

**INTERLOCAL AGREEMENT
FOR TELECOMMUNICATIONS SERVICE TERRITORIES**

This Interlocal Agreement (Agreement) is made and entered into this 4th day of Dec 2018, by and between Public Utility District No. 3 of Mason County, a municipal corporation in Mason County, Washington (PUD 3), and Kitsap County Public Utility District (Kitsap PUD) and collectively referred to hereinafter as the "Parties."

RECITALS

WHEREAS: PUD 3 and Kitsap PUD are both municipal corporations organized and operating under Title 54 Revised Code of Washington (RCW).

WHEREAS: RCW 54.16.330 authorizes either district to "... construct, purchase, acquire, develop, finance, lease, license handle, add to, contract for, interconnect, alter, improve, repair, operate and maintain any telecommunications facilities within or without the district's limits."

WHEREAS: RCW 54.16.090 authorizes Kitsap PUD and PUD 3 to enter into any contract or agreement for carrying out any of the powers authorized by Title 54 RCW.

WHEREAS: RCW 54 16.200 authorizes Kitsap PUD and PUD 3 to exercise jointly all powers granted to each individual district.

WHEREAS: Chapter 39.34 RCW authorizes the districts to enter into interlocal governmental agreements between one another and become enforceable upon being recorded with the Auditor of their respective Counties or displaying on the agency's web site.

WHEREAS: PUD 3 currently serves approximately 350 customers in the Tri-Lakes area (Tiger, Panther and Mission Lakes) of which approximately 66% are located within Kitsap PUD's territory due to access to the area originating in Mason County.

WHEREAS: PUD 3 operates a wholesale fiber optic system and desires to extend fiber telecommunications service to customers in the Tri-Lakes area when such extension becomes financially viable.

WHEREAS: Kitsap PUD has no current plans to extend its wholesale telecommunications services utilizing fiber optics to the Tri-Lakes area and has therefore determined that it is in the best interests of the residents and businesses of the Kitsap PUD to facilitate PUD 3's construction, ownership, and operation of wholesale telecommunications services within the boundaries of Kitsap County where electrical service is currently provided by PUD 3, when PUD 3 receives such requests.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter provided the parties agree as follows:

1. Kitsap PUD hereby consents, approves, authorizes and acquiesces in PUD 3's construction, ownership, operation, management, repair, maintenance and/or expansion of telecommunications services located within the boundaries of the Kitsap PUD in the Tri-Lakes area when PUD 3 receives a request for telecommunications services. PUD 3 shall determine in its sole discretion the terms under which it will provide services, if at all.
2. This Agreement may be terminated by either Party with six months written notice to the other party.
3. The termination of this Agreement, however, shall not affect any right or ability of PUD 3 to continue to serve customers in the Tri-Lakes area which have, at the time of termination, active connections with the PUD 3 telecommunications services, and PUD 3 shall continue to own, operate, manage, repair and maintain any such service.
4. This Agreement shall terminate on the date that is 25 years after the date first written above, unless earlier terminated in accordance with this Agreement.
5. Nothing in this Agreement is intended nor shall it be construed to create any rights in third parties.
6. There are no third 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. Each Party shall either file or post this agreement in compliance with RCW 39.34.040
13. PUD 3 agrees to protect, defend, indemnify and hold harmless Kitsap PUD 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 the existence of the PUD 3's fiber system or 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 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 Kitsap PUD or PUD 3 except to the extent of negligence or intentional actions of Kitsap PUD, its employees, officers, elected officials and agents.
14. 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;

Kitsap County PUD:


Bob Hunter, General Manager 11/27/18
Date

Mason County PUD No. 3:


Annette Creeksaun, Manager 12-4-2018
Date