

**INTERLOCAL AGREEMENT
FIBER NETWORK INTERTIE**

This is an Interlocal Agreement (Agreement), dated this 8 day of June 2020, by and between the KITSAP PUBLIC UTILITY DISTRICT, a Washington municipal corporation (KPUD), 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, KPUD and PUD 3 operate fiber optic networks pursuant to RCW 54.16.330.

WHEREAS, KPUD 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 KPUD's telecommunications system located in KPUD service territory.

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

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 KPUD's current internal network and operational needs.
3. **Log Yard Road Demarcation Point:** The existing physical location (SP 91) where the fiber optic network terminates and connects to or is capable of being connected to the other Parties' network. The Log Yard Road Demarcation Point is on Washington State Route 3

at the intersection of Log Yard Road in Mason County, WA (at or near this location: 47.467930, -122.804450)

4. **TriLakes 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 TriLakes demarcation point is on Gold Creek Road W in Kitsap County, near the intersection of W Critter Creek Lane NW and Gold Creek Road W (at or near this location: 47.532976, -122.838172).
5. **Facilities:** All physical components of PUD 3's and/or KPUD'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.
6. **Fiber:** Thin, transparent, flexible fiber made of glass or plastic, which is used to transmit light from one point to another for communication purposes.
7. **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.
8. **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.
9. **NOC:** Network Operations Center; the physical space from which a telecommunications network is managed, monitored, and supervised.
10. **Officer:** Includes any elected or appointed member of the Parties.
11. **Person:** An individual, limited liability company, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
12. **Rights-of-way:** Streets, roads, alleys, sidewalk areas and other dedicated rights-of-way within Mason County or Kitsap County, together with dedicated utility easements within the PUD 3 and KPUD limits and easements deeded to the PUD 3 and KPUD for utility purposes.
13. **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 KPUD as follows:

1. At the Log Yard Road Demarcation Point, PUD 3 will splice two fibers and provide a dedicated fiber path for KPUD to the Belfair Collocation Facility in Belfair, WA for active transport via KPUD's network.
2. At the Log Yard Road Demarcation Point, PUD 3 will splice two fibers to a dedicated fiber path provided to PUD 3 by KPUD to the Bremerton Collocation Facility in Bremerton, WA for active transport via PUD 3's network.
3. PUD 3 will build fiber facilities from its existing network to the TriLakes demarcation point in Kitsap County at its sole and exclusive expense.
4. KPUD will build fiber facilities from its existing network to the TriLakes demarcation point in Kitsap County at its sole and exclusive expense.
5. PUD 3 will provide two fibers in a continuous path from the TriLakes demarcation point to its Belfair Collocation Facility in Belfair, Mason County, Washington.
6. PUD 3 will provide an additional two fibers in a continuous path from its Belfair Collocation Facility to its Mt. View Collocation Facility in Shelton, Mason County. These fiber paths are for active transport via KPUD's network.
7. KPUD will provide two fibers in a continuous path from the TriLakes demarcation point to its Bremerton Collocation Facility in Bremerton, Washington.
8. KPUD will provide an additional two fibers in a continuous path from its Bremerton Collocation Facility to its Poulsbo Collocation Facility in Poulsbo, Washington. These fiber paths are for active transport via PUD 3's network.
9. PUD 3 will provide a cubicle of Rack Space (or similar size) and access to AC or DC power in that Rack Unit to KPUD for the installation of KPUD networking equipment at its Belfair Collocation Facility and its Mt. View Collocation Facility.
10. KPUD will provide a cubicle 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 Bremerton Collocation Facility and its Poulsbo Collocation Facility.
11. PUD 3 will provide KPUD a fiber cross-connect from KPUD equipment to the NoaNet equipment at the Mt. View Collocation Facility.
12. KPUD will provide PUD 3 a fiber cross-connect from PUD 3 equipment to the NoaNet equipment at the Bremerton Collocation Facility.

13. PUD 3 will identify and reserve a minimum of twelve (12) fiber optic strands from the TriLakes demarcation point to the Mt. View Collocation Facility in Shelton, to be used in partnership with KPUD in serving custom circuits as requested.
14. KPUD will identify and reserve a minimum of twelve (12) fiber optic strands from the TriLakes demarcation point to the Bremerton Collocation Facility in Bremerton, to be used in partnership with PUD 3 in serving custom circuits as requested.
15. KPUD 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 Bremerton Colo and Mt. View Colo annually for the full duration of the contract, amendments, and extensions.
16. With the exception of Item 15, KPUD shall not be required to pay any rent or other fee or charge to PUD 3 in connection with KPUD's use of the Facilities as provided herein.
17. With the exception of Item 15, PUD 3 shall not be required to pay any rent or other fee or charge to KPUD in connection with PUD 3's use of the Facilities as provided herein.
18. 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.
19. This Agreement may be terminated without cause at any time at the election of KPUD upon ninety (90) days' written notice to PUD 3.
20. This Agreement may be terminated without cause at any time at the election of PUD 3 upon ninety (90) days' written notice to KPUD.
21. 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.
22. 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.
23. 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.

24. PUD 3 shall cooperate with and support KPUD in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.
25. KPUD shall cooperate with and support PUD 3 in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.
26. 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.
27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. KPUD will maintain a 24/7 NOC for the purpose of reporting service and Facilities disruption and coordination and repair of the Fiber Network Capacity.
33. 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.

34. 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.
35. 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 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 as described herein and at such a date and time that will provide Parties reasonable notice.
36. 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.
37. **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.**
38. PUD 3 shall indemnify, defend and hold harmless KPUD 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.

KPUD 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.

39. 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.
40. The relationship between PUD 3 and KPUD 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 KPUD. Pursuant to RCW 39.34.040, following execution, this Agreement will be listed by subject on the web sites respectively of the KPUD and PUD 3.
41. 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.
42. 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 inability to perform resulting from such occurrence. The occurrence of such an event shall not constitute grounds for a declaration of default under this Agreement.
43. Neither party shall assign, sublease, transfer or convey (i) this Agreement or any interest therein, or (ii) any interest in or portion of the KPUD Facilities or the PUD 3 Facilities (as those terms are defined in this Agreement), without the prior written consent of the other

party, which consent shall be in such party's sole discretion. Use of the KPUD Facilities or the PUD 3 Facilities for those purposes in accordance with this Agreement shall not be a violation of the preceding sentence.

44. Any notice required or permitted to be given under this Agreement shall be effective upon receipt and shall be sufficient if in writing and sent by certified mail, postage prepaid, return receipt requested, to the parties at the addresses shown below, or at such other addresses as may in the future be advised:

PUD 3:

KPUD:

Mason PUD 3
PO Box 2148
Shelton, WA 98584
Attn: General Manager

Kitsap PUD
PO Box 2910
Poulsbo, WA 98370
Attn: General Manager

45. The rights, obligations and remedies of the parties as specified under this Agreement shall be interpreted and governed in all respects by the laws of the state of Washington. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
46. Mandatory Mediation. Prior to filing a demand for arbitration as provided in this section, the Parties shall participate in mandatory mediation of any dispute which either Party intends to arbitrate. Each Party agrees to mediate in good faith and shall enter mediation with a sincere desire to resolve the dispute. The mediator shall be selected by agreement between the Parties with each Party to share equally in the cost of mediation. If the Parties cannot agree upon a mediator, one shall be selected by the presiding judge of the Kitsap County Superior Court.
47. Arbitration. If mediation fails to settle a dispute it shall then be submitted to binding arbitration under the rules and procedures of the Kitsap County Mandatory Arbitration Rules, provided that there shall be no appeal except as hereinafter expressly provided. Each Party shall submit the names of three proposed arbitrators to the other Party and the Parties shall attempt to agree upon a single arbitrator as proposed pursuant to the names contained on the list of each Party. If the Parties are unable to agree upon an arbitrator, that arbitrator shall be appointed by the presiding judge of the Kitsap County Superior Court. The Parties agree and hereby request of the presiding judge that the arbitrator to be selected or appointed shall be familiar with municipal law, construction law, water systems operations and maintenance, and other topics generally covered by this Agreement. The Parties agree that the arbitrator shall be allowed to

utilize his or her own independent experts to help resolve technical questions beyond the expertise of the arbitrator. The arbitrator's award shall not be limited by otherwise applicable MAR rules including limits on monetary relief, and shall include any equitable relief, including specific performance, deemed appropriate by the Arbitrator. The prevailing Party shall be entitled to reasonable attorney fees and costs. The arbitrator's decision may only be appealed pursuant to RCW 7.04.

48. This Agreement may not be changed orally, but only by an agreement in writing signed by PUD 3 and KPUD. Any waiver of any term or condition of this Agreement shall not operate as a waiver of any other such term or condition or as any continuing waiver, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof.
49. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. The Section headings contained in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. Words used in this Agreement, regardless of the number and gender specifically, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a "person" in this Agreement shall include an individual, firm, corporation, limited liability company, partnership, limited partnership, limited liability partnership, trust, governmental authority or body, association, unincorporated organizational or any other entity.
50. This Agreement constitutes the entire agreement between PUD 3 and KPUD. It supersedes all prior and contemporaneous communications, representations or agreements whether oral or written with respect to the subject matter thereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by the party sought to be bound thereby.
51. The venue of any litigation between the parties relating to this Agreement shall be the Superior Court of Mason County, Washington.
52. This Agreement shall be binding on the parties and to any subsequent owners, successors and assigns.
53. Execution of this Agreement may be by counterpart originals but shall be effective as if all signatures were contained in a single document. Each such duly executed counterpart, upon execution of this Agreement by both parties, shall constitute a duplicate original of this Agreement. The electronic signature of one or both parties to this Agreement shall bind the parties in the same manner as an original signature.

54. Pursuant to RCW 39.34.040, following execution, this Agreement will be listed by subject on the websites respectively of the PUD and the County.

55. IN WITNESS WHEREOF, PUD 3 and KPUD have executed this Agreement as of the date first written above.

PUBLIC UTILITY DISTRICT NO. 3
OF MASON COUNTY:

Annette Creekpaum
By: [Annette Creekpaum \(Jun 8, 2020 11:11 PDT\)](#)
Annette Creekpaum, General Manager

KITSAP PUBLIC UTILITY DISTRICT:

Bob Hunter
By: [Bob Hunter \(Jun 8, 2020 11:07 PDT\)](#)
Bob Hunter, General Manager