

INTERAGENCY AGREEMENT
BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF TRANSPORTATION
AND
CITY OF KIRKLAND
(Fiber Installation in City Conduit in City Right of Way)

THIS INTERAGENCY AGREEMENT (**Agreement**) is made and entered into by and between the WASHINGTON STATE DEPARTMENT OF TRANSPORTATION (**WSDOT**) and the CITY OF KIRKLAND (**CITY**).

RECITALS

WHEREAS, WSDOT has deployed the "WSDOT Statewide Intelligent Transportation Systems (ITS) Plan", with the goal of improving transportation safety and mobility and enhance productivity through the use of advanced communication technologies into the transportation infrastructure and vehicles, encompassing a broad range of wireless and wire line communications-based information and electronics technologies, and

WHEREAS, WSDOT's Northwest Region is implementing a regional project called the "Traffic Buster" system, herein the "System Network," which will allow approximately twenty local agencies in the central Puget Sound to connect to WSDOT fiber optic network and exchange traffic video, and

WHEREAS, the CITY will be a participating agency in the System Network; and

WHEREAS, it is of mutual benefit to both PARTIES for the CITY to connect to the System Network, the PARTIES hereby wish to establish the roles of the PARTIES for the installation, operation and maintenance of the System Network, and

WHEREAS, it is to the mutual advantage of the CITY and WSDOT to enter into this Agreement, which Agreement is authorized by RCW 39.34.030 and RCW 47.28.140.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, covenants, and performances contained herein it is mutually agreed as follows:

1 PURPOSE.

- 1.1 It is the purpose of this Agreement to set forth the terms and conditions by which the PARTIES shall install, maintain and operate the System Network and interconnect to the System Network located within each PARTIES respective rights of way at each PARTIES sole cost, except as detailed in Section 4 of this Agreement.

- 1.2 The PARTIES agree to work closely in the operation of the System Network and to notify the other PARTY when problems occur. If either PARTY requires access to the other PARTY's cabinet, vault or facility for maintenance or troubleshooting, accompanied access shall be arranged through the PARTIES per Section 8 Contract Management.

2 TERM

2.1 Initial Term

The initial term of this Agreement shall be five (5) years, commencing upon May 1, 2010 regardless of the date of execution.

2.2 Extension

This Agreement may be extended for one (1) additional five (5) year term by mutual written agreement of the PARTIES.

3 STATEMENT OF WORK

3.1 Installation of Fiber Optic Cables

The CITY or its assigned shall:

- 3.1.1 Provide and install a six (6) strand SM fiber-optic cable from the hand-hole located approximately 200ft north of the intersection at NE 124th Street and 116th Avenue NE to the signal cabinet located by the southbound off ramp of Interstate 405 (I-405) at NE 124th Street.
- 3.1.2 Provide and install one each forty-eight (48) strand SM fiber optic cable from the manhole at NE 128th St & 116th Ave NE to the above hand-hole located south on 116th Ave NE.
- 3.1.3 Provide and install a fiber splice case in the hand-hole on 116th Ave NE and fusion splice two (2) fiber strands on the above installed six (6) strand fiber to a City of Kirkland 48 strand fiber. The two (2) fiber strands will be installed in a 2 in, 2 out configuration.
- 3.1.4 Provide and install a tune able mule tape along with the above installed forty-eight (48) strand and six (6) strand fiber cables.
- 3.1.5 Provide and install one each twelve (12) strand fiber patch panel in the above signal cabinet at I-405.
- 3.1.6 Provide and fusion splice FC pigtails for the two (2) fiber stands above on the above six (6) strand fiber pulled into the signal cabinet at I-405 and terminate to the above installed fiber patch panel.
- 3.1.7 Provide OTDR test through the pigtail splices and the splices in the hand-hole to the City of Kirkland forty-eight (48) strand fiber.

3.2 WSDOT's Use of Fiber Strands.

The CITY hereby authorizes WSDOT and WSDOT hereby agrees to use, in accordance with the terms and conditions herein, two (2) strands of the Fiber Cable (Fiber Strands) as described in Section 3.1 for the purpose of improving transportation safety and mobility.

3.3 Maintenance and Repair of Fiber Optic Cables

The City will maintain, repair and keep the Fiber Cable in a safe manner and in good order and repair. If maintenance requires access to WSDOT's signal cabinet, the CITY shall notify WSDOT at least five (5) Business Days in advance for any scheduled maintenance. For emergency repairs that require access to WSDOT's signal cabinet, the CITY will inform WSDOT as soon as possible of any emergency work performed, and will provide all relevant information such as, but not limited to, the nature of the emergency, the locations where repairs were performed, and whether continuing work is required. For the purposes of this Agreement, the term "Business Days" shall mean Monday through Friday, 8:00 a.m. to 5:00 p.m., Pacific Standard Time, except for holidays observed by WSDOT. Maintenance and repair work shall be performed at the cost of the CITY.

3.4 Additional Work

Either PARTY may request additional work by submitting a written request detailing the design, deployment and cost of such work, if to WSDOT, the WSDOT Project Manager, and if to the CITY, the City Project Manager. Prior to commencement of any such option work, the scope of work shall be detailed in a written statement of work (SOW) executed by the appropriate WSDOT Signature Authority listed on Exhibit A, and any revisions thereto, and the CITY's Chief Information Office, as listed on Exhibit A, and any revisions thereto. Each SOW shall include the approval date of the agreed upon additional work.

4 CONSIDERATION

The consideration for this Agreement is:

4.1 The CITY agrees:

- 4.1.1 To install and maintain the Fiber Cable in the Right of Way pursuant to Section 3 above,
- 4.1.2 To provide WSDOT use of two (2) fiber strands at the location as described in Section 3.1, and as may be modified by an approved SOW, as provided in Section 3.4 herein;
- 4.1.3 To invoice WSDOT, providing supporting documents for the charges billed. Invoices and or payments shall not exceed one per month and shall include at a minimum:
 - a. WSDOT Contract Number K430;
 - b. Statement of Work Number (if applicable);
 - c. Description of service;
 - d. Date service was rendered;
 - e. Amount invoiced including all applicable discounts & taxes;
 - f. Total Amount Due.

4.2 WSDOT agrees:

- 4.2.1 To provide operational access to the System Network at no cost to the CITY.
- 4.2.2 To reimburse the CITY for the actual direct salary and direct non salary costs for the work to include but not limited to the installation of fiber optic cables, a splice case and splicing of the fiber required to connect the CITY vault at NE 128th Street and 116th Avenue NE to the WSDOT signal cabinet at the south bound off ramp of I-405 and NE 124th Street, as described in Section 3.1 above.
- 4.2.3 To pay in cash to the CITY a lump sum amount not to exceed six thousand five hundred dollars (\$6,500) no later than thirty days upon receipt of a properly submitted invoice.
- 4.2.4 The consideration provided by each PARTY herein is deemed to be of equivalent value.
- 4.2.5 Any additional work, as agreed to pursuant to Section 3.4, shall include compensation equivalent in value to the work, rights, and obligations agreed to therein.

5 OWNERSHIP OF IMPROVEMENTS

The Fiber Cable and appurtenances thereto installed by the CITY in the Right of Way pursuant to this Agreement shall be deemed the personal property of and owned by the CITY.

6 OVERHEAD, INDIRECT OR ADMINISTRATIVE FEES

Unless otherwise expressly stated in this Agreement, there will be no overhead, indirect or administrative fees assessed for this Agreement by either PARTY.

7 RECORDS

- 7.1 The PARTIES shall each maintain books, records, documents and other evidence relating to this Agreement that sufficiently and properly reflect all direct and indirect costs expended by either PARTY in the performance of this Agreement. These records shall be subject to inspection, review or audit by personnel of both PARTIES, other personnel duly authorized by either PARTY, the Office of State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after termination of this Agreement. Records involving matters in litigation related to this Agreement shall be kept for either one (1) year following the termination of litigation, including all appeals, or six (6) years from the date of expiration or termination of this Agreement, whichever is later.
- 7.2 Records and other documents, in any medium, furnished by one PARTY to this Agreement to the other PARTY, will remain the property of the furnishing PARTY, unless otherwise agreed. Each PARTY will utilize reasonable security procedures and protections to assure that records and documents provided by the other PARTY are not erroneously disclosed to third PARTIES.

- 7.3 Notwithstanding the foregoing, the PARTIES acknowledge that any documents and records that are prepared or created pursuant to this Agreement may be determined to be public records under the Washington Public Records Act, Chapter 42.56 RCW, and as such may be subject to public disclosure. Each PARTY recognizes that certain documents and records may contain proprietary information exempt from disclosure under Public Records Act, may constitute trade secrets as defined in RCW 19.108.010(4) and may include confidential information which is otherwise subject to protection from misappropriation or disclosure. Should any documents or records that are prepared or created pursuant to this Agreement become the subject of a request for public disclosure, the following procedures shall apply:
- 7.3.1 The PARTY who received the disclosure request (Recipient) shall immediately notify the other PARTY (Owner) of such request and the date by which it anticipates producing the requested records.
- 7.3.2 The Owner must then assert in writing to the Recipient any claim that such records contain proprietary or confidential information that it believes is exempt from disclosure under the Public Records Act or is subject to protection pursuant to Chapter 19.108 RCW or other State of Washington law so that Recipient may consider such assertion in responding to the requestor.
- 7.3.3 If the Owner fails to make such assertion within eight (8) days after the date the Recipient notifies the Owner of its intended response, the Recipient shall have the right to make such disclosure.
- 7.3.4 If the Owner makes a timely assertion that the requested records contain proprietary or confidential information or trade secrets, the Recipient will allow the Owner an additional ten (10) days for the Owner to seek judicial protection of the records pursuant to RCW 42.56.540. Such an action shall be at the Owner's expense. Should the Recipient elect to participate in any such action its own attorney's fees will be the Recipient's expense. If the Owner does not seek judicial protection of the records within ten (10) days after notifying the Recipient of its belief that the records contain proprietary or confidential information or trade secrets, then Lessee shall release the records to the requestor.
- 7.3.5 If prior to judicial consideration of a challenge by a requester, the Recipient in its sole discretion believes the Owner does not have a valid claim, it shall so notify the Owner no less than five (5) days prior to the date the Recipient intends to make the disclosure to allow the Owner to take such action as it deems appropriate prior to disclosure. The Recipient will not make such a disclosure while an action to enjoin disclosure is pending under RCW 42.56.540.
- 7.3.6 If the Recipient denies a request for public records solely for reasons other than the Owner's assertion of proprietary or confidential information contained in records, the Owner has no responsibility for payment of any attorneys' fees or fines that may be imposed on the Recipient, nor for payment of Recipient's attorneys' fees.

7.3.7 In the event either PARTY believes that any documents or records subject to transmittal to or review by the other PARTY under the terms of this Agreement contain proprietary, trade secret or other materials that are exempt or protected from disclosure pursuant to applicable Laws, the owner of the document shall identify and clearly mark such information prior to such transmittal or review. The provisions of this Section 6.3 shall apply even though a PARTY may fail to identify and clearly mark such information prior to transmittal or review.

7.4 The provisions in this Section shall survive the expiration or termination of this Agreement.

8 TERMINATION

8.1 Termination for Convenience

Either PARTY may terminate this Agreement upon ninety (90) calendar days' prior written notification to the other PARTY. If this Agreement is so terminated, the PARTIES shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

8.2 Termination for Default

In the event a PARTY does not timely and properly fulfill the performance of the terms and conditions of this Agreement, the other PARTY may issue a written notice to the defaulting PARTY to cure the default within fifteen (15) calendar days of said notice. In the event the default is not cured within that 15-day period, or such longer period, as may be reasonably determined by the non-defaulting PARTY, if the defaulting PARTY is diligently working to cure the default, this Agreement shall terminate without further action of either party.

9 CONTRACT MANAGEMENT

9.1 Contact Information.

All contact information for the management of this agreement shall be identified in Exhibit A. Exhibit A may be updated by either PARTY for their agency only and shall be submitted in writing or electronic mail to the other PARTY by the Contract Administrators. Any update to Exhibit A shall state the effective date of said update.

9.2 Contract Managers

The Contract Managers for both WSDOT and City identified in Exhibit A shall be the primary contact for ALL communications and billings for the performance of this Agreement. The Contract Managers shall be responsible for the daily performance and technical oversight of this Agreement on behalf of WSDOT and CITY.

9.3 Project Managers

9.3.1 The WSDOT Project Manager identified in Exhibit A shall be lead for WSDOT on all technical and troubleshooting issues regarding the performance of this Agreement.

The WSDOT Project Manager shall be responsible for facilitating with the WSDOT Project Manager any interagency technical communications and/or coordination necessary regarding the business associated with this Agreement.

9.3.2 The CITY Project Manager identified in Exhibit A shall be lead for the CITY on all technical and troubleshooting issues regarding the performance of this Agreement. The CITY Project Manager shall be responsible for facilitating with the WSDOT Project Manager any interagency technical communications and/or coordination necessary regarding the business associated with this Agreement.

10 DISPUTES

10.1 The Project Managers shall work cooperatively to resolve problems or issues arising under this Agreement in a timely manner.

10.2 In the event the Project Managers are unable to resolve a dispute, the following individuals are designated to serve as the representatives of each PARTY (Designated Representatives) and shall confer to resolve disputes that arise under this Agreement as requested by either PARTY. The Designated Representative for WSDOT is Grant Rodeheaver, Director of the Office of Information Technology. Designated Representative for the CITY is Brenda Cooper, Chief Information Officer. The Designated Representatives shall use their best efforts and exercise good faith to resolve such disputes.

10.3 In the event the Designated Representatives are unable to resolve the dispute, the Assistant Secretary of Administrative Operations for WSDOT, or his/her designee, and the City Attorney for the CITY or her/his designee shall confer and exercise good faith to resolve the dispute.

10.4 In the event the Assistant Secretary of Administrative Operations for WSDOT and the City Attorney for the CITY are unable to resolve the dispute, the PARTIES may, if mutually agreed in writing, submit the matter to non-binding mediation. The PARTIES shall then seek to mutually agree upon the mediation process, who shall serve as the mediator, and the timeframe the PARTIES are willing to discuss the disputed issue(s).

10.5 Each PARTY shall bring to the mediation session, unless excused from doing so by the mediator, a representative from its side with full settlement authority. In addition, each PARTY shall bring counsel and such other persons as needed to contribute to a resolution of the dispute. The mediation process is to be considered settlement negotiations for the purpose of all state and federal rules protecting disclosures made during such conference from later discovery or use in evidence; Provided, that any settlement executed by the PARTIES shall not be considered confidential and may be disclosed. Each PARTY shall pay its own costs for mediation and share equally in the cost of the mediator. The venue for the mediation shall be in Olympia, Washington, unless the PARTIES mutually agree in writing to a different location.

10.6 If the PARTIES cannot mutually agree as to the appropriateness of mediation, the mediation process, who shall serve as mediator, or the mediation is not successful, then either PARTY may institute a legal action in the County of Thurston, State of Washington, unless other venue is mutually agreed to in writing. The PARTIES agree that they shall have no right to

seek relief in a court of law until and unless each of the above procedural steps has been exhausted.

10.7 Continuity of Service.

10.7.1 WSDOT and the CITY agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Agreement that are not affected by the dispute.

10.7.2 If the subject of the dispute is the amount due and payable by from one PARTY to the other, the PARTY providing the services shall continue providing services pending resolution of the dispute.

11 GOVERNANCE

11.1 This Agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this Agreement shall be construed to conform to those laws.

11.2 In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. Applicable state and federal statutes and rules;
- b. Statement of work; and
- c. Any other provisions of the Agreement, including materials incorporated by reference.

12 ASSIGNMENT

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either PARTY in whole or in part, without the express prior written consent of the other PARTY, which consent shall not be unreasonably withheld or delayed. Provided that nothing herein precludes WSDOT from contracting out the Fiber Cable installation and maintenance work to third PARTIES.

13 WAIVER

A failure by either PARTY to exercise its rights under this Agreement shall not preclude that PARTY from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the PARTY and attached to the original Agreement. A failure by either PARTY to exercise its rights under this Agreement shall not preclude that PARTY from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the PARTY and attached to the original Agreement.

14 SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of

applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

15 INDEPENDENT CAPACITY

The employees or agents of each PARTY who are engaged in the performance of this Agreement shall continue to be employees or agents of that PARTY and shall not be considered for any purpose to be employees or agents of the other PARTY.

16 AMENDMENTS

This Agreement may be amended by mutual written agreement of the PARTIES. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the PARTIES as set forth in Exhibit A.

17 EXHIBITS

17.1 Exhibit List

a. Exhibit A: Contacts

17.2 All exhibits, attachments, and documents referenced in this contract are hereby incorporated into this Agreement.

18 AGREEMENT EXECUTION

The signatories to this Agreement represent that they have the authority to bind their respective organizations to this Agreement.

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EXHIBIT A
Interagency Agreement Contact Information

WSDOT Contract Number: K430
City of Kirkland Contract Number:

Effective Date: May 1, 2010

Washington State Department of Transportation

Only the Contract Signature Authority 1 and 2 identified below are authorized to bind WSDOT.

Contract Signature Authority 1: (under \$100,000 and single year)	Grant Rodeheaver, Director Office of Information Technology P.O. Box 47430 Tumwater, WA 98504-7430 (360) 705-7601 rodeheg@wsdot.wa.gov
Contract Signature Authority 2: (over \$100,000 or multi-year)	Bill Ford, Assistant Secretary Finance and Administration P.O. Box 47400 Olympia, WA 98504-7400 (360) 705-7501 fordb@wsdot.wa.gov
Contract Manager:	Morgan Balogh, NWR Traffic Operations 15700 Dayton Avenue North Seattle, WA 98133-0000 (206) 440-4485 baloghm@wsdot.wa.gov
Project Manager:	Michael Forbis NWR Traffic Operations 15700 Dayton Avenue North Seattle, WA 98133-0000 (206) 440-4463 forbism@wsdot.wa.gov
Contract Administrator:	Jaylene Barry, C.P.M., CPPB Administrative Services Contracts Office P.O. Box 47408 Olympia, WA 98504-7408 (360) 705-7547 barryja@wsdot.wa.gov

Invoicing	<p>Office of Information Technology Attn: Invoice Processing Business Unit 7345 Linderson Way S.W. P.O. Box 47430 Tumwater, WA 98504-7430 (360) 705-7716</p> <p><u>WSDOTOITVendorPayments@wsdot.wa.gov</u> The preferred method of submittal shall be electronic to the email address above.</p>
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City of Kirkland

Contract Signature Authority 1:	Brenda Cooper, Chief Information Center Information Technology Department 123 Fifth Avenue Kirkland, WA 98033 (425) 587-3051 bcooper@ci.kirkland.wa.us
Contract Manager:	Donna Gaw, Network & Operations Manager Information Technology Department 123 Fifth Avenue Kirkland, WA 98033 (425) 587-3080 dgaw@ci.kirkland.wa.us
Contract Administrator:	Donna Gaw, Network & Operations Manager Information Technology Department 123 Fifth Avenue Kirkland, WA 98033 (425) 587-3080 dgaw@ci.kirkland.wa.us

19 ALL WRITINGS CONTAINED HEREIN

This Agreement contains all the terms and conditions agreed upon by the PARTIES. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the PARTIES hereto.

IN WITNESS WHEREOF, the PARTIES have executed this Agreement.

City of Kirkland

State of Washington

Department of Transportation

Donna Gaw, Network & Operations Mgr for
Brenda Cooper, Chief Information Officer

Department of Information Technology

Bill Ford, Assistant Secretary

Administrative Operations

5/27/10

Date

5-26-10

Date