PLEDGE OF ALLEGIANCE

CONSENT AGENDA
1. Approval of Agenda 05/09/17
2. Approval of Minutes 04/25/17
3. Ratification of Vouchers 05/02/17
4. Approval of Vouchers 05/09/17

AUDIENCE COMMENTS

OLD BUSINESS
5. Manager’s Report

NEW BUSINESS
7. Resolution No. 2248-17
   Resolution Recognizing Drinking Water Week - **Action**
8. Surplus Equipment (Copier/Printers) - **Action**
   Motion for Removal of Capital Assets from Fixed Assets per Policy #1022
9. Draft Interlocal Agreement with the Port of Skagit County for Joint Construction and
    Management of Fiber Optic Infrastructure in Skagit County - **Potential Action**

MISCELLANEOUS

COMMISSIONER COMMENTS

**EXECUTIVE SESSION** - Approximate Duration of 15-30 Minutes
Per RCW 42.30.110 (1)(i)(ii)

ADJOURNMENT

JUDY RESERVOIR ELEVATION
May 1, 2017

TO: Commission
FROM: George Sidhu, P.E., General Manager
SUBJECT: Recommendation to Adopt Resolution No. 2248-17

Requested Action:
Motion to adopt Resolution No. 2248-17

Background:
Washington Governor Jay Inslee designated May 7-13 “Drinking Water Week” statewide in a proclamation signed on April 4 (attached).

Drinking Water Week is an opportunity to raise awareness of how consumers can be actively engaged in their water service. Practicing conservation, being aware of how to check for and fix leaks and supporting the PUD’s investments in water infrastructure will help protect this vital resource.

The resolution comes as infrastructure funding takes center stage nationally and in Washington State. The District continues to work in cooperation with other PUDs and water providers across the state to ensure continued access to very low-cost financing to support infrastructure investments while keeping rates as low as practical.

Fiscal Impact:
There is no fiscal impact.

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RESOLUTION NO. 2248-17

A RESOLUTION OF THE COMMISSION OF PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY, WASHINGTON, RECOGNIZING DRINKING WATER WEEK, MAY 7-13, 2017

WHEREAS, water is our most valuable resource; and

WHEREAS, safe and reliable drinking water is vital to ensuring the health of the citizens of Skagit county; and

WHEREAS, we are all stewards of the water infrastructure upon which we depend now and into the future; and

WHEREAS, Skagit PUD is a locally-controlled, not-for-profit utility owned by the citizens of Skagit county who have a voice in the water system that serves local communities; and

WHEREAS, the customer-owners of Skagit PUD can do their part to ensure continued delivery of safe, reliable water by protecting source waters from pollution, practicing water conservation and getting involved in local water issues; and

WHEREAS, Skagit PUD is dedicated to ensuring water delivered to our customer-owners is safe by making investments in infrastructure to maintain a quality system and operating efficiently to provide service at the lowest practical cost; and

WHEREAS, awareness of the value and importance of safe water systems is critical to protecting and sustaining this vital resource for the citizens of Skagit county now and well into the future.

NOW, THEREFORE, BE IT RESOLVED that the week of May 7-13, 2017, be designated Drinking Water Week.

ADOPTED by the Commission of Public Utility District No. 1 of Skagit County, Washington, at a regular meeting held this 9th day of May, 2017.

______________________________
Robbie Robertson, President

______________________________
Eron Berg, Vice President

ATTEST

______________________________
Al Littlefield, Secretary
The State of Washington

Proclamation

WHEREAS, safe and reliable drinking water is vital to healthy communities and a vibrant economy; and

WHEREAS, public awareness and recognition of the value of water in our daily lives is critical to protecting, supporting and sustaining this resource; and

WHEREAS, every day thousands of dedicated water system operators, scientists, engineers, local elected officials, and others work to ensure Washington’s tap water is safe; and

WHEREAS, every citizen can do their part by protecting our source waters from pollution, supporting the upkeep of our drinking water infrastructure, practicing water conservation, and getting involved in local water issues; and

WHEREAS, what we do today to protect our drinking water from threats like aging infrastructure and a changing climate will affect the prosperity and well-being of future generations;

NOW THEREFORE, I, Jay Inslee, Governor of the state of Washington, do hereby proclaim May 7-13, 2017, as

Drinking Water Week

in Washington, and I encourage all people in our state to join me in this special observance.

Signed this 4th day of April, 2017

[Signature]
Governor Jay Inslee
May 9, 2017

TO: George Sidhu, P.E., General Manager
Commissioners

FROM: Sally Saxton, Finance Manager/Treasurer

SUBJECT: Recommendation for Removal of Capital Assets from Fixed Asset Ledger Surplus to the District’s Needs

Background:
Per our Fixed and Tagged Asset Policy #1022, capital assets that are surplus to the District’s needs may be removed from the fixed asset ledger with approval by motion from the Commission.

Requested Action:
I recommend that the Commission move to retire the assets listed below at the meeting of May 9, 2017.

<table>
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<tr>
<th>Fixed Asset Number</th>
<th>Description</th>
<th>Purchase Year</th>
<th>Amount</th>
<th>Reason for Removal</th>
<th>Method of Disposal</th>
</tr>
</thead>
<tbody>
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<td>Ricoh Copier</td>
<td>2011</td>
<td>$30,566.50</td>
<td>Replaced</td>
<td>Sale, Auction</td>
</tr>
<tr>
<td>391-2984</td>
<td>Ricoh Copier</td>
<td>2011</td>
<td>$25,337.19</td>
<td>Replaced</td>
<td>Sale, Auction</td>
</tr>
</tbody>
</table>

kac
INTERLOCAL AGREEMENT
BETWEEN
THE PORT OF SKAGIT COUNTY AND
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY
FOR JOINT CONSTRUCTION AND MANAGEMENT OF FIBER OPTIC INFRASTRUCTURE IN SKAGIT COUNTY.

THIS AGREEMENT ("Agreement") is made and entered into by and between the Port of Skagit County ("Port"), a Washington Municipal Corporation and the Public Utility District No. 1 of Skagit County ("PUD"), a Washington Municipal Corporation pursuant to the authority granted by Chapter 39.34 RCW, the INTERLOCAL COOPERATION ACT. The Port and the PUD may be referred to herein as a “Party”, and may be collectively referred to herein as the “Parties.”

I. RECITALS

WHEREAS, RCW 53.08.370 grants authority to the Port to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the Port district's limits for its own use and/or for the provision of wholesale telecommunications services; and

WHEREAS, RCW 53.08.240 (2) authorizes the Port to enter into contracts with other municipal entities for the purposes of exercising its lawfully authorized powers; and
WHEREAS, RCW 54.16.330 grants authority to the PUD to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the Port district's limits for its own use and/or for the provision of wholesale telecommunications services; and

WHEREAS, RCW 54.16.090 authorizes the PUD to enter into contracts with other municipal entities for the purposes of exercising its lawfully authorized powers; and

WHEREAS, Chapter 39.34 RCW allows the Parties to enter into cooperative agreements to exercise joint powers conferred upon each entity; and

WHEREAS, the Port owns and operates fiber optic infrastructure in and adjacent to the Port-owned Bayview Business Park and licenses to utilize fiber optic infrastructure in the City of Burlington and the City of Mount Vernon for its own use and for provision of wholesale services to retail telecommunications providers that serve businesses and governmental entities with internet access; and

WHEREAS, the PUD owns and operates fiber optic infrastructure in Skagit County for its own use in connecting its water utility SCADA monitoring system, and also owns and operates fiber optic infrastructure between the City of Sedro-Woolley and the Town of Hamilton for provision of wholesale services to retail telecommunications providers that serve businesses, educational, and governmental entities with internet access; and

WHEREAS, the Port and the PUD are seeking to form a cooperative relationship that will facilitate the construction, ownership and management of an open access fiber optic backbone throughout Skagit County for the benefit of Skagit County citizens and businesses.
NOW THEREFORE, in consideration of the following terms and conditions, the parties mutually agree as follows:

II. CONTRACTUAL PROVISIONS

A. PURPOSE:
The purpose of this Agreement is to allow the Port and the PUD to work cooperatively on development of fiber optic infrastructure in Skagit County.

B. FIBER OPTIC SYSTEM GOALS AND POLICY
The primary goal of this collaboration is to support the development of a countywide, open access fiber optic network throughout Skagit County that will, in conjunction with private telecommunications providers, deliver reliable, affordable, high speed internet access to serve residential, business, public safety, governmental, and educational needs.

By making the investment in a publically owned fiber optic backbone, the Parties seek to make it feasible for privately owned telecommunications companies to make additional investments in last mile infrastructure connections to businesses, residences, and institutions.

The backbone system will be constructed and operated according to the following policies:

1. The fiber optic backbone will remain in local, public ownership with sustained use.

2. Parties will share infrastructure, including fiber optic cable and existing conduits, whenever possible in support of the countywide open access network;

3. Parties will build and manage fiber optic infrastructure to carrier grade standards, including pole mounts to regulatory standards, as well as maintenance and operations plan that includes:
a) weekly plant inspections and route driving,

b) redundant network operations center (NOC) services with 24/7 monitoring and response capability;

c) system monitoring, emergency locate, and emergency response capability that is 24/7, 365 days per year; and

d) highly accurate GIS as-built drawings with regular update cycle.

4. The Parties will enact policies and ordinances that will decrease the cost of laying fiber by organizing fiber and conduit installation with other capital projects or in joint trenching with other entities (Dig Once Policy).

C. SYSTEM MANAGEMENT

1. The Parties agree to work collaboratively to develop an Implementation Agreement that will address the system needs identified in section II.B.3. above, as set forth in Appendix A hereto.

2. Parties will designate staff to participate in an Outside Plant Committee that will have oversight responsibility for management of fiber optic infrastructure, including:

   a) Determining build priorities, operating and capital budgets, the parties financial obligations and financing opportunities

   b) Selecting contractors for system management

   c) Identifying and addressing system management issues

3. The Parties recognize that a shared management structure may require the formation of a separate management entity in the future.

D. SYSTEM FINANCING:

1. Parties will develop a complete finance plan for the design,
construction and operation of the fiber optic network. Elements of this finance plan will include the following:

a) Operating and Capital budgets will be adopted cooperatively based on the operating principles and a county-wide fiber backbone plan.

b) A fund will be established to account for all revenues and expenses related to wholesale telecommunications services on the network.

c) In the event that debt financing is used to build the network, revenues derived from the provision of wholesale telecommunications services will be applied first to the payment of such financing instruments.

d) Revenues will then be applied to cover all expenses incurred in the management of the system, including maintenance contractors, staff time to administer the system, and administrative overhead costs.

e) If and when the system generates a positive cash flow net of items 1 (c & d) above, dedicated Operating Reserve and Capital Reserve funds will be established.

f) If and when the system generates a positive cash flow in the future net of items 1 (c & d) above and after establishment of adequate reserves, the Parties will establish a formula for the equitable sharing of revenues.

E. ADMINISTRATION

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Party.

1. The Port’s representative shall be the Executive Director or her/his Designee.
2. The PUD’s representative shall be the General Manager or her/his Designee.

F. INDEMNIFICATION:
Each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions and those of its elected officials, officers, agents, or employees to the fullest extent required by law. Each Party further agrees to save, indemnify, defend, and hold the other Party harmless from any such liabilities. It is further provided that no liability shall attach solely by virtue of being a Party hereto. Each Party hereby waives its immunity under the Washington Industrial Insurance Act solely for the benefit of the other Party and only to meet its indemnity obligations hereunder.

G. TERM, TERMINATION, AND BUYOUT PROVISION:
This Agreement shall take effect on the Effective Date and continue until one Party provides the other Party with a one-year advance notice to terminate.

In the event that either party exercises its rights to terminate the agreement, the other Party shall have the right to purchase the other Party’s share of infrastructure necessary to operate the countywide fiber optic backbone, including fiber optic cable, buffer tubes or strands therein, vaults, and associated appurtenances.

H. SCOPE OF AUTHORITY:
No Party has any independent authority to direct the management of the other Parties’ activities under this Agreement nor, unless authorized in writing by the other Parties, the joint activities of the Parties hereunder. Neither Party has any authority to bind or to act for or to assume any obligations or responsibilities on behalf of the other Parties. The Parties may, upon mutual agreement, acquire real property interests and personal property in common. Any such ownership shall be retained upon termination hereof, absent an agreement otherwise between the Parties.
I. NOTICES:
Any and all notices or communications required or permitted to be given under any of the provisions of this Agreement must be in writing and will be deemed to have been given upon: (1) receipt when personally delivered; (2) the next day when sent by overnight courier; (3) or three (3) days after deposit in the United States Postal Service if sent prepaid by first class, certified or registered mail, return receipt requested. All notices must be addressed to the Parties at the addresses set forth below or at such other address specified by notice by one Party to the other Parties.

If to the Port of Skagit County:

Port of Skagit County
15400 Airport Drive
Burlington, Washington 98233
Attn: Executive Director

If to PUD No. 1 of Skagit County:

PUD No. 1 of Skagit County
1415 Freeway Drive
Mount Vernon, Washington 98273
Attn: General Manager

J. ENTIRE AGREEMENT/MODIFICATION:
This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and discussions with respect to the subject matter of this Agreement. This Agreement may be supplemented by additional agreements executed in writing by the Parties, or may be amended or modified by written agreement signed by the Parties hereto. Such amendments may be for the purposes of, among other things, adding or deleting parties to this Agreement or expanding the responsibilities of the Administrator.
K. APPLICABLE LAW:
This Agreement, and any rights and obligations hereunder, shall be construed and interpreted in accordance with the laws of the State of Washington. Any dispute or proceeding arising out of this Agreement shall be filed in the Superior Court of the State of Washington for Skagit County.

L. ATTORNEYS’ FEES.
The prevailing Party in any dispute, whether or not suit is brought, or in any action to interpret, collect or enforce this Agreement, is entitled to its reasonable attorneys’ fees and costs, in addition to any other remedies, which will be paid by the non-prevailing Party promptly on demand. “Attorneys’ fees” as used in this Section includes services rendered at both the trial and appellate levels as well as services rendered subsequent to judgment in obtaining execution thereon.

M. ASSIGNMENT/NO BENEFICIARIES:
This Agreement is personal to the Parties. No Party to this Agreement may assign its rights or obligations hereunder. This Agreement is for the sole benefit of the Parties and no third party shall be deemed a beneficiary hereof.

N. AUTHORIZATION:
Each Party represents and warrants to the others that it is duly authorized to enter into and to carry out the terms of this Agreement.

O. INDEPENDENT REVIEW.
This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document shall apply to the interpretation or enforcement of this Agreement.
P. SEVERABILITY.
In the case any term of this Agreement is held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will in any way be affected thereby.

Q. COUNTERPARTS.
This Agreement may be executed in counterparts, each of which shall be an original but all of which taken together constitute one and the same instrument.

R. FORCE MAJEURE
If either Party is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonably within its control to perform or comply with any obligation or condition of this agreement upon giving written notice to the other Party, such obligation or condition shall be suspended during the continuance of the inability so caused and such Party shall be relieved of any liability during such period. The term force majeure shall include, without limitation by the following enumeration, acts of God, federal, state, county, or municipal orders, regulations or directives of any governmental authority or persons purporting to act therefor, or when the supply of product or any facility of production, manufacture/storage, transportation, distribution or delivery contemplated by either Party is delayed due to no fault of the Party, riots, acts of terrorism, other disturbances, earthquakes, hurricanes, strikes, or lockouts of any class of works, or stoppage of labor, or damage to piers or essential equipment, floods, fire, explosion, or destruction from any cause of any character either similar or dissimilar to the foregoing and reasonably beyond the control of the Party failing to perform.

S. RECORDING/POSTING/EFFECTIVE DATE
This Agreement shall become effective when recorded by the Parties or when posted on both Parties’ web sites (“Effective Date”).

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.
APPENDIX A

Management Agreement Parameters

The Port and the PUD each acknowledge that the objectives of this agreement for Joint Construction and Management of Fiber Optic Infrastructure requires that they reach an agreement assigning certain construction and management functions to each party ("Implementation Agreement"). They agree, upon mutual acceptance of this agreement for JOINT CONSTRUCTION and MANAGEMENT of FIBER OPTIC INFRASTRUCTURE to promptly undertake discussions and reach an Implementation Agreement that addresses the following construction, management and operational matters:

a) Each party’s responsibility to construct and own portions of the countywide fiber optic backbone.

b) Each party’s use the fiber optic network for the its own use and for provision of wholesale fiber optic services across the system.

c) Each party’s willingness to seek grant funds to construct the fiber optic backbone, and contribute funds if available to plan and construct portions of the system that benefit the Port’s primary mission of economic development.

d) The granting of easements, licenses and authorization as needed to the parties to deploy fiber optic infrastructure across each other’s property or property interests needed for development of the countywide fiber optic backbone.

e) The role each will play to contract for services necessary to operate the countywide fiber optic backbone, including, the following services:

(1) Network Operating Center (NOC) services for at least two qualified NOCs with 24/7 capability for the purposes of providing redundancy in the system.
(2) Route monitoring and maintenance by at least two qualified service providers to monitor the route on a regular basis and respond to repair requests in a timely manner.

(3) Locate services provided by at least two qualified service providers to perform locate and emergency locate services on the backbone route within a specified response time.

(4) GIS and Survey services from a GIS provider and survey firm to provide timely updates to system as-built drawings.

f) The provision of contracting services in compliance with applicable statutes for design, construction and management of the system.

g) The parties’ respective obligations to provide business management services necessary to operate the fiber optic backbone.

h) Establishment and management of a dedicated fund for operation of the fiber optic backbone, including provision of accounting services for the fund and annual reporting to collaborating agencies.

i) Creation and management of dark fiber lease agreements for wholesale fiber optic services.

j) Conveyance of fiber optic buffer tubes and/or strands between the parties.

k) Sharing of the use of easements for development of the countywide fiber optic backbone.

l) Contribution of funds by each party if available to build portions of the fiber optic backbone that directly benefit the parties’ primary missions.

m) Other items as agreed by the parties.
EFFECTIVE DATE: ____________________, 2017

INTERLOCAL AGREEMENT
BETWEEN
THE PORT OF SKAGIT COUNTY AND
PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY
FOR JOINT CONSTRUCTION AND MANAGEMENT OF FIBER OPTIC INFRASTRUCTURE IN SKAGIT COUNTY.

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WHEREAS, RCW 53.08.240 (2) authorizes the Port to enter into contracts with other municipal entities for the purposes of exercising its lawfully authorized powers; and
WHEREAS, RCW 54.16.330 grants authority to the PUD to construct, purchase, acquire, develop, finance, lease, license, handle, provide, add to, contract for, interconnect, alter, improve, repair, operate, and maintain any telecommunications facilities within or without the Port district's limits for its own use and/or for the provision of wholesale telecommunications services; and

WHEREAS, RCW 54.16.090 authorizes the PUD to enter into contracts with other municipal entities for the purposes of exercising its lawfully authorized powers; and

WHEREAS, Chapter 39.34 RCW allows the Parties to enter into cooperative agreements to exercise joint powers conferred upon each entity; and

WHEREAS, the Port owns and operates fiber optic infrastructure in and adjacent to the Port-owned Bayview Business Park and licenses to utilize fiber optic infrastructure in the City of Burlington and the City of Mount Vernon for its own use and for provision of wholesale services to retail telecommunications providers that serve businesses and governmental entities with internet access; and

WHEREAS, the PUD owns and operates fiber optic infrastructure in Skagit County for its own use in connecting its water utility SCADA monitoring system, and also owns and operates fiber optic infrastructure between the City of Sedro-Woolley and the Town of Hamilton for provision of wholesale services to retail telecommunications providers that serve businesses, educational, and governmental entities with internet access; and

WHEREAS, the Port and the PUD are seeking to form a cooperative relationship that will facilitate the construction, ownership and management of an open access fiber optic backbone throughout Skagit County for the benefit of Skagit County citizens and businesses.
NOW THEREFORE, in consideration of the following terms and conditions, the parties mutually agree as follows:

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By making the investment in a publicly owned fiber optic backbone, the Parties seek to make it feasible for privately owned telecommunications companies to make additional investments in last mile infrastructure connections to businesses, residences, and institutions.

The backbone system will be constructed and operated according to the following policies:

1. The fiber optic backbone will remain in local, public ownership with sustained use.

2. Parties will share infrastructure, including fiber optic cable and existing conduits, whenever possible in support of the countywide open access network;

3. Parties will build and manage fiber optic infrastructure to carrier grade standards, including pole mounts to regulatory standards, as well as maintenance and operations plan that includes:
a) weekly plant inspections and route driving,

b) redundant network operations center (NOC) services with 24/7 monitoring and response capability;

c) system monitoring, emergency locate, and emergency response capability that is 24/7, 365 days per year; and

d) highly accurate GIS as-built drawings with regular update cycle.

4. The Parties will enact policies and ordinances that will decrease the cost of laying fiber by organizing fiber and conduit installation with other capital projects or in joint trenching with other entities (Dig Once Policy).

C. ROLES AND RESPONSIBILITIES:

C. Pursuant to SYSTEM MANAGEMENT

4. The Parties agree to the terms of thiswork collaboratively to develop an Implementation Agreement. the Port shall:

a) Construct and own portions of the countywide fiber optic backbone.

b) Use the fiber optic network for the Port's own use and provide wholesale fiber optic services across that will address the system.

c) Seek grant funds to construct the fiber optic backbone and contribute funds if available to plan and construct portions of the system that benefit the Port's primary mission of economic development.

d) Grant easements and authorization as needed to the PUD for deployment of fiber optic infrastructure across Port-owned property as needed for development of the countywide fiber optic backbone.

e) Contract for services necessary to operate the countywide
fiber optic backbone, including the following services:

(1) Network Operating Center (NOC) services. The Port will contract with at least two qualified NOCs with 24/7 capability for the purposes of providing redundancy needs identified in the system.

(2) Route monitoring and maintenance. The Port will contract with at least two qualified service providers to monitor the route on a regular basis and respond to repair requests as set forth in a timely manner Appendix A hereto.

(3) Locate services. The Port will contract with at least two qualified service providers to perform locate and emergency locate services on the backbone route within a specified response time.

(4) GIS and Survey. The Port will contract with a GIS provider and survey firm to provide timely updates to system as-built drawings.

f) Provide business management services necessary to operate the fiber optic backbone, including the following:

   g) Establish and manage a dedicated fund for operation of the fiber optic backbone, provide accounting services for the fund, and provide annual reporting to collaborating agencies.

   h) Provide contracting services in compliance with applicable statutes for design, construction and management of the system.

   i) Enter into and manage dark fiber lease agreements for wholesale fiber optic services.

   j) Convey to the PUD fiber optic buffer tubes and/or strands

   k) Make the PUD an “Assignee” where needed to allow shared use of easements for development of the countywide fiber optic backbone.

2. Pursuant to the terms of this Agreement, the PUD shall:
a) Construct and own portions of the countywide fiber optic backbone.

b) Use the fiber optic network for the PUD’s own use and provide wholesale fiber optic services across the system.

c) Contribute funds if available to build portions of the fiber optic backbone that directly benefit the PUD’s primary mission of providing utility services to customers.

d) Contract with the Port for management of shared fiber optic backbone infrastructure, including both network management and business management services.

e) Make the Port an “Assignee” where needed to allow shared use of easements for development of the countywide fiber optic backbone.

f) Convey to the Port fiber optic buffer tubes and/or strands.

D.A. SYSTEM MANAGEMENT

1-2. Parties will designate staff to participate in an Outside Plant Committee that will have oversight responsibility for management of fiber optic infrastructure, including:

a) Determining build priorities, operating and capital budgets, the parties financial obligations and financing opportunities

b) Selecting contractors for system management

c) Identifying and addressing system management issues

2. The Port will provide business management services to the system as described in Section C (1) above.

3. The Parties recognize that a shared management structure may require the formation of a separate management entity in the future.

E.D. SYSTEM FINANCING:
1. Parties will develop a complete finance plan for the design, construction and operation of the fiber optic network. Elements of this finance plan will include the following:

   a) Operating and Capital budgets will be adopted cooperatively based on the operating principles and a county-wide fiber backbone plan.

   b) A fund will be established by the Port to account for all revenues and expenses related to wholesale telecommunications services on the network.

   c) In the event that debt financing is used to build the network, revenues derived from the provision of wholesale telecommunications services will be applied first to the payment of such financing instruments.

   d) Revenues will then be applied to cover all expenses incurred in the management of the system, including maintenance contractors, the Port's staff time to administer the system, and the Port's administrative overhead costs.

   e) If and when the system generates a positive cash flow net of items 1 (c & d) above, dedicated Operating Reserve and Capital Reserve funds will be established.

   f) If and when the system generates a positive cash flow in the future net of items 1 (c & d) above and after establishment of adequate reserves, the Parties will establish a formula for the equitable sharing of revenues.

F. E. ADMINISTRATION

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this Agreement and for coordinating and monitoring performance under this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Party.

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2. The PUD’s representative shall be the General Manager or her/his Designee.

G.F. INDEMNIFICATION:
Each Party agrees to be responsible and assume liability for its own wrongful and/or negligent acts or omissions and those of its elected officials, officers, agents, or employees to the fullest extent required by law. Each Party further agrees to save, indemnify, defend, and hold the other Party harmless from any such liabilities. It is further provided that no liability shall attach solely by virtue of being a Party hereto. Each Party hereby waives its immunity under the Washington Industrial Insurance Act solely for the benefit of the other Party and only to meet its indemnity obligations hereunder.

H.G. TERM, TERMINATION, AND BUYOUT PROVISION:
This Agreement shall take effect on the Effective Date and continue until one Party provides the other Party with a one-year advance notice to terminate.

In the event that either party exercises its rights to terminate the agreement, the other Party shall have the right to purchase the other Party’s share of infrastructure necessary to operate the countywide fiber optic backbone, including fiber optic cable, buffer tubes or strands therein, vaults, and associated appurtenances.

I.H. SCOPE OF AUTHORITY:
No Party has any independent authority to direct the management of the other Parties’ activities under this Agreement nor, unless authorized in writing by the other Parties, the joint activities of the Parties hereunder. Neither Party has any authority to bind or to act for or to assume any obligations or responsibilities on behalf of the other Parties. The Parties may, upon mutual agreement, acquire real property interests and personal property in common. Any such ownership shall be retained upon termination hereof, absent an agreement otherwise between the Parties.
J.I. NOTICES:
Any and all notices or communications required or permitted to be given under any of the provisions of this Agreement must be in writing and will be deemed to have been given upon: (1) receipt when personally delivered; (2) the next day when sent by overnight courier; (3) or three (3) days after deposit in the United States Postal Service if sent prepaid by first class, certified or registered mail, return receipt requested. All notices must be addressed to the Parties at the addresses set forth below or at such other address specified by notice by one Party to the other Parties.

If to the Port of Skagit County:
Port of Skagit County
15400 Airport Drive
Burlington, Washington 98233
Attn: Executive Director

If to PUD No. 1 of Skagit County:
PUD No. 1 of Skagit County
1415 Freeway Drive
Mount Vernon, Washington 98273
Attn: General Manager

K. ENTIRE AGREEMENT/MODIFICATION:
This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and discussions with respect to the subject matter of this Agreement. This Agreement may be supplemented by additional agreements executed in writing by the Parties, or may be amended or modified by written agreement signed by the Parties hereto. Such amendments may be for the purposes of, among other things, adding or deleting parties to this Agreement or expanding the responsibilities of the Administrator.
INTERLOCAL AGREEMENT
PORT OF SKAGIT COUNTY
PUD No. 1 OF SKAGIT COUNTY

L.K. APPLICABLE LAW:
This Agreement, and any rights and obligations hereunder, shall be construed and interpreted in accordance with the laws of the State of Washington. Any dispute or proceeding arising out of this Agreement shall be filed in the Superior Court of the State of Washington for Skagit County.

M.L. ATTORNEYS’ FEES.
The prevailing Party in any dispute, whether or not suit is brought, or in any action to interpret, collect or enforce this Agreement, is entitled to its reasonable attorneys’ fees and costs, in addition to any other remedies, which will be paid by the non-prevailing Party promptly on demand. “Attorneys’ fees” as used in this Section includes services rendered at both the trial and appellate levels as well as services rendered subsequent to judgment in obtaining execution thereon.

N.M. ASSIGNMENT/NO BENEFICIARIES:
This Agreement is personal to the Parties. No Party to this Agreement may assign its rights or obligations hereunder. This Agreement is for the sole benefit of the Parties and no third party shall be deemed a beneficiary hereof.

O.N. AUTHORIZATION:
Each Party represents and warrants to the others that it is duly authorized to enter into and to carry out the terms of this Agreement.

P.O. INDEPENDENT REVIEW.
This Agreement has been reviewed and revised by legal counsel for all Parties and no presumption or rule that ambiguity shall be construed against the Party drafting the document shall apply to the interpretation or enforcement of this Agreement.
Q.P. SEVERABILITY.
In the case any term of this Agreement is held invalid, illegal or unenforceable in whole or in part, neither the validity of the remaining part of such term nor the validity of the remaining terms of this Agreement will in any way be affected thereby.

R.Q. COUNTERPARTS.
This Agreement may be executed in counterparts, each of which shall be an original but all of which taken together constitute one and the same instrument.

S.R. FORCE MAJEURE
If either Party is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonably within its control to perform or comply with any obligation or condition of this agreement upon giving written notice to the other Party, such obligation or condition shall be suspended during the continuance of the inability so caused and such Party shall be relieved of any liability during such period. The term force majeure shall include, without limitation by the following enumeration, acts of God, federal, state, county, or municipal orders, regulations or directives of any governmental authority or persons purporting to act therefor, or when the supply of product or any facility of production, manufacture/storage, transportation, distribution or delivery contemplated by either Party is delayed due to no fault of the Party, riots, acts of terrorism, other disturbances, earthquakes, hurricanes, strikes, or lockouts of any class of works, or stoppage of labor, or damage to piers or essential equipment, floods, fire, explosion, or destruction from any cause of any character either similar or dissimilar to the foregoing and reasonably beyond the control of the Party failing to perform.

T.S. RECORDING/POSTING/EFFECTIVE DATE
This Agreement shall become effective when recorded by the Parties or when posted on both Parties’ web sites (“Effective Date”).

IN WITNESS WHEREOF, the parties have executed this Agreement as set forth below.
PORT OF SKAGIT COUNTY:  

__________________________
Patricia H. Botsford-Martin
Its: Executive Director
Dated: ______________________

PUBLIC UTILITY DISTRICT NO. 1 OF SKAGIT COUNTY:

__________________________
By: George Sidhu, P.E.
Its: General Manager
Dated: ______________________
The Port and the PUD each acknowledge that the objectives of this agreement for Joint Construction and Management of Fiber Optic Infrastructure requires that they reach an agreement assigning certain construction and management functions to each party ("Implementation Agreement"). They agree, upon mutual acceptance of this agreement for JOINT CONSTRUCTION and MANAGEMENT of FIBER OPTIC INFRASTRUCTURE to promptly undertake discussions and reach an Implementation Agreement that addresses the following construction, management and operational matters:

a) Each party’s responsibility to construct and own portions of the countywide fiber optic backbone.

b) Each party’s use the fiber optic network for the its own use and for provision of wholesale fiber optic services across the system.

c) Each party’s willingness to seek grant funds to construct the fiber optic backbone, and contribute funds if available to plan and construct portions of the system that benefit the Port’s primary mission of economic development.

d) The granting of easements, licenses and authorization as needed to the parties to deploy fiber optic infrastructure across each other’s property or property interests needed for development of the countywide fiber optic backbone.

e) The role each will play to contract for services necessary to operate the countywide fiber optic backbone, including, the following services:

   (1) Network Operating Center (NOC) services for at least two qualified NOCs with 24/7 capability for the purposes of providing redundancy in the system.
m) Other items as agreed by the parties.

i) Establishment and management of a dedicated fund for accounting services for the fund and annual reporting to collaborating agencies.

j) The parties' respective obligations to provide business management services necessary to operate the fiber optic backbone.

k) The provision of contracting services in compliance with applicable statutes for design, construction and management of the system.

l) The parties to provide timely updates to system as required.

m) Conveyance of fiber optic buffer tubes and/or strands between the parties.

n) Contribution of funds by each party, if available to build portions of the fiber optic backbone that directly benefit the parties' primary missions.

o) The parties to provide support services on an as needed basis.

p) The parties to provide other services as agreed.

Agenda Item #9

(1) Route monitoring and maintenance by at least two qualified service providers to monitor the route on a regular basis and respond to repair requests in a timely manner.

(2) Locate services provided by at least two qualified service providers to perform locate and emergency locate services on the backbone route within a specified response time.

(3) GIS and Survey services from a GIS provider and survey firm to provide timely updates to system as required.

(4) The parties to contribute funds if available to build portions of the fiber optic backbone that directly benefit the parties' primary missions.