

**INTERLOCAL AGREEMENT IMPLEMENTING DARK FIBER  
OPTIC LEASE FACILITATION AGREEMENT**

**THIS INTERLOCAL AGREEMENT IMPLEMENTING DARK FIBER OPTIC LEASE FACILITATION AGREEMENT** (this "Agreement") is entered into this 27<sup>th</sup> day of JULY, 2010 ("Execution Date"), by and between the SNOHOMISH COUNTY EMERGENCY RADIO SYSTEM, an interlocal nonprofit corporation organized under the laws of the State of Washington ("SERS"), and CITY OF MUKILTEO, a municipal corporation organized under the laws of the State of Washington ("City").

**RECITALS**

A. On April 22, 2010, SERS entered into a Dark Fiber Optic Lease Facilitation Agreement with Black Rock Cable, a Nevada Corporation DBA Black Rock Cable, Inc., registered as a foreign corporation in the State of Washington (the "Fiber Agreement"). The Fiber Agreement is attached hereto as **Exhibit A** and incorporated herein by this reference.

B. In the Fiber Agreement, Black Rock Cable agreed to extend dark fiber connectivity to the cities of Arlington, Edmonds, Lynnwood, Marysville, Mill Creek and Mukilteo subject to certain terms and conditions.

C. In this Agreement, SERS and City specify certain terms and conditions with respect to City's responsibility in the implementation of the Fiber Agreement.

**A G R E E M E N T**

**FOR GOOD AND VALUABLE CONSIDERATION** the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Acknowledgement and Affirmative Acceptance of Terms and Conditions of Fiber Agreement.** City has reviewed the Fiber Agreement; it understands that the provision of dark fiber connectivity to its facility by Black Rock Cable pursuant to the Fiber Agreement creates obligations that must be fulfilled by City. City has reviewed the Fiber Agreement and it has satisfied itself that it can fulfill the obligations specified in the Fiber Agreement for the "City" or "Cities" as defined in the Fiber Agreement receiving dark fiber connectivity. By entering into this Agreement with SERS, City represents and warrants to SERS that City is prepared to fulfill the obligations of a "City" recipient of fiber connectivity services under the Fiber Agreement and to perform the obligations specified in the Fiber Agreement for a "City" recipient.

1.1 City has agreed and hereby reaffirms its agreement to reimburse SERS for SERS administrative and legal expenses in preparation of this Agreement and coordination with Black Rock for the initiation of dark fiber connectivity to City and the Cities, provided that City's pro rata equal share (with the other Cities) of the initial reimbursement shall not exceed Three Thousand Dollars (\$3,000.00).

2. **Public Safety Technology Committee Fiber/Wireless Subcommittee.** City agrees to participate on the Public Safety Technology Committee Fiber/Wireless Subcommittee (the "PSTC Fiber/Wireless Subcommittee") that is to be composed of all of the cities participating in the Fiber Agreement. The PSTC Fiber/Wireless Subcommittee shall develop its bylaws and/or rules of procedure upon becoming constituted after all cities have entered into their respective agreements with SERS. A primary purpose of the PSTC Fiber/Wireless Subcommittee shall be to create a single interface between the participating cities and SERS and Black Rock Cable to communicate matters relating to the Fiber Agreement and the provision of dark fiber connectivity to each of the cities receiving that fiber connection.

2.1 The PSTC Fiber/Wireless Subcommittee shall also be the focal point for the City to determine whether or not to exercise the option to purchase the Indefeasible Right to Use ("IRU") that is available to each of the cities under Section 11 of the Fiber Agreement. To the extent that some or all of the Cities in the Fiber Agreement determine that the option will be exercised, the PSTC Fiber/Wireless Subcommittee and/or an entity to be formed at the direction of the PSTC Fiber/Wireless Subcommittee will be the vehicle through which the option to purchase the IRU will be exercised. The option to purchase the IRU in the Fiber Agreement must be exercised collectively by the Cities desiring to do so. SERS will not be participating in or the entity that exercises the option in the Fiber Agreement for the City or the other Cities with respect to the IRU.

3. **Indemnification.**

3.1. The City shall indemnify, defend and hold harmless SERS, its board members, officials, agents, officers, employees and/or volunteers from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorneys' fees, made against SERS, its board members, officials, agents, officers, employees and/or volunteers on account of injury, harm, death or damage to persons or property which is caused by, in whole or in part, negligent acts and/or omissions of the City, its elected officials, directors, officers, agents, and/or employees arising out of or in connection with the performance and/or nonperformance of the services, duties and/or obligations required of the City under this Agreement.

3.2. In the event that SERS and the City are both negligent, then the City's liability for indemnification of the SERS shall be limited to its contributory negligence for any resulting suits, actions, claims, liability, damages, judgments, costs and expenses (including reasonable attorneys' fees and disbursements) that can be apportioned to the City.

3.3. Nothing contained in this section or Agreement shall be construed to create a liability or a right of indemnification by any third party.

3.4. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

4. **Release.** -City hereby releases SERS, its employees, Governing Board Members and agents from any claims arising from a failure of the dark fiber optic system or

communications provided pursuant to the Fiber Agreement or other systems utilizing that fiber connectivity. This release applies to direct claims from City and indirect claims from third parties. City further acknowledges that SERS does not warrant the fiber connectivity provided by Black Rock Cable and any remedies for nonperformance of the Black Rock Cable fiber connectivity are specified in the Fiber Agreement and are the responsibility of Black Rock Cable. Nothing in this Section shall be interpreted and/or applied to require the City to indemnify, defend and/or hold SERS harmless in a manner inconsistent with the terms, conditions and limitations contained in Section 3 of this Agreement.

5. **Interlocal Agreement Provisions.** Pursuant to RCW 39.34.030, the following provisions shall apply to this Agreement:

5.1. **Duration.** The duration of this Agreement shall be Four (4) Years unless extended by mutual agreement of the parties or terminated earlier.

5.2. **Purpose.** The purpose of this Agreement is to allow City to receive dark fiber connectivity from Black Rock Cable through the Fiber Agreement and specify the terms and conditions of the contractual relationship of City and SERS because SERS is the contractual point of contact with Black Rock Cable.

5.3. **Administration.** There shall be no separate legal entity for this Agreement. City shall designate a representative to act on its behalf in the administration of this Agreement and SERS shall designate a representative to act on its behalf in the administration of this Agreement. The parties shall update their respective designated representatives, as needed. The two representatives shall meet together, as needed, to conduct the administrative matters relating to the Agreement.

5.4. **Manner of Financing.** Each party to this Agreement is responsible to finance its own obligations and hold the other party harmless from those financing obligations.

5.5. **Manner of Acquiring, Holding and Disposing of Property.** Each party will be responsible for its own property acquisitions. No property in furtherance of this Agreement will be jointly acquired or owned during the Term of this Agreement.

5.6. **Filing of Agreement.** As provided by RCW 39.34.040, this Agreement shall be filed prior to its entry in force with the MURKLEED City Clerk, the Snohomish County Auditor, or, alternatively, listed by subject on the City and/or SERS website.

6. **Termination.** In the event that City terminates its dark fiber connection with Black Rock Cable and has no further obligations, directly or indirectly, under the Fiber Agreement as a result of the fiber connection it had established with Black Rock Cable, it may terminate this Agreement, provided that the Indemnity provision, Section 3, shall survive the termination with respect to any event occurring prior to such termination. As long as City is

being provided dark fiber connectivity as a result of the Fiber Agreement, it shall not terminate this Agreement unilaterally.

7. **Non-Waiver.** A waiver by either party hereto of a breach of the other party hereto of any covenant or condition of this Agreement shall not impair the right of the party not in default to avail itself of any subsequent breach thereof. Leniency, delay or failure of either party to insist upon strict performance of any agreement, covenant or condition of this Agreement, or to exercise any right herein given in any one or more instances, shall not be construed as a waiver or relinquishment of any such agreement, covenant, condition or right.

8. **Severability.** If a court of competent jurisdiction holds any part, term or provision of this Agreement to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid. If any provision of this Agreement is in direct conflict with any statutory provision of the State of Washington, that provision which may conflict shall be deemed inoperative and null and void insofar as it may conflict, and shall be deemed modified to conform to such statutory provision.

9. **Drafting of Agreement.** Both SERS and the City have participated in the drafting of this Agreement. As such, it is agreed by the parties that the general contract rule of law that ambiguities in the contract language shall be construed against the drafter of a contract shall have no application to any legal proceeding, arbitration and/or action in which this Agreement and its terms and conditions are being interpreted and/or enforced.

10. **Integration and Supersession.** This Agreement sets forth all of the terms, conditions, and agreements of the parties relative to the subject matter of this Agreement, and supersedes any and all such former agreements which are hereby declared terminated and of no further force and effect upon the execution and delivery hereof. There are no terms, conditions, or agreements with respect thereto except as provided herein, and no amendment or modification of this Agreement shall be effective unless reduced to writing and executed by the parties.

11. **Notice.** Any notice or consent required to be give or made under any provision of this Agreement shall be given or made in writing and delivered personally, delivered by a facsimile or sent by certified mail, postage prepaid, addressed to the party at the address set forth below or to such other address as the party may from time to time designate in writing. Notices shall be deemed delivered immediately upon personal delivery or three (3) business days after being mailed. Notices delivered by facsimile shall be deemed personally delivered upon sender's receipt of a facsimile confirmation notice to:

Snohomish County Emergency Radio System:

Mr. Ron Solemsaas, System Manager  
1121 SE Everett Mall Way, Suite 210  
Everett, WA 98201-2832

City: MAYOR JOE MARINE  
CITY OF MUKILTEO  
11930 CYRUS WAY  
MUKILTEO, WA 98275

12. **Disputes, Jurisdiction, Governing Law and Venue.** In the event that a dispute arises between SERS and City under this Agreement or the Fiber Agreement, the parties shall endeavor to resolve the dispute in an amicable manner by direct discussion and, if both parties consent, through alternate dispute resolution, if discussions do not resolve the dispute. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. No Party waives its rights to seek a legal remedy, the jurisdiction and venue for which shall be the Snohomish County Superior Court. In the event legal action is initiated to enforce a Party's rights, the substantially prevailing party shall be entitled to an award of its reasonable attorney fees in addition to whatever other relief the party may be entitled.

13. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears thereon, and all of which shall together constitute one and the same instrument.

WHEREFORE, the parties have executed this Interlocal Agreement Implementing Dark Fiber Optic Lease Facilitation Agreement on the date(s) set forth below.

**SNOHOMISH COUNTY EMERGENCY  
RADIO SYSTEM**

**CITY OF** MUKILTEO

By [Signature]  
Printed Name: GARY HAKENSON  
Title: President  
Date: 7/9/10

By [Signature]  
Printed Name: Joe Marine  
Title: Mayor  
Date:

Approved as to Form:

Attest:

[Signature] 7/9/10  
SERS Attorney

[Signature]  
City Clerk 7.8.10

Approved as to Form:

[Signature] 7/10/10  
City Attorney