

**INTERLOCAL AGREEMENT
BETWEEN
THE CITY OF LACEY
AND
THE STATE OF WASHINGTON
DEPARTMENT OF TRANSPORTATION**

This Interlocal Agreement is made and entered into by and between the City of Lacey, hereinafter referred to as “City” and the Washington State Department of Transportation, hereinafter referred to as “WSDOT.”

Whereas, RCW 39.34.010 permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities; and

Whereas, the City owns underground conduit within the right-of-way of its urban core; and

Whereas, WSDOT has identified a need to use the Conduit for the purpose of installing, operating, and maintaining fiber optic cable to be used by WSDOT for government purposes and WSDOT has the fiber optic cable, personnel, and expertise to install, operate, and maintain fiber optic cable in the Conduit; and

Whereas, the Conduit contains capacity for the WSDOT fiber optic cable and the City is allowing WSDOT to install, operate, and maintain a certain amount of fiber optic cable in the Conduit in exchange for WSDOT providing and installing a certain amount of additional fiber optic cable for City use; and

Whereas, it is in the interest of the City and WSDOT to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and WSDOT agree as follows:

I. Purpose/Objective

The purpose of this Agreement is to allow WSDOT to install and maintain its own fiber optic cable within conduit owned by the City in exchange for providing and installing a certain amount of additional fiber optic cable for the City to thereafter use and maintain, subject to the limitations and requirements set forth in this Agreement and Site Agreement attached hereto and by this reference made a part hereof.

II. Definitions

In this Agreement, the following definition will be used:

Site Agreement: Functions as “Exhibit B” to this interlocal agreement. A site agreement is a site-specific agreement which defines the scope, price, diagrams and maps of each project site. An Exhibit B will be created, submitted and approved by the City for each project. As each Exhibit B is approved, WSDOT will create an amendment to this interlocal agreement that will be approved and signed administratively by both parties.

III. Scope of Agreement/Work

A. The City and WSDOT mutually agree to work cooperatively and to resolve problems or issues arising under this Agreement in a timely manner.

B. The City agrees to:

1. Provide the Conduit that contains the capacity for the WSDOT fiber optic cable.
2. Allow WSDOT to install, operate, and maintain its fiber optic cable in the Conduit at locations and in the manner as identified in this Agreement and in the Site Agreement.

C. WSDOT agrees to:

1. Provide the City with a certain amount of additional fiber optic cables identified in the Site Agreement. Said additional fiber optic cable shall hereinafter be referred to as “City’s cable.”
2. Install City’s fiber optic cable at locations and in the manner as identified in this Agreement and in the Site Agreement.

IV. Installation, Maintenance and Repair

A. WSDOT shall be solely and entirely responsible for all maintenance and repair of all fiber optic cable installed pursuant to this Agreement. City will pay its proportional amount of repair based on percentage of fiber optic cable within that run as described in the Site Agreement.

B. WSDOT will, upon notification of needed repair, make every attempt to respond as soon as possible on a 24/7 basis at all times to repair the fiber optic cable using its own fiber optic cable splicing equipment and trained personnel. If the repair requires specialized tools or third party vendors to repair, WSDOT will use its established agreements and contacts with local vendors to repair fiber optic cable immediately (typical initial response times by vendors for past fiber optic cable repairs after hours have been within two hours on site. Repairs are generally made within 4 hours of first notification of a fiber optic cable outage or needed repair). There is no guaranteed time frame for repair, although safety and customer service will always

take precedence. Fiber optic cable that is active will be repaired first and the City will receive priority over WSDOT and other users of fiber optic cable running throughout the City of Lacey.

- C. WSDOT shall obtain all permits for construction within City right-of-way through City of Lacey and the City shall provide these permits at no cost and also no delay in providing permits.
- D. WSDOT must provide drawings per City specifications showing the position and location of all fiber optic cable, along with depth and type of conduit and any equipment, if any, that it proposes to place within the City right-of-way as shown in the Site Agreement. Vendor performing work will provide this drawing as part of any fiber optic cable installation project and it will be part of the cost of any fiber optic cable build project with the City.
- E. If the City wishes to install alternate runs off of the fiber optic cable, the City shall pay for these alternate runs at no cost to WSDOT.
- F. Copper Location Wire shall be installed alongside all fiber optic cable pulled into City conduit by WSDOT as part of the cost of each fiber optic cable project undertaken by the City and WSDOT.
- G. WSDOT must install all fiber optic cable in accordance with federal, state, and local requirements. WSDOT must also comply with applicable City ordinances and Development Guidelines, and the current version of the WSDOT Standard Specifications for Road, Bridge and Municipal Construction before commencing any construction in the City's right-of-way. WSDOT may not locate or maintain its fiber optic cable so as to interfere with the use of the City right-of-way by the general public, or other persons authorized to use or be present in or upon the City right-of-way. All WSDOT equipment causing such interference must be moved by WSDOT at its sole expense to a location approved by the City Engineer. Both parties shall comply with RCW 19.122 when digging in either parties right-of-way.
- H. WSDOT shall maintain or repair fiber optic cable covered by this Agreement, but must comply with all City rules and regulations, and obtain the required City permits prior to any work within City right-of-way, which approval of such permits by the City shall not be unreasonably withheld or denied. For emergency after hours repairs, permits will not be required; however, WSDOT shall inform the City as soon as possible of any emergency work performed, and shall provide all relevant information such as, but not limited to, the nature of the emergency, the locations where repairs were performed, and whether continuing work is required.

- I. WSDOT will at all times employ reasonable care and install and maintain and use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or workers. All structures and all lines, equipment and connections in, over, under, and upon City right-of-way will at all times be kept and maintained in a safe, suitable condition, and in good order and repair. The City reserves the right to inspect WSDOT equipment to determine whether WSDOT equipment is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other regulation is discovered by the City, the City will discuss the matter with WSDOT and establish a reasonable time for WSDOT to make necessary repairs. If the repairs are not made within the established time, the City may make the repairs itself or have them made and collect all actual costs for such repair from WSDOT. WSDOT shall remit payment for City repairs made under this Section within forty five (45) days of the City's issuance of an invoice itemizing repair costs.
- J. WSDOT will notify the City and obtain approval prior to accessing City owned conduit. Either party doing work on the fiber optic cable installed under this Agreement will notify the other party as defined under Section XIX – Contract Management. Either party doing work on or within the Conduit will do so with due care in accordance with established practices and only use trained personnel. Hours of operation for normal construction and maintenance will comply with City code, or specified on the City permit. The City may have a representative observe WSDOT work at no cost to WSDOT.
- K. WSDOT must cooperate with the City and all permittees, grantees, and users of the City right of way to coordinate construction in the City right of way.

V. Relocation Requirements

- A. WSDOT shall be responsible for relocation costs of shared WSDOT and City fiber optic cable installed under this agreement within the conduit and for aerial run fiber optic cable being moved from poles to underground conduit to accommodate for future changes in street grade, street standards, and improvements within the right-of-way, utility construction or maintenance by the City.
- B. The City shall be responsible for all relocation costs associated with the replacement of the conduit, if initiated by the City.
- C. For aerial fiber optic cable being moved from one pole to another or for replacement of poles, WSDOT and the City shall share responsibility for relocation costs of WSDOT and City fiber optic cable installed under this agreement to accommodate future changes in street grade, street standards, and improvements within the right-of-way, utility construction or maintenance by the City. City will pay its proportional

amount of repair based on percentage of fiber optic cable within that aerial run as described in the Site Agreement.

- D. WSDOT may not permanently occupy or use the City right-of-way. This Agreement conveys to WSDOT no title or interest in the City right-of-way. Upon expiration or termination of this Agreement by the City, WSDOT must, at the sole discretion of the City, either: (1) remove its fiber optic cable from the City right-of-way at its own expense; or (2) disconnect (i.e., unlight) its fiber optic cable and deed the same to the City at no expense to the City. The City's exercise of discretion will be made in writing, by notice to WSDOT, provided pursuant to Exhibit A herein.

VI. Limitations of Use

- A. This agreement does not grant WSDOT any right to exclude others from the City right-of-way. The City has the exclusive right to grant permits, licenses, leases, or franchises to other persons or entities to use the City right-of-way for similar or different purposes.
- B. The uses of all City strands of the fiber optic cable provided by WSDOT will be determined by the City. WSDOT is not authorized to use the Conduit beyond the use provided by this Agreement. This Agreement does not authorize WSDOT to use the Conduit or fiber optic cable therein to provide telecommunications or cable service to third parties, except that WSDOT may provide dark fiber optic cable to other government agencies for their sole use.

VII. Optional Work

If requested by the City, WSDOT may install the fiber optic cable spurs from WSDOT's direct fiber optic cable path shown by the Site Agreement into the facilities identified in the Site Agreement, provided, that the actual direct and related indirect costs of installation of the fiber optic cable spurs shall be at the City's expense.

VII. Indemnification

The parties each agree to defend, indemnify and hold the other, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with each entity's respective performance of its responsibilities under the Agreement, except to the extent such injuries and damages are caused by the negligence of the other.

VIII. Records Maintenance

The parties to this Agreement shall each maintain books, records, documents and other evidence which sufficiently and properly reflect all direct and indirect costs expended by

either party in the performance of the work described herein. These records shall be subject to inspection, review or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six years after expiration of this agreement and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving it a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

IX. Independent Capacity

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

X. Alterations and Amendments

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and dually signed by personnel authorized to bind each of the parties.

XI. Dispute Resolution

In the event of any dispute, the parties shall first attempt to resolve the issues through mediation prior to filing any action in court.

XII. Joint Board

This Agreement creates no Joint Board and no separate legal entity.

XIII. Duration of Agreement

This Agreement shall be effective for twenty (20) years from the commencement date unless otherwise terminated in the manner described under the termination section of this Agreement. At the end of this term, the parties may extend this Agreement under terms and conditions then agreed. If this Agreement is not extended, WSDOT must, at the sole discretion of the City, either: (1) remove its fiber optic cable from the City right-of-way at its own expense; or (2) disconnect (unlight) its fiber optic cable and deed the same to

the City at no expense to the City. WSDOT will be responsible for all costs associated with restoring the right-of-way to its original condition.

XIV. Termination of Agreement

A. Termination for Convenience

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

B. Termination for Cause

If for any cause, either party does not fulfill in a timely and proper manner its obligations under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to initiate a correction of the violation or failure within 30 (thirty) calendar days. If failure or violation is not corrected within the mutually agreed upon time period, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

C. If this Agreement is terminated for any reason, WSDOT must, at the sole discretion of the City, either: (1) remove its fiber optic cable from the City right-of-way at its own expense; or (2) disconnect (unlight) its fiber optic cable and deed the same to the City at no expense to the City. WSDOT will be responsible for all costs associated with restoring the right-of-way to its original condition.

XV. Assignment

The work to be provided under this Agreement, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld or delayed.

XVI. Entire Agreement

This Agreement sets forth all terms and conditions agreed upon by the City and WSDOT and supersedes any and all prior agreements, oral or otherwise, with respect to the subject matter addressed herein.

XVII. Waiver

A failure by either party to exercise its right under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any

other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement.

XVIII. Severability

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.

XIX. Contract Management

A. Contact Information

All contact information for the management of this Agreement shall be identified in Exhibit A, attached hereto and by this reference made a part hereof. Exhibit A may be updated by either party for its agency only and shall be submitted in writing or electronic mail to the other party by the Contract Administrators. Any update to Exhibit A shall state the effective date of said update.

B. Contract Managers

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

C. Technical Contacts

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

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

XX. Recording

Prior to its entry into force, this Agreement shall be filed with the Thurston County Auditor's Office or posted upon the websites or other electronically retrievable public source as required by RCW 39.34.040.

XXI. Notice

Any notice required under this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

CITY OF LACEY
Attn: Information Services Manager
420 College Street SE
Lacey, WA 98503

WSDOT
Attn: Network Services Manager
7345 Linderson Way SW
Tumwater, WA 98504

XVI. Interpretation and Venue

This Agreement shall be governed by the laws of the State of Washington as to interpretation and performance. The parties hereby agree that venue for enforcement of this agreement shall be the Superior Court of Thurston County.

XVII. Commencement Date

This Agreement shall take effect on the date of the last authorizing signature affixed hereto.

CITY OF LACEY



Scott Spence
City Manager

WSDOT



Grant Rodeheaver
Director of Information Technology Division

Date: 3/13/2014

Date: 4/2/14

Approved as to form:

Approved as to form:



City Attorney

Attorney General State of Washington

EXHIBIT A
Interagency Agreement Contact Information

WSDOT Contract Number: K573

Effective Date: **10/28/2013**

Washington State Department of Transportation

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

<p>Contract Signature Authority 1: (unlimited)</p>	<p>Grant Rodeheaver, Director Office of Information Technology P.O. Box 47430 Tumwater, WA 98504-7430 (360) 705-7601 grant.rodeheaver@wsdot.wa.gov</p>
<p>Contract / Project Manager:</p>	<p>Randy Baker, Network Services Manager Office of Information Technology P.O. Box 47430 Tumwater, WA 98504-7430 (360) 705-7787 randy.baker@wsdot.wa.gov</p>
<p>Technical Contact:</p>	<p>Todd Turner, Network Operations Supervisor Office of Information Technology P.O. Box 47430 Tumwater, WA 98504-7430 (360) 705-7694 todd.turner@wsdot.wa.gov</p>
<p>Contract Administrator:</p>	<p>Carol Kirsch Administrative Services Contracts Office P.O. Box 47408 Olympia, WA 98504-7408 (360) 705-7547 carol.kirsch@wsdot.wa.gov</p>
<p>Invoicing</p>	<p>Office of Information Technology Attn: Invoice Processing Business Unit 7345 Linderson Way S.W. P.O. Box 47430 Tumwater, WA 98504-7430 (360) 705-7716 WSDOTOITVendorPayments@wsdot.wa.gov The preferred method of submittal shall be electronic to the email address above.</p>

City of Lacey

Contract Signature Authority 1:	Scott Spence, City Manager City of Lacey 420 College Street SE Lacey, WA 98503 citymanager@ci.lacey.wa.us (360) 491-3214
Contract Manager: Signature Authority 2	Troy Woo, Finance Director City of Lacey 420 College Street SE Lacey, WA 98503 twoo@ci.lacey.wa.us (360) 491-3212
Technical Lead:	Cindy Zielinski, Information Services Manager City of Lacey 420 College Street SE Lacey, WA 98503 czielins@ci.lacey.wa.us 360-438-2627
Contract Administrator:	Cindy Zielinski, Information Services Manager City of Lacey 420 College Street SE Lacey, WA 98503 czielins@ci.lacey.wa.us 360-438-2627