

September 30, 1995

Introduced By:

RON SIMS
GREG NICKELS

Fiber.doc:svw

Proposed No.:

95 - 729

MOTION NO. **9736**

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A MOTION authorizing an inter-agency agreement between King County and the City of Seattle for the construction of a fiber optic network in downtown Seattle and approving the terms and conditions for future fiber optic installation projects.

WHEREAS, it is the intention of King County government to take advantage of opportunities to share resources toward the development of fiber optic systems with federal, state, and local governments, and

WHEREAS, the city of Seattle has adopted resolution no. 29076 encouraging the development of projects to share the installation of fiber optic systems with other public agencies, and

WHEREAS, King County and the city of Seattle intend to construct telecommunications systems utilizing fiber optic cable as the transmission medium, and

WHEREAS, it is in the public interest that jurisdictions cooperate to provide effective and cost efficient information services;

NOW THEREFORE BE IT MOVED by the Council of King County:

The county executive is authorized to execute an inter-agency agreement, substantially in the form attached, with the city of Seattle for the construction and use of a fiber optic network and to utilize the attached terms and conditions for the development of future fiber installation agreements.

PASSED by a vote of 12 to 0 this 19 day of December, 1995.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Kent Puller
Chair

ATTEST:

Gerald A. Pitzer
Clerk of the Council

Attachments:

PROJECT AGREEMENT

between

King County

and

The City of Seattle
Department of Administrative Services

THIS INTER-AGENCY AGREEMENT is made this 10th day of August, 1995, by and between the following public agencies: THE CITY OF SEATTLE (hereinafter "City"), a municipal corporation organized and existing under the laws of the State of Washington, and KING COUNTY (hereinafter "County"), a public corporation organized and existing under the laws of the State of Washington, (hereinafter "Participating Agencies").

WITNESSETH:

WHEREAS, the City has adopted resolution no. 29076 encouraging the development of projects to share the installation of fiber optic systems with other public agencies; and

WHEREAS, the Participating Agencies intend to construct telecommunications systems utilizing fiber optic cable as the transmission medium, and for this purpose may desire to occupy Facilities owned by the City and the County; and

WHEREAS, the Participating Agencies are willing, to the extent they may lawfully do so and subject to the terms and conditions hereinafter set forth, to share fiber optic installations; and

WHEREAS, the Participating Agencies recognize the benefits of such an arrangement and have, to all Parties' satisfaction, agreed as to the following terms and conditions, including sufficient consideration;

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions herein, the parties to this Agreement agree and covenant as follows:

Project Description:

A new fiber run to be installed from the Exchange Building to the King County Courthouse, containing 24 fiber strands for the City of Seattle ("DAS") and 44 fiber strands for King County, Division of Metropolitan Services ("M/KC"), with 4 common spares. M/KC intends to lease up to 10 strands to other agencies consistent with the general terms and conditions. The fiber cable will proceed eastward along Marion in conduit owned by King County to 3rd Avenue, where it will turn southward in DAS conduit to enter the Arctic Building, Public Safety Building and the King County Courthouse. DAS fiber will terminate in the Arctic (24), Public Safety (24) and King County Courthouse (6). M/KC fiber will terminate in the King County Courthouse (48), in the Arctic Building (6) and in the Public Safety Building (24). One 1" inner duct shall be installed in all City conduit to maximize future use of the conduit. DAS authorizes M/KC to place a fiber cable in an existing cable tray between the Public Safety Building and the Municipal Building, with patch panels in each building, to promote network interconnection for exchange of information between entities.

Project Participating Agencies:

King County
City of Seattle Department of Administrative Services

Lead Agency:

King County -- Project Manager Jeff Kass

Facility Owners:

King County -- Facility Manager Jeff Kass

- Lessee, Exchange Building
- Owner, King County Courthouse
- Owner, Marion Street conduit

City of Seattle Department of Administrative Services -- Project Lead Dean Arnold

- Owner, 3rd Avenue conduit-- Facility Manager Dean Arnold
- Owner, Arctic Building-- Facility Manager Barbara Brannan
- Owner, Public Safety Building-- Facility Manager Rick West

Project Budget and Contingency and Cost Sharing Method:

An estimated project budget is attached. An estimated project payment plan is also attached, which distributes costs on the following principles:

- The project engineering and project management costs, the cost of the inner duct and the fiber strands, both material and installation, are shared on the proportion of 24:44 between DAS and M/KC based on the proportion of fiber dedicated to each party.
- The cost of patch panels and fiber terminations, both materials and labor, are distributed based on the terminations desired by each party.
- An Annual Facility Use payment for conduit rental is calculated on a \$3.87 per inner duct foot basis per year and included as a project cost.

Contractual framework and general terms and conditions:

The Participating Agencies agree that the attached General Terms and Conditions for this fiber sharing project is a part of this Agreement with the following exceptions.

Term: The initial term of this Agreement shall be for one year. Both parties agree to extend the Agreement an additional nineteen (19) years. It is the understanding of the parties that M/KC must have legislative approval to enter into financial obligations for longer than one (1) year. In the event M/KC fails to approve legislation authorizing M/KC to continue to rent conduit from the City of Seattle, such failure will not affect M/KC's agreement to allow the City of Seattle to occupy M/KC conduit for the full term of twenty (20) years, subject to the General Terms and Conditions.

Special Provisions: M/KC shall have the right to replace the cable with a larger cable, provided that the cable can occupy a one-inch (1") inner duct, provided further DAS has the right to approve the replacement details and time schedule. DAS approvals are not to be unreasonably withheld. M/KC shall give DAS a ninety (90-) day notice of its intention to replace the cable. M/KC shall be responsible for the direct costs of replacing the cable, including disconnecting and reconnecting the cable at DAS termination points. For this project, DAS agrees to waive the requirement in Exhibit A (City of Seattle Facilities) and the Addendum requiring three one-inch (1") inner ducts in City Facilities.

Special Addendum: City of Seattle Underground Conduit

Bond Requirement: None

Insurance Requirement: \$1,000,000

IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTE THIS AGREEMENT.

THE CITY OF SEATTLE

By: 

Ken Nakatsu

Title: Director
Department of Administrative
Services

Date: 8/10/95

KING COUNTY

By: 

Fred Stephens

Title: Director
King County Department of
Executive Administration

Date: 8/11/95

Exchange Building to King County Courthouse Fiber Project
ESTIMATED BUDGET

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	UNIT	Unit Price	Quantity	Cost
Labor				
Project Management	Lot			
Perform field study of cable route	Lot			
Provide written findings of field study	Lot			
Provide documentation of materials to be used	Lot			
Provide manufacturers' test documentation	Lot			
Coordinate project with appropriate entities	Lot			
Provide documentation of fiber test results	Lot			
Provide documentation of fiber installation	Lot			
Provide "Red-line" field prints of installation	Lot			
	Subtotal			\$4,000
Install patch panel (2 each building)	each	\$200.00	8	\$1,600
Install 1" Innerduct	ft.	\$0.50	1,873	\$937
Install 72 SM fiber	ft.	\$1.10	1,873	\$2,060
Terminate fiber cable (KC-6, PSB-30, ARC-48, Ex-24)	each	\$20.00	108	\$2,160
Terminate fiber cable (KC-44, ARC-24, Ex-44)	each	\$20.00	112	\$2,240
Test fiber	each	\$50.00	54	\$2,700
Test fiber	each	\$50.00	56	\$2,800
	Sub-total			\$14,497
Material				
48 posi. Patch Panel (2 each building)	each	\$650.00	8	\$5,200
1" Innerduct	ft.	\$1.00	1,873	\$1,873
72 strands SM fiber	ft.	\$4.00	1,873	\$7,492
ST connector (KC-6, PEB-30, ARC-48, EX-24)	each	\$30.00	108	\$3,240
ST connector (KC-44, Ex-44, ARC-24)	each	\$30.00	112	\$3,360
	Sub-total			\$21,165
				Labor and Material Cost \$39,662
				Contingency \$3,966
				Total Direct Project cost \$43,628
Conduit rental fee				
		Monthly	Annual	
City Light Conduit	ft.	\$3.87	0	\$0
DAS Conduit	ft.	\$3.87	1,273	\$4,927
Metro Conduit	ft.	\$3.87	600	\$2,322
				Total Annual cost for conduit rental \$7,249
				Total cost, 20 years \$181,008

Exchange Building to King County Courthouse Fiber Project
ESTIMATED COST DISTRIBUTION

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Metro Cost responsibility:

Distributed costs:

Metro share =44/68= 65%

Project Management	\$ 4,000	2,588
Fiber and Innerduct installation	\$ 2,997	1,939
Fiber and Innerduct material	\$ 9,365	6,060
1995 conduit rental - Metro net rental cost	\$ 3,624	1,184
Contingency	\$ 3,966	2,566

Specific costs:

Patch Panel install (EX Bldg)	\$400	259
Patch Panel (EX Bldg)	\$ 1,300	841
Patch Panel install (Arctic Bldg)	\$400	133
Patch Panel (Arctic Bldg)	\$ 1,300	433
Patch Panel install (KCC)	\$400	352
Patch Panel (KCC)	\$ 1,300	1,144
Terminations		2,240
Connectors		3,360
Test Fiber		2,800

Total Metro cost responsibility 1995

25,900

DAS cost responsibility

Distributed costs:

DAS share =24/68= 35%

Project Management	\$ 4,000	1,412
Fiber and Innerduct installation	\$ 2,997	1,058
Fiber and Innerduct material	\$ 9,365	3,305
1995 conduit rental - (DAS net rental income)	\$ 3,624	(1,184)
Contingency	\$ 3,966	1,400

Specific costs:

Patch Panel install (EX Bldg)	\$400	141
Patch Panel (EX Bldg)	\$ 1,300	459
Patch Panel install (Arctic Bldg)	\$400	267
Patch Panel (Arctic Bldg)	\$ 1,300	867
Patch Panel install (PSB)	\$400	400
Patch Panel (PSB)	\$ 1,300	1,300
Patch Panel install (KCC)	\$400	48
Patch Panel (KCC)	\$ 1,300	156
Terminations		2,160
Connectors		3,240
Test Fiber		2,700

Total DAS Cost responsibility 1995

17,728

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DRAFT: 10/04/95 11:10am

GENERAL TERMS and CONDITIONS

For Sharing of Fiber Optic Installation Projects

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I. 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. Building Entrance

Conduit or Conduits usually connecting a Vault, Handhole, or Maintenance Hole in the public right-of-way to a building.

B. Building or Location Served By Fiber Optic System

Any Facility, location, building, or structure where the Participating Agencies terminate any Fiber Optic Cable for use by the Participating Agencies.

C. Building Vault

A vault located substantially within a building and subject to uniform building and fire codes.

D. City Buildings

Structures owned, leased, and/or occupied or partially occupied by City employees, and/or equipment.

E. City Light Department Conduit

Conduit designed to house conductors or cables owned by the City Light Department and for which City Light has authority to control access and use.

F. Common Fiber Spares

Fiber strands installed as part of a Fiber Optic Project held in reserve solely for replacement of disabled fibers.

((F)) G. Conduit

Enclosed runway or tube designed to house cables for their protection (same as Duct).

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((N)) O. Facility Owner

The entity that is the legal owner of a Facility or Facilities or the entity holding the legal right to grant permission to occupy, use or modify Facilities.

((O)) P. 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.

((P)) Q. Fiber Optic Project

The activities associated with the installation of fiber optic transmission materials, ~~((complete with))~~ including cable, splices, inner duct, sleeves, etc. ~~((installed as a shared project by the Participating Agencies.))~~

((Q)) R. Fiber Optic Project Agreement

An agreement for a specific Fiber Optic Project with Participating Agencies that specifies the contractual relationships between and among the participants.

((R)) S. Fiber Strand or Strand of Fiber

A thin transparent fiber of glass enclosed by a material of a lower index of refraction that reflects light throughout its length by internal reflections.

((S)) T. 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.

((T)) U. 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

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- ((Z)) AA. Overhead Transmission Facilities**
- Electrical conductors, structures and related equipment designed or utilized for bulk transportation of electricity between two end points, usually Substations. Structures may be of wood or steel. Transmission voltage levels on the City Light Department system are primarily 115KV or 230KV.
- ((AA)) BB. Participating Agency**
- A public agency that has signed an agreement to engage in a shared Fiber Optic Project.
- ((BB)) CC. Safety Observer**
- A person or persons assigned to watch over Work activities in, on, or around electrical Facilities for the purposes of ~~((keeping such Facilities and employees safe from harm.))~~ **protecting workers from electrical hazards and ensuring Facility integrity.**
- ((CC)) DD. Splice**
- The point where two separate optical fiber strands are joined together either mechanically or by fusion to make one continuous optical fiber strand.
- ((DD)) EE. Substation**
- An electrical power facility where electrical voltage is transformed, controlled, monitored and routed.
- ((EE)) FF. Telecommunications Cable**
- A fiber optic, coaxial, multi-pair, copper, low-voltage cable or any other cable utilized for telecommunications of information from one place to another.
- ((FF)) GG. 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

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II. RELATIONSHIPS AMONG PARTICIPATING AGENCIES

A. FIBER OPTIC PROJECT AGREEMENTS

All fiber optic installation projects among Participating Agencies shall have a Fiber Optic 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
- Project Schedule
- Changes or Addenda to General Terms and Conditions
- Bond and Insurance Requirements for Contracting and Participating Agencies

The General Terms and Conditions for Sharing Fiber Optic Installation Projects shall be an attachment to each Fiber Optic Project Agreement.

B. PRINCIPLES

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

1. Participation in Fiber Optic Projects is voluntary and can depend on specific cable routes.
2. Arrangements for cooperation should be fair and equitable among Participating Agencies. As a general principle, agreements among Participating Agencies, where they have a share of project control, should share costs proportionately based on their share of the fiber strands deployed. Any special configuration, such as a routing change to accommodate a particular entity, should be paid for in whole by such entity. If a Facility Owner requires a route change due to Facility access, the costs of such a change shall be considered general project costs and not the sole responsibility of the Facility Owner as a Participating Agency.

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

5. Complete Acceptance of Fiber Optic Project

The Lead Agency shall formally accept installation of the Fiber Optic 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 and that all punch-list items have been resolved to the satisfaction of the Lead Agency and Facility Owner. Such acceptance shall authorize final payment(s) to contractor(s). The Lead Agency shall also identify ownership of Fiber Strands.

6. Establish Maintenance Plan

The Lead Agency shall develop a maintenance plan for the Fiber Optic Project, and the Participating Agencies will appoint a maintenance manager.

7. Keep Records

The Lead Agency shall provide Facility Owners with whatever documents are specified by the Facility Manager(s) so Facility Owner(s) can maintain accurate records of where and how the Participating Agencies installed equipment within or on Facilities, and where and how the Participating Agencies modified any Facilities. Among the materials that must be provided to Facility Owner are computerized records and archival quality drawings that document installation or modification Work performed by the Lead Agency or its contractors. The Lead Agency shall not charge the Facility Owner for providing any necessary documentation requested by the Facility Manager.

8. Provide Access to Records

The Lead Agency shall provide access to any and all of the Participating Agencies' records with respect to design, installation and maintenance of components of the Fiber Optic System located within or on Facilities to Facility Owner(s) when requested by the Facility Manager(s). The Lead Agency shall not charge the Facility Owner for either access to such

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Participating Agencies unless terminated under the terms and conditions provided herein.

Common Fiber Spares, if provided in a project, shall be shared among the Participating Agencies only. Identified fiber spares shall be used only as replacements for disabled fibers. Use of spare fibers shall be implemented by the Lead Agency, with notification to all Participating Agencies.

G. SALE OF FIBERS

Participating Agencies shall not sell, assign, assign the use, or otherwise convey the use of any of a Participating Agency's fibers as identified in the Project Agreement to any other party except to governmental, public educational or public utility entities.

Should any of the Participating Agencies wish to sell fibers installed under this Agreement, the other Participating Agencies in the project shall be granted right of first refusal. Any entity purchasing fibers installed under a Fiber Optic Project Agreement must agree to the General Terms and Conditions, Exhibits and Addenda as specified in this document and shall notify the Facility Owner(s) of any such purchase.

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

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

I. TAXES

The Participating Agencies shall pay, before delinquency, all applicable taxes, levies, and assessments arising from their joint Fiber Optic installations and undertakings under a Fiber Optic Project Agreement, taxes levied on the Participating Agencies' property, equipment and improvements, and taxes on the Participating Agencies' interest in the Fiber Optic Project Agreement and any leasehold interest deemed to have been created thereby under RCW 82.29A.

J. PAYMENTS

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The Lead Agency shall comply with standards and installation procedures as agreed to by the Participating Agencies and the Facility Owners pursuant to Section II.C.

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 in or on Facilities have been completed.

C. MAINTENANCE AND REPAIR RESPONSIBILITIES

1. Maintenance and Repair of Fiber Optic Cable and Fiber Strands

Maintenance of the Fiber Optic Cable and Fiber Strands within Fiber Optic Cable placed in or on Facilities pursuant to this Agreement shall be the responsibility of the Lead Agency as agent for the Participating Agencies for the term of the Fiber Optic Project Agreement and for any extensions or renewals.

In instances where service to any of the Participating Agencies has been interrupted, the Lead Agency, at the Participating Agencies' request, will make a reasonable effort to complete repairs of the Fiber Optic Cable as soon as permission to effect the repairs has been obtained from the Facility Owner.

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 the duration of the Fiber Optic Project Agreement and any extensions or renewals on a basis proportional to the ownership of fibers attributed to each Participating Agency. ~~The Lead Agency shall review ongoing maintenance expenses with Participating Agencies on an annual basis.~~

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

All costs and expenses incurred by the Lead Agency in performance of Work and payable by the Participating Agencies pursuant to this Agreement 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

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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 gross 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.

IV. RELATIONSHIP WITH FACILITY OWNERS

A. PRINCIPLES FOR USE OF CITY OF SEATTLE FACILITIES

City of Seattle Facilities may be used for fiber sharing projects consistent with principles adopted by the Seattle City Council in Resolution 29076.

1. Facilities, such as utility poles and ((utilidors)) Utilidors, which are currently available for use by non-City entities shall comply with all requirements of the City agency which owns them. Use of a Facility shall be engineered to maximize the reasonable additional future use of such Facility, e. g., guy wire to facilitate future co-lashing. The project cost shall include all fees and charges for the use of the Facility.
2. The General Terms and Conditions do not authorize use of any other City of Seattle Facilities such as conduit, ducts and vaults unless such use is specifically authorized by the Seattle City Council pursuant to the Addendum Authorizing Use of City of Seattle Underground or Transmission Facilities.
3. Shared fiber projects which utilize City poles and Utilidors shall be limited for use only by governmental and public educational agencies and institutions and shall be used for governmental and public educational purposes only.

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3. Right of Entry Agreements

Participating Agencies specifically acknowledge the risks associated with use of Facilities where entry is based on right of entry agreements negotiated for the Fiber Optic Project.

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, subject to Facility availability as determined by the Facility Manager, and any and all conditions specified by the Facility Owner.

E. BUILDING ENTRANCES

In the event that a Building Entrance owned or controlled by one of the Participating Agencies is not usable for either entering a building or for providing access to the location in a building where the Participating Agencies have installed Fiber Optic Project components, the Lead Agency has the responsibility for making alternative arrangements for building access with a building owner. The expense associated with an alternative Building Entrance shall be borne by the Participating Agencies utilizing the building.

F. MODIFICATIONS TO FACILITIES

At the Lead Agency's request, the Facility Owner may make modifications to Facilities to facilitate building access for the Fiber Optic Project. Any requests by the Lead Agency for such modifications shall be made to the Facility Manager. Costs for such modifications shall be paid by the Lead Agency and reimbursed by the Participating Agencies utilizing such Facilities.

All modifications to Facilities shall be subject to the review and approval by the Facility Owner and Participating Agencies during design and construction. If the Lead Agency is responsible for the construction of the Fiber Optic Project subject to this Agreement, any unauthorized modifications must be corrected at the expense of the Lead Agency.

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Agency for Indirect Costs as may be called for in the agreement for use of Facilities between the Lead Agency and the Facility Owner.

b. For Relocation

The Lead Agency shall reimburse Facility Owner(s) for all direct and verifiable costs associated with any relocation unless the costs of relocation of any cables of the Fiber Optic Project located within or on Facilities are borne by a third Party. In addition to reimbursement for direct costs of labor and materials incurred for such relocations, Facility Owner(s) shall be reimbursed by the Lead Agency for Indirect Costs as may be called for in the agreement for use of Facilities between the Lead Agency and the Facility Owner.

2. Annual Facility Use Payment

By December 31 of each year, the Facility Owner will submit to the Lead Agency a bill and supporting documentation for the annual payment for Facilities utilized by the Fiber Optic Project as of that year. Fees shall commence on the effective date of the document authorizing use.

3. Payment

Invoices shall be submitted by the Facility Owner to the Lead Agency.

All amounts due to the Facility Owner under this Agreement shall be paid by the Lead Agency within sixty (60) days of the date of the invoice from the Facility Owner. The Facility Owner may elect to assess an interest fee of 0.033% for each day payment is late, and may consider the Participating Agencies in default if any amount is not paid to the Facility Owner by the due date.

4. Disputed Payments

If a dispute arises as to any funds due to the Facility Owner under the terms of this Agreement, the Participating Agencies shall pay the disputed amount into an escrow account pending

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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.

L. DEFAULT

Any of the following circumstances shall be considered an event of default, and based upon such default, the Facility Owner may, by written Notice of Termination (Section VI.E. — Termination) to the Participating Agencies, suspend or terminate its Agreement with the Lead Agency effective as of the date specified by the Facility Owner in the Notice:

1. The Lead Agency's failure to perform the Work within the time specified, or any authorized extension thereof;
2. The Lead Agency's failure to satisfactorily perform Work in conformance with the Fiber Optic Project Agreement and/or to the satisfaction of the Facility Owner;
3. In the event the Facility Owner deems that the Lead Agency's performance or failure to perform will jeopardize the integrity of its systems and/or Facilities.

Upon the Facility Owner's identification of default, the Facility Owner may elect to give written notice to the Lead Agency to correct the default. The Facility Owner shall provide immediate telephonic notice to correct the default followed by a facsimile, to the Lead Agency. The Lead Agency shall provide immediate telephonic notice, followed by a facsimile, to Participating Agencies of any notice from a Facility Owner of such ~~default~~ suspension or termination. The Lead Agency shall have seven (7) days, or such longer period after receipt of notice of default as the Facility Owner may authorize in writing, to submit to the Facility Owner a written plan for corrective action. If the Lead Agency fails to respond with a written plan for corrective action that is mutually acceptable to the Participating Agencies or if the Lead Agency fails to adhere to the plan for corrective action, the Facility Owner may transmit the termination notice. No notice of termination

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1. The insurance shall contain the following types of coverages and minimum dollar limits:

- a. Commercial General Liability: A policy of commercial general liability insurance, written on an occurrence form, including all the usual coverage known as:
- Premises/Operations Liability
 - Products/Completed Operations
 - Personal/Advertising Injury
 - Contractual Liability
 - Owners and Contractors Protective Liability
 - Employers Liability (Stop Gap)
 - Explosion, Collapse and Underground Property Damage (XCU) (as applicable)
 - Watercraft, owned and non-owned (as applicable)

Such policy(ies) shall provide the following minimum coverage:

Bodily Injury and Property Damage -
\$1,000,000 per occurrence,
\$2,000,000 annual aggregate.

If any policy required under this subsection is written on a claims-made form, the retroactive date shall be prior to or coincident with the date of this Agreement. The policy shall state that coverage is "claims made", and state the retroactive date. The contractor shall maintain such policy continuously in force for a period of twenty-four (24) months following the completion date, and the contractor shall annually provide the Lead Agency with proof of renewal. If renewal of the claims-made form of coverage becomes unavailable, or economically prohibitive, the contractor shall purchase an extended reporting period ("tail") or execute another form of guarantee acceptable to the Lead Agency to assure financial responsibility for liability for services performed, which shall run at least through the end of this twenty-four (24) month period.

- b. Commercial Automobile Liability: A policy of Commercial Automobile Liability, including coverage for owned, non-owned, leased or hired vehicles.

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- c. Be maintained in full force and effect at no expense to the Participating Agencies and the Facility Owner(s) for a period of twenty-four (24) months following the completion date, and
- d. Protect the Participating Agencies and Facility Owner(s) within the policy limits from any and all losses, claims, actions, damages and expenses arising out of or resulting from the contractor's performance or lack of performance under the "Contract", and
- e. Name the Participating Agencies and Facility Owner(s) as an additional insured, on and ISO form (CG2010 or CG 2026), including its officers, elected officials, employees, agents, and volunteers, and
- f. Include a "Separation of Insureds" or "Severability of Interests" provision (whether by endorsement or otherwise) indicating that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, the insurance shall apply:
 - as if each party insured thereunder (whether as a named insured, additional named insured or additional insured) were the only party insured by such policy(ies), and
 - separately to each insured against whom a claim is made or a suit is brought.
- g. In accordance with RCW 48.18.290, the coverages provided by this policy for this Fiber Optic Project shall not be terminated, reduced or otherwise materially changed without providing at least forty-five (45) days prior written notice to the Lead Agency.

Failure of the contractor to comply with any of the terms of these insurance provisions shall be considered a material breach of this Contract and, at the option of the Lead Agency, shall be cause for such action as may be available to the Lead Agency under other provisions of the Contract documents or otherwise in law, including immediate termination of the Contract.

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3. If, upon investigation, the enforcement entity finds probable cause to believe that the contractor has failed to comply with any of the terms of these provisions, the Participating Agencies shall be so notified in writing. The Lead Agency shall give the contractor an opportunity to be heard, after ten (10) days notice. If the agency concurs in the findings of the enforcement entity, it may suspend the contract and/or withhold any funds due or to become due to the contractor, pending compliance by the contractor with the terms of these provisions.
4. Failure to comply with any of the terms of these provisions shall be a material breach of the contract.
5. The foregoing provisions, (1.) through (4.), will be inserted in all contracts for Work covered by the Fiber Optic Project Agreement.

E. WOMEN'S AND MINORITY BUSINESS UTILIZATION

The Lead Agency will make every effort to utilize women's business enterprises and minority business enterprises in any contracting. The Lead Agency will require that its contractors and subcontractors will make every effort to utilize women's business enterprises and minority business enterprises. The Lead Agency will maintain records reasonably necessary for monitoring its compliance with the provisions of this section.

VI. ADDITIONAL TERMS AND CONDITIONS APPLICABLE TO ALL FIBER OPTIC PROJECT AGREEMENTS

A. LAWS, LICENSES, AND PERMITS

1. General Requirement

All Work done under a Fiber Optic 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 represent and warrant to the owners of rights-of-way and to Facility Owners that they shall have and

Notice of termination shall be given by the Participating Agency terminating the Agreement to the others not less than thirty (30) days prior to the effective date of termination.

F. FORCE MAJEURE

Any Participating Agency may suspend a Fiber Optic Project Agreement without recourse by another 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.

G. 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 a Participating Agency to insist upon strict performance of, or that Participating Agency's waiver of, any of the terms, conditions, or obligations of either the General Terms and Conditions or a specific Fiber Optic 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.

H. SEVERABILITY

In the event any section, sentence, clause, or phrase of the General Terms and Conditions or a specific Fiber Optic Project Agreement is adjudicated to be invalid or illegal by a court of last resort and of competent jurisdiction, the remainder of the General Terms and Conditions or of a specific Fiber Optic 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 the replacement section, sentence, clause, or phrase which is legal and most closely represents the original intent of the Participating Agencies.

written consent of the other Participating Agencies, which consent shall not be unreasonably withheld.

O. NOTICES

All notices and other materials to be delivered hereunder, shall be in writing and shall be delivered or mailed to addresses as identified in the Fiber Optic Project Agreement.

P. NON-EXCLUSIVITY

This is a non-exclusive arrangement.

Q. MODIFICATION OR AMENDMENT

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

R. ATTORNEY FEES AND COSTS

In the event legal action is taken or commenced among the Participating Agencies hereto, declaratory or otherwise, for the enforcement of any of the covenants, terms, or conditions of this Agreement, the prevailing party shall be entitled to its costs and reasonable attorney fees as determined by the trial and appellate courts.

Costs and reasonable attorney fees shall include, but not be limited to, reasonable attorney fees, paralegal and legal support staff expenses, costs of arbitration, mediation, expert witnesses, exhibits, reasonable investigations, and reimbursement for all time, expense, and overhead of all prevailing party personnel or consultants assisting in the legal action or responding to or investigating a claim or demand.

S. ARBITRATION/MEDIATION

If a dispute arises out of or relates to this Agreement, or the breach thereof, and if said dispute cannot be settled through direct discussions, the Participating Agencies agree to first endeavor to settle the dispute

EXHIBIT A

CITY OF SEATTLE FACILITIES

I. GENERAL CONDITIONS FOR ACCESS TO AND USE OF CITY FACILITIES

A. All City of Seattle Facilities

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 City Facility Manager or designee in writing (facsimile 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. City Buildings

If the Lead Agency desires to utilize space in any City 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.

Addendum Authorizing Use of City of Seattle Underground or
Transmission Facilities.

II. PROCEDURES FOR CITY OF SEATTLE FACILITIES

A. Engineering, Design, and Maintenance

Upon execution of a Fiber Optic Project Agreement, the Participating Agencies and Facility Owners shall review and revise planning, engineering, design, installation, and maintenance procedures for the Fiber Optic Project. The procedures will be subject to the approval of the Facility Owners.

B. Access

1. The Lead Agency shall notify the appropriate City Department at least two (2) working days before access to any City Department facility is desired. The affected City Department will respond to requests for access from the Lead Agency at least twenty-four (24) hours prior to the requested start time, indicating whether access has been granted as requested, access has been delayed or access has been denied.
2. The City shall make every effort to provide access to Facilities during the times requested by the Lead Agency. However, the City may not be able to accommodate all requests, and the Lead Agency will need to plan accordingly.
3. All access to City Facilities by the Lead Agency or its contractors must be coordinated with the appropriate authority staff designated by the City's Facility Manager(s). The Lead Agency and its contractors must comply with whatever conditions for access to City Facilities that are specified by designated Facility Managers.

C. Project Control

City staff shall be authorized to stop Work on installation that is being conducted by the Lead Agency and its contractors on the Fiber Optic Project if City staff determine that the Work in question would or could potentially cause ~~((injury to others))~~ electrical hazards to workers or problems with the electrical system, telecommunications, traffic control or street-lighting systems. Such problems include, but are not

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EXHIBIT B

SEATTLE CITY LIGHT FACILITIES

I. GENERAL CONDITIONS

Seattle City Light reserves the right to determine if work in or on its Facilities may be performed by contractors. All contractors hired by the Lead Agency to work within or on Seattle City Light Facilities shall be subject to approval by Seattle City Light. In all agreements with contractors, the Lead Agency may require such contractors to attend a pre-construction meeting with the Seattle City Light to review installation requirements and Work restrictions prior to any Work being performed in or on Facilities. The contractor's agreement shall state that Seattle City Light has authority to stop Work or require that inadequate Work be corrected.

A. Priority Protection of the City's Electrical System

The Lead Agency shall make the protection of the City's electrical power system the highest priority when working in Seattle City Light Facilities or in proximity to Seattle City Light Facilities. The Lead Agency will not through his/her action or knowing inaction compromise such protection.

B. Priority Restoration

The restoration of electrical service shall have the highest priority in the event that both Seattle City Light's electrical system and the Participating Agencies' telecommunications services are interrupted, unless otherwise agreed to by City Light and Participating Agencies at the time of restoration. In the event of an outage, Seattle City Light shall expeditiously work to restore the functionality of the Fiber Optic Cable as soon as reasonably possible and practical after restoration of all necessary electrical service. Seattle City Light shall not cut or otherwise damage the Fiber Optic Cable unless absolutely necessary for the safe and prompt restoration of electrical service.

II. REQUIREMENTS FOR USE OF FACILITIES

A. Overhead Transmission Facilities

A. Engineering, Design, and Maintenance

Upon execution of a Fiber Optic Project Agreement, the Participating Agencies and Seattle City Light shall review and revise planning, engineering, design (includes material specifications), installation, and maintenance procedures for the Fiber Optic Project. The procedures will be subject to the approval of Seattle City Light. All materials used must be approved by Seattle City Light prior to installation.

B. Access

1. The Lead Agency shall notify Seattle City Light at least two (2) working days before access to any Seattle City Light facility is desired. City Light will respond to requests for access from the Lead Agency at least twenty-four (24) hours prior to the requested start time, indicating whether access has been granted as requested, access has been delayed or access has been denied.
2. Seattle City Light shall make every effort to provide access to Facilities during the times requested by the Lead Agency. However, ((the City)) ~~Seattle City Light~~ may not be able to accommodate all requests, and the Lead Agency will need to plan accordingly.
3. All access to Seattle City Light Facilities by the Lead Agency or its contractors must be coordinated with the appropriate authority designated by Seattle City Light's Facility Manager(s). The Lead Agency and its contractors must comply with the conditions for access to Seattle City Light Facilities that are specified by designated Facility Managers.
4. All installations within or on Seattle City Light Facilities by the Lead Agency, Participating Agencies or their contractors may require the presence of a Safety Observer. A Seattle City Light Safety Observer shall be used whenever a Lead Agency, Participating Agency or their contractors will perform Work:
 - a. In a substation or switchyard;
 - b. Intermittently in an energized Vault, Maintenance Hole or Handhole (NOTE: Intermittent work is performed in segments lasting only one month or less.); or

2. Any of the Participating Agencies' Fiber Optic Cable in Seattle City Light Substations shall be terminated on connectorized patch panels. Patch panels and electronic equipment shall be located on existing communication racks, or on new communication racks as specified by the Seattle City Light Engineering Services Division. Routing of the Participating Agencies' Fiber Optic Cables into and within Seattle City Light substations shall be as directed by the Seattle City Light Engineering Services Division.

B. Overhead Distribution Facilities

In addition to the provisions of the Master Pole Attachment Agreement, the following requirements shall apply to all such installations:

1. Climbing space. The "back", hereinafter defined, of the pole shall be kept clear for climbing space and shall not rotate around pole from quadrant to quadrant. The back of the pole shall mean the side opposite the "setting gain" or "brand" which is on the face of the pole 10 feet (Telecommunications Company set) or 12 feet (City Light Department set) from the butt end of the pole. The back of the pole shall also mean the convex side of the pole which has a natural sweep or curve from end to end.
2. Service drops shall not be permitted in the climbing space, and drops shall not be installed just beyond this space. A 36" space rather than a 24" space along the lead shall also be required. (Refer to Table 10, Section 236, State of Washington Electrical Construction Code.)
3. The vertical height of installations is to be determined from ground level rather than from the existing power secondary as the secondary is subject to relocation.
4. Non-metallic Conduit, PVC or equal, shall be required for vertical risers attached to the pole above telephone or other attachments.
5. Conduits on poles shall not be located in the climbing space. In case of questions concerning the location of a Conduit, City

Light Department, upon request, will make a field determination.

- 6. The Lead Agency shall also conform to all future and to any existing installation rules, regulations or requirements that may be promulgated in writing to the Participating Agencies by Seattle City Light.

C. Requirement to Relocate Facilities, Other than Overhead

Notwithstanding any provision in this Agreement, Seattle City Light Department may require that Participating Agencies' Fiber Optic Project facilities be relocated or removed from City Light Department facilities. If, following notification ~~(consistent with Section IV.G.1)~~ to relocate or vacate, the Participating Agencies fail to relocate or remove their facilities in a timely manner, Seattle City Light may enforce one or more of the following options:

- 1. Seattle City Light may require the Participating Agencies to construct, or have constructed, alternate facilities such as vaults, maintenance holes, ducts, and conduits for Seattle City Light's use in lieu of relocating their facilities.
- 2. Seattle City Light may impose a fee of two-thousand dollars (\$2,000) per day for each day that the Participating Agencies' Fiber Optic Facilities remain in place after the date specified in the Facility Owner's request to relocate/remove.
- 3. Seattle City Light may assume ownership of the Participating Agencies' Fiber Optic Facilities.
- 4. Seattle City Light may remove the Participating Agencies' Fiber Optic Facilities and charge the costs, including direct and indirect costs, to the Participating Agencies.

- i. Any Conduit utilized by the Lead Agency must be filled with inner duct to the maximum extent feasible, up to a maximum of four one-inch inner ducts.
 - ii. An inner duct must be installed in any Conduit utilized by the Lead Agency and shall ~~be owned~~ ~~by~~ ~~become the property of~~ that City Department.
 - iii. The appropriate City Department must approve in writing both the type and the color of any inner duct installed by the Lead Agency.
 - iv. All inner duct that is installed must have pull strings, unless the inner duct has Fiber Optic Cable(s) in it.
- c. Splices, loops, coils or fiber termination equipment shall not be placed in City Underground Facilities or in Building Vaults unless authorized by the appropriate City Department. Penetrations of Building Vault walls must be done in accordance with applicable fire codes and standard construction practices.

The following material shall be added to Exhibit B to the General Terms and Conditions:

I. C. Fiber Optic Cable Composition

The Lead Agency shall install only readily available Dielectric Cable within or on underground Facilities. All Fiber Optic Cable to be installed shall be approved by Seattle City Light prior to installation in Seattle City Light Facilities. Cable installed without this approval shall be removed by the Participating Agencies upon request from Seattle City Light. Optical Ground Wire, self-supporting cable or messenger-supported cable may be used on Overhead Transmission Facilities and Overhead Distribution Facilities as mutually determined by the Participating Agencies and the City.

II. C. Underground Facilities

relocation requests or service interruptions or any other reason that arise from being co-located with Seattle City Light facilities.