

AFTER RECORDING RETURN TO:

***AMENDED INTERLOCAL AGREEMENT
FOR LED STREET LIGHTING***

This Amended Amendment to Interlocal Agreement (Agreement) is made and entered into this _____ day of January 2015, by and between the City of Shelton, a municipal corporation in Mason County, Washington (City) and Public Utility District No. 3 of Mason County, a municipal corporation in Mason County, Washington (PUD 3), and collectively referred to hereinafter as the "Parties."

RECITALS

WHEREAS: The City and PUD 3 entered into an interlocal agreement dated December 2, 2013 (LED Pilot Project) pursuant to Chapter 39.34 RCW providing for a pilot project to investigate the benefits of replacing approximately seventy-five (75) light fixtures of the existing street lighting system with a modern energy efficient alternative;

WHEREAS: PUD 3 and City have concluded that the LED street lighting installed pursuant the LED Pilot Project have shown substantial benefits in terms or energy efficiency and improved night visibility.

WHEREAS: The City and PUD 3 would like to expand the LED street lighting program to include all metered and unmetered street lights paid for by the City of Shelton.

NOW THEREFORE, in consideration of the mutual covenants hereinafter provided and pursuant to the Interlocal Cooperation Act, Chapter 39.34 RCW, the parties hereby recite, covenant, and agree as follows:

1. PUD 3 shall purchase all materials and perform all labor to replace all existing mercury vapor and sodium halide street lights paid for by the City with modern LED street lighting systems at PUD 3's sole and exclusive expense.
2. PUD 3 shall perform light placement and arm length evaluations to ensure that the LED lighting is being located for the best performance under existing conditions.

3. After installation, PUD 3 shall own, maintain, repair and replace the LED street lighting systems during the term of this agreement at PUD 3's sole and exclusive expense.
4. For existing street lights that have been turned off by the City, PUD 3 agrees not to charge any reconnection fee to re-establish the street lights utilizing LED technology.
5. The City agrees not to disconnect any LED street lights and pay the rates established by PUD 3 in Schedule 41, Outdoor Lighting Rates, for such lights for a minimum period of ten years from the date of conversion.
6. There are no additional parties intended to be benefited under this agreement. There are no other agreements or representations, written or oral, concerning the subject matter of this agreement.
7. This Agreement shall be governed for all purposes by the law of the State of Washington. The venue for any action arising under this Agreement shall be in Mason County, Washington, unless otherwise mutually agreed in writing by the parties.
8. No amendments or variations of the terms and conditions of this Agreement shall be valid unless they are in writing and signed by all of the parties thereto.
9. The Parties agree to perform any further acts and to execute and deliver any further documents as may be reasonably necessary to fully effectuate the provisions of this Agreement.
10. None of the Parties shall be liable nor deemed to be in default for any delay or failure in performance under the Agreement or other interruption of service or employment resulting, directly or indirectly, from acts of God, civil or military authority, acts of the public enemy, terrorism, bomb threats, computer virus, epidemic, power outage, acts of war, accidents, fires, explosions, earthquakes, floods, failure of transportation, machinery, or supplies, vandalism, strikes or other work interruptions by the employees of any party, or any other cause beyond the reasonable control of the party affected thereby. However, each party shall utilize its best good faith efforts to perform under this Agreement in the event of any such occurrence or circumstance.
11. PUD 3 shall serve as the administrator of this agreement.
12. This agreement shall be effective immediately upon execution by the Parties, and shall continue in full force and effect for ten (10) years from the date of execution unless sooner terminated, amended, or superseded by mutual written agreement of the parties.

13. After the initial ten (10) year term of this agreement, the agreement shall automatically renew on a year-to-year basis and may thereafter be terminated, with or without cause, upon not less than ninety (90) days written notice to the other party.
14. Each Party shall either file or post this agreement in compliance with RCW 39.34.040
15. The City agrees to protect, defend, indemnify and hold harmless PUD 3 for any and all activities by City employees, officers, elected officials, agents and volunteers, from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of its elected officials, officers, agents, volunteers or employees, arising out of or in connection with the activities of the City under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative enforcement actions, brought against PUD 3 or the City.
16. PUD 3 agrees to protect, defend, indemnify and hold harmless the City for any and all activities by PUD 3 employees, officers, elected officials, agents and volunteers, from any and all claims, demands, losses, liens, liabilities, penalties, fines, lawsuits, and other proceedings and all judgments, awards, costs and expenses (including attorneys' fees and disbursements) caused by or occurring by reason of any violation of law or negligent act and/or omission of its elected officials, officers, agents, volunteers or employees, arising out of or in connection with the activities of PUD 3 under and pursuant to this Agreement, including but not limited to any personal injury, death, and/or property damage claim, demand, lawsuit or other proceeding, including industrial insurance claims and administrative enforcement actions, brought against the City or PUD 3.
17. This Agreement will be enforced to the fullest extent permitted by applicable law. If any term or provision of this Agreement is held to be invalid, illegal, or unenforceable by a court or other governmental authority of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, which shall remain in full force and affect.
18. This agreement amends and replaces the parties' interlocal agreement dated December 2, 2013 in its entirety.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement effective the date first indicated above;

City of Shelton:

Gary H. Counce 1/26/15
Gary Counce, Mayor Date

PUD No. 3:

Annette Creekpaum 1-30-15
Annette Creekpaum, Manager Date