

**INTERLOCAL AGREEMENT
BETWEEN THE JEFFERSON COUNTY PUD NO. 1 AND
THE PORT OF PORT TOWNSEND**

This Interlocal Agreement ("Agreement") made and entered into this 20th day of January 2021, pursuant to the provisions of Chapter 39.34 RCW, the Interlocal Cooperation Act (the "Act"), by and between Jefferson County PUD No. 1, hereinafter referred to as the "PUD," and the Port of Port Townsend, hereinafter referred to as the "Port" (collectively referred to as "the Parties").

WHEREAS, The PUD and the Port are two local governmental agencies operating in Jefferson County, State of Washington; and

WHEREAS, RCW 39.34.080 permits public agencies to contract with one another for the performance of certain governmental services. Under the Act, public agencies may enter into agreements with one another for joint or cooperative action; and

WHEREAS, The PUD has engineering experience that the Port seeks to utilize; and

WHEREAS, The Port and the PUD seek to collaborate and work together to provide wholesale broadband services in Jefferson County, Washington.

NOW, THEREFORE, based upon mutual covenants to be derived from this agreement, the Parties agree as follows:

1. **Purpose:** It is the purpose of this Agreement to provide for the cooperation between the Parties and make the most efficient use of their resources by enabling the Port to utilize the PUD's engineering services, whether provided internally or contracting out. In addition, the Parties seek to cooperate and find the most efficient way to procure any related contractors, materials and equipment for services provided pursuant to this Agreement. The Parties also seek to cooperate with each other to extend wholesale broadband services to customers in Jefferson County, Washington, and to provide terms and conditions where the PUD will construct, operate and maintain the Port's wholesale broadband network.
 - a. For engineering services, the party requesting engineering services shall provide a written request to the party to be providing such services. The requests shall describe the services, the timing anticipated for the services, and the maximum dollar amount for the services. The party providing such services shall timely respond to any request, and all necessary written documentation authorizing the work to be performed shall be executed by the PUD's General Manager and the Executive Director of the Port. It shall be at each party's discretion to undertake any request for services.
 - b. For wholesale broadband services, the Parties shall work together to plan, design construct any wholesale broadband facilities to be owned by the Port and operated and maintained by the PUD. Exhibit "A" to this Agreement provides the specific terms and conditions regarding the planning, development, permitting, construction and operation of all wholesale broadband services that are subject to this Agreement. Upon completion of construction of any of the Port's wholesale broadband facilities, each Party shall retain their respective ownership of all their properties. This Agreement

does not contemplate joint ownership of property. The PUD agrees to provide the services detailed in the attached Exhibit "A" to this Agreement, after the Parties have agreed upon the specific terms and conditions.

2. **Compensation:** Each Party shall compensate the other Party for the actual cost of services rendered including, but not limited to employee(s) wages (direct rate plus benefits); overhead costs at its current rate in use reimbursement for any and all necessary materials purchased to complete the services; and any costs required for professional insurance coverage necessary. Attached as Exhibit "B" to this Agreement is a current rate schedule for the services to be provided pursuant to this Agreement. The Parties agree to update Exhibit "B" on an annual basis. For purposes of the development of wholesale broadband facilities, Exhibit "A" provides terms and conditions regarding the costs of planning, developing, permitting, constructing and operating the network.
3. **Employees:** Employees assigned to work pursuant to this Agreement remain employees of their respective agency at all times and shall perform the work requested under the sole supervision of their agency. Procedures used in performance of work pursuant to this Agreement shall be mutually agreed to in writing.
4. **Hold Harmless and Indemnification:** Each party (the "Indemnitor") shall hold the other (the "Indemnitee"), harmless, indemnify and defend the other, its board or commission members, officers, officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages, and judgments of any nature whatsoever, including, but not limited to: reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, caused by or arising out of the performance of this Agreement, its employees, agents, or subcontractors or anyone for whose acts any of them may be liable, except for injuries and damages caused by the sole negligence of the Indemnitee. If the claim, suit or action involves concurrent negligence of the Parties, the indemnity provisions provided herein shall be applicable only to the extent of the percentage of each party's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes each party's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Contract.
5. **Insurance:** The PUD is self-insured through its membership in the Pacific Underwriters Management Services. The Port is insured through Enduris Washington (formerly "the Washington Governmental Entity Pool" (WGEP)). Within 30 days of executing this Agreement the PUD and the Port shall mutually provide to each other certificates of coverage from their respective Risk Pools. Both Parties agree that not less than thirty (30) days prior to cancellation, suspension, reduction or material change in the membership of a party in its respective Risk Pool, notice of same shall be given to the other party by registered mail, return receipt requested and by email. The Parties further agree that their membership in their respective Risk Pools provide coverage for the following categories of risk and with coverage limits that equal or exceed what is listed below:

General Liability with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$ 2,000,000) for bodily injury, death and property damage, unless otherwise specified in the contract specifications.

Business Automobile Liability coverage with a minimum limit per occurrence of one million dollars (\$1,000,000) and an aggregate of not less than two million dollars (\$2,000,000). Said coverage shall include liability coverage for all owned, non- owned and hired motor vehicles.

Worker's Compensation insurance with minimum limits not less than that required by state law.

Errors and Omissions for Professional Services Provided.

Each party to this Agreement agrees that the coverage provided to it by its membership in its respective Risk Pool shall be primary with respect to any third- party claim presented to that party for the alleged negligent act and omissions of its employees, contractors or representatives. With respect to all claims of third-party liability against one party to this Agreement the coverage provided to the OTHER party by its membership in a Risk Pool shall be non-contributory.

6. **Compliance with Laws:** Each party hereto, in its performance of this Agreement, agrees to comply with all applicable local, State, and Federal laws and ordinances.
7. **Relationship of the Parties:** No agent, employee or representative of any party shall be deemed to be an agent, employee or representative of any other party for any purpose, and the employees of one party are not entitled to any of the benefits any other party provides to its employees.
8. **Agreement Not for Benefit of Third Parties:** This Agreement is entered into solely for the benefit of the Parties hereto and vests no rights in, or is it enforceable by, any third parties.
9. **Dispute Resolution:** In the event any dispute should occur under this Agreement or related to the performance of any person or equipment, the dispute shall be referred to the General Manager of the PUD and the Executive Director of the Port for resolution. If not resolved within (30) days of referral, either party may pursue such legal actions as it may have available to use.
10. **Waiver and Venue:** A failure by any party to exercise its rights under this Agreement shall not preclude that party from subsequent exercise of such rights and shall not constitute a waiver of any other rights under this Agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original Agreement. This Agreement will be governed by the laws of the State of Washington, both as to interpretation and performance. Any action at law, suit in equity or other judicial proceeding for the enforcement of this agreement may be instituted only in a court of competent jurisdiction in the State of Washington, County of Jefferson.

11. **Duration and Termination:** This Agreement shall commence and be effective upon execution and remain in full force and effect until terminated by agreement of the Parties, or by written notice of termination given by one party to the other party at least thirty (30) days prior to the date of such termination.
12. **Severability:** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this Agreement are declared to be severable.
13. **Entire Agreement – Modification:** The written provisions and terms of this Agreement supersede all prior written and verbal agreements and/or statements by any representative of the Parties, and those statements shall not be construed as forming a part of or altering in any manner this Agreement. This Agreement shall contain the entire Agreement between the parties unless modified in writing and signed by authorized representatives of the Parties.
14. **Filing:** Pursuant to RCW 39.34.040, this Agreement shall be posted on the PUD and Port websites and/or filed with the County Auditor.

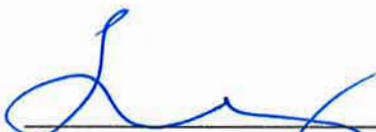
In Witness Whereof, the parties have executed this Agreement this 20th day of January, 2021.

JEFFERSON COUNTY PUD NO. 1

PORT OF PORT TOWNSEND



Kevin Streett, General Manager



Eron Berg, Executive Director

EXHIBIT A

NETWORK DEVELOPMENT, OPERATIONS AND ENGINEERING SERVICES

- **The PUD when requested will assist and collaborate on network build outs and designs on Port property.**
- **Network Configuration - In order to configure and segment the network, the PUD will engineer and purchase the necessary equipment to establish a network agreeable to the Port for their facilities.**
- **Core Equipment - Each party will maintain their core equipment in a manner that provides a high degree of serviceability and reliability. This includes maintaining enough spares for outages and maintenance requirements. Each party will purchase and maintain their own core equipment as needed.**

EXHIBIT B

RATE SCHEDULE FOR SERVICES AND MATERIALS

Compensation. Each Party shall compensate the other Party for the actual cost for services rendered including, be not limited to employee(s) wages (direct rate plus benefits); overhead costs at its current rate in use reimbursement for any and all necessary materials purchased to complete the services; and any costs required for professional insurance coverage necessary

Position	Hourly Rate (2021)
Staking Engineer	\$58.53
Electrical Engineering Manager	\$90.09
GIS Specialist	\$67.09
Broadband Supervisor	\$56.85
Engineering Director	\$97.71