

RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:

Serena S. Carlsen
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101



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Skagit County Auditor

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Easement
SKAGIT COUNTY WASHINGTON
REAL ESTATE EXCISE TAX

Space above this line for Recorder's use.

DEC 14 2010

P23781

6-344

**EASEMENT AGREEMENT
(FIBER OPTIC LINE)**

Amount Paid \$
Skagit Co. Treasurer
By *man* Deputy

This **EASEMENT AGREEMENT (FIBER OPTIC LINE)** (this "Agreement") is made and entered into effective December 14th, 2010 by and between GULL INDUSTRIES, INC., a Washington corporation ("**Grantor**") and CITY OF BURLINGTON ("**Grantee**").

RECITALS

A. Grantor is the owner of all that certain real property in Skagit County, Washington, legally described on Exhibit A (the "**Gull Parcel**").

B. Grantor installed underground conduit to accommodate the future installation of a fiber optic line and related equipment (the "**Improvements**") across a portion of the Gull Parcel, as a condition of approval of the building permit #P10-035 dated April 4, 2010 and in conformance with the requirements of the City of Burlington. The Improvements were installed for the benefit of Grantee.

C. This Agreement sets forth the terms and conditions under which the Grantor will convey title of the Improvements to Grantee and grant to Grantee an easement within the Gull Parcel.

AGREEMENT

1. **Conveyance of Fiber Optic Improvements - Grant of Easement Area.** Grantor does hereby assign, convey, transfer and set over to Grantee all of its rights, titles and interests in and to the Improvements and Grantee accepts the Improvements in their present condition and hereby assumes all duties and liability with respect thereto. Grantor hereby grants and conveys

to Grantee and its agents, designees and/or assigns for the purposes hereinafter set forth, a perpetual easement under, across, and over a portion of the Gull Parcel within the area described on Exhibit B (the "**Easement Area**") attached hereto, a depiction of said easement being attached hereto as Exhibit B-1, both incorporated herein by this reference, to the same extent and purpose as if the rights herein granted had been acquired under Eminent Domain statutes of the State of Washington.

2. **Purpose of Easement.** The Easement is granted for the sole purpose of constructing, reconstructing, installing, repairing, replacing, operating and maintaining underground fiber optic lines for the benefit of Grantee, provided that such use shall not unreasonably interfere with Grantor's, its tenant's and invitees' use of the Gull Parcel or interfere with Grantor's rights hereunder. The Easement granted hereby shall be non-exclusive and Grantor reserves the right to grant other easement rights in and to the Easement Area; provided that such easement rights shall not substantially interfere with the easement rights granted herein. Grantor reserves to itself the right to full use and enjoyment of the entire Easement Area, including, without limitation, the right to place on or in the Easement Area, along, across, and over the Easement Area, such roads, paved parking areas, fences, landscaping, sidewalks, passageways, electric power lines, communication lines, cables and conduits, gas lines, and other facilities, structures and utilities as Grantor may desire, provided that such use shall not unreasonably interfere with Grantee's rights hereunder.

3. **Maintenance - Repair.** Grantee shall maintain the Improvements in safe and proper working condition at all times and shall, if the Easement Area is disturbed by the maintenance, alteration, repair or replacement of the Improvements, restore the surface of the Easement Area as nearly as possible to the condition in which it existed at the commencement of said maintenance alteration, repair or replacement, at its sole cost and expense. Grantee agrees to perform all work in a good and workmanlike manner, in compliance with applicable laws, and so as to avoid to the extent reasonably possible, interference with other utilities or access to Grantor's Parcel.

4. **General Provisions.**

A. **Access.** Grantee shall have the right of access to the Easement Area over and across Grantor's property to the extent reasonably necessary to enable Grantee to exercise its rights hereunder, but such rights shall not include access to or entries upon the interior of any improvements on the Property. Except in the case of an imminent need to effect any repairs or the risk of personal injury or property damage, Grantee shall make good faith attempts to provide at least seven (7) days' written notice to Grantor prior to each entry at Grantor's address for notices herein or as last provided to Grantee.

B. **Indemnification.** Grantee agrees to release, indemnify and hold Grantor harmless from and against liability, including attorney's fees, incurred by Grantor as a result of any acts or omissions of Grantee in the exercise of the rights herein granted to Grantee, or any personal injury caused by Grantee's use of the Easement Area, and Grantee shall promptly



restore any damage to Grantor's improvements on the Gull Property caused by Grantee in the exercise of its rights under this Agreement, but nothing herein shall require Grantee to indemnify Grantor for that portion of any such liability attributable to the negligence of Grantor or the negligence of others. Each reference to Grantor and Grantee in this Section 4 shall be deemed to include such party's employees, agents, tenants, invitees and contractors.

C. Attorneys' Fees. In the event that any suit or other proceeding is instituted by either party to this Agreement arising out of or pertaining to this Agreement or the relationship of the parties, including but not limited to the filing of a lawsuit, a request for an arbitration, mediation, or other alternative dispute resolution process (collectively, "Proceeding"), and any appeals and collateral actions relative to such a Proceeding, the substantially prevailing party as determined by the court or as determined in the Proceeding shall be entitled to recover its reasonable attorneys' fees and all costs and expenses incurred relative to such Proceeding from the non-prevailing party, in addition to such other relief as may be awarded.

D. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties and their successors, heirs, assigns, and personal representatives and all persons claiming by, through or under the parties hereto; provided, however, Grantor shall not be liable under this Agreement for any acts or omissions of any other person that occur after Grantor conveys the Parcel to any unrelated person of record. The easement created by this Agreement shall be appurtenant, shall touch and concern the real property identified above, and shall run with the land. The Grantor warrants that the Grantor has good title to the property and warrants the Grantee's easement to and quiet enjoyment of the easement conveyed herein.

E. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Jurisdiction over and venue of any suit arising out of or related to this Agreement shall be exclusively within the state or federal courts of Skagit County, Washington.

F. Entire Agreement. This Agreement contains the entire agreement between the parties with respect to this matter and may not be modified except in a writing signed by both parties.

G. Waiver. Any waiver by a party of a breach of any provision of the agreement contained within this Agreement by the other party shall not operate or be construed as a waiver of any subsequent breach by that party. No waiver shall be valid unless in writing and signed by the party against whom enforcement of the waiver is sought.

H. Severability. If for any reason any portion of this Agreement or any agreement contained herein shall be held to be invalid or unenforceable, the holding of invalidity or unenforceability of that portion shall not affect any other portion of this Agreement or agreement and the remaining portions of the Agreement shall remain in full force and effect.

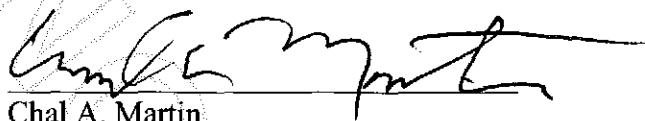


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Marie Lambert
Printed Name: MARIE I LAMBERT
Notary Public in and for the State of Washington
residing at Mount Vernon, WA
My appointment expires 8/15/2012



GRANTEE: CITY OF BURLINGTON



Chal A. Martin
Public Works Director

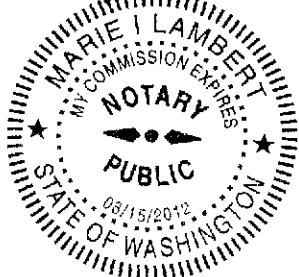
STATE OF WASHINGTON)

) ss.

County of Skagit)

On this _____ day of December, 2010, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Chal A. Martin, P.E., known to me to be the Public Works Director, of the CITY OF BURLINGTON, that executed the foregoing Agreement, and acknowledged it to be the free and voluntary act of said municipal corporation, for the uses and purposes mentioned in this Agreement, and on oath stated that he was authorized to execute said Agreement.

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



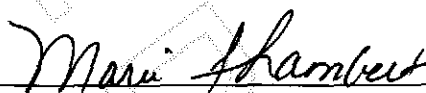

Printed Name: MARIE I LAMBERT
Notary Public in and for the State of Washington
residing at Mount Vernon
My appointment expires 8-15-2012



EXHIBIT A
Legal Description of Gull Parcel

That portion of Government Lot 1, Section 6, Township 34 North, Range 4 East, WM described as follows:

Commencing at the Northeast corner of said Section 6; Thence South 0° 00' 04" East, along the East line of said Section 6 a distance of 326.89 feet to the Southeast corner of the South Half of the North Half of the Northeast Quarter of Government Lot 1 of said Section 6; Thence North 89° 25' 07" West, along the South line thereof, 40.00 feet to the West line of the East 40.00 feet of said Section 6 and the **TRUE POINT OF BEGINNING**; Thence North 0° 00' 04" West, along said line, 255.39 feet to the Southeast corner of that certain parcel as conveyed to the City of Burlington by Deed recorded under Auditors File No. 8810100024, records of Skagit County Washington; Thence North 89° 24' 58" West, along the South line of said parcel, 7.00 feet to an angle point in said parcel; Thence continue along said parcel the following courses, North 0° 00' 04" West 11.82 feet; Thence along a non-tangent curve concave to the Southwest whose radius point bears South 50° 51' 12" West a distance of 49.00 feet through a central angle of 50° 1' 59" an arc distance of 42.99 feet; Thence North 89° 24' 58" West along the South line of said parcel recorded under AFN 8810100024 a distance of 200.50 feet to the West line of that certain parcel as described under document recorded under Auditors file no. 8604010050; Thence South 0° 00' 04" East, along the West line of said parcel and said parcel extended, 284.90 feet to the South line of the South Half of the North Half of the Northeast Quarter of Government Lot 1 of said Section 6; Thence South 89° 25' 07" East, along said line, 245.00 feet to the **TRUE POINT OF BEGINNING**.

Containing 69, 387 square feet, more or less.

Subject to easements, restrictions and reservations of record.

Situate in the County of Skagit, State of Washington



EXHIBIT B
Legal Description of Easement Area

A Fiber Optic easement being in a portion of Government Lot 1, Section 6, Township 34 North, Range 4 East, WM described as follows:

Commencing at the Northeast corner of said Section 6; Thence South 0° 00' 04" West, along the East line of said Section 6 a distance of 326.89 feet to the Southeast corner of South Half of the North Half of the Northeast Quarter of Government Lot 1 of said Section 6; Thence North 89° 25' 07" West, along the South line thereof, 40.00 feet to the West line of the East 40.00 feet of said Section 6 and the **TRUE POINT OF BEGINNING**; Thence North 0° 00' 04" West, along said line, 255.39 feet to the Southeast corner of that certain parcel as conveyed to the City of Burlington by Deed recorded under Auditors File No. 8810100024, records of Skagit County Washington; Thence North 89° 24' 58" West, along the South line of said parcel, 5.00 feet; Thence South 0° 00' 04" East 255.39 feet to the South line of said South Half; Thence South 89° 25' 07" East along said line 5.00 feet to the **TRUE POINT OF BEGINNING**.

TOGETHER WITH That portion of Government Lot 1, Section 6, Township 34 North, Range 4 East, WM described as follows:

Commencing at the Northeast corner of said Section 6; Thence South 0° 00' 04" West, along the East line of said Section 6 a distance of 326.89 feet to the Southeast corner of South Half of the North Half of the Northeast Quarter of Government Lot 1 of said Section 6; Thence North 89° 25' 07" West, along the South line thereof, 40.00 feet to the West line of the East 40.00 feet of said Section 6; Thence North 0° 00' 04" West, along said line, 255.39 feet to the Southeast corner of that certain parcel as conveyed to the City of Burlington by Deed recorded under Auditors File No. 8810100024, records of Skagit County Washington; Thence North 89° 24' 58" West, along the South line of said parcel, 7.00 feet to an angle point in said parcel; Thence North 0° 00' 04" West along said parcel 4.55 feet to the **TRUE POINT OF BEGINNING**; Thence continue along said line North 0° 00' 04" West 7.27 feet to an angle point in said parcel; Thence along a non-tangent curve concave to the Southwest whose radius point bears South 50° 51' 12" West a distance of 49.00 feet through a central angle of 20° 10' 20" an arc distance of 17.25 feet; Thence South 30° 40' 41" West 4.00 feet; Thence South 45° 00' 04" East 21.27 feet to the **TRUE POINT OF BEGINNING**.

Situate in the County of Skagit, State of Washington



PORTION OF GOVERNMENT LOT 1
SECTION 6, T. 34 N, R. 4 E, WM
FIBER OPTICS EASEMENT

