

SEATTLE FIBER PARTNERS AGREEMENT

Amendment #16

Addition of the United States Coast Guard, Port of Seattle, City of Edmonds, City of Shoreline, and Federal Bureau of Investigation as a Seattle Fiber Partner

THIS AMENDMENT to the INTER-AGENCY AGREEMENT is executed on the dates shown below, by and between the following public agencies: THE CITY OF SEATTLE, a municipal corporation organized and existing under the laws of the State of Washington, KING COUNTY, UNIVERSITY OF WASHINGTON, SEATTLE COMMUNITY COLLEGE DISTRICT VI (an agency of the State of Washington), UNITED STATES GENERAL SERVICES ADMINISTRATION, the DEPARTMENT OF INFORMATION SERVICES (an agency of the State of Washington), the SEATTLE PUBLIC SCHOOLS, the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF TRANSPORTATION (an agency of the State of Washington), (hereinafter "Participating Agencies").

WITNESSETH:

WHEREAS, the City of Seattle has adopted a resolution encouraging the development of projects to share the installation of fiber optic systems with other public agencies; and

WHEREAS, THE CITY OF SEATTLE, a municipal corporation organized and existing under the laws of the State of Washington, KING COUNTY ("KC"), UNIVERSITY OF WASHINGTON ("UW"), SEATTLE COMMUNITY COLLEGE DISTRICT VI ("SCCD"), an agency of the State of Washington, the UNITED STATES GENERAL SERVICES ADMINISTRATION ("GSA"), and the DEPARTMENT OF INFORMATION SERVICES ("DIS"), an agency of the State of Washington, the SEATTLE PUBLIC SCHOOLS ("SPS"), the NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION ("NOAA/PMEL"), DEPARTMENT OF TRANSPORTATION ("WSDOT"), an agency of the State of Washington, have previously executed an agreement to construct telecommunications systems utilizing fiber optic cable as the transmission medium ("Executed Agreement"); and

WHEREAS, the UNITED STATES COAST GUARD (USCG), PORT OF SEATTLE (PoS), FEDERAL BUREAU OF INVESTIGATION (FBI), CITY OF EDMONDS, AND CITY OF SHORELINE has expressed an interest in becoming A Participating Agency in various projects; and

WHEREAS, the Participating Agencies to the Executed Agreement 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 include the addition of the UNITED

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STATES COAST GUARD, PORT OF SEATTLE, FEDERAL BUREAU OF INVESTIGATION, CITY OF EDMONDS, AND CITY OF SHORELINE as a Participating Agency; 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 contained, the parties to this agreement hereby agree and covenant as follows:

The Participating Agencies to the Executed Agreement agree to include the UNITED STATES COAST GUARD, PORT OF SEATTLE, FEDERAL BUREAU OF INVESTIGATION, CITY OF EDMONDS, and CITY OF SHORELINE as an additional Participating Agency;

The UNITED STATES COAST GUARD, PORT OF SEATTLE, FEDERAL BUREAU OF INVESTIGATION, CITY OF EDMONDS, AND CITY OF SHORELINE hereby agrees to the terms and conditions of the Executed Agreement and those stated in this Amendment.

WITNESSETH:

WHEREAS, the City of Seattle has adopted a resolution encouraging the development of projects to share the installation costs of fiber optic systems with other public agencies; and

WHEREAS, the City of Seattle, will sell spare strands of fiber to other public agencies, subject to the General Terms and Conditions approved in Ordinance 117981 (Exhibit A); and

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

IN WITNESS WHEREOF, THE PARTIES HERETO EXECUTE THIS 16TH AMENDMENT

<p>UNITED STATES COAST GUARD</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>	<p>PORT OF SEATTLE</p> <p>By: _____</p> <p>Title: _____</p> <p>Date: _____</p>
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<p>CITY OF SHORELINE</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>	<p>CITY OF EDMONDS</p> <p>By: <u>Wain O'Earle</u></p> <p>Title: <u>Mayor</u></p> <p>Date: <u>1-4-12</u></p>
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<p>FEDERAL BUREAU OF INVESTIGATION</p> <p>By: <u>Maury V. Taylor</u></p> <p>Title: <u>Maury V. Taylor</u> <u>Contracting Officer</u> <u>Federal Bureau of Investigation</u></p> <p>Date: <u>OCTOBER 28, 2010</u></p>	<p>CITY OF SEATTLE</p> <p>By: _____</p> <p><u>Bill Schrier</u></p> <p>Title: <u>Chief Technology Officer and</u> <u>Director of the Department of Information</u> <u>Technology</u></p> <p>Date: _____</p>
<p>UNIVERSITY OF WASHINGTON</p> <p>By: <u>Clare Donahue</u></p> <p>Title: <u>Assoc. Vice President</u> <u>University of Washington</u></p> <p>Date: <u>6/13/2011</u></p>	<p>SEATTLE COMMUNITY COLLEGE DIST.</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>
<p>SEATTLE PUBLIC SCHOOLS</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>	<p>GENERAL SERVICES ADMINISTRATION</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>

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<p>WASHINGTON STATE DEPARTMENT OF TRANSPORTATION</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>	<p>WASHINGTON STATE DEPARTMENT OF INFORMATION SERVICES</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>
<p>NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>	<p>KING COUNTY</p> <p>By: _____</p> <p>Title: _____</p> <p>_____</p> <p>Date: _____</p>

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

H. Dark Fiber

An optical fiber strand not coupled to an optical light source.

I. Dead-end Tower

A structure designed and constructed to terminate electrical transmission or distribution circuits.

J. Dielectric Cable

Fiber Optic Cable which is entirely composed of non-electrical current conducting elements (i.e., non-metallic).

K. Duct

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

L. Duct Bank

Two or more parallel Ducts usually enclosed in a concrete envelope.

M. Facility or Facilities

A structure including but not limited to: Buildings, Vaults, Maintenance Holes, Handholes, Conduit, Building Entrances, Substations, transmission towers, and distribution poles.

N. Facility Manager

The person designated by the Facility Owner to manage the Facility, including granting access, determining and approving its use and terms and conditions for such use.

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.

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.

Q. Fiber Optic Project

The activities associated with the installation of fiber optic transmission materials, including cable, splices, inner duct, sleeves, etc.

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.

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.

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.

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 general charges. This definition also applies to Facility Owner indirect costs.

V. Lead Agency

The designee of the Participating Agencies by their mutual consent in a Fiber Optic Project Agreement responsible for managing fiber installation projects, including entering into construction contracts and overseeing the construction work for the Participating Agencies and ongoing maintenance of the project(s).

W. Make-Ready Work

Any and all planning, analysis, design, review, adjustment to equipment, construction, and/or other activities (such as tree trimming) necessary to prepare existing Facilities for use by the Lead Agency as determined by the Facility Owner.

X. Maintenance Hole

An underground structure (usually concrete) which workers may enter for the purposes of installation and maintenance of cable.

Y. Optical Ground Wire

A composite electrical conductor expressly designed and manufactured to enclose optical fibers for telecommunications and for installation as a shield wire on transmission towers to provide lightning protection.

Z. Overhead Distribution Facilities

Electrical conductors, structures and related equipment designed and utilized to transport electricity to City Light Department customers. Primary distribution voltage levels are usually in the range of 4KV to 34.5KV.

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.

BB. Participating Agency

A public agency that has signed an agreement to engage in a shared Fiber Optic Project.

CC. Safety Observer

A person or persons assigned to watch over Work activities in, on, or around electrical Facilities for the purposes of protecting workers from electrical hazards and ensuring electrical Facility integrity.

DD. Seattle Facilities

Those Facilities owned, managed, occupied by a City of Seattle Department or Division, including but not limited to Seattle City Light, Seattle City Water, Seattle Department of Administrative Services.

EE. Splice

The point where two separate optical fiber strands are joined together either mechanically or by fusion to make one continuous optical fiber strand.

FF. Substation

An electrical power facility where electrical voltage is transformed, controlled, monitored and routed.

GG. 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.

HH. Telecommunications Service(s)

Telecommunications service(s) is the transmission of information over Fiber Strands from one location to another (not including services provided between two areas within the same building) meeting industry accepted transmission standards, their equivalent or replacement service. Such information includes but is not limited to voice, data, pictures, and facsimile. Telecommunication service(s) does not include Dark Fiber or services other than transmission services.

II. Termination Panel

Non-electronic equipment which is used to attach the ends of each of the

individual fibers from a fiber optic cable. This panel serves as a junction between the fibers of a Fiber Optic Cable and electronic equipment that is to be connected to the fibers.

JJ. Underground Facilities

Facilities situated beneath the surface of the ground, a roadway, or the water including, but not limited to, Building Entrances, Conduits, Ducts, Duct Banks, Handholes, Maintenance Holes, Vaults, and electrical conductors, but not including Facilities located inside buildings or facilities treated as Overhead Transmission Facilities or as Overhead Distribution Facilities in agreements between the City of Seattle and other entities.

KK. Utilidors

Utility tunnels maintained by the City of Seattle.

LL. Vault

An underground or in-building structure (usually concrete) used to house transformers, its appendages and electrical cables.

MM. Work

All activities related to the planning, right-of-way acquisition, scheduling, analysis, design, engineering, preparation, installation, evaluation, maintenance, repair and operation of a Fiber Optic Project in or on Facilities as it relates to this Agreement including Make-Ready Work but not including work done prior to the execution of a Fiber Optic Project Agreement.

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
- Apportionment of Liability
- 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 each have a share of project control, should share costs proportionately based on each 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.

In projects where a Participating Agency desires fiber for future use and does not participate in the route design, engineering, or terminations, such Participating Agency may be considered secondary. Costs may be allocated to a secondary Participating Agency on an incremental basis.

SEE ALSO, ADDENDUM 2. m.v.s.

C. GENERAL PLANNING, ENGINEERING AND DESIGN CONSIDERATIONS

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

1. Perform Feasibility Review

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

2. Execute Fiber Optic Project Agreement

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

3. Perform Detailed Engineering Design

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

4. Install Project

The Lead Agency shall be responsible to ensure compliance with all 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 Facility. 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. Such costs, however, shall be included as part of the Project Budget, Section II.A.

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 information or for obtaining copies of any portion of the information. Such costs, however, shall be included as part of the Project Budget, Section II.A. The records to which the Lead Agency shall provide the Facility Owner access include, but are not limited to computerized records and design

drawings, equipment and fiber specifications, route maps, manufacturer's test reports on fibers and on other equipment, documentation of the installation of Fiber Optic Cable and other equipment, and documentation of maintenance done on fibers and other equipment.

D. CHANGE ORDERS

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

The costs of any changes required by and beneficial to an individual Participating Agency made after the signing of a Fiber Optic Project Agreement shall be borne by that Participating Agency. If a Facility Owner requires a route relocation due to Facility access, the costs of such a relocation shall be considered general project costs and not the sole responsibility of the Facility Owner as a Participating Agency. The costs of other changes necessary to complete the project shall become part of the total project cost and shall be approved by the Participating Agencies.

E. OWNERSHIP OF FIBER OPTIC CABLE

All Fiber Optic Cable and Fiber Strands paid for in the initial installation of a Fiber Optic Project by the Participating Agencies shall be owned by those Participating Agencies as identified in the Fiber Optic Project Agreement.

F. USE OF FIBERS

Participating Agencies shall have complete free and unrestricted use of the fiber optic installations made under a Fiber Optic Project Agreement for any lawful governmental, public educational, intergovernmental or public utility purpose. Such right to use shall be for the duration of the Agreement and any renewal Agreements by the 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 all the terms and conditions of this Agreement, including 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 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. *SEE ADDENDUM 2. m.v.j.*

J. PAYMENTS

Participating Agencies shall pay all amounts owed to the Lead Agency within thirty (30) days of receipt of the billing. If a Participating Agency cannot or does not make payment for charges owed within ninety (90) days, the Participating Agency shall be given written notice to correct the default. The Participating Agency shall have ninety (90) days, or such longer time after receipt of notice as the Lead Agency may authorize in writing, to make payment. If the Participating Agency fails to make payment, it shall be required to sell its fibers, offering right of first refusal to the other Participating Agencies. As a condition of sale, such Participating Agency shall require any entity purchasing their fibers to agree to all the terms and

conditions of this Agreement, including the General Terms and Conditions, Exhibits and Addenda. Failure by any Participating Agency to comply with the requirements of this section may void the sale as determined by the other Participating Agencies. The Participating Agencies shall require such entity to notify the Facility Owner(s) of any such purchase. *SEE ADDENDUM 2. 7.V.5.*

K. LIABILITY

Liability attributed to the Participating Agencies under this Agreement shall be shared on a basis proportional to each Participating Agency's ownership of the fibers in the location where the liability occurs. Ownership is determined by the demarcation points described in an Exhibit to the Project Agreement. However, in the case of gross negligence or willful misconduct on the part of any Participating Agency (including the Lead Agency), such Participating Agency shall be solely liable for its conduct. The Facility Owner shall accrue no additional liability as a result of its ownership of facilities nor shall the Lead Agency accrue additional liability in its role as Lead Agency, except in the event of gross negligence or willful misconduct on the part of the Facility Owner or Lead Agency. See, Sections 3.G and 3.H; Sections 4.I and 4.K.

III. RELATIONSHIP AMONG PARTICIPATING AGENCIES AND THE LEAD AGENCY

A. GENERAL RESPONSIBILITY OF LEAD AGENCY

The Lead Agency shall be responsible for the overall management, installation and maintenance of the Fiber Optic Project as the agent of the Participating Agencies in the project. The Lead Agency shall be responsible for negotiating and entering into separate agreements on behalf of Participating Agencies with Facility Owners for the specific use of their Facilities and with contractors to perform all or part of the Work associated with the Fiber Optic Project. The Lead Agency is responsible for ensuring that the applicable terms and conditions of the Project Agreement, General Terms and Conditions, exhibits and addenda are included in Agreements with Facility Owners and contractors. Prior to execution of any agreements with Facility Owners or contractors, the Lead Agency shall provide opportunity for the Participating Agencies to review and comment on such agreements. In the event there is a dispute regarding any of the provisions or lack of provisions of any agreement, such dispute shall be resolved through the process identified in this Agreement. The Lead Agency shall keep the Participating Agencies informed as to the status of the Fiber Optic Project.

B. INSTALLATION

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 Maintenance Manager 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 Agencies shall reimburse the Lead Agency within thirty (30) days of receipt of the

Lead Agency's statement of charges.

E. LEAD AGENCY'S NONCOMPLIANCE

Failure of the Lead Agency to adhere to the requirements of Work and record keeping in this document will be corrected at the Participating Agencies' joint expense unless there has been gross negligence or willful misconduct on the part of the Lead Agency. Where there has been gross negligence or willful misconduct on the part of the Lead Agency, Work shall be corrected at the expense of the Lead Agency.

F. AUDIT

The Lead Agency shall permit Participating Agencies or agent(s) thereof from time to time (including after the expiration or termination of a Fiber Optic Project Agreement), to inspect and audit at any and all reasonable times in King County, or at such other reasonable location as mutually agreed to by the Participating Agencies, all pertinent books and records of the Lead Agency, the subcontractors or any other person or entity in connection or related to the Fiber Optic Project with respect to the services provided, costs thereof, and the compensation paid therefor.

G. LIMITATION OF LIABILITY

The Lead Agency shall not be liable, in law or in equity, to the Facility Owner, Participating Agencies, or any subsequent user for any damages relating to the interruption of service or interference with the operation of the Fiber Optic Project, except to the extent caused by the gross negligence or willful misconduct of the Lead Agency. THE LEAD AGENCY SHALL NOT BE LIABLE TO THE FACILITY OWNER, PARTICIPATING AGENCIES OR THEIR USERS OR ANY SUBSEQUENT USER UNDER ANY CIRCUMSTANCES FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES ALLEGED TO HAVE ARISEN DUE TO AN INTERRUPTION OF SERVICE OR DAMAGE TO ANY FIBER OPTIC CABLE OR ASSOCIATED EQUIPMENT.

H. INDEMNIFICATION *SEE ADDENDUM 2. M.V.S.*

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

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, 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.
4. Use of Overhead Transmission Facilities is not authorized in a Fiber Optic Project Agreement unless specifically authorized by the City Council and a specific Addendum is attached hereto.
5. The Facility Owner has final approval of planning, engineering, design, material, and maintenance for all portions of a Fiber Optic Project on or within its Facilities.

B. APPROVALS

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

C. ACKNOWLEDGMENT AND ACCEPTANCE OF RISKS

1. Co-location

In choosing to co-locate any components of a Fiber Optic Project in Facilities, the Participating Agencies acknowledge and accept all risks, such as the possibility of electrical fires that may damage components of a Fiber Optic Project, that are associated with having components of the Fiber Optic Project co-located with such Facilities. Participating Agencies explicitly understand that these risks include bearing all costs, except such costs caused by the gross negligence or willful misconduct of the Facility Owner, including but not limited to: provision of alternate communication paths needed by the Participating Agencies, loss of Participating Agency business and restoration of their fiber systems if they are damaged.

2. Easements

Participating Agencies acknowledge that existing easements may not be warranted for this purpose.

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.

on Facilities.

2. Relocation

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

H. PAYMENT TO FACILITY OWNERS

1. Reimbursements

The Facility Owner shall submit invoices to the Lead Agency during the progress of the Work for reimbursement for Work completed to date.

a. For Performance of Work

The Lead Agency shall reimburse Facility Owner(s) for all costs incurred by the Facility Owner(s) in the performance of Work necessary for the installation and operation of the Fiber Optic Project. In addition to reimbursement for direct costs of labor and materials incurred in the performance of Work necessary for the installation and operation of the Fiber Optic Project, the 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.

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 the outcome of the dispute. The Participating Agencies may agree to allocate interest; if no such agreement can be reached, the interest will accrue to the benefit of the substantially prevailing party.

I. LIMITATION OF LIABILITY

Facility Owners shall not be liable, in law or in equity, to the Lead Agency, Participating Agencies, or any subsequent user for any damages relating to the interruption of service or interference with the operation of the Fiber Optic Project, except to the extent caused by the gross negligence or willful misconduct of the Facility Owner. THE FACILITY OWNER SHALL NOT BE LIABLE TO THE PARTICIPATING AGENCIES OR THEIR USERS OR ANY SUBSEQUENT USER UNDER ANY CIRCUMSTANCES FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OR DAMAGES ALLEGED TO HAVE ARISEN DUE TO AN INTERRUPTION OF SERVICE OR DAMAGE TO ANY FIBER OPTIC CABLE OR ASSOCIATED EQUIPMENT.

J. RIGHTS OF PROPERTY

Nothing in the General Terms and Conditions, Exhibits and/or Addenda shall be construed to convey to the Participating Agencies any property

rights in Facilities. Nothing in the General Terms and Conditions, Exhibits and/or Addenda shall be construed to compel a Facility Owner to maintain any of its Facilities for a period longer than is necessary for its own service requirements. In the event that Facilities are abandoned by the Facility Owner, the Participating Agencies may remain in such Facilities at their own risk, subject to the approval of the Facility Owner.

K. INDEMNIFICATION *SEE ADDENDUM 2. M.V.S*

Except as limited below, the Lead Agency and Participating Agencies shall indemnify and save harmless Facility Owners, their officers, employees, and agents from all claims, actions, liability, and damages of any nature arising out of any act or omission, except in the event there has been gross negligence or willful misconduct by the Facility Owner in connection with this Agreement.

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

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 for reason of default will be effective without first providing the Lead Agency with such written notice of default.

Upon receipt of a notice of termination, except as otherwise directed by the Facility Owner, the Lead Agency shall cease Work under the Fiber Optic Project Agreement on the date specified in the notice and waive all claims for profits and damages caused by such cessation; provided, however, unless an emergency exists, as defined by the appropriate Facility Owner authority, that the date of termination shall not be less than ten (10) days from the date such notice of termination is received.

In the event the Facility Owner terminates a Fiber Optic Project Agreement as provided in this clause, the Facility Owner may perform Work by whatever method it may deem expedient to protect its Facilities. In such case, expenses incurred by the Facility Owner for protecting its Facilities shall be charged to, and subject to Section III.E., paid by the Lead Agency.

V. RELATIONSHIP BETWEEN LEAD AGENCY AND CONTRACTORS

A. RESPONSIBILITY

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

B. APPROVALS

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

C. INSURANCE

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

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)
 - Pollution Liability Insurance

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.

Such policy shall provide the following minimum coverage:
Bodily Injury and Property Damage -
\$1,000,000 per accident/occurrence

- c. Workers' Compensation: Contractor agrees at all times to comply with all applicable workers' compensation, occupational disease, and occupational health and safety laws, statutes, and regulations to the full extent applicable. Such workers' compensation and occupational disease requirements shall include coverage for all employees suffering bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of the agreement between the contractor and the Lead Agency (Contract).

- 2. If the contractor's insurance contains a deductible (or self-insured retention amount) the contractor shall:
 - a. disclose such amount, and
 - b. be responsible for payment of any claim equal to or less than the deductible (or self-insured retention amount).

Any deductible or self-insured retention must be disclosed and is subject to approval by the Lead Agency.

- 3. The above policy or policies, endorsements thereto, and subsequent renewals shall:
 - a. Be subject to approval by the Lead Agency as to company,

form, and coverage. The insurance carrier shall be:

- rated A-:VII or higher in the A.M. Best's Key Rating Guide,
 - licensed to do business in the State of Washington, or be
 - filed in the State of Washington as surplus lines by a Washington Surplus Lines Broker.
- b. Be primary to all other insurance the Lead Agency, Participating Agencies, and Facility Owner(s) may obtain, and
- 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.

D. BOND

To ensure compliance with the terms of this document, all contractors shall provide an executed Contract Bond in the amount specified in the Fiber Optic Project Agreement, with a surety or sureties who are acceptable to the Participating Agencies and the Facility Owner(s). This bond shall remain in full force and effect through acceptance of the Work. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without prior thirty (30) days written notice being given to the Lead Agency.

E. NONDISCRIMINATION AND AFFIRMATIVE ACTION

During the performance of Work, the Lead Agency, for itself, its assignees and successors in interest, agrees as follows:

1. The Lead Agency shall not allow any contractor to discriminate against any employee or applicant for employment because of age, sex, race, religion, creed, color, ideology, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their creed, religion, race, color, sex, age, national origin, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer, recruit-ment, or recruitment advertising, layoff or termination, rates or pay or other forms of compensation, and selection for training, including apprenticeship.
2. The contractor shall, prior to commencement and during the term of its contract, furnish to the appropriate enforcement entity in the Lead Agency's governmental agency upon his/her request and on such form as may be provided by that entity therefor, a report of the affirmative action taken by the contractor in implementing the terms

of these provisions, and will permit access to his/her records of employment, employment advertisements, application forms, other pertinent data and records requested by the enforcement entity for the purpose of investigation to determine compliance with this provision.

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.

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

B. PERFORMANCE STANDARDS

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

C. SUBJECT TO LAWS

All Fiber Optic Project Agreements are subject to all applicable federal, state, and local laws, and regulations, rulings and orders of governmental agencies. Any Participating Agency may terminate its obligations under a Fiber Optic Project Agreement if ordered to do so by the final order or filing of a court or other governmental agency or if such order or ruling would make it impossible for any Participating Agency to carry out its obligations under this Agreement. If required by the final order of a court of competent jurisdiction, upon the issuance of such order stating that the rights of use or access to an Owner's Facilities is unlawful, the Lead Agency shall immediately terminate work associated with the use or access and the Lead Agency shall remove all violating appurtenances. In addition, if at any time during the term of this Agreement, the action of a governmental agency requires modification of terms and conditions of the Agreement in order to meet legal requirements, or renders performance by any Participating Agency unreasonable, the Participating Agencies will enter into negotiations to achieve an equitable adjustment of any increased costs or liabilities incurred by any Party as a result of such required modification. The preceding section shall not apply to a court order determining that the Participating Agencies' use violates a private easement.

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

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

D. TERM *SEE ADDENDUM 2. M.V.J.*

Fiber Optic Project Agreements shall become effective upon the execution of all Participating Agencies, and unless terminated in accordance with the provisions of Article VI.E [Termination, shall continue up to a term of twenty (20) years.

One year prior to the expiration of this twenty-year period, the Participating Agencies shall in good faith negotiate a renewal Agreement for an additional twenty-year period or terminate their participation according to the provisions in this Agreement. As a starting point for negotiations of a renewal Agreement, the Participating Agencies will use the Fiber Optic Project Agreement as the framework for further negotiations. Under the terms of any renewal Agreement, the Participating Agencies shall continue to make payments to Facility Owners for use of Facilities and to make other payments specified in the Fiber Optic Project Agreement.

Terms and conditions of existing Fiber Optic Project Agreements that have expired shall remain in effect until superseded by a new Agreement.

E. TERMINATION *SEE ADDENDUM 2. M.V.J.*

1. For Cause

Any Participating Agency may terminate a Fiber Optic Project Agreement in the event that another fails to perform its obligations as described in this Agreement, and such failure has not been corrected to the reasonable satisfaction of the other in a timely manner after notice of breach has been provided to such other Party.

2. Notice

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.

I. RIGHTS CUMULATIVE

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

J. CONTRACTUAL RELATIONSHIP

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

K. HEADINGS

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

L. APPLICABLE LAW AND VENUE *SEE ADDENDUM 2. W.V.S.*

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

M. BINDING EFFECTS

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

N. ASSIGNMENT

No Participating Agency or Lead Agency shall assign its rights or assign its duties under a Fiber Optic Project Agreement without the prior 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 substantially 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 substantially prevailing party personnel or consultants assisting in the legal action or responding to or investigating a claim or demand.

S. ARBITRATION/MEDIATION *SEE ADDENDUM 2. m.v.j.*

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 Lead Agency, Facility Owner or Participating Agencies agree to first endeavor to settle the dispute in an amicable manner by mediation, before resorting to arbitration. Thereafter, any unresolved controversy or claim arising out of or relating to this Agreement, or breach thereof, shall be settled by arbitration, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Nothing in this paragraph precludes any Lead Agency, Facility Owner or Participating Agency from seeking relief from King County Superior Court should mediation or arbitration efforts be unsuccessful.

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.

5. Acknowledgment and Acceptance of Risks

In choosing to co-locate any components of a Fiber Optic Project with City Facilities, the Participating Agencies acknowledge and accept all risks, including but not limited to excessive heat or fires that may damage components of the Fiber Optic Project that are associated with having components of the Fiber Optic Project co-located with City Facilities.

B. City Department Facilities, Other than City Light

1. Priority Protection

The Lead Agency shall make the protection of the telecommunications, traffic control and street-lighting Facilities the highest priority when working in City Department Facilities or in proximity to City Department Facilities where such proximity could directly affect the functioning of the Facilities. The Participating Agencies will not through their action or knowing inaction compromise such protection.

2. Priority Restoration

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

3. Underground Facilities

Use of Underground Facilities is not authorized in a Fiber Optic Project Agreement 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.

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 electrical hazards to workers or problems with the electrical system, telecommunications, traffic control or street-lighting systems. Such problems include, but are not limited to future City Work, present crowded conditions, future load growth on the City Light system, and the specification or installation of non-standard equipment, materials and/or supplies by the Lead Agency.

III. ANNUAL PAYMENT TO THE CITY FOR USE OF FACILITIES

On an annual basis, the Lead Agency shall make an annual use payment to the Facility Owner. Regardless of the Ownership of Fiber Optic Cable, the Lead Agency shall pay the Facility Owner for the use of Facilities in or on which Fiber Optic Cable has been installed by or on behalf of the Participating Agencies pursuant to a Fiber Optic Project Agreement.

Charges for Maintenance Hole, Handhole, Vault and Duct/Conduit occupancy shall be established by applicable City rate ordinance.

ref: FinAdmin Ord/Agmt No. 2 (FSFOIP.GTC)

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

Use of Overhead Transmission Facilities is not authorized in this Fiber Optic Project Agreement 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.

ADDENDUM 1:

AUTHORIZING USE OF CITY OF SEATTLE
UNDERGROUND OR TRANSMISSION FACILITIES

This addendum to the General Terms and Conditions provides for the use of The City of Seattle's Underground Facilities, including conduit, ducts, etc.

The following material shall be added to Section IV.D of the General Terms and Conditions:

Any placement of fiber in Seattle City Light Underground Facilities must comply with all provisions of City Light Policies and Procedures for Duct/Vault Use.

The following material shall be added to Section IV.H of the General Terms and Conditions:

H. PAYMENT TO FACILITY OWNERS

1. c. For a Portion of the Cost of Duct, Maintenance Hole and Vault Upgrades and Changes

The Lead Agency shall reimburse Facility Owners for their respective share of the cost of upgrading Ducts, Maintenance Hole and Vaults that contain components of the Fiber Optic Project. In addition to reimbursement for direct costs of labor and materials incurred in the maintenance of the Fiber Optic Project, the Facility Owner shall be reimbursed by the Lead Agency for Indirect Costs.

The following material shall replace section I.B.3 of Exhibit A to the General Terms and Conditions:

- I. B. 3. Underground Facilities, Other than Seattle City Light
 - a. The appropriate City Department shall have complete authority over duct assignment to the Lead Agency.
 - b. The Lead Agency shall install, if not already installed, inner duct in all Seattle City Department Conduit under the following conditions:

- 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 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

- 1. Seattle City Light shall have complete authority over duct assignments, racking and placement of cables in maintenance holes, vaults and handholes. The Lead Agency shall comply with

any such assignments and placement direction. Ownership of Seattle City Light Underground Facilities containing any Fiber Optic Project materials shall remain with Seattle City Light.

2. The Lead Agency shall install, if not already installed, inner duct in all Seattle City Light conduit in which the Participating Agencies install Fiber Optic Cable subject to the following conditions:
 - a. 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.
 - b. An inner duct must be installed in any Conduit utilized by the Lead Agency.
 - c. Seattle City Light must approve in writing both the type and the color of any inner duct prior to installation by the Lead Agency.
 - d. All inner duct that is installed must have pull strings, unless the inner duct has Fiber Optic Cable(s) in it. All inner duct installed shall become the property of Seattle City Light.
3. Splices, loops, coils or fiber termination equipment shall not be placed in City Light Department Underground Facilities or in Building Vaults. Penetrations of Building Vault walls must be done in accordance with applicable fire codes and standard construction practices.

V. Backup Facilities

In recognition of the critical nature of the telecommunications services to be provided via the Fiber Optic Projects being constructed and used under this Agreement, the Participating Agencies shall attach to each Project Agreement written backup/alternative communication plans that will be used by the Participating Agencies in the case of Fiber Optic system failure, relocation requests or service interruptions or any other reason that arise from being co-located with Seattle City Light facilities.

ref: FinAdmin Ord/Agrmt No. 2 (FSFOIP.GTC)

ADDENDUM 2:

SPECIAL TERMS AND CONDITIONS FOR AGREEMENTS WITH THE UNITED STATES GOVERNMENT

This Addendum modifies the Terms and Conditions of the Model Agreement for Fiber Sharing Projects in which the United States Government, by and through the ~~General Services Administration~~ ^{FEDERAL BUREAU OF INVESTIGATION} (hereafter referred to as ~~GSA~~ ^{FBI}), is either a Facility Owner, Lead Agency or Participating Agency. The modifications are necessary due to the special requirements of federal statutes or federal administrative policies. Unless otherwise noted, these modifications override the Terms and Conditions of the Model Agreement for Fiber Sharing Projects.

All parties to a fiber project in which ~~GSA~~ ^{FBI M.V.S.} is either a Facility Owner, Lead Agency or Participating Agency shall agree to these modifications in their entirety.

I. The following paragraph will supplement the provisions of Section II, Relationships Among Participating Agencies, Paragraph B., Principles:

3. ~~The GSA~~ ^{FBI M.V.S.}, as an agency of the United States government, intends to participate in the fiber optic project to the fullest extent practicable. As such, if and when additional moneys are necessary, beyond those agreed to at the start of each project, the United States government intends to pay such prorated share of these additional expenses, calculated in accordance with Model II of this agreement. The request for additional moneys will be presented to the United States government in the form of a 'claim' as described in the attached Federal Acquisition Regulations (FAR), Clause, 52.233-1, Disputes. The term "Contractor" referred to in the text of the attached FAR would either be the Facility Owner or the Lead Agency or both, whichever is applicable.

II. The following paragraph will supplement the provisions of Section II, Relationships Among Participating Agencies, Paragraph I., Taxes:

~~The GSA~~ ^{FBI M.V.S.}, as an agency of the United States government, is exempt from the payment of any federal, state or local taxes. As part of any fiber project, the Facility Owner, Lead Agency or Participating Agencies agree not to assess the GSA for any federal, state or local taxes.

- III. The following paragraph will supplement the provisions of Section II, Relationships Among Participating Agencies, Paragraph J., Payments:

The ^{FBI, NY, NJ} ~~GSA~~, as an agency of the United States government, will make payments in accordance with the Prompt Payment Act, Public Law 31 USC 3901, as amended. Payments for services under this agreement will be made by the United States Government only in arrears.

- IV. The following paragraph will replace the provisions of Section III, Relationships Among Participating Agencies and the Lead Agency, Paragraph H., Indemnification as follows:

H. Save Harmless

Except as limited below, the Facility Owners and Participating Agencies shall 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 that there has been gross negligence or willful misconduct by the Lead Agency in connection with this Agreement.

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

The United States Government cannot indemnify another entity or agency for any reason (Antideficiency Act, 31 U.S.C. 1341, Adequacy of Appropriations, 41 U.S.C. 11). The resolution of any claims against the United States Government under this Agreement will be done in accordance with the Contract Disputes Act of 1978, Public Law 41 USC 601-613, as amended.

- V. The following paragraph will replace the provisions of Section IV, Relationship With Facility Owners, Paragraph K., Indemnification as follows:

K. Save Harmless

Except as limited below, the Lead Agency and Participating Agencies shall save harmless the Facility Owner, 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 that there has been gross negligence or willful misconduct by the Facility Owner in connection with this Agreement.

If any claim arises to which this provision may be applicable, the Facility Owner

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

The United States Government cannot indemnify another entity or agency for any reason (Antideficiency Act, 31 U.S.C. 1341, Adequacy of Appropriations, 41 U.S.C. 11). The resolution of any claims against the United States Government under this Agreement will be done in accordance with the Contract Disputes Act of 1978, Public Law 41 USC 601-613, as amended.

- VI. The following paragraph will replace the provisions of Section VI, Additional Terms and Conditions Applicable to all Fiber Optic Project Agreements, Paragraph D., Term:

Fiber Optic Project Agreements shall become effective upon the execution of all Participating Agencies, and unless terminated in accordance with the provisions of Article VI. E - Termination, shall continue in effect for a term of ten (10) years.

One year prior to the expiration of this ten year period, the Participating Agencies shall in good faith negotiate a new Agreement for a ten (10) year period. As a starting point for negotiations of an Agreement, the Participating Agencies will use the Fiber Optic Project Agreement as the framework for further negotiations. Under the terms of any Agreement, the Participating Agencies shall continue to make payments to Facility Owners for use of Facilities and to make other payments specified in the Fiber Optic Project Agreement.

- VII. The following paragraphs will supplement the provisions of Section VI, Additional Terms and Conditions Applicable to all Fiber Optic Project Agreements, Paragraph E., Termination:

3. The ^{FBI M.V.S.}GSA, as an agency of the United States government, has the right to terminate this Agreement, in whole or in part, in accordance with the attached Federal Acquisition Regulation (FAR), Clause 52.249-6, Termination (Cost Reimbursement). The term "Contractor" referred to in the text of the attached FAR would either be the Facility Owner or the Lead Agency or both, whichever is applicable.

- VIII. The following paragraphs will replace the provisions of Section VI, Additional Terms and Conditions Applicable to all Fiber Optic Project Agreements, Paragraph L., Applicable Law and Venue:

All agreements among the Participating Agencies shall be construed and interpreted in accordance with the laws of the United States of America and the

laws of the State of Washington. The venue of any action brought hereunder shall be in the United States Federal District Court, Western District of Washington at Seattle.

- IX. The following paragraphs supplements the provisions of Section VI, Additional Terms and Conditions Applicable to all Fiber Optic Project Agreements, Paragraph S., Arbitration/Mediation:

Any dispute arising under this Agreement will be subject to the Contract Disputes Act of 1978, Public Law 41 U.S.C. 601-613. During the pendency of a dispute, the parties shall not be excused from performance of this Agreement.

ref. FinAdmin Ord/Agrmt No. 2 (FSFOIP.GTC)