

**INTERLOCAL AGREEMENT FOR SPOKANE TRANSIT AUTHORITY TO USE FIBER
FACILITIES OWNED BY CITY OF SPOKANE VALLEY, AND OTHER MATTERS RELATING
THERE TO**

THIS INTERLOCAL AGREEMENT (hereinafter "Agreement") is between the CITY OF SPOKANE VALLEY, a Washington State municipal corporation, (hereinafter "City") and SPOKANE TRANSIT AUTHORITY, a Washington State political subdivision and special purpose district (hereinafter "STA"), and jointly referred to as the "Parties."

RECITALS:

WHEREAS Chapter 39.34 RCW, Interlocal Cooperation Act, permits governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on the basis of mutual advantage to perform functions, and provide services and facilities to each other and the public; and

WHEREAS, the City owns fiber infrastructure that STA desires to use for telecommunication purposes (voice, data, video) at the Pence Cole Valley Transit Center located at the northwest corner of 4th Avenue and University Road; and

WHEREAS, it is in the operational and financial best interest of both Parties for the City to allow STA to utilize one pair (two strands) of dark fiber for the purpose of communicating about transit business with STA's other facilities.

NOW, THEREFORE, the Parties agree as follows:

1. **PARTIES**

A. City of Spokane Valley is a Washington State municipal corporation, referred to herein as "City", located at 11707 East Sprague, Suite 106, Spokane Valley, WA 99206.

B. Spokane Transit Authority is a Washington State political subdivision and special purpose district known as STA, headquartered at Spokane Transit Administration Facility, 1230 West Boone Avenue, Spokane, Washington.

2. **PURPOSE AND RESPONSIBILITIES**

The purpose of this Interlocal Agreement is to provide the terms under which the City will permit STA to utilize one pair (two strands) of dark fiber for the purpose of STA communicating between the Pence Cole Valley Transit Center (Valley Transit Center) at 4th Avenue and University Road, and STA's other facilities regarding STA business. STA, through its contractor, shall construct the connection to the City's fiber facilities at the City's fiber vault (the Vault), which is located in right-of-way in the south side of the Appleway Boulevard corridor adjacent to the Valley Transit Center, as shown in Attachment A. All construction shall be to the City's standards and STA and its contractor shall obtain all necessary permits and inspections required by City.

3. **COSTS**

A. STA shall pay all costs related to constructing the connection to the City's fiber facilities from the Vault onto STA property. STA shall pay all costs of repair of said connection that may be required as a result of damage to the Vault not caused by City's negligence. If the Vault is moved due to a City road capital project, STA will pay the costs related to constructing STA's

new connection of one pair (two strands) of dark fiber to the City's relocated fiber facilities and fiber vault.

B. STA shall pay its pro-rata share of all maintenance costs for any fiber actually used under this agreement.

C. STA agrees to reimburse the City within 30 days of mailing of any invoice for such maintenance costs or installation costs incurred by the City.

4. **TERM**

This Agreement shall begin upon signature by both jurisdictions and shall extend 10 years and may be renewed for additional 10 year terms upon written mutual agreement. Either Party may terminate this Agreement for cause or functionality any time upon 180 days prior written Notice.

5. **OWNERSHIP OF FACILITIES**

The City shall continue to own all fiber strands, and STA shall have only a right to use the one pair of dark fiber strands under the terms set forth herein. STA shall own the connection from its facilities at the Valley Transit Center to the Vault.

6. **LIABILITY**

A. The City shall defend, indemnify and hold harmless STA, its officers, employees and agents, from any claim, damage, loss, liability, injury, cost and expense arising out of the negligence or intentional acts of the City, its officers, employees and agents in connection with the Agreement, except to the extent of the negligence or intentional acts of STA, its officers, employees and agents. If an action, claim or proceeding instituted by a third party is directed at work or action taken by the City solely on behalf of STA, its officers, employees and agents, STA shall defend, indemnify and hold harmless the City from any expenses connected with the defense, settlement, or monetary judgment ensuing from such actions, claims, or proceedings.

B. STA shall defend, indemnify and hold harmless the City, its officers, employees and agents, from any claim, damage, loss, liability, injury, cost and expense arising out of the negligence or intentional acts of STA, its officers, employees and agents in connection with the Agreement, except to the extent of the negligence or intentional acts of the City, its officers, employees and agents. If an action, claim or proceeding instituted by a third party is directed at work or action taken by STA solely on behalf of the City, its officers, employees and agents, the City shall defend, indemnify and hold harmless STA from any expenses connected with the defense, settlement, or monetary judgment ensuing from such actions, claims, or proceedings.

C. Each Party specifically assumes potential liability for actions brought by its own employees against the other Party, and solely for the purposes of this indemnification, each Party specifically waives any immunity under Title 51 RCW. The parties have specifically negotiated this provision.

D. In the event STA's fiber connection to the City's fiber network is compromised or service lost for whatever reason up to the connection in the Vault, the City is obligated to make reasonable efforts to restore connectivity. In such event, the City shall not be liable to STA for any consequential damages caused by a disruption in service. Any loss of service resulting from damage or other causes from the Vault into STA's property shall be the responsibility of STA.

7. NOTICES

All Notices shall be in writing and served on any of the Parties either personally or by certified mail, return receipt requested, at their respective addresses. Notices sent by certified mail shall be deemed served when deposited in the United States mail, postage prepaid.

CITY:	City Manager City of Spokane Valley 11707 East Sprague, Suite 106 Spokane Valley, Washington 99206
STA:	CEO or designee Spokane Transit Authority 1230 West Boone Avenue Spokane, Washington 99201

8. INSURANCE

STA is a member of the Washington State Transit Insurance Pool (Pool) along with 24 other public transit agencies in Washington. STA obtains its insurance coverage from the Pool. The Pool is a public entity enabled by RCW 48.62. It is regulated and overseen by the state Office of Risk Management. The Pool is not a commercial insurer and is not rated.

During the course of this contract, STA will maintain coverage from the Pool for auto, general, and public officials liability with limits no less than \$10 million per occurrence.

STA shall require any contractor or subcontractors working on the City's facilities or property to obtain and provide proof of insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the contractor, its agents, representatives, employees or subcontractors in the following minimum forms and amounts:

1. Automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
2. Commercial general liability insurance shall be written on ISO occurrence form CG 00 01, shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate, and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. City and STA shall be named as an additional insured under contractor's commercial general liability insurance policy with respect to the work performed for the STA.
3. Workers' compensation coverage as required by the industrial insurance laws of the State of Washington.

STA shall require that contractor's insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII. STA shall also require contractor to fax or send electronically in .pdf format a copy of insurer's cancellation notice within two business days of receipt to STA.

As evidence of the insurance coverage required by this Agreement, STA shall furnish an insurance certificate from its risk pool to the City Clerk at the time STA returns the signed Agreement. The certificate shall specify the amount of coverage and the deduction or retention level. If requested, complete copies of insurance policies shall be provided to City. STA shall be financially responsible for all pertinent deductibles, self-insured retentions, and/or self-insurance under its policy.

9. **MISCELLANEOUS**

A. **Non-Waiver** - No waiver by either Party of any of the terms of this Agreement shall be construed as a waiver of the same or other rights of that party in the future.

B. **Headings** - Headings are inserted for convenience of reference only and are not to be deemed part of or to be used in construing this Agreement.

C. **Entire Agreement** - This Agreement contains the entire understanding of the Parties. No representations, promises, or agreements not expressed herein have been made to induce either Party to sign this Agreement.

D. **Modification** - No modification or amendment to this Agreement shall be valid until put in writing and signed with the same formalities as this Agreement.

E. **Assignment** - Neither Party may assign its interest in this Agreement without the express written consent of the other Party.

F. **Severability** - In the event any portion of this Agreement should become invalid or unenforceable, the rest of the Agreement shall remain in full force and effect.

G. **Compliance with Laws** - The Parties shall observe all federal, state and local laws, ordinances and regulations, to the extent that they may be applicable to the terms of this Agreement.

H. **Non-Discrimination** - The Parties shall not discriminate in violation of local, state, or federal law.

I. **Venue** - This Agreement shall be construed under the laws of Washington State. Any action at law, suit in equity or judicial proceeding regarding this Agreement or any provision hereto shall be instituted only in courts of competent jurisdiction within Spokane County, Washington.

J. **Counterparts** - This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute but one and the same.

K. **Organization with Separate Entity and Powers** - No new or separate legal or administrative entity is created to administer the provisions of this Agreement. Real or personal property acquired for purposes of this Agreement shall be held and disposed of as set forth herein.

L. **Agreement to be Filed** - The City shall file this Agreement with its City Clerk. STA shall file this Agreement with the Spokane County Auditor.

M. Financing - Each Party shall be responsible for the financing of its contractual obligations under its normal budgetary process.

N. Property Upon Termination - Title to all property acquired by any Party in the performance of this Agreement shall remain with the acquiring Party upon termination of the Agreement.

Dated: 7/16/14

CITY OF SPOKANE VALLEY

By: Mike Jackson
Mike Jackson, City Manager

Attest:

Approved as to form:

Christine Bainbridge
Christine Bainbridge, City Clerk

Gay P. D. Shell
Office of the City Attorney

Dated: 6.19.14

SPOKANE TRANSIT AUTHORITY

By: S. Susan Mung
CEO

Attest:

Approved as to form:

Travis Watson
Clerk of the Authority

Lawrence Allen
Legal Counsel