

ORDINANCE NO. 1963-1220

**AN ORDINANCE OF THE CITY OF SHELTON, WASHINGTON, GRANTING A
NONEXCLUSIVE FRANCHISE FOR THE TRANSMISSION, DISTRIBUTION AND SALE OF
ELECTRICITY**

This Electricity and Telecommunication Franchise ("Franchise") is entered into in Shelton, Washington, this 17th day of August 2021, by and between the City of Shelton, Washington, a municipal corporation, (hereinafter "City") and Public Utility District No. 3 of Mason County. (hereinafter "PUD 3"). The City and PUD 3 are sometimes referred to hereinafter collectively as the "parties."

WHEREAS, PUD 3 has applied for a nonexclusive Franchise to construct, operate, and maintain an electric line system in, across, over, upon, along, and under City of Shelton Rights-of-Way; and

WHEREAS, PUD 3 has applied for a nonexclusive Franchise to construct, operate, and maintain a telecommunication system in, across, over, upon, along and under City of Shelton Right-of-Way; and

WHEREAS, the City has reviewed PUD 3's performance, has identified the future electricity and telecommunication-related needs and interests of the City and its citizens, has considered the financial, technical and legal qualifications of PUD 3, and has determined that PUD 3's plans for constructing, operating and maintaining its System are adequate, in a full public proceeding affording due process to all concerned; and

WHEREAS, the public has had adequate notice and opportunity to comment on PUD 3's proposal to provide electricity and telecommunication services within the City; and

WHEREAS, the City has a legitimate and necessary regulatory role in ensuring the availability of electricity and telecommunication services in the franchise area; and

WHEREAS, the City is authorized by applicable law to grant one or more nonexclusive franchises to construct, operate and maintain electricity and telecommunication system or systems within the boundaries of the City.

NOW, THEREFORE, in consideration of the mutual promises made herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and PUD 3 do hereby agree as follows:

SECTION 1 GRANT OF FRANCHISE

The City hereby grants to PUD 3 a right and Franchise for the period of ten (10) years from and after the effective date of Ordinance 1963-1220 to construct, operate and maintain in, over, upon, and under the present and future Right-of-Way and easements within the present and future limits of the City, communication lines, electric power lines, and all necessary and desirable appurtenances thereto, for the purpose of providing communications and transmitting electric power and energy.

SECTION 2 FRANCHISE NONEXCLUSIVE

This Franchise shall be nonexclusive. The City may at any time grant authorization to use the Rights-of-Way for any purpose not incompatible with PUD 3's authority under this Franchise and for such additional franchises as the City deems appropriate.

SECTION 3 INDEMNIFICATION AND INSURANCE REQUIREMENTS

3.1 Indemnification

(A) General Indemnification. PUD 3 shall indemnify, defend and hold harmless the City, and its officers, officials, boards, commissions, agents and employees (while acting in an official capacity) from any action, claim, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees and expenses, arising from any action, neglect, omission or inaction of PUD 3 its agents or employees including, but not limited to, delays on City construction projects caused by or arising out of PUD 3's failure to relocate its facilities in a timely manner. PUD 3 shall consult and cooperate with the City while conducting its defense of the City. If any such claim or demand is subject to RCW 4.24.115 and caused by or results from the concurrent negligence of (a) the City, its elected or appointed officials, or its agents or employees and (b) PUD 3, or its agents or employees, then in such event the defense and indemnity provisions provided for in the preceding paragraph 9.1 shall be valid and enforceable only to the extent of PUD 3's negligence. The City shall indemnify, defend and hold harmless PUD 3, and its officers, officials, boards, commissions, agents and employees (while acting in an official capacity) from any action, claim, damage, loss, liability, cost or expense, including court and appeal costs and reasonable attorneys' fees and expenses, arising from any action, neglect, omission or inaction of the City its agents or employees including, but not limited to, delays on PUD 3 construction projects caused by or arising out of City's failure to relocate its facilities in a timely manner. The City shall consult and cooperate with PUD 3 while conducting its defense of PUD 3. If any such claim or demand is subject to RCW 4.24.115 and caused by or results from the concurrent negligence of (a) PUD 3, its elected or appointed officials, or its agents or employees and (b) the City, or its agents or employees, then in such event the defense and indemnity provisions provided for in the preceding paragraph 9.1 shall be valid and enforceable only to the extent of the City's negligence.

(B) Procedures and Defense. The indemnified party shall give the other party timely written notice of any claim or of the commencement of any action, suit or other proceeding covered by the indemnity in this Section. If a claim or action arises, indemnified party shall then tender the defense of the claim to other within six (6) business days of receipt of such notice, which defense shall be at the indemnifying party's expense. The indemnified party may participate in the defense of a claim and, in any event, the Indemnifying party may not agree to any settlement of claims financially affecting the indemnified party without the indemnified party's prior written approval, which approval shall not be unreasonably withheld.

(C) Expenses. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the indemnified party and the counsel selected

by indemnifying party to represent the indemnified party, the indemnifying party shall pay the expenses incurred by the indemnified party in defending itself with regard to any action, suit or proceeding indemnified. The indemnified party's expenses shall include all out of-pocket expenses that are necessary for the indemnified party defense, such as consultants' fees, and shall also include the reasonable value of any services rendered by the General Counsel/City Attorney or his/her assistants or any employees of the indemnified party or its agents but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the indemnified party by the indemnifying party.

3.2 Insurance Requirements

(A) General Requirement. PUD 3 must have adequate insurance during the entire term of this Franchise (and for a period of twelve [12] months thereafter) to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise, or involve PUD 3, its agents, representatives, contractors, subcontractors and their employees.

(B) Minimum Insurance Limits. PUD 3 must keep insurance in effect in accordance with the minimum insurance limits herein set forth:

- (1) Commercial General Liability: Two million dollars (\$2,000,000) per occurrence and five million dollars (\$5,000,000) general aggregate for bodily injury, personal injury and property damage.
- (2) Automobile Liability: Three million dollars (\$3,000,000) combined single limit per accident for bodily injury and property damage.
- (3) Workers Compensation Insurance: In accordance with State law requirements.
- (4) Excess Liability or Umbrella Coverage: One million dollars (\$1,000,000).

The amounts listed above are the minimum deemed necessary by the City to protect the City's interests in this matter. The City has made no recommendation to PUD 3 as to the amount of insurance coverage necessary to protect PUD 3's interests. Any decision by PUD 3 to carry or not carry insurance amounts in excess of the above is solely that of PUD 3.

(C) Endorsements.

- (1) All policies shall contain, or shall be endorsed so that:
 - (a) The City shall be designated as an additional insured;
 - (b) Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees and agents shall be in excess of PUD 3's primary insurance and shall not contribute to it; and
 - (c) The policy shall contain a severability of interests provision. PUD 3's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

(2) The insurance provided herein shall not be cancelled or the limits reduced so as to be out of compliance with the requirements of this Section without forty-five (45) days written notice first being given to the City. If the insurance is cancelled PUD 3 shall provide a replacement policy. PUD 3 agrees to maintain continuous uninterrupted insurance coverage, in the amounts required, for the duration of this Franchise (and as specified above, thereafter).

(D) Acceptability of Insurers. The City has reviewed PUD 3's self-insurance pool coverage and accepts the same.

(E) Verification of Coverage. PUD 3 shall furnish the City with certificates of insurance. The certificate for each insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices, and are to be provided to the City upon acceptance of this Franchise. PUD 3 hereby warrants that its insurance policies satisfy the requirements of this Franchise.

(F) Verification of Additional Insured Coverage. PUD 3 shall furnish the City with a written copy of the contract of additional insured coverage in a form acceptable to the City. If the additional insured coverage is part of PUD 3's insurance policy, then PUD 3 shall furnish a copy of those pages of its policy showing the City is covered as an additional insured to the City.

SECTION 4 GENERAL RIGHTS-OF-WAY USE AND CONSTRUCTION

4.1 Right to Construct

Subject to generally applicable laws, regulations, rules, resolutions, and ordinances of the City and the provisions of this Franchise, PUD 3 may perform all construction in the Rights-of-Way for any facility needed for the maintenance, operation or extension of PUD 3's Electrical System and/or Telecommunications System. Construction shall include 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. Permissible activities may 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, regulation, capacitance, 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 or electrical distribution systems (e.g., transformers, protection devices, distribution huts, splice cases, service terminals, vaults, cabinets, poles, etc.)

4.2 Rights-of-Way Meetings

Subject to receiving advance notice, PUD 3 shall make reasonable efforts to attend and participate in meetings of the City regarding Rights-of-Way issues that may impact the Electricity and Telecommunication System.

4.3 General Standards

All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with good engineering practices and in compliance with all federal, State, and local laws and regulations. PUD 3 shall promptly respond to any construction issues raised by the City and remedy any construction-related problems in a timely and responsive manner. To the maximum extent possible, PUD 3 shall utilize existing facilities in lieu of installing new equipment such as conduit, poles, or wires. This Franchise does not grant, give or convey to PUD 3 the right or privilege to install its facilities in any manner on specific utility poles or equipment owned by the City or any private third party. Equipment associated with PUD 3's Electricity and/or Telecommunication Systems may be in appropriate housing upon the surface of the ground. Nothing in this Franchise shall be construed to require PUD 3 to construct, operate, or maintain underground any ground-mounted appurtenances such as pedestals, provided that such facilities must be placed in accordance with City Code and any permit requirements.

4.4 Joint Trenching/Boring

To the extent it is economically feasible, PUD 3 shall joint trench or share bores or cuts and work with other providers (such as, but not limited to, gas, water, sanitary sewer), licensees, permittees, and franchisees so as to reduce the number of Rights-of-Way cuts within the City. PUD 3 shall follow all State law requirements for trench safety, including RCW 39.04.180.

4.5 Movement of Facilities During Emergencies

In the case of fire, disaster, or other emergency, the City may move, remove, or disconnect PUD 3's facilities and equipment located in the Rights-of-Way or on any other property of the City. The City shall provide reasonable notice to PUD 3 prior to taking such action and shall provide PUD 3 with the opportunity to perform such action unless, in the City's sole judgment, the imminent threat to public health, safety or welfare makes such notice impractical.

For the safety of all, a Qualified Worker meeting Washington State Labor & Industries requirements must be used to perform work that falls under this provision.

4.6 One Call

The Parties will maintain membership in good standing with the Utilities Underground Location Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. Parties shall abide by the State's "Underground Utilities" statutes (Chapter

19.122 RCW) and will further comply with and adhere to City regulations related to the One Call locator service program.

4.7 Permits Required for Construction

Prior to doing any work in the Rights-of-Way or other public property, PUD 3 shall apply for and obtain any permits necessary from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for protecting any structures in such Rights-of-Way, for restoration of such Rights-of-Way, and for protection of the public and the continuity of pedestrian or vehicular traffic. PUD 3 shall pay all generally applicable fees for the requisite City permits.

4.8 Emergency Permits

In the event that emergency repairs are necessary, PUD 3 shall immediately notify the City of the need for such repairs. PUD 3 may initiate such emergency repairs and shall apply for appropriate permits within forty-eight (48) hours after completion of the repair.

4.9 Compliance with Applicable Codes

(A) City Codes. PUD 3 shall comply with all lawful and applicable City codes, including, without limitation, construction codes, building codes, the Fire Code, and zoning codes and regulations that do not conflict with PUD 3's contractual rights under this Franchise.

(B) Regulations and Safety Codes. PUD 3 shall comply with all lawful and applicable federal, State, and City safety requirements, rules, regulations, laws, and practices. By way of illustration and not limitation, PUD 3 shall comply with the National Electric Code, National Electrical Safety Code, and Occupational Safety and Health Administration (OSHA) Standards.

4.10 Least Interference

Work in the Rights-of-Way, or on other public property, shall be done in a manner that causes the least interference with the rights and reasonable convenience of adjacent property owners. PUD 3's Electricity System and Telecommunications System shall be located, erected, and maintained so as not to endanger the lives of Persons, or to interfere with new improvements the City may deem proper to make, or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property, and shall not unreasonably interfere with travel and use of public places by persons during the construction, repair, operation, or removal thereof. The City may require the removal or relocation of PUD 3's lines, cables, equipment, and other appurtenances that are in violation of this Section from the property in question at PUD 3's expense.

4.11 Prevent Injury/Safety

PUD 3 shall provide and use any equipment and facilities necessary to control and carry PUD 3's signals so as to prevent injury to the City's property or property belonging to any Person. PUD 3, at its own expense, shall repair, renew, change, and improve its facilities to keep them in good repair, and safe and presentable condition. All excavations made by PUD 3 in the Rights-of-Way shall be properly safeguarded for the prevention of accidents.

4.12 Notice to Private Property Owners

Except in the case of an emergency involving public safety or an outage, or service interruption to a large number of customers or subscribers, PUD 3 shall give reasonable advance notice to private property owners of construction work on or in adjacent Rights-of-Way. If PUD 3's work is a result of a larger City project, other public project, or a private developer project, Notice to Property Owners and detailed project information that may affect their property shall be the responsibility of the lead agency, or the City. PUD 3 may, at its discretion, supplement other customer communication regarding the impact of PUD 3's facilities and operations.

4.13 Clear Zone Requirements

PUD 3 recognizes the need for the City to maintain adequate width for installation and maintenance of sanitary sewer, water, and storm drainage utilities owned by the City, and other public utility providers.

Thus, the City reserves the right to maintain clear zones with the Rights-of-Way for installation and maintenance of said utilities. The clear zones for each Rights-of-Way segment shall be noted and conditioned with the issuance of each Rights-of-Way permit. If adequate clear zones are unable to be achieved on a particular Right-of-Way, PUD 3 shall locate in an alternate Right-of-Way or propose alternate construction methods which maintain and/or enhance the existing clear zones.

4.14 Underground Construction; Location & Relocation of Facilities

PUD 3 will cooperate with the City, developers, and with other affected utilities in the underground construction of new electricity distribution and telecommunications facilities within the franchise area, which shall be at developer or requestor expense.

- A. PUD 3 shall, at its sole expense, relocate its overhead facilities upon request by the City if:
 - (1) Necessary to accommodate City capital projects, provided that the City has reasonably complied with the notification requirements of this Section, and provided that if the City requests relocation for a second time in a five year period, the City shall bear the costs of the second relocation; or
 - (2) Due to unforeseen emergencies as necessary to protect the public health, welfare, and safety.
- B. If the City requests that existing PUD 3 facilities be relocated underground, the City shall reimburse the PUD the incremental cost of underground construction compared to aerial relocation. The PUD 3 shall comply with all federal, state, and local regulations on undergrounding.
- C. If the City determines that a City project necessitates the relocation of PUD 3's existing facilities, then:
 - (1) Within a reasonable time, which shall be no less than 90 days prior to the necessary relocation, the City shall provide PUD 3 with written notice requiring relocation; provided that in the event of an emergency beyond the control of the City and which

will result in severe financial consequences to the City or its citizens or businesses, the City shall give PUD 3 as much advance written notice as is practicable;

(2) When City projects are under consideration and/or preliminary Funding Application Level Design (e.g. "10% Design") begins, the City will contact PUD 3 to schedule an initial project scope meeting so tentative plans, system impact studies, community partnerships, and enhanced communication can begin with as much preparation time as possible.

(2) The City shall provide PUD 3 with copies of information for such improvement project and a proposed location for PUD 3's facilities so that PUD 3 may relocate its facilities in the Rights-of-Way in order to accommodate the project; and

(3) In calculating the date that relocation must be completed, the City shall consult with PUD 3 and other franchise holders and consider the extent of facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation. PUD 3 shall complete the relocation by the date specified, unless the City establishes a later date for completion, after a showing by PUD 3 that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements. In the event of an emergency as described in this Section, PUD 3 shall relocate its facilities within a reasonable time period specified by the City.

(4) The City and/or Requestor shall provide traffic-control, permitting, trenching, backfill, and restoration for the relocation of PUD 3's facilities if the new facilities are to be placed underground. The undergrounding of the electric or telecommunications underground infrastructure may extend outside of the project boundaries in order to accommodate the request, and this must be included in eligible relocation costs and plans.

(5) To ensure proper space and availability in a supplied joint trench, PUD 3 shall pay for the work (time and materials) necessary to complete Electric System and/or Telecommunications related engineering and coordination with the other utilities involved in the project.

- D. PUD 3 may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise PUD 3 in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the facilities. If so requested by the City, PUD 3 shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by PUD 3 full and fair consideration, within a reasonable time, so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, PUD 3 shall relocate its facilities as otherwise provided in this Section.

- E. In the event that the City requests PUD 3 to relocate its facilities for a project which is primarily for benefit of a third-party, the PUD 3 shall relocate its facilities contingent upon permit approvals from the City and the third party's entry into a reimbursement agreement with PUD 3.
- F. In the event the City establishes a Local Improvement District (LID) to fund a relocation or conversion project, PUD 3 shall be reimbursed by the LID for all expenses incurred as a result of the project.

At the City's request, PUD 3 shall supply drawings or other documentation indicating the location of its facilities within City streets and rights-of-way.

4.15 Additional Ducts and Conduits

PUD 3 and the City recognize that situations may occur in the future where the City may desire to place its own fiber optic cable in trenches or bores opened by PUD 3. PUD 3 agrees to cooperate with the City in any construction that involves trenching or boring, provided that the City has first provided reasonable notice to PUD 3 in some manner that it is interested in sharing the trenches or bores in the area where PUD 3's construction is occurring. PUD 3 shall allow the City to lay City conduit in PUD 3's trenches and bores, provided that the City shares pro rata in the cost of the trenching and boring with PUD 3. The City shall be responsible for maintaining its respective conduit, which is buried in PUD 3's trenches and bores. The City agrees that any conduit placed in these projects shall not now or throughout the term of this Franchise be utilized to provide services that interfere with the services provided by PUD 3 or be provided for access by a private, for-profit electricity or telecommunications company.

(A) If PUD 3 is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and upon request by the City, additional duct or conduit and related structures necessary to access the duct or conduit shall be provided for the City, subject to the following conditions:

- (1) The City shall not require that the additional duct or conduit space be connected to the access structures and vaults of PUD 3.
- (2) Upon written request by the City for a cost estimate to share a trench or bore within a Right-of-Way, PUD 3 shall prepare such estimate and present the same to the City within sixty (60) days thereafter regarding the incremental costs and Fully Allocated Costs of providing the City with ducts, conduits, and related structures necessary to access the conduit or duct and of the date such construction, relocation, or placement will begin. If PUD 3 and the City disagree regarding the appropriateness of the proposed incremental and Fully Allocated Costs, the parties may negotiate.
- (3) The City may require PUD 3 to furnish such additional duct or conduit and the related structures necessary to access the conduit or duct for the incremental costs by so notifying PUD 3 no later than sixty (60) days after the information referred to in subsection (B) is provided by PUD 3 or a court.
- (4) If the City requires PUD 3 to furnish additional duct, conduit, or related structures pursuant to this subsection, PUD 3 shall construct the facilities to the same standards as PUD 3's other new facilities, and shall turn such additional duct, conduit or related

structures over to the City upon completion of same and satisfactory inspection thereof by the City.

(5) Any duct or conduit and related structures necessary to access the duct or conduit that are furnished by PUD 3 to the City pursuant to this Section shall be used exclusively by, and directly for, the City for any commercial or noncommercial purposes.

All provisions for the placement of Additional Ducts and Conduits within this section bilaterally also apply to the City's open trench and/or directional bore projects. The City shall notify PUD 3 of all such projects prior to 90 days before work commencement, or during preliminary designs, whichever is sooner.

4.16 Restoration of Property

(A) PUD 3 shall protect public and private property from damage. If damage occurs, PUD 3 shall promptly notify the property owner within twenty-four (24) hours.

(B) In the event PUD 3 disturbs or damages any Rights-of-Way or other public property, PUD 3 shall promptly restore the Rights-of-Way or property to at least its prior condition, normal wear and tear excepted.

(C) PUD 3 shall warrant any street restoration work performed by or for PUD 3 in the Rights-of-Way or on other public property for the greater of one (1) year or for the life of the asphalt street patch until overlay occurs, provided that no action by a third party or acts of nature materially affects the integrity of PUD 3's street cut work, unless a different period is required by the City Code. If street cut work is not satisfactorily performed by PUD 3 within a reasonable time, the City may, after prior notice to PUD 3, or without notice where the disturbance or damage may create a risk to public health or safety, cause the work to be done and recover the reasonable cost of the work from PUD 3. Within forty-five (45) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, PUD 3 shall pay the City.

(D) Upon completion of the work that caused any disturbance or damage, PUD 3 shall promptly commence restoration of the property, and will use its best efforts to complete temporary restoration within twenty-four (24) hours, and permanent restoration within 90 days, considering the nature of the work that must be performed.

4.17 Discontinuing Use

Whenever PUD 3 intends to discontinue using any facility within the Rights-of-Way, PUD 3 shall notify the City of its intention. PUD 3 may remove the facility or request that the City permit it to remain in place. Notwithstanding PUD 3's request that any such facility remain in place, the City may require PUD 3 to remove the facility from the Rights-of-Way or modify the facility to protect the public health, welfare or safety. The City may require PUD 3 to perform a reasonable combination of modification and removal of the facility. PUD 3 shall complete such removal and/or modification respectively in accordance with a schedule reasonably set by the City. Until such time as PUD 3 removes or modifies the facility as reasonably directed by the City, or until the rights to and responsibility for the facility are accepted by another Person having authority to use, construct and/or maintain such facility, PUD 3 shall

retain all liability for such facility and shall remain responsible for all necessary repairs and relocations of the facility in the same manner and degree as if the facility were in active use.

4.18 LED Street Lights

PUD 3 shall keep the LED streetlight system in good repair and working condition. PUD 3 shall charge the City at PUD 3's Schedule 41 rate for outdoor lighting as now adopted or hereinafter amended. All PUD 3 electrical service rules and regulations shall apply to billings and payments. City-owned LED streetlight poles shall not be subject to PUD 3 charges and assessments.

PUD 3 shall perform maintenance on the City-owned streetlight poles as needed and upon request by the City, subject to PUD 3's then existing labor and equipment rates, and scheduling availability.

Upon request from the City, PUD 3 shall install or replace the City's streetlight poles, vaults, and/or conduits, and bill the City for the work at PUD 3's then existing labor and equipment rates. In such projects, the City shall provide all traffic control, trenching, backfilling, restoration, permitting, and easements, and shall work with PUD 3 to determine acceptable locations and specifications of infrastructure. All staking of agreed upon pole locations shall be provided by the City.

The City shall have priority to utilize GFI outlets on the light poles for Christmas decorations or other uses. The City shall notify PUD 3 of the dates of installation and removal of lighted decorations, along with the actual wattage and count of each fixture. Unmetered electricity shall be billed to the City, or its designee, at PUD 3's Schedule 20 (small commercial) rate or Unmetered Device rate, at PUD 3's discretion.

4.19 Movement of System Facilities for Other Franchise or Permit Holders

If any removal, replacement, modification or disconnection of the Electricity System and/or Telecommunication System is required to accommodate the construction, operation, or repair of the facilities or equipment of another City franchise or permit holder, PUD 3 shall, after at least forty-five (45) days advance written notice, take action to effect the necessary changes requested by the responsible entity. PUD 3 may require that the costs associated with the removal, replacement, modification, or disconnection of the Electricity System and/or Telecommunication System be paid by the benefited party, and PUD 3 may require a reasonable deposit of the estimated payment in advance.

4.20 Reservation of City Use of Rights-of-Way

Nothing in this Franchise shall prevent the City from constructing sewers; grading, paving, repairing or altering any Rights-of-Way; laying down, repairing or removing water mains; installing conduit or fiber optic cable; or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as not to obstruct, injure or prevent the use and operation of PUD 3's Electricity System and/or Telecommunication System.

4.21 Tree Trimming

PUD 3 may prune or cause to be pruned, using proper pruning practices, any tree in the Rights-of-Way which interferes with the reliability, construction, operations, and maintenance of PUD 3's Electricity System and/or Telecommunication System. PUD 3 shall comply with any and all City regulations regarding tree trimming, including obtaining a permit, if required, to remove Right-of-Way trees.

Except in emergencies, before pruning trees at a point below fifteen and a half (15.5) feet above the sidewalk grade, PUD 3 will make a reasonable attempt to contact the owner or occupant of the premises abutting the rights of way in or over which the tree is growing. For purposes of this subsection, emergencies exist when it is necessary to prune to protect the public or PUD 3's facilities from imminent danger.

4.22 Inspection of Construction and Facilities

The City may inspect any of PUD 3's facilities, equipment, or construction within the Rights-of-Way and on other public property in the franchise area. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order PUD 3, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition within a reasonable amount of time established by the City. The City has the right to inspect, repair, and correct the unsafe condition if PUD 3 fails to do so, and to reasonably charge PUD 3 therefore.

For the safety of all, a Qualified Worker meeting Washington State Labor & Industries requirements must be used to perform work that falls under this provision.

4.23 Stop Work

On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as reasonably determined by the City, or in violation of the terms of any regulations or permits issued, then the work may immediately be stopped by the City.

The stop work order shall:

- (1) Be in writing;
- (2) Be given to the person doing the work, or be posted on the work site;
- (3) Submitted via email to PUD 3's Director of Engineering & Utility Services and Operations Manager;
- (4) Indicate the nature of the alleged violation or unsafe condition;
- (5) Establish conditions under which work may be resumed; and
- (6) Provide the name and contact information for the representative of the City for further discussion.

4.24 Nonconforming or Unauthorized Conditions

Whenever the City determines that PUD 3 has taken any action or caused any condition within the franchise area in violation of the City Code that results in or produces any unsafe, nonconforming, or unauthorized condition, the City may order the correction or discontinuance of such condition or any activity causing such condition, or order the taking of any other remedial action, pursuant to applicable provisions of the City Code.

4.25 Work of Contractors and Subcontractors

PUD 3's contractors and subcontractors shall be licensed and bonded in accordance with the City's generally applicable regulations. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by PUD 3. PUD 3 shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is PUD 3's responsibility to ensure that contractors, subcontractors, or other Persons performing work on PUD 3's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

SECTION 5 FRANCHISE FEES AND UTILITY TAX

5.1 Franchise Fees

As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon PUD 3. However, as provided in RCW 35.21.860, PUD 3 shall reimburse and pay the City's actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit or license, (ii) inspecting plans and construction, or (iii) preparing detailed statement pursuant to Chapter 43.21C RCW.

5.2 Tax Liability

Utility Tax. PUD 3 acknowledges that the City is authorized under RCW 35.21.870, as amended, and Shelton Municipal Code 3.38 and 3.48, to impose a utility tax on PUD 3 for provision of electrical services. Nothing in this Franchise shall exempt nor be construed to exempt PUD 3 from payment of the City's utility tax, currently 6% of total gross receipts for both electrical and non-exempt telecommunications, in accordance with the City's Code.

SECTION 6 MISCELLANEOUS PROVISIONS

6.1 Local Employment Efforts

PUD 3 shall use reasonable efforts to utilize qualified local contractors, including minority business enterprises and woman business enterprises, whenever PUD 3 employs contractors to perform work under this Franchise.

6.2 Notices

Throughout the term of this Franchise, each party shall maintain and file with the other a local address for the service of notices by mail. All notices shall be sent to such respective address, and such notices shall be effective upon the date of mailing. At the effective date of this Franchise:

PUD 3's address shall be:

Mason PUD 3
Attention: General Manager; and Director of Engineering & Utility Services
PO Box 2148

2621 E Johns Prairie Road
Shelton, WA 98584

The City's address shall be:

City of Shelton
Attention: City Clerk; Finance Director; and City Manager
525 W. Cota Street
Shelton, WA 98584

6.3 Cumulative Rights

Subject to applicable law, all rights and remedies given to the City by this Franchise or retained by the City herein shall be in addition to and cumulative with any and all other rights and remedies, existing or implied, now or hereafter available to the City, at law or in equity, and such rights and remedies shall not be exclusive, but each and every right and remedy specifically given by this Franchise or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the City, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy.

6.4 Binding Effect – Cancellation of Interlocal Agreements

This Franchise shall be binding upon the parties hereto, their permitted successors and assigns. The 2017 Interlocal Agreement for Recurring Annual Right of Way Permit is cancelled and of no further effect.

The following interlocal agreements for LED Street and Pedestrian Lighting are superseded and therefore cancelled:

1. 2018 Interlocal Agreement for LED Street and Pedestrian Lighting
2. 2015 Amended Interlocal Agreement for LED Street Lighting
3. 2013 Interlocal Agreement for LED Street Lighting Project

6.5 Authority to Amend

This Franchise may also be amended at any time by mutual written agreement between the parties.

6.6 Disputes and Venue

If any disputes shall arise concerning application or interpretation of this Agreement, the Parties shall first attempt to resolve the dispute through negotiation, with or without the help of a professional mediator. Venue for any dispute related to this Franchise shall be in Mason County Superior Court.

6.7 Governing Laws

This Franchise shall be governed, construed and enforced in accordance with the laws of the State of Washington (as amended), and any other applicable local, State and federal laws, rules, regulations, legislation or orders (as such now exist, are later amended or subsequently adopted).

6.8 No Joint Venture

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

6.9 Waiver

The failure of the City at any time to require performance by PUD 3 of any provision hereof shall in no way affect the right of the City hereafter to enforce the same, nor shall the waiver by the City of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

6.10 Severability

If any Section, subsection, paragraph or provision of this Franchise is determined to be illegal, invalid or unconstitutional by any court or agency of competent jurisdiction, such determination shall have no effect on the validity of any other Section, subsection, paragraph or provision of this Franchise, all of which will remain in full force and effect for the term of the Franchise.

6.11 Entire Agreement

This Franchise and Exhibit represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties.

6.12 Force Majeure

In the event PUD 3 is prevented or delayed in the performance of any of its obligations under this Franchise by a reason beyond the control of PUD 3, PUD 3 shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City. Those conditions which are not within the control of PUD 3 include, but are not limited to, natural disasters, civil disturbances, severe or unusual weather conditions which have a direct and substantial impact on PUD 3's ability to provide Electricity Service and/or Telecommunication Services in the City, work delays caused by waiting for utility providers to service or perform make-ready services on their utility poles or other facilities to which PUD 3's Electricity System and/or Telecommunication System is attached, and PUD 3's inability to obtain federal, State or railroad permits despite PUD 3's best efforts to do so. If PUD 3 believes that a reason beyond its control has prevented or delayed its compliance with the provisions of this Franchise, PUD 3 shall provide documentation as reasonably required by the City to substantiate PUD 3's claim. If PUD 3 has not yet cured the deficiency, PUD 3 shall also provide the City with its proposed plan for remediation, including the timing for such cure.

6.13 Attorneys' Fees

If any action or suit arises in connection with this Franchise, the Parties shall bear their own expenses, including attorney fees and court costs.

6.14 Actions of the City or PUD 3

In any action by the City or PUD 3 mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

6.15 Acceptance

Within thirty (30) days of receipt of the Franchise after its execution by the City, this Franchise shall be formally adopted by PUD 3's legislative body in accordance with PUD 3's procedures and State law. .

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Shelton, Washington, this 17th day of August, 2021.

CITY OF SHELTON

By Kevin Dray
Mayor

ATTEST:
Hanna Nauert
City Clerk

APPROVED AS TO FORM:

Kathleen Haggard
City Attorney

ACCEPTED AND APPROVED this 14 day of September, 2021.

Mason PUD 3

By Annette Creekpaum
Annette Creekpaum (Sep 14, 2021 14:15 PDT)

Its Manager.