

NOEL COMMUNICATIONS INC.

Master Carrier Agreement

THIS AGREEMENT made as of this 14th day of July, 20 09 by and between NOEL COMMUNICATIONS, INC., a corporation, and City of Othello (hereinafter referred to as "CUSTOMER"),

1. **FACILITY, TERM AND CONDITIONS:** Noel agrees to provide the Facility (defined as the amount of Bandwidth shown on accompanying Noel Communications Contract Form) on the requested date, for the term(s) and at the rate(s) contained in the Noel Communications Contract Form (herein after referred to as Contract) and incorporated on the front of this Agreement. Customer understands that the Noel Communications Demarc is always resident in the Noel Communications Point of Presence (POP) and does not include the provision of local exchange facilities unless noted in writing by an officer of Noel Communications. For purposes of application of the provisions of this Agreement, each Contract shall be considered separately.

2. **ADDITIONAL FACILITY:** Customer has the right to increase facilities under the terms of this Agreement, provided capacity is available, by executing a Noel Contract for additional facilities being requested. Such increased facilities will be at Noel Communications rate(s) in effect upon the date of execution of the Contract.

3. **PERFORMANCE STANDARD WARRANTY:** Noel Communications warrants that the interexchange facility will be 99.9% available over any 180 day period, other than for reasons of complete cable cut, system maintenance or force majeure as provided for under this Agreement. Customer may terminate this Agreement without penalty or cancellation liability on thirty (30) days written notice in the event availability does not meet or exceed this level: provided that if Noel Communications shall demonstrate during the thirty (30) day notice period an improvement in availability, then this Agreement shall not terminate. For the purposes of this Agreement, the term "available" shall mean only that the facility is operational and shall not include those times when the Customer is unable to use the Facility because of the amount of traffic on the facility. In no event shall Noel be liable for any damages whatsoever on the account of a breach of the foregoing warranty and the limitations of Noel Communications's liability specified in Paragraph 13 herein shall be fully applicable to the above paragraph.

4. **Noel BEST EFFORTS:** Noel will use its reasonable best efforts to make the Facility(s) available by the requested date stated in the Facility Order. It is agreed that Noel Communications hereby limits its liability for timely installation to that which it would otherwise have under the terms of this agreement pertaining to

facility interruptions. Customer further agrees that Customer has sole responsibility for installation and testing of facilities and equipment other than that necessary for provision of Interexchange Facility described in the Contract, and that the Customer's liability for charges hereunder shall not be limited by untimely installation or non-operation of said facilities and equipment.

5. **START OF SERVICE:** The term(s) of this Agreement and those stated in the Contract shall begin on the requested facility date contained therein or at the time of Facility first becomes available, whichever is later (hereinafter "start of service date").
6. **PAYMENT:** Before commencement of services, Noel Communications, in its sole discretion may require Customer to pay and Customer agrees to pay a deposit of \$ 0.00 , which is based on the projected monthly bill for Customer. Customer agrees to pay Noel Communications a monthly charge equal to the rate(s) set forth in the Contract, unless the monthly charge is reduced or increased pursuant to the terms hereof. The installation charges, if any, contained in the Contract are due at the time of first invoicing. Subsequent payments are due net 30 days from date of invoicing. In the event Customer fails to pay Noel Communications's invoice in full on or before 30 days from invoicing Customer agrees to also pay a late fee in the amount of one and one-half percent (1-1/2%) of the unpaid balance per month. If Customer receives two (2) disconnect notices in any twelve (12) month period, Noel Communications retains the option of requiring Customer to pay a deposit or increase its deposit. All deposits will be held in a special deposit account. Deposits and interest will be refunded after a good payment record of twelve (12) consecutive months or within thirty (30) days of termination of this Agreement after payment of all amounts due Noel Communications. If customer has received two (2) or more late notices in the prior twelve (12) months, Noel Communications shall continue to hold said deposit until such time as customer has not received two (2) late notices in the prior twelve (12) months. Customer authorizes Noel Communications to take any steps necessary to evaluate Customer's credit worthiness, including but not limited to seeking a credit report of Customer from a third party credit reporting agency.
7. **SUSPENSION OF FACILITY:** In the event payment in full including all late fees, is not received from Customer by Noel Communications on or before the date due, Noel Communications may issue to Customer a written Notice of Disconnect for non-payment. If Customer fails to bring all charges current within ten (10) days after the date of the notice, Noel Communications shall have the right to suspend all Facilities to Customer until such time as Customer has paid, in full, arrearages, including any late fees as specified herein and reconnect fees which are in effect. Additionally, Noel Communications shall have the option to terminate Facility(s) and services to customer.

8. ADDITIONAL CHARGES: Any applicable federal, state or local use, excise, sales or privilege taxes, duties or similar liabilities chargeable to or against Noel Communications because of the Facility furnished to Customer by Noel Communications shall be charged to and payable by the Customer in addition to the regular charges under this Agreement. Further, should Noel Communications contract with a local provider for the delivery from Noel Communications POP to Customer's facility, Customer shall be responsible for all charges related to said establishment of delivery. Customer shall reimburse Noel Communications within thirty (30) days of notification by Noel Communications of such charges. This provision shall in no way obligate Noel Communications to provide said installation service, but rather such contracting for establishment of delivery to Customer shall be undertaken at the sole option of Noel Communications.
9. SYSTEM MAINTENANCE: Noel Communications represents that system maintenance normally will not result in material facility interruptions. In the event that system maintenance should require the interruption of facility(s) to a material degree, to the extent possible Noel Communications shall so notify Customer at least 24 hours prior to such interruption. Emergency maintenance or repair shall not require 24 hour notice.
10. CONTINUATION OF SERVICE: Following the expiration of the term(s) ⁶⁵ contained in the Contract this Agreement shall continue in effect, ~~for one month~~ ^{for 240} until renewal is negotiated between Customer and Noel Communications, unless terminated by either the Customer or Noel Communications upon thirty (30) days written notice before the end of each term. ~~If the Customer fails to accept an Noel Communications offered Renewal of the original Contract within thirty (30) days after the end of the original term, Noel Communications will begin billing the Contract on a monthly basis at 110% of the prior contract price or the offered renewal rate, whichever is greater.~~ ⁷⁵ If Noel Communications has fully performed under this agreement and if at the termination of this agreement, the Customer plans to secure all or a portion of a similar service from another supplier solely because such other supplier's rates are below Noel Communications' rates, then the Customer shall notify Noel Communications of such other more favorable price terms in writing. If Noel Communications agrees within thirty (30) days of such notification to provide its services at the same rates or lesser rates than those being offered by the other supplier, then the Customer hereby agrees to negotiate an additional contract term for the desired service at the more favorable rates with Noel Communications.
11. FORCE MAJEURE: Any other term or provision in this Agreement to the contrary notwithstanding, Noel Communications shall not be liable to Customer or any other person, firm or entity for any failure or performance hereunder if such failure is due to any causes beyond the reasonable control of Noel Communications. Such causes shall include without limitation, acts of God, fire, explosion, vandalism,

cable cut, storm or other similar occurrence; any law, order, regulation, direction, action or request of the United States Government or of any government (including state and local governments or of any department, agency, commission, court bureau, corporation or other instrumentality of any one or more said governments) or of any civil or military authority, national emergencies, insurrections, riots, wars, strikes, lockouts or work stoppages or other labor difficulties, or supplier failures, shortages, breaches or delays. If Noel Communications's failure of performance by reasons of force majeure specified above shall be for ninety (90) days or less, then this Agreement shall remain in effect, but an appropriate percentage of charges shall be abated in the discretion or determination of Noel Communications; if for more than ninety (90) days, then this Agreement may be canceled by either party, by written notice, without any liability whatsoever.

12. GENERAL LIMITATION OF LIABILITY OF Noel Communications: This Section shall be a general limitation of Noel Communications's liability under this Agreement, applying in all events and any other term or provision in this Agreement to the contrary notwithstanding. (A) Facility Interruptions: Noel Communications or its representatives shall not be liable to the Customer or to any other person, firm or entity in any respect whatsoever (including, without limitation, for damages) arising out of mistakes, accidents, errors, omissions, interruptions or defects in transmission, or delays, including those which may be caused by regulatory or judicial authorities, occurring in the course of furnishing the Facility. Any mistakes, accidents, omissions, interruptions, delays, errors or defects in transmission of facility which are caused or contributed to, directly or indirectly, by any act or omission of the Customer or its agents, representatives, invitees, licensees, successors or assigns (hereinafter "Customers or Others") or which arise from or are caused by the use of Customer-provided facilities or equipment, or arise from or are caused by the use of facilities or equipment furnished by any other person using Customer's facilities which are connected to Noel Communications' facilities, shall not result in the imposition of any liability whatsoever upon Noel Communications and Customer shall pay to Noel Communications any reasonable costs, expenses, damages, fees or penalties incurred by Noel Communications as a result thereof, including costs of local exchange company labor and materials. IN THE EVENT FACILITY IS INTERRUPTED FOR ANY REASON WHATSOEVER, NOEL SHALL NOT BE LIABLE FOR ANY DAMAGES WHATSOEVER. THAT IS TO SAY, IT SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, ACTUAL, PUNITIVE OR ANY OTHER DAMAGES, OR FOR ANY LOST PROFITS OF ANY KIND OR NATURE WHATSOEVER. Noel Communication's sole obligation in the event Facility is interrupted, for whatever reason, is to use its reasonable best efforts to repair the facility, and if such Facility remains out of order for two (2) normal working hours or longer after being reported to be out of order, a pro rata adjustment or refund may be made to the Customer, at the Customer's request, if such interruption is not the fault of Customer or Others. The

order of a court of competent jurisdiction, the Federal Communications Commission or any other local, state or federal government authority; (C) Noel Communications shall have the right to cancel this Agreement without liability if Noel Communications is prohibited from furnishing telecommunications services by any governmental body; (D) Customer may cancel this Agreement with respect to any segment, without penalty or other payment whatsoever except for payment of services actually used, if Noel Communication's provision of the Service along such segment does not comply with the specifications set forth in Bell Technical Advisory #34(TA-34), Issue 3, dated Oct. 1979, for the interruption period specified above and Noel Communications is notified by Customer under normal trouble reporting procedures; (E) If Customer purports to cancel this Agreement, except for reasons stated in this item and except for a material breach by Noel Communications of terms of the Agreement, or Noel Communications cancels or terminates the Service for nonpayment of Service pursuant to Item 6 of this Agreement, then in either of these events the Customer shall immediately pay to Noel Communications all charges due plus a cancellation charge based on a termination liability equal to the 100% minimum recurring monthly charges under this Agreement as specified in the Pricing Description of the Facility Order (Contract) through the end of the term of this Agreement as specified in Paragraph 16 below, and in the Contract.

15. ADDITIONAL PROVISIONS: (A) The failure of either party to give notice of default or to enforce or insist upon compliance with any terms or conditions of the Agreement, the waiver of any terms or conditions of the Agreement or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of the Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing; (B) The parties do not intend and this Agreement shall not create any partnership or joint venture between the parties nor result in a joint communications service offering to the customers of either Noel Communications or the Customer; (C) In the event suit is brought or an attorney is retained by Noel Communications to enforce the terms of this Agreement or to collect any monies due hereunder or to collect money damages for breach thereof, Noel Communications shall be entitled to recover, in addition to any other remedy, reimbursement, for reasonable attorney's fees, court costs, costs of investigation and other related expenses incurred in connection therewith; (D) The Facility provided by Noel Communications is subject to the condition that it will not be used for any unlawful purpose; (E) No subsequent agreement between Customer and Noel Communications concerning the Facility shall be effective or binding unless it is made in writing by authorized representatives of the parties hereto and no representation, promise, inducement or statement of intention has been made by either party which is not embodied herein; (F) This Agreement shall be binding and inure to the benefit of the parties hereto and their respective successors or assigns provided however, that Customer shall not assign or transfer its rights or

obligations under this Agreement without the prior written consent of Noel Communications; (G) This Agreement shall be governed by the laws of the state of Washington and the Venue for any action to enforce this Agreement shall be in the same county delivered in; (H) This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements, arrangements or understandings related to the subject matter hereof; (I) If any part or any provision of this Agreement or part of any provision of this Agreement or any application thereof shall be invalid or unenforceable, the remainder of this Agreement and any other application of such provision shall not be affected thereby; (1) Descriptive headings in this Agreement are for convenience only and shall not affect the construction of this agreement.

16. TERM: This Agreement shall be effective for the term of ~~Life~~ 3 years

17. NOTICE: Unless otherwise provided herein, all notices and communications concerning this Agreement shall be made in writing and shall be deemed duly given with delivered in hand, or U.S. mail, certified mail, return receipt requested addressed to the parties as follows:

NOEL COMMUNICATIONS, INC.
901 E. Pitcher St.
Yakima, WA 98901

PO Box 2965
Yakima, WA 98907

If to Customer: Billing Address on first page of Contract or at such address as may be designated in writing to the other party from time to time. The effective date of any notice under this Agreement shall be the date of delivery if hand delivered or the date of mailing.

ACCEPTANCE

NOEL COMMUNICATIONS, INC.

Signature: Gabriel Springer

Print Name: Gabriel Springer

Title: Network Manager

Date: 7/14/09

CUSTOMER

Signature: Shannon M. G.

Print Name: Shannon M. G.

Title: Mayor

Date: 7/27/09