

Agreement Regarding Telecommunications Service - CERB

This Agreement Regarding Fiber Optic Service ("Contract") is date this 25th day of October 2021, and is made by and between Public Utility District No. 1 of Mason County, Washington (PUD 1) and Public Utility District No. 3 of Mason County, Washington (PUD 3).

RECITALS:

- A. PUD 1 and PUD 3 are municipal corporations organized and operating under Title 54 Revised Code of Washington (RCW);
- B. The boundaries of PUD 1 and PUD 3 are within Mason County, Washington;
- C. PUD 1 and PUD 3 are both engaged in the business of distributing electricity, but at present only PUD 3 operates a wholesale fiber optic system;
- D. 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...";
- E. RCW 54.16.090 authorizes PUD 1 and PUD 3 to enter into any contract or agreement for carrying out any of the powers authorized by Title 54 RCW;
- F. RCW 54.16.200 authorizes PUD 1 and PUD 3 to exercise jointly all powers granted to each individual district;
- G. PUD 1 has secured a Community Economic Revitalization Board (CERB) grant from the Washington State Department of Commerce to construct and operate a 3.7 mile section of broadband along Highway 101 from approximately the location of Mike's Beach Resort (38470 US Hwy 101 Lilliwaup, WA 98555) in Mason County to Forest Drive in Jefferson County, titled "Hood Canal-101 Broadband Project";
- H. PUD 3 has no current plans to provide wholesale telecommunications services utilizing fiber optics in its service area north of Lilliwaup. PUD 3 has therefore determined that it is in the best interests of the residents and businesses to facilitate PUD 1's construction, ownership and operation of wholesale telecommunications services within the boundaries of PUD 3 for this specific CERB project. PUD 3 therefore authorizes and approves PUD 1 to construct, own, manage, and operate such telecommunications services in accordance with this Contract.
- I. PUD 1 and PUD 3 have determined that the acts authorized in this Contract are necessary for economic development and enhanced telecommunications within the boundaries of PUD 3.
- J. Chapter 39.34 RCW authorizes PUD 1 and PUD 3 to enter into interlocal governmental agreements between one another and become enforceable upon being recorded.

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

1. PUD 3 hereby consents, approves, authorizes, and acquiesces in PUD 1's construction, ownership, operation, management, repair, maintenance and/or expansion of telecommunications services located within the boundaries of PUD 3 for the purposes of the CERB-funded "Hood Canal-101 Broadband Project". PUD 1 shall determine at its sole discretion the terms under which it will provide services, if at all. PUD 1 shall provide copies of any construction, maintenance, operation, and service agreements to PUD 3 within 30 days of execution for documentation of the utilization of the described publicly-owned fiber line within PUD 3's service territory.
2. PUD 3 retains its rights to construct, operate, own, and maintain telecommunications networks within its service territory, including the area described in this agreement.
3. This agreement shall be considered a unique one-time situation. PUD 3 does not intend to cede additional telecommunications service territory for future projects.
4. This agreement shall extend the Agreement Regarding Telecommunications Services between PUD 1 and PUD 3 dated September 26, 2006 by an additional 25-year term following the scheduled expiration date of September 26, 2031.
5. This Contract shall terminate six months after one party gives the other party written notice of its intent to terminate. Termination of this Contract, however, shall not affect any right or ability then established by PUD 1 in any telecommunications services, and PUD 1 shall continue to own, operate, manage, repair, maintain, or expand any such service. Thus, the termination of this Contract merely prevents PUD 1 from entering into new arrangements with third parties (from and after the termination date) for the ownership and/or operation of telecommunications services within PUD 3 to the extent that the approval of PUD 3 would be required before PUD 1 could lawfully enter into such arrangements. This Contract shall terminate on the date that is 25 years after the date first written above, unless earlier terminated in accordance with this Contract.
4. Nothing in this Contract is intended nor shall it be construed to create any rights in third parties.
5. Each Party shall either file or post this Agreement in compliance with RCW 39.34.040

PUBLIC UTILITY DISTRICT NO. 1 OF MASON COUNTY, WASHINGTON

By  Its General Manager

PUBLIC UTILITY DISTRICT NO. 3 OF MASON COUNTY, WASHINGTON

By  Its General Manager