INTERLOCAL COOPERATION AGREEMENT

THIS INTERLOCAL COOPERATION AGREEMENT (the "AGREEMENT") is made and entered into effective the 13th day of October, 2015 between Kittitas County ("COUNTY) and Northwest Open Access Network ("NOANET") to facilitate the implementation of a broadband access service to the local government network in the County of Kittitas (herein referred to as the "PROJECT"). The COUNTY and NOANET are sometimes referred to in this Agreement as the "PARTIES".

RECITALS

WHERAS, The Washington Interlocal Cooperation Act, Chapter 39.34 of the Revised Code of Washington ("RCW"), permits public entities to cooperate with one another on the basis of mutual advantage to make the most efficient use of their powers, thereby providing services and facilities in a manner that accords best with geographic, economic, population, and other factors influencing the needs and development of local communities. Under the Act, public agencies may enter into agreements with one another for joint or cooperative action; and

WHEREAS, the PARTIES are public agencies as defined in RCW 39.34.020(1) that recognize the need to provide for the PROJECT to improve the communications capability of the PARTIES and to provide for improved access to broadband data transmission and enhance community economic development in Kittitas County; and

WHEREAS, the COUNTY is responsible for various local governmental-related functions, including, among others, information technology, telecommunications, public services and public administration and cooperation with other agencies regarding the same; and

WHEREAS, the COUNTY has a data center, leased fiber infrastructure and established network services to various other governmental agencies and offers services and support. The COUNTY wishes to obtain services from NOANET for COUNTY operations, including, without limitation, to assist in network transport and related activities; and

WHEREAS, NOANET wishes to utilize the COUNTY facilities and services to provide the COUNTY with access to and use of the Local Government Network as described Exhibit A to this Agreement.

Now, therefore, in consideration of the mutual promises and covenants contained herein, the parties hereby agree as follows:

AGREEMENT

1. PURPOSE AND SCOPE

The purpose and scope of this Agreement is to specify the terms and conditions under which the COUNTY and NOANET will undertake the PROJECT. The reciprocal obligations of the PARTIES are further described in Exhibit A to this Agreement.

1.1 COUNTY Obligations

The COUNTY hereby agrees to provide NOANET a non-exclusive franchise agreement to use County roads, rights-of-way, and other County property within Kittitas County as set forth in the Franchise agreement dated October 13, 2015, incorporated herein by this reference (hereinafter referred to as the "County Franchise").

1.2 NOANET Obligations

NOANET agrees to operate and maintain the Facilities and Services as set forth in Exhibit A for the period of time required by the COUNTY and for the term listed in section 2 of this agreement. Both parties understand that technologies and facilities necessary to deliver the services set forth in Exhibit A change over time due to circumstances outside of either parties control or that said services may not be technically feasible or desired at a later point in time.

2. PROPERTY OWNERSHIP AND DISPOSITION

The PARTIES shall retain their respective ownership of all of their properties. This Agreement does not contemplate joint ownership of property and, therefore, does not contain provisions regarding disposition of property owned by either Party.

3. TERM

The term of this Agreement shall begin as of the Effective Date of the County Franchise, and shall terminate upon termination of the County Franchise.

4. AUTHORIZATION AND LIMITATIONS ON USE

4.1 Noninterference / Hazardous Materials. Except as expressly authorized by applicable laws or this Agreement, each Party covenants and agrees:

4.1.1 It shall not interfere in any manner with the other Party's operations, communications equipment, or other facilities, including easements and rights-of-way.

4.1.2 It shall not do or permit anything to be done in, on or about the County Facilities, the other's property or premises, if any, nor bring or keep or permit to be brought or kept therein, any hazardous materials.

4.2 Compliance with Laws. Each Party shall comply with all applicable laws and regulations in the exercise and performance of its rights and obligations under this Agreement.

5. FIBER OPTIC EQUIPMENT AND FACILITIES

5.1 No Representations or Warranties. EACH PARTY MAKES NO REPRESENTATIONS, WARRANTIES, COVENANTS OR ASSURANCES: (1) WITH RESPECT TO THE DESIGN, CONSTRUCTION, DURABILITY, SUITABILITY OR RELIABILITY OF THE EQUIPMENT OR FACILITIES, OR ANY PART THEREOF, WHETHER EXPRESS OR IMPLIED, AND EACH PARTY SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (2) WITH RESPECT TO THE NATURE OR ACCURACY OF THE DESCRIPTION, LOCATION OR MEASUREMENT OF THE EQUIPMENT OR FACILITIES, OR ANY PART THEREOF; (4) WITH RESPECT TO INTERRUPTION OR CONTINUATION OF THE FACILITIES AND/OR OTHER SERVICES.

5.2 Unauthorized Access/Breach. Except as provided in this Agreement, each Party is prohibited from accessing, directly or indirectly, the other Party's equipment or facilities, or any part thereof. Any unauthorized access by either Party of the other Party's equipment or facilities, or any part thereof, shall constitute a material breach of this Agreement and a default by the unauthorized Party under Section 12 of this Agreement.

5.3 Approval of Design and Interconnection Specifications. Each Party shall provide, as reasonably requested, information relating to the proposed design and/or installation specifications prior to modifying or making any connection to the County Facilities or associated equipment or facilities.

5.4 Installation. Both Parties shall mutually agree to a work schedule during which the interconnections for the fiber optic equipment or facilities can be made. Each Party shall timely complete all such work within the agreed upon schedule.

5.5 Cooperation and Coordination. Each Party shall cooperate with the other concerning the timing, method or placement of its construction, installation and testing activities.

6. ALTERATIONS, MAINTENANCE AND REPAIRS

6.1 Scheduling/Notice. Except as set forth in Section 7.2, each Party, at its sole cost and expense, may schedule and perform or cause to be performed scheduled alterations, maintenance and repairs on its own fiber optic equipment or facilities, or any part thereof, at the times and in the manner as may be established by the respective owner. The Party scheduling work shall provide two weeks prior written notice to other Party identifying the time, location, and nature of each scheduled alteration or maintenance and repair job for performance thereof which reasonably presents a substantial risk of damage to the other Party's property or creates a substantial likelihood of an interruption of fiber optic equipment or facilities. If fiber optic equipment or facilities include redundant fiber pathways, work will be scheduled to include no more than one pathway at any given time.

6.1.1 Each Party shall furnish on a continuing basis the current name, title, telephone number, and personal communications device number (including facsimile transmission number, cellular telephone number and paging device number), if any, of any representative who shall be kept informed of maintenance schedules. Currently, the designated points of contact are as follows:

COUNTY
Name: Jim Goeben
Title: Director, Kittitas County Information Technology
Telephone Number: 509-312-0213
Cell Number: 509-312-0213
Email: jim.goeben@co.kittitas.wa.us

NOANET
Name: Chris Walker
Title: Telecommunications Director
Telephone Number: (509) 456-3619
Network Operations Center: (866) 662-6380 support@noanet.net
Email: cwalker@noanet.net

7. FORCE MAJEURE

7.1 As used in this Agreement, the term “Force Majeure” means acts of God (including but not limited to, earthquakes, fires, floods, windstorms, landslides, and ice storms); strikes, lockouts, or other labor disputes; acts of public enemy; acts of vandalism, wars, riots, and insurrection; epidemics; civil disturbances; explosions; train derailments; breakdown or failure of machinery or facilities (excluding the cable and cable accessories); accidents to machinery or equipment (excluding the cable and cable accessories), and delay in delivery of equipment, to the extent such occurrences are beyond the reasonable control of the Parties; and any other event, cause, or condition beyond the Party’s reasonable control, which, by the exercise of reasonable diligence, prevents the Party claiming Force Majeure from performing its obligations under this Agreement.

7.2 If either Party is unable to carry out its obligations under this agreement as a result of an event, cause, or condition of Force Majeure, the Party claiming Force Majeure shall give notice and full particulars of such Force Majeure in writing to the other Party within five (5) calendar days of the beginning of the occurrence of the Force Majeure event, cause, or condition. Any obligations that such Party is unable to perform due to an event, cause, or condition of Force Majeure shall be suspended during the continuance of such event of Force Majeure. The Party claiming Force Majeure shall use reasonable efforts to remedy and minimize the effects of such event of Force Majeure with all reasonable dispatch.

7.3 Neither Party shall be liable, or be considered to be in material breach or default, under this Agreement on account of any delay in or failure of performance due to Force Majeure unless specifically stated in this Agreement.

7.4 If Force Majeure prevents restoration within one (1) year from the event of such Force Majeure, then either Party shall have the option to terminate this Agreement.

8. INDEMNITY

Subject to the limitation of liability provisions set forth in Section 13, each Party shall, at its sole expense, indemnify, defend, save, and hold harmless the other Party, its officers, agents, members, and employees from all actual or potential claims or losses, including costs and attorneys’ fees at trial and on appeal, and damages or claims for damages to property or persons, suffered by anyone whomsoever to the extent caused by any negligent or willful act of or omission of the indemnifying Party or its subcontractors, excluding damages caused by the negligence of the indemnified Party, its officers, agents, members, or employees.

This indemnification includes, without limitation, any liability for injury to the person or property of either Party, its agents, officers, employees or invitees. Both Parties specifically waive any immunity provided by Title 51 RCW, Washington's Industrial Insurance Act. The provisions of this section shall survive the expiration or termination of this Agreement.

THIS WAIVER HAS BEEN MUTUALLY NEGOTIATED BY THE PARTIES.

9. WARRANTIES

AS IS, NO WARRANTY. BOTH PARTIES ACKNOWLEDGE THEY ARE FAMILIAR WITH THE FIBER OPTIC FACILITIES AND EQUIPMENT AND HAVE INVESTIGATED SAME. THEY ACKNOWLEDGE AND AGREE THAT THEY ARE RELYING SOLELY ON THEIR INSPECTION AND INVESTIGATION OF THE FIBER OPTIC FACILITIES AND EQUIPMENT, AND ACCEPT THE FIBER OPTIC FACILITIES AND EQUIPMENT “AS IS, WHERE IS” IN ITS PRESENT

CONDITION WITH NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, EITHER ORAL OR WRITTEN, MADE BY EITHER PARTY OR ANY EMPLOYEE, AGENT OR REPRESENTATIVE OF EITHER PARTY WITH RESPECT TO THE PHYSICAL CONDITION OF THE FIBER OPTIC FACILITIES AND EQUIPMENT. EACH PARTY SHALL HAVE DETERMINED PRIOR TO ENTRY INTO THIS AGREEMENT, THAT THE FIBER OPTIC FACILITIES AND EQUIPMENT CAN BE USED FOR THE INTENDED PURPOSES. BOTH PARTIES ACKNOWLEDGE AND AGREE THAT NEITHER PARTY, NOR ANY EMPLOYEE, AGENT OR REPRESENTATIVE, HAS MADE, AND DOES NOT MAKE, ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SUITABILITY FOR COMMERCIAL PURPOSES, MERCHANTABILITY, POTENTIAL USE OF THE FIBER OPTIC FACILITIES AND EQUIPMENT, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INTERRUPTABILITY OF THE FIBER OPTIC SERVICES, ALL OF WHICH WARRANTIES EACH PARTY HEREBY EXPRESSLY DISCLAIMS.

10. ASSIGNMENT

This Agreement cannot be assigned, transferred utilized or any portion subcontracted by either Party, hereto without the prior written consent the other party, which shall not unreasonably be withheld.

11. WAIVER

The consent by COUNTY or NOANET to any act by the other shall not be deemed to imply consent or to constitute the waiver of a breach of any provision hereof or continuing waiver of any subsequent breach of the same or any other provision, nor shall any custom or practice which may arise between the Parties in the administration of any part of the provisions hereof be construed to waive or lessen the right of a Party to insist upon the performance by the other Party in strict accordance with the provisions hereof.

12. DEFAULT AND REMEDIES FOR DEFAULT

12.1 Breach. This Agreement may be terminated upon the occurrence of a material breach of this Agreement and a default under this Agreement. If the Party in breach fails to cure the breach within thirty (30) days or such longer period of time as is provided below, after receipt of notice thereof from the non-breaching Party, or, when the cure reasonably requires more than thirty (30) days, the breaching Party fails to commence the cure within such thirty (30) days and thereafter diligently and continuously prosecute such cure to completion, such action or inaction shall constitute a material breach and default under this Agreement.

12.2 Remedies Not Exclusive. Subject to Section 13.2. In the event of a material breach and default under this Agreement, termination is not the exclusive remedy. Any and all other remedies available of law or equity are expressly preserved.

13. LIMITATION OF LIABILITY

13.1 THE PARTIES SHALL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, LIQUIDATED, OR SPECIAL DAMAGES OR LOST REVENUE OR LOST PROFITS ARISING OUT OF THIS AGREEMENT OR THE PERFORMANCE OR NONPERFORMANCE OF ANY PROVISION OF THIS AGREEMENT.

13.2 SUBJECT TO SECTION 15, EACH PARTY'S TOTAL LIABILITY FOR ANY CLAIMS OR DEMANDS ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY THE OTHER PARTY PURSUANT TO THIS AGREEMENT.

14. NOTICE

Except as may otherwise be provided herein, any notices, except service of process and notice of emergency which may be given personally, telephonically, by e-mail or facsimile, shall be effective if personally served upon the other Party or if mailed by registered or certified mail, return receipt requested, to the following addresses:

Kittitas County, Director of Information Technology, 205 W 5th Ave. Ste. 13, Ellensburg, WA 98926

NoaNet, 5802 Overlook Ave NE, Tacoma, WA 98422

Notices mailed shall be deemed given on the date of mailing. The Parties shall notify each other in writing of any change of address.

15. DISPUTE RESOLUTION

In the event that a dispute arises under this Agreement, it shall be resolved as follows: Each Party shall appoint a member to a disputes board. These two members shall then select a third member not affiliated with COUNTY or NOANET. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. An attempt at such dispute resolution in compliance with the aforesaid process is a prerequisite to filing of any litigation concerning the dispute. The Parties shall share equally in the cost of the third disputes board member.

16. GOVERNING LAW

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the Superior Court of the State of Washington in and for the County of Kittitas. This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Washington, without reference to its conflicts of law principles.

17. ATTORNEYS' FEES AND COSTS

In the event of litigation regarding any of the terms of this Agreement, the substantially prevailing Party shall be entitled, in addition to other relief, to such reasonable attorneys' fees and costs as determined by the court.

18. MUTUAL NEGOTIATION AND CONSTRUCTION

18.1 Mutual Negotiation and Construction. This Agreement and each of the terms and provisions hereof are deemed to have been explicitly negotiated between, and mutually drafted by, the Parties, and the language in all parts of this Agreement shall, in all cases, be construed according to its fair meaning and not strictly for or against either Party.

18.2 Headings. The captions and section headings hereof are inserted for convenience purposes only and shall not be deemed to limit or expand the meaning of any section.

19. ENTIRE AGREEMENT; AMENDMENTS

This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior agreements or understandings among the Parties with respect thereto. This Agreement may be amended only by an agreement in writing signed by the Parties.

20. SEVERABILITY

Should any part, term or provision of this Agreement be determined to be invalid, the remainder of this Agreement shall not be affected, and the same shall continue in full force and effect.

21. NO THIRD PARTY RIGHTS

This Agreement shall not be construed to create rights in or grant remedies to any third Party as a beneficiary of this Agreement.

22. TAXES

Each Party shall be responsible for its own federal, state and local taxes, assessments, fees, surcharges and other financial impositions.

23. COMPLIANCE WITH LAWS

Each Party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.

24. RELATIONSHIP OF THE PARTIES

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the PARTIES, or to impose any partnership obligations or liability upon either Party. No agent, employee or representative of COUNTY shall be deemed to be an agent, employee, or representative of NOANET for any purpose. No agent, employee or representative for NOANET shall be deemed to be an agent, employee or representative of COUNTY for any purpose.

25. CONFIDENTIALITY

NOANET and COUNTY acknowledge that COUNTY is subject to Chapter 42.56 RCW and that this Agreement shall be a public record to the extent required by Chapter 42.56 RCW.

26. SURVIVABILITY

All provisions of this Agreement regarding indemnification, representations, warranties, confidentiality, and any other provisions that by their nature are intended to survive termination of this Agreement shall survive after its termination or expiration.

27. FILING

This Agreement shall be filed with the County Auditor or, alternatively, listed by subject in the Parties' respective websites or other electronically retrievable public source.

28. AUTHORIZATION

Each Party hereby represents and warrants to the other that it is duly authorized to enter into and carry out the terms of this Agreement.

29. COUNTERPARTS

This Agreement may be executed in counterparts, which together shall constitute a single agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the date first written above.

NORTHWEST OPEN ACCESS NETWORK

_____
Greg Marney
Chief Executive Officer

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

_____
Gary Berndt, Chair

_____
Obie O'Brien, Vice Chair

_____
Paul Jewell, Commissioner

ATTEST:

_____
Julie Kjorsvik, Clerk of the Board

Dated: _____

EXHIBIT A:
Facilities and Services

Kittitas County agrees to provide the following:

1. A non-exclusive franchise agreement to NOANET as set forth in the County Franchise.
2. Access to a third party fiber optic pair from determined access point on Dolarway Road in Ellensburg, WA to the county data center at 205 W 5th, Ave, Ellensburg.
3. Operations and Maintenance responsibilities to third party fiber optic system.

NoaNet agrees to provide the following

1. NOANET will provide a minimum of 100 Mbps Ethernet service to Kittitas County as an access point to the Local Government Network distributed architecture. The speed of the circuit/connection shall be evaluated every 5 years and reasonably increased to stay current with the average LGN connection speed. This access point will delivered using a third party fiber system delivered to the NOANET Point of Presence on Dolarway Road in Ellensburg, WA to the Kittitas County's office at 205 W 5th Ave in Ellensburg, WA.
2. NOANET will install and maintain a Network Interface and Power System for the terms and conditions set forth in the Interlocal Agreement. The third party fiber system will be coordinated by Kittitas County.
3. Fiber Optic termination cable between NOANET PoP on Dolarway Road in Ellensburg, WA and third party access point.