

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
THE CITY OF ANACORTES
AND
THE CITY OF BURLINGTON**

THIS AGREEMENT (“Agreement”) is made in duplicate and entered into this , 2020, by and between **CITY OF ANACORTES**, a municipal corporation of the State of Washington (“City of Anacortes”), and the **CITY OF BURLINGTON**, a municipal corporation of the State of Washington (“City of Burlington”), pursuant to the authority granted by Chapter 39.34 RCW, Interlocal Cooperation Act. City of Anacortes and the City of Burlington may be individually referred to herein as “Party” and may be collectively referred to herein as the “Parties”.

WITNESS THAT:

WHEREAS, City of Anacortes desires a single dark fiber optic connection from the City of Burlington networking head end located at 311 Cedar St , to the point of interconnection between the City of Burlington’s Fiber System and the City of Mount Vernon’s fiber system; and

WHEREAS, The City of Burlington has the authority to construct and maintain various wire line facilities within the City of Burlington’s Right of Way; and

WHEREAS, The City of Burlington and the City of Mount Vernon co-share fiber and fiber connections; and

WHEREAS, The City of Burlington and the City of Mount Vernon co-share a common fiber fee for fiber usage between the cities; and

WHEREAS, The Parties desire to reduce to writing their agreements relating to the City of Burlington’s provision of certain dark fiber optic connectivity between locations within the City of Burlington’s Fiber System, and unrestricted bandwidth, for monthly compensation from City of Anacortes.

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

DEFINITIONS.

- A. “City of Burlington’s fiber system” means all facilities related to the City of Burlington’s operation of its fiber lines which are owned, operated, controlled and maintained by the City of Burlington, including but not limited to fiber optic cables, equipment and all associated hardware utilized by the City of Burlington.
- B. “Dark Fiber” means unlit optical fiber cable strands, with connectivity from end-to-end and meeting generally accepted industry loss and performance standards, where the Licensee is responsible for providing and attaching the telecommunications equipment and lasers to transmit the light to carry data via the fiber.
- C. “Fiber” means optical fiber cable strands used to transmit light to carry data from end-to-end and meeting generally accepted industry loss and performance standards.
- D. “Non-recurring Charges” means work done by the City of Burlington in order to install and connect the City of Burlington’s fiber system to the City of Burlington’s Demarc location

at the Party's premises, the charge for such work shall include all reasonable material, labor, engineering and administrative costs and applicable overheads. The City of Burlington's standard billing rates (Reference the City Fiber Fee Schedule) for having personnel on site shall apply, and the City of Burlington's cost accounting systems used for recording capital and expense activities shall be used.

E. "Maintenance Charges" Any work done by the City of Burlington in order to maintain and repair the fiber system located on the Licensee or Licensee Customer side of the demarcation point shall be included as non-recurring charges.

F. "Plant Maintenance" means the City of Burlington's fiber system owned operated and maintained by the City of Burlington ending at the Licensee demarcation point.

1. RESPONSIBILITIES:

1.1 City of Anacortes :

- A. Will compensate the City of Burlington for any and all NRC and MRC expenses related to City of Anacortes use of the City of Burlington Fiber System.
- B. Will not sublet, lease or otherwise grant access of use to any entity other than that which is authorized in writing by the City of Burlington.

1.2 The City of Burlington:

- A. Will arrange for, install, own, operate and maintain the City of Burlington's facilities necessary to provide non-exclusive rights to City of Anacortes to utilize dark fiber from the City of Burlington's Fiber System between the demarcation point for specific site locations and under specific terms and conditions for each site location described in **Exhibit A** attached to this Agreement.
- B. Will establish the demarcation point which shall be the point of separation of responsibility between the City of Burlington and City of Mount Vernon.
- C. Will secure and maintain any and all necessary franchises, permits, easements, or agreements necessary for the use of property including, the use of utility poles for the construction and maintenance of the City of Burlington's Fiber System.
- D. Will deploy a standard single mode dark fiber optic product terminating in the City of Burlington's colocation closet and will perform all work using industry standards.
- E. Will provide City of Anacortes at least 24-hours prior written notice requesting access to any building or structure necessary to install, maintain and repair Fiber Service as necessary.
- F. Will notify City of Anacortes in writing when the fiber has been installed and is ready for use. The date of such notification ("State Date") shall be the first day of actual service under this Agreement.

- 2. TERM:** The term of this Agreement shall be three (3) years from the date of execution, with automatic term renewals in successive one (1) year increments, unless sooner terminated as

provided for elsewhere in this Agreement.

3. **COMPENSATION:** City of Anacortes shall compensate the City of Burlington the amount stated in Exhibit A. City of Anacortes will pay the City of Burlington for actual fiber services usage, as set forth in **Exhibit A** attached to this Agreement, including any and all non-recurring charges to establish on-site connectivity. If necessary, the first invoice for service commencing on the Start Date shall be prorated. City of Anacortes shall pay the City of Burlington within thirty (30) days after approval of a satisfactory invoice. Any delinquency of one hundred twenty (120) days may result in the immediate termination of this Agreement, at the discretion of the City of Burlington.
4. **RELATIONSHIP OF THE PARTIES:** The Parties agree that they are each independent entities operating pursuant to the terms and conditions of this Agreement. No partnership or joint venture exists between the Parties and no partnership or joint venture is created by and between the Parties by virtue of this Agreement. No agent, employee, servant or representative of City of Anacortes shall be deemed an employee, agent, servant, or representative of the City of Burlington for any purpose; and vice versa. Each Party agrees to aid and assist the other in accomplishing the objectives of this Agreement.
5. **TREATMENT OF ASSETS AND PROPERTY:** No fixed assets, personal, or real property will be jointly or cooperatively, acquired, held, used, or disposed of pursuant to this Agreement.
6. **INDEMNIFICATION:** Each Party expressly agrees to be responsible and assume liability for its own wrongful or negligent acts or omissions, or those of their officials, officers, agents, or employees, to the fullest extent required by law, and further agree to indemnify, defend, and hold the other Party harmless from any such liability. No liability shall attach to the Parties by reason of entering into this Agreement except as expressly provided herein.
7. **LIMITATIONS OF LIABILITY:** Notwithstanding any provision of this Agreement to the contrary, and except to the extent caused by its own willful misconduct, the Parties shall not be liable for any special, incidental, indirect, punitive or consequential damages, including but not limited to: loss of profits or revenue, cost of capital, or claims of the other Party (whether arising out of transmission interruptions or problems, any interruption or degradation of service or otherwise) whether foreseeable or not, arising out of, or in connection with either Party's performance or non-performance of its respective obligations under this Agreement, or any other cause or nature whatsoever and all claims with respect to which such special, incidental, indirect, punitive, or consequential damages are hereby specifically waived.
8. **FORCE MAJEURE:** Except for payment of sums due, neither Party shall be liable to the other or deemed in default of this Agreement if, and to the extent that, such Party's performance of one or more of its obligations hereunder is prevented by reason of Force Majeure which includes, without limitation: any act of nature, fire, epidemics, and the adoption or amendment of government codes, ordinances, laws, rules, regulations, or restrictions that materially impair the affected Party's performance hereunder, including lack of funding, war or civil disorder, riots, strikes, lock-outs, or other labor disputes. The affected Party agrees to perform one or more of its obligations as soon as practicable or immediately assist the other Party in whatever reasonable manner to gain access to Fiber Service or offer limited substitutions for consideration. If the initial connectivity date is affected, the Start Date shall be excused and extended for and during the period of any such delay.
9. **FILING AGREEMENT:** Notwithstanding any provision herein to the contrary, and in compliance with RCW 39.34.040, this Agreement and any modification thereof shall be posted on each Party's website and, if not, a copy hereof shall be filed in accordance with RCW 39.34.040; PROVIDED, that any delay in effecting compliance with this Section shall not affect

the stated term and conditions contained herein.

- 10. RESPONSIBLE PERSONS:** The following individuals are designated as representatives of the respective Parties and shall be responsible 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.

Geoff Hawes, IT Director
City of Burlington
833 S. Spruce St.
Burlington, WA 98233
Ph: 360-755-2398
E-mail: ghawes@burlingtonwa.gov

Jim Lemberg, Manager
City of Anacortes
P.O. Box 547
Anacortes, WA 98221
Ph: 360-588-8360
E-mail: jiml@cityofanacortes.org

- 11. COMPLIANCE WITH LAWS:** The Parties agree to comply with all applicable federal, State, and local laws, ordinances, and regulations.

- 12. TERMINATION:** This Agreement may be terminated by either Party for any reason upon the giving of sixty (60) days advance written notice to the other, either personally delivered or mailed postage prepaid by certified mail, return receipt requested, to the Party's last known address for the purposes of giving notice under this paragraph. If this Agreement is so terminated, City of Anacortes will be responsible for any fees incurred with removal of any City of Burlington fiber system and equipment. The Parties shall be liable only for performance rendered or costs incurred in accordance with the terms of this Agreement prior to the effective date of termination.

- 13. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:** No changes or modifications of this Agreement shall be valid or binding upon either Party to this Agreement unless such changes or modifications are made by written Amendment and executed by the Parties hereto. Waiver of any default or breach of any provision of this Agreement shall not be deemed to be a waiver of any prior or subsequent default or breach and shall not be construed to be a modification of the terms of this Agreement, unless stated to be such in writing signed by an authorized representative of the Party and attached to the original Agreement.

14. DISPUTES:

14.1 The Parties shall attempt to resolve any disputes as to the validity or enforcement of any term or provision of this Agreement by negotiation and compromise at the management level. Failing such compromise, such claim or assertion shall be elevated to the equivalent Director levels of each Party, and if necessary, to each Party's respective attorneys.

14.2 In the event that a dispute cannot be resolved in the manner described above, it shall be determined by a Dispute Board in the following manner: Each Party shall appoint one member to the Dispute Board. The members so appointed shall jointly appoint an additional member to the Dispute Board. The Dispute Board shall review the facts, terms, applicable statutes, and rules before making a determination of the dispute which shall be final and binding on the Parties.

14.3 The duties and obligations imposed by this Agreement and the rights and remedies herein shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by either Party shall constitute a waiver of any right or duty afforded the Party under this

Agreement, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed to in writing. All claims, counterclaims, disputes and other matters in question between the Parties arising out of, or relating to, this Agreement or its breach will be decided by mediation. Either Party may request in writing that a dispute be submitted to mediation. The Parties shall be equally responsible for the cost of any mediation. Mediation is optional and neither Party is compelled to participate.

15. NOTICES:

15.1 All notices hereunder may be delivered or mailed, unless required otherwise within this Agreement. In the event such representatives are changed, the Party making the change shall notify the other Party. All correspondence, letters, or other notices shall be directed to the foregoing parties at the following addresses/phone numbers:

City of Burlington
Attn: Leif Johnson, City Attorney
833 S. Spruce St
Burlington, WA 98233
E-mail: leifj@burlingtonwa.gov

City of Anacortes
Attn: Tiffany Matson, Contract Specialist
904 6th Street
Anacortes, WA 98221
E-mail: matsont@cityofanacortes.org

15.2 All notices mailed by regular post (including first class) shall be deemed to have been given on the third business day following the date of mailing, if properly mailed and addressed. Notices sent by certified or registered mail shall be deemed to have been given on the day next following the date of mailing, if properly mailed and addressed. For all types of mail, the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing. For e-mail, delivery shall be the next business day after the day sent; a delivery or a read receipt shall be conclusive evidence of the date of mailing.

16. NO THIRD PARTY BENEFICIARIES: This Agreement is not entered into with the intent that it shall benefit another entity or person or that such other person or entity shall be entitled to be treated as a third party beneficiary of this Agreement.

17. ASSIGNMENT: Unless otherwise expressly provided herein, no portion of this Agreement may be assigned, contracted, or subcontracted to any other individual, firm, company or other entity without the express and prior written approval of the Parties.

18. SEVERABILITY: If any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason, that holding shall not affect or impair, in any manner, the validity, legality, or enforceability of the remainder of this Agreement.

19. GOVERNING LAW AND VENUE: This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Any legal action arising herefrom shall be brought only in Skagit County Superior Court, Skagit County, Washington, which forum shall have sole and exclusive jurisdiction and venue.

20. OTHER PROVISIONS:

20.1 Fiber Route: The City of Burlington shall have, at all times, the sole discretion to choose the route of the fiber optic lines including routes which may not be the most direct route between the locations desired by City of Anacortes .

20.2 Fiber Connectivity Restoration, Repair & Maintenance:

- A. The City of Burlington shall employ a reasonable standard of care to maintain continuity of the City of Burlington’s Fiber System whenever possible. If City of Anacortes becomes aware that fiber continuity is lost, City of Anacortes shall notify the City of Burlington or the City of Burlington’s emergency designate immediately. If during off hours, City of Anacortes shall notify the City of Burlington by contacting the number provided in Part 20(E) below. Once the City of Burlington is notified, City of Burlington shall inspect the City of Burlington’s Fiber System and all fiber and associated equipment on City of Burlington’s side of the demarcation point in order to determine the cause of loss of service. After its inspection, the City of Burlington shall report back to City of Anacortes. The City of Burlington shall be responsible to re-establish continuity to City of Anacortes in the event lack of continuity exists on the City of Burlington side of the demarcation point. The City of Burlington shall notify City of Anacortes if problems encountered are not due to lack of fiber continuity on City of Burlington’s Fiber System.

- B. The City of Burlington shall perform, or be caused to perform, emergency and regular maintenance of the City of Burlington’s Fiber System, including fiber continuity disruptions to City of Anacortes for a reasonable period of time. The City of Burlington shall coordinate with City of Anacortes to schedule regular maintenance at times that are mutually convenient to both Parties when such maintenance is likely to cause disruption of fiber service to City of Anacortes.

- C. City of Anacortes will be allowed managed access to any City of Anacortes equipment at the City of Burlington’s Fiber Head end site. City of Anacortes personnel must pass CJIS requirements for access to the City of Burlington’s fiber room.

20.3 Credits for Loss of Continuity: Credits for loss of continuity will not be issued by the City of Burlington

20.4 Notification of Loss of Service: In the event City of Anacortes experiences loss of fiber continuity as set forth above, City of Anacortes shall notify the City of Burlington by calling the phone numbers listed below. Notices regarding loss of fiber continuity under

this subsection may be hereafter changed from time to time by the City of Burlington if such notice of the changes is provided in writing.

- a) During Regular Business Hours (Mon-Fri 8-5pm): 360-755-2398 or 360-630-4619
- b) During Off Hours 24x7 number: 360-540-0694

21. ENTIRE AGREEMENT: This Agreement contains all of the terms and conditions agreed upon by the Parties. The Parties agree that there are no other understandings, oral or otherwise, regarding the subject matter of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto, having read this Agreement in its entirety, including all attachments, do agree in each and every particular and by their duly authorized representatives have thus executed this Agreement as of the day and year first above written.

CITY OF ANACORTES

CITY OF BURLINGTON

By: _____
Laurie Gere, Mayor

By: _____
Steve Sexton, Mayor

Date: _____

Date: _____

Attest: _____
Steve Hoglund, Finance Director

Attest: _____
Joe Stewart, Finance Director

Date: _____

Date: _____

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Darcy Swetnam, City of Anacortes Attorney

Leif Johnson, City of Burlington Attorney

Date: _____

Date: _____

EXHIBIT A

**INTERLOCAL COOPERATIVE AGREEMENT BETWEEN
THE CITY OF ANACORTES FIBER AND
THE CITY OF BURLINGTON FIBER**

LOCATIONS / WORK PROVIDED

- 1) **Dark Fiber Provided:** One strand of single mode dark fiber optic connectivity between the splice case located in the City of Mount Vernon and the City location below:

From: Location	To: City of Burlington	Monthly Rate
City of Mount Vernon and City of Burlington meet me point Riverside Bridge Burlington	Suite B, 311 Cedar Street, Burlington WA fiber head end	\$175.00

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

- 3) **Other Expenses:**

From: City Location	Equipment rack space	Monthly Rate
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Misc. Expenses: Any additional building entry fees charged by the building owner or property management will be the responsibility of City of Anacortes.

Call Out Numbers For Loss of Continuity:

1st Fiber 8x5 call out cell number: 360-630-4619
2nd Fiber 24x7 Callout cell number: 360-540-0694
3rd Fiber 24x7 Callout cell number: 360-540-1263

EXHIBIT B

City of Burlington, Skagit County, Washington

FIBER LICENSEE TELECOMMUNICATIONS FEE SCHEDULE

<p><u>Application Fee exclude ISP</u> This is a one-time billable charge to pay for application to acquire fiber or telecommunication services and to cover engineering costs. Does not include permitting fees.</p>	\$75
<p><u>Inspection Fee Exclude ISP</u> This is a one-time billable charge to pay for a post installation fiber connection inspection if required.</p>	\$125
<p><u>Dark Fiber CoB to MV Commercial</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Minimum 2 year lease.</p>	\$175
<p><u>Dark Fiber CoB to MV Local Government Agency</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Minimum 2yr lease.</p>	\$100
<p><u>Dark Fiber within CoB Commercial use</u> This is monthly billable fee per fiber strand of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. Subject to City approval or availability. Minimum 2 year lease.</p>	\$350
<p><u>Dark Fiber Local Government Agency</u> This is monthly billable fee per fiber, of dark fiber, leased from the City. This fee includes maintenance repair but not the termination equipment, installation fees, splicing fees, certification fees or permit fees. This fiber is not for resale, reuse or sublease to any other organization. Subject to City approval or availability. Minimum 2 year lease.</p>	\$200
<p><u>City Lit Fiber strand on a VLAN, Commercial use, Exclude ISP</u> This is billable per fiber strand, per splitter port, per wavelength channel of lit CWDM or DWDM fiber, leased from the city if an ISP contract does not exist. This is a monthly recurring fee. This fee includes maintenance. Minimum 3 year lease, Excludes the City GPON equipment.</p>	\$275
<p><u>City Lit Fiber strand on a VLAN, Local Government Agency</u> This is billable per fiber strand, per splitter port, per wavelength channel of City CWDM or DWDM fiber, leased from the city. This is a monthly recurring fee. This fee includes maintenance. Minimum 4 year lease</p>	\$75

<p><u>CWDM or DWDM Fiber strand, Commercial use, Exclude ISP</u> This is billable, per fiber strand, per splitter port, per wavelength channel of commercial lit CWDM or DWDM fiber, if an ISP service contract does not exist. This is a monthly recurring fee. This fee includes maintenance. Minimum 2 year lease, Excludes the City GPON equipment.</p>	\$125
<p><u>CWDM or DWDM Fiber strand, Local Government Agency</u> This is billable per fiber strand, per splitter port, per wavelength channel of City CWDM or DWDM lit fiber, if an interlocal agreement does not exist. This is a monthly recurring fee. This fee includes maintenance. Excludes the City GPON equipment.</p>	\$55
<p><u>Full Cabinet Space Commercial</u> This includes a 19" cabinet, restricted entry and 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	\$400
<p><u>Full Cabinet Space Local Government Agency</u> This includes a 19" cabinet, restricted entry and 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 2yr lease</p>	\$200
<p><u>Half-Cabinet Space Commercial</u> This includes a half 19" cabinet, restricted entry, 20 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	<u>\$300</u>
<p><u>Half Cabinet Space Local Agency</u> This includes a 19" cabinet, restricted entry, 30 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 2yr lease</p>	<u>\$150</u>
<p><u>One-Third Cabinet Space Commercial</u> This includes 6U in a 19" cabinet, restricted entry, 15 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	<u>\$175</u>
<p><u>One-Third Cabinet Space Local Agency</u> This includes 6U in a 19" cabinet, restricted entry, 15 Amps AC UPS Power with standby generator, located in the designated City Co-Location Facility. This is a monthly recurring fee. Minimum 3yr lease</p>	<u>\$75</u>
<p><u>Rack-Unit Cabinet Space Commercial</u> This includes the per 1U Rack space, restricted entry, no power, located in the City Co-Location facility. These Units not guaranteed to be contiguous. This is a monthly recurring fee. Or AC UPS Powered up to 100W \$100</p>	<u>\$50</u>
<p><u>Rack-Unit Cabinet Space Local Agency</u></p>	<u>\$25</u>

<p>This includes the per 1U Rack space, restricted entry, no power, located in the City Co-Location facility. These Units not guaranteed to be contiguous. This is a monthly recurring fee, or AC UPS Powered up to 100W \$35</p>	
<p><u>Cabinet Setup Fee - Full</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.</p>	<u>\$300</u>
<p><u>Cabinet Setup Fee- 1/2</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee.</p>	<u>\$200</u>
<p><u>Cabinet Setup Fee - 1/3</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee</p>	<u>\$100</u>
<p><u>Rack Unit Setup Fee- per RU (Rack Unit)</u> This is a minimum billable per each installment and those requirements to install. This is a one-time startup fee, does not include terminations or installs</p>	<u>\$100</u>
<p><u>Interconnect Fees</u> This is billable per each cable (Simplex, Duplex, CATS, or CAT6) installed between units, beyond initial setup fee. This is a per incidence fee. The District reserves the right to modify these fees on a per incidence basis, based on any special needs or circumstances.</p>	<u>\$10</u>
<p><u>Labor – Standard</u> This is beyond initial setup fee and is billable per hour. This requires a 1hr minimum.</p>	<u>\$85</u>
<p><u>Labor - Overtime</u> This is beyond initial setup fee and is billable per hour. 2hr minimum. Applies to work from 4:30 pm to 8 am on workdays and any time on weekends and holidays.</p>	<u>\$150</u>