



INTERLOCAL AGREEMENT NO. 8628
Between
PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY
And
PORT OF PASCO

THIS AGREEMENT is made and entered into this 26 day of September, 2014, by and between the Public Utility District No. 1 of Franklin County, a Municipal Corporation, hereinafter referred to as "District" and Port of Pasco, a Municipal Corporation, hereinafter referred to as "The Port." "Party" means a party to this Agreement and "Parties" means, collectively, both Parties to this Agreement, unless the context clearly requires a different construction.

RECITALS

WHEREAS RCW 53.08.370 authorizes port districts to contract for, interconnect, purchase, acquire, and maintain telecommunications facilities within or without the district's limits for the district's own use; and

WHEREAS RCW 54.16.330 authorizes public utility districts to lease, license, provide, contract for, operate and maintain telecommunications facilities within or without the district's; and

WHEREAS, RCW 39.34 et seq. authorizes District and The Port to enter into interlocal agreements for the purpose of providing municipal services, and

WHEREAS, The Parties wish to develop a business relationship concerning the use and placement of fiber cable and associated equipment in accordance with their identical authority to operate and maintain telecommunication facilities;

NOW, THEREFORE, the Parties agree as follows:

- Dark Fiber**
There will be times where either Party will want to acquire the right to use dark fiber of the other Party, and per this Agreement the Party with excess dark fiber will, if sufficient excess dark fiber exists, allow use of such dark fiber following a written application for such use and execution of a separate written agreement containing terms and conditions for use of such dark fiber. The determination of whether sufficient excess dark fiber exists will be at the dark fiber owner's sole discretion. The terms and conditions of such dark fiber use will be included in the Service Order Summary Agreement – Dark Fiber (the "SOS-DK") which must be executed by the Parties.

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- 2. Indemnification**
The Party acquiring the right to use the other Party's excess dark fiber (the "Using Party") shall defend, indemnify, and hold harmless the other Party, its officers, employees, and agents from any and all costs, claims, judgments or awards of damages arising out of or in any way resulting from the negligent acts, omissions, or use of dark fiber by the Using Party or its agents, employees, or officers in the use of the other Party's excess dark fiber.
- 3. Consideration**
Either Party acquiring the right to use the other Party's excess dark fiber will provide fair consideration for such use to the dark fiber's owner.
- 4. Amendment**
This Agreement may only be amended by mutual, written agreement of the signatories to this Agreement.
- 5. Interlocal Cooperation Act Provision**
Subject to Sections 1, 2, and 3 each Party shall be solely responsible for all costs, materials, supplies and services necessary for their performance under the terms of this Agreement; all property and materials secured by each Party in the performance of this Agreement shall remain the sole property of that Party; and, all funding incident to the fulfillment of this Interlocal Agreement, shall be borne by each Party necessary for the fulfillment of their responsibilities under the terms of this Agreement. No special budgets or funds are anticipated, nor shall be created incident to this Interlocal Agreement. It is not the intention that a separate legal entity be established to conduct the cooperative undertakings, nor is the acquisition, holding, or disposing of any real or personal property anticipated under the terms of this Agreement. The Parties will jointly administer the cooperative undertaking set out in this Agreement.
- This Agreement shall be filed with the Franklin County Auditors, or alternatively, posted on the Parties' respective websites as required by RCW 39.34.
- 6. Term/Termination**
This Agreement shall have an initial term of five (5) years commencing on the effective date provided above, and may be renewed for additional (5) year terms with ninety (90) days notice prior to the end of the current term. For the one (5) year renewal to be effective The Port must provide District with a ninety (90) day written request to renew, and District must issue its written concurrence to renew this Agreement. If the ninety (90) day notice is not given, the Agreement shall renew automatically for one-year terms until either party provides notice of cancellation at least sixty (60) days before a new one-year term begins.

However, if a SOS-DK remains open that has not yet expired as of the expiration of this Agreement, then such SOS-DK and all terms in this Agreement will remain in effect until the SOS-DK has expired or the SOS-DK is otherwise terminated.

7. Entire Agreement

The Parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are hereby expressly excluded.

8. Nonwaiver

Waiver of any default or breach under this Agreement shall not be deemed to be a waiver of any other 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 through written agreement of the Parties hereto.

9. Invalid Provisions



If any provision of this Agreement shall be held invalid, the remainder of this Agreement shall not be affected if such remainder would then continue to serve the purposes and objectives of the Parties.

10. Applicable Law

Should any dispute arise concerning the enforcement, breach, or interpretation of this Agreement, resolution shall be by presentation to the General Manager of the District and the Executive Director of the Port, and in the event the dispute is not then able to be resolved, it shall be resolved by submitting the dispute to binding arbitration. The binding arbitration shall proceed according to the Washington State Superior Court Mandatory Arbitration Rules (MAR) for a case assigned for arbitration in Franklin County Superior Courts, and the prevailing Party shall be entitled to its reasonable attorney fees and costs. If the Parties cannot agree on an arbitrator to decide the dispute within 15 days following a Party's written demand for arbitration is received by the other Party, the arbitrator shall be appointed by the presiding judge of the Superior Court of Franklin County, Washington.

IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized officers and/or agents on the day and year first written above.

THE PORT OF PASCO PUBLIC UTILITY DISTRICT NO. 1 OF FRANKLIN COUNTY

BY:  BY: 
TITLE: President, Board of Commissioners TITLE: GENERAL MANAGER

PRINT NAME: James T. Klindworth PRINT NAME: EDWARD J. BROST
DATE: September 25, 2014 DATE: OCTOBER 29, 2014

STATE OF WASHINGTON)

: ss.

County of Franklin)

On this 25th day of September, 2014, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JAMES T. KLINDWORTH to me known to be the President of the Board of Commissioners of Port of Pasco, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on ~~that~~ stated that he was authorized to execute the said instrument.



Witness my hand and official seal hereto affixed the day and year first above

Linda M. O'Brien
NOTARY PUBLIC in and for the State of Washington
Residing at: *Bennewick*
My Commission Expires: *2/8/2018*

STATE OF WASHINGTON)

: ss.

County of Franklin)

On this ___ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared _____ to me known to be the _____ of Public Utility District No. 1 of Franklin County, the municipal corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

Witness my hand and official seal hereto affixed the day and year first above written.

NOTARY PUBLIC in and for the State of Washington
Residing at: _____
My Commission Expires: _____