

CONTRACT TO PERFORM GOVERNMENTAL ACTIVITIES

**Between
THURSTON COUNTY
And
CITY OF TUMWATER**

THIS CONTRACT is entered into in duplicate originals between THURSTON COUNTY, hereinafter "County," and City of Tumwater, hereinafter "City."

WHEREAS, it is to the mutual advantage of the County and the City to cooperate in the extension of infrastructure necessary to provide fiber optic communications that will service both County and City facilities in order to make the most efficient use of their powers to provide services and facilities needed by the citizens residing within their respective jurisdictions; and

WHEREAS, RCW 39.34.080 authorizes a public agency to contract with another public agency to perform any governmental service which each public agency is authorized by law to perform, provided that such contract shall be authorized by the governing body of each party to the contract;

NOW, THEREFORE, in consideration of the mutual promises and covenants recited herein, it is mutually agreed by the parties as follows:

I. PURPOSE

The purpose of this Contract is to provide the work necessary to extend underground conduit, for future installation of fiber optic communications, along County and City rights of way as shown in Attachment "A" attached hereto and incorporated herein by reference, that will service County and City facilities.

The installation of future fiber optic communications will be completed by others under separate contract.

II. SERVICES

The work to be provided by the County under this Contract shall consist of excavation and backfill of approximately 6,700 feet of trench, 1 foot in width and a minimum 30 inches in depth, together with providing 4-inch diameter conduit and placement of the conduit in the trench. This work includes all labor, materials and equipment necessary to complete this work. The work will extend along Old Hwy 99, 88th Avenue, North Tilley Road, 93rd Avenue and South Tilley Road beginning at the intersection of 84th Avenue SE and ending at the City's Urban Growth Area Boundary on South Tilley Road approximately 320 feet south of 93rd Avenue as shown on Attachment "A"

The City currently owns existing conduit to which the County's work may connect. This conduit was installed by others and the City makes no warranty, either expressly or implied, that the existing conduit is in place and serviceable. The City will make reasonable effort to locate the existing conduit.

The work to be provided by the City under this contract shall consist of constructing conduit crossings of paved roadways, by boring, at the locations shown on Attachment "A". This work includes all labor, materials and equipment necessary to complete this work.

The work under this contract does not include the installation of the fiber optic communication line. This work will be done by others under separate contract.

III. OWNERSHIP AND OPERATION OF INSTALLED INFRASTRUCTURE

The ownership and operation of all infrastructure installed under this contract shall be by the City.

IV. DURATION

The term of this Contract shall commence upon the approval by the governing body of each party and the filing of this Contract as required by RCW 39.34.040. This Contract shall terminate on November 15, 2007 unless terminated sooner as provided herein.

V. RESPONSIBILITY OF THE COUNTY

The County shall:

1. Provide all necessary equipment, operators, materials, traffic control and administration for County provided services set forth under Section II SERVICES;
2. Provide all inspection, contract administration and quality assurance testing for County provided services set forth under Section II SERVICES;
3. Keep accurate records of costs for county services;
4. Obtain (if necessary) the permits needed to work within county rights of way for all services described in Section II SERVICES; and
5. File this contract in accordance with RCW 39.34.040

VI. RESPONSIBILITY OF THE CITY

The City shall:

1. Provide all necessary equipment, operators, materials, traffic control and administration for City provided services set forth under SECTION II SERVICES;
2. Provide all inspection, contract administration and quality assurance testing for City provided services set forth under SECTION II SERVICES;
3. Keep accurate records of costs for City services; and
4. Obtain (if necessary) the permits needed to work within city rights of way for all services described in Section II SERVICES.

VII. PAYMENT

The City agrees to assume full cost for the City services and responsibilities set forth herein. The County agrees to assume full cost for County services and responsibilities set forth herein.

VIII. ADMINISTRATION

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Contract and for coordinating and monitoring performance under this Contract. In the event such representatives are changed, the party making the change shall notify the other party in writing.

The County's representative shall be Lane McAllister, 9605 Tilley Rd SW, Olympia 98512-9140, 360-786-5495, mcallil@co.thurston.wa.us.

The City's representative shall be Steve Craig, 555 Israel Road SW, Tumwater WA 98501, 360-754-4150, scraig@ci.tumwater.wa.us.

Wherever written notice is required under this Contract, such notice shall be provided to the representatives designated above.

IX. RELATIONSHIP OF THE PARTIES

The employees or agents of each party who are engaged in the performance of this Contract 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. This Contract is for the benefit of the parties, and no third party beneficiary relationship is intended.

X. INDEMNIFICATION AND HOLD HARMLESS

Each party agrees to indemnify and hold harmless the other party, its elected and appointed officers, employees, and agents from and against any and all claims, demands, and/or causes of action of any kind or nature, including but not limited to attorneys fees and costs, arising from the negligent action and/or inactions of the party, its elected and appointed officers, employees, and agents in conjunction with this Contract. In the event of concurrent negligence of the parties, each party's obligations hereunder shall apply only to the extent of fault attributable to that party, its elected and appointed officers, employees, and agents. It is further provided that no liability shall attach to the County or the City by reason of entering into this Contract except as expressly provided herein.

XI. TERMINATION

Either party may terminate this Contract upon thirty (30) days prior written notice to the other party. If this Contract is so terminated the parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Contract prior to the effective date of termination. The indemnification and hold harmless provisions of this Contract shall survive termination of the Contract.

XII. CHANGES, MODIFICATIONS, AND AMENDMENTS

The Contract may be changed, modified, amended or waived only by written agreement executed by the parties hereto.

XIII. GOVERNANCE

This Contract is entered into pursuant to and under the authority granted by the laws of the State of Washington and any applicable federal laws. The provisions of this Contract shall be construed to conform to those laws. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Thurston County, Washington.

XIV. SEVERABILITY

If any provision of this Contract or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract 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 Contract, and to this end the provisions of this Contract are declared to be severable.

XV. WAIVER

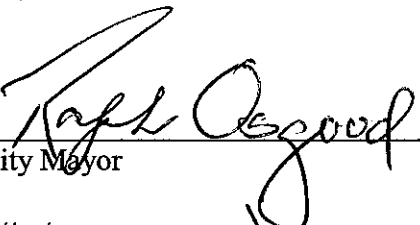
A failure by either party to exercise its rights under this Contract shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Contract unless stated to be such in a writing signed by an authorized representative of the party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

XVI. ENTIRE CONTRACT

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

IN WITNESS WHEREOF, the parties have caused this Contract to be executed this 15 day of October, 2007.

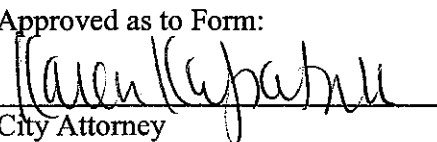
City of Tumwater



City Mayor

Attest:


City Clerk

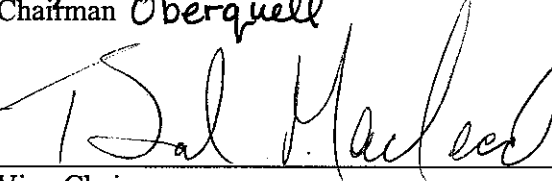
Approved as to Form:


City Attorney


Board of County Commissioners
Thurston County



Chairman Oberquell

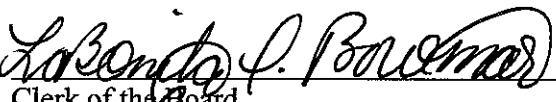


Vice-Chairman



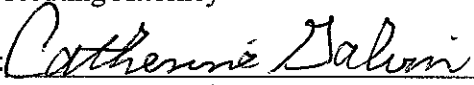
Commissioner

ATTEST:



Clerk of the Board

Approved as to Form:
Edward G. Holm
Prosecuting Attorney

By: 

Deputy Prosecuting Attorney

