

**RESOLUTION NO. 2016-09**

**A RESOLUTION OF THE MASON TRANSIT AUTHORITY BOARD AUTHORIZING THE ACTING GENERAL MANAGER TO SIGN AND EXECUTE THE CONTRACT BETWEEN HOOD CANAL COMMUNICATIONS AND MASON TRANSIT AUTHORITY FOR THE PURPOSE OF PROVIDING IT AND RELATED SERVICES.**

**WHEREAS**, Mason Transit Authority ("MTA") has been utilizing IT support provided by Hood Canal Communications ("HCC") on a trial basis to evaluate whether outsourcing such support would be of value on a long-term basis to MTA; and


**WHEREAS**, MTA has evaluated the level of service, responsiveness and cost associated therewith and found that the high quality of service received has been at a lesser cost for MTA than in previous years;

**WHEREAS**, MTA desires to enter into a three-year contract with HCC to continue receiving IT support.

**NOW THEREFORE, BE IT RESOLVED** that the Acting General Manager is authorized to sign and execute the contract with HCC.

Adopted this 16th day of February, 2016.

  
\_\_\_\_\_  
Terri Jeffreys, Chair

  
\_\_\_\_\_  
Wes Martin, Authority Member

  
\_\_\_\_\_  
Randy Neatherlin, Authority Member

  
\_\_\_\_\_  
Don Pogreba, Authority Member

\_\_\_\_\_  
Tim Sheldon, Authority Member

  
\_\_\_\_\_  
John Campbell, Vice-Chair

  
\_\_\_\_\_  
Tracy Moore, Authority Member

  
\_\_\_\_\_  
Deborah Petersen, Authority Member

\_\_\_\_\_  
Ginger Seslar, Authority Member

APPROVED AS TO CONTENT:

  
Danette Brannin, Acting General Manager

APPROVED AS TO FORM:

  
Robert W. Johnson, Legal Counsel

ATTEST:

  
Tracy Becht, Clerk of the Board

DATE:



## FACILITY SERVICE AGREEMENT

**THIS TECHNICAL SUPPORT SERVICE AGREEMENT** ("Agreement") is made and entered into the \_\_\_\_\_, by and between **HOOD CANAL TELEPHONE CO., INC, dba HOOD CANAL COMMUNICATIONS**, a Washington corporation, hereinafter referred to as "HCC", and **MASON COUNTY PUBLIC TRANSPORTATION BENEFIT AREA dba MASON TRANSIT AUTHORITY**, hereinafter referred to as "MTA." HCC and MTA may be referred to herein individually as a "Party" or collectively as "Parties."

**WHEREAS**, HCC provides desktop, server, network, and various other telecommunications technical support.

**WHEREAS**, MTA desires to obtain the services described herein from HCC under the terms and conditions as specified herein,

**NOW, THEREFORE**, in consideration of the mutual covenants and benefits as set forth in this Agreement, the Parties agree as follows:

### AGREEMENT

1. Description of Service

HCC will provide phone, on-site, and remote technical support services up to 12 hours per week during HCC's normal support business hours of 8:30 am to 4:00 pm Monday through Friday excluding major holidays. This includes up to three on-site visits per week. The Technical Support set forth above shall be known as the "Service."

2. Rate

2.1 Charges. Monthly Recurring Charges for the Service shall be as follows:

2016: \$4,940 per month

2017: \$5,237 per month

2018: \$5,551 per month

Total charge for the three (3) year term of this contract: \$188,736 plus any additional hours or on-site visits as described below.

Additional hours, during HCC's normal hours described above, over 12 hours per week will be billed at HCC's per hour labor rate at the time of service, minus \$10 per hour discount. Additional on-site visits (trip fees) over and above three visits per week will be billed at ½ hour labor each visit.

After normal business hours the rate is 1 ½ (one and one-half) times the hourly rate at the time of service, less \$10 per hour discount. After-hours support will be for critical/emergency services only and billed at \$295 per call, which includes up to two hours of technician's time. Any time over the two hours will be billed at time and a half as described in this paragraph.

Labor rates and trip fees are subject to change, however, this agreement takes anticipated increases into consideration and the monthly recurring charges above have been adjusted accordingly.

Applicable fees and taxes will apply to services rendered.

- 2.2 Invoices HCC will issue invoices monthly, in advance. HCC will issue an initial invoice upon the Effective Date detailed in this Agreement and will issue additional invoices within five (5) days of the first of each month thereafter. MTA covenants and agrees to pay undisputed invoices within thirty (30) days following date of receipt by MTA ("Due Date"); provided, however, receipt shall be deemed to occur three (3) days after the invoice is deposited in the mail, postage prepaid, by HCC or upon the day of sending if sent electronically. To dispute an invoice, MTA must notify HCC prior to the Due Date and must follow the Dispute Resolution procedure in Section 5. All undisputed portions of a disputed invoice must be paid by the Due Date.
- 2.3 Other Charges. Invoices will contain an itemized description of expenses, charges, costs, and all state, federal, sales, or other applicable taxes, surcharges, or other fees, including, but not limited to, applicable USF surcharges, and franchise fees. MTA agrees to pay all such charges.
3. Default. A default is an uncured material breach of an obligation under this Agreement. Subject to the dispute resolution provisions of Section 5 and the opportunity to cure under Section 11, in the event of a default by either Party in performance of any obligation under this Agreement, the non-defaulting Party shall have such rights and remedies, including specific performance, as are available at law, in equity, or under this Agreement, and the following provisions of this section shall not be deemed a limitation or an exclusion of such rights and remedies except as may be expressly provided. Without limitation of the rights described in the previous sentence, one Party may cancel this Agreement by written notice to the other Party, (a) if the Party to whom notice is given shall become insolvent or make a general assignment for the benefit of creditors, except as provided in Article 13, Assignment; or (b) if any action for relief under bankruptcy or insolvency laws or laws relating to the relief of debtors is taken by or against the Party to whom notice is given.
4. Dispute Resolution. The Parties will attempt in good faith to resolve any dispute arising out of or relating to this Agreement promptly by negotiation between executives who have authority to settle the controversy and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Within fifteen (15) days after delivery of the notice, the receiving Party will submit to the other a written response. The notice and the response will include (a) a statement of the Party's position and a summary of arguments supporting that position and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within thirty (30) days after delivery of the disputing Party's notice, the executives of both Parties will meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. All reasonable requests for information made by one Party to the other will be honored. All negotiations pursuant to this clause are confidential and will be treated as compromise and settlement negotiations for purposes of applicable rules of evidence. If the dispute is not resolved within sixty (60) days of the first meeting of the executives, each Party may exercise whatever rights it deems available to it. The Parties agree that this dispute resolution process may not be used to delay termination under Section 11.

5. Time of Essence. Time is of the essence in the performance of each of the Party's obligations under this Agreement.
6. Emergency Service Obligation. In the event of an "Emergency," which is defined as a sudden, unexplained loss of services, or any situation that threatens loss of life or damage to property, HCC will make commercially reasonable efforts to have service restored in an expeditious manner after HCC notes or is notified by MTA of the Emergency.

In the event of an Emergency, the personnel listed as "Emergency Contacts" are to be contacted immediately upon notice, as referenced in Attachment A. For routine and maintenance purposes, the personnel listed as "Routine and Maintenance Contacts," are to be contacted during working hours, as referenced in Attachment A. The work numbers generally are in use Monday-Friday, 8 am – 5 pm. The after-hours and home numbers are in use 5 pm to 8 am, weekends and holidays. The Parties shall update the contacts in writing as provided in Section 12 whenever changes are made regarding contact personnel.

7. Limitation of Liability/Indemnification/Risk of Loss.

- 7.1 Risk of Loss. MTA agrees that, except for loss or damage caused by or due to HCC, MTA is assuming all risk of loss to its equipment, software and computer programs through use of the Services provided by HCC under this Agreement.

- 7.2 Sole Warranty. HCC warrants that it shall use the same efforts to restore any loss of the Services for MTA that it would use to restore its own facilities and services.

- 7.3 Limitation on Damages. Except with respect to (i) each Party's third-party indemnification obligations under Section 8.4, (ii) each Party's confidentiality obligations under Section 18, and (iii) claims arising due to a Party's intentional misconduct: (a) neither Party shall be liable to the other Party under this Agreement for any special, incidental, reliance, indirect, consequential, or punitive damages under any theory whatsoever; and (b) to the maximum extent permitted by law, each Party's aggregate liability to the other Party on any and all claims or causes of action whatsoever arising from or related to this Agreement shall be limited to the amount of fees actually paid to HCC by MTA under this Agreement.

- 7.4 Third Party Indemnification.

- (a) By HCC. HCC shall indemnify, defend and hold MTA and its members, managers, officers, agents and employees (collectively, the "**MTA Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the MTA Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) HCC's negligence or willful misconduct in exercising its rights or performing its obligations under this Agreement; (ii) HCC's noncompliance with or default under this Agreement; and/or (iii) HCC's failure to comply with applicable law in connection with its performance under this Agreement.

- (b) By MTA. MTA shall indemnify, defend and hold HCC and its members, managers, officers, agents and employees (collectively, the "**HCC Indemnified Parties**") harmless from and against any and all claims, lawsuits or damages asserted against the HCC Indemnified Parties by any third-party to the extent the same arise out of or are due to: (i) MTA's negligence or willful misconduct in exercising its rights or performing its obligations under this Agreement; (ii) MTA's noncompliance with or default under this Agreement; and/or

(iii) MTA's failure to comply with applicable law in connection with its performance under this Agreement.

8. Disclaimer of Warranties. HCC HEREBY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, EXCEPT FOR THOSE WARRANTIES EXPRESSLY SET FORTH HEREIN. THIS DISCLAIMER OF WARRANTIES INCLUDES, BUT IS NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR INTENDED PURPOSE. THE PRICES SET FORTH IN THIS AGREEMENT ARE EXPRESSLY SET IN RELIANCE UPON THIS DISCLAIMER OF WARRANTIES AND THE INDEMNIFICATION AND LIMITATION PROVISIONS SET FORTH ABOVE.
9. Force Majeure. Neither Party is liable for any delay, error, computer failure, failure to perform, damages, destruction, malfunction of the equipment, or any consequence thereof, caused, occasioned, or due to fire, flood, water, the elements, labor disputes, or shortages, utility curtailments, power failures, explosions, civil disturbances, acts of third parties, computer failure, government and regulatory requirements, act of God or public enemy, shortages of equipment or supplies, unavailability of transportation, or acts or omissions due to causes beyond their control.
10. Mutual Service Obligations. Each Party agrees to exercise reasonable and prudent care with respect to the other's property. Each Party shall cooperate with each other and provide reasonable notice for scheduling of activities, which require the participation or knowledge of the other Party. HCC agrees that its employees and agents shall follow MTA policies when on MTA's property, so long as such policies are provided to HCC in writing, in advance.
11. Termination.
- 11.1 Termination by MTA. This Agreement may be terminated by MTA for HCC's material breach of any term or condition hereof, provided, that MTA has provided written notice to HCC of the breach and (a) HCC fails to cure said breach within thirty (30) days of receipt of said written notice, or (b) if such breach is not capable of being cured within said thirty (30) day period, HCC is not making a reasonable, continuing effort to cure the breach.
- 11.2 Termination by HCC. This Agreement may be terminated by HCC for MTA's material breach of any term or condition hereof under the following circumstances: (i) HCC delivers written notice to MTA describing the breach with reasonable particularity; (ii) with respect to MTA's failure to pay an undisputed invoice when due, MTA fails to cure said breach within five (5) days after receiving HCC's notice; or (iii) with respect to any other type of material breach, MTA fails to cure said breach within thirty (30) days of receipt of said written notice, provided that, if the breach is not reasonably capable of being cured within said thirty (30) day period, MTA shall not be in default and HCC may not terminate this Agreement so long as MTA commences cure within the thirty (30) day time period and thereafter diligently pursues cure to completion.
- 11.3 Termination by HCC for Third Party Reasons.  
MTA understands and agrees that the Services provided to it under this Agreement by HCC are services which HCC provisions using not just its own services but the services of others. If one or more of those third parties, for whatever reason, no longer allows HCC to use the third party's services, changes the nature or ability of use of the services such that the Services cannot be provided at the level expected by MTA and HCC, or no longer provides those services, HCC, in its sole discretion, may determine that this Agreement should be terminated. If HCC decides to terminate this Agreement, HCC shall provide thirty (30) days

prior written notice of termination to HCC and upon such termination HCC shall have no further obligation of any nature to MTA related to this Agreement or the Services.

11.4 Termination by either Party.

Either Party, in its sole discretion, may determine that this Agreement should be terminated. If the Party decides to terminate this Agreement, The Party shall provide thirty (30) days prior written notice of termination of this agreement. After the (30) day notice this agreement shall be terminated with no further obligation by either party.

12. Notices. All notices required to be given under this Agreement, and all other communications related to this Agreement, shall be in writing and shall be deemed to have been duly given (a) when personally delivered, (b) when deposited for overnight mail, or (c) when received if deposited in first class U.S. Mail, charges prepaid, return receipt requested.

Notices shall be addressed as follows:

a. To HCC :

Hood Canal Telephone Company  
dba Hood Canal Communications  
Richard Buechel, President  
East 300 Dalby Road, PO Box 249  
Union, WA 98592

b. To MTA:

ATTN: Finance Manager  
Mason Transit Authority  
790 East Johns Prairie Road  
Shelton, WA 98584

Either Party may change such address or change said designation or title of the individuals by written notice issued and delivered as above.

13. Assignment of this Agreement. No Party may assign this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's prior consent: (i) as security for financing or in connection with the enforcement of any security so granted in connection with such financing; (ii) to a parent, affiliate or subsidiary; or (iii) to a successor in interest to its business by merger, sale of assets, operation of law, purchase, consolidation or reorganization. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and permitted successors and assigns.
14. Modifications or Amendments. No modifications or amendments to this Agreement shall be effective unless in writing and signed by both Parties.

15. Governing Law. All questions relative to the execution, validity, interpretation, and performance of this Agreement shall be governed by the laws of the State of Washington, without reference to its choice of law provisions.
16. Severance. If any provision of this Agreement shall be held to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and such other provisions shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained in this Agreement.
17. Entire Agreement. This Agreement is the entire, final, and complete agreement of the Parties pertaining to the Parties' relationship with regard to this matter and supersedes and replaces all written and oral agreements heretofore made or existing by and between the Parties or their representatives insofar as this matter is concerned. Venue shall be in Mason County, WA.
18. Confidential Information and Property/Washington Public Records Act.
  - a) Confidential Information and Property ("Confidential Information") shall mean any and all business, technical, or third-party information (including, but not limited to, marketing plans, financial data, specifications, drawings, sketches, models, samples, computer programs, or documentation) marked as confidential or proprietary and provided, disclosed, or made accessible under this Agreement. Each Party agrees to use the Confidential Information of the other Party only for the purposes of performing its rights and obligations under this Agreement. The Parties shall restrict access to the Confidential Information to employees or agents who have a "need to know". Each Party, and its employees or agents, shall not disclose the Confidential Information of the other Party to any third party (except for such Party's consultants or contractors who have a need to know such Confidential Information and provided that such consultants or contractors have executed a confidentiality agreement promising to protect the Confidential Information) and shall treat the other Party's Confidential Information with at least the same degree of care as it treats its own Confidential Information of like kind. This provision will not apply to information which is in the public domain, is previously known to the receiving Party without obligation of confidentiality, is independently developed by the receiving Party or is obtained by the receiving Party from a third party that does not have an obligation to keep the information confidential. Each Party shall return to the other Party all Confidential Information of the other Party obtained during the course of this Agreement or related to this Agreement upon termination of this Agreement for any reason.
  - b) MTA is a Washington municipal corporation, a government entity that is subject to the requirements of the Washington Public Records Act, Chapter 42.56 of the Revised Code of Washington ("the Act"). MTA agrees that upon receiving any request pursuant to the Act for public access to or disclosure of information associated with this contract or any other confidential information as defined by this agreement of HCC in MTA's possession or control, MTA will notify HCC of such request and provide at least five (5) days' written notice of such request prior to public disclosure of the documents. HCC may take such efforts to assert or exercise any rights available to HCC under the Act to prevent or limit such public disclosure or access at HCC's sole and exclusive expense.
  - c) HCC shall indemnify, defend, and hold harmless MTA, its commissioners, officers, employees, advisors, and agents to the fullest extent permitted by law, from and against any and all losses, claims, damages, obligations, assessments, penalties, judgments, awards, and other liabilities and will fully reimburse MTA for any and all fees, costs, expenses and disbursements as and when incurred, of investigating, preparing, or defending any claim, action, suit, proceeding or investigation, whether or not in connection with pending or threatened litigation or arbitration, and whether or not MTA is a party (including any and all legal and other MTA expenses in giving testimony or furnishing documents in response to a subpoena or otherwise), arising out of or in



connection with the withholding of records associated with this agreement under the Act.

19. Attorney Fees. In the event of litigation to enforce this Agreement or any provision thereof, the substantially prevailing party, in addition to other relief awarded, shall be entitled to recover their reasonable attorney fees, including fees and costs on appeal, if any.

**HOOD CANAL TELEPHONE CO., INC.  
dba HOOD CANAL COMMUNICATIONS**

Date:

By: \_\_\_\_\_

Print

Name: \_\_\_\_\_

Michael J Obliazlo

Title: \_\_\_\_\_

General Manager

**MASON COUNTY PUBLIC TRANSPORTATON BENEFIT AREA  
dba MASON TRANSIT AUTHORITY**

20. Counterparts. This Agreement may be executed in counterparts which taken together shall constitute a single agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as subscribed, the day and year first above written.

Date:

By: \_\_\_\_\_  
Print Name: Danette Brannin  
Title: Acting General Manager

**ATTACHMENT A**

<b>Emergency Contacts</b>					
<b>Hood Canal Telephone Company (HCC)</b>			<b>MTA</b>		
Name	Type	Phone Number	Name	Type	Phone Number
1. HCC Repair	email	sjones@hcc.net	Marshall Krier	Office	360-426-9434
Spencer Jones	Daytime #	360 898-2481	mkrier@masontransit.org	Cell	360-481-1800
	After Hours #	360 898-4357		Pager	
2.	email	neil@hcc.net	Danette Brannin	Office	360-432-5750
Neil Jones	Daytime #	360 898-2481	dbrannn@masontransit.org	Cell	360-701-4202
	After Hours #	360 898-4357		Pager	

<b>Routine and Maintenance Contacts</b>					
<b>Hood Canal Telephone Company (HCC)</b>			<b>MTA</b>		
Name	Type	Phone Number	Name	Type	Phone Number
1. HCC	Office	360 898-2481	Danette Brannin	Office	360-432-5750
Mike Oblizalo	Fax	360 898-2244	dbrannin@masontransit.org	Fax	360-426-0899
	Email	mikeo@hcc.net		Mobile	360-701-4202
12	Office	360 898-2481	Rikki Johnson	Office	360-432-5720
Neil Jones	Fax	360 898-2244	rjohnson@masontransit.org	Fax	360-426-0899
	email	neil@hcc.net		Mobile	