

**MASTER AGREEMENT TO PROVIDE
ENGINEERING, PERMITTING, CONSTRUCTION DRAFTING,
AND PROFESSIONAL SERVICES**

THIS AGREEMENT TO PROVIDE CONSULTING SERVICES (the “Agreement”) is made effective as of day 5 of June, 2023, and is between **NORTHWEST OPEN ACCESS NETWORK**, a Washington nonprofit mutual corporation (“**NoaNet**”), and (Company Name), a limited liability company of the State of Washington, with its place of business at (address) (“Consultant”). Consultant and NoaNet are sometimes referred to in this Agreement collectively as “Parties” and individually as “Party”.

RECITAL

Consultant has experience and expertise in engineering, permitting, construction drafting, and other professional services typical of work performed to prepare a fiber optic network for construction, and because of Consultant’s experience and expertise, NoaNet desires to engage Consultant’s services. Consultant desires to provide NoaNet with such services upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the Parties agree as follows:

1. **Services to be Provided.**

1.1 **Services.** Consultant shall perform the services (“Consulting Services”) described in the Consulting Services Scope of Work, attached as Exhibit A or in any subsequent Consulting Services Scope of Work executed by the Parties during the Term of this Agreement. In the performance of Consulting Services, Consultant shall exercise the highest fiduciary duties of loyalty and care in favor of NoaNet.

1.2 **Acceptance of Services.** All Consulting Services shall be subject to written acceptance by NoaNet. If NoaNet rejects such services, Consultant shall correct the deficiency within 15 days of such rejection and resubmit the same to NoaNet for acceptance. If NoaNet rejects such services a second time, Consultant shall be deemed to have breached this Agreement and NoaNet shall have the rights set forth in paragraph 9.

1.3 **Prohibition Against Delegation.** Consulting Services may not be subcontracted or otherwise performed by third parties on behalf of Consultant without the prior written consent of NoaNet.

2. **Compensation and Billing.**

2.1 **Fee.** As compensation in full for the successful performance of Consulting Services, NoaNet shall pay to Consultant an hourly fee at the rates set forth in the Consulting Services Scope of Work, attached as Exhibit A or in any subsequent Consulting Services Scope of Work executed by the Parties during the Term of this Agreement.

2.2 **Billing and Payment.** Consultant shall submit a billing statement to NoaNet by the 15th of each month for services performed in the prior calendar month. NoaNet agrees to pay amounts due within 30 days of NoaNet's receipt of the billing statement. Billing statements shall describe in reasonable detail the nature of services performed, the time expended, and the expenses for which reimbursement is sought. All compensation shall be subject to adjustment for any amounts found improperly invoiced.

2.3 **Reimbursable Expenses.** Consultant shall be reimbursed for the following direct expenses associated with performance of Consulting Services: actual photocopying costs, extraordinary postage (not general correspondence), and shipping/delivery expenses. Reasonable transportation, lodging, and meal expenses necessary to the performance of work under this Agreement will be reimbursed as outlined in the Consulting Services Scope of Work. Air travel, lodging, and overnight meal expenses must receive prior approval from NoaNet. Only direct expenses as set forth above are reimbursable; indirect expense/overhead charges are not reimbursable.

2.4 **Fee and Expense Records.** Records of fees and reimbursable expenses shall be kept on the basis of generally accepted accounting principles. All such records shall be kept for a period of not less than 3 years from the date of final payment under this Agreement and shall be available for audit and inspection by NoaNet or its authorized representatives during normal business hours.

3. **Confidentiality.** Consultant shall keep, and shall cause its employees, officers, managers, representatives, and agents to keep, all information made available or disclosed to, or developed or obtained by Consultant as the result of or related to this Agreement ("Confidential Information") confidential, and shall not disclose or use Confidential Information for the benefit of any person other than NoaNet; provided however, that Consultant shall have no obligation with respect to that portion of Confidential Information which is disclosed by NoaNet to others without any restriction on use or disclosure. If Consultant receives a request for Confidential Information from a third party, Consultant shall promptly notify NoaNet in writing of such request. If Consultant is required to disclose Confidential Information by law, regulation, or legal or regulatory process, Consultant shall take all reasonable steps to preserve the confidentiality of such information and shall give NoaNet prompt prior written notice so that NoaNet may seek an appropriate protective order or other remedy, with the cooperation of Consultant.

4. **Deliverables to Remain NoaNet Property.** The information prepared by Consultant pursuant to this Agreement, and any other deliverables the Parties may

agree to, shall be and remain the property of NoaNet. Consultant shall not use this information, or any other deliverables, for any purpose beyond those specified in this Agreement, and shall not make them available to any other person or entity, without the prior written consent of NoaNet, unless NoaNet provides these deliverables to anyone requesting them without restriction and notifies Consultant that they may do so as well. All materials prepared or developed by Consultant under this Agreement, including documents, calculations, maps, sketches, notes, reports, data, models, and samples, shall become the property of NoaNet when prepared, whether delivered to NoaNet or not, and shall together with any materials furnished to Consultant by NoaNet under this agreement, be delivered to NoaNet upon request and, in any event, upon termination of this Agreement. NoaNet shall retain title to all property furnished by NoaNet in connection with the work to be performed under this Agreement.

5. **Intellectual Property.** Consistent with the preceding paragraph, Consultant hereby assigns and transfers to NoaNet all intellectual property, including copyrights, patents, trademarks, and trade secrets in any products or documents produced and delivered to NoaNet pursuant to this Agreement, reserving to itself a non-exclusive license to use its copies of those products and documents as background for other projects for NoaNet. If requested by NoaNet, Consultant agrees to do all things necessary, at NoaNet's sole cost and expense, to obtain patents, trademarks, or copyrights of any of the products or documents delivered to NoaNet by Consultant pursuant to this Agreement and further agrees to execute such documents as may be necessary to implement this paragraph.

6. **Insurance.**

6.1 **Comprehensive General Liability and Automobile Insurance.** Consultant shall at its own expense obtain and maintain in force during the term of this Agreement, public liability and property damage insurance. Such insurance shall provide coverage to Consultant, any subcontractor performing work provided by this Agreement, and NoaNet and its member utilities. NoaNet and its member utilities shall be named as an additional insured on the policy insofar as the work and obligations performed under this Agreement are concerned. The coverage provided shall protect against claims for bodily injury, including accidental death, personal injury, and property damage, which may arise from any act or omission of Consultant or its subcontractor, or by anyone directly or indirectly employed by either of them. The required insurance policy shall not contain an exclusion for losses to property in the care, custody, or control of NoaNet or its member utilities.

During the course and performance of this Agreement, Consultant will maintain the following minimum insurance coverages:

1. Worker's compensation and employer's liability - statutory limits
2. Comprehensive general liability - \$1,000,000 single limit combined for personal injury, and property damage.

3. Automobile liability and property damage - \$500,000 single limit combined for bodily injury and property damage.

Prior to Consultant's commencing work under this Agreement, certification of the above insurance shall be delivered to NoaNet by Consultant's insurance carrier or agent certifying the above insurance coverages are in effect and will not be canceled or materially changed without 30 days prior written notice given to NoaNet.

6.2 **Professional Liability Insurance.** Consultant shall at its own expense obtain and maintain in full force and effect during the term of the Agreement, professional liability insurance, including Consultant's Errors and Omissions Insurance, providing coverage of at least \$1,000,000 against professional liability or errors and omissions in connection with the Consulting Services to be performed by Consultant under this Agreement. Prior to Consultant's commencing work under this Agreement, certification of this insurance shall be delivered to NoaNet by the Consultant's insurance carrier or agent certifying the above insurance coverage is in effect and will not be canceled or materially changed without 30 days prior written notice given to Consultant.

7. **Professional Services Assurance.** In the performance of Consulting Services, Consultant agrees to exercise the degree of skill and care required by customarily accepted good practices and procedures adopted by consultants rendering the same or similar type of services at the time such services are performed under this Agreement. Consultant shall furnish all personnel necessary for the expeditious and satisfactory performance of this Agreement, each to be competent, experienced, and well-qualified for the work assigned.

If Consultant intends to rely on information or data supplied by NoaNet, NoaNet member utilities, or other generally reputable sources without independent verification, such intent shall be brought to the attention of NoaNet.

Consultant assures that its work under this Agreement shall be generally suitable for the use to which NoaNet and its member utilities intend to use said services or work. In no event will there be any obligation to pay for work which is judged to be substandard.

8. **Term.** The term of this Agreement shall be for a period commencing on its effective date through June 30, 2024 or the last completion dated stated in an applicable Consulting Services Scope of Work, whichever is later, unless terminated earlier in accordance with paragraph 9. This Agreement may be renewed by written amendment agreed to by both Parties.

8.1 **Time for Completion.** During the course and performance of this Agreement, Consultant will maintain the following time for completion requirements.

:

1. Consultant shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in General Project Schedule in Consulting Services Scope of Work and are hereby agreed to be reasonable.

2. If, through no fault of Consultant, such periods of time or dates are changed, or the orderly and continuous progress of Consultant's services is impaired, or Consultant's services are delayed or suspended, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.
3. If NoaNet authorizes changes in the scope, extent, or character of the Project, then the time for completion of Consultant's services, and the rates and amounts of Consultant's compensation, shall be adjusted equitably.
4. NoaNet shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Consultant's performance of its services.
5. If Consultant fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then NoaNet shall be entitled to such damages as may be incurred, subject in any case to the limitations set forth in this Agreement, including but not limited to limitations set forth in Section 10.

9. **Termination.**

9.1 **Terminating Events.** This Agreement may be terminated upon the occurrence of any of the following "Terminating Events:"

(a) By either Party:

- (i) if the other Party commits any material breach of this Agreement; or
- (ii) if the other Party ceases to conduct business.

(b) By NoaNet:

- (i) if Consultant fails to correct a deficiency pursuant to paragraph 1.2; or
- (ii) if Consultant violates a state or federal criminal law involving the commission of a felony or a crime; or
- (iii) for Consultant's abuse of alcohol or controlled substances, misrepresentation, fraud, deception or dishonesty, or any act or omission of Consultant which materially impairs NoaNet's or any of its member utilities' business, goodwill or reputation; or
- (iv) upon thirty (30) days prior written notice delivered to the Consultant.

(c) By mutual written agreement of the Parties.

9.2 **Termination Date.** The Termination Date shall be the date upon which this Agreement expires pursuant to paragraph 8 above, the date upon which notice of termination is given to the non-terminating Party, or the date upon which any other notice period set forth above expires, whichever is earliest.

9.3 **Liability Upon Termination.** If either Party terminates this Agreement, NoaNet shall have no further liability to Consultant, except to pay Consultant fees and reimbursable expenses incurred for successful performance of Consulting Services prior to the Termination Date.

10. **Indemnification.** To the fullest extent permitted by law, Consultant shall indemnify and hold harmless NoaNet and its member utilities and its and their officers, directors, commissioners, employees, agents, and representatives from and against any financial loss, claim, suit, action, damage, or expense including but not limited to attorney's fees, arising out of or resulting from the performance of (or failure to perform) this Agreement or any Consulting Services Scope of Work. Consultant's obligation to indemnify, defend, and hold harmless shall not be eliminated by any actual or alleged concurrent negligence of NoaNet or its member utilities, or its and their officers, directors, commissioners, employees, agents, and representatives.

The indemnification obligation under this paragraph shall not be affected by any limitation on the amount or type of damages, compensation, or benefits payable by or for Consultant or any subcontractor under any worker's compensation act, including Title 51 RCW, any disability benefit acts, or any other employee benefit acts. Consultant and any subcontractor hereby waive, for themselves and their successors, any right to claim any such limitation as a defense, set off, or other reduction of rights to indemnification under this paragraph. Consultant further agrees that this waiver has been mutually negotiated by the parties.

11. **Warranties and Representations.**

11.1 Consultant warrants and represents that:

- (a) Consultant has the authority to enter into this Agreement and to perform all obligations under this Agreement and any Consulting Services Scope of Work.
- (b) Consultant has obtained all necessary licenses to do business in the State of Washington. Consultant acknowledges that its relationship with NoaNet under this Agreement is that of an independent business contracting to perform services for NoaNet. As such, Consultant shall be solely responsible for all federal, state, and local taxes which may be required of a self-employed person, including estimated income taxes, self-employment taxes, industrial insurance, and unemployment insurance.

12. **Federal Requirements**

These projects are funded primarily by a grant from the National Telecommunications Infrastructure Association, Broadband Infrastructure Program (NTIA BIP). and as such, bidders shall be expected to understand and comply with any requirements including but not limited to the below.

- a.) **Audit and Access to Records.** For all negotiated contracts and negotiated modifications (except those of \$10,000 or less), NoaNet, Agency, the Controller General, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Consultant which are pertinent to the Agreement, for the purpose of making audits, examinations, excerpts, and transcriptions. Consultant shall maintain all required records for three years after final payment is made and all other pending matters are closed.
- b.) **Suspension and Debarment:** In addition to the State of Washington responsible bidder criteria non-debarment requirement, this procurement is subject to the Federal non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR part 180. The regulations in 2 CFR part 180 restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities. This certification form is provided as Attachment A to this Agreement.
- c.) **Small, Women's Business and Minority Business Enterprises (SWMBE):** Certification if applicable should have been included in your bid response, the SWMBE status of your firm, agencies with which you have certified as such and through which service or publication you were made aware of this business opportunity.
- d.) **Byrd Anti-Lobbying Amendment Certification:** For a bid which exceeds \$100,000.00, bidders shall provide with their bid a completed Byrd Anti-Lobbying Amendment Certification. This certification form is provided as Attachment B to this Agreement.

13. **Independent Contractor Status.** Consultant shall at all times during the existence of this Agreement be an independent contractor and in no event be deemed or considered (without limiting the foregoing) as an agent, employee, or joint venture, in any manner whatsoever, of NoaNet or its member utilities, in any of Consultant's work under this Agreement.

14. **General.**

14.1 **Entire Agreement/Task Orders/Amendment/Counterparts.** This Agreement (including any attachments) and any applicable Consulting Services Scope of Work constitutes the entire Agreement between the Parties with respect to its subject matter and supersedes all prior understandings and agreements. In the event of a conflict between the terms of a Consulting Services Scope of Work and the terms of this Agreement, the terms of the Consulting Services Scope of Work shall control. This Agreement may be amended only by an instrument executed by the authorized representatives of both Parties. This Agreement may be executed in counterparts, each

of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14.2 **Notices**. All notices under this Agreement must be in writing and delivered to the mailing address or email address identified by the Parties at the addresses below their signatures to this Agreement, or to such other address as any Party may, in the future, designate in writing.

14.3 **Waiver**. Failure by either Party at any time to require strict performance of any provision of this Agreement shall in no way affect such Party's rights to enforce such provisions nor shall any waiver by either Party of any breach of any provisions of this Agreement be held to be a waiver of any succeeding breach of any such provisions or as a waiver of the provision itself.

14.4 **Assignment**. Consultant shall not assign this Agreement or any money due or to become due hereunder without the prior written consent of NoaNet.

14.5 **Compliance With Applicable Laws**. In the performance of this Agreement, Consultant shall comply with applicable federal, state and local laws, orders, rules and regulations, including but not limited to those pertaining to social security, income tax withholding, medical aid, industrial insurance, worker's compensation, fair employment practice, and unemployment compensation, and shall indemnify, protect and hold harmless NoaNet and its member utilities from and against all claims, suits, actions, liabilities, loss, damage, and expense arising from any failure of Consultant to comply with same.

14.6 **Survival**. All representations and warranties, confidentiality requirements, agreements regarding ownership of deliverables, intellectual property rights, and agreements to defend, hold harmless, or indemnify made in this Agreement shall survive termination.

14.7 **Severability**. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

14.8 **Signature Clause**. The signatories to this Agreement represent that they are authorized to enter into this Agreement on behalf of the Party on whose behalf they sign.

14.9 **Venue**. The Parties agree that in the event any litigation should occur concerning or arising out of this contract, the venue of any legal action shall be King County Superior Court of the State of Washington, unless otherwise agreed in writing by the Parties.

14.10 **Attorneys' Fees**. In the event of any suit, action, or proceeding or on any appeal therefrom relating to any rights, duties, or liabilities arising under this Agreement, the prevailing Party shall be entitled to recover from the other Party such sums as the court may adjudge reasonable as attorneys' fees and costs.

14.11 **Bound Parties**. This Agreement shall be binding on the Parties to this Agreement and their representatives, heirs, executors, successors, and assigns.

14.12 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of Washington without giving effect to any choice or conflict of law provision or rule.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date and year first above written.

NORTHWEST OPEN ACCESS NETWORK

By: _____

Craig Nelsen, its Chief Executive Officer

Date: _____

Financial Office: Consultant Financial Office
 7195 Wagner Way Ste 104
 Gig Harbor, WA 98335

Phone : (253) 292-9936

E-mail : accountspayable@noanet.net

Invoice to : accountspayable@noanet.net

CONSULTANT
(NAME)

By: _____

Date: _____

Mailing address: _____

Phone: _____

Fax: _____

E-mail address: _____

Federal Employer Identification Number: _____

Attachment A

DEBARMENT AND SUSPENSION CERTIFICATION

Contractor's signature affixed to this Agreement, shall constitute a certification under penalty of perjury under the laws of the State of Washington, that the Contractor has complied with Title 49, Code of Federal Regulations, Part 29, Debarment and Suspension Certificate, which certifies that Contractor or any person associated therewith in the capacity of owner, partner, director, officer, or manager, is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any federal agency within the past three (3) years, does not have a proposed debarment pending, and has not been indicted, convicted, or had a civil judgement rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years. Any exception to this certification must be disclosed to NoaNet.

Exceptions will not necessarily result in denial of recommendation for award, but will be considered in determining Contractor responsibility. Disclosure must include to whom exceptions apply, initiating agency, and dates of auction.

Date: _____

Date: _____

NoaNet
Name

Name of Contractor

By: _____

Title

Title

Attachment B

Byrd Anti-Lobbying Amendment Certification RETURN WITH YOUR BID

BYRD ANTI-LOBBYING AMENDMENT CERTIFICATION

(To be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies to the best of one's knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any

person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Please check the appropriate box:

No non-federal funds have been used or are planned to be used for lobbying in connection with this application/award/contract.

or

Attached is Standard Form LLL, "Disclosure of Lobbying Activities," which describes the use (past or planned) of non-federal funds for lobbying in connection with this application/award/contract.

Executed this _____ day of _____, 2023

By: _____
(Type of Print Name) (Title of Executing Official)

(Signature of Executing Official) (Name of Organization/Applicant)

