

PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY
BOARD OF COMMISSIONERS

AGENDA
JULY 23, 2024
4:30 PM

The public is invited to attend in person or via Zoom.

Join the meeting via Zoom: <https://skagitpud.zoom.us/j/82082590753?pwd=ZkUrVGE4T2xXK3NUV1ZRK2pxUDlxdz09>

Meeting ID: 820 8259 0753

Passcode: 009457

Or dial: 1-253-215-8782

Please turn your audio and video off during the meeting. Use the "Raise Hand" feature if you would like to speak during Audience Comments.

If you have a question or comment for the Board, please submit it by 5 p.m. the Monday prior to the meeting by calling (360) 848-4460 or send an email to pud@skagitpud.org

PLEDGE OF ALLEGIANCE

CONSENT AGENDA

1. Approval of Agenda 7/23/24
2. Approval of Minutes 7/9/24
3. Ratification of Voucher 7/16/24
4. Voucher Approval 7/23/24
5. [Markwood Phase 2 Project Acceptance](#)

SKAGITNET UPDATE & DISCUSSION

6. [SkagitNet Update and Proposed System Operation Agreement with Astound](#)

SECOND QUARTER FINANCIALS

AUDIENCE COMMENTS

OLD BUSINESS

7. General Manager's Report
8. Engineering Department Update
9. [Draft Water System Plan - Discussion and Release Authorization - *Action*](#)

NEW BUSINESS

INFORMATION

10. Judy Reservoir Data Report
11. Recent News Article

COMMISSIONER COMMENTS

ADJOURNMENT

MINUTES OF THE REGULAR MEETING OF THE COMMISSION
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON

July 9, 2024

The regular meeting of the Commission of Public Utility District No. 1 was held in the Aqua Room of the utility located at 1415 Freeway Drive, Mount Vernon, Washington.

The meeting was called to order at 4:30 p.m. Commissioners Joe Lindquist, president; Andrew Miller, vice president; and Corrin Hamburg, secretary, were in attendance.

In attendance were Kevin Tate, Shannon Patiño, Nick Semrau, Kathy White, Pete Gilbert, Brian Henshaw, Alistair Boudreaux, Mark Handzlik, Mark Semrau, and Mike Fox.

Participating remotely: Courtney Shilling

Commissioner Lindquist led the Pledge of Allegiance.

CONSENT AGENDA

Commissioner Miller moved to approve the Consent Agenda for July 9, 2024, as presented.

1. Approval of Agenda 7/9/24
2. Approval of Minutes 6/25/24 Regular Meeting
3. Ratification of Voucher 6/25/2024 No. 3140 (\$308,854.40)
Accounts Payable Voucher No. 29454-29485 (\$308,854.40)
Ratification of Voucher 7/2/2024 No. 3141 (\$2,407,072.30)
Accounts Payable Voucher No. 29486-29542 (\$599,794.72)
Electronic Funds Transfer (\$1,536,705.88)
Payroll Electronic Funds Transfers No. 044562-044645 (\$270,571.70)
4. Voucher Approval 7/9/24 No. 3142 (\$480,774.44)
Accounts Payable Voucher No. 2954-29599 (\$479,568.8\$4)
Electronic Funds Transfer (\$1,205.60)

The motion passed unanimously.

AUDIENCE COMMENTS

None.

OLD BUSINESS

5. Manager's Report: Acting General Manager Tate provided an update on the following:
 - A heat advisory went into effect on Friday, July 5, until 10 p.m. on Tuesday, July 9. As a result of the extreme heat shutoff moratorium law that went into place last year, no disconnections for nonpayment will take place this week.
 - Former PUD Commissioner Jim Cook passed away on June 28 after a brief battle with pancreatic cancer. He served as a commissioner from 2005 through 2016.
 - Staff have begun testing the new Cayenta Connect Employees time entry module, which will go live on July 29.
 - A moving committee has been established as part of the PUD Campus Replacement project to facilitate that move into the new building.
 - A PUD Campus Replacement project tour will be held before the regular board meeting on July 23. Commissioner Lindquist will be out of town, but Commissioners Miller and Hamburg confirmed they would join the tour.
6. Community Relations Department Update: Community Relations Manager Tate gave a department update on community outreach efforts and events, media coverage, owned media, the 2024 Water Quality Report, and website updates.

NEW BUSINESS

7. Revisions to Small Works Roster Procurement Policies and Procedures: Engineering Manager Handzlik explained that there are new purchasing rules affecting public works contracting and Small Works Roster. The new rules require agencies to direct contract with firms from the Public Works Small Business Enterprise (PWSBE) certification program, administered by the Office of Minority and Women's Business Enterprise, or

solicit all firms on the appropriate Small Works Roster. Due to the need to establish new internal policies and practices for direct contracting, the PUD is proposing to suspend current internal small works processes and procure projects through the formal competitive sealed bid process and public advertisement until more information is developed regarding direct contracting.

A brief discussion ensued.

Commissioner Hamburg moved to approve the suspension of the portions of Policy No. 1031 that apply to public works contracts procured through the Small Works Roster process. As a result, suspending Small Works Roster processes identified in Administrative Practice and Procedure No. 2049.

The motion passed unanimously.

8. Recommendation for Removal of Capital Assets from Capital Asset Ledger Surplus: Operations Manager Fox informed the board that the PUD has surplus equipment and assets that have either been replaced or are no longer needed and can be retired and auctioned.

Commissioner Hamburg moved to authorize the general manager to retire asset numbers 99, 155, 170, 171, 172, 175, 180, 201, 203, 215, 227, and P10 from the capital asset ledger.

The motion passed unanimously.

INFORMATION

9. Judy Reservoir Data Report
10. Recent News Article

COMMISSIONER COMMENTS

Commissioner Lindquist noted that he would be absent at the July 23, 2024, meeting.

ADJOURNMENT

Having no further business to come before the board, Commissioner Lindquist moved for adjournment. The motion passed, and the July 9, 2024, meeting adjourned at 4:51 p.m.

ATTEST

Joe Lindquist, President

Corrin Hamburg, Secretary

Andrew Miller, Vice President

We, the undersigned Board of Commissioners of Public Utility District No. 1 of Skagit County, Washington, do hereby certify that the merchandise and /or services hereinafter specified have been received and are hereby approved for payment in the amount of \$1,186,343.37 this 16th day of July, 2024.

The total is comprised of the following:

Accounts Payable voucher No. from 29600 through 29648 in the amount of \$862,262.52, Electronic Funds Transfer in the amount of \$95,375.60. Payroll Electronic Funds Transfers and checks No. 044646 through 044728 in the amount of \$228,705.25.

Attest:



 Manager



 Auditor

 President

 Vice - President

 Secretary

Date: 07/15/2024

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Voucher	Claimant	Amount
29600	ALL BATTERY SALES AND SERVICE	117.72
29601 - EDI	AMERITAS LIFE INSURANCE CORP	3,470.30
29602	BADGER METER INC	212,862.44
29603 - EDI	BANNER BANK	682.40
29604	BERG VAULT CO OF WA INC	195.84
29605	CAROLLO ENGINEERS INC	39,339.92
29606	CDW GOVERNMENT INC	101,643.48
29607	CINTAS	142.72
29608	CODY MYERS	95.16
29609	COMCAST BUSINESS	121.82
29610	E&E LUMBER INC	267.59
29611 - EDI	ELECTRONIC FEDERAL TAX PAYMENT	83,431.24
29612	EMILY CALDWELL	124.32
29613 - EDI	EMPOWER RETIREMENT	815.00
29614	ENVIRO-CLEAN EQUIPMENT INC.	217.80
29615	EUROFINS EATON ANALYTICAL LLC	630.00
29616	EXPRESS EMPLOYMNT PROFESSIONALS	1,156.03
29617	FERGUSON ENTERPRISES LLC #3326	47.83
29618	GENERAL PACIFIC, INC.	200,192.00
29619	HACH COMPANY	301.91
29620	HD FOWLER COMPANY INC	6,224.47
29621	KAYE- SMITH ENTERPRISES INC	10,751.37
29622	ANYTIME LABOR SEATTLE LLC	624.45
29623	LYNDEN ICE COMPANY LLC	121.50
29624	MODERN DIESEL	225.00
29625	MODERN DIESEL	350.00

Voucher	Claimant	Amount
29626	HARRIS COMPUTER SYSTEMS	26,460.16
29627	NORTH HILL RESOURCES	320.37
29628	ODP BUSINESS SOLUTIONS, LLC	274.31
29629	PEACE HEALTH	1,290.21
29630	PEACE HEALTH	1,252.75
29631	POMP'S TIRE SERVICE INC	1,931.05
29632	PUGET SOUND ENERGY	41,355.03
29633	PURMS JOINT SELF INS FUND	190,123.19
29634	QCC QUALITY CONTROLS CORP	19,002.02
29635	SEDRO WOOLLEY AUTO PARTS INC	177.04
29636	SELVINA ANBURAJ	156.15
29637	SIMON HAM	109.31
29638	SIRENNET.COM	1,126.08
29639	SKAGIT HYDRAULICS	375.20
29640	SKAGIT REGIONAL HEALTH	110.00
29641	SKAGIT WHATCOM ELECTRONICS	76.92
29642	TOSHA TAYLOR	55.44
29643	VICTORIA VILLA	151.53
29644 - EDI	WA STATE SUPPORT REGISTRY	844.89
29645 - EDI	WA STATE TREASURER	6,012.36
29646	ASTOUND BUSINESS SOLUTIONS LLC	2,151.54
29647	WOODS ACQUISITION CORP DBA	10.85
29648 - EDI	ZIPLY FIBER	119.41
		957,638.12



1415 Freeway Drive | Mount Vernon, Washington 98273 | (360) 424-7104 | SkagitPUD.org

July 23, 2024

MEMORANDUM

TO: Board of Commissioners
FROM: Mark Handzlik PE, Engineering Manager
SUBJECT: Markwood Phase 2 Project Acceptance

Requested Action:
Acceptance of the Markwood Phase 2 Project.

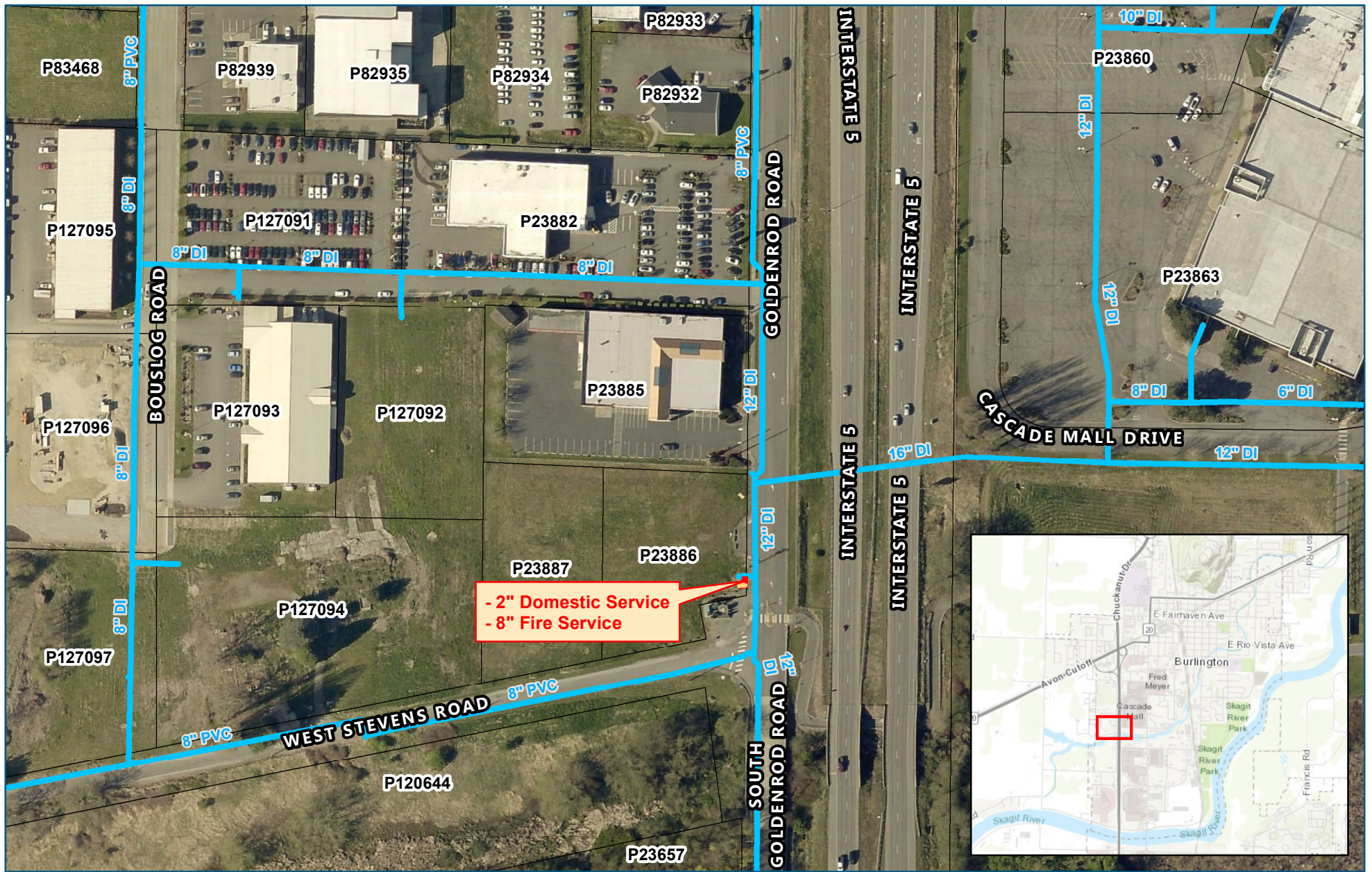
Background:

Reference: CP18026
Location: Burlington
Developer: Sage Burlington 4, LLC
Contractor: BDZ Developers, Inc.

The PUD has approved the plans and specifications and has inspected the installation of the new water plant within the above project. The Engineering Department has received satisfactory pressure and bacteriological test results. All documentation for this project has been completed.

Fiscal Impact:
None.

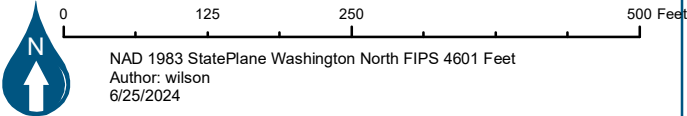
Enclosures: 1. [Markwood Phase 2 Acceptance Map](#)



- 2" Domestic Service
 - 8" Fire Service



Markwood Phase II Project Project Acceptance



- Existing Main
- Awaiting Acceptance

Job Identity: CP18026

This map was created from available public records and existing map sources, not from field surveys. While great care was taken in this process, maps from different sources rarely agree as to the precise location of geographic features. The relative positioning of map features to one another results from combining different map sources without field verification.

The PUD #1 of Skagit County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either expressed or implied. No representation or warranty is made concerning the accuracy, currency, completeness or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold the PUD #1 of Skagit County harmless from any damage, loss, or liability arising from the use of this map.





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July 23, 2024

MEMORANDUM

TO: Board of Commissioners

FROM: George Sidhu, P.E., General Manager

SUBJECT: SkagitNet Update and Proposed System Operation Agreement with Astound

Requested Action:
For discussion only.

Background:

SkagitNet LLC was formed in 2017 between the Port of Skagit and Skagit PUD to plan, construct and manage an open-access fiber optic backbone throughout Skagit County for the benefit of Skagit County citizens and businesses. Through various projects since then, a county-wide fiber optic backbone was constructed using various sources of funding. The open-access model did not attract as many internet service providers as originally hoped and was not as successful as planned. Then, due to different expectations as a result of the COVID-19 pandemic, fiber-to-the-home became the target for the federal and state governments. As a result, the funding that became available to build out the broadband networks was more targeted toward public-private partnerships to be successful.

To optimize the use of the fiber optic backbone that was installed by SkagitNet, discussions were held with Astound Broadband LLC to form a public-private partnership that would connect the backbone to the Astound System to facilitate further building out of the fiber network in Skagit County. A proposed agreement has been developed called an indefeasible right of use (IRU) where:

- Astound will operate and maintain the backbone system from the Skagit Airport Hut to Concrete, WA
- SkagitNet will grant to Astound an IRU to a portion of the fiber optic strands within the backbone
- Astound shall have the right to utilize the backbone for business purposes
- Astound will interconnect the backbone with the Astound System as necessary to operate the backbone

The IRU is proposed to be 20 years in length, at which time Astound will assume ownership of the backbone, except for 4 buffer tubes that will be reserved for the Port and the PUD in perpetuity for our own communications.

The main benefit to executing the IRU with Astound is that the backbone will be connected to the Astound system and will provide customers with additional options for fiber optic network services. As it currently stands, SkagitNet has been unable to successfully provide an open access network for customers on the existing backbone. This IRU will allow Astound to make further investments into the fiber optic network so that fiber-to-the-home is available to more customers, thus putting the backbone to use as was originally intended.

Fiscal Impact:

The IRU agreement includes a one-time fee that Astound will pay the Port and the PUD in the amount of \$1,030,000. This fee will be distributed between the Port and the PUD, and is expected to partially or nearly completely cover the original cost of the fiber infrastructure installed on Josh Wilson Road as a part of our pipeline project in 2013.

Enclosures: 1. [Skagit County IRU Backbone](#)

FIBER SYSTEM IRU AGREEMENT

THIS FIBER SYSTEM IRU AGREEMENT (“Agreement”) is made and entered into as of this ____ day of _____ 2024 (the “Effective Date”) between the Port of Skagit, a Washington municipal corporation having its principal offices at 15400 Airport Drive, Burlington, WA 98233 (the “**Port**”), the Public Utility District No. 1 of Skagit County, a Washington municipal corporation having its principal offices at 1415 Freeway Drive, Mount Vernon, WA 98273 (the “**PUD**”), and Astound Broadband, LLC, a Washington limited liability company having its principal offices at 3700 Monte Villa Pkwy, Bothell, WA 98021 (“**Astound**”). The Port, the PUD, and Astound are sometimes individually referred to herein as a “Party” or collectively as the “Parties”. The Port and the PUD shall be collectively referred to herein as the “Municipalities.”

RECITALS

1. The Municipalities have an existing dark fiber backbone system running from the Skagit Airport Hut to Concrete, Washington serving portions of east Skagit County (the “**Backbone System**”).
2. Pursuant to RCW 53.08.370, the Port is authorized to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the Port’s geographic limits for the Port’s own use, and for the provision of telecommunications services within or without the Port’s geographic limits.
3. Pursuant to RCW 54.16.330, the PUD is authorized to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the PUD’s geographic limits for the PUD’s own use, and for the provision of telecommunications services within or without the PUD’s geographic limits.
4. Astound owns, controls and operates a communications network in the region (the “**Astound System**”).
5. The Backbone System will benefit from interconnection with the Astound System, which will further enable Astound to activate and operate the Backbone System.
6. Astound desires to provide retail broadband and other advanced communication services utilizing the Backbone System.
7. The Municipalities and Astound desire to enter into this Agreement whereby, in general: (i) Astound will operate and maintain the Backbone System; (iv) the Municipalities will grant to Astound an indefeasible right of use (“**IRU**”) to a portion of the fiber optic strands within the Backbone System; (v) Astound shall have the right to utilize the Backbone System for all lawful purposes including, but not limited to, offering, provisioning, and providing broadband and other advanced communication services; and (vi) Astound will interconnect the Backbone System with the Astound System as necessary to operate the Backbone System consistent with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties do hereby agree as follows:

1.0 TABLE OF EXHIBITS MADE PART OF THIS AGREEMENT

- Exhibit A: Backbone System Description**
- Exhibit B: Astound System Description**
- Exhibit C: Operations and Maintenance Specifications and Procedures**
- Exhibit D: Bill of Sale – Backbone System**
- Ex. D, Schedule 1: Backbone System Description**
- Ex. D, Schedule 2: Backbone System Map**
- Exhibit E: Post Purchase Reserved Dark Fiber IRU Agreement**

2.0 DEFINITIONS

- 2.1 “Agreement” means this Fiber System IRU Agreement, and any and all Exhibits, Addenda, and Attachments to which the Parties may agree from time to time and which reference this Fiber System IRU Agreement.
- 2.2 “Applicable Standards” means all applicable rules and regulations and engineering and safety standards governing the installation, maintenance, and operation of network facilities and the performance of all work in public and private rights of way, and includes the most current versions of National Electric Safety Code (“**NESC**”); the National Electrical Code (“**NEC**”); the regulations of the Federal Communications Commission (“**FCC**”), the Occupational Safety and Health Administration (“**OSHA**”), and other pertinent federal agencies; provisions of a city’s, a county’s, or State of Washington’s building, construction, zoning, and safety codes; and rules and regulations relating to permits for occupation of public rights of way; each of which is incorporated by reference in to this Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of a local, state, or federal authority having jurisdiction over such facilities.
- 2.3 “Arbitration” means the referral of a matter or set of issues to binding arbitration utilizing the AAA Commercial Arbitration Rules. The arbitrator’s decision shall be final and binding on the Parties. The arbitration shall occur within Skagit County, and the cost shall be borne equally between the Parties. Each party shall pay their own attorneys’ fees and costs incurred relating to this binding arbitration process. The arbitrator’s decision may be entered in a court of competent jurisdiction for enforcement purposes only.
- 2.4 “Astound Connectivity Service” means providing Communication Service to Customers and interconnection of the Backbone System with the Astound System, as further described in Section 5.
- 2.5 “Astound System” means the existing communications network and appurtenant network equipment owned and controlled by Astound in Skagit County, Washington.

- 2.6 “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; easements to private property; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation, or use of tangible or intangible public or private property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.
- 2.7 “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind applicable to the placement and maintenance of the Backbone System or the Astound System, as the case may be, whether imposed by a governmental authority or a private entity.
- 2.8 “Backbone System IRU” or “IRU” means Dark Fiber optic strands within the Backbone System in which an exclusive indefeasible right of use is granted to Astound by the Municipalities pursuant to this Agreement.
- 2.9 “Backbone System” means the Dark Fiber backbone system running from the Skagit Airport Hut to Concrete, Washington serving portions of east Skagit County.
- 2.10 “Case” means a fiber optic cable splice case.
- 2.11 “Communication Service” means the retail services provided by an ISP to a Customer Location, and may include without limitation, broadband internet access service, data transmission service, IP transport, VoIP service, telecommunications service, and video service, regardless of technology used, as set forth in service agreements between an ISP and a Customer.
- 2.12 “Customer” means a person, business, or other entity that lawfully receives Communication Services from an ISP.
- 2.13 “Dark Fiber” generally means fiber optic strands not connected to active electronic or optronic equipment and that do not currently transmit information.
- 2.14 “Effective Date” means the date upon which this Agreement is executed by the second and final signatory.
- 2.15 “FAT” means a fiber access terminal.
- 2.16 “ISP” means a provider of internet access services.
- 2.17 “Location” means a residence, entity, or business.
- 2.18 “Maintenance” or “Maintain” means work that must be performed upon or to the Backbone System to ensure the continuity of acceptable signal transmission to

and from a Customer for the purpose of delivering Communication Services in a manner consistent with industry standards and this Agreement, including but not limited to the Operating and Maintenance Specifications and Procedures attached as Exhibit C.

- 2.19 “NID” means a network interface device or slack box.
- 2.20 “Reserved Dark Fiber” means four (4) buffer tubes of the Backbone System Dark Fiber strands not made subject to the Backbone System IRU granted to Astound under this Agreement, and that are reserved for other uses by the Municipalities as described and discussed in Section 8.
- 2.21 “Service Drop” means installation of the Service Drop Materials required to connect the NID at a Customer’s Location with the Backbone System at a FAT or Case so that the Customer Location can obtain Communication Services through the Backbone System.
- 2.22 “Service Drop Materials” means, in general, the fiber optic cable and other physical materials that connects the Backbone System to a Customer’s Location at a FAT or Case from the closest technically feasible point in the right of way. The Service Drop Material consists of a common industry package of materials which includes (a) fiber-optic cable and sheathing which will run from the FAT/Case to the NID at the Customer Location; and (b) a NID to be attached to the Customer’s Location. Service Drop Materials shall not include any materials necessary for connecting the NID to any wiring or other equipment downstream (i.e., towards the Customer’s Location) of the NID.
- 2.23 “Underlying Rights” means any and all necessary right of way agreements, easements, licenses, leases, rights or other agreements necessary for the construction, use and occupancy of the Backbone System or the Astound System, as the case may be.

3.0 GRANT OF BACKBONE SYSTEM IRU TO ASTOUND

- 3.1 In consideration of Astound’s obligations under this Agreement, the Municipalities grant to Astound, and Astound accepts from the Municipalities, an exclusive, indefeasible right of use in certain Backbone System Dark Fiber strands, as described in this Section 3 (“Backbone System IRU”).
- 3.2 Description.
 - 3.2.1 The Backbone System IRU shall include all Dark Fiber strands in the Backbone System except the Reserved Dark Fiber. Astound shall utilize the IRU fiber strands during the Term, as defined in Section 3.6 below, for: (i) operation of the Backbone System by Astound, and (ii) provision of retail Communication Services by Astound.
 - 3.2.2 The Backbone System IRU shall not include the Reserved Dark Fiber, as described and discussed in Section 10.

- 3.3 Commencement of IRU. The Backbone System IRU shall commence upon the Effective Date of this Agreement (the “IRU Commencement Date”).
- 3.4 Underlying Rights. The Municipalities have obtained all required Underlying Rights relating to the Backbone System and shall use commercially reasonable efforts to maintain such Underlying Rights for the duration of the IRU. In the event Underlying Rights are not maintained during the Term, Astound shall be excused from performance obligations in this Agreement for which such Underlying Rights are required. The IRU is subject to the terms, conditions, limitations, restrictions and reservations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession.
- 3.5 Ownership; No Liens, Rights, or Claims. At no time during the IRU term shall Astound obtain legal ownership of the Backbone System IRU fiber, nor allow the Backbone System IRU fiber to be made subject to any encumbrance, lien, or security interest by any third party. If such a lien, right or claim is asserted, Astound will promptly and diligently undertake its removal at the sole cost of Astound.
- 3.6 Term of IRU. The Backbone System IRU shall commence as described in Section 3.3, and shall continue for a period of twenty (20) years from the IRU Commencement Date (the “Term”).
- 3.7 Other IRUs. Nothing in this Section shall be deemed or construed to prohibit the Municipalities from leasing, licensing, subleasing, granting indefeasible rights of use, or entering into similar agreements or arrangements with other persons respecting the Reserved Dark Fiber.

4.0 CONDITION AND RELOCATION OF THE BACKBONE SYSTEM

- 4.1 Condition. Astound has performed its own inspection of the Backbone System and is not relying on any representation or warranty of the Municipalities regarding the Backbone System’s condition. Astound accepts the Backbone System “as-is” and “where-is” based on its own inspection of the Backbone System.
- 4.2 Backbone System Relocation. If, during the Term, the Municipalities are required to relocate any portion of the Backbone System or any portion thereof (i) by any governmental authority under the power of eminent domain or otherwise; (ii) by the grantor or provider of any Underlying Rights; (iii) by any other person having the authority to so require (each a “Relocating Authority”); or (iv) by the occurrence of any Force Majeure Event, as defined in Section 21, the Municipalities shall notify Astound of the same and Astound shall have the right to either (a) proceed with such relocation at Astound’s sole cost and expense, including, but not limited to,

the right, in good faith, to reasonably determine the extent and timing of, and methods to be used for, such relocation; or (b) to pay such amounts to the Relocating Authority as are necessary to avoid the need for such relocation at Astound's sole cost and expense. If, and to the extent that, a relocation is not the result of a failure by the Municipalities to observe and perform their obligations under this Agreement, the costs of relocating of the Backbone System shall be paid and borne by Astound.

5.0 OPERATION OF BACKBONE SYSTEM

- 5.1 Generally. Astound shall operate the Backbone System IRU fiber as a fiber network to provide Communication Services to Customer Locations. Such operation will require: (i) installation and operation of certain equipment attached to Backbone System fiber optic strands necessary to light the Backbone System IRU fiber; (ii) interconnection of Backbone System fiber strands with the Astound System; and (iii) transmission of data through the Backbone System and Astound System (collectively, "Astound Connectivity Service").
- 5.2 Limited to Backbone System IRU Fiber. Unless otherwise agreed by the Parties, the Astound Connectivity Services shall apply only as to Backbone System IRU fiber strands.
- 5.3 Access to Backbone System IRU Fiber. Astound may access the Backbone System IRU fiber as needed to fulfill its obligations under this Agreement, subject to Underlying Rights and such reasonable premises access and security policies that may be communicated to Astound by the Municipalities.
- 5.4 Ongoing Operation. Astound may provide Communication Services to Customers through the Backbone IRU, in its sole discretion and at its sole cost.
- 5.5 Authorizations. Astound shall be responsible for obtaining any new, and maintaining all existing, required Authorizations, and payment of Authorization Fees, relating to the activities of Astound described in this Section including, but not limited to, all such Authorization Fees related to the Backbone System. All activities of Astound described in this Agreement shall be performed in accordance with Applicable Standards, industry standards, and applicable law.

6.0 SYSTEM MAINTENANCE

- 6.1 Maintenance of Backbone System.
 - 6.1.1 Astound shall, at its sole cost and expense, physically Maintain the entire Backbone System (including Reserved Dark Fiber, and not just the Backbone System IRU fibers), in a safe and serviceable condition, taking commercially reasonable measures so that the Backbone System will meet or exceed common industry standards for performance of like fiber facilities of like age under like circumstances. Astound shall not permit the

Backbone System to be damaged or depreciated in value by any negligent or intentional act or omission of Astound, its agents, or employees.

- 6.1.2 Astound shall perform all required Maintenance services relating to the Backbone System. Astound shall identify and repair and correct any material failure, interruption, or impairment in the operation of the Backbone System.
- 6.1.3 Without limiting the generality of the foregoing, Astound's Maintenance obligations are further specified in the Operations and Maintenance Specifications and Procedures attached hereto as Exhibit C.
- 6.1.4 Without limiting the generality of the foregoing, Astound shall schedule and perform periodic inspections (at a minimum, annually), will identify and repair and correct any material failure, interruption or impairment in the operation of the Backbone System.
- 6.1.5 Maintenance of Astound System. Astound shall, at its sole cost and expense except as otherwise provided in this Agreement, care for and Maintain the Astound System in a safe and serviceable condition, so that Astound Connectivity Service involving middle mile transport using the Astound System will meet or exceed common industry standards for performance of like facilities of like age under like circumstances. Astound shall schedule and perform periodic inspections (at a minimum, annually), will identify and repair and correct any material failure, interruption or impairment in the operation of the Astound System.
- 6.2 NOC. Astound shall operate a Network Operations Center ("NOC") to support the operation of the Backbone System.
- 6.3 Interruptions Involving Astound Connectivity Services. As further described in the Operations and Maintenance Specifications Procedures:
 - 6.3.1 Astound shall respond promptly to any reasonable complaints from the Municipalities regarding the Astound Connectivity Services.
 - 6.3.2 The Municipalities shall immediately notify the Astound NOC, or Astound personnel included in the Operations Escalation List set forth in Exhibit C, upon learning of any material interruption of Astound Connectivity Services. As soon as reasonably practicable thereafter, Astound shall notify the Municipalities of a restoration plan and timeline to complete restoration. Astound shall provide periodic progress updates to the Municipalities until the outage is restored.
 - 6.3.3 Astound shall respond to a material interruption of Astound Connectivity Service within 24 hours of receiving notice of such interruption and Astound shall continue diligently to remedy the interruption until cured. If such

interruption is not remedied after 48 hours of reporting, the Municipalities may remedy the interruption, the reasonable, actual cost of which shall be reimbursed by Astound.

- 6.4 Responsibility for Repair Cost. Notwithstanding the foregoing, in the event the Municipalities or its agents damage or permit damage to occur to the Astound System or the Backbone System, Astound shall be entitled to reimbursement for the full cost and expense of repair of such damage, including but not limited to reimbursement for damages associated with third party claims related thereto, and shall invoice the Municipalities for the reasonably and industry standard costs to repair any such damage.
- 6.5 Notice of Impending Damage. The Municipalities and Astound shall promptly notify each other of any known matters pertaining to, or the occurrence (or impending occurrence) of, any event that would be reasonably likely to give rise to any damage or impending damage to, or loss, of the Backbone System or the Astound System that are known to such Party.

7.0 SERVICE DROPS

- 7.1 *Reserved Dark Fiber Service Drops.* If requested by the Municipalities, Astound shall, at the Municipalities sole cost and expense, install Service Drops interconnecting with the Reserved Dark Fiber, which such request Astound shall not unreasonably condition, delay, or deny. Astound shall charge the Municipalities a reasonable market-based rate for any requested Service Drop installations. The Municipalities shall be responsible for: (i) obtaining, at no cost or expense to Astound, all Authorizations and Underlying Rights required such Service Drop and its installation. Astound shall be responsible for: (i) all work associated with installation of such Service Drop, including fiber splicing and (ii) performing such installation in full compliance with any and all permits, Underlying Rights, Authorizations, Applicable Standards, and industry standards, subject to Astound's right to charge the Municipalities for the same.

8.0 RESERVED DARK FIBER

- 8.1 The Municipalities shall retain all rights and control with respect to the Reserved Dark Fiber. The Municipalities have sole and exclusive right to use such Reserved Dark Fiber for any and all lawful purposes determined by the Municipalities in their sole discretion, with all costs and expenses relating to such use (including, without limitation, interconnection of third-party systems with the Reserved Dark Fiber) being the sole responsibility of the Municipalities. Without limiting the generality of the foregoing, the Municipalities shall be entitled to authorize other municipal entities including, but not limited to the municipal limited liability company SkagitNet LLC to utilize the Reserved Dark Fiber. Notwithstanding the foregoing, the Municipalities shall not authorize any ISPs to utilize the Reserved Dark Fiber to provide retail Communications Services to Customers.

9.0 BACKBONE SYSTEM FEE

9.1 Backbone System IRU Fee. As partial consideration for this Agreement, Astound shall pay the Municipalities a one-time fee totaling One Million Thirty-Thousand Dollars (\$1,030,000.00) (the “Backbone System IRU Fee”) in exchange for the Backbone IRU granted herein. The Backbone System IRU Fee shall be allocated between the Municipalities and paid as follows: \$ [REDACTED] made payable and delivered to the Port and \$ [REDACTED] made payable and delivered to the PUD. The Backbone System IRU Fee shall be due no later than thirty (30) days after the IRU Commencement Date.

10.0 USE OF SYSTEMS

10.1 Compliance with Applicable Laws and Regulations. Each Party will use the other Party’s System in compliance with, and subject to, all applicable government codes, ordinances, laws, rules, and regulations as they now exist or are hereinafter amended.

10.2 Limited Rights to Use. The Municipalities agree and acknowledge that they have no right to use the Astound System other than in connection with provision of Astound Connectivity Services. Astound agrees and acknowledges that it has no right to use the Backbone System for transport of information other than (i) to provide Astound Connectivity Service, (ii) in connection with retail Communication Service provided by Astound, or (iii) as the Parties may otherwise agree in writing during the Term.

10.3 No Interference.

10.3.1 The Municipalities shall not use Astound Connectivity Services nor the Astound System in a way that materially interferes with, or adversely affects the use of, Astound’s services provided to any other person using Astound Connectivity Services or the Astound System. Astound shall not use or permit the use of Astound Connectivity Services nor the Astound System in a way that materially interferes with, or adversely affects, the Backbone System.

10.3.2 Astound shall not use the Backbone System in a way that materially interferes with, or adversely affects the use of, the Backbone System or any other person using the Backbone System. The Municipalities shall not use or permit the use of the Backbone System in a way that materially interferes with, or adversely affects, use of the Astound System.

11.0 TERM AND TERMINATION

11.1 Term. This Agreement shall commence on the Effective Date and terminate on the IRU Termination Date set forth in Section 5.6, above (the “Term”).

11.2 Except as expressly provided elsewhere in this Agreement, termination or expiration of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration, and, as applied to such rights and obligations, this Agreement shall remain in full force and effect until such rights and obligations have been fulfilled or waived.

11.3 Bankruptcy.

11.3.1 Upon the occurrence of a bankruptcy or insolvency condition described below, the Municipalities, and not Astound, may proceed under the default and remedy procedures described in Section 13:

11.3.1.1 Astound commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws;

11.3.1.2 Any person commences an involuntary case against Astound under Title 11 of the United States Code or the corresponding provisions of any successor laws and either (A) the case is not dismissed by midnight at the end of the 60th day after commencement or (B) the court before which the case is pending issues an order for relief or similar order approving the case;

11.3.1.3 A court of competent jurisdiction appoints, or Astound makes an assignment of all or substantially all of its assets relating to this Agreement to, a custodian (as that term is defined in Title 11 of the United States Code or the corresponding provisions of any successor laws) for Astound of all or substantially all of its assets; or

11.3.1.4 Astound fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.

11.3.2 The Parties agree and acknowledge that, notwithstanding the occurrence of a bankruptcy or insolvency condition described above, Astound shall be required to continue to perform its obligations under this Agreement without interruption. Astound and the Municipalities acknowledge that the market value of the Astound System, the Backbone System, and the Backbone System IRU will be significantly and adversely affected in the event of a cessation or interruption of Astound Connectivity Services, Maintenance of the Backbone System, and other Astound obligations set forth in this Agreement. Unless this Agreement is terminated by the Municipalities following a Astound bankruptcy or insolvency condition, Astound shall continue to provide Astound Connectivity Services and perform Maintenance on the Backbone System throughout a bankruptcy proceeding to the extent permitted by law and the consideration for such continued Astound Connectivity Service and Maintenance is included as part of the consideration received by Astound in this Agreement.

- 11.4 Events Upon Termination. Following expiration of the Term in the event Astound elects not to Purchase the Backbone System as set forth in Section 12, the Backbone System IRU shall immediately terminate, all rights of Astound to use the Backbone System under this Agreement shall cease, and the Municipalities shall owe Astound no further duties or consideration. Astound shall then either (i) commence payment to the Municipalities of a commercially reasonable lease fee in exchange for Astound's continued use of the Backbone System, consistent with the Municipalities' standard terms or conditions, or (ii) promptly (and in no case later than sixty (60) days following such termination or expiration) remove all of Astound's electronics, equipment, and other Astound property from the Backbone System at Astound's sole cost and under the Municipalities' supervision. Termination of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration.

12.0 ASTOUND PURCHASE UPON EXPIRATION

- 12.1 So long as Astound is not in breach of this Agreement, Astound will purchase the entirety of the Backbone System (the "Purchase"), including Reserved Dark Fiber, upon conclusion of the Term for a purchase price of One Dollar (\$1.00) (the "Purchase Price"). Astound may elect not to Purchase the Backbone System, in which case Astound shall notify the Municipalities in writing at least ninety (90) days prior to the conclusion of the Term that Astound elects not to execute the Purchase.
- 12.2 Astound shall provide notice of its election not to exercise its Purchase right hereunder to the Municipalities at least ninety (90) days prior to the conclusion of the Term; provided, however, that any failure to provide such notice shall not affect Astound's right not to Purchase the Backbone System upon conclusion of the Term.
- 12.3 Following expiration, upon Astound's payment of the Purchase Price, the Municipalities shall irrevocably convey and transfer to Astound full and complete ownership of the entirety of the Backbone System, free and clear of any and all liens, adverse claims, security interests and other encumbrances, by executing and delivering to Astound a bill of sale substantially in the form attached hereto as Exhibit D (or in such other form as may be legally sufficient at the time) (the "Backbone System Bill of Sale"). Schedules 1 and 2 to the Backbone System Bill of Sale, as set forth in Exhibit D hereto, shall be revised prior to signature by the Parties, as appropriate, to include all Backbone System build-out within the Service Area of the Backbone System. The Municipalities further agrees to execute and deliver to Astound such further written instruments and documentation reasonably required to effectuate, memorialize, and/or otherwise document such conveyance and transfer upon reasonable, written request therefor by Astound. The consideration for the Purchase includes the obligations of Astound undertaken under this Agreement during the Term.

- 12.4 Contingent Assignment of Third-Party Agreements. Upon the effective date of the Backbone System Bill of Sale, the Municipalities shall be deemed to have automatically assigned to Astound, and Astound shall be deemed to have automatically assumed from the Municipalities, all of the Municipalities' rights, interests, duties, and obligations in, under any, and of any then-existing third-party agreements granting rights of use in the Backbone System, subject to the Municipalities' right for an irrevocable right to use the Reserved Dark Fiber, as set forth in Paragraph 12.6, below. Astound shall defend, indemnify, and hold the Municipalities harmless for any claims, losses, or liabilities relating to Astound's or its agents' actions under such third-party agreements after the effective date of the Backbone System Bill of Sale. The Municipalities and Astound shall work cooperatively before and after the effective date of the Backbone System Bill of Sale to take any additional steps required to transfer such third-party agreements to Astound.
- 12.5 Contingent Assignment of Backbone System Underlying Rights. Upon the effective date of the Backbone System Bill of Sale, the Municipalities shall be deemed to have automatically assigned to Astound, and Astound shall be deemed to have automatically assumed from the Municipalities, all of the Municipalities' rights, title, interests, duties, and obligations in, under any, and of the Backbone System Underlying Rights. Astound shall defend, indemnify, and hold the Municipalities harmless for any claims, losses, or liabilities relating to Astound's or its agents' actions under the Backbone System Underlying Rights after the effective date of the Backbone System Bill of Sale. The Municipalities and Astound shall work cooperatively before and after the effective date of the Backbone System Bill of Sale to take any additional steps required to transfer the Backbone System Underlying Rights to Astound.
- 12.6 Post Purchase Reserved Dark Fiber IRU Agreement. Concurrent with the Parties' execution of the Backbone System Bill of Sale, the Parties shall execute the "Post Purchase Reserved Dark Fiber IRU Agreement," attached hereto as Exhibit E, granting the Municipalities an indefinite right to utilize the Reserved Dark Fiber for so long as the Backbone System remains functional, regardless of who owns said Backbone System.

13.0 ASSIGNMENT

- 13.1 Generally. Except as otherwise provided herein, neither Party may assign this Agreement, or any rights or duties under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably delayed, conditioned, or withheld. Notwithstanding the foregoing, the Municipalities can reasonably assign this Agreement, or any rights or duties under this Agreement to other municipal corporations or an entity wholly owned by municipal corporations without the prior written consent of Astound.
- 13.2 Assignment to Affiliate of Astound. The foregoing notwithstanding, Astound (referred to in this Section 13.2 as the "Assigning Party") may, without the prior

consent of, but upon notice to, the Municipalities, assign this Agreement to an affiliate of the Assigning Party, the parent of the Assigning Party, or to any company into which the Assigning Party may be merged or consolidated, or that acquires substantially all of the assets or stock of Assigning Party; provided, the assignee shall be subject to all the provisions of this Agreement. An “affiliate” of the Assigning Party shall mean any corporation which, directly or indirectly, controls, is controlled by, or is under common control with the Assigning Party, or a successor corporation to the Assigning Party by merger, consolidation, or non-bankruptcy reorganization. For purpose of the definition of “affiliate,” the word “control” (including “controlled by” and “under common control with”) shall mean, with respect to any corporation, partnership, or association, the possession, directly or indirectly, of the power to direct or, to cause the direction of, the management and policy of a particular corporation, partnership, or association, whether through the ownership of voting securities, by contract, or otherwise. Astound shall not attempt to circumvent any of its obligations under this Agreement, or to deprive the Municipalities of any anticipated benefit under this Agreement, through the use of ownership changes, reorganizations, creation of new entities, or other artificial devices.

- 13.3 Assignment for Collateral. Each Party (referred to in this Section 13.3 as the “Assigning Party”) shall also have the right, upon thirty (30) days prior written notice, and without the other Party’s consent, to assign or otherwise transfer this Agreement as collateral to any institutional lender or as bond collateral (including revenue bonds) to the Assigning Party (or institutional lender to any permitted transferee or assignee of the Assigning Party); provided, that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, and, upon execution on the collateral, shall be responsible for the performance of all terms and conditions of this Agreement until such time as it transfers the collateral. Lender shall not be restricted from exercising any right of enforcement or foreclosure, with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the other Party to this Agreement agrees to accept performance of this Agreement by the assignee, so long as the assignee is subject to the provisions of this Agreement.

14.0 DEFAULT AND REMEDIES

- 14.1 Default Defined. The term “default,” as used in this Agreement, is defined as follows: A default shall be deemed to have occurred under this Agreement if, in the case of a material breach of this Agreement by a Party, that Party fails to cure such material breach within thirty (30) days after delivery to it of written notice specifying such breach; provided, however, that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.

- 14.2 Remedies Upon Default. Upon the occurrence of a default, the non-defaulting Party shall have all remedies available at law or at equity not otherwise excluded herein, including, but not limited to, termination of this Agreement, damages, specific performance, and/or relief from further performance. Each such remedy shall be cumulative and not exclusive. Without limiting the foregoing, (i) in the case of default by Astound, the Municipalities may, after providing written notice to Astound, operate, maintain, or repair the Astound System and/or Backbone System to the extent necessary, reserving the cost as damages against Astound.
- 14.3 No Termination of Connectivity Services. Notwithstanding anything to the contrary in this Agreement, Astound may not terminate the Municipalities' right to use the Astound System for transmission over the Reserved Dark Fiber for any reason prior to the expiration of the Term of this Agreement.
- 14.4 Municipalities' Cure Rights. Notwithstanding any other provision of this Agreement, in the event Astound does not or is unable to perform the services in conformance with the terms of this Agreement, regardless of reason or Astound's good faith attempts, the Municipalities may (but are not obligated), upon written notice to Astound reasonable under the circumstances (but without authorization from Astound), perform such services or work and/or take such action that it deems necessary. In such instances, the Municipalities may request Astound to pay the Municipalities an amount equal to the actual costs of services performed by the Municipalities. If the Municipalities request payment, Astound will remit payment to the Municipalities within thirty (30) days from the date of Municipalities' invoice
- 14.5 Injunctive Relief. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms, and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder and/or injunctive relief, in addition to any other right or legal remedy available to such Party.
- 14.6 Purchase Right is Essential. The Parties acknowledge and agree that Astound's right to purchase the Backbone System at the end of the Term, as specified in Section 12, is an essential expectation of, and comprises significant value to, Astound under this Agreement, in exchange for which Astound will have expended significant resources in performing its obligations throughout the Term. Equitable remedies relating to any early termination of this Agreement shall take into account the then-present value of Astound's Purchase.

15.0 MEDIATION

- 15.1 Pre-Litigation Mediation. Prior to filing a lawsuit related to or arising out of this Agreement, the Parties shall engage in mediation utilizing a mutually agreeable mediator or, in the event the Parties cannot agree on a mediator, then one appointed by the American Arbitration Association. Either Party can demand mediation by sending written notice to the other Party. Each Party shall pay its

own attorneys' fees and costs incurred in such mediation. The Parties shall each pay one-third (1/3) of the mediator's fees.

16.0 COMPLIANCE WITH APPLICABLE LAW

16.1 Generally. The Parties shall comply with all applicable laws, rules, government requirements and directives, Applicable Standards and Authorizations relating to a Party's performance of its obligations, and enjoyment of rights conferred, under this Agreement.

17.0 LIMITATIONS OF LIABILITY; INDEMNIFICATION

17.1 ONLY ACTUAL DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PARTIES SHALL BE LIABLE TO THE OTHER PARTIES OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL COSTS, LIABILITIES, OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.

17.2 Mutual Indemnification. To the extent permitted by law, each Party hereby agrees to defend and indemnify the others and their respective managers, members, officers, commissioners, and employees from and against, and assume liability for, any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims"), to the extent and in proportion that such Claims arise from the negligent, grossly negligent, or willful act of the indemnifying Party or its officers, employees, servants, affiliates, agents, contractors, licensees, invitees, or vendors.

17.3 LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES. For purposes of the foregoing indemnification provision, and only to the extent of Claims against each other under such indemnification provision, each Party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, the United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

18.0 INSURANCE

18.1 Astound Insurance. Throughout the Term of this Agreement, Astound shall maintain insurance coverages of the types and in the minimum amounts set forth below at its expense, as applicable:

<u>Type of Insurance:</u>		<u>Limit:</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2,000,000
	Prod./Comp. op. Agg.	\$2,000,000
	Personal & Adv. Injury	\$2,000,000
	Each Occurrence	\$2,000,000
Automobile Liability, including any auto, hired auto, and non-owned autos	Combined Single Limit	\$2,000,000
Excess Liability, Umbrella Form	Each Occurrence	\$2,000,000
	Aggregate	\$2,000,000

18.2 Astound Insurance: Additional Insured Status and Other Provisions. The insurance policy or policies providing the foregoing insurance coverages shall name the Municipalities as an additional insured by way of a policy endorsement. Astound shall provide to the Municipalities certificate(s) of insurance and, if requested by the Municipalities, a copy of any policy providing any portion of such required coverage. Receipt of such certificate or policy by the Municipalities does not constitute approval by the Municipalities of the terms of such policy. Furthermore, the policy of insurance required herein (or each such policy, if more than one) shall (i) be written as a primary and non-contributory policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to the Municipalities except upon forty-five (45) days' prior written notice from the insurance company to the Municipalities; (iii) contain an express waiver of any right of subrogation by the insurance company against the Municipalities; (iv) expressly provide that the defense and indemnification of the Municipalities as an "additional insured" will not be affected by any act or omission by the Municipalities which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

18.3 Municipalities' Insurance. Throughout the Term of this Agreement, the Port and PUD shall each maintain insurance coverages of the types and in the minimum amounts set forth below at its expense, as applicable:

<u>Type of Insurance:</u>		<u>Limit:</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2,000,000
	Prod./Comp. op. Agg.	\$2,000,000
	Personal & Adv. Injury	\$2,000,000
	Each Occurrence	\$2,000,000
Automobile Liability, including any auto, hired auto, and non-owned autos	Combined Single Limit	\$2,000,000
Excess Liability, Umbrella Form	Each Occurrence	\$2,000,000
	Aggregate	\$2,000,000

18.4 Municipalities' Insurance: Additional Insured Status and Other Provisions. The insurance policy or policies providing the Municipalities' insurance coverages required by Section 18.3, above, shall name Astound as an additional insured by way of a policy endorsement. The Municipalities shall provide to Astound certificate(s) of insurance and, if requested by the Astound, a copy of any policy providing any portion of such required coverage. Receipt of such certificate or policy by Astound does not constitute approval by Astound of the terms of such policy. Furthermore, the policy of insurance required herein (or each such policy, if more than one) shall (i) be written as a primary and non-contributory policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to Astound except upon forty-five (45) days' prior written notice from the insurance company to Astound; (iii) contain an express waiver of any right of subrogation by the insurance company against Astound; (iv) expressly provide that the defense and indemnification of Astound as an "additional insured" will not be affected by any act or omission of Astound which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

18.5 CASUALTY LOSS. Each Party agrees that neither Party nor each Party's managers, members, shareholders, officers, commissioners, directors, employees, insurance carriers, or casualty policies shall be responsible to the first

(1st) Party for any property loss or damage done to the first (1st) Party's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever, where such loss has arisen, directly or indirectly, in whole or in part, from this Agreement. It shall be each Party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the other Party, third party, or act of nature. In this regard, each Party hereby releases and discharges the other Party and such other Party's managers, members, shareholders, officers, commissioners, directors.

18.5.1 The Municipalities' Obligation to Rebuild the Backbone System. Notwithstanding the foregoing in Section 18.5 above, in the event of any casualty loss to the Backbone System for which the Municipalities receive any insurance recovery or recovery from any other third party, and if the recovery or sum of the recoveries so received by the Municipalities shall be sufficient to fund rebuilding of the Backbone System, the Municipalities shall proceed expeditiously to rebuild the Backbone System and diligently prosecute such rebuilding until the Backbone System shall be fully restored.

18.5.1.1 If the proceeds from the above-mentioned recovery or recoveries are insufficient to fully fund rebuilding of the Backbone System, then the Municipalities shall expeditiously commence and diligently prosecute to completion the building of such portion or portions of the Backbone System as to which the recoveries so received by the Municipalities shall be sufficient. The portion of portions of the Backbone System to be rebuilt shall be determined by the Municipalities in consultation with Astound; however, the Municipalities reserves sole and absolute discretion to make final decisions on which portions of the Backbone System to rebuild.

18.5.1.2 If the Municipalities will rebuild only a portion or portions of the Backbone System as described in the preceding subparagraph, Astound shall have the right to rebuild the Backbone System, or such portion or portions thereof, not rebuilt by the Municipalities as Astound, in its sole discretion, shall determine to rebuild. In the event Astound rebuilds any portion of the Backbone System hereunder, upon written request therefor delivered by Astound to the Municipalities, the Municipalities shall, without cost or expense to Astound, assign or otherwise convey to Astound all such Municipalities' Underlying Rights as shall be necessary and/or convenient thereto, and title to such portion or portions of the Backbone System as so rebuilt by Astound shall be vested in Astound.

18.5.2 Astound's Obligation to Rebuild the Astound System. Notwithstanding the foregoing in Section 18.5 above, in the event of any casualty loss to the

Astound System which prevents Astound from providing the Astound Connectivity Service to the Municipalities, Astound shall proceed expeditiously to rebuild the Astound System to the extent necessary to restore the Astound Connectivity Service to good working order and shall diligently prosecute such rebuilding until the Astound Connectivity Service is fully restored. If rebuilding the Astound System is commercially impracticable, Astound shall arrange and provide alternative connectivity services supporting Backbone System operation during the Term, to the reasonable satisfaction of the Municipalities.

19.0 TAXES AND GOVERNMENT IMPOSITIONS

19.1 Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.

20.0 REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGEMENTS

20.1 Representations and Warranties of Astound. Astound represents and warrants that, for all purposes, including, without limitation, for purposes of Section 541(d) of the Bankruptcy Code, as follows:

- a. Astound is duly organized, valid existing, and in good standing under the laws of the State of Washington, and is registered to do business in the State of Washington.
- b. This Agreement is a valid and legally binding obligation of Astound, and is enforceable against Astound in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Neither the execution and delivery of this Agreement, acceptance of the Backbone System IRU, nor provision of Astound Connectivity Services will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under (i) Astound's organizational documents; (ii) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either Astound is a party or by which Astound is bound; or (iii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.
- d. No consent from, or other approval of, any governmental entity or agency, or any other person or entity, is necessary in connection with the execution, delivery, or performance of this Agreement.
- e. The undersigned has full authority to execute this Agreement on behalf of Astound.

- f. Astound has the financial, technical, and management expertise and experience to fully perform all of the Astound's obligations under this Agreement.

20.2 Representations and Warranties of the Port.

- a. The Port is duly organized, valid existing, and in good standing under Washington municipal corporation organized pursuant to Title 53 RCW.
- b. This Agreement is a valid and legally binding obligation of the Port, and is enforceable against the Port in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Neither the execution and delivery of this Agreement nor grant of the Backbone System IRU will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, (i) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either the Port is a party or by which Port is bound; or (ii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.
- d. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery, or performance of this Agreement.
- e. The undersigned has full authority to execute this Agreement on behalf of the Port.

20.3 Representations and Warranties of the PUD.

- a. The PUD is duly organized, valid existing, and in good standing under Washington municipal corporation organized pursuant to Title 54 RCW.
- b. This Agreement is a valid and legally binding obligation of the PUD, and is enforceable against the PUD in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Neither the execution and delivery of this Agreement nor grant of the Backbone System IRU will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, (i) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either the PUD is a party or by which PUD is bound; or (ii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.

- d. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery, or performance of this Agreement.
- e. The undersigned has full authority to execute this Agreement on behalf of the PUD.

21.0 FORCE MAJEURE

21.1 None of the Parties shall be in default under this Agreement if, and to the extent that, any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; wind; flood; fiber cut, cable cut, or other material failures, shortages or unavailability, and then, only during such periods as may be required to reasonably repair the fiber cut, cable cut, or other material failures shortages, or unavailability, or other delay in delivery not resulting from the responsible Party's failure; failure of third-party power or system failures; lack of or delay in transportation not resulting from the responsible Party's failure; government codes, ordinances, laws, rules, regulations, or restrictions; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize the Municipalities' or Astound's Underlying Right; inability of the Municipalities to obtain access to the Astound System not resulting from Astound's failure; inability of Astound to obtain access to the Backbone System not resulting from the Municipalities' failure; or any other cause beyond the reasonable control of such Party.

22.0 NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, via registered or certified mail with a return receipt requested, by electronic mail, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Astound at:

Astound Broadband, LLC
 ATTN: _____

E-mail: _____

All notices and other communications shall be given to Port at:

Port of Skagit
 ATTN: 15400 Airport Dr.
 Burlington, WA 98233

E-mail: _____

All notices and other communications shall be given to PUD at:

ATTN: Skagit PUD
1415 Freeway Dr.
Mt. Vernon, WA 98273

E-mail: _____

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may, by similar notice given, change the address to which future notices or other communications shall be sent.

23.0 MISCELLANEOUS TERMS

23.1 Binding Effect. This Agreement, and each of the Parties' respective rights and obligations under this Agreement, shall be binding on, and shall inure to the benefit of, the Parties hereto and each of their respective permitted successors and assigns.

23.2 Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.

23.3 Governing Law, Jurisdiction, And Venue. This Agreement, and all disputes or claims arising therefrom, shall be governed by, and construed in accordance with, the laws of the State of Washington. Exclusive and sole jurisdiction and venue shall be in the Washington State Superior Court in the county wherein the Municipalities have their principal offices, and not in any other federal or state court. There shall be no right of removal to any federal court, which rights both Parties expressly and irrevocably waive. The Parties expressly and irrevocably waive the right to trial by jury.

23.4 Rules of Construction. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

(a) Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed. All listing of items shall not be taken

to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.

- (b) Except as set forth to the contrary herein, any right or remedy of Municipalities or Astound shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- (c) Except as specifically set forth herein, nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.
- (d) This Agreement has been fully negotiated and jointly drafted between and by the Parties.
- (e) All actions, activities, consents, approvals, and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement, the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.

23.5 Entire Agreement. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Attachments referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Attachments hereto are inconsistent with the express terms of this Agreement, the terms of the Attachments shall prevail. This Agreement may only be modified or supplemented by an instrument in writing, executed by each Party, and delivered to the Party relying on the writing.

23.6 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer, or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Article and shall be entitled to enforce the obligations of this Article.

23.7 Relationship of the Parties. The relationship between the Municipalities and Astound shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. The Municipalities and Astound, in performing any of their obligations hereunder, shall be independent contractors or independent parties, and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

- 23.8 Change In Law. If changes in applicable laws, regulations, rules or orders materially affect either Party's ability to lawfully fulfill any of its obligations under this Agreement, the Parties agree to negotiate and execute appropriate changes to this Agreement. If changes in applicable laws, regulations, rules or orders make either Party's continued fulfillment of its obligations under this Agreement commercially impracticable, either Party may propose an appropriate amendment to this Agreement.

- 23.9 Severability. If any term, covenant, or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

- 23.10 Survival. All obligations of in this Agreement shall not cease upon the termination of this Agreement, and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.

- 23.11 Time. It is mutually agreed and understood that time is of the essence of this Agreement.

- 23.12 Attorneys' Fees. The substantially prevailing party in any action to enforce any term or condition of this Agreement shall be entitled to an award of their reasonable costs and attorneys' fees.

- 23.13 Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which taken together shall constitute one (1) and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile, or other electronic signature, by any of the parties to any other party, and the receiving party may rely on the receipt of such document, so executed and delivered by facsimile, or other electronic means, as if the original had been received.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

THIS AGREEMENT CONTAINS INDEMNIFICATIONS, RELEASES, AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES.

PORT OF SKAGIT

ASTOUND BROADBAND, LLC

By: _____
 Title: _____

By: _____
 Title: _____

**PUBLIC UTILITY DISTRICT NO. 1
OF SKAGIT COUNTY**

By: _____
Title: _____

EXHIBIT A:

Backbone System Description

The Municipalities' backbone fiber network in the Skagit County, Washington running from the Skagit Airport Hut to Concrete, Washington. It is ~_____ miles long.

[Insert map of Backbone System here]

EXHIBIT B:

Astound System Description

Astound provides Internet and related services to customers and businesses throughout Skagit County utilizing Fiber, Coax and Wireless technologies with a focus on rural residential access. Astound will provide a demarcation point to interconnect with the Backbone System to facilitate the needed connectivity to support internet access for residential and business users and the Municipalities' use of the Reserved Dark Fiber.

[Insert depiction of Demarcation Point]

EXHIBIT C:

Operations and Maintenance Specifications and Procedures

1. DEFINED TERMS

- (a) "Routine Maintenance" is all preventive maintenance activities, upgrades and repairs, including but not limited to those activities outlined in this Attachment.
- (b) "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance that requires restoration.

2. GENERAL

- 2.1.** Astound's personnel will dispatch maintenance and repair personnel along the Backbone System to handle and repair problems detected by Astound, the Municipalities, an ISP, a Customer, or otherwise.
- 2.2.** Astound's maintenance employees will be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Astound will dispatch its first maintenance employee to a site requiring an emergency maintenance activity as soon as practicable from the time an emergency alarm is identified by Astound's NOC or emergency notification is received by the Municipalities, an ISP, a Customer, or otherwise, whichever occurs first. In the case of a catastrophic event requiring emergency service to multiple sites, Astound will dispatch maintenance employees on an emergency basis with response times commensurate with the magnitude of the event and subject to commercial impracticability.
- 2.3.** The Municipalities will utilize the list of escalation contacts ("Operations Escalation List") provided by Astound to report and seek immediate initial redress of exceptions noted in the performance of Astound in meeting maintenance service objectives. Astound may update the Operations Escalation List from time to time.
- 2.4.** Astound will take workmanlike care to prevent impairment to the signal continuity and performance of the Backbone System. The precautions to be taken by Astound will be notified to the Municipalities. In addition, Astound will reasonably cooperate with the Municipalities in sharing information and analyzing any disturbances regarding the Backbone System.
- 2.5.** Non-emergency work that is reasonably expected to produce any signal discontinuity must be coordinated between the Parties and performed in accordance with Scheduled Maintenance Procedures. "Scheduled Maintenance Procedures" or "SMP" means a pre-arranged period of time reserved for performing certain work the Astound System or Backbone System that may impact Customer's telecommunications services. Unless otherwise agreed by the Municipalities, SMP will be completed after midnight and

before 6:00 a.m., local time. Major work such as fiber rolls and hot cuts will also be scheduled utilizing SMP.

- 2.6. Astound will maintain the Backbone System in a manner that permits normal operation of the equipment associated with the Backbone System. Such maintenance includes, but is not limited to, landscaping, weed control, fence repair, installation and operation of smoke detectors, air conditioning, power and trash removal.

3. BACKBONE SYSTEM

- 3.1. Astound will maintain the Backbone System in good and operable condition and repair the Backbone System in a workmanlike manner. Astound will maintain the Backbone System in a manner that permits normal operation of the Backbone System.
- 3.2. Astound will subscribe to state one-call, Call before You dig service and ensure the Backbone System is registered. Astound will perform all required locates. Astound will have qualified representatives on site at any time another company is crossing the Backbone System or digging within sixteen (16) inches of the Backbone System. Astound will maintain all signposts along the Backbone System with the number of the “call before you dig” organization.
- 3.3. Astound will perform appropriate Routine Maintenance on the Backbone System in accordance with Astound’s then-current preventative maintenance procedures. Astound’s maintenance procedures will not substantially deviate from standard industry practice.

4. RESTORATION OF FIBER CUT

- 4.1. When restoring a cut fiber, the Parties agree to work together to restore all traffic as quickly as possible. Astound, immediately upon arriving on the site of the cut, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- 4.2. It will be the responsibility of Astound and the Municipalities to report to one another any known environmental hazards that would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operations.
- 4.3. Upon notification of interruption of fiber service or other information indicating a potential fiber cut, Astound will mobilize technicians to achieve necessary repair or restoration, including, but without limitation, using reasonable efforts to have maintenance personnel at the affected site within four (4) hours after receipt of such notice and repair completed within eight (8) hours from notice with the required restoration material and equipment.
- 4.4. The requirement for detection of the fault location is “as exact as possible” utilizing test records, fiber documentation, GPS coordinates and OTDR test results of the affected portions of the Backbone System.

4.5. Astound's maintenance employees will be responsible for correcting or repairing fiber discontinuity or damage, including, but not limited to, the emergency repair of the Backbone System. Astound will repair the traffic-affecting discontinuity as soon as possible after learning of the discontinuity or the service-affecting situation.

4.6. Astound will maintain sufficient capability to teleconference with the Municipalities during an emergency repair in order to provide continuous communication. With respect to restoration of open fibers on fiber strands not immediately required for service, the repair will be scheduled for the next available SMP.

5. OPERATIONS ESCALATION LIST

<u>Escalation List:</u>		<u>Contact</u>
Support	Email	add
	Phone	add
NOC	Email	add
	Phone	add

Initial contact should be to support and they'll escalate to the NOC.

EXHIBIT D:

Bill of Sale – Backbone System

KNOW ALL MEN BY THESE PRESENTS: That for and in consideration of the payment of One Dollar (\$1.00), the terms and conditions of that certain IRU Agreement dated _____, 20__, and other good and valuable consideration, **THE PORT OF SKAGIT**, a Washington municipal corporation (the “Port”) and the **PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY**, A Washington municipal corporation (the “PUD”), do hereby convey, grant, bargain sell, assign, and transfer to **ASTOUND BROADBAND, LLC**, a Washington limited liability company (“Astound”), the fiber optic strands and related conduit, vaults, and appurtenances described on Schedule 1 and depicted on Schedule 2 hereto (the “Backbone System”).

The Backbone System is sold “AS IS, WHERE IS”, with all faults in its present state and condition as of the closing, with no rights of recourse against the Port or the PUD, and without any representations or warranties of any kind whatsoever, express or implied, by the Port or the PUD or any of their respective employees or agents, except for the warranty of title set forth below.

The Port and PUD hereby warrant that they have good and legal title to the Backbone System, and that the Backbone System is sold free and clear of all liens, security interests, and encumbrances of any kind and nature.

IN WITNESS WHEREOF, the Port, the PUD and Astound have hereunto set their signatures, hand, and seal this ____ day of _____, 20__.

PORT OF SKAGIT

ASTOUND BROADBAND, LLC

By: _____
Title: _____

By: _____
Title: _____

**PUBLIC UTILITY DISTRICT NO. 1
OF SKAGIT COUNTY**

By: _____
Title: _____

Schedule 1 (Exhibit D):

[Backbone System Description]

The Municipalities' backbone fiber network in the Skagit County, Washington running from the Skagit Airport Hut to Concrete, Washington. It is ~_____ miles long.

Schedule 2 (Exhibit D):

[Backbone System Map]

[Insert map of Backbone System here]

EXHIBIT E:
Post Purchase Reserved Dark Fiber IRU Agreement

POST PURCHASE RESERVED DARK FIBER IRU AGREEMENT

THIS POST PURCHASE RESERVED DARK FIBER IRU AGREEMENT (“Agreement”) is made and entered into as of this ___ day of _____ 20__ between the Port of Skagit, a Washington municipal corporation having its principal offices at 15400 Airport Drive, Burlington, WA 98233 (the “**Port**”), the Public Utility District No. 1 of Skagit County, a Washington municipal corporation having its principal offices at 1415 Freeway Drive, Mount Vernon, WA 98273 (the “**PUD**”), and Astound Broadband, LLC, a Washington limited liability company having its principal offices at 3700 Monte Villa Pkwy, Bothell, WA 98021 (“**Astound**”). The Port, the PUD, and Astound are sometimes individually referred to herein as a “Party” or collectively as the “Parties”. The Port and the PUD shall be collectively referred to herein as the “Municipalities.”

RECITALS

1. Pursuant to a Bill of Sale of even date herewith (the “Bill of Sale”), Astound purchased a dark fiber backbone system running from the Skagit Airport Hut to Concrete, Washington serving portions of east Skagit County as described on Exhibit 1 (the “**Purchased System**”), from the Municipalities.
2. Subsequent to execution of the Bill of Sale, the Purchased System became part of the larger communications network that Astound owns, controls and operates in the region (the “**Astound System**”).
3. Pursuant to RCW 53.08.370, the Port is authorized to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the Port’s geographic limits for the Port’s own use, and for the provision of telecommunications services within or without the Port’s geographic limits.
4. Pursuant to RCW 54.16.330, the PUD is authorized to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the PUD’s geographic limits for the PUD’s own use, and for the provision of telecommunications services within or without the PUD’s geographic limits.
5. As a condition of selling the Purchased System to Astound, Astound was required to grant the Municipalities certain use rights in a portion of the Purchased System (the “**Reserved Dark Fiber**”).
6. The Municipalities and Astound desire to enter into this Agreement whereby, in general: (i) Astound will grant the Municipalities an indefeasible right of use (“**IRU**”) to a portion of the fiber optic strands within the Purchased System; (ii) the Municipalities shall have the right to utilize those strands for all lawful purposes including, but not limited to, offering, provisioning, and providing broadband and other advanced communication services; and (iii) Astound will interconnect the Municipalities’ Reserved Dark Fiber strands with the Astound System as necessary for the Municipalities to utilize those strands consistent with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the Parties do hereby agree as follows:

1.0 TABLE OF EXHIBITS MADE PART OF THIS AGREEMENT

Exhibit 1: Purchased System Description and Map

Ex. 1, Schedule A: Purchased System Description

Ex. E, Schedule B: Purchased System Map

Exhibit 2: Operations and Maintenance Specifications and Procedures

2.0 DEFINITIONS

- 2.1 “Agreement” means this Post Purchase Reserved Dark Fiber IRU Agreement, and any and all Exhibits, Addenda, and Attachments to which the Parties may agree from time to time and which reference this Post Purchase Reserved Dark Fiber IRU Agreement.
- 2.2 “Applicable Standards” means all applicable rules and regulations and engineering and safety standards governing the installation, maintenance, and operation of network facilities and the performance of all work in public and private rights of way, and includes the most current versions of National Electric Safety Code (“**NESC**”); the National Electrical Code (“**NEC**”); the regulations of the Federal Communications Commission (“**FCC**”), the Occupational Safety and Health Administration (“**OSHA**”), and other pertinent federal agencies; provisions of a city’s, a county’s, or State of Washington’s building, construction, zoning, and safety codes; and rules and regulations relating to permits for occupation of public rights of way; each of which is incorporated by reference in to this Agreement, and/or other reasonable safety, engineering, architectural or aesthetic requirements of a local, state, or federal authority having jurisdiction over such facilities.
- 2.3 “Astound Connectivity Service” means allowing: (i) interconnection of the Reserved Dark Fibers with the Astound System as necessary for the Municipalities to utilize the Reserved Dark Fibers pursuant to this Agreement.
- 2.4 “Astound System” means the existing communications network and appurtenant network equipment owned and controlled by Astound in Skagit County, Washington.
- 2.5 “Authorizations” means the permissions a Party must have to perform its obligations under this Agreement, which may include franchises; licenses; permits; zoning approvals; variances; exemptions; grants of authority to use public rights of way or facilities; easements to private property; agreements to make attachments to poles, ducts, conduits, towers, buildings, rooftops, manholes, and the like; and any other approval of a governmental authority or third persons with respect to (i) the construction, installation, repair, maintenance, operation, or use of tangible or

intangible public or private property, as the case may be, or (ii) any requirement by a governmental authority for the engagement in a business or enterprise.

- 2.6 “Authorization Fees” means all permit, right-of-way, easement, pole attachment, franchise, encroachment, or license fee, charge or assessment of any kind applicable to the placement and maintenance of the Astound System, as the case may be, whether imposed by a governmental authority or a private entity.
- 2.7 “Case” means a fiber optic cable splice case.
- 2.8 “Communication Service” means the retail services provided by an ISP to a Customer Location, and may include without limitation, broadband internet access service, data transmission service, IP transport, VoIP service, telecommunications service, and video service, regardless of technology used, as set forth in service agreements between an ISP and a Customer.
- 2.9 “Customer” means a person, business, or other entity that lawfully receives Communication Services from an ISP via the IRU Fiber.
- 2.10 “Dark Fiber” generally means fiber optic strands not connected to active electronic or optronic equipment and that do not currently transmit information.
- 2.11 “Effective Date” means the date upon which this Agreement is executed by the second and final signatory.
- 2.12 “FAT” means a fiber access terminal.
- 2.13 “ISP” means a provider of internet access services that offers and provides Communication Services to Customers.
- 2.14 “Location” means a residence, entity, or business.
- 2.15 “Maintenance” or “Maintain” means work that must be performed upon or to the Astound System to ensure the continuity of acceptable signal transmission through the Reserved Dark Fiber in a manner consistent with industry standards and this Agreement, including but not limited to the Operating and Maintenance Specifications and Procedures attached as Exhibit 2.
- 2.16 “NID” means a network interface device or slack box.
- 2.17 “Reserved Dark Fiber” means four (4) buffer tube of the Purchased System’s Dark Fiber strands and that are reserved for the Municipalities’ use as described in Sections 3 and 4, below.
- 2.18 “Reserved Dark Fiber IRU” or “IRU” the exclusive indefeasible right of use in the Reserved Dark Fiber granted to the Municipalities by Astound pursuant to this Agreement.

- 2.19 “Service Drop” means installation of the Service Drop Materials required to connect the NID at a location with the Reserved Dark Fiber so that the Municipalities can utilize the Reserved Dark Fiber IRU.
- 2.20 “Service Drop Materials” means, in general, the fiber optic cable and other physical materials that connects the Port System to a Customer’s Location at a FAT or Case from the closest technically feasible point in the right of way. The Service Drop Material consists of a common industry package of materials which includes (a) fiber-optic cable and sheathing which will run from the FAT/Case to the NID at the Customer Location; and (b) a NID to be attached to the Customer’s Location. Service Drop Materials shall not include any materials necessary for connecting the NID to any wiring or other equipment downstream (i.e., towards the Customer’s Location) of the NID.
- 2.21 “Underlying Rights” means any and all necessary right of way agreements, easements, licenses, leases, rights or other agreements necessary for the use of the Purchased System or the Astound System, as the case may be.

3.0 GRANT OF RESERVED DARK FIBER IRU TO THE MUNICIPALITIES

- 3.1 Astound grants to the Municipalities, and the Municipalities accept from Astound, an exclusive, indefeasible right of use in the Reserved Dark Fiber (“Reserved Dark Fiber IRU”).
- 3.2 Description. The Reserved Dark Fiber IRU shall include the Reserved Dark Fiber strands in the Purchased System, which fiber strands the Municipalities shall utilize during the Term, as defined in Section 3.6 below, for any lawful purpose.
- 3.3 Commencement of IRU. The Reserved Dark Fiber IRU shall commence upon the Effective Date of this Agreement.
- 3.4 Underlying Rights. Astound shall use commercially reasonable efforts to maintain all required Underlying Rights relating to the Purchased System, including the Reserved Dark Fiber, for the duration of the IRU. The IRU is subject to the terms, conditions, limitations, restrictions and reservations of the Underlying Rights, and subject to the terms under which the right of way and other property interests are owned or held by the grantor of the Underlying Rights, including, but not limited to, covenants, conditions, restrictions, easements, reversionary interests, bonds, mortgages and indentures, and other matters, whether or not of record, and to the rights of tenants and licensees in possession.
- 3.5 Ownership; No Liens, Rights, or Claims. At no time during the IRU term shall the Municipalities obtain legal ownership of Reserved Dark Fiber, nor allow Reserved Dark Fiber IRU fiber to be made subject to any encumbrance, lien, or security interest by any third party. If such a lien, right or claim is asserted, the Municipalities will promptly and diligently undertake their removal at the sole cost of the Municipalities.

- 3.6 Term of IRU. The IRU shall commence as described in Section 3.3, and shall continue for so long as Astound, or any of its successors, maintain and operate the Purchased System for telecommunications services (the “Term”).
- 3.7 Other IRUs. Nothing in this Section shall be deemed or construed to prohibit Astound from leasing, licensing, subleasing, granting indefeasible rights of use, or entering into similar agreements or arrangements with other persons respecting the Astound System, subject to the Municipalities’ rights with respect to the Reserved Dark Fiber IRU.

4.0 OPERATION OF RESERVED DARK FIBER IRU

- 4.1 Generally. During the Term of the IRU, The Municipalities shall retain all rights and control with respect to the Reserved Dark Fiber. The Municipalities have sole and exclusive right to use such Reserved Dark Fiber for any and all lawful purposes determined by the Municipalities in their sole discretion, with all costs and expenses relating to such use (including, without limitation, interconnection of third-party systems with the Reserved Dark Fiber) being the sole responsibility of the Municipalities. Without limiting the generality of the foregoing, the Municipalities shall be entitled to authorize other municipal entities including, but no limited to the municipal limited liability company SkagitNet LLC to utilize the Reserved Dark Fiber. Notwithstanding the foregoing, the Municipalities shall not authorize any ISPs to utilize the Reserved Dark Fiber to provide retail Communications Services to Customers.
- 4.2 Access to Reserved Dark Fiber. The Municipalities may access the Reserved Dark Fiber as needed to fulfill its rights or obligations under this Agreement, subject to Underlying Rights and such reasonable premises access and security policies that may be communicated to the Municipalities by Astound. All activities of the Municipalities described in this Agreement shall be performed in accordance with Applicable Standards, industry standards, and applicable law.
- 4.3 Authorizations. Astound shall be responsible for obtaining and maintaining all required Authorizations, and payment of Authorization Fees, relating to the Reserved Dark Fiber including, but not limited to, all such Authorization Fees related to the Astound System including, but not limited to, the Reserved Dark Fibers.

5.0 SYSTEM MAINTENANCE

- 5.1 Maintenance of Astound System.
- 5.1.1 Astound shall, at its sole cost and expense, physically Maintain the entire Astound System (including Reserved Dark Fiber), in a safe and serviceable condition, taking commercially reasonable measures so that the Reserved Dark Fiber will meet or exceed common industry standards for performance of like lit fiber facilities of like age under like circumstances. Astound shall

not permit the Reserved Dark Fiber to be damaged or depreciated in value by any negligent or intentional act or omission of Astound, its agents, or employees.

- 5.1.2 Astound shall perform all required Maintenance services relating to the Reserved Dark Fibers. Astound shall identify and repair and correct any material failure, interruption, or impairment in the operation of the Backbone System.
- 5.1.3 Without limiting the generality of the foregoing, Astound's Maintenance obligations are further specified in the Operations and Maintenance Specifications and Procedures attached hereto as Exhibit 2.
- 5.1.4 Without limiting the generality of the foregoing, Astound shall schedule and perform periodic inspections (at a minimum, annually), will identify and repair and correct any material failure, interruption or impairment in the operation of the Astound System including the Reserved Dark Fiber.
- 5.2 NOC. Astound shall operate a Network Operations Center ("NOC") to support the operation of the Astound System.
- 5.3 Interruptions Involving Reserved Dark Fibers. As further described in the Operations and Maintenance Specifications Procedures:
 - 5.3.1 Astound shall respond promptly to any reasonable complaints from the Municipalities regarding the Reserved Dark Fibers.
 - 5.3.2 The Municipalities shall immediately notify the Astound NOC, or Astound personnel included in the Operations Escalation List set forth in Exhibit C, upon learning of any material interruption of the Reserved Dark Fibers. As soon as reasonably practicable thereafter, Astound shall notify the Municipalities of a restoration plan and timeline to complete restoration. Astound shall provide periodic progress updates to the Municipalities until the outage is restored.
 - 5.3.3 Astound shall respond to a material interruption of the Reserved Dark Fibers within 24 hours of receiving notice of such interruption, and Astound shall continue diligently to remedy the interruption until cured. If such interruption is not remedied after 48 hours of reporting, the Municipalities may remedy the interruption, the reasonable, actual cost of which shall be reimbursed by Astound.
- 5.4 Responsibility for Repair Cost. Notwithstanding the foregoing, in the event the Municipalities or their agents damage or permit damage to occur to the Astound System, Astound shall be entitled to reimbursement for the full cost and expense of repair of such damage, including but not limited to reimbursement for damages associated with third party claims related thereto, and shall invoice the

Municipalities for the reasonably and industry standard costs to repair any such damage.

- 5.5 Notice of Impending Damage. Municipalities and Astound shall promptly notify each other of any known matters pertaining to, or the occurrence (or impending occurrence) of, any event that would be reasonably likely to give rise to any damage or impending damage to, or loss, of the Astound System that are known to such Party.

6.0 SERVICE DROPS

- 6.1 *Reserved Dark Fiber Service Drops.* If requested by the Municipalities, Astound shall, at the Municipalities' sole cost and expense, install Service Drops interconnecting with the Reserved Dark Fiber, which such request Astound shall not unreasonably condition, delay, or deny. Astound shall charge the Municipalities a reasonable market-based rate for any requested Service Drop installations. The Municipalities shall be responsible for: (i) obtaining, at no cost or expense to Astound, all Authorizations and Underlying Rights required such Service Drop and its installation. Astound shall be responsible for: (i) all work associated with installation of such Service Drop, including fiber splicing and (ii) performing such installation in full compliance with any and all permits, Underlying Rights, Authorizations, Applicable Standards, and industry standards, subject to Astound's right to charge the Municipalities for the same.

7.0 USE OF SYSTEMS

- 7.1 Compliance with Applicable Laws and Regulations. The Municipalities will use the Reserved Dark Fibers in compliance with, and subject to, all applicable government codes, ordinances, laws, rules, and regulations as they now exist or are hereinafter amended.
- 7.2 Limited Rights to Use. The Municipalities agree and acknowledge that they have no right to use the Astound System other than in connection with Reserved Dark Fiber IRU granted herein.
- 7.3 No Interference.
- 7.3.1 The Municipalities shall not use the Reserved Dark Fibers in a way that materially interferes with, or adversely affects the use of, Astound's services provided to any other person using the Astound System. Astound shall not use or permit the use of the Astound System in a way that materially interferes with, or adversely affects, the Municipalities' use of the Reserved Dark Fibers.

8.0 TERM AND TERMINATION

- 8.1 Term. This Agreement shall commence on the Effective Date and terminate on the IRU Termination Date set forth in Section 3.6, above (the “Term”).
- 8.2 Except as expressly provided elsewhere in this Agreement, termination or expiration of this Agreement shall not affect the rights or obligations of either Party that have arisen before the date of termination or expiration, and, as applied to such rights and obligations, this Agreement shall remain in full force and effect until such rights and obligations have been fulfilled or waived.
- 8.3 Bankruptcy.
- 8.3.1 Upon the occurrence of a bankruptcy or insolvency condition described below, the Municipalities, and not Astound, may proceed under the default and remedy procedures described in Section 10:
- 8.3.1.1 Astound commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor laws;
- 8.3.1.2 Any person commences an involuntary case against Astound under Title 11 of the United States Code or the corresponding provisions of any successor laws and either (A) the case is not dismissed by midnight at the end of the 60th day after commencement or (B) the court before which the case is pending issues an order for relief or similar order approving the case;
- 8.3.1.3 A court of competent jurisdiction appoints, or Astound makes an assignment of all or substantially all of its assets relating to this Agreement to, a custodian (as that term is defined in Title 11 of the United States Code or the corresponding provisions of any successor laws) for Astound of all or substantially all of its assets; or
- 8.3.1.4 Astound fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so.
- 8.3.2 The Parties agree and acknowledge that, notwithstanding the occurrence of a bankruptcy or insolvency condition described above, Astound shall be required to continue to perform its obligations under this Agreement without interruption. Unless this Agreement is terminated by the Municipalities following a Astound bankruptcy or insolvency condition, Astound shall continue to provide the Astound Connectivity Services, Maintenance of the Backbone System, and other Astound obligations set forth in this Agreement throughout a bankruptcy proceeding to the extent permitted by law and the consideration for such continued Astound Connectivity Service and Maintenance is included as part of the consideration received by Astound in this Agreement.

9.0 ASSIGNMENT

- 9.1 Generally. Except as otherwise provided herein, neither Party may assign this Agreement, or any rights or duties under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably delayed, conditioned, or withheld. Notwithstanding the foregoing, the Municipalities can reasonably assign this Agreement, or any rights or duties under this Agreement to other municipal corporations or an entity wholly owned by municipal corporations without the prior written consent of Astound.
- 9.2 Assignment to Affiliate of Astound. The foregoing notwithstanding, Astound (referred to in this Section 9.2 as the “Assigning Party”) may, without the prior consent of, but upon notice to, the Municipalities, assign this Agreement to an affiliate of the Assigning Party, the parent of the Assigning Party, or to any company into which the Assigning Party may be merged or consolidated, or that acquires substantially all of the assets or stock of Assigning Party; provided, the assignee shall be subject to all the provisions of this Agreement. An “affiliate” of the Assigning Party shall mean any corporation which, directly or indirectly, controls, is controlled by, or is under common control with the Assigning Party, or a successor corporation to the Assigning Party by merger, consolidation, or non-bankruptcy reorganization. For purpose of the definition of “affiliate,” the word “control” (including “controlled by” and “under common control with”) shall mean, with respect to any corporation, partnership, or association, the possession, directly or indirectly, of the power to direct or, to cause the direction of, the management and policy of a particular corporation, partnership, or association, whether through the ownership of voting securities, by contract, or otherwise. Astound shall not attempt to circumvent any of its obligations under this Agreement, or to deprive the Municipalities of any anticipated benefit under this Agreement, through the use of ownership changes, reorganizations, creation of new entities, or other artificial devices.
- 9.3 Assignment for Collateral. Each Party (referred to in this Section 96.3 as the “Assigning Party”) shall also have the right, upon thirty (30) days prior written notice, and without the other Party’s consent, to assign or otherwise transfer this Agreement as collateral to any institutional lender or as bond collateral (including revenue bonds) to the Assigning Party (or institutional lender to any permitted transferee or assignee of the Assigning Party); provided, that the assignee or transferee in any such circumstance shall continue to be subject to all of the provisions of this Agreement, and, upon execution on the collateral, shall be responsible for the performance of all terms and conditions of this Agreement until such time as it transfers the collateral. Lender shall not be restricted from exercising any right of enforcement or foreclosure, with respect to any related security interest or lien, so long as the purchaser in foreclosure is subject to the provisions of this Agreement. In the event any such lender assigns any rights it has under this Agreement, the other Party to this Agreement agrees to accept performance of this Agreement by the assignee, so long as the assignee is subject to the provisions of this Agreement.

10.0 DEFAULT AND REMEDIES

- 10.1 Default Defined. The term “default,” as used in this Agreement, is defined as follows: A default shall be deemed to have occurred under this Agreement if, in the case of a material breach of this Agreement by a Party, that Party fails to cure such material breach within thirty (30) days after delivery to it of written notice specifying such breach; provided, however, that if the breach is of a nature that cannot be cured within thirty (30) days, a default shall not have occurred so long as the breaching Party has commenced to cure within said time period and thereafter diligently pursues such cure to completion.
- 10.2 Remedies Upon Default. Upon the occurrence of a default, the non-defaulting Party shall have all remedies available at law or at equity not otherwise excluded herein, including, but not limited to, termination of this Agreement, damages, specific performance, and/or relief from further performance. Each such remedy shall be cumulative and not exclusive. Without limiting the foregoing, (i) in the case of default by Astound, the Municipalities may, after providing written notice to Astound, operate, maintain, or repair the Reserved Dark Fiber and/or the Astound System to the extent necessary to maintain continuation of the IRU, reserving the cost as damages against Astound.
- 10.3 No Termination of Connectivity Services. Notwithstanding anything to the contrary in this Agreement, Astound may not terminate the Municipalities’ right to use the Reserved Dark Fibers for the IRU for any reason prior to the expiration of the Term of this Agreement.
- 10.4 Municipalities’ Cure Rights. Notwithstanding any other provision of this Agreement, in the event Astound does not or is unable to perform the services in conformance with the terms of this Agreement, regardless of reason or Astound’s good faith attempts, the Municipalities may (but are not obligated), upon written notice to Astound reasonable under the circumstances (but without authorization from Astound), perform such services or work and/or take such action that it deems necessary. In such instances, the Municipalities may request Astound to pay the Municipalities an amount equal to the actual costs of services performed by the Municipalities. If the Municipalities requests payment, Astound will remit payment to the Municipalities within thirty (30) days from the date of Municipalities’ invoice
- 10.5 Injunctive Relief. The Parties acknowledge and agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms, and agree that, due to the unique subject matter covered by this Agreement, each Party shall be entitled to specific performance of the obligations hereunder and/or injunctive relief, in addition to any other right or legal remedy available to such Party.

11.0 MEDIATION

- 11.1 Pre-Litigation Mediation. Prior to filing a lawsuit related to or arising out of this Agreement, the Parties shall engage in mediation utilizing a mutually agreeable mediator or, in the event the Parties cannot agree on a mediator, then one appointed by the American Arbitration Association. Either Party can demand mediation by sending written notice to the other Party. Each Party shall pay its own attorneys' fees and costs incurred in such mediation. The Parties shall each pay one-third (1/3) of the mediator's fees.

12.0 COMPLIANCE WITH APPLICABLE LAW

- 12.1 Generally. The Parties shall comply with all applicable laws, rules, government requirements and directives, Applicable Standards and Authorizations relating to a Party's performance of its obligations, and enjoyment of rights conferred, under this Agreement.

13.0 LIMITATIONS OF LIABILITY; INDEMNIFICATION

- 13.1 ONLY ACTUAL DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NO PARTY SHALL BE LIABLE TO THE OTHER PARTIES OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL COSTS, LIABILITIES, OR DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S PERFORMANCE OF ITS OBLIGATIONS UNDER THIS AGREEMENT.
- 13.2 Mutual Indemnification. To the extent permitted by law, each Party hereby agrees to defend and indemnify the other and their respective managers, members, officers, commissioners, and employees from and against, and assume liability for, any injury, loss, damage to, or claim by any third party for personal injury or damage to tangible property (collectively the "Claims"), to the extent and in proportion that such Claims arise from the negligent, grossly negligent, or willful act of the indemnifying Party or its officers, employees, servants, affiliates, agents, contractors, licensees, invitees, or vendors.
- 13.3 LIMITED WAIVER OF IMMUNITY UNDER WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, AND OTHER SIMILAR INDUSTRIAL INSURANCE SCHEMES. For purposes of the foregoing indemnification provision, and only to the extent of Claims against each other under such indemnification provision, each Party specifically waives any immunity it may be granted under the Washington State Industrial Insurance Act, Title 51 RCW, the United States Longshore and Harbor Workers Compensation Act, 33 USC §901-950, or any other similar workers' compensation schemes. The indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable to or for any third party under workers' compensation acts, disability benefit acts, or other employee benefit acts. The foregoing provision was specifically negotiated and agreed upon by the Parties hereto.

14.0 INSURANCE

14.1 Astound Insurance. Throughout the Term of this Agreement, Astound shall maintain insurance coverages of the types and in the minimum amounts set forth below at its expense, as applicable:

<u>Type of Insurance:</u>		<u>Limit:</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2,000,000
	Prod./Comp. op. Agg.	\$2,000,000
	Personal & Adv. Injury	\$2,000,000
	Each Occurrence	\$2,000,000
Automobile Liability, including any auto, hired auto, and non-owned autos	Combined Single Limit	\$2,000,000
Excess Liability, Umbrella Form	Each Occurrence	\$2,000,000
	Aggregate	\$2,000,000

14.2 Astound Insurance: Additional Insured Status and Other Provisions. The insurance policy or policies providing the foregoing insurance coverages shall name the Municipalities as an additional insured by way of a policy endorsement. Astound shall provide to the Municipalities certificate(s) of insurance and, if requested by the Municipalities, a copy of any policy providing any portion of such required coverage. Receipt of such certificate or policy by the Municipalities does not constitute approval by the Municipalities of the terms of such policy. Furthermore, the policy of insurance required herein (or each such policy, if more than one) shall (i) be written as a primary and non-contributory policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to the Municipalities except upon forty-five (45) days' prior written notice from the insurance company to the Municipalities; (iii) contain an express waiver of any right of subrogation by the insurance company against the Municipalities; (iv) expressly provide that the defense and indemnification of the Municipalities as an "additional insured" will not be affected by any act or omission by the Municipalities which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

14.3 Municipalities' Insurance. Throughout the Term of this Agreement, the Port and PUD shall maintain insurance coverages of the types and in the minimum amounts set forth below at its expense, as applicable:

<u>Type of Insurance:</u>		<u>Limit:</u>
General Liability (including contractual liability) written on an occurrence basis	General Aggregate	\$2,000,000
	Prod./Comp. op. Agg.	\$2,000,000
	Personal & Adv. Injury	\$2,000,000
	Each Occurrence	\$2,000,000
Automobile Liability, including any auto, hired auto, and non-owned autos	Combined Single Limit	\$2,000,000
Excess Liability, Umbrella Form	Each Occurrence	\$2,000,000
	Aggregate	\$2,000,000

14.4 Municipalities' Insurance: Additional Insured Status and Other Provisions. The insurance policy or policies providing the Municipalities insurance coverages required by Section 14.3, above, shall name Astound as an additional insured by way of a policy endorsement. The Municipalities shall provide to Astound certificate(s) of insurance and, if requested by the Astound, a copy of any policy providing any portion of such required coverage. Receipt of such certificate or policy by Astound does not constitute approval by Astound of the terms of such policy. Furthermore, the policy of insurance required herein (or each such policy, if more than one) shall (i) be written as a primary and non-contributory policy; (ii) expressly provide that such insurance may not be materially changed, amended, or canceled with respect to Astound except upon forty-five (45) days' prior written notice from the insurance company to Astound; (iii) contain an express waiver of any right of subrogation by the insurance company against Astound; (iv) expressly provide that the defense and indemnification of Astound as an "additional insured" will not be affected by any act or omission of Astound which might otherwise result in a forfeiture of said insurance; (v) contain a separation of insureds provision such that the policy applies separately to each insured that is subject of a claim or suit; and (vi) not contain a cross-claim, cross-suit, or other exclusion that eliminates coverage by one insured against another.

14.5 CASUALTY LOSS. Each Party agrees that neither Party nor each Party's managers, members, shareholders, officers, commissioners, directors,

employees, insurance carriers, or casualty policies shall be responsible to the first (1st) Party for any property loss or damage done to the first (1st) Party's property, whether real, personal, or mixed, occasioned by reason of any fire, storm, or other casualty whatsoever, where such loss has arisen, directly or indirectly, in whole or in part, from this Agreement. It shall be each Party's sole responsibility to provide its own protection against casualty losses of whatsoever kind or nature, regardless of whether or not such loss is occasioned by the acts or omissions of the other Party, third party, or act of nature. In this regard, each Party hereby releases and discharges the other Party and such other Party's managers, members, shareholders, officers, commissioners, directors.

14.5.1 Astound's Obligation to Rebuild the Purchased System. Notwithstanding the foregoing in Section 14.5 above, in the event of any casualty loss to the Purchased System for which Astound receives any insurance recovery or recovery from any other third party, and if the recovery or sum of the recoveries so received by Astound shall be sufficient to fund rebuilding of the Purchased System, Astound shall proceed expeditiously to rebuild the Purchased System and diligently prosecute such rebuilding until the Purchased System shall be fully restored.

15.0 TAXES AND GOVERNMENT IMPOSITIONS

15.1 Each Party shall be responsible for paying its own federal, state or local sales, use, excise, value-added, personal property, income or other taxes or charges assessed on or levied against any transaction or event arising from the performance of this Agreement.

16.0 REPRESENTATIONS, WARRANTIES, AND ACKNOWLEDGEMENTS

16.1 Representations and Warranties of Astound. Astound represents and warrants that, for all purposes, including, without limitation, for purposes of Section 541(d) of the Bankruptcy Code, as follows:

- a. Astound is duly organized, valid existing, and in good standing under the laws of the State of Washington, and is registered to do business in the State of Washington.
- b. This Agreement is a valid and legally binding obligation of Astound, and is enforceable against Astound in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Neither the execution and delivery of this Agreement, grant of the Backbone System IRU, nor provision of Astound Connectivity Services will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under (i) Astound's organizational

documents; (ii) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either Astound is a party or by which Astound is bound; or (iii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.

- d. No consent from, or other approval of, any governmental entity or agency, or any other person or entity, is necessary in connection with the execution, delivery, or performance of this Agreement.
- e. The undersigned has full authority to execute this Agreement on behalf of Astound.
- f. Astound has the financial, technical, and management expertise and experience to fully perform all of the Astound's obligations under this Agreement.

16.2 Representations and Warranties of the Port.

- a. The Port is duly organized, valid existing, and in good standing under Washington municipal corporation organized pursuant to Title 53 RCW.
- b. This Agreement is a valid and legally binding obligation of the Port, and is enforceable against the Port in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).
- c. Neither the execution and delivery of this Agreement nor receipt of the Backbone System IRU will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, (i) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either the Port is a party or by which Port is bound; or (ii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.
- d. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery, or performance of this Agreement.
- e. The undersigned has full authority to execute this Agreement on behalf of the Port.

16.3 Representations and Warranties of the PUD.

- a. The PUD is duly organized, valid existing, and in good standing under Washington municipal corporation organized pursuant to Title 54 RCW.
- b. This Agreement is a valid and legally binding obligation of the PUD, and is enforceable against the PUD in accordance with its terms, except when enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or other similar laws relating to the enforcement of creditors

rights, generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

- c. Neither the execution and delivery of this Agreement nor receipt of the Backbone System IRU will violate, conflict with, or result in a breach of the terms, conditions, or provisions of, or constitute a default under, (i) any contract, agreement, mortgage, deed of trust, or other instrument or obligation to which either the PUD is a party or by which PUD is bound; or (ii) any applicable law or regulation or any order, decree, writ, or injunction of any court or governmental body.
- d. No consent from, or other approval of, any governmental entity or agency or any other person or entity is necessary in connection with the execution, delivery, or performance of this Agreement.
- e. The undersigned has full authority to execute this Agreement on behalf of the PUD.

17.0 FORCE MAJEURE

17.1 Neither Party shall be in default under this Agreement if, and to the extent that, any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; wind; flood; fiber cut, cable cut, or other material failures, shortages or unavailability, and then, only during such periods as may be required to reasonably repair the fiber cut, cable cut, or other material failures shortages, or unavailability, or other delay in delivery not resulting from the responsible Party's failure; failure of third-party power or system failures; lack of or delay in transportation not resulting from the responsible Party's failure; government codes, ordinances, laws, rules, regulations, or restrictions; war or civil disorder; strikes or other labor disputes; failure of a third party to grant or recognize an Underlying Right; inability of the Municipalities to obtain access to the Reserved Dark Fibers not resulting from Astound's failure; or any other cause beyond the reasonable control of such Party.

18.0 NOTICES

All notices and other communications required or permitted under this Agreement shall be in writing and shall be given by United States first class mail, postage prepaid, via registered or certified mail with a return receipt requested, by electronic mail, or by hand delivery (including by means of a professional messenger service or overnight mail) addressed as follows:

All notices and other communications shall be given to Astound at:

Astound Broadband, LLC
ATTN: _____

E-mail: _____

All notices and other communications shall be given to Port at:

ATTN: Port of Skagit
15400 Airport Dr.
Burlington, WA 98233

E-mail: _____

All notices and other communications shall be given to PUD at:

ATTN: Skagit PUD
1415 Freeway Dr.
Mt. Vernon, WA 98273

E-mail: _____

Any such notice or other communication shall be deemed to be effective when actually received or refused. Either Party may, by similar notice given, change the address to which future notices or other communications shall be sent.

19.0 MISCELLANEOUS TERMS

- 19.1 Binding Effect. This Agreement, and each of the Parties' respective rights and obligations under this Agreement, shall be binding on, and shall inure to the benefit of, the Parties hereto and each of their respective permitted successors and assigns.
- 19.2 Waiver. The failure of either Party hereto to enforce any of the provisions of this Agreement, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision, but the same shall nevertheless be and remain in full force and effect.
- 19.3 Governing Law, Jurisdiction, And Venue. This Agreement, and all disputes or claims arising therefrom, shall be governed by, and construed in accordance with, the laws of the State of Washington. Exclusive and sole jurisdiction and venue shall be in the Washington State Superior Court in the county wherein the Municipalities have their principal offices, and not in any other federal or state court. There shall be no right of removal to any federal court, which rights both Parties expressly and irrevocably waive. The Parties expressly and irrevocably waive the right to trial by jury.
- 19.4 Rules of Construction. The captions or headings in this Agreement are strictly for convenience and shall not be considered in interpreting this Agreement or as amplifying or limiting any of its content. Words in this Agreement which import the

singular connotation shall be interpreted as plural, and words which import the plural connotation shall be interpreted as singular, as the identity of the parties or objects referred to may require.

- (a) Unless expressly defined herein, words having well-known technical or trade meanings shall be so construed. All listing of items shall not be taken to be exclusive, but shall include other items, whether similar or dissimilar to those listed, as the context reasonably requires.
- (b) Except as set forth to the contrary herein, any right or remedy of Municipalities or Astound shall be cumulative and without prejudice to any other right or remedy, whether contained herein or not.
- (c) Except as specifically set forth herein, nothing in this Agreement is intended to provide any legal rights to anyone not an executing Party of this Agreement.
- (d) This Agreement has been fully negotiated and jointly drafted between and by the Parties.
- (e) All actions, activities, consents, approvals, and other undertakings of the Parties in this Agreement shall be performed in a reasonable and timely manner, it being expressly acknowledged and understood that time is of the essence in the performance of obligations required to be performed by a date expressly specified herein. Except as specifically set forth herein, for the purpose of this Agreement, the standards and practices of performance within the telecommunications industry in the relevant market shall be the measure of a Party's performance.

19.5 Entire Agreement. This Agreement constitutes the entire and final agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Attachments referred to herein are integral parts hereof and are hereby made a part of this Agreement. To the extent that any of the provisions of any Attachments hereto are inconsistent with the express terms of this Agreement, the terms of the Attachments shall prevail. This Agreement may only be modified or supplemented by an instrument in writing, executed by each Party, and delivered to the Party relying on the writing.

19.6 No Personal Liability. Each action or claim against any Party arising under or relating to this Agreement shall be made only against such Party as a corporation, and any liability relating thereto shall be enforceable only against the corporate assets of such Party. No Party shall seek to pierce the corporate veil or otherwise seek to impose any liability relating to, or arising from, this Agreement against any shareholder, employee, officer, or director of the other Party. Each of such persons is an intended beneficiary of the mutual promises set forth in this Article and shall be entitled to enforce the obligations of this Article.

19.7 Relationship of the Parties. The relationship between the Municipalities and Astound shall not be that of partners, agents, or joint venturers for one another, and nothing contained in this Agreement shall be deemed to constitute a

partnership or agency agreement between them for any purposes, including, but not limited to, federal income tax purposes. The Municipalities and Astound, in performing any of their obligations hereunder, shall be independent contractors or independent parties, and shall discharge their contractual obligations at their own risk subject, however, to the terms and conditions hereof.

- 19.8 Change In Law. If changes in applicable laws, regulations, rules or orders materially affect either Party's ability to lawfully fulfill any of its obligations under this Agreement, the Parties agree to negotiate and execute appropriate changes to this Agreement. If changes in applicable laws, regulations, rules or orders make either Party's continued fulfillment of its obligations under this Agreement commercially impracticable, either Party may propose an appropriate amendment to this Agreement.
- 19.9 Severability. If any term, covenant, or condition contained herein is, to any extent, held invalid or unenforceable in any respect under the laws governing this Agreement, the remainder of this Agreement shall not be affected thereby, and each term, covenant, or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 19.10 Survival. All obligations of in this Agreement shall not cease upon the termination of this Agreement, and shall continue as obligations until fully performed. All clauses of this Agreement which require performance beyond the termination date shall survive the termination date of this Agreement.
- 19.11 Time. It is mutually agreed and understood that time is of the essence of this Agreement.
- 19.12 Attorneys' Fees. The substantially prevailing party in any action to enforce any term or condition of this Agreement shall be entitled to an award of their reasonable costs and attorneys' fees.
- 19.13 Counterparts. This Agreement may be executed in one (1) or more counterparts, all of which taken together shall constitute one (1) and the same instrument. The counterparts of this Agreement may be executed and delivered by facsimile, or other electronic signature, by any of the parties to any other party, and the receiving party may rely on the receipt of such document, so executed and delivered by facsimile, or other electronic means, as if the original had been received.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

THIS AGREEMENT CONTAINS INDEMNIFICATIONS, RELEASES, AND A LIMITED WAIVER OF IMMUNITY UNDER THE WASHINGTON STATE INDUSTRIAL INSURANCE ACT, TITLE 51 RCW, OR ANY OTHER SIMILAR WORKERS' COMPENSATION SCHEMES.

PORT OF SKAGIT

By: _____
Title: _____

ASTOUND BROADBAND, LLC

By: _____
Title: _____

**PUBLIC UTILITY DISTRICT NO. 1
OF SKAGIT COUNTY**

By: _____
Title: _____

EXHIBIT 2:

Purchased System Description and Map

Schedule A (Exhibit 2)

[Purchased System Description]

The backbone fiber network owned by Astound in the Skagit County, Washington running from the Skagit Airport Hut to Concrete, Washington. It is ~_____ miles long.

Schedule B (Exhibit 2):

[Purchased System Map]

[Insert map of Purchased System here]

EXHIBIT 2:

Operations and Maintenance Specifications and Procedures

1. DEFINED TERMS

- (a) "Routine Maintenance" is all preventive maintenance activities, upgrades and repairs, including but not limited to those activities outlined in this Attachment.
- (b) "Non-Routine Maintenance" is all efforts and activities in response to an emergency circumstance that requires restoration.

2. GENERAL

- 2.1. Astound's personnel will dispatch maintenance and repair personnel along the Reserved Dark Fiber to handle and repair problems detected by Astound or the Municipalities, or otherwise.
- 2.2. Astound's maintenance employees will be available for dispatch twenty-four (24) hours a day, seven (7) days a week. Astound will dispatch its first maintenance employee to a site requiring an emergency maintenance activity as soon as practicable from the time an emergency alarm is identified by Astound's NOC or emergency notification is received by the Municipalities, or otherwise, whichever occurs first. In the case of a catastrophic event requiring emergency service to multiple sites, Astound will dispatch maintenance employees on an emergency basis with response times commensurate with the magnitude of the event and subject to commercial impracticability.
- 2.3. The Municipalities will utilize the list of escalation contacts ("Operations Escalation List") provided by Astound to report and seek immediate initial redress of exceptions noted in the performance of Astound in meeting maintenance service objectives. Astound may update the Operations Escalation List from time to time.
- 2.4. Astound will take workmanlike care to prevent impairment to the signal continuity and performance of the Reserved Dark Fiber. The precautions to be taken by Astound will be notified to the Municipalities. In addition, Astound will reasonably cooperate with the Municipalities in sharing information and analyzing any disturbances regarding the Reserved Dark Fiber.
- 2.5. Non-emergency work that is reasonably expected to produce any signal discontinuity must be coordinated between the Parties and performed in accordance with Scheduled Maintenance Procedures. "Scheduled Maintenance Procedures" or "SMP" means a pre-arranged period of time reserved for performing certain work to the Reserved Dark Fiber, the Purchased System, or Astound System that may impact the Municipalities' IRU. Unless otherwise agreed by the Municipalities, SMP will be completed after midnight and before 6:00 a.m., local time. Major work such as fiber rolls and hot cuts will also be scheduled utilizing SMP.

- 2.6. Astound will maintain the Reserved Dark Fiber in a manner that permits normal operation of the equipment associated with the Reserved Dark Fiber. Such maintenance includes, but is not limited to, landscaping, weed control, fence repair, installation and operation of smoke detectors, air conditioning, power and trash removal.

3. RESERVED DARK FIBER

- 3.1. Astound will maintain the Reserved Dark Fiber in good and operable condition and repair the Reserved Dark Fiber in a workmanlike manner. Astound will maintain the Reserved Dark Fiber in a manner that permits normal operation of the Reserved Dark Fiber.
- 3.2. Astound will subscribe to state one-call, Call before You dig service and ensure the Purchased System, including the Reserved Dark Fiber, is registered. Astound will perform all required locates. Astound will have qualified representatives on site at any time another company is crossing the Reserved Dark Fiber or digging within sixteen (16) inches of the Reserved Dark Fiber. Astound will maintain all signposts along the Reserved Dark Fiber with the number of the “call before you dig” organization.
- 3.3. Astound will perform appropriate Routine Maintenance on the Reserved Dark Fiber and the Purchased System in accordance with Astound’s then-current preventative maintenance procedures. Astound’s maintenance procedures will not substantially deviate from standard industry practice.

4. RESTORATION OF FIBER CUT

- 4.1. When restoring a cut fiber, the Parties agree to work together to restore all traffic as quickly as possible. Astound, immediately upon arriving on the site of the cut, shall determine the best course of action to be taken to restore the fiber and shall begin restoration efforts.
- 4.2. It will be the responsibility of Astound and the Municipalities to report to one another any known environmental hazards that would restrict or jeopardize any maintenance work activities in shelters or right of way areas of operations.
- 4.3. Upon notification of interruption of fiber service or other information indicating a potential fiber cut, Astound will mobilize technicians to achieve necessary repair or restoration, including, but without limitation, using reasonable efforts to have maintenance personnel at the affected site within four (4) hours after receipt of such notice and repair completed within eight (8) hours from notice with the required restoration material and equipment.
- 4.4. The requirement for detection of the fault location is “as exact as possible” utilizing test records, fiber documentation, GPS coordinates and OTDR test results of the affected portions of the Reserved Dark Fiber.

4.5. Astound’s maintenance employees will be responsible for correcting or repairing fiber discontinuity or damage, including, but not limited to, the emergency repair of the Reserved Dark Fiber. Astound will repair the traffic-affecting discontinuity as soon as possible after learning of the discontinuity or the service-affecting situation.

4.6. Astound will maintain sufficient capability to teleconference with the Municipalities during an emergency repair in order to provide continuous communication. With respect to restoration of open fibers on fiber strands not immediately required for service, the repair will be scheduled for the next available SMP.

5. OPERATIONS ESCALATION LIST

<u>Escalation List:</u>		<u>Contact</u>
Support	Email	add
	Phone	add
NOC	Email	add
	Phone	add

Initial contact should be to support and they’ll escalate to the NOC.



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July 23, 2024

MEMORANDUM

TO: George Sidhu, P.E., General Manager
FROM: Mark Handzlik, P.E., Engineering Manager
SUBJECT: Draft Water System Plan - Discussion and Release Authorization

Requested Action:

Authorize the general manager to publish the SEPA Environmental Checklist and send the draft Water System Plan to the Department of Health, the Department of Ecology, and local planning agencies for consistency review.

Background:

The Washington State Department of Health (DOH) requires water purveyors to prepare a water system plan (WSP) that meets the requirements of WAC 246-290. A WSP helps to understand how growth will impact water rights, operations, treatment and supply, and capital planning. PUD staff have prepared a draft WSP covering the next 10-year planning period.

At the regular meeting of the commission on May 28, 2024, staff presented the draft WSP and provided draft copies of the WSP to the Commission for their review. The purpose of this discussion is to receive comments and address questions from the Commission.

Following this discussion, the draft WSP will be compiled with any initial comments received from the Commission, and will be transmitted to the DOH, the Department of Ecology, and neighboring planning bodies and water systems for review and comment. The overall review period is expected near the end of August 2024, at which time staff will compile comments and begin the final approval process with the Commission and DOH.

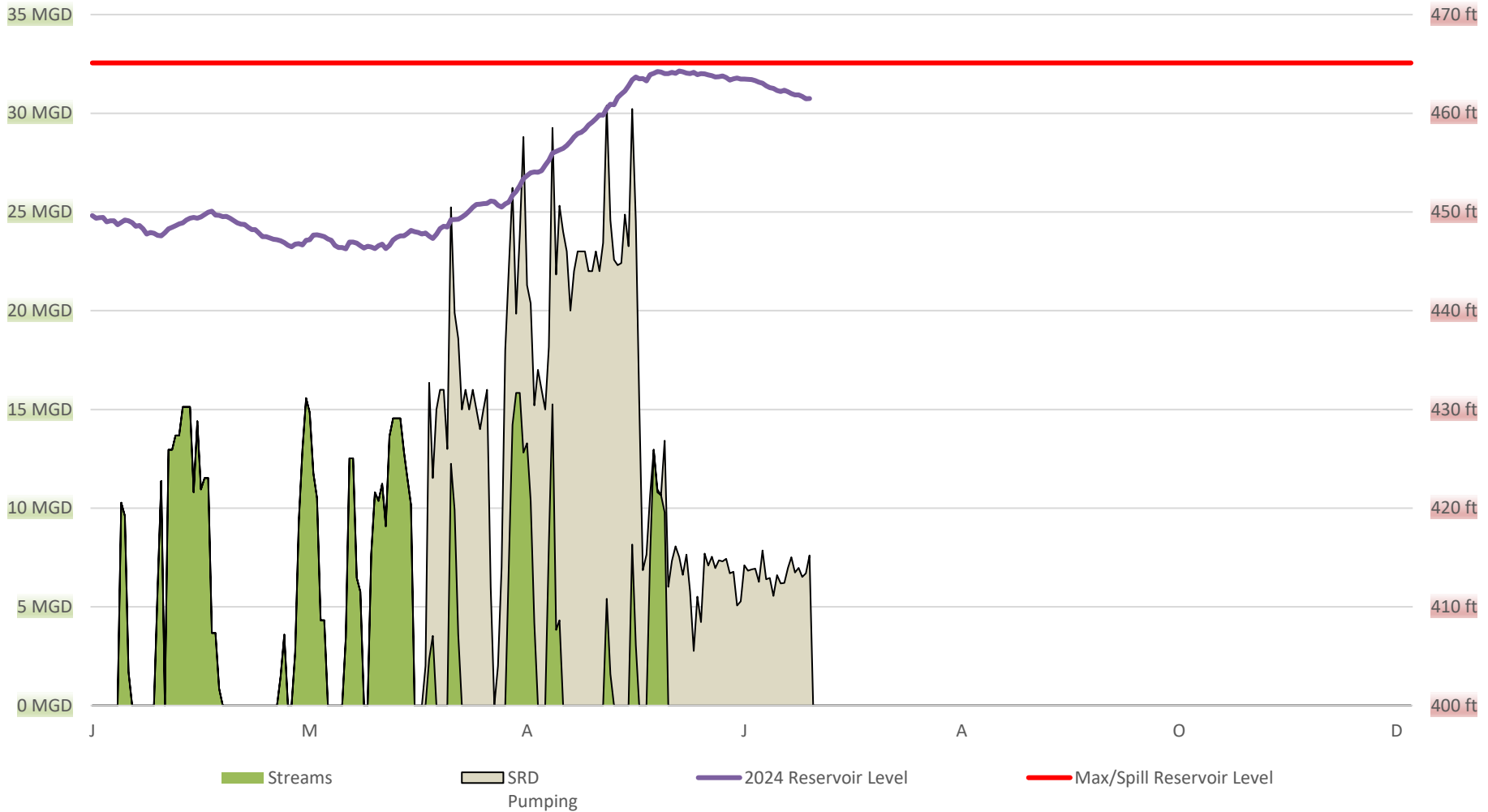
Fiscal Impact:

The 2024 Water System Plan has been prepared in-house and funded through the operational spending.

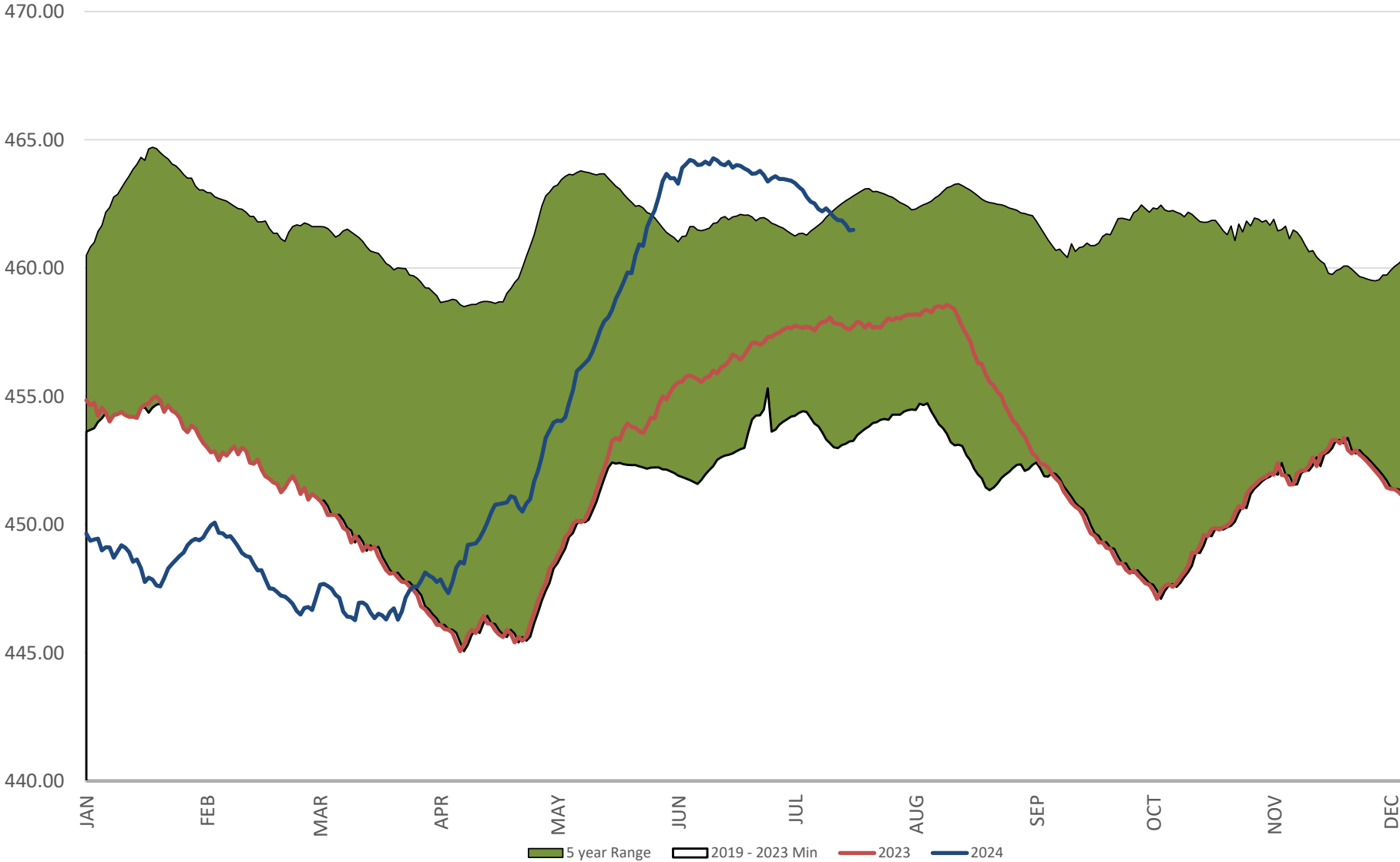
Enclosures:

2024 Judy Reservoir Inflows & Elevation

July 10 Elevation:	462.33 (ft)
July 17 Elevation:	461.49 (ft)
Change in Elevation:	<u>-0.84</u> (- 10.1 Inches)
Spillway Elevation:	465.10
Stream Inflow YTD:	704.90 MG
Skagit River YTD:	<u>1251.26 MG</u>



5-YEAR JUDY RESERVOIR ELEVATIONS



WaterWorld.

DRINKING WATER TREATMENT > POTABLE WATER QUALITY

Reverse osmosis solves island water quality problem

The Guemes Island community in Skagit County, Washington, USA, uses a reverse osmosis system to produce pure and safe water for residents

By Craig Beckman

The Guemes Island community in Skagit County, Washington, USA, uses a reverse osmosis system to produce pure and safe water for residents

Since 1791, Guemes Island, part of the San Juan Islands off Anacortes, Washington, has given residents and visitors an escape from the hustle and bustle of city life, but this escape was not to a deserted island. Rather, the island strived to give residents modern day comforts. While this goal has remained constant for many years, the means of providing residents with mainland accommodations has presented challenges to island officials — particularly a deteriorating potable water supply.

Over the years, the community's 32 residents relied on a local well to provide them with fresh drinking water; however mineral content increased and seawater infiltrated the well, making the water unsuitable for drinking. Poor water quality forced residents to meet their own potable water needs by bringing water to the island by ferry.





Guemes Island water supply deteriorated from seawater infiltration. Photo by Osmonics

[Click here to enlarge image](#)

Contributing to the water's marginal quality was the naturally occurring high level of dissolved solids – namely salt and iron – in the residential water supply.

Guemes Island property owners turned to the Public Utility District of Skagit County, to solve their water quality problem. The district selected the US consulting firm Kennedy-Jenks of Bellevue, Washington, to help determine the best course of action. The primary goal was to design a treatment system capable of providing residents with a reliable, clean, safe drinking water source. This would require installing a system that reduced the level of dissolved solids below 500 ppm while meeting the daily water supply of 2,000 to 15,000 gallons. The system had to be affordable because the population is small and the cost to purify the water is passed down to residents.

District officials decided that a MUNI reverse osmosis (RO) system from the US company of Osmonics, based in Minnetonka, Minnesota, would meet project goals. Operating costs are lower because the low recovery RO unit uses a limited amount of chemicals to pre-treat water. The RO system's low conversion rate produces a low-concentration brine discharge, which is safer for the environment.

Installing the system on the island, however, presented some challenges. Guemes Island only had a single-phase power source because of its small size. To generate enough power to run the 50-hp RO feed pump meant that the district would have to convert the plant's

power source to three-phase. Instead, an inverter system was installed that uses a variable speed motor drive for the high-pressure pump.

In addition, a well had to be drilled to bring seawater from Puget Sound to the island. The unusual shore consisted of condensed sand, so drilling a well on the shoreline was not an option. Alternatively, engineers installed a lateral gallery pipe system in the sand on the shore that connected to the collection well on the beach. This required the installation of an 80-foot perforated pipe that allows salt water to seep into the well. As the water moves from the channel to the pipe, the sand on the shore acts as an effective pre-filter helping to further reduce total project costs. From there, water is pumped into a supply pipe and up the hill to the desalination plant.



The MUNI RO system from Osmonics meet water supply requirements. Photo by Osmonics

[Click here to enlarge image](#)

The desalination system treats seawater with multi-media sand filtration, followed by an Osmonics Hytrex cartridge filter, before reaching the RO unit. The RO system then desalinates water using a high-pressure RO membrane separation process, turning salty seawater into high-purity water with less than 200 ppm of total dissolved solids.

Ultrapure desalinated water can corrode distribution system pipes and plumbing components. Therefore, it flows into a mineral calcite contact tank before being sent to the distribution system. The treatment process adds calcium hardness, raises pH and stabilises product water by using crushed limestone, which reduces the corrosive nature and improves the overall taste of the water.

After four years of consistent results from the RO equipment, the membranes in the RO unit have not been replaced. In addition, the automated control system requires only one operator to periodically monitor the system.

Author's note

Craig Beckman is the business and marketing manager of Pure Water Systems, Osmonics, with headquarters in Minnetonka, Minnesota.