

ATTACHMENT A
TNET CONSORTIUM
MEMBERSHIP TERMS AND CONDITIONS

These MEMBERSHIP TERMS AND CONDITIONS are attached to, and made a part of, that certain Participation Agreement entered into by the County and the Participant (collectively referred to as the “Parties”).

1.0 DEFINITIONS

1.1 “Agreement” shall mean, collectively, the following: Participation Agreement; Attachment A, “Membership Terms and Conditions”; Attachment B, “Guidebook and Best Practices”; and Attachment C, “Membership Roster.”

1.2 “Attributes” shall mean information, such as street names and address ranges, about the King County geography, stored in tabular format in the TNET databases.

1.3 “County” shall mean King County.

1.4 “Data layer” shall mean a collection of similar geographic features, such as roadways (lines), waterbodies (polygons) or landmarks (points), otherwise understood as feature classes.

1.5 “GIS” shall mean Geographic Information System, a collection of computer hardware, software and geographic data for capturing, storing, maintaining, analyzing and displaying all forms of geographically referenced information.

1.6 “Intellectual Property” or “IP” shall mean copyrights, patents, trade secrets and any other forms of proprietary rights in products of the mind, including but not limited to software, inventions, discoveries, system designs, information, training manuals, works of authorship, databases and other information in any form or medium.

1.7 “KCMT” shall mean King County Metro Transit.

1.8 “Member” shall mean the Participant, King County and all other public agencies that are Members of the TNET Consortium as evidenced by having signed effective TNET Participation Agreements.

1.9 “Participant” shall mean the public agency that is identified in the Participation Agreement to which this Attachment A is attached.

1.10 “Parties” or “Party” shall mean the Participant and the County or either as the context indicates.

1.11 “Third Party IP” shall mean IP owned by a person or entity other than a Member of the TNET Consortium.

1.12 “TNET Consortium” shall mean the group of public agencies who are bound together AS Members under signed, effective TNET Participation Agreements.

1.13 “TNET Master Database” shall mean a multi-modal GIS transportation line data layer and associated attribute database housed on King County servers.

1.14 "TNET Master Environment" shall mean the core TNET environment including database, software, custom applications, synchronization technology and hardware existing within King County's firewall.

1.15 "TNET Replicated Database" shall mean the replicated version of the TNET Master Database that resides on each TNET Consortium Member's server.

1.16 "TNET Replicated Environment" shall mean the replicated environment, including hardware, software and staff within each TNET Consortium Member's firewall, each with its own internal support.

2.0 MEMBERSHIP IN TNET CONSORTIUM

2.1 Participant

The Participant is a public agency in the State of Washington and a Member of the TNET Consortium. The Participant agrees to be bound by the terms of the following (which are collectively referred to herein as the "Agreement"):

- Participation Agreement
- Attachment A Membership Terms and Conditions
- Attachment B Guide Book and Best Practices
- Attachment C Membership Roster

2.2 County

The County is a Member of the TNET Consortium and agrees to be bound by the terms of this Agreement.

2.3 Obligations Extend to All Members

The Parties understand and agree that their obligations under this Agreement are owed to all the other Members of the TNET Consortium.

2.4 Appointed Representative

The Participant shall appoint a representative who shall attend Membership meetings and correspond on behalf of the Participant with other Members.

3.0 COUNTY'S TNET MASTER ENVIRONMENT

3.1 The County, through KCMT, owns, operates and maintains the current TNET Master Environment at no cost to the Participant and the other TNET Consortium Members. The County will not make enhancements to the TNET Master Environment (e.g. adding functionality) without consent by all Members if to do so would require Members to incur costs to modify their TNET Replicated Environments. The cost of any enhancements to the TNET Master Environment (e.g. adding functionality) may be shared upon agreement by one or more Members of the TNET Consortium.

3.2 In the event of system breakdowns, the County will endeavor to restore operation of the TNET Master Environment, in whole or in part, but shall have no duty to restore such operation within a certain period of time.

4.0 TNET REPLICATED ENVIRONMENTS

4.1 Each Party shall purchase at its sole expense the equipment, software, licenses, communication networks, services and any other thing necessary to create a TNET Replicated Environment that is able to connect to the TNET Master Environment, all in accordance with the requirements of Attachment B, Appendix A.

4.2 Each Party shall host, manage and maintain its respective TNET Replicated Environment, as part of its normal GIS operations and within its own firewall, at its sole expense.

4.3 Each Party may add data unique to its businesses to its Replicated Environment but only if such additions do not have a detrimental effect, directly or indirectly, on the TNET Master Environment or on other Members' Replicated Environments. Each Party shall be solely responsible for any cost associated with any data layers that are added to its TNET Replicated Environment but are not part of the TNET Master Environment.

4.5 In the event of system breakdowns, the Parties will endeavor to restore operation of their TNET Replicated Environments, in whole or in part, but shall have no duty to restore such operation within a certain period of time.

5.0 DATA MAINTENANCE

5.1 Each Party agrees to update, correct, modify and otherwise maintain its TNET Replicated Database in accordance with the Best Practices specified in Attachment B. In addition to maintaining its own transit and roads data, the County shall attempt, but is not required, to maintain transportation-related data within King County that is not being maintained by other Members of the TNET Consortium.

5.2 Each Party shall undertake such data maintenance on a regular basis and as soon as possible after changes occur in the geography and/or related attribution information within its jurisdiction or after errors or deficiencies in its TNET Replicated Database are identified.

5.3 At least once each business day, each Party shall synchronize its TNET Replicated Database to the TNET Master Databases in accordance with the requirements of Attachment B. Such synchronization is required, whether or not a Party has modified its TNET Replicated Database, to ensure optimal currency as well as the earliest possible detection of any and all data issues.

6.0 OTHER MEMBERSHIP RESPONSIBILITIES

6.1 Each Party shall develop and maintain its own transportation-related data, working collaboratively with other local jurisdictions and transit agencies, whether or not Members of the Consortium, to resolve issues related to data currency, attributes and/or spatial accuracy and to identify changes in the region such as new streets, street name or address range changes.

6.2 Each Party shall actively participate in meetings and email exchanges among Members of the Consortium in order to make timely and informed decisions about matters related to TNET operations, maintenance and modifications, including but not limited to: modifications to the database design; changes to application functionality; new data elements; consultant contracts for major improvements; conflict resolution regarding source data; and changes to the practices specified in Attachment B.

6.3 Each Party shall be responsible for obtaining any required authority from its own governing board prior to committing to an expenditure of resources.

6.4 Each Party shall be responsible for informing its respective officials, employees and contractors of the provisions of this Agreement and shall take all reasonable measures to enforce compliance with same, including but not limited to the administration of discipline.

6.5 Each Party shall be solely responsible for the procurement, administration and payments related to any contracts for goods or services it needs to satisfy its obligations under this Agreement.

6.6 Each Party shall prepare a semi-annual report on its activities and expenditures related to the work of this Agreement. Such reports shall be submitted to KCMT's GIS Program Manager by July 31 and January 31 each year. Said Program Manager shall subsequently provide all TNET Consortium Members with a summary report on the program's status and expenditures related to the work of this Agreement.

6.7 Each Party agrees that qualified professional personnel will be assigned to perform any work related to this Agreement in a timely and professional manner; and that such work shall conform to the Best Practices set forth in Attachment B.

6.8 Each Party agrees that it shall undertake all commercially practicable security measures to protect against the introduction of any viruses, disabling code or other defects into the TNET Master and Replicated Environments.

7.0 COUNTY SUPPORT OF CONSORTIUM ACTIVITIES

7.1 The County, through KCMT, shall provide the following support to the TNET Consortium Members:

- a. coordination of and administrative support to the decision-making process of the Consortium
- b. technical assistance regarding data synchronization with the TNET Master Environment
- c. communication with outside entities pertaining to requests for information and inquiries about becoming a Member of the TNET Consortium

7.2 The County shall provide procurement and contract administration services for any consulting contracts related to TNET that may be funded by the Consortium Members.

8.0 INTELLECTUAL PROPERTY

8.1 Each Party represents and warrants that it has obtained and will maintain in effect, at its sole expense, any Third Party IP license rights necessary for the Party to perform its obligations under this Agreement, including but not limited to license rights related to the software specified in Attachment B.

8.2 Each Party agrees to comply with the terms of its Third Party IP licenses and any multi-user licenses provided through the County. Without limiting the foregoing, the Participant agrees that it will use the "Go! Sync" software provided by the County only for purposes of performing TNET functions specified in this Agreement.

8.3 Each Party agrees that any data it has or will contribute to the TNET Master Database shall be deemed to be in the public domain and, accordingly, each Party hereby waives and disclaims any ownership, copyright or other IP rights in and to said data. Each Party further agrees that it will provide data to the TNET Master Database only if the Party believes, in good faith, that no other person or entity has, claims to have, or could reasonably claim to have any ownership, copyright or other IP rights in and to said data. To the extent a Party hires a contractor to collect, create or otherwise provide data for inclusion in the TNET Master Database, the Party agrees to include terms in its contract that said data will be deemed to be in the public domain and that the contractor waives and disclaims any ownership, copyright or other IP rights in and to said data.

9.0 DISTRIBUTION OF DATA TO NONMEMBERS

9.1 Except as expressly provided herein, nothing in this Agreement shall be construed to prohibit or limit each Party's ability to disclose, convey, sell or transfer the data in its TNET Replicated Database to persons and entities that are not Members of the TNET Consortium.

9.2 Each Party agrees that, absent consent by all the Members of the TNET Consortium, it will not allow access to its TNET Replicated Database by any person or entity, other than its employees, whether by intranet, internet or otherwise.

9.3 Each Party agrees that it shall be responsible for responding to any requests for disclosure of public records related to TNET that it might receive and neither Party has an obligation to respond on behalf of the other. If a request is made for computer object code, source code or other proprietary information, or the Participant is required, or anticipates or has cause to anticipate that it may be required, by law or court order to disclose same, the Participant shall immediately notify the County of the request or requirement and use its best endeavors (without breach of applicable law) to delay and withhold disclosure until the legal owner of the code or proprietary information has had a reasonable opportunity to oppose disclosure by lawful means.

10.0 FORCE MAJEURE

A "force majeure" event shall include, without limitation by the following enumeration: acts of nature; acts of civil or military authorities; terrorism; fire; accidents; shutdowns for purpose of emergency repairs; labor strikes, slow-downs and other actions; and industrial, civil or public disturbances. If any Party is rendered unable, wholly or in part, by a force majeure event or any other cause not within such Party's control, to perform or comply with any obligation or condition of this Agreement, upon giving notice and reasonably full particulars to the other Party, such obligation or condition shall be suspended only for the time and to the extent commercially practicable to restore normal operations. In the event a Party ceases to be excused pursuant to

this provision, then the other Party shall be entitled to exercise any remedies otherwise provided for in this Agreement, including Termination for Default.

11.0 LEGAL RELATIONS

11.1 No joint venture or partnership is formed as a result of this Agreement. No employees or agents of one Party or any of its contractors or subcontractors shall be deemed, or represent themselves to be, employees of any other Party. The other Members of the TNET Consortium shall be deemed to be third party beneficiaries of this Agreement.

11.2 The Parties shall each comply with all federal, state and local laws, regulations, and ordinances applicable to the actions to be performed under this Agreement, including but not limited to, Section 504 of the Rehabilitation Act of 1973, as amended, Chapter 12.18 of the King County Code (Fair Employment Practices) and all other applicable laws, regulations and ordinances prohibiting discrimination. Any Party which receives federal grant funds for reimbursement of payments made or expenses incurred in performance of work under this Agreement shall defend, indemnify and hold harmless the other Members of the TNET Consortium against any claims, lawsuits, actions, grievances, costs, losses, damages or liabilities or obligations of any kind whatsoever which are directly or indirectly related to the terms of such Party's grant agreement with the federal government.

11.3 Each Party shall protect, defend, indemnify and save harmless each other Member of the TNET Consortium, its officers, employees and agents ("Indemnitees") from any and all costs, claims, demands, lawsuits, judgments, awards of damages, and any liability whatsoever ("Claims"), arising out of or related to the acts or omissions of the indemnifying Party, its officers, employees and/or agents in connection with its obligations under this Agreement. Said Claims include but are not limited to Claims alleging a violation of a third party's copyright, trade secrets, patent or other intellectual property rights. The indemnifying Party's indemnification obligation shall include but is not limited to, all Claims against it by one of its employees or former employees, and the indemnifying Party expressly waives by mutual negotiation, with respect to the Indemnitees only, all immunity and limitation on liability under any industrial insurance act, including Title 51 RCW, other worker's compensation act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such Claim. An Indemnitee asserting that another Member of the TNET Consortium is obliged to provide it with defense and indemnification under this provision in a TNET Participation Agreement shall promptly notify such other Member of any claim, demand, action, lawsuit or other covered potential liability. The Indemnitee shall provide the indemnifying Party with information, reasonable assistance, and sole authority to defend or settle any such Claims against the Indemnitee. In the event the Indemnitees incur any costs including attorneys' fees to enforce the provisions of this subsection, all such costs and fees shall be recoverable from the Indemnifying Party.

11.4 Except for (a) injuries to persons and (b) intentional and willful violations of intellectual proprietary rights which can be attributed to the indemnifying Party's management, a Party shall not be liable to any other Member of the TNET Consortium for any indirect, incidental, special or consequential damages, including but not limited to lost data or profits, however arising.

11.5 A Party's rights and remedies under this Agreement are in addition to any other rights and remedies provided by law. No action or failure to act by a Party shall constitute a waiver of any right or duty afforded to the Party under this Agreement.

11.6 This Agreement shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. The Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.

11.7 The provisions of Sections 8, 9, 11 and 12 shall survive and remain applicable to each of the Parties notwithstanding any termination or expiration of this Agreement and notwithstanding withdrawal by a Party from the TNET Consortium.

12.0 RETENTION OF RECORDS AND AUDIT ACCESS

12.1 Each Party shall maintain, for six (6) years after their creation, all books, records and documents of its performance under this Agreement in accordance with generally accepted accounting principles.

12.2 Federal, state or County auditors shall have access to each Party's records related to this Agreement and be able to copy such records during the Party's normal business hours and upon reasonable notice. The Party shall provide proper facilities for such access, inspection and copying and fully cooperate with the auditors.

END OF ATTACHMENT A