

**COVER SHEET – AGENDA ITEM # R6**  
**For Commission Meeting: November 19, 2018**

“MESD Intergovernmental Agreement - I-Net Capital Costs”

**Recommendation**

Staff recommends that the Commission approve a Master Intergovernmental Agreement (IGA) with the Multnomah Education Service District (MESD), which establishes a process to reimburse MESD for I-Net capital costs under the cable services franchise agreements.

**Background**

Under the IGA creating the Commission, the MHCRC is responsible for collecting the PEG/I-Net Fee from the cable franchisees and distributing those funds in accordance with cable franchise agreements and approved MHCRC budgets.

Under the cable franchises, the PEG/I-Net Fees can be used to fund, among other purposes, capital costs related the I-Net and its use. MESD provides network management and related services to seven school districts in Multnomah County, which includes about 140 sites connected to the I-Net. In addition, MHCRC staff is looking to MESD to be an active partner in testing and identifying needs for the next generation I-Net under a renewed franchise with Comcast. Previously, MESD’s capital costs related to I-Net sites have been reimbursed by the Portland, Bureau of Technology Services (BTS), who in turn sought reimbursement from the capital funds under an agreement between BTS and the MHCRC. Both MHCRC staff and MESD agree that an IGA between MESD and the MHCRC for cost reimbursement is a more direct and efficient way to handle this going forward.

The proposed IGA establishes a process for issuing payments from the capital fund in order to reimburse MESD for capital costs related to the use of the I-Net. Staff developed the attached draft IGA in consultation with MHCRC general legal counsel and MESD. As you can see, the IGA provides an ongoing process for reimbursement of I-Net capital costs within an annual amount contained in the adopted MHCRC budget. MHCRC staff will authorize planned expenditures for I-Net capital projects and verify actual costs once a project is complete.

Attachment: MHCRC-MESD Master Intergovernmental Agreement (draft)

Prepared By: Julie S. Omelchuck  
November 13, 2018

# MASTER INTERGOVERNMENTAL AGREEMENT

Contract No. [REDACTED]

This Master Intergovernmental Agreement (“Master Agreement”) is between the Mt. Hood Cable Regulatory Commission, an Oregon intergovernmental entity (“MHCRC”), and the Multnomah Education Service District, an education service district under ORS Chapter 334 (“MESD”). This Master Agreement between the MHCRC and MESD is authorized under ORS 190.010 et seq. This Master Agreement may refer to the MHCRC and MESD either individually as a Party, or collectively as the Parties.

## Recitals

1. The Mt. Hood Cable Regulatory Commission (“MHCRC”) was created by Intergovernmental Agreement (dated December 24, 1992) (“IGA”) to carry out cable regulation and administration on behalf of Multnomah County and the cities of Portland, Gresham, Troutdale, Fairview, and Wood Village (“the Jurisdictions”). Among other things, the MHCRC oversees compliance with the cable services franchise agreements, subject to discretionary review by the Jurisdictions as provided under §4.A. of the IGA.
2. The cable franchises with Comcast provide for communications network assets and infrastructure (the “Institutional Network” or “I-Net”) to be provided by the cable franchisee as part of the public benefits obligations. The I-Net is an advanced, fiber-based communications network connecting government, educational and community institutions that is capable of carrying video, data and voice applications.
3. The cable franchises also provide for the franchisees to pay a PEG/I-Net Fee to fund, among other things, the capital costs of local government and education institutional use of the I-Net. The IGA §9.D(3) authorizes the MHCRC to collect and expend the PEG/I-Net Fee on behalf of the Jurisdictions.
4. The PEG/I-Net Fee resources and expenditures are included in the MHCRC’s annual budget, which is subject to review and approval by the governing bodies of the Jurisdictions.
5. As part of its responsibilities for overseeing the I-Net, the MHCRC facilitates partnerships and network planning, and manages funds to provide for capital costs related to the I-Net and its use by public agencies. Under the cable franchise agreements, Comcast owns and provides the core I-Net facilities and infrastructure, and the City of Portland’s Bureau of Technology Services maintains the edge network infrastructure and provides I-Net services to public agencies.
6. Multnomah Education Service District (MESD) is a public agency I-Net subscriber and serves seven school districts within Multnomah County for delivery of cost effective and

efficient technology services. MESD is a member of the Cascade Technology Alliance (CTA), a partnership among many Oregon Education Service Districts to provide technical expertise to schools and government agencies throughout the State of Oregon.

10. MESD, in partnership with Portland Public Schools and other I-Net users, has expressed interest and expertise in piloting technology to improve the efficiency and effectiveness of the existing I-Net and to conduct research and innovation around next-generation I-Net technology.

11. MHCRC has funds available to reimburse capital costs associated with use of the I-Net. MESD has the technical knowledge and skills to perform this work and provides these services on a cost reimbursement basis.

12. The MHCRC and MESD want to enter into this Master Agreement to provide for reimbursement of MESD's capital costs related to I-Net.

**NOW THEREFORE, THE PARTIES AGREE:**

**1. Effective Date and Duration.**

1.1 This Master Agreement is effective December 1, 2018.

1.2 The term of this Master Agreement shall be until June 30, 2022, unless terminated earlier pursuant to the terms of this Agreement.

**2. Project Representatives.**

2.1 Each Party has designated a Project Manager to serve as its formal representative for purposes of this Master Agreement. All notices, reports, notes, and other communications required under or relating to this Master Agreement shall occur between the respective Project Managers.

2.2 The MHCRC Project Manager for this Master Agreement shall be:

Julie S. Omelchuck  
MHCRC  
c/o City of Portland Office for Community Technology  
111 SW Columbia, Suite 600, Portland, Oregon 97201  
Phone: 503 823-4188  
Email: [julieo@mhcrc.org](mailto:julieo@mhcrc.org)

The MHCRC Project Manager may be such other person as may be designated in writing by the MHCRC Chair.

2.3 The MESD Project Manager for this Master Agreement shall be:

Eric Harrison  
MESD  
11611 NE Ainsworth Circle, Portland, Oregon 97220  
Phone: 503-257-1554  
Email: eharrison@mesd.k12.or.us

The MESD Project Manager may be such other person as may be designated in writing by the MESD Superintendent or Deputy Superintendent.

**3. Amendments.** The provisions of this Master Agreement shall not be altered, modified, supplemented or otherwise amended, in any manner whatsoever, except by written mutual agreement signed by authorized representatives of the Parties, subject to approval as to form by the Parties' respective counsel.

**4. Work Order Process and Cost Reimbursement.**

4.1 The MHCRC Project Manager and the MESD Project Manager shall work cooperatively to identify capital costs for projects that use the I-Net and address needs of I-Net subscribers.

4.2 Once the details of a project are finalized, the MESD Project Manager shall provide a project description, implementation timeframe, and a price quotation ("Quotation") to the MHCRC Project Manager for project capital costs, including equipment, installation charges, construction charges, and any other cost for which the MESD intends to seek reimbursement. The MHCRC Project Manager shall determine if the project and its related capital costs qualify to receive funding under this Master Agreement. The MHCRC Project Manager shall indicate acceptance of the project Quotation by providing notice in writing by electronic mail.

4.3 Reimbursement to MESD by the MHCRC shall occur on a project by project basis. Upon completion of an I-Net capital project, MESD shall submit an invoice to the MHCRC Project Manager, on MESD letterhead and signed and dated by an authorized representative of the MESD. The total requested reimbursement amount shall be no more than the I-Net project Quotation accepted by the MHCRC Project Manager, plus any additional capital costs directly related to the I-Net project totaling no more than five percent (5%) of the project's accepted Quotation. The MHCRC shall pay all invoices to which no dispute exists within thirty (30) days of receipt of the invoice.

4.4 The invoice shall include documentation, satisfactory to the MHCRC Project Manager, for all capital costs for which the MESD is seeking reimbursement, including copies of paid receipts or other evidence of actual costs incurred by the MESD. The MHCRC Project Manager may require additional documentation of any cost in order to verify relationship of the cost to the project's accepted Quotation. If the MHCRC Project Manager finds that the invoice is not in accordance with this Master Agreement, the MHCRC Project Manager shall notify the MESD Project Manager of the reasons for the disallowance. The MESD Project Manager may revise the invoice and resubmit in response to the reasons identified in the disallowance.

4.5 The MESD Project Manager shall immediately provide notice in writing by electronic mail to the MHCRC Project Manager when MESD anticipates or realizes any deviation in the I-Net project that may result in MESD's inability to implement an I-Net project as originally submitted in the project Quotation. The MESD's notice shall identify the reasons for the deviation. If the MHCRC and the MESD wish to proceed with a modification to the I-Net project, the MESD's Project Manager shall submit a revised I-Net project Quotation to the MHCRC Project Manager in accordance with Section 4.2 of this Master Agreement.

4.6 I-Net projects implemented under this Master Agreement are not required to be coterminous with the expiration of this Master Agreement, but shall survive the expiration of such until completion. In these cases, all provisions of this Master Agreement shall be considered active and in full force until the applicable existing project(s) reach conclusion. In no case shall a new project be undertaken by the MHCRC or the MESD after the expiration date of this Master Agreement.

**5. Disputed Charges.** In the event the MHCRC Project Manager disputes any costs contained in an invoice from MESD for an I-Net project, the MHCRC Project Manager shall notify the MESD Project Manager in writing of disputed charges immediately when discovered but no later than forty-five (45) days following the date of receipt of the invoice. The Parties shall meet and resolve the disputed charges in a timely manner. Both Parties agree to investigate any disputed amounts in an expedited fashion in an effort to resolve and settle the dispute prior to seeking any other remedies. Charges not disputed within forty-five (45) days from the date of receipt of the MESD's invoice shall be due and payable and no longer subject to dispute.

**6. Early Termination.**

This Master Agreement may be terminated any time by mutual consent, or by either Party upon sixty (60) days written notice. No such termination shall prejudice any right or obligation of either Party already accrued prior to the effective date of termination.

**7. Indemnification.** Subject to the limitations and conditions of the Oregon Constitution, Article XI, Section 6, and the Oregon Tort Claims Act (ORS 30.260 through 30.300), the Parties agree to indemnify and hold one another harmless from any loss, damage, injury, claim, or demand arising from their respective activities in connection with this Master Agreement. Neither Party shall be liable for any loss, damage, claim, or demand arising from the negligence of the other Party or its agents, officers, contractors or employees.

**8. Access to Records.** As public bodies subject to the Oregon Public Records law, the Parties shall maintain all records pertaining to this Master Agreement in accordance with the requirements of Oregon law during and following termination of this Master Agreement. Upon reasonable written notice, each Party shall have access to the books, documents and records of the other Party, which are related to this Master Agreement, for the purpose of examination, copying, and audit.

**9. Compliance with Laws.** In connection with each Party's activities under this Master Agreement, the MHCRC and the MESD shall comply with all applicable federal, state and local laws and regulations.

**10. Contract Disputes.** The Parties agree that any disagreement regarding the interpretation, meaning or effect of any provision of this agreement shall be settled by arbitration if so requested by either party in writing. The arbitration decision will be binding upon the parties. The cost of such arbitration shall be shared equally between the parties.

**11. Notice.** Any notice provided for under this Master Agreement shall be effective if in writing and: (1) delivered personally to the addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested; (2) or sent by electronic mail with confirming record of delivery confirmation through electronic mail return-receipt, or by confirmation that the electronic mail was accessed, downloaded or printed. Notice will be deemed to have been adequately given three (3) days following the date of mailing, or immediately if personally served. For service by electronic mail, service will be deemed effective at the beginning of the next business day. Notices shall be addressed as follows, or to such other address as the receiving party may specify in writing:

If to the MHCRC: Julie S. Omelchuck, Program Manager  
Mt. Hood Cable Regulatory Commission  
Office address: 111 SW Columbia St., Suite 600  
Portland, OR 97201  
Mailing Address: PO Box 745  
Portland, OR 97207-0745  
Email: [julieo@mhcrc.org](mailto:julieo@mhcrc.org)

If to the MESD: Eric Harrison  
Multnomah Education Service District  
11611 NE Ainsworth Circle  
Portland, Oregon 97220  
Email: [eharrison@mesd.k12.or.us](mailto:eharrison@mesd.k12.or.us)

**12. Severability.** If any provision of this Master Agreement is declared by a court of law to be illegal or in conflict with any law, the validity of the remaining terms, conditions and provisions shall not be affected; and the rights and obligations of the Parties shall be construed and enforced as if this Master Agreement did not contain the particular provision held to be illegal or invalid.

**13. Subcontracting and Assignment.** The Parties shall not subcontract or assign any part of this Master Agreement without the prior written consent of the other Party. Prior notice of at least one hundred and twenty (120) days is required and the Parties shall not be obligated to approve of or otherwise agree with any proposed assignment or subcontracting arrangement.

Unapproved subcontracts or assignments shall be void and of no force and effect. In the event an assignment or subcontracting arrangement is approved, the Party assigning or subcontracting shall remain obligated for full performance of its obligation under this Master Agreement, and the other Party shall incur no obligation other than its obligations under this Master Agreement. Any approved assignee or subcontractor shall be required to agree to fulfill all the assigned or subcontracted obligations of the assigning or subcontracting Party.

**14. Force Majeure.** The Parties shall not have breached this Master Agreement by failure to perform a substantial obligation under this Master Agreement if the failure to perform arises out of causes beyond their control and without their fault or neglect, including without limitation: fire; flood; epidemic; volcanic eruption; quarantine restrictions; strike; freight embargo; unusually severe weather; riot; acts of God, sovereign or public enemy; or war. In the event delay or default arising from these causes reasonably prevents successful performance of this Master Agreement, the Parties may terminate this Master Agreement, without penalty, upon written agreement, or the Parties may make mutually acceptable revisions to this Master Agreement to allow it to continue as modified. Under no circumstances will failure to pay be deemed a Force Majeure event.

**15. Non-Waiver.** The Parties shall not be deemed to have waived any breach of this Master Agreement by the other Party except by an express waiver in writing. An express written waiver as to one breach shall not be deemed a waiver of any other breach not expressly identified, even though the other breach is of the same nature as that waived.

**16. Independent Contractors.** The Parties shall each be responsible for any of their own federal, state and local taxes applicable to payments under this Master Agreement. The work performed by the MESD under this Master Agreement is work for hire, and any employees and subcontractors used by the MESD in performing this work are not employees or subcontractors of the MHCRC and shall not be eligible for any benefits from the MHCRC, including without limitation, federal social security, health benefits, workers' compensation, unemployment compensation and retirement benefits.

**17. Non-Appropriations.**

17.1 It is the intent of the MHCRC to continue this Master Agreement for an indefinite term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) the MHCRC agrees to include in its budget request appropriations sufficient to cover its obligations under this Master Agreement; b) the MHCRC agrees to use all reasonable and lawful means to secure these appropriations; c) the MHCRC agrees it shall not use non-appropriations as a means of terminating this Master Agreement in order to acquire functionally equivalent products or Services from a third party. The MHCRC reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

17.2 It is the MESD's intent to continue this Master Agreement for its entire term and to satisfy its obligations hereunder. For each succeeding fiscal period: a) The MESD agrees to include in its budget request appropriations sufficient to cover its obligations under this Master

Agreement; b) The MESD agrees to use all reasonable and lawful means to secure these appropriations; c) The MESD agrees it shall not use non-appropriations as a means of terminating this Master Agreement. The MESD reasonably believes that sufficient funds to discharge its obligations can and shall lawfully be appropriated and made available for this purpose.

17.3 In the event that insufficient funds are appropriated to continue payments under this Master Agreement and either Party has no other funding source lawfully available to it for such purpose, the Parties may agree to terminate particular Quotations or agree to suspend work under this Master Agreement until available funding sources are identified, or that Party may terminate this Master Agreement by giving the other Party not less than thirty (30) days prior written notice without penalty. Upon termination and to the extent of lawfully available funds, the terminating Party shall be obligated to remit all amounts due and all costs reasonably incurred by the other Party through the date of Termination.

**18. Captions.** Captions or headings are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Master Agreement.

**19. Choice of Venue.**

This Master Agreement shall be construed according to the laws of the State of Oregon. Any litigation between the Parties arising under this Master Agreement or out of work performed under this Master Agreement shall occur, if in the state courts, in the Multnomah County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon, Portland.

**20. Severability.** If any term or provision of this Master Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Master Agreement did not contain the particular term or provision held to be invalid.

**21. No Third Party Beneficiary.** The MHCRC and the MESD are the only Parties to this Master Agreement and as such, are the only Parties entitled to enforce its terms. Nothing contained in this Master Agreement gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

**22. Entire Agreement.** This Master Agreement consists of these terms and conditions and any Quotations added from time to time pursuant to Section 4. This Master Agreement shall take precedence over any specific Quotations. There are no other contract documents unless specifically referenced or incorporated in this Master Agreement, or added or deleted by written Amendment to this Master Agreement. This Master Agreement contains the entire agreement between the Parties and supersedes all prior written or oral discussions or agreements. No waiver, consent, modification or change of terms of this Master Agreement shall bind either Party unless in writing and signed by both Parties and approved by the MHCRC's Legal Counsel



as to form. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

**23. Electronic Execution.** The Parties agree that they may execute this Master Agreement and any Amendments to this Master Agreement by electronic means, including the use of electronic signatures and scanned documents.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Master Agreement to be executed as of the Effective Date.

**MT. HOOD CABLE REGULATORY COMMISSION (MHCRC):**

**MULTNOMAH EDUCATION SERVICE DISTRICT (MESD):**

Signed: \_\_\_\_\_  
*MHCRC Chair*

Signed: \_\_\_\_\_

By: \_\_\_\_\_  
*(Printed name)*

Title: \_\_\_\_\_

By: \_\_\_\_\_  
*(Printed name)*

Date: \_\_\_\_\_

Date: \_\_\_\_\_

*Approved as to form:*

Signed: \_\_\_\_\_  
*MHCRC Legal Counsel*

Date: \_\_\_\_\_