

**INTERLOCAL AGREEMENT BETWEEN THE CITY OF ELLENSBURG
AND
KITTTAS COUNTY 9-1-1
FOR
METROPOLITAN AREA NETWORK SERVICES**

This INTERLOCAL AGREEMENT ("Agreement") is entered into on this 13th day of February, 2014, by and between the City of Ellensburg ("City") and KITTCOM, Kittitas County 9-1-1 ("Subscriber"); sometimes collectively referred to as "Parties" and individually as "Party", and is made pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW. Under this Agreement the Parties agree to participate with each other and other public agencies in funding the design, construction, operation and maintenance of a fiber optic Metropolitan Area Network ("MAN").

WHEREAS, on December 16, 2013, the City adopted Chapter 9.110 of the Ellensburg City Code that created a City owned telecommunications utility for the provision of telecommunications services; and

WHEREAS, on December 16, 2013 the City entered into a Telecommunications System Services Agreement with Cannon Construction, Inc. for the design and construction of the MAN with a December 1, 2014 targeted completion date; and

WHEREAS, the City shall pay for the labor and materials to design and construct a City-owned MAN and to operate and maintain the MAN; the City shall operate and own all of the network hardware and premises equipment that is located on the City side of the point of delivery; and the City will operate, maintain and use the MAN for any commercial or non-commercial purposes it deems appropriate for the life of the system; and

WHEREAS, the City and Subscriber desire to enter into an agreement providing for sharing, in conjunction with other participating public agencies who enter into companion Agreements for MAN Services with the City, the costs of designing, constructing, operating and maintaining the MAN; and

WHEREAS, RCW 39.34.080 and other Washington law, as amended, authorizes any city to contract with any other city/county to perform any governmental service, activity or undertaking which each contracting city/county is authorized by law to perform; and

WHEREAS, the governing bodies of each of the parties hereto have determined to enter into this Agreement as authorized and provided for by RCW 39.34.080 and other Washington law, as amended,

NOW, THEREFORE, It is hereby AGREED to by the Parties as follows:

I. **PURPOSE.** The purpose of this Agreement is to provide for the design, construction, operation and maintenance of the MAN and for the Parties' financial participation with other subscribers in the shared capital costs, and shared operating/maintenance costs of the MAN to be financed, owned, operated and maintained

by the City.

II. DEFINITIONS.

- A. **Metropolitan Area Network ("MAN"):** Fiber optic cables used to link subscriber sites to each other for non-commercial use and to other networks owned, operated and maintained by the City.
- B. **MAN Network Hardware:** Hardware owned by the City that is an integral part of the MAN to process and direct information from senders to receivers.
- C. **MAN Premises Equipment:** Hardware that is owned by the City that is located at Subscriber sites to convert information from its native format to a format suitable for transmission over the MAN.
- D. **Site:** The location or locations at which MAN Hardware and/or MAN Premises Equipment is needed to convert Subscriber's information to a format suitable for transmission over the MAN.
- E. **MAN Services: Man services will be offered as** Ethernet to Subscriber Sites at 1 Gigabits/s (1GB); and/or Transmission System 1 (T-1) at 1.544 Mbit/s.

III. LEAD AGENCY.

- A. The City shall be the lead agency under this Agreement responsible for securing financing for the capital costs and installation of the MAN, MAN Network Hardware, and MAN Premises Equipment. The City will, in consultation with the Subscriber and other subscribers that enter into companion agreements for MAN Services, be responsible for operating and maintaining the MAN, MAN Network Hardware, and MAN Premises Equipment, and providing MAN Services. Day to day management and operation of the MAN shall be conducted under the authority and supervision of the City's Director of Energy Services.
- B. The City shall establish a technical committee composed of a representative of the Subscriber, and a representative of each other Subscriber that enters into companion agreements for MAN Services. The role of the technical committee shall be advisory to the City's Director of Energy Services. The technical committee will meet on an as-needed basis and shall review and recommend (1) equipment project options and approaches, (2) options for MAN operations and additions to MAN Services, (3) options for technical standards appropriate to the MAN, and (4) solutions to any other technical issues that the committee deems appropriate.

IV. CAPITAL COSTS REIMBURSEMENT.

- A. Subscriber shall reimburse the City for the City's incremental capital costs for the construction of the MAN. Subscriber shall either reimburse the City for its share of the City's reimbursable capital costs as included in Option E.1 below, or Subscriber shall reimburse the City annually for its share of the City's reimbursable capital costs as included in Options E.2-E.5 below until the capital costs have been paid in full.

- B. Subscriber's share of capital costs shall be determined based upon the number of Subscriber sites, and all City sites and sites of other subscribers that enter into companion agreements for MAN Services, as determined by the Director of Energy Services. As of the effective date of this Agreement, Subscriber's share, and the shares of all other subscribers under companion agreements for MAN Services with the City, is set forth in the document entitled "Capital Costs by Subscriber", appended hereto as Exhibit "A". Any subscriber executing agreements for MAN Services with the City subsequent to the date of this Agreement, and any Site added by Subscriber subsequent to the effective date of this Agreement, shall be charged directly by the City for all costs associated with such sites.
- C. Subscriber's share of capital costs may be subject to adjustment by the Director of Energy Services if the MAN Network Hardware or MAN Premises Equipment in service on the effective date of this Agreement requires replacement, and shall apply regardless of the payment option selected by Subscriber. In any such instance, the Director of Energy Services may revise Exhibit "A" as appropriate by no later than March 31st of each year. Any such revision shall take effect on the January 31st invoice immediately following such revision.
- D. The City shall annually, no earlier than January 31st, issue an invoice to Subscriber for its share of the capital costs financed by the City including any annual adjustments. Payment shall be due no later than thirty (30) days following receipt of the invoice. Payments not received when due shall bear interest at the rate of 12% per annum.
- E. The Subscriber shall select one of the following capital cost reimbursement options no later than thirty (30) days after the effective date of this Agreement:
1. Option A - A total of one invoice of \$26,082.00 issued no earlier than January 31, 2015. The minimum Agreement term shall be through December 31, 2015.
 2. Option B - A total of five annual invoices of \$5,695.00 each. The first annual invoice shall be issued no earlier than January 31, 2015, the second through fifth annual invoices shall be issued no earlier than January 31st of each subsequent year. The minimum Agreement term shall be through December 31, 2018.
 3. Option C - A total of ten annual invoices of \$3,058.00 each. The first annual invoice shall be issued no earlier than January 31, 2015, the second through tenth annual invoices shall be issued no earlier than January 31st of each subsequent year. The minimum Agreement term shall be through December 31, 2023.
 4. Option D, a total of fifteen annual invoices of \$2,185.00 each. The first annual invoice shall be issued no earlier than January 31, 2015, the second through fifteenth annual invoices shall be issued no earlier than January 31st of each subsequent year. The minimum Agreement term shall be through

December 31, 2028.

5. Option E - A total of twenty annual invoices of \$1,753.00 each. The first annual invoice shall be issued no earlier than January 31, 2015, the second through twentieth annual invoices shall be issued no earlier than January 31st of each subsequent year. The minimum Agreement term shall be through December 31, 2033.

V. OPERATING/MAINTENANCE COST REIMBURSEMENT.

- A. Subscriber shall annually reimburse the City for Subscriber's share of the operating and maintenance costs of the MAN by the City. Responsibility for these operating and maintenance costs will be determined based upon the number of Ethernet and/or T-1 Ports used by the Subscriber and all Ethernet Ports used by the City and other subscribers that enter into companion agreements for MAN Services. As of the effective date of this Agreement, the Subscriber's share is \$8,356.00, and the shares of all other subscribers under companion agreements for MAN Services with the City, is set forth in the document entitled "Operating/Maintenance Costs by Subscriber", incorporated by reference herein as Exhibit "B".
- B. Shares of the operating and maintenance costs of the MAN by the City may be subject to annual adjustment by the Director of Energy Services if: (a) there is a change in Subscribers Ethernet Ports used, City Ethernet Ports used, or Ethernet Ports used by other subscriber's under companion agreements for MAN Services, or (b) a subscriber included in Exhibit "B" as of the effective date of this Agreement terminates its companion agreement for MAN Services, or (c) a subscriber not included in Exhibit "B" as of the effective date of this Agreement is added to a companion agreement for MAN Services with the City. In any such instance, the Director of Energy Services may revise Exhibit "B" as appropriate by no later than March 31st of each year. Any such revision shall take effect on the January 31st invoice immediately following such revision.
- C. The City shall annually, no earlier than January 31st of each year, issue an invoice to Subscriber for its share of the operating and maintenance costs for that calendar year. Payment shall be due no later than thirty (30) days following receipt of the invoice. Payments not received when due shall bear interest at the rate of 12% per annum.

VI. OWNERSHIP OF PROPERTY. The City shall own the MAN and all of the MAN Network Hardware, and MAN Premises Equipment; provided however, each Subscriber shall have the exclusive right to use MAN Premises Equipment located wholly upon a site owned or controlled by that party. Upon termination of this Agreement, ownership of the MAN Network Hardware and MAN Premises Equipment shall remain vested in the City. Each Party shall own or otherwise have the exclusive right to use its own user application equipment.

VII. RIGHT OF ENTRY, COOPERATION AND EASEMENT. In order to provide access to MAN Services as contemplated by this Agreement, Subscriber must provide a location at its site for the installation of a point of delivery. The Subscriber hereby grants to the City or its agent for the term of this Agreement:

- A right of access and entry to Subscriber's site for the installation of a point of delivery; and
- A path to and through Subscriber's site for the installation of facilities necessary to connect Subscriber's point of delivery to the MAN as shown in Exhibit "C"; and
- An easement to and through Subscriber's site for the installation of facilities necessary to connect Subscriber's point of delivery to the MAN, if applicable, as shown in Exhibit "D".

Subscriber acknowledges that connecting Subscriber to the MAN requires installation of facilities on its site, and Subscriber therefore agrees to cooperate with the City in the location and installation of such facilities at its site, including without limitation locating a path for any such facilities through and to any buildings on Subscriber's site.

VIII. RETAINED RESPONSIBILITY AND AUTHORITY. Each Subscriber shall retain ownership, responsibility and authority for its user application equipment. The City assumes no liability for Subscriber's user application equipment. User application equipment will not be included in the operating expenses of the MAN.

IX. RECORDS MAINTENANCE, RETENTION AND INSPECTION. The City will maintain accounts and records which reflect all direct and indirect costs of any nature incurred, including but not limited to equipment purchased and services performed under this Agreement. The records shall be maintained in accordance with the requirements of Chapter 40.14 RCW. The records and documents with respect to all matters covered by this Agreement shall be subject at all times, upon reasonable prior notice, to inspection and review by either of the parties hereto.

X. DURATION OF AGREEMENT - AMENDMENT - TERMINATION

A. Duration. This Agreement shall be in full force and effect upon the effective date written above, and shall remain in effect until terminated pursuant to section B below. MAN Services to the Subscriber will commence January 1, 2015.

B. Termination.

1. By Mutual Agreement. Notwithstanding the Subscriber's selection of a Capital Cost Reimbursement option and associated minimum term in Section IV of this Agreement, this Agreement may be terminated at any time by mutual agreement of the Parties, or

2. Termination. Notwithstanding the Subscriber's selection of a Capital Cost Reimbursement option and associated minimum term in Section IV of this Agreement, either Party may terminate this Agreement by giving written notice to the Party(ies) by June 30 in any year of its intention to terminate effective December 31 of that year.

C. Reimbursement. Upon the termination of this Agreement, any capital costs of the Subscriber specified in Section IV of this Agreement that will remain unpaid as of the

termination date shall be reimbursed to the City within 90 days of the termination effective date.

XI. Amendment. This Agreement may be amended at any time by mutual consent of the Parties, made in writing and approved and executed by the duly authorized agents of each of the Parties. Exhibits A and B of this Agreement may be amended annually by the Energy Services Director without the written agreement of the Subscriber in accordance with Sections IV and V of this Agreement.

XII. LIABILITY OF THE CITY.

- A. Loss of Access.** The City shall not be liable for any loss, injury or damage of any kind, including but not limited to consequential, special and punitive damages, resulting from the interruption, reduction, loss or restoration of access to the telecommunications facilities owned by the City from any cause, including without limitation any loss by fire, flood, accident, casualty, sabotage, terrorist act, strike, labor slow-down, act of God or the public enemy, or failure or inadequacy of telecommunications access or appurtenant facilities. The City disclaims any express or implied warranty of merchantability or fitness for a particular purpose for access to the telecommunications facilities owned by the City. The delivery of telecommunications access to any person or entity shall not be construed as or deemed to be the delivery of goods under the Washington Uniform Commercial Code. Every person and entity accepting access to the telecommunications facilities owned by the City agrees to, and shall be deemed to, waive any and all claims for damage or loss to the person's or entity's lines, facilities or communications equipment caused by any act or omission of the City; provided however, that nothing herein shall be deemed or construed as a waiver of any claim for damage or liability arising out of the gross negligence or intentional act of the City or its agents.
- B. Shut Down for Repairs.** Prior to a planned suspension of access to the telecommunications facilities, the City will make reasonable efforts under the applicable circumstances to provide at least a 24 hour advance notice of such suspension to any person with access to such telecommunication facilities. However, such notice shall not be required if the provision of notice is not practicable under the circumstances due to the unplanned nature of any necessary repairs, upgrades, extensions, or changes. The City shall not be liable for damage of any kind, direct or indirect, resulting from any such suspension of access to the telecommunications facilities owned by the City.
- C. Hold Harmless.** Except as specifically provided in Section XII.A, each party to this agreement will be responsible for the negligent acts or omissions of its own employees, volunteers, officers, or agents in the performance of this agreement. Neither party will be considered the agent of the other nor does either party assume any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this agreement.

XIII. I-NET INTERLOCAL. Pursuant to the notice of termination provided on December 19, 2013, the terms and conditions of the I-Net Interlocal Agreement

between the City and Subscriber, dated May 16, 2000, shall remain in full force and effect through December 31, 2014.

XIV. RATIFICATION. Acts taken in conformity with this Agreement prior to its execution are hereby ratified and affirmed.

XV. GOVERNING LAW AND VENUE. This Agreement shall be governed by the laws of the State of Washington, and venue for any lawsuit arising out of this Agreement shall be in the Kittitas County Superior Court.

XVI. SEVERABILITY. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Agreement shall not affect the validity of the remainder of the Agreement.

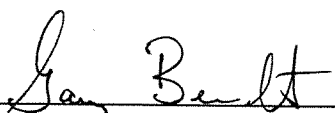
XVII. INTEGRATION. This Agreement contains the entire agreement of the parties concerning the subject thereof, including all oral understandings or agreements, and there are no collateral understandings or agreements or representations or warranties not expressly included herein.

XVIII. FILING. Copies of this Agreement shall be filed with the Kittitas County Auditor, or, alternatively, listed by subject on each or either Party's web site or other electronically retrievable public source pursuant to RCW 39.34.040.

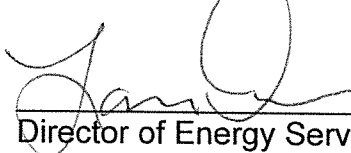
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this 13th day of February, 2014.

KITTITAS COUNTY 9-1-1

CITY OF ELLENSBURG




Gary Berndt, Chairman of the Board



Director of Energy Services

Attest:

Attest:



Secretary of the Board, Darlene Mainwaring




City Clerk

Approved as to form:

Approved as to form:



Michael P. Nigrey, Kittitas County
Deputy Prosecuting Attorney



~~City Clerk~~ Attorney

Exhibit A

Capital Costs by Subscriber

Subscribers	Sites	Option A	Option B	Option C	Option D	Option E
Kittitas County	4	\$ 52,163	\$11,390	\$6,115	\$4,370	\$3,506
Kittitas County Permit Center		12,710	\$2,775	\$1,490	\$1,065	\$854
Central Washington University	4	52,163	11,390	6,115	4,370	3,506
Ellensburg School District	7	91,286	19,933	10,701	7,647	6,136
Kittitas County 911	2	26,082	5,695	3,058	2,185	1,753
Kittitas Valley Fire and Rescue	0					
Kittitas Valley Hospital	4	52,163	11,390	6,115	4,370	3,506
Kittitas County PUD No. 1	0					
Non-City Subscriber Total	21	\$286,567	\$62,573	\$33,594	\$24,005	\$19,262

Exhibit B

Operating/Maintenance Costs by Subscriber

Subscribers	Ethernet Ports	Annual Cost
Kittitas County	15	\$12,533
Central Washington University	5	4,178
Ellensburg School District	11	9,191
Kittitas County 911	10	8,356
Kittitas Valley Fire and Rescue	2	1,671
Kittitas Valley Hospital	6	5,013
Kittitas County PUD No. 1	0	0
Non-City Subscriber Total	49	\$40,942