

INTERGOVERNMENTAL AGREEMENT
Between
OFFICE OF THE SECRETARY OF STATE,
WASHINGTON STATE LIBRARY DIVISION,
And
RICHLAND PUBLIC LIBRARY

CONTRACT NO. 154-09

This Agreement is made and entered into between the OFFICE OF SECRETARY OF STATE, WASHINGTON STATE LIBRARY DIVISION ("Agency") and the RICHLAND PUBLIC LIBRARY ("Contractor").

IT IS THE PURPOSE OF THIS AGREEMENT TO:

Provide Internet connectivity to the Contractor through the K-20 Educational Network.

NOW, THEREFORE, it is mutually agreed that:

1. STATEMENT OF WORK

Responsibilities of the Contractor

The Contractor agrees to reimburse the Agency for financial obligations related to and arising from the provision of transport services and Internet connectivity through the K-20 Educational Network. Such services may be subject to change pursuant to written amendment(s) to this Agreement between the Contractor and the Agency.

- 1.1 **Timely payment:** The Agency shall submit quarterly invoices as stated in Section 3 Compensation. Payment will be made by the Contractor within thirty (30) calendar days of receipt of the invoice.
- 1.2 **Ongoing Service:** It is recognized that ongoing service is dependent upon funding from both State and Federal sources that may cease to be available at a future date. In this event, the Contractor will become responsible for the full cost of their connections.
- 1.3 **Federal Funding:** A portion of the funds used to maintain the K-20 Network is derived from the federal Universal Service Fund "E-rate" discount program. It is incumbent upon the Contractor to maintain a technology plan certified for the purpose of this program by a valid certifying body. Further, the Contractor will complete and file the appropriate forms to participate as an Administrative Entity in annual K-20/DIS consortial applications for telecommunication services which include this contracted circuit. Compliance with the Children's Internet Protection Act (CIPA) is not a requirement.
- 1.4 **Conditions of Use and Acceptable Use Policies:** At its March 23, 2000 meeting, the K-20 Educational Network Board approved and adopted K-20 Network Conditions of Use and Acceptable Use Policies (hereinafter "K-20 Policies). A true and accurate copy of the K-20 Policies is attached as Exhibit B and incorporated herein by reference. The Contractor agrees to adhere to the K-20 Policies currently adopted and amendments thereto. Any amendments shall be provided within fifteen (15) calendar days of approval. The Agency may terminate this Agreement with a thirty (30) calendar day written notice for failure to comply with the K-20 Policies currently adopted and amendments thereto. The K-20 Policies, current and future versions, can also be found on Access Washington internet web site at

<http://www.dis.wa.gov/enterprise/k20network/aup.aspx>. For the purpose of this Agreement, Section 2: Acceptable Use Policies of the “K-20 Network Conditions of Use and Acceptable Use Policies”, item 1: The “educational purpose” and “educational mission” of the institutions is to be understood to mean the broader “mission” of a public library; “organized political or religious advocacy” is understood to mean “organized political or religious advocacy using the K-20 Network infrastructure as a means to directly publish or distribute any such information from the member institution (e.g. web servers, email servers, peer-to-peer technologies, etc.)”; “The transmission of obscene material” is understood to mean “The transmission of obscene material using the K-20 Network infrastructure as a means to directly publish or distribute any such information from the member institution (e.g. web servers, email servers, peer-to-peer technologies, etc.)”.

Responsibilities of the Agency

The Agency shall furnish the necessary personnel, equipment, material and/or service(s), and otherwise do all things necessary for or incidental to the performance of the work set forth below.

- 1.5 **Connectivity:** The Agency agrees to provide transport services and Internet connectivity in accordance with the specifications below.
- 1.6 **Helpdesk Services:** Helpdesk services will be provided to the Contractor to determine “ownership of problem” and expedite problem resolution of K-20 circuit related incidents.

2. PERIOD OF PERFORMANCE

Subject to its other provisions, the period of performance of this Agreement shall commence on the date of execution of this contract and continue until terminated by either party using the procedures set forth in this document.

3. COMPENSATION

Compensation for the work provided in accordance with this Agreement has been established under the terms of RCW 39.34.130. The parties have determined that the cost of accomplishing the work herein will not exceed the combined fees for transport and Internet connectivity charges set forth below. Payment for satisfactory performance of the work shall not exceed this amount unless the parties mutually agree to a higher amount prior to the commencement of any work that will cause the maximum payment to be exceeded. Compensation for services shall be based on the rates attached hereto as Exhibit A, Quarterly Circuit Co-pay, and in accordance with the following terms:

3.1 Transport charges:

- 3.1.1 Bandwidth: Ten megabit per second (10 Mbps) fiber connection
- 3.1.2 Service location: 955 Northgate Drive, Richland, WA 99352
- 3.1.3 Quarterly charge (From fee table, Exhibit A): Based on actual usage measured at the 95% bandwidth level as collected by the University of Washington / Pacific Northwest Gigapop

3.2 Transport services are provided through the Department of Information Services.

3.3 Internet Connectivity:

- 3.3.1 Quarterly charge: Based on actual usage measured at the 95% bandwidth level as collected by the University of Washington / Pacific Northwest Gigapop
- 3.3.2 The actual charge for Internet connectivity will be based on 95th percentile bandwidth usage for the preceding quarterly period.
- 3.3.3 Internet connectivity is provided through the University of Washington.

4. BILLING PROCEDURE

The Agency shall submit quarterly invoices for approved and completed work. Payment will be made by warrant or account transfer by the Contractor within thirty (30) calendar days of receipt of the invoice. Upon expiration of this Agreement, any claim for payment not already made shall be submitted within thirty (30) calendar days after the expiration date or the end of the fiscal year.

5. RECORDS MAINTENANCE

Each party to this Agreement shall each maintain books, records, documents, and other evidence, which sufficiently and properly reflect all direct and indirect costs expended by either party in the performance of the service(s) described herein. These records shall be subject to inspection, review, or audit by personnel of both parties, other personnel duly authorized by either party, the Office of the State Auditor, and federal officials so authorized by law. All books, records, documents, and other material relevant to this Agreement will be retained for six (6) years after expiration and the Office of the State Auditor, federal auditors, and any persons duly authorized by the parties shall have full access and the right to examine any of these materials during this period.

Records and other documents, in any medium, furnished by one party to this Agreement to the other party, will remain the property of the furnishing party, unless otherwise agreed. The receiving party will not disclose or make available this material to any third parties without first giving notice to the furnishing party and giving a reasonable opportunity to respond. Each party will utilize reasonable security procedures and protections to assure that records and documents provided by the other party are not erroneously disclosed to third parties.

6. COPYRIGHT PROVISIONS

The Agency shall be the copyright owner for all purposes under Title 17 U.S.C. of all data which originates from this Agreement. Data shall include, but is not limited to, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register, and the ability to transfer these rights.

7. INDEPENDENT CAPACITY

The employees or agents of each party who are engaged in the performance of this Agreement shall continue to be employees or agents each party and shall not be considered for any purpose to be employees or agents of the other party.

8. NONDISCRIMINATION

Each party shall comply with all federal and state nondiscrimination laws, regulations, and policies.

9. AGREEMENT ALTERATIONS AND AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel duly authorized to bind each of the parties.

10. TERMINATION

Either party may terminate this Agreement upon a one-hundred-eighty (180) calendar day written notice to the other party. If this Agreement is terminated, the parties shall be liable for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

11. TERMINATION FOR CAUSE

If for any cause, either party does not fulfill its obligations in a timely and proper manner under this Agreement, or if either party violates any of these terms and conditions, the aggrieved party will give the other party written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within fifteen (15) business days. If failure or violation is not corrected, this Agreement may be terminated immediately by written notice of the aggrieved party to the other.

12. TERMINATION PROCEDURE

Upon termination of this Agreement, the Agency, in addition to any other rights provided in this Agreement, may require the Contractor to deliver to the Agency any property specifically produced or acquired for the performance of such part of this Agreement as has been terminated. The provisions of the "Treatment of Assets" clause shall apply in such property transfer.

The Contractor shall pay to the Agency the agreed upon price, if separately stated, for completed work and service(s) accepted by the Agency, and the amount agreed upon by the Contractor and the Agency for (i) completed work and service(s) for which no separate price is stated, (ii) partially completed work and service(s), (iii) other property or services which are accepted by the Agency, and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent (The Secretary of State or his/her delegate) shall determine the extent of the liability of the Agency. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Agreement.

13. DISPUTES

When a dispute arises between the parties, and it cannot be resolved by direct negotiation, either party may request a dispute hearing with the Office of the Secretary of State, except as otherwise provided in this Agreement or otherwise provided for under the terms in 45 CFR 1183.36(b)(11) or (12), or 45 CFR 1183.43.

13.1 The request for a dispute hearing must:

- be in writing;
- state the disputed issue(s);
- state the relative positions of the parties;
- state the Contractor's name, address, and Agreement number; and
- be mailed to the Office of the Secretary of State and the other party's (respondent's) Project Manager within three (3) business days after the parties agree that they cannot resolve the dispute.

13.2 The respondent shall send a written answer to the requester's statement to both the agent and the requester within fifteen (15) business days.

13.3 The Office of the Secretary of State shall review the written statements and reply in writing to both parties within ten (10) business days. The Office of the Secretary of State may extend this period if necessary by notifying the parties.

13.4 The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Nothing in this Agreement shall be construed to limit the parties' choice of a mutually acceptable Alternate Dispute Resolution (ADR) method in addition to the dispute resolution procedure outlined above.

14. GOVERNANCE

This Agreement 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 Agreement shall be construed and interpreted in accordance with those laws. The venue of any action brought hereunder shall be in the Superior Court for Thurston County.

In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable Federal and State of Washington statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A, Quarterly Circuit Co-pay: Public Libraries Connecting to K-20 Network
- Exhibit B, K-20 Network Conditions of Use and Acceptable Use Policies
- Any other provision, term, or material incorporated by reference or otherwise incorporated in this Agreement.

15. ASSIGNMENT

The work to be provided under this Agreement, and any claim arising hereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

16. WAIVER

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

17. SEVERABILITY

If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such a remainder conforms to the requirements of applicable law and the fundamental purpose of this Agreement, and to this end the provisions of this Agreement are declared to be severable.

18. ALL WRITINGS CONTAINED HEREIN

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

19. CONTRACT MANAGEMENT

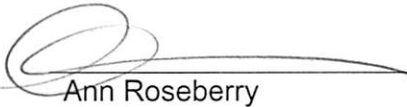
The Project Manager for each of the parties shall be responsible for and shall be the contact person for all communications and billings regarding the performance of this Agreement.

<p>Contract Administrator for the CONTRACTOR is:</p>	<p>Project Manager for the AGENCY is:</p>
<p>Ann Roseberry Address: Richland Public Library 1270 Lee Blvd Richland, WA 99352-3505 Phone: 509.942.7450 Fax: 509.942.7447 E-mail address: aroseberry@ci.richland.wa.us</p>	<p>Gary C. Bortel Address: Washington State Library PO Box 42460 Olympia, WA 98504-2460 Phone: 360.570.5588 Fax: 360.586.7575 E-mail address: gbortel@secstate.wa.gov</p>

IN WITNESS WHEREOF, the parties have executed this Agreement.

RICHLAND PUBLIC LIBRARY

OFFICE OF THE SECRETARY OF STATE


 Ann Roseberry
 Director
 6/9/09
 Date


 Eleanor Dovey
 Financial Services Manager
 6/25/09
 Date

APPROVED TO FORM:
 Attorney General's Office

Exhibit A

Public Libraries Connecting to K-20 Network Quarterly Circuit Co-pay

Bandwidth	Circuit Co-pay	Estimated ISP Fees
Less than 1Mbps	\$400	***
1Mbps – 6Mbps	\$400/Mbps*	***
Beyond 6Mbps	\$60/Mbps **	***

*A base price of \$400/quarter will be charged for up to the first megabit. Circuit co-pays in the range of 1-6 Mbps are based on actual ISP usage measured at the 95th percentile multiplied by \$400/quarter and are independent of transport mechanism. (e.g. 1.12Mbps [\$448] = 1.12Mbps * \$400/quarter [\$448])

** Circuit co-pays beyond 6 Mbps (\$2,400/quarter) measured at the 95th percentile usage increase at \$60/Mbps per quarter. (e.g. 8Mbps [\$2,520] = 6Mbps * \$400/quarter [\$2,400] + 2Mbps * \$60/quarter [\$120]).

***ISP fees are charged at the current commodity price per megabit based on actual ISP usage measured at the 95th percentile.

Exhibit B

K-20 Network Conditions of Use and Acceptable Use Policies

(Including all connections, circuits, switching and uplink-downlink resources and applications).

This document contains two sections. Section 1, "Conditions of Use," establishes the conditions of use of the K-20 Network for purposes of technical connections, operation and management. Section 2, "Acceptable Use Policies," provides guidance to institutions on non-technical policies relating to user eligibility for participation in the K-20 network, acceptable uses of network resources, and procedures for enforcement.

Section 1: Conditions of Use

1. Only institutions authorized by statute and approved by the K-20 Educational Network Board (K-20 Board) may maintain connections to the state-funded K-20 network, with the exception that certain external interface connections which are engineered by the K-20 Network Technical Steering Committee (NTSC) to provide interconnections with other networks are permitted. Such connections are permitted with the proviso that no network transit is allowed for such external connections other than traffic to or from authorized K-20 members. Two examples of such exceptions are local peerings and commodity and research internet transit arrangements that are engineered by the K-20 NTSC.
2. Only traffic to or from legitimate K-20 members may be transmitted over the K-20 network
3. Uses of the network that may jeopardize the proper technical operation of the network, or uses of the network that may cause the network to be disconnected from external networks, are strictly prohibited. Where such uses occur, the K-20 Operations Cooperative (KOCO) is authorized by the K-20 Board to suspend such connections until the problem is resolved to its satisfaction. A party that believes a connection has been improperly suspended may request that the NTSC review the KOCO's action; such review shall be undertaken and completed in a timely manner (not to exceed five working days). The NTSC may, upon review, direct the KOCO to reconnect the party. A party may appeal a decision of the NTSC to the Information Services Board, the decision of which shall be final.

Section 2: Acceptable Use Policies

1. Use of the network is restricted to educational purposes, i.e., activities consistent with the educational missions of the institutions and sectors. The determination of what is an "educational purpose" rests with each institution or sector. The term is intended to be defined broadly, and may include activities that directly or indirectly support the delivery of educational services. However, the following are presumed not to be educational uses:
 - Organized political or religious advocacy.
 - Resale or lease of K-20 shared bandwidth, electronics, or other equipment to private entities for commercial purposes. However, non-educational entities may utilize K-20 services under certain conditions set forth in paragraphs (2) and (3) below. For purposes of this document, resale or lease does not include educational institutions' arrangements with private entities for the transmission of (1) digital content developed by the educational entities as part of university-sponsored research; or (2) course materials, library resources, or ancillary

materials, the dissemination of which is consistent with the institution's educational purpose.

- The transmission of obscene material.
2. For the use of K-20 resources for videoconferencing services, priority shall be given to educational activities at K-20 Board-approved sites on a first-come, first-served basis. An institution may permit public sector non-educational entities to use its own (non-shared) videoconferencing facilities provided the following conditions are met:
 - The use involves facilities that would otherwise go unused.
 - The use involves only the on-site facilities and related equipment, and does not utilize K-20 transport or MCU capacity.
 3. Where a shared component of a K-20 satellite uplink/downlink facility is underutilized, the trustee institution may find that the lease of the facility for non-educational commercial purposes is appropriate for limited periods to help offset the operational costs of the facility. Such lease arrangements are authorized provided the following conditions are met:
 - The lease involves air time or equipment that would otherwise go unused.
 - The lease involves only the uplink/downlink facility and related equipment, and does not utilize K-20 transport or other shared equipment.
 - The institution agrees to account to the K-20 Board for all monies obtained as a result of the lease.
 4. The participants authorized by statute to use the K-20 network may only do so for activities which they are legally allowed to conduct and which do not conflict with state or federal law or policy which governs their endeavors. The network may not be used for illegal purposes. Entities have primary responsibility for enforcing the provisions of this document. While it is understood that enforcement here cannot be done through technology, it will instead be achieved at the end-sites and via the normal legal or policy channels relevant to appropriate investigation and adjudication.
 5. Where an entity is alleged to have violated one or more provisions of this document other than Section 1(3), the K-20 Board shall take appropriate remedial action, which may include suspension of an entity's network connection, only after providing the entity with notice of the specific allegations against it and an opportunity to respond to those allegations in writing or, at the entity's option, in public hearing. The K-20 Board shall set forth in writing the basis for any remedial action. Any entity whose connection to the network has been suspended by the K-20 Board may request reconnection to the network upon a showing that it has taken appropriate steps to correct the matter or matters that are the basis for the action.
 6. Nothing in this document is intended to preclude an entity from developing or enforcing its own acceptable use policies to supplement Section 2 of this document, provided its policies are not inconsistent with those set forth above. Where an entity

proposes a policy that is inconsistent, it may at any time petition the K-20 Board for a waiver of one or more specific provisions. A petition for waiver shall set forth the provision or provisions for which waiver is sought; the grounds for such a waiver; the impact of a waiver, if any, on the technical operation of the network; and the fiscal impact, if any, on the network. The decision to grant or deny a waiver shall rest solely with the K-20 Board.