

AFTER RECORDING RETURN TO:

***INTERLOCAL AGREEMENT
FOR RECURRING ANNUAL RIGHT OF WAY PERMIT***

This Interlocal Agreement (Agreement) is made and entered into this 13th day of February 2017, 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, RCW 39.34 authorizes public agencies to enter into interlocal agreements; and

Whereas, pursuant to RCW 39.34.080, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform; provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth its purposes, powers, rights, objectives, and responsibilities of the contracting parties;

Whereas, the purpose of this agreement is to acknowledge the authority of the City of Shelton (referred to as the City) to protect the integrity of public rights of way for the use and enjoyment of its citizens, and that Mason County Public Utility District No. 3 (referred to as PUD 3) is allowed to conduct certain activities in the operations and maintenance of its utility system for the purpose of safety, reliability, and customer service.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and PUD 3 agree as follows:

1. The City shall allow PUD 3 to conduct utility system operations and maintenance that has minimal or no impact on rights of way or public use of said rights of way during operations or maintenance activities.

2. Under this agreement, system operations and maintenance shall be defined as any repair, replacement, or installation that is needed to provide for the safe and reliable operations of electricity distribution and transmission facilities; and fiber optic communications facilities within the right of way. Activities that may be considered system operations and maintenance include:
 - Emergency response (e.g. electrical or fiber outage response, downed power lines and/or replacement of poles due to weather or accidents).
 - Tree trimming.
 - Replacement, repair, or installation of street and/or security lighting.
 - Replacement, repair, or installation of conductor (underground and overhead).
 - Replacement, repair, or installation of transformers (pole and pad mounted) and/or overcurrent or sectionalizing devices.
 - Replacement, repair, or installation of poles.
 - Replacement, repair, or installation of guy wires.
 - Replacement, repair, or installation of fiber or electric service drops.
 - Replacement, repair, or installation of fiber optic communications equipment, including wires, distribution hubs, and communications huts.
 - Testing and/or inspection of existing components of the communications or electrical distribution system (i.e. transformers, protection devices, poles, etc.).

3. PUD 3 shall pay to the City upon the execution of this agreement an annual fee of \$1,000. The payment shall be due by December 31 of each year this agreement is in effect.

4. Where required, PUD 3 shall have traffic control measures in place to protect its employees and the public. These measures are defined in the Washington State Department of Transportation Standard Specifications for Road, Bridge, and Municipal Construction.


5. PUD 3 shall maintain a database of operations and maintenance activities conducted under this agreement.

6. In regards to emergency response; when disturbance of the right of way (road cut, sidewalk demolition, trenching, etc.) is necessary to make repairs, PUD 3 shall notify the City of Shelton about the nature of the emergency and the work being done. If in the emergency response, additional restoration requirements and/or inspection are necessary, consultation shall take place with the City after the emergency repairs are completed. Restoration will be completed by the City, at the PUD's expense, to a state equal to the conditions of the right of way before the disturbance.
7. The agreement shall be in effect for that part of the PUD 3 utility system that lies within the corporate limits of the City of Shelton, State of Washington.
8. The term of this agreement shall be for a period of five (5) years, commencing on the date of signing by authorized representatives of the City and PUD 3, and continuing on a calendar year basis. 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.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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.

14. PUD 3 shall serve as the administrator of this agreement.
15. Each Party shall either file or post this agreement in compliance with RCW 39.34.040
16. 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.
17. 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.
18. 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.


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

City of Shelton:



Ryan Wheaton, City Manager 07-17-17
Date

PUD No. 3:



Annette Creeksaun, Manager 3-14-17
Date