

DARK FIBER OPTIC LEASE AGREEMENT

This Dark Fiber Optic Lease Agreement ("**Agreement**") is made and entered into this 19th day of May, 2015, ("**Execution Date**") by and between Skagit Public Utility District No.1 ("**Customer**") and The City of Mount Vernon, a municipal corporation in the State of Washington ("**The City**").

Whereas, The City has the authority to construct and maintain various wire line facilities within the rights-of-way of the City; and

Whereas, The City is offering for compensation unrestricted bandwidth dark fiber optic connectivity to customers; and

Whereas, the Customer desires to obtain from the City certain fiber connectivity between locations within the City's Fiber System. The City is willing to do so under the terms and conditions set forth herein; and

Accordingly, in consideration of the mutual benefits and obligations set forth herein, the parties agree as follows:

1. DEFINITIONS.

- A. "City's fiber system" means all facilities related to the City's operation of its fiber lines which are owned, operated, controlled and maintained by the City, including but not limited to fiber optic cables, equipment and all associated hardware utilized by the City.
- B. "Dark Fiber" means unlit optical fiber cable strands, with connectivity from end-to-end and meeting generally accepted industry loss and performance standards, where the Lessee is responsible for providing and attaching the telecommunications equipment and lasers to transmit the light to carry data via the fiber.
- C. "Fiber" means optical fiber cable strands used to transmit light to carry data from end-to-end and meeting generally accepted industry loss and performance standards.
- D. "Non-recurring Charges" means work done by the City in order to install and connect the City's fiber system to the Customer's site location, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. The City's standard billing rates for having personnel on site shall apply, and the City's cost accounting systems used for recording capital and expense activities shall be used. Any work done by the City in order to maintain and repair the fiber system located on the Customer side of the demarcation point shall be included as non-recurring charges.
- E. "Plant Maintenance" means the City's fiber system owned operated and maintained by the City ending at the Customer demarcation point.

2. THE CITY RESPONSIBILITIES FOR FIBER SERVICE

The City shall provide the following "Fiber Service" to the Customer:

A. Arrange for, install, own, operate and maintain facilities necessary to provide non exclusive rights to utilize dark fiber from the City's Fiber system to the Customer between the demarcation point for specific site locations and under specific terms and conditions for each such site location as described in Exhibit A attached to and made part of this Agreement. The demarcation point shall be at the point in which dark fiber from the City enters the Customer's real property at its property line and shall be the point of separation of responsibility between the City and the Customer. The City shall be responsible for everything including operations and maintenance between the City side of the demarcation point and the Customer shall be responsible for everything including operations and maintenance on the Customer side of each demarcation point as identified in Exhibit A. The City shall provide all outside plant maintenance of fiber at no additional cost to the Customer. In addition to fiber located on the Customer side of the demarcation point, if maintenance or repair is required due to any acts of the Customer, its employees, or agents, the Customer shall be responsible for all costs of maintenance related to the specific act; and

B. Securing and maintaining any and all necessary franchises, permits, easements or agreements necessary for the use of property including the use of utility poles for the construction and maintenance of the City's fiber system. The City will deploy a standard single mode fiber optic product and will perform all work using industry standards.

3. FIBER ROUTE

The City at all times shall have sole discretion to choose the route of the fiber optic lines including routes which may not be the most direct route between the locations desired by the Customer.

4. DELIVERY OF FIBER FACILITY

When required by the City, the Customer shall promptly facilitate access to the Customer's property including buildings or any structure necessary to construct and maintain Fiber Service to the Customer. The City shall notify the Customer in writing when fiber has been installed and is ready for use. The date of such notification ("**January 1, 2015**") shall be the first day that the Customer shall be billed by the City under this Agreement.

5. TERM

This Agreement shall become effective upon the Start Date stated above and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect.

6. COMPENSATION

Customer shall pay a rental rate for Fiber Service from Start Date on a monthly basis, Customer shall pay all Non-recurring charges which occur during the month. If necessary, the first invoice for service commencing on the Start Date shall be prorated. Thereafter, monthly rental and Non-recurring payments will be invoiced at the beginning of each monthly period. All payments will be due thirty (30) days from Customer's receipt of City's invoice. Exhibit A shall contain the monthly lease payment amounts and amounts for any initial Non-recurring charges to establish on site

connectivity with the Customer.

7. FIBER CONNECTIVITY RESTORATION, REPAIR & MAINTENANCE

The City shall employ a reasonable standard of care to maintain continuity of the City's fiber system whenever possible. If the Customer becomes aware that fiber continuity is lost, the Customer shall notify the City immediately. If during off hours, Customer shall notify the City by pager number provided in Section 10. Once the City is notified, City shall inspect the City's fiber system and all fiber and associated equipment on Customer side of the demarcation point in order to determine the cause of loss of service. After its inspection the City shall report back to the Customer. The City shall be responsible and to re-establish continuity to the Customer in the event lack of continuity exists on the City side of the demarcation point. Customer shall be responsible to re-establish continuity of the fiber in the event lack of continuity exists on the Customer side of the demarcation point. The City shall notify the Customer if problems encountered are not due to lack of fiber continuity or is due to a lack of continuity on the Customer side of the demarcation point.

The City shall have the ability to perform emergency and regular maintenance of the City's fiber system. Such maintenance includes the potential that fiber continuity may be disrupted to the Customer for a reasonable period of time. The City shall coordinate with the Customer to schedule regular maintenance at times that are mutually convenient to both parties when such maintenance is likely to cause disruption of Fiber service to the Customer.

Customer shall grant to the City or its contractor access to Customer property including the interior areas of any structures that contain fiber or fiber related equipment on the Customer side of the demarcation point in order to complete any inspection necessary to determine where or the nature of the cause of any disruption of Fiber Service to the Customer. The Customer shall provide 24/7 escorted access as necessary to repair and maintain the Customer Fiber if necessary.

8. CREDITS FOR LOSS OF CONTINUITY

Credits for loss of continuity will not be issued by the City unless it is as a result of City's negligence.

9. TERMINATION WITHOUT CAUSE

Either Party may terminate this agreement at anytime and without cause with ninety (90) days prior written notice to the other Party.

10. NOTICE

A. All notices hereunder may be delivered or mailed unless required otherwise within this Agreement. If mailed, they shall be sent to the following respective addresses:

To Mount Vernon:
Attn: City Attorney
P.O. Box 809
Mount Vernon, WA 98273
E-Mail: kevinr@mountvernonwa.gov

Skagit PUD
Attn: Bob Powell
1415 Freeway Drive
Mount Vernon, Washington
E-Mail: powell@skagitpud.org

And to:

City of Mount Vernon
Attn: Information Services Manager
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
E-Mail: kimk@mountvernonwa.gov

or to such other respective addresses as any Party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. For e-mail, delivery shall be the next business day after the day sent; a delivery or a read receipt shall be conclusive evidence of the date of mailing.

B. NOTIFICATION OF LOSS OF SERVICE.

In the event Customer experiences loss of fiber continuity as set forth in Section 7 of this Agreement, Customer shall notify the City by calling the following phone numbers:

- a. During Regular Business Hours (Mon-Thurs 8-5 pm Fri. 8-3:30pm):
- b. During Off Hours pager number: 360.336.4915

Notices regarding loss of fiber continuity under this subsection may be hereafter changed from time to time by the City if such notice of the changes is provided in writing

11. LIMITATIONS OF LIABILITY

Notwithstanding any provision of this Agreement to the contrary, except to the extent caused by its own willful misconduct, the City shall not be liable for any special, incidental, indirect, punitive or consequential damages including, but not limited to, loss of profits or revenue, cost of capital, or claims of customers, (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), whether foreseeable or not, arising out of, or in connection with either party's performance or non performance of its respective obligations under this Agreement or any other cause or nature whatsoever and all claims with respect to which such special, incidental, indirect, punitive or consequential damages are hereby specifically waived.

12. CUSTOMER RESTRICTIONS ON USE OF FIBER

The City will provide dark fibers to the Customer with no bandwidth restrictions. The Customer warrants that it will use the dark fiber only for legal and authorized purposes. The fiber optic line will be provided as a discrete and dedicated connection for the Customer. The Customer must use the fiber for internal purposes only and cannot resell the dark fiber to any other without the written consent of The City.

During the term of this Agreement Customer agrees to inform The City at least 30 days in

advance of its plans to use the Fiber for 10 Gbps or greater bandwidth levels.

13. INDEMNIFICATION

Subject to the provisions of this Agreement, The City hereby releases and agrees to indemnify, defend, protect and hold harmless Customer, its directors, officers, stockholders, agents, and employees, and its respective successors or permitted assigns from and against: (i) any and all causes of action, demands, claims, suits, losses, judgments or costs (collectively "**Damages**") which may be brought by or asserted by any third party against Customer related to The City's design, construction, maintenance or operation or use of the Fiber, or (ii) each and every breach, or material default by The City of any of its covenants, agreements, duties or obligations hereunder, or (iii) any violation by The City of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with The City's performance of its obligations under this Agreement, or (iv) damages directly attributable to the negligent act or omission or willful misconduct of The City.

Subject to the provisions of this Agreement, Customer hereby releases and agrees to indemnify, defend, protect and hold harmless The City, its directors, officers, stockholders, agents, and employees, and its respective successors or permitted assigns from and against: (i) any and all causes of action, demands, claims, suits, losses, judgments or costs (collectively "Damages") which may be brought by or asserted by any third party against The City related to Customer's maintenance, operation or use of the Fibers, or (ii) each and every breach, or material default by Customer of any of its covenants, agreements, duties or obligations hereunder, or (iii) any violation by Customer of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with Customer's performance of its obligations under this Agreement, or (iv) damages directly attributable to the negligent act or omission or willful misconduct of Customer.

14. RESOLUTION OF DISPUTES

The Parties shall attempt to resolve by negotiation and compromise any disputes as to the validity or enforcement of any term or provision of this Agreement. Failing such compromise, such claim or assertion shall be settled by binding arbitration. Venue of any such proceeding shall be in Skagit County Washington. There shall be one arbitrator agreed upon by the parties, or if the parties cannot agree on that arbitrator within two (2) days of the initial arbitration demand, the arbitrator shall be selected by the administrator of the American Arbitration Association ("AAA") office closest to Mount Vernon, Washington. The arbitrator selected by AAA shall reside in, or as close to, Mount Vernon, WA as practical. The arbitration shall be conducted under the AAA Commercial Arbitration Rules with Expedited Procedures in effect. The arbitrator may award injunctive relief or any other remedy available from a judge, including temporary restraining orders or injunctions or the joinder of parties or consolidation of the arbitration proceedings with any other proceedings involving common issues of law or fact or which may promote judicial economy. Pending appointment of an arbitrator, any party to a claim or assertion may apply to a court of competent jurisdiction for such interim order or relief as may be appropriate, including temporary restraining orders or injunctions, provided that once the arbitrator is appointed, all further interim relief, including temporary restraining orders or injunctions, shall be awarded by the arbitrator whose powers in that regard shall include the power to vary or dissolve any temporary order or relief granted by the court. The arbitrator in such proceedings shall award to the substantially prevailing party reasonable attorney's fees and costs incurred by the substantially prevailing party in conjunction with such dispute.

15. ASSIGNMENT & TRANSFER

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto and all of the parties shall be jointly and severally liable hereunder. Neither party may assign this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld.

16. REPRESENTATION & WARRANTY

The signatories of this Agreement represent and warrant that they are authorized to execute this Agreement on behalf of the entities which are party to this Agreement, bind their respective entities to this Agreement; that the parties are registered to do business in the State of Washington and that the execution of this Agreement has been approved by the governing boards, members or partners, if any, of the parties to this Agreement.

17. FORCE MAJEURE

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, each of which shall constitute a force majeure, and the affected party shall be released from liability and shall suffer no prejudice for the failure of performance of its obligation or obligations, and, if the construction schedule is affected, the Start Date shall be excused and extended for and during the period of any such delay: any circumstance beyond the reasonable control of the affected party, including without limitation, which materially affects the ability of the affected party to perform its obligations hereunder; any act of God; fire; flood; the adoption or amendment of government codes, ordinances, laws, rules, regulations or restrictions that materially impair the affected party's performance hereunder including lack of funding; war or civil disorder; strikes, lock-outs or other labor disputes.

18. ENTIRE AGREEMENT

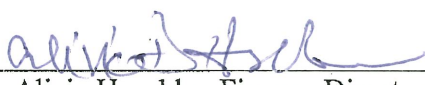
This Agreement constitutes the full and final agreement between the parties hereto and incorporates and supersedes all prior agreements and negotiations. It may not be modified or supplemented in *any* manner whatsoever, except upon the written agreement of all parties hereto.

Executed and accepted this 24~~th~~ day of May, 2015.


CITY OF MOUNT VERNON

By: 
Jill Bourdreau, Mayor

Date: 5-29-15

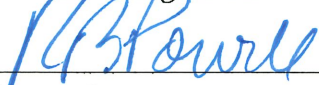
Attest: 
Alicia Huschka, Finance Director

Date: 5-29-15

Approved as to form and legality:

Kevin Rogerson, City Attorney

Date: 5-29-15

CUSTOMER Skagit PUD

By:  Robert B. Powell
Its: General Manager

Date: March 3, 2015

EXHIBIT A

TO DARK FIBER OPTIC LEASE AGREEMENT
BETWEEN THE CITY OF MOUNT VERNON AND CUSTOMER

LOCATIONS / WORK PROVIDED

Dark Fiber Provided: Two strands of single mode fiber optic connectivity between the main building located at the Customer site and City right of way below:

<i>From:</i> <i>City Right of</i>	<i>To:</i> <i>Customer Site</i>	<i>Customer Contact</i>	<i>Monthly Rental Price</i>
Skagit PUD 1415 Freeway Drive Mount Vernon, WA	Skagit PUD Watertank 500 North 9th Mount Vernon, WA	Attn: Gary Chrysler Phone: 360.424.7104 Email: gary.chrysler@skagitpud.org	\$75
Skagit PUD 1415 Freeway Drive Mount Vernon, WA	Skagit PUD Pump St 814 North Waugh Mount Vernon, WA	Attn: Gary Chrysler Phone: 360.424.7104 Email: gary.chrysler@skagitpud.org	\$75

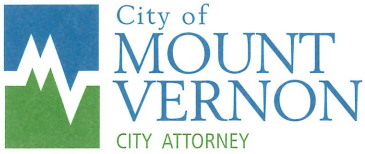
Non-Recurring Expenses: [include any costs borne upon the City to install]

Other terms and conditions: Any additional building entry fees charged by the building owner or property management will be the responsibility of the Customer. Further, the Customer will be responsible for providing the City of Mount Vernon written permission for installation and building access.

Call Out Numbers For Loss of Continuity:

Fiber call out pager number: 360.336.4915

Fiber Callout cell number: 360.840.5485



RECEIVED
JUN 03 2015
SKAGIT P.U.D.

June 1, 2015

Robert Powell
General Manager
Public Utility District No. 1 of Skagit County
PO Box 1436
Mount Vernon, WA

Re: Dark Fiber Optic Lease Agreement

Dear Mr. Powell:

Please find enclosed an original of the above-referenced agreement between the City and PUD for your records.

If you have any questions, please contact me at the telephone number captioned above.

Sincerely,

A handwritten signature in blue ink that reads "Chrissy Sprouse".

Chrissy Sprouse
Paralegal

DARK FIBER OPTIC LEASE AGREEMENT

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Whereas, The City is offering for compensation unrestricted bandwidth dark fiber optic connectivity to customers; and

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C. "Fiber" means optical fiber cable strands used to transmit light to carry data from end-to-end and meeting generally accepted industry loss and performance standards.

D. "Non-recurring Charges" means work done by the City in order to install and connect the City's fiber system to the Customer's site location, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. The City's standard billing rates for having personnel on site shall apply, and the City's cost accounting systems used for recording capital and expense activities shall be used. Any work done by the City in order to maintain and repair the fiber system located on the Customer side of the demarcation point shall be included as non-recurring charges.

E. "Plant Maintenance" means the City's fiber system owned operated and maintained by the City ending at the Customer demarcation point.

2. THE CITY RESPONSIBILITIES FOR FIBER SERVICE

The City shall provide the following "Fiber Service" to the Customer:

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B. Securing and maintaining any and all necessary franchises, permits, easements or agreements necessary for the use of property including the use of utility poles for the construction and maintenance of the City's fiber system. The City will deploy a standard single mode fiber optic product and will perform all work using industry standards.

3. FIBER ROUTE

The City at all times shall have sole discretion to choose the route of the fiber optic lines including routes which may not be the most direct route between the locations desired by the Customer.

4. DELIVERY OF FIBER FACILITY

When required by the City, the Customer shall promptly facilitate access to the Customer's property including buildings or any structure necessary to construct and maintain Fiber Service to the Customer. The City shall notify the Customer in writing when fiber has been installed and is ready for use. The date of such notification ("**January 1, 2015**") shall be the first day that the Customer shall be billed by the City under this Agreement.

5. TERM

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Customer shall grant to the City or its contractor access to Customer property including the interior areas of any structures that contain fiber or fiber related equipment on the Customer side of the demarcation point in order to complete any inspection necessary to determine where or the nature of the cause of any disruption of Fiber Service to the Customer. The Customer shall provide 24/7 escorted access as necessary to repair and maintain the Customer Fiber if necessary.

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Skagit PUD
Attn: Bob Powell
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Mount Vernon, Washington
E-Mail: powell@skagitpud.org

And to:

City of Mount Vernon
Attn: Information Services Manager
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
E-Mail: kimk@mountvernonwa.gov

or to such other respective addresses as any Party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. For e-mail, delivery shall be the next business day after the day sent; a delivery or a read receipt shall be conclusive evidence of the date of mailing.

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12. CUSTOMER RESTRICTIONS ON USE OF FIBER

The City will provide dark fibers to the Customer with no bandwidth restrictions. The Customer warrants that it will use the dark fiber only for legal and authorized purposes. The fiber optic line will be provided as a discrete and dedicated connection for the Customer. The Customer must use the fiber for internal purposes only and cannot resell the dark fiber to any other without the written consent of The City.

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14. RESOLUTION OF DISPUTES

The Parties shall attempt to resolve by negotiation and compromise any disputes as to the validity or enforcement of any term or provision of this Agreement. Failing such compromise, such claim or assertion shall be settled by binding arbitration. Venue of any such proceeding shall be in Skagit County Washington. There shall be one arbitrator agreed upon by the parties, or if the parties cannot agree on that arbitrator within two (2) days of the initial arbitration demand, the arbitrator shall be selected by the administrator of the American Arbitration Association ("AAA") office closest to Mount Vernon, Washington. The arbitrator selected by AAA shall reside in, or as close to, Mount Vernon, WA as practical. The arbitration shall be conducted under the AAA Commercial Arbitration Rules with Expedited Procedures in effect. The arbitrator may award injunctive relief or any other remedy available from a judge, including temporary restraining orders or injunctions or the joinder of parties or consolidation of the arbitration proceedings with any other proceedings involving common issues of law or fact or which may promote judicial economy. Pending appointment of an arbitrator, any party to a claim or assertion may apply to a court of competent jurisdiction for such interim order or relief as may be appropriate, including temporary restraining orders or injunctions, provided that once the arbitrator is appointed, all further interim relief, including temporary restraining orders or injunctions, shall be awarded by the arbitrator whose powers in that regard shall include the power to vary or dissolve any temporary order or relief granted by the court. The arbitrator in such proceedings shall award to the substantially prevailing party reasonable attorney's fees and costs incurred by the substantially prevailing party in conjunction with such dispute.

15. ASSIGNMENT & TRANSFER

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto and all of the parties shall be jointly and severally liable hereunder. Neither party may assign this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld.

16. REPRESENTATION & WARRANTY

The signatories of this Agreement represent and warrant that they are authorized to execute this Agreement on behalf of the entities which are party to this Agreement, bind their respective entities to this Agreement; that the parties are registered to do business in the State of Washington and that the execution of this Agreement has been approved by the governing boards, members or partners, if any, of the parties to this Agreement.

17. FORCE MAJEURE

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, each of which shall constitute a force majeure, and the affected party shall be released from liability and shall suffer no prejudice for the failure of performance of its obligation or obligations, and, if the construction schedule is affected, the Start Date shall be excused and extended for and during the period of any such delay: any circumstance beyond the reasonable control of the affected party, including without limitation, which materially affects the ability of the affected party to perform its obligations hereunder; any act of God; fire; flood; the adoption or amendment of government codes, ordinances, laws, rules, regulations or restrictions that materially impair the affected party's performance hereunder including lack of funding; war or civil disorder; strikes, lock-outs or other labor disputes.

18. ENTIRE AGREEMENT

This Agreement constitutes the full and final agreement between the parties hereto and incorporates and supersedes all prior agreements and negotiations. It may not be modified or supplemented in *any* manner whatsoever, except upon the written agreement of all parties hereto.

Executed and accepted this ____ day of _____, 2015.

CITY OF MOUNT VERNON

By: _____
Jill Bourdreau, Mayor

Date: _____

Attest: _____
Alicia Huschka, Finance Director

Date: _____

Approved as to form and legality:

Kevin Rogerson, City Attorney

Date: _____

CUSTOMER Skagit PUD

By: RB Powell Robert B. Powell
Its: General Manager

Date: March 3, 2015

EXHIBIT A

**TO DARK FIBER OPTIC LEASE AGREEMENT
BETWEEN THE CITY OF MOUNT VERNON AND CUSTOMER**

LOCATIONS / WORK PROVIDED

Dark Fiber Provided: Two strands of single mode fiber optic connectivity between the main building located at the Customer site and City right of way below:

<i>From:</i> <i>City Right of</i>	<i>To:</i> <i>Customer Site</i>	<i>Customer Contact</i>	<i>Monthly Rental Price</i>
Skagit PUD 1415 Freeway Drive Mount Vernon, WA	Skagit PUD Watertank 500 North 9th Mount Vernon, WA	Attn: Gary Chrysler Phone: 360.424.7104 Email: gary.chrysler@skagitpud.org	\$75
Skagit PUD 1415 Freeway Drive Mount Vernon, WA	Skagit PUD Pump St 814 North Waugh Mount Vernon, WA	Attn: Gary Chrysler Phone: 360.424.7104 Email: gary.chrysler@skagitpud.org	\$75

Non-Recurring Expenses: [include any costs borne upon the City to install]

Other terms and conditions: Any additional building entry fees charged by the building owner or property management will be the responsibility of the Customer. Further, the Customer will be responsible for providing the City of Mount Vernon written permission for installation and building access.

Call Out Numbers For Loss of Continuity:

Fiber call out pager number: 360.336.4915

Fiber Callout cell number: 360.840.5485



RECEIVED
FEB 17 2015
SKAGIT P.U.D.

February 12, 2015

Bob Powell
General Manager, Skagit PUD
P.O. Box 1436
Mount Vernon, WA 98273

Re: Fiber agreement with City of Mount Vernon

Dear Mr. Powell:

The City of Mount Vernon provides fiber connections (dark and lit) to various public agencies throughout Skagit County. As such, we are conducting an internal audit of all our fiber connections and agreements to be sure we are in compliance with all requirements. We have discovered that the City has been providing Skagit PUD with two dark fiber connections since approximately 2004, without an agreement or required monthly charge.

Accordingly, I have attached two Dark Fiber Optic Lease Agreements between the parties for two dark fiber connections, having a monthly charge of \$150 beginning January 1, 2015. (This minimal fee of \$150 is to help us pay for ongoing fiber maintenance and support.) Please have both agreements signed and returned to our office before April 1, 2015. I will then take them before City Council for approval and signatures and will send you one fully executed original.

Thank you for your assistance. If you or anyone from your staff has any questions or concerns, please feel free to email at kimk@mountvernonwa.gov or call me directly at 419-3240.

Best regards,

A handwritten signature in black ink, appearing to read "Kim Kleppe".

Kim Kleppe
Information Services Director

Cc: Mayor Boudreau

DARK FIBER OPTIC LEASE AGREEMENT

This Dark Fiber Optic Lease Agreement ("**Agreement**") is made and entered into this ____ day of _____, 2015, ("**Execution Date**") by and between Skagit Public Utility District No.1 ("**Customer**") and The City of Mount Vernon, a municipal corporation in the State of Washington ("**The City**").

Whereas, The City has the authority to construct and maintain various wire line facilities within the rights-of-way of the City; and

Whereas, The City is offering for compensation unrestricted bandwidth dark fiber optic connectivity to customers; and

Whereas, the Customer desires to obtain from the City certain fiber connectivity between locations within the City's Fiber System. The City is willing to do so under the terms and conditions set forth herein; and

Accordingly, in consideration of the mutual benefits and obligations set forth herein, the parties agree as follows:

1. DEFINITIONS.

A. "City's fiber system" means all facilities related to the City's operation of its fiber lines which are owned, operated, controlled and maintained by the City, including but not limited to fiber optic cables, equipment and all associated hardware utilized by the City.

B. "Dark Fiber" means unlit optical fiber cable strands, with connectivity from end-to-end and meeting generally accepted industry loss and performance standards, where the Lessee is responsible for providing and attaching the telecommunications equipment and lasers to transmit the light to carry data via the fiber.

C. "Fiber" means optical fiber cable strands used to transmit light to carry data from end-to-end and meeting generally accepted industry loss and performance standards.

D. "Non-recurring Charges" means work done by the City in order to install and connect the City's fiber system to the Customer's site location, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. The City's standard billing rates for having personnel on site shall apply, and the City's cost accounting systems used for recording capital and expense activities shall be used. Any work done by the City in order to maintain and repair the fiber system located on the Customer side of the demarcation point shall be included as non-recurring charges.

E. "Plant Maintenance" means the City's fiber system owned operated and maintained by the City ending at the Customer demarcation point.

2. THE CITY RESPONSIBILITIES FOR FIBER SERVICE

The City shall provide the following "Fiber Service" to the Customer:

A. Arrange for, install, own, operate and maintain facilities necessary to provide non exclusive rights to utilize dark fiber from the City's Fiber system to the Customer between the demarcation point for specific site locations and under specific terms and conditions for each such site location as described in Exhibit A attached to and made part of this Agreement. The demarcation point shall be at the point in which dark fiber from the City enters the Customer's real property at its property line and shall be the point of separation of responsibility between the City and the Customer. The City shall be responsible for everything including operations and maintenance between the City side of the demarcation point and the Customer shall be responsible for everything including operations and maintenance on the Customer side of each demarcation point as identified in Exhibit A. The City shall provide all outside plant maintenance of fiber at no additional cost to the Customer. In addition to fiber located on the Customer side of the demarcation point, if maintenance or repair is required due to any acts of the Customer, its employees, or agents, the Customer shall be responsible for all costs of maintenance related to the specific act; and

B. Securing and maintaining any and all necessary franchises, permits, easements or agreements necessary for the use of property including the use of utility poles for the construction and maintenance of the City's fiber system. The City will deploy a standard single mode fiber optic product and will perform all work using industry standards.

3. FIBER ROUTE

The City at all times shall have sole discretion to choose the route of the fiber optic lines including routes which may not be the most direct route between the locations desired by the Customer.

4. DELIVERY OF FIBER FACILITY

When required by the City, the Customer shall promptly facilitate access to the Customer's property including buildings or any structure necessary to construct and maintain Fiber Service to the Customer. The City shall notify the Customer in writing when fiber has been installed and is ready for use. The date of such notification ("**January 1, 2015**") shall be the first day that the Customer shall be billed by the City under this Agreement.

5. TERM

This Agreement shall become effective upon the Start Date stated above and, if not terminated in accordance with other provisions of this Agreement, shall continue in effect.

6. COMPENSATION

Customer shall pay a rental rate for Fiber Service from Start Date on a monthly basis, Customer shall pay all Non-recurring charges which occur during the month. If necessary, the first invoice for service commencing on the Start Date shall be prorated. Thereafter, monthly rental and Non-recurring payments will be invoiced at the beginning of each monthly period. All payments will be due thirty (30) days from Customer's receipt of City's invoice. Exhibit A shall contain the monthly lease payment amounts and amounts for any initial Non-recurring charges to establish on site

connectivity with the Customer.

7. FIBER CONNECTIVITY RESTORATION, REPAIR & MAINTENANCE

The City shall employ a reasonable standard of care to maintain continuity of the City's fiber system whenever possible. If the Customer becomes aware that fiber continuity is lost, the Customer shall notify the City immediately. If during off hours, Customer shall notify the City by pager number provided in Section 10. Once the City is notified, City shall inspect the City's fiber system and all fiber and associated equipment on Customer side of the demarcation point in order to determine the cause of loss of service. After its inspection the City shall report back to the Customer. The City shall be responsible and to re-establish continuity to the Customer in the event lack of continuity exists on the City side of the demarcation point. Customer shall be responsible to re-establish continuity of the fiber in the event lack of continuity exists on the Customer side of the demarcation point. The City shall notify the Customer if problems encountered are not due to lack of fiber continuity or is due to a lack of continuity on the Customer side of the demarcation point.

The City shall have the ability to perform emergency and regular maintenance of the City's fiber system. Such maintenance includes the potential that fiber continuity may be disrupted to the Customer for a reasonable period of time. The City shall coordinate with the Customer to schedule regular maintenance at times that are mutually convenient to both parties when such maintenance is likely to cause disruption of Fiber service to the Customer.

Customer shall grant to the City or its contractor access to Customer property including the interior areas of any structures that contain fiber or fiber related equipment on the Customer side of the demarcation point in order to complete any inspection necessary to determine where or the nature of the cause of any disruption of Fiber Service to the Customer. The Customer shall provide 24/7 escorted access as necessary to repair and maintain the Customer Fiber if necessary.

8. CREDITS FOR LOSS OF CONTINUITY

Credits for loss of continuity will not be issued by the City unless it is as a result of City's negligence.

9. TERMINATION WITHOUT CAUSE

Either Party may terminate this agreement at anytime and without cause with ninety (90) days prior written notice to the other Party.

10. NOTICE

A. All notices hereunder may be delivered or mailed unless required otherwise within this Agreement. If mailed, they shall be sent to the following respective addresses:

To Mount Vernon:
Attn: City Attorney
P.O. Box 809
Mount Vernon, WA 98273
E-Mail: kevinr@mountvernonwa.gov

Skagit PUD
Attn: Bob Powell
1415 Freeway Drive
Mount Vernon, Washington
E-Mail: powell@skagitpud.org

And to:

City of Mount Vernon
Attn: Information Services Manager
P.O. Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273
E-Mail: kimk@mountvernonwa.gov

or to such other respective addresses as any Party hereto may hereafter from time to time designate in writing. All notices and payments mailed by regular post (including first class) shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. Notices and payments sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. For e-mail, delivery shall be the next business day after the day sent; a delivery or a read receipt shall be conclusive evidence of the date of mailing.

B. NOTIFICATION OF LOSS OF SERVICE.

In the event Customer experiences loss of fiber continuity as set forth in Section 7 of this Agreement, Customer shall notify the City by calling the following phone numbers:

- a. During Regular Business Hours (Mon-Thurs 8-5 pm Fri. 8-3:30pm):
- b. During Off Hours pager number: 360.336.4915

Notices regarding loss of fiber continuity under this subsection may be hereafter changed from time to time by the City if such notice of the changes is provided in writing

11. LIMITATIONS OF LIABILITY

Notwithstanding any provision of this Agreement to the contrary, except to the extent caused by its own willful misconduct, the City shall not be liable for any special, incidental, indirect, punitive or consequential damages including, but not limited to, loss of profits or revenue, cost of capital, or claims of customers, (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise), whether foreseeable or not, arising out of, or in connection with either party's performance or non performance of its respective obligations under this Agreement or any other cause or nature whatsoever and all claims with respect to which such special, incidental, indirect, punitive or consequential damages are hereby specifically waived.

12. CUSTOMER RESTRICTIONS ON USE OF FIBER

The City will provide dark fibers to the Customer with no bandwidth restrictions. The Customer warrants that it will use the dark fiber only for legal and authorized purposes. The fiber optic line will be provided as a discrete and dedicated connection for the Customer. The Customer must use the fiber for internal purposes only and cannot resell the dark fiber to any other without the written consent of The City.

During the term of this Agreement Customer agrees to inform The City at least 30 days in

advance of its plans to use the Fiber for 10 Gbps or greater bandwidth levels.

13. INDEMNIFICATION

Subject to the provisions of this Agreement, The City hereby releases and agrees to indemnify, defend, protect and hold harmless Customer, its directors, officers, stockholders, agents, and employees, and its respective successors or permitted assigns from and against: (i) any and all causes of action, demands, claims, suits, losses, judgments or costs (collectively "**Damages**") which may be brought by or asserted by any third party against Customer related to The City's design, construction, maintenance or operation or use of the Fiber, or (ii) each and every breach, or material default by The City of any of its covenants, agreements, duties or obligations hereunder, or (iii) any violation by The City of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with The City's performance of its obligations under this Agreement, or (iv) damages directly attributable to the negligent act or omission or willful misconduct of The City.

Subject to the provisions of this Agreement, Customer hereby releases and agrees to indemnify, defend, protect and hold harmless The City, its directors, officers, stockholders, agents, and employees, and its respective successors or permitted assigns from and against: (i) any and all causes of action, demands, claims, suits, losses, judgments or costs (collectively "Damages") which may be brought by or asserted by any third party against The City related to Customer's maintenance, operation or use of the Fibers, or (ii) each and every breach, or material default by Customer of any of its covenants, agreements, duties or obligations hereunder, or (iii) any violation by Customer of any regulation, rule, statute or court order of any local, state or federal governmental agency, court or body in connection with Customer's performance of its obligations under this Agreement, or (iv) damages directly attributable to the negligent act or omission or willful misconduct of Customer.

14. RESOLUTION OF DISPUTES

The Parties shall attempt to resolve by negotiation and compromise any disputes as to the validity or enforcement of any term or provision of this Agreement. Failing such compromise, such claim or assertion shall be settled by binding arbitration. Venue of any such proceeding shall be in Skagit County Washington. There shall be one arbitrator agreed upon by the parties, or if the parties cannot agree on that arbitrator within two (2) days of the initial arbitration demand, the arbitrator shall be selected by the administrator of the American Arbitration Association ("AAA") office closest to Mount Vernon, Washington. The arbitrator selected by AAA shall reside in, or as close to, Mount Vernon, WA as practical. The arbitration shall be conducted under the AAA Commercial Arbitration Rules with Expedited Procedures in effect. The arbitrator may award injunctive relief or any other remedy available from a judge, including temporary restraining orders or injunctions or the joinder of parties or consolidation of the arbitration proceedings with any other proceedings involving common issues of law or fact or which may promote judicial economy. Pending appointment of an arbitrator, any party to a claim or assertion may apply to a court of competent jurisdiction for such interim order or relief as may be appropriate, including temporary restraining orders or injunctions, provided that once the arbitrator is appointed, all further interim relief, including temporary restraining orders or injunctions, shall be awarded by the arbitrator whose powers in that regard shall include the power to vary or dissolve any temporary order or relief granted by the court. The arbitrator in such proceedings shall award to the substantially prevailing party reasonable attorney's fees and costs incurred by the substantially prevailing party in conjunction with such dispute.

15. ASSIGNMENT & TRANSFER

The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all of the parties hereto and all of the parties shall be jointly and severally liable hereunder. Neither party may assign this Agreement without the prior written consent of the other party which consent shall not be unreasonably withheld.

16. REPRESENTATION & WARRANTY

The signatories of this Agreement represent and warrant that they are authorized to execute this Agreement on behalf of the entities which are party to this Agreement, bind their respective entities to this Agreement; that the parties are registered to do business in the State of Washington and that the execution of this Agreement has been approved by the governing boards, members or partners, if any, of the parties to this Agreement.

17. FORCE MAJEURE

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, each of which shall constitute a force majeure, and the affected party shall be released from liability and shall suffer no prejudice for the failure of performance of its obligation or obligations, and, if the construction schedule is affected, the Start Date shall be excused and extended for and during the period of any such delay: any circumstance beyond the reasonable control of the affected party, including without limitation, which materially affects the ability of the affected party to perform its obligations hereunder; any act of God; fire; flood; the adoption or amendment of government codes, ordinances, laws, rules, regulations or restrictions that materially impair the affected party's performance hereunder including lack of funding; war or civil disorder; strikes, lock-outs or other labor disputes.

18. ENTIRE AGREEMENT

This Agreement constitutes the full and final agreement between the parties hereto and incorporates and supersedes all prior agreements and negotiations. It may not be modified or supplemented in *any* manner whatsoever, except upon the written agreement of all parties hereto.

Executed and accepted this ____ day of _____, 2015.

CITY OF MOUNT VERNON

By: _____
Jill Bourdreau, Mayor

Date: _____

Attest: _____
Alicia Huschka, Finance Director

Date: _____

Approved as to form and legality:

Kevin Rogerson, City Attorney

Date: _____

CUSTOMER Skagit PUD

By: _____
Its: _____

Date: _____

EXHIBIT A

TO DARK FIBER OPTIC LEASE AGREEMENT
BETWEEN THE CITY OF MOUNT VERNON AND CUSTOMER

LOCATIONS / WORK PROVIDED

Dark Fiber Provided: Two strands of single mode fiber optic connectivity between the main building located at the Customer site and City right of way below:

<i>From:</i> <i>City Right of</i>	<i>To:</i> <i>Customer Site</i>	<i>Customer Contact</i>	<i>Monthly Rental Price</i>
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Fiber Callout cell number: 360.840.5485



1415 Freeway Drive
P.O. BOX 1436
Mount Vernon, WA 98273-1436
tel: (360) 424-7104
www.SkagitPUD.org

Owned by the people we serve.

LETTER OF TRANSMITTAL

DATE: March 5, 2015
TO: Kim Kleppe, Information Services Director
City of Mount Vernon
PO Box 809
Mount Vernon WA 98273
FROM: Robert Powell, General Manager
RE: **Dark Fiber Optic Lease Agreement**



COMMENTS:

Enclosed please find two originals of above-referenced Lease Agreement for signature by Mayor Boudreau. Upon execution, please return one original executed Agreement to my attention; a mailing label is included for your convenience. The second original is for your use. *It appears that the Mayor's name is misspelled on the signature page.*

If you require assistance, please contact me.

Thank you.