

PUD

File

May 29, 2008



Port of Benton
Attn: Scott Keller
3100 George Washington Way
Richland, WA 99352

Re: *Interlocal Agreement for Wholesale Telecommunications Services*
#08-46-03

Please find enclosed, for your records, a copy of the signed above referenced contract.

Very truly yours,

A handwritten signature in blue ink that reads "Loretta E. Tucksen".

Loretta E. Tucksen
Contracts and Purchasing Coordinator

enc: 1

INTERLOCAL AGREEMENT FOR WHOLESALE TELECOMMUNICATIONS SERVICES

THIS AGREEMENT is made and entered into by and between Public Utility District No. 1 of Benton County ("PUD") and the Port of Benton ("Port,").

RECITALS

Public Utility districts are authorized pursuant to RCW 54.16.330 to construct, operate and maintain telecommunications facilities without the District's geographical limits by contract. Port districts are authorized pursuant to RCW 53.08.370 to construct, operate, maintain and contract for telecommunications facilities within its geographical limits. Port districts are also authorized to enter into contracts with any municipal corporation of the State of Washington to carry out its purposes. (RCW 53.08.140). Both port districts and public utility districts are further authorized to contract with another public agency to perform any governmental service or activity which each public agency is authorized by law to perform. (RCW 39.34.080).

Port desires to make telecommunications facilities available to certain retail service providers in its port district, and PUD is willing to furnish such telecommunication services pursuant to the terms set forth below, and pursuant to the Interlocal Cooperation Act.

AGREEMENT

1. Port hereby authorizes PUD to provide Wholesale Telecommunications Services to retail telecommunication and internet providers within a portion of the port district which is outside the district boundaries of the PUD and within the boundaries of the Port ("Contract Area") to which the PUD is able and willing to provides services at PUD's sole discretion. To this end, Port authorizes PUD to take such steps as are necessary to provide, maintain, and service Wholesale Telecommunications Services access, and infrastructure for said service, to and for retail providers within the Contract Area. "Wholesale Telecommunications Services" is providing broadband access and service to an entity that delivers connectivity and service to an end user.

2. PUD may contract directly with retail telecommunication and internet providers within Port Boundaries. This Agreement does not create a partnership or any other agency relationship between PUD and Port. Neither party is authorized to speak for, obligate or incur liability on behalf of, the other party in any way. This Agreement does not authorize either party to use, manage, restrict or control the other party's rights, employees or facilities, or the other party itself.

3. PUD shall not sell, lease or license internet bandwidth or any telecommunication service directly to end users.

4. PUD shall be responsible for financing any of the costs associated with the delivery of internet access or bandwidth except by mutual and specific project agreement, under the terms of this Agreement.


5. All equipment and any improvement thereon or fixtures purchased by PUD, shall remain the sole property of PUD. All personnel utilized by PUD in fulfillment of this Agreement shall be solely within the supervision, direction and control of PUD. All funding incident to PUD's equipment and maintenance operation expenses as provided in this Agreement, shall be the sole responsibility of PUD. No special budget or funds are anticipated, nor shall be created. It is not intended that a separate legal entity be established to conduct this cooperative undertaking, nor is the acquiring, holding, or disposing of real or personal property other than as specifically provided within the terms of this Agreement, anticipated. The Director of Operations of PUD shall be designated as the Administrator of this Interlocal Agreement.

6. PUD may acquire, hold or dispose of real or personal property as necessary to deliver services under this Agreement. Such property shall be titled and held in the name of PUD.

7. This Agreement shall commence on _____ ("Commencement Date") and continue until _____. This Agreement shall automatically and perpetually renew annually on the anniversary of the Commencement Date unless either party to this Agreement delivers notice in writing to the other party at least ninety (90) days before the date of automatic annual renewal.

8. Any notice required under the terms of this Agreement shall be sent to the following:

PUD: 
Public Utility District No. 1 of Benton County
P.O. Box 6270
Kennewick, WA 99336-0270

Port: 
Port of Benton
3100 George Washington Way
Richland, WA 99352

9. This Agreement represents the entire and integrated Agreement between PUD and Port relating to Wholesale Communication Services, and supersedes all prior negotiations, representations or agreements, either written or oral.

10. Nothing in this Agreement shall be construed so as to require the commission of any acts contrary to law, and wherever there is any conflict between any provisions of this Agreement and any statute, law, public regulation or ordinance, the latter shall prevail, but in such event, the provisions of this Agreement affected shall be curtailed and limited only to the extent necessary to bring it within legal requirements.

11. This Agreement is governed, construed and enforced in accordance with the substantive laws of the State of Washington. Should any dispute arise concerning the enforcement, breach or interpretation of this Agreement, venue shall be placed in Benton County, Washington, and the prevailing party shall be entitled to its reasonable attorney fees and costs as additional judgment.

DATED this _____ day of _____, 2007.

BENTON COUNTY PUBLIC UTILITY
DISTRICT NO. 1



James W. Sanders
General Manager

PORT OF BENTON



Scott D. Keller
Executive Director