



INTER-LOCAL AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is made and entered into effective the 1st day of February, 2014, between City of Arlington, a City organized in Washington State, ("CITY"), and the Jamestown S'Klallam Tribe Economic Development Authority, a political subdivision of a Federally recognized Indian Tribe, dba Jamestown Networks ("JNET"). CITY and JNET are sometimes referred to in this Agreement as the "Parties."

RECITALS

- A. CITY wishes to obtain services ("Services") from JNET, as follows:

Ethernet connectivity to the Yakima County data center in Yakima, WA via a service referred to in this Agreement as "LGN Service" (see Exhibit A – Services Statement of Work").
- B. JNET uses the network infrastructure and personnel resources of Northwest Open Access Network ("NoaNet"), a Washington nonprofit mutual corporation, which operates a statewide fiber optic network. JNET has, by separate agreement, secured the services and personnel of NoaNet to provision and maintain the services provided to CITY as set forth in this Agreement.
- C. JNET is willing to provide the type of service CITY requires, referenced in A., above, for the consideration as set forth in Exhibit A.
- D. CITY confirms it has received permission from Snohomish County for its traffic to pass through the fiber leased on behalf of the County by NoaNet to the County colocation facility at 3000 Rockefeller Street in Everett, Washington.
- E. CITY will make all arrangements, agreements and consideration with the County to use of the existing fiber.
- F. JNet, through its subcontractor NoaNet, will assign a dedicated port on the NoaNet switch at the County facility.

AGREEMENT

Now, therefore, CITY and JNET, in consideration of the mutual benefits hereunder, agree as follows:

1. PURPOSE AND SCOPE

The purpose and scope of this Agreement is to specify the terms and conditions under which CITY and JNET will undertake the LGN Service. The details are described in Exhibit A to this Agreement.

1.1 CITY's Obligations:

- a. CITY hereby agrees to provide JNET, and its vendor NoaNet, access to CITY's personnel and facilities to complete the setup of LGN Service specified in the Exhibit A, which service may only be used for lawful purposes, for the compensation set forth in that exhibit.
- b. The CITY agrees to pay JNET for the Service, as stipulated in Exhibit A to this Agreement, in a timely manner.

1.2 JNET's Obligations:

- a. JNET, through its agreement with its vendor NoaNet, agrees to operate and maintain the facilities ("Facilities") and Service as set forth in the Exhibit A for the compensation set forth in that exhibit.



b. JNET agrees to provide the Service in a responsible and business-like manner, in exchange for the compensation stated in Exhibit A to this Agreement.

1.3 Property Ownership and Disposition. The Parties shall retain their respective ownership of all of their properties. This Agreement does not contemplate joint ownership of property and, therefore, does not contain provisions regarding disposition of property owned by either Party.

2. TERM; TERMINATION

The initial term ("Initial Term") of the Agreement shall be for a period of five (5) years from and after the Effective Date. The Effective Date shall be the date on which the Service first becomes available for use by CITY.

Either Party may terminate this Agreement at the end of the Initial Term upon written notification to the other Party of their intent to do so at least sixty (60) days prior to the expiration of the Initial Term. Should a terminating Party not notify the other Party of their intent to terminate the Services at least sixty (60) days prior to the expiration of the Current Term, the Services and Agreement will continue in effect for an additional one (1) year term ("Default Extended Term").

Upon termination of this Agreement, all JNET involvement in the provision of the Services will terminate.

3. COMPLIANCE WITH LAWS

Each Party shall comply with all applicable laws and regulations in the exercise and performance of its rights and obligations under this Agreement.

4. FIBER OPTIC EQUIPMENT AND FACILITIES

4.1 No Representations or Warranties. EACH PARTY MAKES NO REPRESENTATIONS, WARRANTIES, COVENANTS OR ASSURANCES: (1) WITH RESPECT TO THE DESIGN, CONSTRUCTION, DURABILITY, SUITABILITY OR RELIABILITY OF THE EQUIPMENT OR FACILITIES, OR ANY PART THEREOF, WHETHER EXPRESS OR IMPLIED, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (2) WITH RESPECT TO THE NATURE OR ACCURACY OF THE DESCRIPTION, LOCATION OR MEASUREMENT OF THE EQUIPMENT OR FACILITIES, OR ANY PART THEREOF; AND (4) WITH RESPECT TO INTERRUPTION OR CONTINUATION OF THE FACILITIES AND/OR SERVICES.

4.2 Unauthorized Access/Breach. Except as provided in this Agreement, each Party is prohibited from accessing, directly or indirectly, the other Party's equipment or facilities, or any part thereof. Any unauthorized access by either Party of the other Party's equipment or facilities, or any part thereof, shall constitute a material breach of this Agreement and a default by the unauthorized Party under this Agreement.

4.3 Approval of Design and Interconnection Specifications. Each Party shall provide, as reasonably requested from the other Party, information relating to the proposed design and/or installation specifications prior to modifying or making any connection to the CITY facilities or associated equipment or facilities.

4.4 Installation. Both Parties shall mutually agree to a work schedule during which the interconnections for the fiber optic equipment or facilities can be made. Each Party shall timely complete all such work within the agreed upon schedule.

4.5 Cooperation and Coordination. Each Party shall cooperate with the other concerning the timing, method or placement of its construction, installation and testing activities.

5. ALTERATIONS, MAINTENANCE AND REPAIRS



- 5.1 Scheduling/Notice. Except as set forth in Section 6.2, each Party, at its sole cost and expense, may schedule and perform or cause to be performed scheduled alterations, maintenance and repairs on its own fiber optic equipment or facilities, or any part thereof, at the times and in the manner as may be established by the owner thereof. Subject to the provisions of Section 12, the Party scheduling work shall provide two (2) weeks prior written notice to other Party identifying the time, location, and nature of each scheduled alteration or maintenance and repair job for performance thereof which reasonably presents a substantial risk of damage to the other Party's property or creates a substantial likelihood of an interruption of fiber optic equipment or facilities. If fiber optic equipment or facilities include redundant fiber pathways, work will be scheduled to include no more than one pathway at any given time.

Each Party shall furnish on a continuing basis the current name, title, telephone number, and personal communications device number (including facsimile transmission number, cellular telephone number and paging device number), if any, of any representative who shall be kept informed of maintenance schedules. The initial contacts are as follows:

Party: JNET
Address: 1033 Old Blyn Hwy, Sequim, WA 98382
Name: Ben Neff
Title: Operations Manager
Telephone Number: 360.683.2025
Facsimile Number: 360.683.9583
Email address: bneff@jamestowntribe.org

Party: CITY
Address: 238 N. Olympic Ave
Name: Bryan Terry
Title: IT Manager
Telephone Number: 360-403-4610
Facsimile Number: 360-435-4149
Email address: bterry@arlingtonwa.gov

NoaNet (JNET Vendor): NoaNet's contact regarding maintenance and repairs of the fiber optic equipment or facilities is NoaNet's Network Operations Center (NOC)
Phone: 509-456-3611
800 Phone: 866-662-6380
Address: 422 W. Riverside, Suite 400, Spokane, WA 99201

- 5.2 Maintenance, Repair, and Restoration of the Cable.
- 5.2.1 Maintenance of Fiber Optic Equipment or Facilities.
Reserved
- 5.2.2 Restoration Priorities and General Requirements.
- a. Each Party's obligation to maintain and repair its own fiber optic cable and equipment, and any activity incidental thereto, shall not unreasonably conflict with the other Party's rightful use and operation of its facilities and equipment.
- b. Timely restoration is dependent upon the timely coordination and cooperation between both Parties. Each Party will provide the other, in writing, with its emergency contact/call-out list as soon as practicable following the effective date of this Agreement.
- 5.2.3 Restoration/Repairs of the Cable.
Reserved



6. FORCE MAJEURE

- 6.1 As used in this Agreement, the term "Force Majeure" means acts of nature (including but not limited to, earthquakes, fires, floods, windstorms, landslides, and ice storms), strikes, lockouts, or other labor disputes; acts of public enemy; acts of vandalism, wars, riots, and insurrection; epidemics; civil disturbances; explosions; train derailments; breakdown or failure of machinery or facilities (excluding the cable and cable accessories); accidents to machinery or equipment (excluding the cable and cable accessories), and delay in delivery of equipment, to the extent such occurrences are beyond the reasonable control of the Parties and any other event, cause, or condition beyond a Party's reasonable control, which, by the exercise of reasonable diligence, prevents the Party claiming Force Majeure from performing its obligations under this Agreement.
- 6.2 If either Party is unable to carry out its obligations under this Agreement as a result of an event, cause, or condition of Force Majeure, the Party claiming Force Majeure shall give notice and full particulars of such Force Majeure in writing to the other Party within five (5) calendar days of the beginning of the occurrence of the Force Majeure event, cause, or condition. Any obligations that such Party is unable to perform due to an event, cause, or condition of Force Majeure shall be suspended during the continuance of such event of Force Majeure. The Party claiming Force Majeure shall use reasonable efforts to remedy and minimize the effects of such event of Force Majeure with all reasonable dispatch.
- 6.3 Neither Party shall be liable, or be considered to be in material breach or default under this Agreement, on account of any delay in or failure of performance due to Force Majeure unless specifically stated in this Agreement.
- 6.4 If Force Majeure prevents restoration within one (1) year from the event of such Force Majeure, then either Party shall have the option to terminate this Agreement.
- 6.5 The obligations set forth in this section are expressly subject to the limitation of liability provisions contained in Section 12.

7. INSURANCE

- 7.1 Liability Insurance. Each Party shall, at its own expense, carry and maintain the following liability insurance coverage throughout the term of the Agreement:
 - 7.1.1 General Liability Insurance: In the amounts of at least \$1,000,000.00 per occurrence/\$2,000,000.00 aggregate.
 - 7.1.2 Each Party shall identify the other as an additional insured under the general liability insurance required under this Agreement. It is the sole responsibility of each Party to provide updated insurance information, in a timely manner, including any notices of cancellation or reduction in limits of insurance. Each Party will require that its insurer provide at least thirty (30) days notice to the other Party regarding any changes in insurance coverage required by this Agreement.
- 7.2 Property Insurance. Each Party shall carry and maintain property insurance in a form that will provide all risk coverage for the fiber optic equipment or facilities upon or within the other Party's property.
- 7.3 Insurance Shall Not Limit Liability. Subject to the limitation of liability provisions set forth in Section 12, the insurance coverage and benefits required herein shall not be deemed to limit liability to either Party or any third party. In the event the minimum insurance limits specified in this Agreement are less than the maximum amount of insurance in effect at the time of claim or loss which arises from or is connected to the Agreement, each Party affirmatively agrees that all insurance limits available to it will be extended to the other Party as additional insured.



8. INDEMNITY, HOLD HARMLESS AND DUTY TO DEFEND

Subject to the limitation of liability provisions set forth in Section 12, each Party shall, at its sole expense, indemnify, defend, save, and hold harmless the other Party, its officers, directors, agents, members, and employees from all actual or potential claims or losses, including costs and attorneys' fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever to the extent caused by any negligent or willful act of or omission of the indemnifying Party or its subcontractors, excluding damages caused by the negligence of the indemnified Party, its officers, directors, agents, or employees.

This indemnification includes, without limitation, any liability for injury to the person or property of either Party, its agents, officers, employees or invitees. Both Parties specifically waive any immunity provided by Title 51 RCW, Washington's Industrial Insurance Act. The provisions of this section shall survive the expiration or termination of this Agreement.

9. ASSIGNMENT

This Agreement cannot be assigned, transferred or any portion subcontracted by either Party hereto without the prior written consent of the other Party, which shall not unreasonably be withheld.

10. WAIVER

The consent by CITY or JNET to any act by the other shall not be deemed to imply consent or to constitute the waiver of a breach of any provision hereof or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the Parties in the administration of any part of the provisions hereof be construed to waive or lessen the right of a Party to insist upon the performance by the other Party in strict accordance with the provisions hereof.

11. DEFAULT AND REMEDIES FOR DEFAULT

11.1 **Breach.** This Agreement may be terminated upon the occurrence of a material breach and default under this Agreement. If the Party in breach fails to cure the breach within thirty (30) days or such longer period of time as is provided below, after receipt of notice thereof from the non-breaching Party, or, when the cure reasonably requires more than thirty (30) days, the breaching Party fails to commence the cure within such thirty (30) days and thereafter diligently and continuously prosecutes such cure to completion, such action or inaction shall constitute a material breach and default under this Agreement.

11.2 **Remedies Not Exclusive.** In the event of a material breach and default under this Agreement, termination is not the exclusive remedy. Any and all other remedies available of law or equity are expressly preserved.

12. LIMITATION OF LIABILITY

12.1 THE PARTIES SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT.

12.2 SUBJECT TO SECTION 12.1, EACH PARTY'S TOTAL AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS OR DEMANDS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID BY THE OTHER PARTY PURSUANT TO THIS AGREEMENT.

13. NOTICE

Except as may otherwise be provided herein, any notices, except service of process and notice of emergency which may be given personally, telephonically, by e-mail or facsimile, shall be effective if personally served upon the other Party or if mailed by registered or certified mail, return receipt requested, to the following addresses:



For CITY, c/o Bryan Terry, IT Manager, 238 N. Olympic Ave, Arlington WA 98223;

For JNET, c/o Douglas Sellon, Executive Director, 1033 Old Blyn Hwy, Sequim, WA 98382.

Notices mailed shall be deemed given on the date of mailing. The Parties shall notify each other in writing of any change of address.

14. BREACH OF AGREEMENT; REMEDIES; DISPUTE RESOLUTION

If either Party fails to comply with the terms and conditions of this Agreement, the other Party may pursue such remedies as are legally available, including, but not limited to, the immediate termination of this Agreement. In the event that a dispute arises under this Agreement, it shall be resolved as follows: Each Party shall appoint a member to a disputes board and be responsible for the costs of that appointee. These two members shall then select a third member not affiliated with CITY or JNET. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process is a prerequisite to filing of any litigation concerning the dispute. The Parties shall share equally in the cost of the third member of the disputes board.

15. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Washington.

16. ATTORNEYS' FEES AND COSTS

In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing Party shall be entitled, in addition to other relief, to such reasonable attorneys' fees and costs as determined by the court.

17. MUTUAL NEGOTIATION AND CONSTRUCTION

17.1 Mutual Negotiation and Construction. This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

17.2 Headings. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

18. ENTIRE AGREEMENT; AMENDMENTS

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.

19. SEVERABILITY

Should any part, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

20. NO THIRD PARTY RIGHTS

This Agreement shall not be construed to create rights in or grant remedies to any third Party as a beneficiary of this Agreement.

21. TAXES

Each Party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions.

22. COMPLIANCE WITH LAWS

Each Party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and regulations that apply to it.



23. RELATIONSHIP OF THE PARTIES

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, or to impose any partnership obligations or liability upon either Party. No agent, employee or representative of CITY shall be deemed to be an agent, employee, or representative of JNET for any purpose. No agent, employee or representative for JNET shall be deemed to be an agent, employee or representative of CITY for any purpose.

24. CONFIDENTIALITY

Each Party shall treat all information made available or disclosed to, or developed or obtained by, it as the result of or related to this Agreement ("Confidential Information") as confidential, and shall not disclose or use Confidential Information for the benefit of any person other than the disclosing Party; provided however, that the Party receiving the Confidential Information shall have no obligation with respect to that portion of Confidential Information which is disclosed by the disclosing Party to others without any restriction on use or disclosure, or which must be disclosed to others under law. If the receiving Party receives a request for Confidential Information from a third party, the receiving Party shall promptly notify the disclosing Party in writing of such request, and if the receiving Party in good faith believes it is obligated to disclose the requested Confidential Information, the disclosing Party shall be given the opportunity to seek judicial or other protection of such Confidential Information, at its own expense, with the cooperation of the receiving Party.

25. SURVIVABILITY

All provisions of this Agreement regarding indemnification, representations, warranties, confidentiality, and any other provisions that by their nature are intended to survive termination of this Agreement shall survive after its termination or expiration, including exhibits.

26. CONTRACT ADMINISTRATORS FOR RESPECTIVE PARTIES

The initial contract administrators of the respective Parties to this Agreement shall be as follows:

For JNET, its Executive Director, or their designated representative; and

For CITY, its Mayor, or their designated representative.

27. AUTHORIZATION

Each Party hereby represents and warrants to the other that it is duly authorized to enter into and carry out the terms of this Agreement.

28. COUNTERPARTS

This Agreement may be executed in counterparts, which together shall constitute a single agreement.

29. LIMITED WAIVER OF SOVEREIGN IMMUNITY

The parties respectively waive, relative to the enforcement of this Agreement only, by them against each other, any claims they may have to sovereign immunity.



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

For: CITY OF ARLINGTON

For: Jamestown Networks

By: 
Barbara Tolbert, Mayor

By: 
Douglas Sellon, Executive Director

List of Exhibits Attached:

Exhibit A - Services Statement of Work



EXHIBIT A
Service Order Summary

| Service Description | Monthly Recurring Charge (MRC) | Term |
|----------------------------|---------------------------------------|-------------|
| 100Mb LGN access | \$ 500.00 | 60 months |
| Total | \$ 500.00 | |