

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

CONSENT AGENDA REQUEST

TO: Board of County Commissioners

FROM: Mark McCauley, County Administrator

DATE: February 13, 2023

**SUBJECT: Approval of an American Rescue Plan Act (ARPA) Grant Agreement
with Mason County Public Utility District (PUD) No. 1**

STATEMENT OF ISSUE:

At the January 9, 2023 Board of County Commissioners meeting the Board approved moving forward with a \$100,000 grant agreement with Mason County PUD No. 1 for providing broadband access to south Jefferson County residents and directed the County Administrator to bring forward a grant agreement for the Board's consideration.

ANALYSIS:

The attached proposed ARPA grant agreement will provide Mason County PUD No. 1 with \$100,000 to assist them in providing broadband access to south county residents.

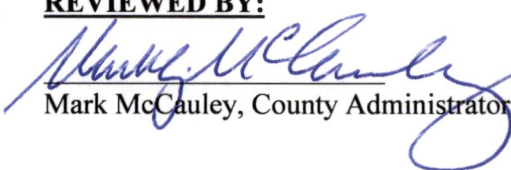
FISCAL IMPACT:

Grant is for \$100,000 which will be paid out of the Grants Management Fund, Fund 123.

RECOMMENDATION:

That the Board approve the attached grant agreement.

REVIEWED BY:

 _____
Mark McCauley, County Administrator Date 2/7/23

CONTRACT REVIEW FORM
(INSTRUCTIONS ARE ON THE NEXT PAGE)

CONTRACT WITH: Mason County PUD No. 1 - ARPA Grant
(Name of Contractor/Consultant)

Mason PUD 2023
Contract No.

COUNTY DEPARTMENT:	County Administrator
Contact Person:	Mark McCauley
Contact Phone:	360-385-9130
Contact email:	mmccauley@co.jefferson.wa.us

AMOUNT: \$100,000

PROCESS:

- | | |
|-------------------------------------|-------------------------|
| ☒ | Exempt from Bid Process |
| ☐ | Cooperative Purchase |
| ☐ | Competitive Sealed Bid |
| ☐ | Small Works Roster |
| ☐ | Vendor List Bid |
| ☐ | RFP or RFQ |
| ☐ | Other: _____ |

Revenue: N/A

Expenditure: \$100,000

Matching Funds Required: N/A

Sources(s) of Matching Funds: N/A

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☐ N/A: ☒

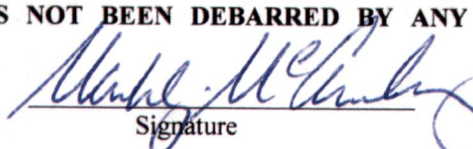

Signature

2-6-23

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☐ N/A: ☒


Signature

2-6-23

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

Electronically approved by Risk Management on 2/7/2023.
New indemnity language included.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

Electronically approved as to form by PAO on 2/10/2023.
Thanks for fixing the language.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY (IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

**GRANTEE AGREEMENT WITH MASON COUNTY PUBLIC UTILITY DISTRICT
NO. 1**

This Grantee Agreement ("Agreement") is by and between Jefferson County, a Washington political subdivision ("County") and Mason County Public Utility District No. 1, ("Grantee").

WHEREAS, on March 11, 2021, President Biden signed the American Rescue Plan Act (ARPA) into law; and

WHEREAS, the ARPA has allocated funds to counties, of which Jefferson County is one; and

WHEREAS, ARPA funds may be used for any various purposes; and

WHEREAS, Grantee is embarking on an effort to bring broadband access to certain parts of South Jefferson County; and

WHEREAS, The Grantee is seeking ARPA funds to help advance the project: and

WHEREAS, Jefferson County agrees that making broadband accessible to south County residents is a high priority for this community: and

WHEREAS, the Jefferson County Board of Commissioners committed to provide \$100,000 in ARPA funds to this project and directed the County Administrator to bring forth a grant agreement to make said funds available to the Grantee:

NOW, THEREFORE, in consideration of the foregoing recitals, which are incorporated herein by reference, and the terms and conditions set forth below, the parties agree as follows:

Grant Amount and Grantee's Use of Grant Funds. The Grant amount is \$100,000. The Grant is to be used for the purposes outlined in Exhibit A.

Reporting Requirements. Grantee will submit a report to the County following the completion of the project. The report will include information regarding the usage of the \$100,000 grant amount and the completed project.

Effective Date and Term. This Agreement shall commence on the date when last executed by the parties and remain in effect until the Grant is exhausted but prior to December 31, 2026.

Termination. The County may terminate this Agreement, for convenience or otherwise and for no consideration or damages, upon prior notice to the Grantee.

Independent Grantee. Each party under this Agreement shall be for all purposes an independent Grantee. Nothing contained herein will be deemed to create an association, a partnership, a joint venture, or a relationship of principal and agent, or employer and employee between the parties. The Grantee shall not be, or be deemed to be, or act or purport to act, as an employee, agent, or representative of the County for any purpose.

Indemnification. The Grantee shall defend, indemnify and hold either Client, its officers, officials, employees, agents and volunteers (and their marital communities) harmless from any claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Grantee in performance of this Agreement, except for injuries and damages caused by the sole negligence of the Client. Should a court of competent jurisdiction determine this Agreement is subject to RCW 4.24.115 if liability for damages occurs arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and either Client, its officers, officials, employees, agents and volunteers (and their marital communities) the Grantee's liability, including the duty and cost to defend, shall be only for the Grantee's negligence. It is further specifically understood that the indemnification provided constitutes the Grantee'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. This section shall survive the expiration or termination of this Agreement.

Required Liability Coverages. Prior to commencing work, the Grantee shall obtain at its own cost and expense the following coverage specified below either by a policy of insurance or by an agreement with a "Risk Pool" created pursuant to Ch. 48.62 RCW such as the Washington Cities Insurance Authority and shall keep such coverage in force during the terms of the Agreement.

Commercial Automobile Liability coverage providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the work for a combined single limit of not less than \$500,000 each occurrence in connection with the Grantee's performance of his Agreement. This coverage shall indicate on the certificate the following coverage: (a) Owned automobiles; (b) Hired automobiles; and, (3) Non-owned automobiles.

Commercial General Liability. Coverage in an amount not less than a single limit of \$1,000,000 per occurrence and an aggregate of not less than two (2) times the occurrence amount (\$2,000,000.00 minimum) for bodily injury, including death and property damage, unless a greater amount is specified in the contract specifications.

The commercial general liability coverage shall contain no limitations on the scope of the protection provided and include the following minimum coverage:

- a. Broad Form Property Damage, with no employee exclusion;
- b. Personal Injury Liability, including extended bodily injury;
- c. Broad Form Contractual/Commercial Liability – including coverage for products and completed operations;
- d. Premises – Operations Liability (M&C);
- e. Blanket Contractual Liability.

Such coverage shall be evidenced by one of the following methods: (a) Certificate of Coverage; or, (b) Self-insurance through an irrevocable Letter of Credit from a qualified financial institution.

The Grantee shall furnish the County with properly executed certificates of coverage that, at a minimum, shall include: (a) The limits of overage; (b) The project name to which it applies; (c) The certificate holder as Jefferson County, Washington and its elected officials, officers, and employees with the address of Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368, and, (d) A statement that the coverage shall not be canceled or allowed to expire except on thirty (30) days prior written notice to the County. Certificates of coverage as required by this section shall be delivered to the County within fifteen (15) days of execution of this Agreement.

Failure of the Grantee to take out or maintain any required coverage shall not relieve the Grantee from any liability under this Agreement, nor shall the coverage requirements be construed to conflict with or otherwise limit the obligations concerning indemnification of the County.

The Grantee's insurers shall have no right of recovery or subrogation against the County (including its employees and other agents and agencies), it being the intention of the parties that the coverage, with the exception of Professional Liability coverage, so affected shall protect all the parties and shall be primary coverage for all losses covered by the above described insurance.

Insurance companies or risk pools issuing the Grantee's coverages shall have no recourse against the County (including its employees and other agents and agencies) for payment of any premiums or for assessments under any form of agreement providing coverage.

All deductibles in the Grantee's coverages shall be assumed by and be at the sole risk of the Grantee.

Any deductibles or self-insured retention shall be declared to and approved by the County prior to the approval of this Agreement by the County. At the option of the County, the insurer or risk pool shall reduce or eliminate deductibles or self-insured retention, or the Grantee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Any judgments for which the County may be liable, in excess of insured amounts required by this Agreement, or any portion thereof, may be withheld from payment due, or to become due, to the Grantee until the Grantee shall furnish additional security covering such judgment as may be determined by the County.

Any coverage for third party liability claims provided to the County by a "Risk Pool" created pursuant to Ch. 48.62 RCW shall be non-contributory with respect to any coverage the Grantee shall provide to comply with this Agreement.

The County may, upon the Grantee's failure to comply with all provisions of this Agreement relating to coverage, withhold payment or compensation that would otherwise be due to the Grantee.

The Grantee shall provide a copy of all agreements providing any coverage specified in this Agreement.

Written notice of cancellation or change in the Grantee's coverage required by this Agreement shall reference the project name and agreement number and shall be mailed to the County at the

following address: Jefferson County Risk Management, P.O. Box 1220, Port Townsend, WA 98368.

The Grantee's liability coverage shall be primary and noncontributory with respect to any insurance or self-insurance programs covering the County, its elected and appointed officers, officials, employees, and agents.

Any failure to comply with reporting provisions of any agreement providing coverage shall not affect coverage provided to the County, its officers, officials, employees, or agents.

The Grantee's coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of liability.

The Grantee shall include all Sub-Grantees as persons covered under its coverages or shall furnish separate certificates and endorsements for each Sub-Grantee. All coverage for Sub-Grantees shall be subject to all the requirements stated in this Agreement.

The coverage limits mandated for any coverage required by this Agreement are not intended to be an indication of exposure nor are they limitations on indemnification.

The Grantee shall maintain all required coverages in force from the time services commence until services are completed. Certificates, coverages, and endorsements expiring before completion of services shall be promptly replaced. All the coverages required by this Agreement shall provide that thirty (30) days prior to cancellation, suspension, reduction or material change in the policy, notice of same shall be given to the County Risk Manager by registered mail, return receipt requested.

The Grantee shall place coverages with a "Risk Pool" created pursuant to Ch. 48.62 RCW or with insurers licensed to do business in the State of Washington and having A.M. Best Company ratings of no less than A-, with the exception that excess and umbrella coverage used to meet the requirements for limits of liability or gaps in coverage need not be placed with insurers or re-insurers licensed in the State of Washington.

The County reserves the right to request additional coverage on an individual basis for extra hazardous contracts and specific service agreements.

Worker's Compensation (Industrial Insurance).

If and only if the Grantee employs any person(s) in the status of employee or employees separate from or in addition to any equity owners, sole proprietor, partners, owners or shareholders of the Grantee, the Grantee shall maintain workers' compensation insurance at its own expense, as required by Title 51 RCW, for the term of this Agreement and shall provide evidence of coverage to Jefferson County Risk Management, upon request.

Worker's compensation insurance covering all employees with limits meeting all applicable state and federal laws. This coverage shall include Employer's Liability with limits meeting all applicable state and federal laws.

This coverage shall extend to any Sub-Grantee that does not have their own worker's compensation and employer's liability coverage.

The Grantee expressly waives by mutual negotiation all immunity and limitations on liability, with respect to the County, under any industrial insurance act, disability benefit act, or other employee benefit act of any jurisdiction which would otherwise be applicable in the case of such claim.

If the County incurs any costs to enforce the provisions of this subsection, all cost and fees shall be recoverable from the Grantee.

Compliance with Laws. Guidelines. The Grantee shall comply with all federal, state, and local laws and all requirements (including certifications and audits), to the extent applicable, when seeking Reimbursement.

Maintenance and Audit of Records. The Grantee shall maintain records, books, documents, and other materials relevant to its performance under this Agreement. These records shall be subject to inspection, review and audit by the County or its designee, the Washington State Auditor's Office. If it is determined during the course of the audit that the Grantee was reimbursed for unallowable costs under this Agreement or any, the Grantee agrees to promptly reimburse the County for such payments upon request.

Notices. Any notice desired or required to be given hereunder shall be in writing, and shall be deemed received five (5) days after deposit with the U.S. Postal Service, postage fully prepaid, certified mail, return receipt requested, and addressed to the party to which it is intended at its last known address, or to such other person or address as either party shall designate to the other from time to time in writing forwarded in like manner:

Grantee

Kristen Masteller
General Manager
21971 N. Hwy. 101
Shelton, WA 98584

Jefferson County

Mark McCauley
County Administrator
Jefferson County Courthouse
1820 Jefferson Street
Port Townsend, WA 98368

Improper Influence. Each party warrants that it did not and will not employ, retain, or contract with any person or entity on a contingent compensation basis for the purpose of seeking, obtaining, maintaining, or extending this Agreement. Each party agrees, warrants, and represents that no gratuity whatsoever has been or will offered or conferred with a view towards obtaining, maintaining, or extending this Agreement.

Conflict of Interest. The elected and appointed officials and employees of the parties shall not have any personal interest, direct or indirect, which gives rise to a conflict of interest.

Time. Time is of the essence in this Agreement.

Survival. The provisions of this Agreement that by their sense and purpose should survive expiration or termination of this Agreement shall so survive. Those provisions include without limitation Indemnification and Maintenance and Audit of Records.

Amendment. No amendment or modification to this Agreement will be effective without the prior written consent of the authorized representatives of the parties.

Governing Law; Venue. This Agreement will be governed in all respects by the laws of Washington state, both as to interpretation and performance, without regard to conflicts of law or choice of law provisions. Any action arising out of or in connection with this Agreement may be instituted and maintained only in a court of competent jurisdiction in Jefferson County, Washington or as provided by RCW 36.01.050.

Non-Waiver. No failure on the part of the County to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by the County of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to the County at law or in equity.

Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

Assignment. Neither party shall assign or transfer any of its interests in or obligations under this Agreement without the prior written consent of the other party.

Entire Agreement. This Agreement constitutes the entire agreement between the County and the Grantee for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties with respect to this Agreement.

No Third Party Beneficiaries. Nothing herein shall or be deemed to create or confer any right, action, or benefit in, to, or on the part of any person or entity that is not a party to this Agreement. This provision shall not limit any obligation which either party has to the Washington State Department of Commerce of these grant funds, including the obligation to provide access to records and cooperate with audits as provided in this Agreement.

Severability. In the event that one or more provisions of this Agreement shall be determined to be invalid by any court of competent jurisdiction or agency having jurisdiction thereof, the remainder of this Agreement shall remain in full force and effect and the invalid provisions shall be deemed deleted.

Counterparts. This Agreement may be executed in counterparts, any of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Authorization. Each party warrants to the other party, that the person executing this Agreement on its behalf has the full power and authority to do so.

Public Records Act. Notwithstanding any provisions of this Agreement to the contrary, to the extent any record, including any electronic, audio, paper or other media, is required to be kept or indexed as a public record in accordance with the Washington Public Records Act, Chapter 42.56 RCW (as may be amended), the Grantee agrees to maintain all records constituting public records

and to produce or assist the County in producing such records, within the time frames and parameters set forth in state law. The Grantee also agrees that upon receipt of any written public record request, Grantee shall, within two business days, notify the County by providing a copy of the request per the notice provisions of this Agreement.

(SIGNATURES APPEAR ON THE NEXT PAGE)

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS**

By: _____
Greg Brotherton, Chair DATE

**MASON COUNTY PUBLIC UTILITY
DISTRICT NO. 1**

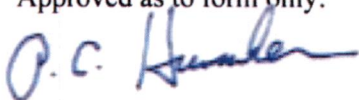
By: _____
Kristin Masteller DATE
General Manager

SEAL:

ATTEST:

Carolyn Gallaway DATE
Clerk of the Board

Approved as to form only:



February 10, 2023

Philip C. Hunsucker DATE
Chief Civil Deputy Prosecuting Attorney

IN WITNESS WHEREOF, this Agreement is executed and shall become effective as of the last date signed below.

**JEFFERSON COUNTY BOARD OF
COMMISSIONERS**

By: _____
Greg Brotherton, Chair DATE

**MASON COUNTY PUBLIC UTILITY
DISTRICT NO. 1**

By: Kristin Masteller _____
Kristin Masteller 02/03/2023
General Manager

SEAL:

ATTEST:

Carolyn Gallaway DATE
Clerk of the Board

Approved as to form only:

Philip C. Hunsucker DATE
Chief Civil Deputy Prosecuting Attorney

EXHIBIT A



INVITATION TO BID

January 20, 2022

ENGINEERS ESTIMATE: \$1,480,0000

Notice is hereby given for the submittal of sealed bids for construction of Hood Canal-101 Phase Two Broadband Project for Mason County PUD No. 1 (Owner) and Hood Canal Communications.

The Hood Canal-101 Broadband Project is a joint project between Hood Canal Communications and Mason County PUD 1 to install Fiber along US Highway 101. Due to the age and size of the PUD's poles, there are 158 poles that have been identified for replacement. This project includes the replacement of 158 utility poles along Highway 101 including the transfer of live power, and existing communications attachments.

The project spans approximately 5.8 miles from North of Forest Dr., Brinnon WA (MP 314.33) to Mt. Walker Rd., Brinnon WA (MP 301.51).

This pole replacement is noncontiguous along US HWY 101. Alternating single lane traffic control will be necessary for all Highway work.

Forty-one poles will be replaced along Dosewallips Rd. A single pole is to be replaced along Duckabush Rd. Both Dosewallips and Duckabush are county owned roadways that will require single lane alternating traffic control.

The District will provide all poles required for project completion.

All materials, including consumables, will be purchased by the Contractor outside of the materials provided. The Contractor will provide all labor, equipment, testing, and consumable parts to complete the project. The Contractor also will provide conductor, insulators, conduit to complete the project, this is not an exhaustive list.

Bids must be physically received by Mason County PUD 1, at 21971 N. Highway 101, Shelton WA 98584 no later than 4:00 p.m. PST on February 17, 2023, (post marks will not be recognized) at which time all complying bids shall be publicly opened and read aloud at the PUD 1 office at 4:30 p.m. via Zoom. Bid documents may be obtained from the Mason County PUD 1 website by visiting: <https://mason-pud1.org/bids/>

It is required that prospective bidders visit the project area and visually confirm understanding of work and construction. Please check in at the Mason County PUD 1 office when onsite to verify visit.

ANTICIPATED PROJECT SCHEDULE:

Notice is hereby	Bid Documents Available Online/Advertisement
given for the	Virtual Job Show at 9:00 a.m. PST via Zoom
submittal of	Bid Opening at 4:30 p.m. PST via Zoom
sealed bids for	Notice of Intent to Award
construction of	Pre-Construction Conference & Notice to Proceed
Hood Canal-101	Construction Complete

Phase Two
Link to Virtual Job Walk-through: (<https://us02web.zoom.us/j/85485131825>)

Broadband
Link to Bid Opening: (<https://us02web.zoom.us/j/83290884089>)

Project for

Mason County concerning bid documents, submittal requirements, or technical project information
PUD No. 1 contact Engineering Manager James Reyes at (360) 877-5249 or jamesr@mason-pud1.org.

(Owner) and

Hood Canal

