

**INTERLOCAL AGREEMENT
INTERNET REDUNDANCY PROGRAM**

This is an Interlocal Agreement (Agreement), dated this 28 day of April 2022, by and between the MASON COUNTY, a Washington municipal corporation (COUNTY), and PUBLIC UTILITY DISTRICT NO. 3 of MASON COUNTY, a Washington municipal corporation (PUD 3), and collectively referred to as the “Parties”. In consideration of the mutual covenants and conditions hereinafter provided, pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, it is agreed as follows:

RECITALS:

WHEREAS, PUD 3 operates a fiber optic network pursuant to RCW 54.16.330.

WHEREAS, COUNTY hosts the Emergency Operations Center at its Public Works Facility, and other critical systems and services at its Downtown Shelton Campus, which rely on stable and reliable telecommunications network connections for efficient operations.

WHEREAS, COUNTY finds it imperative for business continuity to secure a cable-diverse, geo-diverse, and network-diverse route for its internet traffic.

PUD 3’s fiber network extends from COUNTY locations to PUD 3 collocation facilities, where it takes three separate high-capacity geo-diverse paths out of Mason County, in partnership with NoaNet, to multiple internet data centers in the region, including Seattle, Portland, and Spokane. This fiber path and network are separate and unique from the COUNTY’s primary internet provider.

WHEREAS, PUD 3 has available a portion of its telecommunications facilities, including facilities installed at COUNTY locations, and COUNTY desires to utilize such facilities.

WHEREAS, PUD 3 is not providing, or attempting to provide, or replace COUNTY’s primary retail internet service.

Now, therefore it is agreed between PUD 3 and COUNTY as follows:

1. PUD 3 will upgrade, operate, and maintain fiber optic facilities and networking equipment at these designated COUNTY Locations:
 - a. Mason County Downtown Shelton Campus
411 N 5th Street, BLDG 1
Shelton, WA 98584

b. Mason County Public Works & Emergency Operations Center
100 W Public Works Drive
Shelton, WA 98584

2. PUD 3 will provide a designated gigabit ethernet port on a dedicated VLAN at each of the above locations for COUNTY to access the internet. PUD 3 will work with COUNTY networking staff to support configuration of the circuit.
3. The PUD 3 networking device must be plugged into a maintained and monitored Universal Power Supply (UPS) on-site. If no UPS is available, PUD 3 will provide one for \$10/month to COUNTY for the duration of this agreement. A UPS is required.
4. PUD 3 does not guarantee uninterrupted service on these circuits. However, PUD 3 will provide 24/7/365 device monitoring and respond to disruptions in service on designated devices in a timely manner.
5. COUNTY will be able to utilize PUD 3's network for connectivity in certain cases at its discretion, such as if its primary internet provider were to lose service connectivity to its Location(s).
6. COUNTY will pay PUD 3 \$2,700 total for a five-year term for each location above (\$5,400 total for two Locations), billable on the first of the month following both Parties executing this agreement.
7. COUNTY will pay PUD 3 for bandwidth utilization monthly, based on usage for the billing period, if any. PUD 3 will use the 95th Percentile Billing Method as described in PUD 3 Telecommunications Service Rules & Regulations. The rate will be \$1.25/Mbps.
8. COUNTY shall pay all fees due for services according to the prices and terms listed herein and/or PUD 3's Telecommunications Service Rules and Regulations.
9. COUNTY shall provide its own equipment and professional services to configure, operate, maintain, repair, and replace its internal communications network(s). The COUNTY shall be exclusively responsible for the operation of its network, systems, and equipment.
10. PUD 3 shall be exclusively responsible for the operation, maintenance, and repairs of its network equipment, fiber cable, and other outside plant equipment along its segments.
11. If COUNTY would like to utilize this service at additional locations, all terms in this Agreement will apply and an additional Location amendment will be drafted and signed by both parties. Additional locations may require a line extension of PUD 3's fiber network, which will be reviewed and agreed upon by Parties prior to construction.
12. The initial term shall be five (5) years from the date of this Agreement. This Agreement will automatically renew at the same rates and terms for additional five (5) year terms, unless terminated in writing by either Party.

13. Either Party shall have the right to terminate this agreement in the event the other party breaches this agreement, upon written notification specifying the breach in reasonable detail, and the breaching party fails to cure its breach within 30 days after delivery of notice of breach. Damages and/or refund payment are strictly limited to a pro-rated monthly amount of services not rendered.
14. Neither party shall have the right to transfer or assign rights to a third party for the purpose of selling, promoting, operating telecommunications connections without the consent of both parties.
15. Parties represent and warrant that they will use this service in compliance with this Agreement and all applicable government codes, ordinances, laws, rules, and regulations as may now or in the future exist.
16. Parties shall cooperate with in complying with any requirements of any governmental authority, applicable to its respective rights and obligations hereunder.
17. Parties shall promptly notify the designated representatives of any matters pertaining to, or the occurrence (or impending occurrence) of, any event of which it is aware that could give rise to any damage or impending damage to the Network.
18. PUD 3 will maintain a 24/7 Network Operations Center (NOC) for the purpose of monitoring and reporting service and network disruption and coordination and repair of its fiber network.
19. At any time PUD 3 determines that an alteration, repair, or inspection is needed, PUD 3 will notify the COUNTY in advance and abide by any changes in scheduling that may be required by the Parties. The Parties will coordinate and schedule resources necessary for maintenance, testing, or repairs as required to maintain reliable and continuous services. Parties may be required to provide a representative to be present, at their cost, during such activities.
20. Any scheduled or routine activities or maintenance shall be performed in accordance with standard industry practices. Intrusive maintenance (maintenance that requires service downtime or potential service downtime) will be performed Monday – Thursday, during the hours of 1:00 am and 5:00 am. Scheduling Party will notify other Party in writing at least TEN (10) business days prior to commencing any such scheduled maintenance.
21. At times, emergencies occur that require immediate restoration to a damaged fiber facility or equipment that has malfunctioned. This restoration work should be performed as soon as reasonably practicable. Any unscheduled maintenance work shall be reported to COUNTY. Parties shall perform all network maintenance functions to ensure the service per this Agreement meet a TWENTY-FOUR (24) hour per day, SEVEN (7) days per week functional requirement. Parties will make all reasonable efforts to schedule emergency

maintenance during off-peak hours as described herein and at such a date and time that will provide COUNTY reasonable notice.

22. **Except as set forth in this agreement, PUD 3 makes no warranty or representation, express or implied, with respect to any matter whatsoever, including, without limitation, the facilities or the capabilities, characteristics, availability of use thereof, or any maintenance services performed by PUD 3 or its agents in connection therewith. PUD 3 specifically disclaims, and COUNTY hereby waives, any implied warranty of merchantability or fitness for a particular purpose, and any warranty arising from usage of trade or course of dealing.**
23. PUD 3 shall indemnify, defend and hold harmless COUNTY from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments including, without limitation, reasonable attorney's fees, arising out of or in any way connected with COUNTY, its agents', employees' or officers' performance under this Agreement, except to the extent that such damage or injury is caused by or the result of COUNTY's negligence or intentional misconduct.

COUNTY shall indemnify, defend and hold harmless PUD 3 from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments including, without limitation, reasonable attorney's fees, arising out of or in any way connected with PUD 3, its agents', employees' or officers' performance under this Agreement, except to the extent that such damage or injury is caused by or the result of the PUD 3's negligence or intentional misconduct.
24. COUNTY recognizes that use of PUD 3's system shall be at its own risk, and therefore, expressly assumes any risk arising from the exercise of any rights, privileges, or obligations identified herein.
25. All performance under this Agreement and any use by either Party of the other Party's facilities shall comply in all respects with all applicable state, federal and local law and regulation, including without limitation RCW 54.16.330.
26. The relationship between PUD 3 and COUNTY is that of independent contractors and nothing in this Agreement shall be construed to create a partnership, joint venture, or agency relationship between PUD 3 and COUNTY. Pursuant to RCW 39.34.040, following execution, this Agreement will be listed by subject on the websites respectively of the COUNTY and PUD 3.
27. In the event that either party become subject to, in whole or in part, one or more provisions of any state or federal tariff, then in the event of any conflict between any provision of this Agreement and any provision of such tariff, to the extent that such tariff provision creates a conflict required by law, regulation or any order of a court or governmental agency, the provision of such tariff shall control. This Agreement shall also be subject to such modifications as may be required or authorized by any regulatory agency in the exercise of its lawful jurisdiction.

28. In the event that a Party's performance is delayed, prevented, obstructed, or inhibited because of any Act of God, fire, casualty, delay or disruption in transportation, flood, war, strike, lockout, epidemic, destruction or shut-down of production facilities, shortage or curtailment, riot, insurrection, governmental acts or directives, any full or partial failure of any telecommunications or computer network, or any other cause beyond the reasonable control of a party, including financial requirements or manufacturing limitations imposed by third-party manufacturers, suppliers, or vendors, such party's performance shall be excused and the time for the performance shall be extended for the period of delay or inability to perform resulting from such occurrence. The occurrence of such an event shall not constitute grounds for a declaration of default under this Agreement.
29. Neither party shall assign, sublease, transfer or convey (i) this Agreement or any interest therein.
30. Any notice required or permitted to be given under this Agreement shall be effective upon receipt and shall be sufficient if in writing and sent by certified mail, postage prepaid, return receipt requested, to the parties at the addresses shown below, or at such other addresses as may in the future be advised:

PUD 3:

Mason PUD 3
2621 E. Johns Prairie Road
Shelton, WA 98584
Attn: General Manager

COUNTY:

Mason County
411 N 5th Street
Shelton, WA 98584
Attn: County Administrator

31. The rights, obligations and remedies of the parties as specified under this Agreement shall be interpreted and governed in all respects by the laws of the state of Washington. Any provision of this Agreement which is invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.
32. If any suit or action is instituted or prosecuted to interpret or enforce any provision of this Agreement, the prevailing party in such suit or action shall be entitled to recover from the other party costs, expenses and reasonable attorney fees incurred by such prevailing party in connection with such suit or action, in addition to all other sums allowed by law (subject to the limitations herein), both at trial and on appeal.
33. This Agreement may not be changed orally, but only by an agreement in writing signed by PUD 3 and COUNTY. Any waiver of any term or condition of this Agreement shall not operate as a waiver of any other such term or condition or as any continuing waiver, nor shall any failure to enforce any provision hereof operate as a waiver of such provision or of any other provision hereof.

34. This Agreement may be executed in counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same instrument. The Section headings contained in this Agreement are for convenience only and shall not affect in any way the meaning or interpretation of this Agreement. Words used in this Agreement, regardless of the number and gender specifically, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires. Any reference to a "person" in this Agreement shall include an individual, firm, corporation, limited liability company, partnership, limited partnership, limited liability partnership, trust, governmental authority or body, association, unincorporated organizational or any other entity.
35. This Agreement, constitutes the entire agreement between PUD 3 and COUNTY. It supersedes all prior and contemporaneous communications, representations or agreements whether oral or written with respect to the subject matter thereof and has been induced by no representations, statements or agreements other than those herein expressed. No agreement hereafter made between the parties shall be binding on either party unless reduced to writing and signed by the party sought to be bound thereby.
36. The venue of any litigation between the parties relating to this Agreement shall be the Superior Court of Mason County, Washington.
37. This Agreement shall be binding on the parties and to any subsequent owners, successors and assigns.

38. IN WITNESS WHEREOF, PUD 3 and COUNTY have executed this Agreement as of the date first written above.

PUBLIC UTILITY DISTRICT NO. 3
OF MASON COUNTY:

MASON COUNTY:

Annette Creekpaum
By: Annette Creekpaum (Apr 28, 2022 12:15 PDT)
Annette Creekpaum, General Manager

Kevin Shutty
By: Kevin Shutty (Apr 28, 2022 11:23 PDT)
Kevin Shutty, Commissioner