

INTERLOCAL AGREEMENT FIBER NETWORK INTERTIE

This is an Interlocal Agreement (Agreement), dated this 7th day of May 2019, by and between the GRAYS HARBOR PUBLIC UTILITY DISTRICT No. 1, a Washington municipal corporation (GHPUD), and PUBLIC UTILITY DISTRICT NO. 3 of MASON COUNTY, a Washington municipal corporation (PUD 3), and collectively referred to as the "Parties". In consideration of the mutual covenants and conditions hereinafter provided, pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, it is agreed as follows:

RECITALS

WHEREAS, GHPUD and PUD 3 operate fiber optic networks pursuant to RCW 54.16.330.

WHEREAS, GHPUD has available a currently unused portion of its telecommunications facilities, and PUD 3 desires to utilize such facilities,

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WHEREAS, PUD 3 will construct new fiber optic facilities and utilize existing excess capacity available in its telecommunications system located in PUD 3 service territory to create an intertie with GHPUD's telecommunications system located in GHPUD service territory.

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DEFINITIONS

The following definitions shall be used in this Agreement:

1. **Cable:** One or more fibers and/or buffer tubes, together with any housing or protective material surrounding or containing the fibers and/or buffer tubes.
2. **Capacity:** Fiber strands or facilities that are in excess of the PUD 3's and/or GHPUD's current internal network and operational needs.
3. **Demarcation Point:** The physical location (splice case and/or LIU) where the fiber optic network terminates and connects to or is capable of being connected to the other Parties' network. The demarcation point is on Washington State Highway 108 at the Mason County and Grays Harbor County Line (at or near this location: 47.084780, -123.231795).
4. **Facilities:** All physical components of PUD 3's and/or GHPUD's fiber optic network, including, without limitation, poles, wires, pipes, underground conduits, ducts, equipment

cabinets, manholes, hand holes, vaults, fibers, cables, buffer tubes, devices, switches, routers, amplifiers, power supplies and other structures and appurtenances.

5. **Fiber:** Thin, transparent, flexible fiber made of glass or plastic, which is used to transmit light from one point to another for communication purposes.
6. **LIU (Light Interface Unit):** A device in which fiber optic cables are terminated and provide access to individual fibers for cross connection. This could also take the form of a fiber patch or cross connect.
7. **Network:** Cables and facilities which are existing or being constructed by the Parties at the locations referenced herein; together with any extensions, modifications, improvements or expansions thereto as determined by the Parties.
8. **NOC:** Network Operations Center; the physical space from which a telecommunications network is managed, monitored, and supervised.
9. **Officer:** Includes any elected or appointed member of the Parties.
10. **Person:** An individual, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
11. **Rights-of-way:** Streets, roads, alleys, sidewalk areas and other dedicated rights-of-way within Mason County or Grays Harbor County, together with dedicated utility easements within the PUD 3 and GHPUD limits and easements deeded to the PUD 3 and GHPUD for utility purposes.
12. **Splice Case:** A waterproof housing in which fiber optic cables begin, end, and/or are spliced together.

Now, therefore it is agreed between PUD 3 and GHPUD as follows:

1. PUD 3 will build fiber facilities from its existing network to the demarcation point at the Mason County-Grays Harbor County line along Washington State Highway 108 at its sole and exclusive expense.
2. GHPUD will build fiber facilities from its existing network to the demarcation point at the Mason County-Grays Harbor County line along Washington State Highway 108 at its sole and exclusive expense.
3. PUD 3 will provide two fibers in a continuous path from the demarcation point to its Totten Colocation Facility in Mason County, Washington. PUD 3 will provide an additional two fibers in a continuous path from its Totten Colocation Facility to its Mt. View Colocation Facility in Mason County. These fiber paths are for active transport via GHPUD's network.

4. GHPUD will provide two fibers in a continuous path from the demarcation point to its Elma Colocation Facility in Grays Harbor County, Washington. GHPUD will provide an additional two fibers in a continuous path from its Elma Colocation Facility to its Satsop Colocation Facility in Grays Harbor County. These fiber paths are for active transport via PUD 3's network.
5. PUD 3 will provide a cubicle of Rack Space (or similar size) and access to AC or DC power in that Rack Unit to GHPUD for the installation of GHPUD networking equipment at its Mt. View Colocation Facility and its Totten Colocation Facility.
6. GHPUD will provide a 1/3 cabinet of Rack Space (or similar size) and access to AC or DC power in that Rack Unit to PUD 3 for the installation of PUD 3 networking equipment at its Elma Colocation Facility and its Satsop Colocation Facility.
7. PUD 3 will provide GHPUD a fiber cross-connect from GHPUD equipment to the NoaNet equipment at the Mt. View Colocation Facility.
8. GHPUD will provide PUD 3 a fiber cross-connect from PUD 3 equipment to the NoaNet equipment at the Satsop Colocation Facility.
9. PUD 3 will identify and reserve a minimum of forty-eight (48) fiber optic strands from the demarcation point to the Totten Colocation Facility in Shelton, to be used in partnership with GHPUD in serving custom circuits as requested.
10. GHPUD will identify and reserve a minimum of forty-eight (48) fiber optic strands from the demarcation point to the Elma Colocation Facility in Elma, to be used in partnership with PUD 3 in serving custom circuits as requested.
11. GHPUD and PUD 3 will work together to fulfill custom circuit requests from outside sources using the identified excess capacity on each respective network. The Districts will coordinate rates for inter-county circuits. When a new circuit is turned up, the lead District will provide a copy of the contract to the supporting District within ten (10) business days. The supporting District will bill the lead District for half (50%) of the contract rate for the inter-county segment between Elma Colo and Totten Colo annually for the full duration of the contract, amendments, and extensions.
12. With the exception of Item 11, GHPUD shall not be required to pay any rent or other fee or charge to PUD 3 in connection with GHPUD's use of the Facilities as provided herein.
13. With the exception of Item 11, PUD 3 shall not be required to pay any rent or other fee or charge to GHPUD in connection with PUD 3's use of the Facilities as provided herein.
14. The initial term of shall be ten (10) years from the date of this Agreement. This Agreement will automatically renew unless terminated in writing per section 15 & 16.

15. This Agreement may be terminated without cause at any time at the election of GHPUD upon ninety (90) days' written notice to PUD 3.
16. This Agreement may be terminated without cause at any time at the election of PUD 3 upon ninety (90) days' written notice to GHPUD.
17. Parties shall not use the Capacity as collateral for any loan or otherwise pledge any property of other Party, including this Agreement as payment or surety for the payment of any amount, debt or obligation.
18. Neither party shall have the right to transfer or assign rights to a third party for the purpose of selling, promoting, operating telecommunications connections without the consent of both parties which consent shall not be unreasonably withheld.
19. Parties represent and warrant that they will use Capacity in compliance with this Agreement and all applicable government codes, ordinances, laws, rules and regulations as may now or in the future exist.
20. PUD 3 shall cooperate with and support GHPUD in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.
21. GHPUD shall cooperate with and support PUD 3 in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.
22. Parties shall provide their own equipment to light the fiber and operate, maintain, repair, and replace its internal communications network(s). The Parties shall be exclusively responsible for the operation of their internal communications network, systems, and equipment.
23. Parties shall be exclusively responsible for the operation, maintenance, and repairs of the fiber cable and other outside plant equipment along their segments. There shall be no access to outside plant facilities within the other Party's service territory, with the exception of pre-arranged mutual aid services by agreement.
24. The Parties shall keep the Capacity and Facilities in good repair, operating condition, and working order. In performing any repairs, replacements, alterations, or other work performed on or around the Capacity or Facilities, the Parties shall not cause unreasonable interference with use of the Capacity. It shall be the Segment owner's responsibility to perform basic maintenance inspection work and provide locates.
25. During the term hereof, the Facilities shall conform in all material respects to the specifications and standards applicable to similar facilities used by the Parties in its telecommunications operations.

26. Parties shall promptly notify the designated representatives of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to the Network.
27. PUD 3 will maintain a 24/7 NOC for the purpose of reporting service and Facilities disruption, and coordination and repair of the Fiber Network Capacity.
28. GHPUD will maintain a 24/7 System Dispatch Center for the purpose of reporting service and Facilities disruption, and coordination and repair of the Fiber Network Capacity.
29. At any time one of the Parties determine that an alteration, repair, or inspection is needed, the Party will notify the designated NOC in advance and abide by any changes in scheduling that may be required by the Parties. The Parties will coordinate and schedule resources necessary for maintenance, testing, or repairs as required to maintain reliable and continuous services. Parties may be required to provide a representative to be present, at their cost, during such activities.
30. Any scheduled or routine activities or maintenance shall be performed in accordance with standard industry practices. Intrusive maintenance (maintenance that requires service down time or potentially service down time) will be performed Monday – Thursday, during the hours of 1:00 am and 5:00 am. Scheduling Party will notify other Party in writing at least TEN (10) business days prior to commencing any such scheduled maintenance.
31. At times, emergencies occur that require immediate restoration to a damaged fiber facility or equipment that has malfunctioned. This restoration work should be performed as soon as reasonably practicable. Any unscheduled maintenance work shall be reported to Parties. Parties shall perform all network maintenance functions to ensure the Capacity per this Agreement meets a TWENTY-FOUR (24) hour per day, SEVEN (7) days per week functional requirement. Parties will make all reasonable efforts to schedule emergency maintenance during off peak hours as described herein and at such a date and time that will provide Parties reasonable notice.
32. Each party shall designate a representative to assist with maintenance and repairs, beyond the ordinary operation and basic maintenance inspection work on the Network. In the event that a Party requires additional assistance from the other Party, the Party shall contact the other Party's designated representative either verbally or in writing. Such assistance may include, but is not limited to, assistance in making any connection to the Capacity, assistance in acquiring additional rights of use, assistance in dealing with any unusual loss of signal, defect or break, or other actions. Upon receipt of a request for such services, the Parties shall endeavor to perform the requested services as soon as possible. If the designated representatives of the Parties are unable to complete the services and third-party assistance becomes necessary, the Parties shall equally share the cost thereof. The Parties shall conduct all such work to minimize the effect on the Capacity.
33. **Except as set forth in this agreement, the Parties make no warranty or representation, express or implied, with respect to any matter whatsoever, including, without**

limitation, the facilities or the capabilities, characteristics, availability of use thereof, or any maintenance services performed by parties or its agents in connection therewith. Parties specifically disclaims, and parties hereby waives, any implied warranty of merchantability or fitness for a particular purpose, and any warranty arising from usage of trade or course of dealing.

34. PUD 3 shall indemnify, defend and hold harmless GHPUD from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments including, without limitation, reasonable attorney's fees, arising out of or in any way connected with GH PUD, its agents', employees' or officers' performance under this Agreement, except to the extent that such damage or injury is caused by or the result of GH PUD's negligence or intentional misconduct.

GHPUD shall indemnify, defend and hold harmless PUD 3 from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments including, without limitation, reasonable attorney's fees, arising out of or in any way connected with PUD 3, its agents', employees' or officers' performance under this Agreement, except to the extent that such damage or injury is caused by or the result of the PUD 3's negligence or intentional misconduct.

35. All performance under this Agreement and any use by either party of the other party's facilities shall comply in all respects with all applicable state, federal and local law and regulation, including without limitation RCW 54.16.330.
36. The relationship between PUD 3 and GHPUD is that of independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between PUD 3 and GHPUD. Pursuant to RCW 39.34.040, following execution, this Agreement will be listed by subject on the web sites respectively of the GHPUD and PUD 3.
37. In the event that either party become subject to, in whole or in part, one or more provisions of any state or federal tariff, then in the event of any conflict between any provision of this Agreement and any provision of such tariff, to the extent that such tariff provision creates a conflict required by law, regulation or any order of a court or governmental agency, the provision of such tariff shall control. This Agreement shall also be subject to such modifications as may be required or authorized by any regulatory agency in the exercise of its lawful jurisdiction.
38. In the event that a party's performance is delayed, prevented, obstructed, or inhibited because of any Act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of production facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any telecommunications or computer network, or any other cause beyond the reasonable control of a party, including financial requirements or manufacturing limitations imposed by third-party manufacturers, suppliers, or vendors, such party's performance shall be excused and the time for the performance shall be extended for the period of delay or