

INFRASTRUCTURE USE AGREEMENT
BETWEEN
SKAGITNET LLC,
THE PORT OF SKAGIT COUNTY,
and
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY

THIS AGREEMENT ("Agreement") is made and entered into by and between SkagitNet LLC, a local government owned limited liability company ("SkagitNet"), the Port of Skagit County ("Port"), a Washington Municipal Corporation and the Public Utility District No. 1 of Skagit County ("PUD"), a Washington Municipal Corporation, pursuant to the authority granted by Chapter 39.34 RCW, the INTERLOCAL COOPERATION ACT. SkagitNet, the Port and the PUD may be referred to herein as a "Party", and may be collectively referred to herein as the "Parties."

I. RECITALS

WHEREAS, RCW 53.08.370 grants authority to the Port 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 district's limits for its own use and/or for the provision of wholesale telecommunications services; and

WHEREAS, RCW 53.08.240 (2) authorizes the Port to enter into contracts with other municipal entities for the purposes of exercising its lawfully authorized powers; and

WHEREAS, RCW 54.16.330 grants authority to the PUD 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 district's limits for its own use and/or for the provision of wholesale telecommunications services; and

WHEREAS, RCW 54.16.090 authorizes the PUD to enter into contracts with other municipal entities for the purposes of exercising its lawfully authorized powers; and

WHEREAS, Chapter 39.34 RCW allows the Parties to enter into cooperative agreements to exercise joint powers conferred upon each entity; and

WHEREAS, the Port owns and operates fiber optic infrastructure, including fiber optic cable, vaults, splice cases, and other associated appurtenances, in Skagit County for its own use and for provision of wholesale services to retail telecommunications providers that serve businesses and governmental entities with internet access; and

WHEREAS, the PUD owns and operates fiber optic infrastructure, including fiber optic cable, vaults, splice cases, and other associated appurtenances, in Skagit County for its own use in connecting its water utility SCADA monitoring system, and also owns and operates fiber optic infrastructure between the City of Sedro-Woolley and the Town of Hamilton for provision of wholesale services to retail telecommunications providers that serve businesses, educational, and governmental entities with internet access; and

WHEREAS, the Port and the PUD formed SkagitNet as a limited liability company with the Washington Secretary of State on May 17, 2018, to serve as a joint operating entity for

purposes of facilitating the construction, ownership and management of an open access fiber optic backbone throughout Skagit County for the benefit of Skagit County citizens and businesses; and

WHEREAS, the Parties deem that it is necessary and beneficial to the operation of SkagitNet to specify agreed upon general terms, covenants and conditions for use of the Port's and the PUD's fiber optic infrastructure by SkagitNet.

NOW THEREFORE, in consideration of the following terms and conditions, the parties mutually agree as follows:

II. CONTRACTUAL PROVISIONS

A. OVERVIEW

1. This Agreement states the general terms, covenants, and conditions by which the Port and PUD will contribute fiber optic infrastructure to SKAGITNET, including all fiber optic cable, vaults, splice cases, and other appurtenances for the fiber system runs identified in the VETRO FiberMap. This Agreement is intended to cover any and all facilities to be provided by the Port and PUD to SKAGITNET. SKAGITNET may use Port or PUD fiber and facilities only for authorized and lawful purposes and within the scope of this Agreement.

B. SkagitNet Budget

1. SkagitNet will timely prepare and submit to the Port and PUD No. 1 a proposed annual budget. The proposed budget will describe SkagitNet's

planned work for the year. SkagitNet will have quarterly meetings with the Port and PUD No. 1 to provide updates on SkagitNet's activities.

C. FIBER OPTIC INFRASTRUCTURE LEASING

1. All leasing of fiber optic infrastructure by Parties to this Agreement will be on a wholesale basis pursuant to the Port's and PUD's respective telecommunications statutory authority.

2. SkagitNet will be the entity responsible for executing and managing wholesale leases of fiber optic infrastructure.

3. Port and PUD agree to assign or terminate and reissue existing wholesale leases on individually owned infrastructure to SkagitNet by May 30, 2020.

D. INFRASTRUCTURE USE

1. All fiber optic infrastructure to be leased by SkagitNet will be cataloged in the VETRO FiberMap and will be input into SkagitNet's system map in Vetro FiberMap for network management purposes. The capacity of the fiber line shall be included.

2. The SkagitNet Manager is responsible for ensuring that all infrastructure leased by SkagitNet has been inventoried on the VETRO Viewer prior to use. Records of such inventory shall be maintained by SkagitNet and made available promptly upon request of either other Party. The Manager shall reserve 2 strands for the sole use by Skagit PUD. These strands shall be the

same color coding within the SkagitNet system.

E. LOCATE SERVICES

1. All infrastructure in use by SkagitNet will be mapped in the One Call program for utility locates. The SkagitNet Manager is responsible for ensuring the addition of new infrastructure to the One Call system map.

2. The SkagitNet Manager will maintain a list of current vendors for locate services.

F. SYSTEM CONSTRUCTION

1. Parties agree to construct fiber optic infrastructure to common standards, using common construction specifications and materials.

2. Fiber System Specifications:

a) Fiber optic cable in use for SkagitNet must meet the specifications set forth below as measured by optical time domain reflectometer ("OTDR"):

Parameter	Specifications	Units
Maximum attenuation	1310nm (A1)	.50 dB/km
Maximum attenuation	1550nm (A2)	.40 db/km
Cladding diameter	125 +-3	nm
Cutoff Wavelength	1250 +-100	nm
Zero dispersion wavelength	1310 +-12	nm
Maximum dispersion	(1285-1330nm)	3.5 ps/nm km

Reference: EIA RS-455 test method

b) SKAGITNET shall have the right, at its expense, to test fibers covered under this Agreement any time for consistency with the technical specifications set forth above.

c) In the event the result of any test performed in accordance with Section E.2.b herein shows that the fiber(s) are not operating in accordance with the technical specifications, SKAGITNET shall have the right to remedy performance prior to use of infrastructure for leasing purposes at its' expense.

G. MAINTENANCE

1. Infrastructure covered under this Agreement will be included in a monitoring contract with an approved Network Operating Center (NOC) pursuant to SkagitNet's current Plan of Operations.

2. The SkagitNet Manager will be responsible for maintaining a list of approved maintenance and repair contractors authorized to work on the SkagitNet system. This list will be provided to the NOC to deploy outage repairs in the event of after-hours outages.

H. INDEMNIFICATION AND INSURANCE

1. Each Party agrees to be responsible and assume liability for its own wrongful and /or negligent acts or omissions and those of its elected officials, officers, agents, or employees to the fullest extent required by law. Each Party

further agrees to save, indemnify, defend, and hold the other Party harmless from any such liabilities. It is further provided that no liability shall attach solely by virtue of being a Party hereto. Each Party hereby waives its immunity under the Washington Industrial Insurance Act solely for the benefit of the other Parties and only to meet its indemnity obligations hereunder.

2. Each Party shall have in place a policy of general liability and automobile liability insurance applicable to all activities performed during the term hereof. Such insurance shall have minimum limits of liability as follows: personal injury and death – FIVE MILLION & NO/100 DOLLARS (\$5,000,000.00); property damage – ONE MILLION & NO/100 DOLLARS (\$1,000,000.00). Proof of such insurance shall be provided by each Party to the other Parties and shall not be cancellable or the limits lowered without prior notice to the other Parties.

I. TERM, TERMINATION, AND BUYOUT PROVISION

1. This Agreement shall be for 20 years., but may be terminated, with or without cause by a Party on ONE HUNDRED EIGHTY (180) days written notice to both other Parties; provided, that should it be necessary to preserve safety of persons or property or to preserve public funds, this Agreement may be terminated for cause on such time as is deemed reasonable by the terminating Party.

2. Dispute Resolution. The Port of Skagit Executive Director and the PUD No. 1 General Manager shall meet to resolve any default in a mutually agreeable manner. Failing agreement between the Director and General

Manager, they shall identify, and the Parties shall participate in good faith in, a binding alternative dispute resolution process to do so.

3. Venue. The venue for any dispute related to this Agreement shall be Skagit County, Washington.

J. SCOPE OF AUTHORITY:

No Party has any independent authority to direct the management of the other Parties' activities under this Agreement nor, unless authorized in writing by the other Parties, the joint activities of the Parties hereunder. Neither Party has any authority to bind or to act for or to assume any obligations or responsibilities on behalf of the other Parties. The Parties may, upon mutual agreement, acquire real property interests and personal property in common.

K. NOTICES:

Any and all notices or communications required or permitted to be given under any of the provisions of this Agreement must be in writing and will be deemed to have been given upon: (1) receipt when personally delivered or delivered by email; (2) the next day when sent by overnight courier; (3) or three (3) days after deposit in the United States Postal Service if sent prepaid by first class, certified or registered mail, return receipt requested. All notices must be addressed to the Parties at the addresses set forth below or at such other address specified by notice by one Party to the other Parties.

If to the Port of Skagit County:

Port of Skagit County
15400 Airport Drive
Burlington, Washington 98233
Attn: Executive Director

If to PUD No. 1 of Skagit County:

PUD No. 1 of Skagit County
1415 Freeway Drive
Mount Vernon, Washington 98273
Attn: General Manager

L. ENTIRE AGREEMENT/MODIFICATION:

This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and discussions with respect to the subject matter of this Agreement. This Agreement may be supplemented by additional agreements executed in writing by the Parties, or may be amended or modified by written agreement signed by the Parties hereto. Such amendments may be for the purposes of, among other things, adding or deleting parties to this Agreement or expanding the responsibilities of the Administrator.

M. APPLICABLE LAW:

This Agreement, and any rights and obligations hereunder, shall be construed and interpreted in accordance with the laws of the State of Washington. Any dispute or proceeding arising out of this Agreement shall be filed in the Superior Court of the State of Washington for Skagit County.

N. ATTORNEYS' FEES.

The prevailing Party in any dispute, whether or not suit is brought, or in any action to interpret, collect or enforce this Agreement, is entitled to its reasonable attorneys' fees and costs, in addition to any other remedies, which will be paid by the non-prevailing Party promptly on demand. "Attorneys' fees" as used in this Section includes services rendered at

both the trial and appellate levels as well as services rendered subsequent to judgment in obtaining execution thereon.

O. ASSIGNMENT/NO BENEFICIARIES:

This Agreement is personal to the Parties. No Party to this Agreement may assign its rights or obligations hereunder. This Agreement is for the sole benefit of the Parties and no third party shall be deemed a beneficiary hereof.

P. AUTHORIZATION:

Each Party represents and warrants to the others that it is duly authorized to enter into and to carry out the terms of this Agreement.

Q. INDEPENDENT REVIEW.

This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document shall apply to the interpretation or enforcement of this Agreement.

R. SEVERABILITY.

In the case any term of this Agreement is held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will in any way be affected thereby.

S. COUNTERPARTS.

This Agreement may be executed in counterparts, each of which shall be an original but all of which taken together constitute one and the same instrument.

T. FORCE MAJEURE

If either Party is rendered unable, wholly or in part, by force majeure or any other cause of

any kind not reasonably within its control to perform or comply with any obligation or condition of this agreement upon giving written notice to the other Party, such obligation or condition shall be suspended during the continuance of the inability so caused and such Party shall be relieved of any liability during such period. The term force majeure shall include, without limitation by the following enumeration, acts of God, federal, state, county, or municipal orders, regulations or directives of any governmental authority or persons purporting to act therefor, or when the supply of product or any facility of production, manufacture/storage, transportation, distribution or delivery contemplated by either Party is delayed due to no fault of the Party, riots, acts of terrorism, other disturbances, earthquakes, hurricanes, strikes, or lockouts of any class of works, or stoppage of labor, or damage to piers or essential equipment, floods, fire, explosion, or destruction from any cause of any character either similar or dissimilar to the foregoing and reasonably beyond the control of the Party failing to perform.

U. RECORDING/POSTING/EFFECTIVE DATE

This Agreement shall become effective when recorded by the Parties or when posted on both the Port's and the PUD's web sites ("Effective Date").

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.

PORT OF SKAGIT COUNTY:

PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY:

FOR 

Patricia H. Botsford-Martin



George Sidhu (Apr 16, 2020)

Its: Executive Director

By: George Sidhu, P.E.

Dated: 3/12/2020

Its: General Manager

Dated: 4/16/20

SKAGITNET, LLC



Andrew Entrikin

Its: Manager

Dated: 3/13/2020