

**JOINT NETWORK INTERLOCAL OPERATING AGREEMENT**

**OF**

**SkagitNet, LLC**

**a local government owned Washington limited liability company**

**Dated and Effective**

**as of**

**May 16, 2018**

**THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 NOR REGISTERED NOR QUALIFIED UNDER ANY STATE SECURITIES LAWS. SUCH MEMBERSHIP INTERESTS MAY NOT BE OFFERED FOR SALE, SOLD, DELIVERED AFTER SALE, TRANSFERRED, PLEDGED, OR HYPOTHECATED UNLESS QUALIFIED AND REGISTERED UNDER APPLICABLE STATE AND FEDERAL SECURITIES LAWS OR UNLESS, IN THE OPINION OF COUNSEL SATISFACTORY TO THE NETWORK, SUCH QUALIFICATION AND REGISTRATION IS NOT REQUIRED. ANY TRANSFER OF THE MEMBERSHIP INTERESTS REPRESENTED BY THIS AGREEMENT IS FURTHER SUBJECT TO OTHER RESTRICTIONS, TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.**

**PORT OF SKAGIT COUNTY  
AND  
SKAGIT COUNTY PUBLIC UTILITY DISTRICT No. 1**

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**INTERLOCAL OPERATING AGREEMENT  
OF  
SKAGITNET, LLC**

THIS INTERLOCAL OPERATING AGREEMENT (this “Agreement”) is made and entered into effective as of May 16, 2018, by and between the Port of Skagit County, as Manager (“Manager”) (the “Port”), a Washington port district established pursuant to Tile 53 RCW, and Skagit County Public Utility District No. 1 (the “PUD”), a Washington public utility district established pursuant to Title 54 RCW (collectively, the “Members” and/or “Parties”).

**RECITALS**

- A. The Parties are entering into this Agreement under the authority of the Interlocal Corporation Act, specifically RCW 39.34.030, to jointly provide telecommunications in the form of a county-wide fiber optic backbone with the collective goals of: Providing rural and urban state-of-the-art digital communication services; Creating economic opportunities, including sustainable community wage jobs; Consolidating administration; Reducing administrative layering; and Reducing administrative costs, all consistent with the State of Washington’s legislative policy as set forth in RCW 53.08.370 and RCW 54.16.340.
- B. The PUD operates a SCADA system which allows critical monitoring of the PUD’s water supply system to its customers and which, due to its fundamental importance to the welfare of the community, is an essential public function requiring the security, reliability and redundancy of the telecommunications network that will be created and maintained by SkagitNet.
- C. This Agreement provides a means for each Party to share in the benefits, provision, cost and revenues of telecommunication services.
- D. This Agreement also serves as an Operating Agreement as provided for in the LLC Act, as defined below, as well as an Interlocal Agreement, as authorized by RCW 39.34.030.
- E. RCW 39.34.030 expressly authorizes local government, such as the Parties, to form limited liability companies to carry out their joint activities.

- F. This Agreement supplements prior agreements between the Port and the PUD concerning telecommunications.
- G. In adopting this Agreement, in addition to adopting the Articles of the Agreement, the Members hereby also adopt, and agree to, the Recitals and the facts set forth herein.

## ARTICLE 1 -- DEFINITIONS

The following terms used in this Agreement shall have the following meanings (unless otherwise expressly provided herein):

- 1.1 “**Act**” means the Washington Limited Liability Company Act (RCW Ch. 25.15).
- 1.2 “**Capital Account**” means the capital account determined and maintained for each Member pursuant to Section 8.3.
- 1.3 “**Capital Contribution**” means any contribution to the capital of the NETWORK in cash or property by a Member whenever made.
- 1.4 “**Certificate of Formation**” means the certificate of formation pursuant to which the NETWORK was formed, as originally filed with the office of the Secretary of State on May 16, 2108, and as amended from time to time.
- 1.5 “**Distributable Cash**” means all cash received by the NETWORK, less the sum of the following to the extent paid or set aside by the NETWORK: (i) all principal and interest payments on indebtedness of the NETWORK and other sums paid or payable to lenders; (ii) all cash expenditures incurred incident to the normal operation of the NETWORK’s business; and (iii), Reserves.
- 1.6 “**Fiscal Year**” means a calendar year commencing January 1 and ending December 31.
- 1.7 “**Majority Interest**” means, at any time, more than fifty percent (50%) of the then outstanding Units held by Members.
- 1.8 “**Manager**” means the person or entity designated by the Members as the manager of the NETWORK pursuant to Section 5.1 below and RCW 25.15.154.
- 1.9 “**Member**” or “**Members**” shall mean the Port and the PUD and any other entity that may be admitted to the Network as a Member. Any governmental entity that signs a counterpart of this Agreement shall be a "Member" of the LLC formed hereby as that term is defined in RCW 25.15.006(8) and as that term is used in RCW 25.15.154, as amended. Each Member of the Network must be a public agency as provided for in RCW 39.34.030(3)(b).

1.10 “**Membership Interest**” means all of a Member’s share in the Net Profits, Net Losses, and other tax items of the NETWORK and distribution of the NETWORK’s assets pursuant to this Agreement and the Act and all of a Member’s rights to participate in the management or affairs of the NETWORK, including the right to vote on, consent to or otherwise participate in any decision of the Members.

1.11 “**Net Book Value**” means capitalized cost less any accumulated depreciation.

1.12 “**Net Profits**” and “**Net Losses**” shall have the meaning ascribed to those terms in Section 9.3.

1.13 “**NETWORK**” means SkagitNet, LLC, governed by this joint operating agreement of the Parties. The NETWORK is a “company” as that term is used in the LLC Act.

1.14 “**NETWORK Act**” means RCW 53.08.370 and RCW 54.16.340 now or as hereafter amended.

1.15 “**Percentage Interest**” means with respect to any Member, the percentage determined based upon the ratio that the number of Units held by such Member bears to the total number of outstanding Units.

1.16 “**Person**” means any individual or Entity, and the heirs, executors, administrators, legal representatives, successors, and assigns of such “Person” where the context so permits.

1.17 “**Plan of Operation**” means a detailed description of operational objectives, operational activities, including tentative schedules adopted by all Members. It also includes the NETWORK’S then current capital improvement plan and a description of those capital assets that will be added, maintained or disbursed over the ensuing twenty-four (24) months. The Plan of Operations shall also contain, or refer to, an agreement between the Members as to the ownership, use and maintenance of the Members’ respective internal telecommunications facilities and the Network’s telecommunication facilities. An initial Plan of Operations shall be adopted together with the initial capital improvement plan and capital and operating budgets of the NETWORK within one hundred fifty (150) days of the formation of the NETWORK and the Plan of Operations shall be evaluated and considered for modification commencing no later than July 1 of each year for completion and adoption during each annual budgeting process and modified, if necessary, upon approval of the annual budgets by the Members

1.18 “**Point of Presence**” or “PoP” means a physical location that serves as a demarcation point or interface point between communications entities and is the place where a long-haul fiber optic network interfaces with and connects to the local fiber optic network. This location may also serve as a data center location and house servers, routers, switches, and other electronic accoutrements necessary to operate a fiber optic network with access to internet content.

1.19 “**Reserves**” means, with respect to any fiscal period, funds set aside or amounts allocated during such period to reserves which shall be maintained in amounts deemed sufficient

by the Member for working capital and to pay taxes, insurance, debt service or other costs or expenses incident to the ownership or operation of the NETWORK's business.

1.20 "Units" means the Units issued to any Member under this Agreement as reflected in attached **Exhibit A**, as amended from time to time, subject to the provisions of Article 12 and Section 15.3 of this Agreement.

## ARTICLE 2 -- FORMATION OF LLC

2.1 Formation. The NETWORK was formed on May 16, 2018, when the Certificate of Formation was executed and filed with the office of the Secretary of State in accordance with and pursuant to the Act. The Manager shall promptly execute all amendments to the Certificate of Formation and all other documents needed to enable the Manager to accomplish all filing, recording, and other acts necessary and appropriate to comply with all requirements for the formation and operation of the NETWORK as an LLC under the Act.

2.2 Name. The name of the NETWORK is **SkagitNet, LLC**.

2.3 Principal Place of Business. The principal place of business of the NETWORK shall be 15400 Airport Drive, Burlington, WA 98233. The NETWORK may locate its places of business at any other place or places as the Manager may from time to time deem advisable.

2.4 Registered Office and Registered Agent. The NETWORK's initial registered agent and the address of its initial registered office in the State of Washington are as follows:

<u>Name</u>	<u>Address</u>
<b>Bradford E. Furlong</b>	<b>15400 Airport Drive, Burlington, WA 98233</b>

The registered office and registered agent may be changed by the Manager from time to time by filing an amendment to the Certificate of Formation.

2.5 Term. The term of the NETWORK shall be perpetual unless the NETWORK is earlier dissolved in accordance with either Article 13 or the Act.

## ARTICLE 3 – AUTHORITY, BUSINESS AND PURPOSE OF NETWORK

3.1 Authority. As provided for in the Statutory Authorities, it is the policy of the State of Washington to encourage the development of rural telecommunications services and the availability of telecommunications in rural areas. To this end, the Statutory Authorities provide to the Parties authority to construct and operate regional telecommunications systems, integrating planning, construction, financing, administration, maintenance/repairs and service delivery. This

Agreement is a joint operating agreement among the Members to operate a county-wide broadband network.

The purpose of the Members, in entering into this Agreement, is to jointly own and operate the NETWORK for the provision of open access wholesale telecommunication services and to take such other and further actions as are required and/or authorized by the NETWORK Act. The mutual goal of the Members, in entering into this Agreement, is to work together to facilitate the provision of telecommunication services to the residents, businesses and public agencies of Skagit County in an efficient, reliable and stream-lined manner.

The Interlocal Corporation Act, specifically RCW 39.34.030, provides, in part, that any two or more public agencies may enter into agreements with one another for joint cooperative action. RCW 39.34.030(3)(b) specifically provides: 1) the Members may form a limited liability company under which each Member is a public agency, as provided for in Section 1.9, and 2) the NETWORK's funds are subject to audit, as provided for in Section 11.5 of this Agreement. The Members have exercised the authority granted to them under the Statutory Authorities, the LLC Act and the Interlocal Cooperation Act to form this NETWORK as an LLC to achieve maximum efficiency in the delivery of telecommunication services and so that their rights and liabilities as to each other and third parties are firmly established and clearly understood.

This Agreement serves as such a joint Operating Agreement among the Members to operate telecommunication services, as provided for by the Statutory Authorities, with:

- (a) Each Member bearing a share of the cost of telecommunication services provided by the NETWORK;
- (b) The Treasurer of the PUD ("Treasurer") serving as the custodian of funds made available for the purposes of such telecommunication services and that the Treasurer may make payments from NETWORK funds in its possession upon approval of the Manager and audits by the appropriate auditing officer of the Port; *provided*, that the funds held by the Treasurer shall not be co-mingled with the funds of any Member and shall be separately accounted for as owned exclusively by SkagitNet;
- (c) Both members adopting a joint annual capital and operating budget, as well as an annual Plan of Operations for the NETWORK at the time each adopts its annual budget. Such Plan of Operations shall provide overall direction for Capital development, operation procedures and goals, and financial policy for the NETWORK. The Plan of Operations shall be reviewed by the Members annually and modified no later than the date of adoption of the NETWORK budget, unless emergent circumstances intervene to require earlier modification or deviation from an adopted Plan of Operations.
- (d) The Auditor of the Port serving as the auditing officer of the NETWORK's funds and accounts; *provided*, that the accounting and other activities of

SkagitNet is subject to audit by the Office of the State Auditor to the same extent as is each of the Members; and

- (e) The joint supervision and operation of services and facilities.

The foregoing notwithstanding, the Manager, as defined in Section 1.8 of this Agreement and described in Section 5.1 of this Agreement, may by majority vote of the Members change the Treasurer and Auditor designation to another Treasurer and Auditor.

3.2. Business and Purpose. The business and the purpose of the NETWORK shall be:

3.2.1 To operate a county-wide digital telecommunications network to provide a state-of-the-art county-wide digital telecommunications system, with access to a Point of Presence (“PoP”) as provided for in in the Statutory Authorities from the date of formation until dissolved pursuant to Article 13 hereof.

3.2.2 To carry out any lawful, services, business or activity that may be conducted by a NETWORK or LLC as determined by the Members acting through the Manager; and

3.2.3 To exercise all other powers necessary to or reasonably connected with the NETWORK’s business and services it provides that may be legally exercised by limited liability companies under the LLC Act.

#### **ARTICLE 4 -- NAMES AND ADDRESSES OF MEMBERS**

The names and addresses of the Members are set forth on attached **Exhibit A**, as amended from time to time. Each of the Parties identified in Section 1.9 of this Agreement, once each executes this Agreement, shall be a Member of the NETWORK.

#### **ARTICLE 5 -- MANAGEMENT**

5.1 Management Subject to the Members Reserved Powers, the business and affairs of the NETWORK shall be managed by the Manager. Except as otherwise expressly provided in this Agreement and subject to the Member-adopted capital and operating budgets and Plan of Operations, the Manager shall have full, complete and exclusive authority, power and discretion to manage and control the business, affairs and properties of the NETWORK, to make all decisions regarding those matters and to perform any and all other acts or activities customary or incident to the management of the NETWORK’s business. The Manager shall act in the best interest of the NETWORK, taking into account, to the extent consistent therewith, the mutual goals, objectives and policies of the Members. Without limiting the generality of the foregoing, the Manager shall have power and authority, on behalf of the NETWORK, to do the following:

5.1.1 Work collaboratively with both Members. Such collaboration shall include regular consultation with the staff of each Member and regular reporting to all Members concerning the affairs of the NETWORK, including, but not limited to, no later than May 31<sup>st</sup> of each year, an annual report for the previous Fiscal Year that includes: (1) a narrative summary of the NETWORK's operations; (2) a Balance Sheet; and (3) an Income Statement.

5.1.2 Spend the capital and revenues of the NETWORK in the furtherance of the business of the NETWORK;

5.1.3 Acquire property from any Person as the Manager may determine, and the fact that the Member is an affiliate of such Person shall not prohibit the Manager from dealing with that Person;

5.1.4 Acquire, improve, manage, operate, sell, transfer, exchange, encumber, pledge and dispose of any real or personal property of the NETWORK, including the Property;

5.1.5 Strictly subject to unanimous Member approval, incur indebtedness in the manner consistent with the Members' statutory authority in order to finance or refinance NETWORK assets, to meet other NETWORK obligations, to provide NETWORK with working capital and for any other NETWORK purposes; to execute promissory notes, deeds of trust and assignments of NETWORK property and such other security instruments as a lender of funds may require to secure repayment of such borrowing(s); to change, substitute or amend such borrowing, as, in its judgment, is in the best interest of the NETWORK, and to execute any and all documents that may be required by a bank or other financial institution or other source to establish an escrow, trust agreement, a trust account with a bank, institution or other sources for the receipt of funds, sale proceeds and other payments and disbursements thereof to service such loan(s);

5.1.6 Purchase at the expense of the NETWORK, such liability, casualty, property and other insurance as the Manager, deems reasonably advisable to protect the NETWORK's assets against loss or claims of any nature, provided, however, the Manager shall not be liable to the NETWORK or to others for failure to purchase any insurance if such coverage should prove inadequate;

5.1.7 Invest NETWORK funds temporarily in the manner as allowed under the law for investment of funds by the Members;

5.1.8 Execute instruments and documents for the acquisition or disposition of the NETWORK's property, assignments, bills of sale, leases, and any other instruments or documents necessary, in the opinion of the Manager, to the business of the NETWORK as established in the Plan of Operations;

5.1.9 Employ accountants, legal counsel, independent contractors, managing agents or other experts to perform services for the NETWORK and to compensate them from NETWORK funds;



5.1.10 Enter into any and all other agreements with any other Person for any purpose, in such form as the Manager may approve;

5.1.11 From time to time open bank accounts in the name of the NETWORK, and the Manager shall be the sole signatory thereon, unless the Members determines otherwise;

5.1.12 To do and perform all other acts as may be necessary or appropriate to the conduct of the NETWORK's business;

5.1.13 Unless authorized to do so by this Agreement or by the Manager, no employee or other agent of the NETWORK shall have any power or authority to bind the NETWORK in any way, to pledge its credit or to render it liable for any purpose; and

5.1.14 The Manager shall devote to the NETWORK and apply to the accomplishment of the NETWORK's purposes so much of its time and attention as in his or her judgment is reasonably necessary to manage properly the affairs of the NETWORK.

5.1.15 Within ninety (90) days of the formation of the NETWORK, the Manager shall, in cooperation with the Members, develop a recommended initial Plan of Operation, a recommended initial capital improvement plan and capital budget and a recommended initial operating budget for adoption by the Members. Additionally, modifications thereto shall be completed in a timely fashion to allow the Members to thoroughly review and adopt each pursuant to the time lines set forth herein. Where the Members cannot agree to a Plan of Operation, a budget or a modification thereto, they shall promptly meet in joint session and work in good faith to reach a mutually agreeable outcome.

5.2 Designation of Manager. The initial Manager shall be the Port of Skagit County, acting through a person designated by the Executive Director of the Port; *provided*, that the Executive Director of the Port shall consult with and take into account the recommendations of the General Manager of the PUD prior to designating an employee or contractor to act on behalf of the Port as Manager. The Manager may be removed at the request of any Member, which removal shall be effective once a replacement Manger has been designated. Any future manager shall be designated by unanimous consent of the Members. If the Members are unable to agree on the designation of any future Manager, they shall promptly meet in joint session and work in good faith to determine a mutually agreeable designee.

5.3 Compensation. The NETWORK will not pay the Manager or the Members any fees or other compensation for their services except as set forth in this Agreement or in an agreement between the NETWORK and a Member or Members; *provided*, that such an agreement (or agreements) shall provide that:

(A) each Member be reimbursed the actual cost of its:

- (i) wages and benefits,
- (ii) consumables, and

- (iii) direct expenses incurred on behalf of the NETWORK, unless otherwise agreed by the Member incurring such costs; and

(B) the Manager shall be reimbursed by the NETWORK the actual cost of its:

- (i) wages and benefits,
- (ii) consumables, and
- (iii) direct expenses incurred on behalf of the NETWORK, unless otherwise agreed by the Member incurring such costs.

5.4 Limitation on Liability; Indemnification. Neither the Manager nor any Affiliate of the Manager shall be liable, responsible or accountable in damages or otherwise to the NETWORK or for any act or omission by any such Person performed in good faith pursuant to the authority granted to such Person by this Agreement or in accordance with its provisions, and in a manner reasonably believed by such Person to be within the scope of the authority granted to such Person and in the best interest of the NETWORK; provided that such act or omission did not constitute fraud, intentional misconduct, or gross negligence. The NETWORK shall indemnify and hold harmless the Manager, and each director, officer, partner, employee or agent thereof, against any liability, loss, damage, cost or expense incurred by them on behalf of the NETWORK or in furtherance of the NETWORK's interests without relieving any such Person of liability for fraud, misconduct, bad faith or negligence. The Manager shall not have any personal liability with respect to the satisfaction of any required indemnification of the above-mentioned Persons.

Any indemnification required to be made by the NETWORK shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court, settlement, contract or otherwise. In addition, the NETWORK shall advance funds to a Person claiming indemnification under this Section 5.4 for legal expenses and other costs incurred as a result of a legal action brought against such Person if: (i) the legal action relates to the performance of duties or services by the Person on behalf of the NETWORK; (ii) the legal action is initiated by a party other than a Member; and (iii) such Person undertakes to repay the advanced funds to the NETWORK if it is determined that such Person is not entitled to indemnification pursuant to the terms of this Agreement.

5.5 Right to Rely on the Manager. Any Person dealing with the NETWORK may rely (without duty of further inquiry) upon a certificate signed by the Manager as to the identity and authority of the Manager or other Person to act on behalf of the NETWORK.

## **ARTICLE 6 -- RIGHTS AND OBLIGATIONS OF MEMBERS**

6.1 Obligations of Members. Each Member shall promptly, and in good faith, carry out its obligations under this Agreement including the adoption of budgets, the Plan of Operations and modifications to each. The Members shall promptly, as necessary, designate the Manager. In

addition, each Member shall designate staff and resources to support the Manager and the development of telecommunications facilities and operations contemplated hereby.

6.2 Limitation of Members' Liability. No Member will be personally liable, merely as a Member, for any debts, losses or liabilities of the NETWORK beyond the Member's respective contributions and any obligation of the Member hereunder to make contributions, except as otherwise specifically provided by law. No Member shall have liability to the NETWORK or its Members for monetary damages for conduct merely as a Member, except for acts or omissions that involve intentional misconduct, fraud, gross negligence, or for any transaction for which the Member has personally received a benefit in money, property or services to which the Member was not legally entitled. If the Act is hereafter amended to authorize NETWORK action further eliminating or limiting the personal liability of Members, then the liability of a Member shall be eliminated or limited to the full extent permitted by the Act, as so amended. Any repeal or modification of this section of the Act shall not adversely affect any right or protection of a Member of the NETWORK existing at the time of such repeal or modification for or with respect to an act or omission or such Member occurring prior to such repeal or modification.

The NETWORK shall defend, indemnify and hold harmless the Members and any of their respective representatives, officials, Members, managers, employees or agents thereof, against any liability, loss, damage, cost or expense incurred by them on behalf of the NETWORK or in furtherance of the NETWORK's interests without relieving any such person of liability for fraud, misconduct, bad faith or gross negligence. No Member shall have any personal liability with respect to the satisfaction of any required indemnification of the above-mentioned persons.

Any tender of defense by an indemnitee arising from any liability, loss, damage, cost or expense incurred that falls within the scope of matters subject to defense, indemnification and being held harmless by this Agreement, shall be promptly accepted by the NETWORK. Any indemnification required to be made by the NETWORK shall be made promptly following the fixing of the liability, loss, damage, cost or expense incurred or suffered by a final judgment of any court, settlement, contract or otherwise. In addition, the NETWORK shall reimburse a person claiming indemnification under this Section 6.2 for legal expenses and other costs incurred as a result of a legal action brought against such person if: (i) the legal action relates to the performance of duties or services by the person on behalf of the NETWORK; (ii) the legal action is initiated by a party other than a Member; and (iii) such person undertakes to repay the advanced funds to the NETWORK if it is determined that such person is not entitled to indemnification pursuant to the terms of this Agreement.

6.3 Inspection of Records. Upon reasonable request, each Member shall have the right to inspect and copy at such Member's expense, during ordinary business hours the records required to be maintained by the NETWORK pursuant to Section 11.5.

6.4 No Priority and Return of Capital. Except as expressly provided in Article 12 or 13, no Member shall have priority over any other Member, either as to the return of Capital Contributions or as to Net Profits, Net Losses or distributions; provided, that this Section 6.4 shall not apply to loans made by a Member to the NETWORK.

6.5 Withdrawal of Member. Except as expressly permitted in this Agreement, no Member shall voluntarily resign or otherwise withdraw as a Member except as set forth in Section 6.5.1 below. The remedy for breach of this Section 6.5 shall be monetary damages (and not specific performance), which may be offset against distributions by the NETWORK to which such Person would otherwise be entitled.

6.5.1 A Member wishes to voluntarily resign or otherwise withdraw as a Member must provide the other Members with written notice of withdrawal at least three hundred sixty-five (365) days prior to the withdrawal.

## ARTICLE 7 -- MEETINGS OF MEMBERS

7.1 Meetings. Meetings of the Members, for any purpose or purposes, may be called by the Manager or by any Member holding at least twenty-five percent (25%) of the Units held by the Members. A meeting of the Members shall include one Commissioner, or her or his representative, from each Member, designated by the governing body of each Member.

7.2 Place of Meetings. The Member or the Manager calling the meeting may designate any place, either within or outside the State of Washington, as the place of meeting for any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the NETWORK specified in Section 2.3

7.3 Meeting Compliance. Notice and the conduct of member meetings shall comply with the requirements of the Washington Open Public Meetings Act, Chapter 42.30 RCW ("OPMA"), now or as hereafter amended.

7.4 Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section, such determination shall apply to any adjournment thereof.

7.5 Member Meeting Quorum. A Majority Interest, based on each party's Units, represented in person shall constitute a quorum at any meeting of Members. In the absence of a quorum at any such meeting, a majority of Units held by Members so represented may adjourn the meeting from time to time for a period not to exceed sixty (60) days without further notice. However, if the adjournment is for more than sixty (60) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to the public each Member of record entitled to vote at the meeting. At such adjourned meeting at which a quorum shall be present or represented, any business may be transacted which might have been transacted at the meeting as originally notices. The Members present at a duly organized

meeting may continue to transact business until adjournment, notwithstanding the withdrawal during such meeting of that number of Units whose absence would cause less than a quorum.

7.6 Manner of Acting. If a quorum is present, the affirmative vote of Members holding more than fifty percent (50%) of the Units represented at the meeting in person shall be the act of the Members, unless the vote of a greater or lesser percentage is required by this Agreement or the Act.

7.7 Proxies. No proxy shall be allowed at any meeting of the Members.

7.8 Action by Members Without a Meeting. Action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents describing the action taken, executed by Members entitled to vote thereon, adopted at a meeting complying with the OPMA of the governing board of each Member and delivered to the Manager for inclusion in the NETWORK's minutes. Action taken under this Section 7.8 is effective when all Members entitled to vote thereon have signed such consents, unless such consents specify a different effective date. The record date for determining Members entitled to take action without a meeting shall be the date the first Member signs a consent.

7.9 Waiver of Notice. When any notice is required to be given to a Member, a waiver thereof in writing signed by the Member entitled to such notice, whether before, at, or after the time stated therein, shall be equivalent to the giving of such notice.

7.10 Failure to Observe Formalities. Pursuant to RCW 25.15.061, notwithstanding anything herein to the contrary, this Agreement does not expressly require the Members to hold any meetings and the failure to observe any formalities requiring the calling or conduct of any meeting shall not be considered a factor tending to establish personal liability of the Members.

## ARTICLE 8 CONTRIBUTIONS TO THE NETWORK AND CAPITAL ACCOUNTS

8.1 Members' Initial Capital Contributions. Each Member shall contribute such amount as is set forth in the attached **Exhibit A** as such Member's share of the Member's initial Capital Contribution; *provided*, that the Members may defer the establishment of the initial capital account balances and composition until such time as they agree to adopt the initial Plan of Operations, Operating Budget and Capital Budget.

Each Member's initial Capital Contribution shall consist of cash and the Net Book Value of its real and personal property contributed to the NETWORK as set forth in **Exhibit B** hereto. All Capital Contributions, if any, shall be made prorata, based on each Member's respective Percentage Interest unless otherwise agreed by the Members.

8.2 Additional Capital Contributions. Each Member shall be required to make such additional Capital Contributions as shall be recommended by the Manager from time to time to be

reasonably necessary to meet the expenses of the NETWORK. All such Capital Contributions, if any, shall be made, once approved by all Members, prorata, based on each Member's respective Percentage Interest and pursuant to a then current Member-adopted capital budget or operating budget and the then current Plan of Operations.

The Manager shall give written notice to each Member of the amount of any required additional Capital Contribution, and each Member shall promptly: (a) review such notice; (b) take action to approve or disapprove the contribution; and (c) take action to approve any required modification required to the operating or capital budget and/or Plan of Operations. Payment to the NETWORK of the additional Capital Contribution, if approved by all Members, shall be made no later than sixty (60) days following the date such notice is given. Nothing contained in this Section 8.2 is or shall be deemed to be for the benefit of any Person other than the Members and the NETWORK, and no such Person shall under any circumstances have any right to compel any actions or payments by the Members.

### 8.3 Capital Accounts.

8.3.1 Establishment and Maintenance. A separate Capital Account will be maintained for each Member throughout the term of the NETWORK in accordance with the rules of Regulation Section 1.704. Each Member's Capital Account will be increased by: (1) the amount of money contributed by such Member to the NETWORK; (2) the Net Book value of property contributed by such Member to the NETWORK; (3) allocations to such Member of Net Profits. Each Member's Capital Account will be decreased by: (1) the amount of money distributed to such Member by the NETWORK; (2) the Net Book value of property distributed to such Member by the NETWORK; In the event of a permitted sale or exchange of a Membership Interest in the NETWORK, the Capital Account of the transferor shall become the Capital Account of the transferee to the extent it relates to the transferred Membership Interest.

8.4 Withdrawal or Reduction of Members' Contributions to Capital. No portion of a Member's Capital Account shall be disbursed back to such Member(s) without the unanimous approval of all Members. No Member shall receive out of the NETWORK's property any part of its Capital Contribution until all liabilities of the NETWORK – not including outstanding liabilities to Members based on their Capital Contributions – have been paid or there remains property of the NETWORK sufficient to pay them. A Member, irrespective of the nature of its Capital Contribution, only has the right to demand and receive cash in return for his or her Capital Contribution; unless such return is made to affect a distribution of the NETWORK's assets pursuant to a winding up of the NETWORK.

## **ARTICLE 9 -- ALLOCATIONS OF NET PROFITS AND LOSSES**

### 9.1 Allocation of Net Profit and Loss - In General.

9.1.1 Allocation of Net Profit or Loss. Net Profit or Net Loss for any fiscal year of the NETWORK shall be allocated among the Members in accordance with their respective

Percentage Interests. The NETWORK's Net profit or Loss shall be calculated by June 1<sup>st</sup> of each year for the preceding Fiscal Year.

9.1.2 Limitation. The Net Loss allocated to each Member for any NETWORK fiscal year pursuant to Section 9.1.1 shall not exceed the maximum amount of Net Loss that can be so allocated without causing such Member to have a deficit Capital Account at the end of the fiscal year. All Net Losses in excess of the limitation set forth in this Section 9.1.2 shall be respective Percentage Interests.

9.2 Other Allocation Rules.

9.2.1 General. Except as otherwise provided in this Agreement, all items of NETWORK income, gain, loss, deduction, and any other allocations not otherwise provided for shall be divided among the Members in the same proportions as they share Net Profits or Net Losses, as the case may be, for the year. Net profits and Net Losses shall be determined on an accrual basis in conformance with applicable provisions of the Budgeting, Accounting, and Reporting Standards ("BARS") manual of the Office of the Washington State Auditor

9.3 Determination of Net Profit or Loss.

9.3.1 Computation of Net Profit or Loss. The Net Profit or Net Loss of the NETWORK, for each fiscal year or other period, shall be an amount equal to the NETWORK's taxable income or loss for such period

## ARTICLE 10 -- DISTRIBUTIONS

10.1 Cash Distributions.

10.1.1 Nonliquidation Distributions. Distributions of Distributable Cash, other than distributions in liquidation pursuant to Section 10.1.2 shall be made to all Members prorata in proportion to their respective percentage interests as set forth in **Exhibit A**. The foregoing notwithstanding, the Members intend that Net Profit is to first be invested in NETWORK facilities, then, once adequate funds are in hand for projected facilities needs and the NETWORK's reserves are fully funded, distributed to Members to offset Capital Contributions; and all Members' Capital Accounts have a zero balance, to Members.

10.1.2 Distributions in Liquidation. Notwithstanding Section 10.1.1, distributions in liquidation of the NETWORK shall be made to each Member in the manner set forth in Section 13.3.3.

10.2 Distributions in Kind. Non-cash assets, if any, shall be distributed in a manner that reflects how cash proceeds from the sale of such assets for fair market value would have been distributed (after any unrealized gain or loss attributable to such non-cash assets has been allocated among the Members in accordance with Article 9).

10.3 Withholding; Amounts Withheld Treated as Distributions. The Manager is authorized to withhold from distributions, or with respect to allocations or payment, to Members, to pay over to the appropriate federal, state or local governmental authority any amounts required to be withheld pursuant to the Code or provisions of applicable state or local law. All amounts withheld pursuant to the preceding sentence in connection with any payment, distribution or allocation to any Member shall be treated as amounts distributed to such Member pursuant to this Article 10 for all purposes of this Agreement.

10.4 Limitation Upon Distributions. No distribution shall be declared and paid unless, after the distribution is made, the assets of the NETWORK are in excess of all liabilities of the NETWORK, except liabilities to Members on account of their contributions.

## **ARTICLE 11 -- ACCOUNTING, BOOKS, AND RECORDS**

11.1 Accounting Methods. The NETWORK's books and records shall be kept, and its income tax returns prepared, under such permissible methods of accounting, consistently applied, as the Manager determines is in the best interest of the NETWORK and its Members.

11.2 Interest on and Return of Capital Contributions. No Member shall be entitled to interest on its Capital Contribution or to return of its Capital Contribution, except as otherwise specifically provided for herein.

11.3 Loans to NETWORK. Nothing in this Agreement shall prevent any Member from making secured or unsecured loans to the NETWORK.

11.4 Accounting Period. The NETWORK's accounting period shall be the calendar year.

11.5 Records, Audits and Reports. At the expense of the NETWORK, the Manager shall maintain records and accounts of all operations and expenditures of the NETWORK. At the minimum the NETWORK shall keep at its principal place of business the following records:

- (a) A current list and past list, setting forth the full name and last known mailing address for each Manager and Member;
- (b) A copy of the Certificate of Formation and all amendments thereto;
- (c) Copies of this Agreement and all amendments hereto;
- (d) Copies of the NETWORK's federal, state, and local tax returns and reports, if any, for the three most recent years;



(e) Minutes of every meeting of the Members and any written consents obtained from Members for actions taken by the Manager without a meeting; and

(f) Copies of the NETWORK's financial statements for the three most recent years.

#### 11.6 Tax Matters Member.

11.6.1 Designation. The Manager shall be the "Tax Matters Member" of the NETWORK for purposes of Code Section 6221 et seq. and corresponding provisions of any state or local tax law applicable to the NETWORK, if any.

11.6.2 Expenses of Tax Matters Member; Indemnification. The NETWORK shall indemnify and reimburse the Tax Matters Member for all reasonable expenses, including legal and accounting fees, claims, liabilities, losses and damages incurred in connection with any administrative or judicial proceeding with respect to the tax liability of the Members attributable to the NETWORK. The payment of all such expenses shall be made before any distributions are made to Members (and such expenses shall be taken into consideration for purposes of determining Distributable Cash) or may discretionary Reserves are set aside by the Manager. Neither the Tax Matters Member nor any Manager shall have any obligation to provide funds for such purpose. The provisions for exculpation and indemnification as set forth in Section 5.4 of this Agreement shall be fully applicable to the Member acting as Tax Matters Member for the NETWORK.

11.7 Returns and Other Elections. The Tax Matters Member shall cause the preparation and timely filing of all tax and information returns required to be filed by the NETWORK, if any, pursuant to the Code and all other tax and information returns deemed necessary are required in each jurisdiction in which the NETWORK does business. Copies of such returns, or pertinent information therefrom, shall be furnished to the Members within a reasonable time after the end of the NETWORK's fiscal year. Except as otherwise expressly provided to the contrary in this Agreement, all elections permitted to be made by the NETWORK under federal or state laws shall be made by the Tax Matters Member in the Tax Matter Member's sole discretion.

## ARTICLE 12 -- TRANSFERABILITY

12.1 General. Except as otherwise expressly provided in this Agreement, no Member shall have the right to:

(i) Sell, assign, transfer, exchange or otherwise transfer for consideration, (collectively, "sell" or "sale"); or

(ii) Gift, bequeath or otherwise transfer for no consideration whether or not by operation of law, except in the case of bankruptcy (collectively "gift"), all or part of its Membership Interest. Each Member hereby acknowledges the reasonableness of the restrictions on sale and gift of Membership Interests imposed by this Agreement in view of the NETWORK's

purposes and the relationship of the Members. Accordingly, the restrictions on sale and gift contained herein shall be specifically enforceable. In the event that any Member pledges or otherwise encumbers any of its Membership Interest as security for repayment of a liability, any such pledge or hypothecation shall be made pursuant to a pledge or hypothecation agreement that requires the pledgee or secured party to be bound by all the terms and conditions of this Article 12.

12.2 First Refusal Rights. A Member or its trustee in bankruptcy, receiver, assignee of benefit of creditors, or any other legal representative who desires to sell all or any portion of a Member's Membership Interest, shall first offer it for sale to the NETWORK. The NETWORK shall have fifteen (15) days from the date of notice to purchase the Membership Interest at its then "Fair Market Value." "Fair Market Value" is defined for purposes of this Article 12 as the Net Book Value of the Membership Interest as determined in accordance with generally accepted accounting principles by the NETWORK's regularly employed accountants. If the NETWORK does not elect to purchase, the Membership Interest shall be offered to the other Members pursuant to Section 12.3.

12.3 Mandatory Buy-Out. Notwithstanding any provision herein to the contrary, in the event that the Members determine to dissolve the NETWORK as stated in Section 13.1, any Member shall have the option (the "Buy-Out Offer"), exercisable at any time thereafter, to invoke the mandatory buy-out provisions of this Section 12.3, as follows:

12.3.1 Any Buy-Out transfer triggered by this provision shall require that any portion of the NETWORK that serves an operational need of a Member(s) shall remain in place, including, but not limited to the PUD's SCADA system.

12.3.2 Buy-Out Notice. A Member (the "Initiating Member") wishing to initiate the Buy-Out Offer shall send a written notice (the "Buy-Out Notice") to the other Member(s) (the "Recipient Member(s)"), which shall state (i) a price (the "Buy-Out Unit Price") and other terms for the purchase of a Unit of the Membership Interest, and (ii) that the Initiating Member offers, in the alternative, either to purchase all Units owned by Recipient Member(s) or to sell all Units owned by the Initiating Member, pursuant to this Section 12.3 at the Buy-Out Unit Price and on the terms stated in the Buy-Out Notice.

12.3.3 Election Notice. Within thirty (30) days after the Initiating Member has given a Buy-Out Notice, the other Member(s) each shall send a written notice of their election (the "Election Notice") either to accept the Initiating Member's offer to purchase such Recipient Member's Units, or to accept the Initiating Member's offer to sell all of its Units, at the price stated in the Buy-Out Notice. A failure by any Recipient Member(s) to send such Election Notice shall be deemed an election by such Recipient Member(s) to accept the offer of the Initiating Member to purchase its (the Recipient Member's) Units.

12.3.4 Allocation of Units. If there is more than one Recipient Member, each Recipient Member electing to purchase the Units of the Initiating Member shall have the right to

purchase its ratable proportion of the Units owned by the Initiating Member, as compared with other Recipient Members so electing.

12.3.5 Purchase Price; Payment. The aggregate purchase price for the Units purchased pursuant to this Section 12.3 (the “Buy-Out Purchase Price”) shall be the Buy-Out Unit Price multiplied by the number of Units being purchased. Payment of the Buy-Out Purchase Price shall be made in cash within sixty (60) days of the Buy-Out Offer. All payments hereunder shall be made at the office of the NETWORK unless the holders of a majority of the Units shall agree to an alternate location. Each transferring Member shall receive its proportionate amount of all items of net income, net loss, gains, losses, and proceeds realized by the NETWORK through the closing date based upon the Units owned prior to the transfer.

12.3.6 Default Option. If any purchasing Member (referred to herein as a “Defaulting Member”) shall fail to make payment of the Buy-Out Purchase Price when and as required, the transferring Member shall have the right, at its option, to purchase all of the Units of the Defaulting Member for the price set forth in the Buy-Out Notice. Such option shall be exercised by sending written notice thereof to the Defaulting Member within ten (10) days after the date specified for payment of the Buy-Out Purchase Price, which notice shall specify a closing date not later than thirty (30) days following the date such notice is given. If the transferring Member(s) fail to exercise such option, the Buy-Out Notice shall become void ab initio, and the Defaulting Member shall continue as a Member as though such Buy-Out Notice had not been sent; provided, that notwithstanding anything in this Section 12.3 to the contrary, the Defaulting Member or Members shall reimburse the selling Member or Members for all of his, her or their costs and expenses, including, without limitation, all appraisal, legal and accounting fees, incurred in connection with such Buy-Out Notice.

12.3.7 Continuation of Agreement. This Agreement shall continue in full force and effect as to the remaining Member(s) upon the consummation of a sale of Units pursuant to this Section 12.3.

12.3.8 Eligibility. No Member who is in default of any of its obligations under this Agreement shall be entitled to initiate the Buy-Out Offer provided in this Article 12, but any Member shall have the right to respond to a Buy-Out Notice.

## **ARTICLE 13 -- DISSOLUTION AND TERMINATION**

13.1 Dissolution. The NETWORK shall be dissolved upon the occurrence of the written agreement of all Members.

13.1.1 The Members acknowledge that the operations and property of the NETWORK comprise a valuable, essential public asset, the continuous operation of which is vital to the communities served thereby. The Members therefore further acknowledge that any dissolution of the NETWORK shall be conducted to assure continuity of telecommunication

services provided by the NETWORK at the level and with the reliability of the NETWORK's operations immediately prior to any dissolution.

13.2 Allocation of Net Profit and Loss in Liquidation. The allocation of Net Profit, Net Loss and other items of the NETWORK following the date of dissolution, including but not limited to gain or loss upon the sale of all or substantially all of the NETWORK's assets, shall be determined in accordance with the provisions of Articles 9 and 10 and shall be credited or charged to the Capital Accounts of the Members in the same manner as Net Profit, Net Loss, and other items of the NETWORK would have been credited or charged if there were no dissolution and liquidation.

13.3 Winding Up, Liquidation and Distribution of Assets. Upon dissolution, the Member shall immediately proceed to wind up the affairs of the NETWORK. The Member shall sell or otherwise liquidate all of the NETWORK's assets as promptly as practicable (except to the extent the Member may determine to distribute any assets to the Members in kind) and shall apply the proceeds of such sale and the remaining NETWORK assets in the following order of priority:

13.3.1 Payment of creditors, including Members who are creditors, to the extent otherwise permitted by law, in satisfaction of liabilities of the NETWORK, other than liabilities for distributions to Members;

13.3.2 To establish any reserves that the Member deems reasonably necessary for contingent or unforeseen obligations of the NETWORK and, at the expiration of such period as the Member shall deem advisable, the balance then remaining in the manner provided in Section 13.3.3 below;

13.3.3 By the end of the taxable year in which the liquidation occurs (or, if later, within ninety (90) days after the date of such liquidation), to the Members in proportion to the positive balances of their respective Capital Accounts, as determined after taking into account all Capital Account adjustments for the taxable year during which the liquidation occurs (other than those made pursuant to this Section 13.3.3); *provided*, that any real or personal property contributed by a Member shall be distributed to such Member at its then book value unless such Member declines to accept the property or as otherwise agreed by the Members.

13.4 No Obligation to Restore Negative Capital Account Balance on Liquidation. Notwithstanding anything to the contrary in this Agreement, upon a liquidation, if any Member has a negative Capital Account balance (after giving effect to all contributions, distributions, allocations and other Capital Account adjustments for all taxable years, including the year during which such liquidation occurs), such Member shall have no obligation to make any Capital Contribution to the NETWORK, and the negative balance of such Member's Capital Account shall not be considered a debt owed by such Member to the NETWORK or to any other Person for any purpose whatsoever.

13.5 Termination. The Member shall comply with any applicable requirements of applicable law pertaining to the winding up of affairs of the NETWORK and the final distribution

of its assets. Upon completion of the winding up, liquidation and distribution of the assets, the NETWORK shall be deemed terminated.

13.6 Certificate of Cancellation. When all debts, liabilities and obligations have been paid and discharged or adequate provisions have been made therefor and all of the remaining property and assets have been distributed to the Members, the Member shall file a certificate of cancellation as required by RCW 25.15.080. Upon filing the certificate of cancellation, the existence of the NETWORK shall cease, except as otherwise provided in the Act.

13.7 Return of Contribution Nonrecourse to Other Members. Except as provided by law or as expressly provided in this Agreement, upon dissolution each Member shall look solely to the assets of the NETWORK for the return of its Capital Contributions, if any. Return of Capital Contributions shall be made on a pro rata basis reflecting the Members' Percentage Interests; *provided*, that personal property (at then current Net Book Value), and real property interests and real property (at then current fair market value contributed by a Member shall be distributed to that Member unless otherwise agreed by all Members. If the property remaining after the payment or discharge of liabilities of the NETWORK is insufficient to return the contributions to the Members, no Member shall have recourse against any other Member, the NETWORK or NETWORK Manager.

#### **ARTICLE 14 INDEPENDENT ACTIVITIES OF MEMBERS**

Any Member, including the Manager, that may engage in or possess an interest in other business ventures of every nature and description, independently or with others, including but not limited to, the ownership, financing, management, employment by, lending to or otherwise participating in other Member operations permitted by law even if similar to, but so long as not in direct competition with, the business of the NETWORK.

#### **ARTICLE 15 -- MISCELLANEOUS PROVISIONS**

15.1 Notices. Any notice, demand, or communication required or permitted under this Agreement shall be deemed to have been duly given if delivered personally to the party to whom directed or, if mailed by registered or certified mail, postage and charges prepaid, addressed (a) if to a Member, to the Member's address specified on attached **Exhibit A**, and (b) if to the NETWORK, to the address specified in Section 2.3. Except as otherwise provided herein, any such notice shall be deemed to be given when personally delivered or, if mailed, three (3) business days after the date of mailing. A Member or the NETWORK may change its address for the purposes of notices hereunder by giving notice to the others specifying such changed address in the manner specified in this Section 15.1.

15.2 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

15.3 Amendments. This Agreement may not be amended except by the unanimous written agreement of all of the Members.

15.4 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

15.5 Headings. The headings in this Agreement are inserted for convenience only and shall not affect the interpretations of this Agreement.

15.6 Waivers. The failure of any Person to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

15.7 Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any one right or remedy shall not preclude or waive the right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

15.8 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid, illegal or unenforceable to any extent, the remainder of this Agreement and the application thereof shall not be affected and shall be enforceable to the fullest extent permitted by law.

15.9 Heirs, Successors and Assigns. Each of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

15.10 Creditors and Other Third Parties. None of the provisions of this Agreement shall be for the benefit of or enforceable by any of the creditors of the NETWORK. This Agreement is not for the benefit of the public or any Person other than the Members and shall not be enforceable thereby under any circumstances whatsoever.

15.11 Investment Representations. The Units have not been registered under the Securities Act of 1933, the Securities Act of Washington or any other state securities laws (collectively, the "Securities Acts") because the NETWORK is issuing the Units in reliance upon the exemptions from the registration requirements of the Securities Acts, and the NETWORK is relying upon the fact that the Units are to be held by each Member for investment.

Accordingly, each Member hereby confirms the Units have been acquired for such Member's own account, for investment and not with a view to the resale or distribution thereof and may not be offered or sold to anyone unless there is an effective registration or other

qualification relating thereto under all applicable Securities Acts or unless such Member delivers to the NETWORK an opinion of counsel, satisfactory to the NETWORK, that such registration or other qualification is not required. The Members understand that the NETWORK is under no obligation to register the Units or to assist any Member in complying with any exemption from registration under the Securities Acts.

[Remainder of page intentionally left blank; Signatures to follow]

Executed by the undersigned Members effective as of the date first above written.

**PORT OF SKAGIT COUNTY, MEMBER**

BY [Handwritten Signature]  
Patricia H. Botsford Martin, Executive Director

STATE OF WASHINGTON )  
  ) ss  
COUNTY OF SKAGIT )

On this 15<sup>th</sup> day of May, 2018, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Patricia h. Botsford Martin, to me known to be the Executive Director of the PORT OF SKAGIT COUNTY, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that she w was duly authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

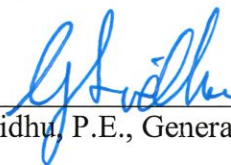
WITNESS my hand and official seal hereto the day and year in this certificate first above written.



[Handwritten Signature]  
(signature)  
Sarah M G Hastings  
(print name)  
**NOTARY PUBLIC** in and for the State of Washington,  
residing at Sedro Woolley  
My appointment expires: 9-19-18



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

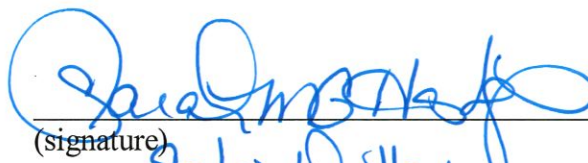
BY   
George Sidhu, P.E., General Manager

STATE OF WASHINGTON )  
  ) ss  
COUNTY OF SKAGIT   )

On this 15<sup>th</sup> day of May, 2018, before me, the undersigned Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared George Sidhu to me known to be the General Manager of PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, a municipal corporation, the corporation that executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was duly authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

**IN WITNESS WHEREOF** I have hereunto set my hand and affixed my official seal the day and year first above written.



  
(signature)  
Sedro Woolley  
(print name)

**NOTARY PUBLIC** in and for the State of Washington,

residing at Sedro Woolley

My appointment expires: 9-19-18

**EXHIBIT A**

**MEMBER INFORMATION**

<u>Names of Member</u>	<u>Initial Capital Contribution</u> <sup>1</sup>	<u>Units</u>	<u>Percentage Interest</u>
Port of Skagit County 15400 Airport Drive Burlington, WA 98233 Manager	\$ _____	100	50%
PUD #1 of Skagit County 1415 Freeway Drive Mount Vernon WA 98273	\$ _____	100	50%

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<sup>1</sup> The amount and composition of each Member's capital contribution will be determined as part of the initial Plan of Operations, the Operating Budget and Capital Budget to be approved by both Members in November 2018.

**EXHIBIT B**

**INITIAL CAPITAL ACCOUNTS<sup>2</sup>**

Port of Skagit County

List of cash, Net Book Value of assets

Total

Skagit County PUD #1

List of cash, book value of assets

Total

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<sup>2</sup> See, Footnote #1.