

**INTERGOVERNMENTAL AGREEMENT  
For IRNE Telecommunications Services  
5-Year Agreement**

This Agreement is between the City of Portland (City), and the US Army Corps of Engineers, Northwestern Division ("CENWD").

**AGREED**

**1. PARTIES**

This Agreement may refer to the City and the CENWD individually as a Party, or collectively as the Parties.

**2. PROJECT MANAGERS**

2.1 The City's Project Manager for this Agreement shall be the City's Manager of Communications Operations and Engineering. The City Project Manager may appoint additional project managers.

2.2 The CENWD's Project Manager shall be Ali Hodroge. The CENWD's Project Manager may appoint additional project managers.

**3. ATTACHMENTS**

The Parties agree Attachments may be added to or deleted from this Agreement, without formal Amendment, from time to time if in writing, signed by both Parties' Project Managers. Attachments conforming to this section shall be effective upon the date last signed.

Attachment 1, Robert Duncan Plaza to Green-Wyatt Federal Building Connectivity, and Attachment 2, Authority attached hereto, are part of this original agreement, without separate signatures.

**4. PURPOSE**

4.1 The purpose of this Agreement is to provide the CENWD access to and use of specific City telecommunications services through the City's Integrated Regional Network Enterprise (IRNE). The IRNE is a regional telecommunications network established and managed by the City for the mutual benefit of the City and other public entities in the region who subscribe to IRNE services.

4.2 The CENWD understands and agrees that the IRNE Services provided under this Agreement are for use by and for the CENWD for the conduct of its official business. The CENWD shall not resell, barter or share the IRNE Services to or with any commercial entity. The City shall not control the content of information transported over the IRNE by the CENWD in any way.

## **5. TERM AND RENEWAL**

- 5.1 This Agreement shall be effective as of the first installation date of IRNE Services (as evidenced by the City's records) and shall terminate upon completion of 60 months from that date (Effective Date).
- 5.2 If mutually agreeable to the Parties, this Agreement may be extended or renewed for additional periods, such periods to be determined at time of extension or renewal. Either Party may request extension or renewal; however, the request for extension or renewal shall be in writing and provided to the other Party at least ninety (90) days prior to expiration of the term to be extended or renewed. Any mutually agreeable extension or renewal of this Agreement shall be by written amendment or execution of a new Agreement, signed by authorized representatives of the Parties.
- 5.3 Extension or renewal shall be conditioned upon: (1) availability of IRNE facilities; (2) continued offering of the IRNE Services by the City; and (3) the parties reaching agreement on terms. At least ninety (90) days prior to expiration of the term of this Agreement, the parties shall commence negotiations if they desire to continue IRNE Services under mutually acceptable terms and conditions. However, nothing binds or requires the City to continue to supply IRNE Services, or the CENWD to continue to purchase IRNE Services after termination of this Agreement.

## **6. TELECOMMUNICATIONS SERVICES ORDER PROCESS**

- 6.1 The City shall provide the IRNE Services upon receipt and acceptance of an order for service (Order) by the CENWD. Services provided shall be in conformance with the published IRNE Catalog of Services (IRNE Catalog).
- 6.2 Interfaces shall be described in the published IRNE Catalog. The CENWD shall indicate its requirements for interfaces in its Orders. Orders shall be submitted to the City Project Manager.
- 6.3 Work to be performed by the City or the CENWD to install or operate the IRNE Services shall be as described in the Order(s).
- 6.4 The CENWD may order any IRNE Service, provided that it is available to the CENWD's premises, and provided that the CENWD agrees to pay all construction, installation and recurring charges for the IRNE Services as described in the Order. IRNE Services shall be provided under the specific terms and conditions as detailed and described in this Agreement and the IRNE Catalog.
- 6.5 CENWD shall submit its Order(s) describing the type of service requested, the install date requested, and the interface requested to the City Project Manager. The City Project Manager shall respond in writing within ten (10) working days confirming receipt of the Order. The IRNE Project Manager shall subsequently provide a cost quote including recurring charges, non-recurring charges, installation charges, construction charges, and any other cost, to the CENWD. The City Project Manager shall also provide an installation date and service due date to the CENWD at this time.

- 6.6 If engineering and/or construction is required before an Order can be filled for the CENWD, the City Project Manager shall instead notify the CENWD in writing within ten (10) working days of receipt of the Order that the Order can not be filled, and that engineering and construction work is required. In this instance, the City Project Manager shall provide to the CENWD a written engineering and construction cost estimate. If the CENWD wishes to proceed with the engineering and construction work, the CENWD shall provide an Order that includes the engineering or construction work identified by the City as necessary to provide the service requested. Once the City Project Manager has received the Order for the engineering and construction the City Project Manager shall notify the CENWD in writing within ten (10) working days of its ability to provide a due date for service delivery.
- 6.7 If the City is unable to provide the service to the CENWD in a timely manner, or the service delivery date is unacceptable to the CENWD, the CENWD may withdraw the Order, or request another service from the City by submitting another Order.
- 6.8 The City shall make every effort to meet the service delivery date to the CENWD that is quoted for the Order. However, construction delays, difficulty in contracting for labor or materials, permit availability or other construction or engineering issues may occur which are out of the control of the City. If the City expects a delay, it shall promptly notify the CENWD in writing and revise the Order delivery date. The CENWD agrees that when construction, engineering or other issues that affect service delivery occur, the City shall not be held responsible for any damages, penalties or liability due to delays in providing the service.

## **7. RATES, CHARGES AND PAYMENT PROCEDURES**

- 7.1 IRNE Services shall be billed to the CENWD as monthly recurring charges, or as installation, construction, engineering, equipment, or other non-recurring charges. The City shall establish the rates that form the basis of these charges. The City shall publish the rates for IRNE Services annually by the City in the IRNE Catalog.
- 7.2 The City shall establish rates for IRNE Services that are tied to the term length of this Agreement. The City reserves the right to develop new rates for then existing IRNE Services and for new IRNE Services previously not in the IRNE Catalog at any time, and publish them in the IRNE Catalog. Upon publication by the City, any new service and new rate shall be available to the CENWD. Rate increases for services ordered and delivered during the term of this Agreement shall be limited to the increase in the consumer price index as forecast and published by the City's budget office. At the termination of this Agreement, or at any time this Agreement is amended or extended beyond the original term, the rates for services ordered and delivered from that time forward shall be updated to reflect the current published rates for services. In addition, services ordered and delivered under the original term, but continued under the new term shall be billed at the new rate for those services in effect at the time of the renewal or extension.
- 7.3 The CENWD shall pay all charges within 45 calendar days of the date of the City's invoice. Interest shall be charged to late accounts as provided by Portland City Code. Failure to pay charges when due may also result in termination of IRNE Services as provided by Section 14 of this Agreement.

- 7.4 In lieu of monthly payments for recurring charges, the CENWD may prepay the monthly recurring charges annually on a fiscal year basis. The annual payment shall consist of the monthly recurring payment times twelve. For the first year, the annual payment shall consist of the monthly recurring charges pro-rated for the remainder of the then current fiscal year. For the final fiscal year, the payment shall consist of the monthly recurring charges pro-rated for the remaining term of the Agreement.
- 7.5 In the event the CENWD disputes any of the charges, the CENWD shall pay all undisputed charges within the 45 days. The CENWD shall notify the City in writing of disputed charges immediately when discovered but no later than 45 days following the date on the City's invoice. The Parties shall meet and resolve the disputed charges in a timely manner. Both Parties agree to investigate any disputed amounts in an expedited fashion in an effort to resolve and settle the dispute prior to seeking any other remedies. Charges not disputed within 45 days from the date of the City's invoice shall be due and payable and no longer subject to dispute under this section.
- 7.6 If the CENWD disputes charges and does not pay such charges by the payment due date, such charges shall be subject to late payment charges unless the dispute is resolved in favor of the CENWD. If the disputed charges have been withheld and the dispute is resolved in favor of the City, the CENWD shall pay the disputed amount and applicable late payment charges, as provided in Section 7.7, no later than the second billing period following the resolution of the dispute. If the disputed charges have been withheld by the CENWD and the dispute is resolved in favor of the CENWD, the City shall credit the bill of the CENWD for the amount of the disputed charges and any late charges already paid no later than the second billing period after the resolution of the dispute. If the CENWD pays the disputed charges and any applicable late charges and the dispute is resolved in favor of the City, no further action shall be required. If the CENWD has paid the disputed charges and any applicable late charges, the City has credited the payment to the CENWD's account, and the dispute is resolved in favor of the CENWD, the City shall credit the CENWD's bill for the disputed amount and the late payment charges already paid no later than the second bill payment due date after the resolution of the dispute.
- 7.7 The late payment charge calculated on the disputed amounts shall be at the same rate as but in addition to the interest rate described in Section 7.3, above. In no event, however, shall any late payment charges be assessed on any previously assessed late payment charges.
- 7.8 The invoice received by the CENWD from the City shall contain the details necessary to identify the circuit or service provided, itemized charges on the circuit or service and the CENWD identifier, geographic address and billing interval. Every service or circuit provided by the City to the CENWD shall have a discrete identifier on the invoice to facilitate CENWD tracking of service charges.

## **8. INTERFACES**

- 8.1 At the CENWD premises the City shall provide a standard network interface for the type of IRNE Services provided, and as described in the Order. The City shall work with the CENWD to meet IRNE standards for interface, or shall propose alternatives

to the standard if there is a legitimate need to do so to protect the integrity of the CENWD's facilities or IRNE network security. The CENWD shall be responsible for extending the IRNE Services from the City's interface point to its service locations. The City may require the installation of City equipment on the CENWD's premises in order to provide the IRNE Services and network interface. The CENWD shall be responsible for providing and/or paying for such equipment, and space, environmental controls, power, and other required support for the equipment. Ownership of equipment and facilities shall be as provided in Section 10.

- 8.2 In the event special construction or equipment is required to provide the IRNE Interfaces to the CENWD premises, the CENWD shall be responsible for payment for those items and their installation. These charges shall be quoted to the CENWD at the time of Order processing as provided in Section 6, and paid as non-recurring charges by the CENWD as provided by Section 7. Ownership of equipment and facilities shall be as provided in Section 10.

## **9. MANAGEMENT OF THE IRNE SERVICE**

- 9.1 An IRNE Network Manager appointed by the City and an CENWD Network Manager appointed by the CENWD shall manage their discrete areas associated with use of the IRNE Services. The IRNE Network Manager shall be responsible for activities relating to providing the CENWD with access to the IRNE Services and with maintaining the integrity of the IRNE Services. The CENWD Network Manager shall be responsible for any equipment provided by the CENWD to use the IRNE Services to transmit and receive information. The IRNE Services shall be managed by both Network Managers to optimize the joint benefit of both Parties to this Agreement. Each Party shall notify the other in writing of the contact information for its Network Manager for this Agreement within five (5) days of Effective Date of this Agreement.
- 9.2 Each Party shall provide the other with a number to contact the other's Network Operations Center (NOC) 24 hours-per-day by telephone or pager. This number shall be used for reporting of troubles and repair management, and other day-to-day network management issues. Use of e-mail for non-critical communication is acceptable and encouraged.
- 9.3 If either Party changes Network Managers, it shall provide the other Party with prior written notification at least thirty (30)-days in advance of the change, if possible. If 30 days advance notice is not possible then prior notice shall be given no later than one (1) week after the Party making the change becomes aware of it.
- 9.4 Each Party shall appoint a backup or Alternate Network Manager to act in the absence of the Network Manager. The other Party shall be notified in the same manner as provided by Section 9.1 and 9.3 of this Agreement.

## **10. OWNERSHIP OF THE IRNE**

The City shall retain asset ownership and physical control of the IRNE, including without limitation equipment or facilities installed on the CENWD's premises for the purpose of providing IRNE Services to the CENWD.

## **11. MAINTENANCE AND OPERATIONS**

- 11.1 The City is responsible for maintaining the IRNE network and IRNE interfaces during the term of this Agreement. At the time of installation of IRNE equipment or services to the CENWD premises, the IRNE Project Manager shall provide a diagram and listing depicting the IRNE equipment and the IRNE demarcation in the CENWD's premises. The cost of maintaining the IRNE network and interfaces identified on the diagram and listing as IRNE managed equipment and facilities shall be paid by the IRNE. The CENWD is responsible for the operations and maintenance, and the cost of operations and maintenance, of its electronic facilities and equipment. Any equipment, interfaces, software or wiring not specifically identified on the IRNE-provided diagram and listing as the responsibility of the City shall be maintained and operated by the CENWD.
- 11.2 In the event of any transmission problem, the City and the CENWD agree to make every reasonable effort to properly troubleshoot their equipment and facilities at the end points to isolate the problem, and to participate in joint testing at any reasonable time requested by the other Party.
- 11.3 The CENWD shall attempt to isolate service problems and determine whether the problems exist on the CENWD's side of the IRNE network interface before reporting the problems to the IRNE Network Operations Center (NOC).
- 11.4 If the CENWD determines that the problem likely resides on the IRNE side of the network interface, the CENWD shall report the problem to the IRNE NOC. The method of reporting shall be determined by the City and provided to the CENWD's Network Manager in writing. The City reserves the right to require a specific type of notification, for example a pager, for urgent problems during non-business hours. The City may change the notification method at any time and shall give reasonable notification of such changes to the CENWD.
- 11.5 If the City determines that the problem likely resides with the CENWD's equipment or facilities, the IRNE NOC shall report the trouble to the CENWD's Network Manager or other designated person. Method of reporting shall be determined by the CENWD and provided to the IRNE Network Manager in writing.
- 11.6 Parties shall work cooperatively to resolve problems. This may include joint testing, joint visits to shared equipment sites, or other actions that may lead to problem resolution.

## **12. SITE ACCESS**

The City shall have reasonable access to its equipment and facilities at the CENWD's premises for the purposes of performing site surveys, engineering, installation, testing, trouble resolution, upgrades, and other necessary work. The access at CENWD's premises shall be in accordance with the CENWD's building management policies and procedures; however the CENWD shall make every reasonable effort to accommodate City access requirements. The City Project Manager and the CENWD Project Manager shall define access requirements and procedures in writing in order to facilitate the site access requirements of the City.

## **13. AMENDMENTS**

The provisions of this Agreement shall not be, altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement signed by authorized representatives of the Parties. The Manager of Communications Operations and Engineering may authorize any amendment of this Agreement on behalf of the City. The CENWD's Project Manager may authorize any amendment to this Agreement on behalf of the CENWD.

## **14. EARLY TERMINATION**

- 14.1 This Agreement may be terminated by mutual consent of the Parties. Termination by mutual consent shall be in written form stating the effective date of termination. Either Party may terminate this Agreement upon giving written notice of termination to the other Party not less than three (3) months prior to the termination date which shall be set forth in the notice.
- 14.2 Either Party may terminate this Agreement in the event that the other Party fails to comply with all applicable federal, state (specifically Oregon Public Utility Commission) and local laws and regulations. In the event that either Party wishes to terminate under this provision, written notice to cure shall be given to the other Party at least ninety days (90) in advance to allow time for the Parties to comply with the applicable regulations, statutes or laws. In the event that either Party has failed to comply with the applicable regulations, statutes, or laws by the end of the ninety (90)- day notification periods, the non-breaching Party may terminate this Agreement immediately and no additional advance notice shall be required.
- 14.3 Except as otherwise provided by this section either Party may terminate this Agreement in the event of a breach of the Agreement by the other. Prior to such termination, however, the Party seeking termination shall give the other Party written notice of the breach and of the Party's intent to terminate. If the breaching Party has not entirely cured the breach, or offered a plan to cure, within fifteen (15) days of the notice, then the Party giving the notice may terminate this Agreement at any time thereafter by giving a written notice of termination. CENWD has the right to terminate agreement/services without any penalty if present services are not needed any more. CENWD shall give IRNE 30 day notice of this action.
- 14.4 In the event the City fails to provide IRNE Services provided to the CENWD for any period of 72 hours in a billing period or calendar month, IRNE will exert every effort to provide the service in a timely manner. CENWD have the right and may terminate this Agreement upon written notice to the City.





## **20. SEVERABILITY**

If any provision of this Agreement is declared by a court of law to be illegal or in conflict with any law, the validity of the remaining terms, conditions and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be illegal or invalid.

## **21. COMPLETE AGREEMENT**

This Agreement consists of this Agreement and any Attachments added from time to time pursuant to Section 3, above. There are no other contract documents unless specifically referenced or incorporated in this Agreement, or added or deleted by written amendment to this Agreement. This Agreement contains the entire agreement between the Parties and supercedes all prior written or oral discussions or agreements.

## **22. SUBCONTRACTING AND ASSIGNMENT**

The Parties shall not subcontract or assign any part of this Agreement without the prior written consent of the other Party. Prior notice of at least 120 days is required and the Parties shall not be obligated to approve of or otherwise agree with any proposed assignment or subcontracting arrangement. In the event an assignment or subcontracting arrangement is approved, the Party assigning or subcontracting shall remain obligated for full performance of its obligation under this Agreement, and the other Party shall incur no obligation other than its obligations under this Agreement. Any approved assignee or subcontractor shall be required to agree to fulfill all the assigned or subcontracted obligations of the assigning or subcontracting Party.

## **23. FORCE MAJEURE**

23.1 The City or the CENWD shall breach this Agreement if it fails to perform any substantial obligation under this Agreement, except as provided in subsection 23.2.

23.2 The Parties shall not have breached this Agreement by failure to perform a substantial obligation under this Agreement if the failure to perform arises out of causes beyond their control and without their fault or neglect, including without limitation: fire; flood; epidemic; volcanic eruption; quarantine restrictions; strike; freight embargo; unusually severe weather; riot; acts of God, sovereign or public enemy; or war. In the event delay or default arising from these causes reasonably prevents successful performance of this Agreement, the Parties may terminate this Agreement, without penalty, upon written agreement, or the Parties may make mutually acceptable revisions to this Agreement to allow it to continue as modified.

## **24. NON-WAIVER**

The Parties shall not be deemed to have waived any breach of this Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

## **25. INDEPENDENT CONTRACTORS**

The Parties shall each be responsible for any of their own federal, state and local taxes applicable to payments under this Agreement. The Parties, and their employees and subcontractors agree that their employees and subcontractors are not employees of the other Party and that their employees and subcontractors are not eligible for any benefits from the other Party, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

## **26. NON-APPROPRIATION**

26.1 The CENWD intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) The CENWD agrees to include in its budget request appropriations sufficient to cover its obligations under this Agreement; b) The CENWD agrees to use all reasonable and lawful means to secure these appropriations; c) The CENWD agrees it shall not use non-appropriations as a means of terminating this Agreement in order to acquire functionally equivalent products or services from a third party. The CENWD reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

26.2 The City intends to continue this Agreement for its entire term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) The City agrees to include in its budget request appropriations sufficient to cover its obligations under this Agreement; b) The City agrees to use all reasonable and lawful means to secure these appropriations; c) The City agrees it shall not use non-appropriations as a means of terminating this Agreement. The City reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

26.3 In the event that insufficient funds are appropriated to continue payments under this Agreement and either Party has no other funding source lawfully available to it for such purpose, that Party may terminate this Agreement by giving the other Party not less than thirty (30) days prior written notice without penalty. Upon termination and to the extent of lawfully available funds, the terminating Party shall be obligated to remit all amounts due and all costs reasonably incurred by the other Party through the date of termination.

## **27. IRNE CUSTOMER ADVISORY GROUP**

Upon execution of this Agreement, the CENWD may appoint a representative to the IRNE Customer Advisory Group (CAG), who shall represent the CENWD in all matters referred to the IRNE CAG. The CENWD shall be entitled to a representative on the IRNE CAG so long as this Agreement is in effect. The IRNE CAG's roles and responsibilities are defined below. The City's Manager of Communications Operations and Engineering shall chair the IRNE CAG.

- (a) **Role of the User Board.** The role of the IRNE CAG is to review rates for IRNE services to government and educational institutions. The IRNE CAG may also provide recommendations and advice to the IRNE management and the City Council on services, expansion, market strategy, grant opportunities, partnerships and other issues relevant to the health of the IRNE and the mutual benefit of User Board Members and the City. The IRNE CAG may also review Service Level Agreements to be offered to IRNE users.
- (b) **Limitations.** The IRNE CAG may not make recommendations that would jeopardize the ability of the City of Portland to meet its debt or general fund obligations by setting rates for services lower than the cost to provide those services. The City may provide the IRNE CAG with a Cost of Service study annually indicating the expenses (capital and ongoing) associated with the IRNE services provided to members.
- (c) **Responsibilities.** The IRNE CAG shall meet annually to review the cost of service study and recommend rates and services. It may meet more often as necessary to address other issues as required.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as of the Effective Date.

**CITY OF PORTLAND (CITY):**

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Deputy City Attorney

Date: \_\_\_\_\_

CITY OF PORTLAND, by and through its Elected Officials:

By: \_\_\_\_\_  
Mayor Tom Potter

Date: \_\_\_\_\_

By: \_\_\_\_\_  
City Auditor

Date: \_\_\_\_\_

**CENWD:**

APPROVED AS TO FORM:

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# INTERGOVERNMENTAL AGREEMENT For IRNE Telecommunications Services

## Attachment 1

### Robert Duncan Plaza to Green-Wyatt Federal Building Connectivity

This attachment is prepared due to the unique services requested by CENWD, in accordance with the requirements of Section 3, Attachments of the Intergovernmental Agreement for Telecommunications Services. Attachment 1 provides the:

- Scope of Project
- Construction Process & Interface Description
- End-point Construction Description with Broadgauge Non-recurring Costs
- Recurring Charges for Services

#### 1. Scope of Project

- 1.1 The City of Portland (City) will provide a dark fiber optic cable resource (4 fibers) between Robert Duncan Plaza and the Green-Wyatt Federal Building, both located in the Portland, Oregon downtown core. These fibers will be terminated in fiber management panels in specified locations within each of these buildings. These panels will serve as Points of Demarcation between the two organizations.
- 1.2 Construction will be required from each end point to connect to existing fiber optic cable owned by the City. This construction will be performed using competitive bid on plans and specifications prepared by the City. The City will project manage the fiber optic construction, splicing, and certification.
- 1.3 The US Army Corps of Engineers, Northwest Division (“CENWD”) will reimburse the City for actual costs of this construction, plus a five-percent (5%) administrative charge.

For budgetary purposes, estimated costs for this construction are provided in this Attachment. These estimates are provided based on experience in constructing similar projects, and are believed to be representative of actual costs. They are however, not intended to be “Not to Exceed” dollar amounts.

- 1.4 The City will own the facilities between and including the two points of demarcation.
- 1.5 Additional governmental occupants of each building shall have right of access to available fiber optic strands within this resource, under separate written Intergovernmental Agreement between their Agency and the City.

#### 2. Construction Process & Interface Description

- 2.1 Plans and Specifications. The City Project Manager will prepare Engineered Plans and Specifications. CENWD and other pertinent personnel (building management, etc) will be consulted in order to ensure that the planned construction conforms to CENWD requirements.

- 2.2 Competitive Procurement Process. The City Bureau of Purchases, using standard City competitive purchasing processes, will bid the approved Plans and Specifications. A pre-bid walk-thru will be held, and the bids received will be evaluated and an award will be made.
- 2.3 Construction. Construction will be performed per the specification, resulting in placement of conduit, inner-duct and single-mode fiber optic cable between each premise and existing IRNE backbone facilities. This construction will not include splicing termination of the fiber.

A 23" X 7' equipment rack will be installed at each location, equipped with fiber management panels and provision for storage of slack loops. City personnel will perform this installation.

The fiber management panels will conform to City standards and will contain bulkheads equipped with industry-standard "SC" fiber optic connectors. The slack-loop storage for the excess portion of fiber jumpers will be constructed to prevent fiber kinks or bends less than the minimum bend radius requirement of the fiber optic jumper.

The City's fiber-optic splicing contractor will fusion-splice the newly installed fiber to pigtails. These pigtails will be factory-terminated on one end, and the SC connectors will be installed in the fiber management panel bulkheads. This contractor was selected by competitive bid to perform the highly specialized job of splicing and restoration for all City-owned fiber optic cables.

The fiber-splicing contractor will perform testing of the fibers end-to-end per the standards established by the City, and will provide the results to the City, to serve as a baseline for the performance characteristics of the path. This testing process will provide validation of the integrity of the fiber resource.

- 2.4. Upon completion of this testing and acceptance by the City, the fiber resource will become available to CENWD under the terms of the Interconnect Agreement and this Attachment 1.

### **3. End Point Construction—Non Recurring Cost Estimate**

The Project will require builds at both ends, and will utilize existing IRNE fibers for a majority of the run. The construction estimate cost is \$134,132.00.

- 3.1 Duncan Plaza. At the Duncan Plaza endpoint, a build will take place from an endpoint on or near Naito Parkway westward to the vicinity of Duncan Plaza, and into the building, terminating in a City-supplied relay rack in the 3<sup>rd</sup> Floor ACE Computer Room.

This will require creating a new entrance into the building, connecting to existing pathways leading to the Computer Room.

Fiber will be pulled end-to-end and terminated into ComNet-furnished fiber management/termination equipment.

- 3.2 Green-Wyatt Federal Building. At the Green-Wyatt Federal Building end-point, a build will take place from existing facilities at the west end of the Hawthorne Bridge, entering the building through the established building entrance on 2<sup>nd</sup> Avenue, with connectivity to conduit leading to the lower-level ACE Computer Room. Fiber optic cable will be placed, spliced and terminated into ComNet-furnished fiber management-termination equipment.

#### **4. Provision of Dark Fiber – Recurring Costs**

- 4.1 The single-mode fibers will be priced at \$500.00 per fiber per mile per month. This cost is predicated on a maximum of four fibers, and for a minimum term of 3 years, with defined procedures for renewing the service at that time, if desired.

These fibers will be unlit, and will be accessible via industry-standard (SC) connectors at each end. Connectivity would be Point-to-Point.

Pricing is predicated on a 1-mile minimum distance, with 0.1mile granularity thereafter between end-points (\$50.00 per 0.1 mile). It is anticipated, but not established that this route will fall within the 1-mile distance for pricing purposes. If the distance exceeds one mile, the cost per fiber will be adjusted accordingly.

- 4.2 The cost of leased unlit fiber will vary with route. This pricing is specific to the route described herein.
- 4.3 It is possible to prepay the recurring cost either annually, or for the entire three-year interval at the time when service is initiated.

# **INTERGOVERNMENTAL AGREEMENT For IRNE Telecommunications Services**

## **Attachment 2**

"AUTHORITY. The authority for the Corps of Engineers (Portland District and Northwest Division headquarters, both resident in the City of Portland, Oregon) to enter into this cooperative agreement with the City of Portland and its "IRNE" services is based upon the Grant and Cooperative Agreement Act of 1978, specifically 31 USC 6305, and the partnering relationship between the Corps and the City in the area of Emergency Services. Pursuant to 33 USC 701n and other applicable federal disaster assistance and emergency authorities, the City of Portland, Multnomah County, the State of Oregon, and the Corps (Portland District and Northwestern Division) have an on-going and enduring relationship to provide coordinated emergency services to the people of the City of Portland, Multnomah County, and the State of Oregon, within the respective authorities of each entity.

This agreement, which shall link City and Corps communications and computer services, provides essential support for this collaborative, emergency services partnering mission, so that each party may better carry out its governmental services and missions. The City and the Corps agree that the communications and computer services capabilities - that are the subject of this agreement -- may be further linked with other federal, state, and local government partners in this overall collaborative mission of providing emergency services to the people served by these respective entities, as authorized by applicable federal, state, and local law and the terms of this agreement."

### **FEDERAL CONTRACT INFORMATION AND PROVISIONS (March 2001 Edition)(CENWP-OC)**

1. This agreement is with the Portland District Corps of Engineers, part of the US Army. The following data is a statement of federal law applicable to this agreement and useful information for those contracting with the Portland District Corps of Engineers.
2. **APPLICABLE LAW:** As a federal agency, the Corps and its contracts are governed by federal law. Under the Supremacy Clause of the US Constitution, federal law governs over state and local law in the case of conflicts.
3. **CONTRACT DISPUTES ACT OF 1978:** Federal contracts are generally governed by the 1978 Contract Disputes Act. The applicable Contract Board of Appeals for the Corps of Engineers is the Armed Services Board of Contract Appeals (ASBCA) as of August 2000.
4. **THE FEDERAL TORT CLAIMS ACT:** Torts involving federal personnel acting within the scope of their employment are covered by the Federal Tort Claims Act (FTCA). The FTCA, with some exceptions, generally adopts the state tort law of the location where the tort occurred. In the event that torts occur on navigable waters of the United States and involve traditional maritime activities, federal admiralty law may apply in whole or in part in place of tort law.
5. **PAYMENT AND INTEREST:**
  - a. The Prompt Payment Act applies to federal payments under this agreement. In the event payment is not timely made, statutory interest is automatically added to the payment by the federal payment center.
  - b. With regard to disputed matters, the Contract Disputes Act of 1978 also provides for the payment of statutory interest on contract claims. Claims over \$50,000 generally require certification.



6. **ATTORNEY FEES:** The Equal Access to Justice Act (EAJA) applies to this agreement. Attorney fees of parties dealing with the Federal Government, if any, shall be paid in accordance with the terms of this statute if the applicable requirements are met.

7. **ARBITRATION:** The Corps of Engineers is NOT authorized to agree to binding arbitration. Contract claims shall be handled in accordance with the Contract Disputes Act of 1978. Tort claims shall be handled in accordance with the Federal Tort Claims Act.

8. **AUTHORIZED AGENTS:**

a. For dollar amounts over \$2500, only Contracting Officers are authorized to obligate the United States. This agreement has to be signed by a duly authorized Contracting Officer if anticipated expenses or costs, including contingencies, are going to exceed \$2500.

b. Individual federal employees with a federal government credit card are authorized to obligate contract expenditures on behalf of the federal government up to \$2500 under microprocurement authority.

c. For the Corps of Engineers, only duly authorized legal offices may authorize payment of tort claims under the Federal Tort Claims Act.

9. **LAW ENFORCEMENT MATTERS:** As a federal agency, the Corps is protected and serviced by federal law enforcement personnel as well as state and local law enforcement personnel. In an emergency please contact the closest available law enforcement personnel. Also please notify the Security and Law Enforcement Office of the Portland District Corps of Engineers, 503-808-4440. The FBI, the Defense Investigative Service, and the Army CID all have federal jurisdiction to investigate crimes involving the Corps of Engineers and its employees.

10. **WORKMEN'S COMPENSATION COVERAGE FOR FEDERAL EMPLOYEES ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT:** The Federal Employees Compensation Act (FECA) provides workmen's compensation coverage for federal employees injured within the scope of their employment. FECA is administered jointly by the federal agency employing the employees and the US Department of Labor. In the event of injuries to federal employees, please assist in notifying their agency.

11. **OBLIGATION OF APPROPRIATIONS:** The Federal Fiscal Year runs from October 1 to September 30. Congress generally appropriates funds on an annual basis. If a Corps contract involves multi-year funding, the contract should include one of several alternative methods for payment of contract expenses in future fiscal years, including (a) option years; (b) task orders as required; (c) Continuing Contract clauses; and/or (d) future funding provisions.

12. **HOLD HARMLESS AND INDEMNITY PROHIBITIONS:** The Comptroller General, who by federal law must approve all federal payments, has generally prohibited federal agencies from agreeing to "hold harmless" or other indemnity agreements as violations of federal fiscal criminal statutes (the Anti-Deficiency Act). Consequently, except in the rare case where specific federal statutory authority permits hold harmless or indemnity agreements, the Corps of Engineers cannot legally enter into any hold harmless or indemnity agreements.

13. **QUESTIONS:** Questions may be directed to the designated contact person for the Corps of Engineers for this agreement, or to the Office of Counsel, Portland District Corps of Engineers (503-808-4521).