AGREEMENT BETWEEN
TACOMA POWER AND MASON COUNTY PUBLIC UTILITY DISTRICT No. 3 FOR
TELECOMMUNICATIONS FACILITIES

This Agreement (Agreement) dated this 14th day of June, 2017, by and between Tacoma Power, a division of the City of Tacoma, Washington, Department of Public Utilities (TPU), and Mason County 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 it is agreed as follows:

RECITALS

WHEREAS: PUD 3 operates a telecommunications system for its internal communication needs and utilizes excess capacity of its system to provide wholesale telecommunications services as authorized under RCW Title 54.

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 as authorized under RCW Title 54 which TPU desires to utilize for its internal communications needs.

WHEREAS: TPU has existing excess capacity on its communications system that PUD 3 desires to utilize for its communications system.

WHEREAS: TPU will construct new fiber optic facilities located in PUD 3 service territory which TPU will use for its communication needs and PUD 3 desires to utilize excess capacity for its telecommunications system.

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 TPU’s current internal network and operational needs.

3. **Demarcation Point**: Any physical location where the fiber optic network terminates and connects to or is capable of being connected to: fiber termination panel; splice case; or network access equipment/switch.
4. **Facilities:** All physical components of PUD 3’s and/or TPU’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. **Network:** Cables and facilities which are existing or being constructed by the Parties at the locations reference in **Exhibit A and Exhibit B**; together with any extensions, modifications, improvements or expansions thereto as determined by the Parties.

7. **NOC:** Network Operations Center; the physical space from which a telecommunications network is managed, monitored, and supervised.

8. **Officer:** Includes any elected or appointed member of the Parties.

9. **OTDR:** Optical Time Domain Reflectometer; an instrument that analyzes the light loss in an optical fiber for the purpose of testing and/or troubleshooting. An OTDR injects a short, intense laser pulse into the optical fiber and measures the backscatter and reflection of light as a function of time. The reflected light characteristics are analyzed to determine the location of any fiber optic breaks or splice losses.

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, together with dedicated utility easements within the PUD 3 and TPU limits and easements deeded to the PUD 3 and TPU 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 TPU as follows:

1. PUD 3 hereby leases to TPU, Segments 1 - 5 to provide internal network connectivity for its Hydro Generation, SCADA, and utility data management systems. (See Exhibit A)

2. TPU hereby leases to PUD 3, Segment 6 to extend its telecommunications network. (See Exhibit B)

3. TPU shall deposit upon execution of this agreement $191,000.00 representing one-half of the current engineering estimate which is its fair and equitable contribution of PUD 3’s Fiber installation cost. If the actual costs are less than the engineering estimate, PUD shall refund the excess contribution to TPU. The cost of the Cable and Facilities are not included in the installation cost, since the Cable and Facilities shall at all times remain the property of PUD 3 (Segment 1-5).

4. PUD 3 shall deposit upon execution of this agreement $100,000 representing one-half of the current engineering estimate which is its fair and equitable contribution of TPU’s Fiber installation cost. If the actual costs are less than the engineering estimate, PUD shall refund the excess contribution to TPU. The cost of the Cable and Facilities are not included in the installation cost, since the Cable and Facilities shall at all times remain the property of TPU (Segment 6).

5. TPU shall pay an operations fee for accessing PUD 3’s Fiber Network in the amount of $31,542.00 (Exhibit C) for the first year of this Agreement beginning in 2018. After the first year, the annual rate for each succeeding year shall increase by amount of the Consumer Price Index for the Seattle/Tacoma area. No rate modification shall be assessed during a year with a negative Consumer Price Index. Payment for each consecutive year will be due by January 31 of each year following for the term of the agreement.

6. PUD 3 shall pay an operations fee for accessing TPU’s Fiber Network in the amount of $7,671.60 (Exhibit C) for the first year of this Agreement, beginning in 2018. After the first year, the annual rate for each succeeding year shall increase by amount of the Consumer Price Index for the Seattle/Tacoma area. No rate modification shall be assessed during a year with a negative Consumer Price Index. Payment for each consecutive year will be due by January 31 of each year following for the term of the agreement.

7. The term of this Agreement shall be TWENTY (20) years from the date of installation and commissioning.

8. Parties shall make all payments required herein.

9. 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.

5/22/2017
10. Parties shall promptly notify 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 Networks.

11. 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.

12. TPU shall cooperate with and support PUD 3 in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.

13. PUD 3 shall cooperate with and support TPU in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.

14. TPU shall have sole responsibility for the expense and acquisition of any property or utilities necessary for its equipment along the route of the Capacity. PUD 3 may provide assistance in such acquisitions, but this offer shall not constitute the creation of a responsibility for such acquisition. PUD 3 shall provide all components necessary for the operation of any facilities or services offered by PUD 3.

15. TPU shall utilize the Fiber for its internal use only. TPU covenants not to resell or sublease any Fiber Capacity, assign its rights to use said Capacity, or utilize the Fiber in any manner that exceeds the authority authorized by this Agreement.

16. PUD 3 shall utilize the TPU Fiber only for its internal use and the provision of telecommunications services within its service territory as authorized by RCW 54.16.330. PUD 3 covenants that it will not otherwise resell or sublease any Fiber Capacity or assign its rights to use said Capacity or utilize the Fiber in any manner that exceeds the authority authorized by this Agreement.

17. 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.

18. 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.

19. At any time the Parties determine that an alteration, repair, or inspection is needed, the Party will notify the designated NOC 48 hours 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.

5/22/2017
20. 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.

21. TPU in the future may elect to stand up a 24/7 NOC for the purpose of reporting service and Facilities disruption and coordination and repair of the Fiber Network Capacity. TPU may in the future stand up a NOC, which then would service as the monitoring and reporting

22. Any unscheduled maintenance work shall be reported to the Parties. The Parties shall perform all network maintenance functions to ensure the Capacity per this Agreement meet 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 and at such a date and time that will provide Parties reasonable notice.

23. 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 during the hours of 11:00 pm and 4:00 am (when feasible). A Party will notify the other Party in writing at least FOURTEEN (14) calendar days prior to commencing any such scheduled maintenance.

24. 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.

25. 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.

26. Upon the termination of this Agreement, all rights to use the Capacity shall revert to the Segment owner and the other Party shall have no further rights or obligations hereunder with respect thereto unless such rights or obligations are specifically provided herein to survive the Terms. Other obligations, including obligations to make payments, shall remain in effect, and shall not be cancelled or modified by the termination of this Agreement, except those obligations that require use of the Capacity.

27. The term of this Agreement may be extended only by mutual written agreement of the Parties. The Parties agree to begin negotiations of renewal on or about a year prior to the end of this Agreement and shall negotiate in good faith with the mutual intent to extend this
Agreement for all or some portion of the Capacity with due regard for unusual circumstances, including the loss of a Party’s rights to lease or use some or all of the Capacity herein. The dispute resolution provisions in this Agreement do not apply to the termination of this Agreement or to the negotiations to renew this Agreement.

28. PUD 3’s point of contact for this Agreement is Justin Holzgrove, Telecommunication and Community Relations Manager. TPU’s point of contact for this Agreement is Tim Bagwell, Network Communications Systems Supervisor. Either Party may change the point of contact by written notice to the other party.

29. There are no additional parties intended to be benefited under this agreement. There are no other agreements or representations, written or oral, concerning the subject matter of this agreement.

30. No amendments or variations of the terms and conditions of this Agreement shall be valid unless they are in writing and signed by all of the Parties thereto.

31. The Parties agree to perform any further acts and to execute and deliver any further documents as may be reasonably necessary to fully effectuate the provisions of this Agreement.

32. None of the Parties shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service or employment resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, terrorism, bomb threats, computer virus, epidemic, power outage, acts of war, accidents, fires, explosions, earthquakes, floods, failure of transmission equipment, machinery, or supplies, vandalism, strikes or other work interruptions by the employees of any party, or any other cause beyond the reasonable control of the party affected thereby. However, each party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence or circumstance.

33. TPU agrees to protect, defend, indemnify and hold harmless PUD 3 from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys’ fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of its elected officials, officers, agents, volunteers or employees, arising out of or in connection with the activities of the TPU under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative enforcement actions, brought against PUD 3 or the TPU.

34. PUD 3 agrees to protect, defend, indemnify and hold harmless TPU for any and all activities by PUD 3 employees, officers, elected officials, agents and volunteers, from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys’ fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of
its elected officials, officers, agents, volunteers or employees, arising out of or in connection
with the activities of PUD 3 under and pursuant to this Agreement, including but not limited
to any personal injury, death, and/or property damage claim, demand, lawsuit or other
proceeding, including industrial insurance claims and administrative enforcement actions,
brought against TPU or PUD 3.

35. This Agreement will be enforced to the fullest extent permitted by applicable law. If any
term or provision of this Agreement is held to be invalid, illegal, or unenforceable by a court
or other governmental authority of competent jurisdiction, such invalidity, illegality or
unenforceability shall not affect any other term or provision of this Agreement, which shall
remain in full force and affect.

36. This Agreement shall be governed for all purposes by the law of the State of Washington.
The venue for any action arising under this Agreement shall be in Mason County,
Washington, unless otherwise mutually agreed in writing by the parties.

37. Neither Party shall be liable to the other Party under this Agreement for any indirect, special,
punitive, incidental or consequential damages, or for loss of profits, time, opportunity or data,
whether in an action in contract, tort, product liability, statute, equity or otherwise. The
exclusion of damages shall apply even if the limited remedies fail of their essential purpose.

38. PUD 3 and TPU will attempt to settle all disputes arising under this Agreement, including,
but not limited to, payment disputes, and disputes relating to the wrongful termination of this
Agreement, through informal means. In the event the parties are unable to resolve a dispute
informally, the dispute shall be referred to binding arbitration. Either party may submit such
dispute to binding arbitration, in accordance with the provisions of RCW 7.04. Judgment
upon the award rendered may be entered in any court having jurisdiction. All post-
arbitration procedures will be in conformity with RCW 7.04. Both parties will act in good
faith and with due diligence to resolve the matter through arbitration as quickly as
possible. Except for disputes concerning wrongful termination of this Agreement, pending
the outcome of arbitration of any dispute, this Agreement will remain in effect in accordance
with its terms. In any dispute arising out of this Agreement, the parties shall bear their own
costs and attorney’s fees, provided that in any litigation to enforce an arbitration award, the
prevailing party in such action shall be entitled to recover from the other party its costs and
reasonable attorney’s fees in addition to any other relief granted.
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective the date first indicated above:

CITY OF TACOMA, TACOMA POWER / UTILITY TECHNOLOGY SERVICES

William A. Gaines
Director of Utilities/CEO

Chris Robinson
Power Superintendent/COO

Andy Cherullo
Director of Finance

PUBLIC UTILITY DISTRICT NO.3:

Annette Creekpaum
Signature

5/22/2017
Date

Printed Name: Annette Creekpaum
Title: Manager

Address: P.O. Box 2148

Sheilon, WA 98584

Tax ID: 91-1259796

Approved as to Form:

Michael W. Smith
Deputy City Attorney
Exhibit A

Segment 1
Cushman Hill to North Fork

Segment 2
North Fork to BPA Potlatch

Segment 3
BPA Potlatch to Sunnyside

Segment 4
Sunnyside to Mt. View Colo

Segment 5
Mt. View Colo to Tacoma Potlatch Union

New Construction
PUD 3 Fiber

Existing PUD Facilities

Mt. View Colo

Sunnyside Splice

BPA Potlatch

North Fork Switch Yard

TPU

Tacoma Potlatch Union

Fire Sta 18
Hut 38

FD 18

Cushman Hill Tower
Cushman 1

PUD only
Exhibit B

Segment 6
BPA Potlatch to Cushman 2

Tacoma Power
Fiber
### Exhibit C

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