FILED
SUPREME COURT
STATE OF WASHINGTON
8/9/2019 3:40 PM
BY SUSAN L. CARLSON
CLERK

No. 96360-6

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KING COUNTY,

Appellant,

v.

KING COUNTY WATER DISTRICTS
Nos. 20, 45, 49, 90, 111, 119, 125, et al.,

Respondents.

AMES LAKE WATER ASSOCIATION, DOCKTON WATER ASSOCIATION, FOOTHILLS WATER ASSOCIATION, SALLAL WATER ASSOCIATION, TANNER ELECTRIC COOPERATIVE, and UNION HILL WATER ASSOCIATION,

Intervenor-Defendants.

BRIEF OF *AMICUS CURIAE* WASHINGTON STATE ASSOCIATION OF COUNTIES

ARETE LAW GROUP PLLC
Denise L. Ashbaugh, WSBA # 28512
Jeremy E. Roller, WSBA # 32021
1218 Third Avenue, Suite 2100
Seattle, WA 98101
(206) 428-3250

Mellani McAleenan, WSBA # 29327
General Counsel, WSAC
206 10th Avenue SE
Olympia, WA 98501
(360) 753-1886

Attorneys for *Amicus Curiae* Washington State Association of Counties

TABLE OF CONTENTS

I. IDENTITY AND INTEREST OF *AMICUS CURIAE* 1

II. STATEMENT OF THE CASE..... 2

III. ARGUMENT..... 2

A. Washington Counties Enjoy Broad Control Over and Interests in Rights-of-Way 3

B. Counties and Utilities Have Long Recognized a County's Right to Grant Franchises Governing Construction, Maintenance, and Operation of Utility Facilities Within Public Rights-of-Way..... 5

C. Franchises Negotiated Between Washington Counties and Utilities Establish Conditions for Utilities' Use of Rights-of-Way and Protect the Public and the Counties..... 8

D. Upholding the Trial Court Order Could Deprive Counties of the Right to Establish Terms and Conditions for Utility Use of Rights-of-Way and Needlessly Multiply Litigation.. 12

1. Counties and the Public Will Suffer Harm if Counties Cannot Require Utilities to Enter Franchise Agreements..... 13

2. Allowing Utilities to Use County-Controlled Rights-of-Way Without Franchise Agreements Will Multiply Litigation..... 17

IV. CONCLUSION..... 20

TABLE OF AUTHORITIES

CASES

Baster-Wyckoff Co. v. City of Seattle 67 Wn.2d 555, 408 P.2d 1012 (1965) 4

City of Issaquah v. Teleprompter Corp., 93 Wn.2d 567, 611 P.2d 741 (1980) 6

City of Lakewood v. Pierce Cty., 106 Wn. App. 63, 23 P.3d 1 (2001) 5, 6

City of Spokane v. Spokane Gas & Fuel Co., 175 Wash. 103, 26 P.2d 1034 (1933) 6, 8, 18

Hadfield v. Lundin, 98 Wash. 657, 168 P. 516 (1917) 4

Henry v. Thorne, 92 Wn.2d 878, 602 P.2d 354 (1979) 3

King Cty. Council v. Pub. Disclosure Comm'n, 93 Wn.2d 559, 611 P.2d 1227 (1980) 3

Pac. Tel. & Tel. Co. v City of Everett, 97 Wash. 259, 166 P. 650 (1917) 6

Provins v. Bevis, 70 Wn.2d 131, 422 P.2d 505 (1967) 15

Ruff v. King Cty., 125 Wn.2d 697, 887 P.2d 886 (1995) 15

State ex. rel. York v. Bd. of Comm'rs, 28 Wn.2d 891, 184 P.2d 577 (1947) 6

State v. Pub. Util. Dis. No. 1 of Clark Cty., 55 Wn.2d 645, 349 P.2d 426 (1960) 6

Washington Fruit & Produce Co. v. City of Yakima, 3 Wn.2d 152, 100 P.2d 8 (1940) 5

Wuthrich v. King Cty., 185 Wn.2d 19, 366 P.3d 926 (2016) 15

STATUTES

RCW 36.32.120(2) 4

RCW 36.55.010 5

RCW 36.55.050 7

RCW 36.75.010(6) 3

RCW 36.75.020 ..... 3, 4

RCW 36.75.040 4

OTHER AUTHORITIES

Op. Att'y Gen. No. 17 (1996). 3

Op. Att'y Gen. No. 169 (1958). 4

Op. Att'y Gen. No. 425 (1952). 18

Don F. Vaccaro, Annotation, *Liability of Governmental Entity or Public Officer for Personal Injury or Damages Arising Out of Vehicular Accident Due to Negligent or Defective Design of a Highway*, 45 A.L.R.3d 875 (1972) 16

I. IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Washington State Association of Counties ("WSAC") is a non-profit association that serves all 39 counties in the State of Washington. Its membership includes elected county commissioners, council members, and executives. WSAC provides a variety of services to its member counties, including advocacy, training, workshops, and a forum to network and share best practices. WSAC also serves as an umbrella organization for affiliate organizations representing county road engineers, local public health officials, administrators, emergency managers, human service administrators, clerks of county boards, and others.

The outcome of this appeal could dramatically alter decades of established county regulation of county-controlled public rights-of-way ("ROW"). Washington counties have long possessed statutory, regulatory, and constitutional authority over county ROW and have historically exercised that control by entering into franchise agreements with secondary ROW users. Despite this long history, the trial court's order invalidated key provisions of King County Ordinance 18403, eliminating King County's ability to charge reasonable compensation in conjunction with a franchise agreement. The order further calls into question the necessity of franchise agreements and seemingly eliminates a

county's ability to require any terms or conditions in conjunction with granting a franchise. WSAC has a substantial interest in ensuring that its member counties retain their well-established, recognized, and critical control over the public ROW within their jurisdictions and that secondary ROW users, such as utilities, are not granted free and unconditioned use of this important public asset.

WSAC requests that the Court reverse the trial court's order granting summary judgment for the utilities and remand the matter with instructions to enter summary judgment for King County upholding Ordinance 18403.

II. STATEMENT OF THE CASE

WSAC adopts the Statement of the Case set forth in King County's Opening Brief.

III. ARGUMENT

In invalidating Ordinance 18403, the trial court stated that "[f]ranchises are contracts which must be negotiated and agreed upon by the parties thereto, and King County may not require the utility defendants to enter into a franchise agreement by accepting King County's franchise terms." CP 2283. This order, if upheld, would upend more than a century of law and Washington counties' historical practice of negotiating and granting, if appropriate, franchise agreements setting the terms and

conditions of utility use of county-controlled ROW. Such a result would deprive counties and the public of essential protections to their safety, jeopardize the primary purpose of county-controlled ROW (public travel), create conflicts between various users of ROW, and needlessly multiply litigation between counties and utilities, requiring judicial intervention in matters previously negotiated between counties, water districts, and other utilities.

A. Washington Counties Enjoy Broad Control Over and Interests in Rights-of-Way.

Washington counties have a long history of broad authority over and responsibility for county-controlled ROW. County authority and responsibility is set forth in multiple statutes, case law, and decades of franchise agreements wherein counties establish parameters regarding utilities' use of ROW. Indeed, authority is granted to counties as agents of the State of Washington.[1] RCW 36.75.020.

County roads[2] are "established, laid out, constructed, altered, repaired, improved, and maintained by the legislative authority of the

---

[1] Because home rule charter counties have broad power and control over their laws and operations, limited only by the state constitution and statutes, an express grant of authority to act is not required for such counties. *See* RCW 36.75.020; *King Cty. Council v. Pub. Disclosure Comm'n*, 93 Wn.2d 559, 562-63, 611 P.2d 1227 (1980); *Henry v. Thorne*, 92 Wn.2d 878, 881-82, 602 P.2d 354 (1979); 1996 Op. Att'y Gen. No. 17, 1996 WL 576958 at *2 n.2.

[2] County roads are "every highway or part thereof, outside the limits of incorporated cities and towns and which has not been designated as a state highway." RCW 36.75.010(6).

respective counties as agents of the state, or by private individuals or corporations who are allowed to perform such work under an agreement with the county legislative authority." RCW 36.75.020. Such work must be performed in accordance with county standards and under the supervision and direction of the county engineer. *Id.* This broad authority is reiterated in RCW 36.32.120(2) which provides that the county commissioners shall "lay out, discontinue, or alter county roads and highways within their respective counties, ***and do all other necessary acts relating thereto*** according to law, except within cities and towns which have jurisdiction over the roads within their limits." (emphasis added). This includes performing "***all acts necessary and proper for the administration of the county roads***." RCW 36.75.040. Interpreting a substantially similar version of RCW 36.75.020, the Washington Attorney General concluded that "the legislature has made all matters relevant to the construction and maintenance of county roads the exclusive function of the boards of county commissioners." 1958 Op. Att'y Gen. No. 169, 1958 WL 56416, at *1.[3]

[3] There is no inherent right for a private party to conduct private business on public streets without the consent of the state, nor except upon the terms and conditions prescribed by the state or municipality. *Baster-Wyckoff Co. v. City of Seattle* 67 Wn.2d 555, 560, 408 P.2d 1012 (1965); *Hadfield v. Lundin*, 98 Wash. 657, 168 P. 516 (1917).

B. Counties and Utilities Have Long Recognized a County's Right to Grant Franchises Governing Construction, Maintenance, and Operation of Utility Facilities Within Public Rights-of-Way.

Washington counties are empowered by the legislature to grant franchises for use of public ROW. Specifically, RCW 36.55.010 provides:

> Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right-of-way of county roads in their respective counties for the construction and maintenances of waterworks, gas pipes, telephone, telegraph, and electrical light lines, sewers, and any other such facilities.

"A franchise [is] … the right of a public utility to make use of the city streets for the purpose of carrying on the business in which it is generally engaged, that is, of furnishing service to members of the public generally." *City of Lakewood v. Pierce Cty.*, 106 Wn. App. 63, 73-74, 23 P.3d 1 (2001) (quoting *Washington Fruit & Produce Co. v. City of Yakima*, 3 Wn.2d 152, 157-58, 100 P.2d 8 (1940)). As Puget Sound Energy's Municipal Franchise Briefing Books states, a franchise is a document that establishes "the basic framework by which our utility facilities are allowed to occupy public right away." If a utility does not wish to enter into franchise agreement, it may decline to do so, and accordingly, operate its facilities outside public ROW. *See Pac. Tel. & Tel. Co. v City of Everett*,

97 Wash. 259, 267, 166 P. 650 (1917); *see also City of Spokane v. Spokane Gas & Fuel Co.*, 175 Wash. 103, 107, 26 P.2d 1034 (1933).

Franchises have the legal status of contracts, and municipalities are "unquestionably empowered ***to impose*** lawful restrictions on the franchises [they agree] to grant." *City of Lakewood*, 106 Wn. App. at 74 (emphasis added); *City of Issaquah v. Teleprompter Corp.*, 93 Wn.2d 567, 577, 611 P.2d 741 (1980). Municipalities have this power as they hold the interest acquired by the public in trust and the primary purpose for which roads and streets are established and maintained is public travel. *See State ex. rel. York v. Bd. of Comm'rs*, 28 Wn.2d 891, 897-98, 184 P.2d 577 (1947). Utilities' uses of public roadways constitute "secondary" or "subordinate" purposes, which are permissible only when they are consistent with the primary purpose. *Id.* at 898. Thus, a county – or other municipality when so authorized – makes the determination whether a secondary use as proposed is appropriate. *State v. Pub. Util. Dis. No. 1 of Clark Cty.*, 55 Wn.2d 645, 649-50, 349 P.2d 426 (1960).

> In the absence of an express and definite provision to the contrary, ***a utility company maintains its structures and rights in a public street subject to the paramount right of the [municipality] to use its streets for all governmental purposes.*** A grant, franchise, easement or other right accorded to a utility company by public authority, to maintain structures in public streets, ***is at all times subject to the police power of the sovereign, and unless***

> ***expressly agreed to otherwise in the franchise***, the company must, at its own expense, make such changes as the public convenience and necessity require, and it is bound to alter, remove, relocate, support and maintain a structure, when necessary for the city's carrying out a function in the interest of public health, safety or welfare, and this is so, whether the [municipality] has fee title or a mere easement in the street.

Id. (emphasis added). As Washington's legislature established, if a county deems it in the public interest to grant a franchise, it may ***require*** certain conditions – such as placement of utilities and their appurtenances – as part of the franchise agreement. *See* RCW 36.55.050.

The Districts' argument that the trial court's ruling allows a utility to locate, operate, and maintain facilities within a public ROW without a franchise agreement is inconsistent with Washington law. A county's right to impose conditions upon a utility through a franchise agreement and to regulate the use of public, county-controlled ROW for their primary purpose is not only established by law, but by common sense and decades of practice. The reasons are obvious – if franchise agreements were not required for utilities to operate on public ROW, for example, who would determine who is responsible for the costs of working around utilities when road repair is necessary? If a utility trenches an existing roadway, how would the county ensure and/or regulate that backfill and pavement repair are up to standards? If a utility installs equipment without a

franchise agreement, who is responsible for ensuring the new equipment is not a clear zone[4] hazard, and is not detrimental to the safe primary use of the roadway (public travel) that counties are charged with maintaining? Each of these answers are found in franchise agreements, which are necessary to regulate the use of public ROW. *See City of Spokane*, 175 Wash. at 107 ("The municipality may refuse to grant a franchise at all. If it grants a franchise, it may do so on its own terms, conditions, and limitations. The applicant's alternative is to accept the franchise as offered, or reject it as a whole."). As described further below, to hold, as the utilities suggest, that the secondary users may use county ROW with no terms and/or conditions flips decades of law on its head. This would result in secondary users' rights being inconsistent with the primary use, and likely will result in increased litigation between and among counties, water districts, and other utilities.

C. Franchises Negotiated Between Washington Counties and Utilities Establish Conditions for Utilities' Use of Rights-of-Way and Protect the Public and the Counties.

As noted above, Washington counties historically have required water districts (and other utilities) to negotiate franchises governing the conditions and use of county-controlled ROW. Counties generally use

[4] A "clear zone" is the unobstructed roadside area that allows a driver to stop or regain control of a vehicle that has left the roadway.

counsel from the civil division of the prosecuting attorney's office in such negotiations and enforce the franchise agreements through county engineers or, if necessary, through other authorities. Representative samples of water district[5] franchises for several of WSAC's member counties are included in the appendix hereto. As shown by those franchise agreements, terms and conditions often include, *inter alia*, the following: acknowledging the counties' jurisdiction over ROW and rights to maintain public roadways[6], indemnifying counties and committing to hold counties harmless[7], requiring insurance (often including minimum policy limits and mandating the county to be a named insured)[8], barring county liability for any harm to the utility caused by the county's vacation of a ROW[9],

---

[5] Given the parties in this case, WSAC has attached examples from water district franchises. Similar franchise agreements are entered between counties and other kinds of utilities.

[6] *See* Peshastin Water District Franchise (Chelan County) § 4; Zirkle Fruit Company Franchise (Kittitas County) § 1; Jopp Water Company Franchise (Pierce County) §§ IV, IX; Silver Lake Water & Sewer District Franchise (Snohomish County) § 2.2; Whitworth Water District No. 2 Franchise (Spokane County) §§ 2, 6; Lake Whatcom Water & Sewer District (Whatcom County) §§ 9, 15.

[7] *See* Peshastin Water District Franchise (Chelan County) § 8; Zirkle Fruit Company Franchise (Kittitas County) §§ 13, 15; Jopp Water Company Franchise (Pierce County) §§ V, VII; Silver Lake Water & Sewer District Franchise (Snohomish County) § 16; Whitworth Water District No. 2 Franchise (Spokane County) § 33; Lake Whatcom Water & Sewer District (Whatcom County) § 14.

[8] *See* Peshastin Water District Franchise (Chelan County) § 9; Zirkle Fruit Company Franchise (Kittitas County) § 5; Jopp Water Company Franchise (Pierce County) § V; Silver Lake Water & Sewer District Franchise (Snohomish County) § 18; Whitworth Water District No. 2 Franchise (Spokane County) § 34; Lake Whatcom Water & Sewer District (Whatcom County) § 22.

[9] *See* Peshastin Water District Franchise (Chelan County) § 10; Jopp Water Company Franchise (Pierce County) § VI; Lake Whatcom Water & Sewer District (Whatcom County) § 13.

requiring the utility to commit to remove, repair, or relocate facilities if requested by the county[10], binding the utility to county permitting procedures and requirements[11], requiring utilities to restore county roads to their pre-utility-related work condition[12], setting standards for the utilities' performance of work[13], establishing terms for assignment of the franchise[14], establishing terms upon which the county may terminate or modify the franchise (including acknowledging the county's power to unilaterally terminate or amend the franchise)[15], requiring that all hiring or

---

[10] *See* Peshastin Water District Franchise (Chelan County) § 11; Zirkle Fruit Company Franchise (Kittitas County) §§ 3.I, 4.D; Jopp Water Company Franchise (Pierce County) § VII; Silver Lake Water & Sewer District Franchise (Snohomish County) § 9; Whitworth Water District No. 2 Franchise (Spokane County) §§ 8, 9; Lake Whatcom Water & Sewer District (Whatcom County) § 10.

[11] *See* Peshastin Water District Franchise (Chelan County) § 12; Zirkle Fruit Company Franchise (Kittitas County) § 3.A; Jopp Water Company Franchise (Pierce County) § I; Silver Lake Water & Sewer District Franchise (Snohomish County) §§ 4.2-4.4; Whitworth Water District No. 2 Franchise (Spokane County) § 15; Lake Whatcom Water & Sewer District (Whatcom County) § 5.

[12] *See* Peshastin Water District Franchise (Chelan County) § 13; Jopp Water Company Franchise (Pierce County) § I; Silver Lake Water & Sewer District Franchise (Snohomish County) § 7; Whitworth Water District No. 2 Franchise (Spokane County) § 15; Lake Whatcom Water & Sewer District (Whatcom County) § 6(a).

[13] *See* Peshastin Water District Franchise (Chelan County) § 14; Zirkle Fruit Company Franchise (Kittitas County) § 3.C; Jopp Water Company Franchise (Pierce County) § III; Silver Lake Water & Sewer District Franchise (Snohomish County) § 6; Whitworth Water District No. 2 Franchise (Spokane County) § 15; Lake Whatcom Water & Sewer District (Whatcom County) § 4.

[14] *See* Peshastin Water District Franchise (Chelan County) § 17; Jopp Water Company Franchise (Pierce County) § VIII; Silver Lake Water & Sewer District Franchise (Snohomish County) § 22; Whitworth Water District No. 2 Franchise (Spokane County) § 27; Lake Whatcom Water & Sewer District (Whatcom County) § 17.

[15] *See* Peshastin Water District Franchise (Chelan County) §§ 18, 22; Zirkle Fruit Company Franchise (Kittitas County) § 4.A; Jopp Water Company Franchise (Pierce County) §§ IX, XI; Silver Lake Water & Sewer District Franchise (Snohomish County) § 23; Whitworth Water District No. 2 Franchise (Spokane County) §§ 8, 28; Lake Whatcom Water & Sewer District (Whatcom County) § 19.

employment resulting from the franchise be non-discriminatory[16], establishing procedures for judicial or non-judicial resolution of disputes relating to the franchise[17], establishing procedures for addressing emergency threats to public safety or property caused by the utility (including allocating costs of such actions to the franchisee)[18], setting the term of the franchise agreement[19], requiring the posting of a bond to guarantee restoration of county roads to their pre-work condition[20], requiring that monuments and markers on the ROW be restored[21], requiring utilities to provide financial information upon county request[22], providing that the franchise may be terminated, installations removed, and hazardous conditions remediated should the utility cease service[23],

---

[16] *See* Peshastin Water District Franchise (Chelan County) § 21.
[17] *See* Peshastin Water District Franchise (Chelan County) § 24; Zirkle Fruit Company Franchise (Kittitas County) § 4.C; Jopp Water Company Franchise (Pierce County) §§ VII.12; XIII; Silver Lake Water & Sewer District Franchise (Snohomish County) §§ 24.1, 28; Whitworth Water District No. 2 Franchise (Spokane County) § 29.
[18] Zirkle Fruit Company Franchise (Kittitas County) § 4.B; Silver Lake Water & Sewer District Franchise (Snohomish County) §§ 5, 13; Whitworth Water District No. 2 Franchise (Spokane County) § 16.
[19] Zirkle Fruit Company Franchise (Kittitas County) § 8; Jopp Water Company Franchise (Pierce County) Preamble; Silver Lake Water & Sewer District Franchise (Snohomish County) § 3; Whitworth Water District No. 2 Franchise (Spokane County) § 3; Lake Whatcom Water & Sewer District (Whatcom County) Ex. B.
[20] Jopp Water Company Franchise (Pierce County) § I; Whitworth Water District No. 2 Franchise (Spokane County) §§ 15, 25.
[21] Jopp Water Company Franchise (Pierce County) § I; Silver Lake Water & Sewer District Franchise (Snohomish County) § 6.4; Whitworth Water District No. 2 Franchise (Spokane County) § 19; Lake Whatcom Water & Sewer District (Whatcom County) § 12;
[22] Jopp Water Company Franchise (Pierce County) § IX.
[23] Jopp Water Company Franchise (Pierce County) § XII; Silver Lake Water & Sewer District Franchise (Snohomish County) §§ 14.1-14.3; Whitworth Water District No. 2 Franchise (Spokane County) § 26.

providing that owners of previously installed utilities in the ROW have preference in the location and positioning of their facilities[24], requiring the utility to submit records accurately reflecting the location of its facilities in the ROW[25], establishing maintenance standards for the utility's facilities[26], and establishing terms for the utility's use of hazardous materials and remediation for any release of hazardous materials[27], among others. County franchises also often reserve the right to charge additional fees and compensation for use of county-controlled ROW.[28]

D. Upholding the Trial Court Order Could Deprive Counties of the Right to Establish Terms and Conditions for Utility Use of Rights-of-Way and Needlessly Multiply Litigation.

As long permitted by Washington law and as shown by the

---

[24] Silver Lake Water & Sewer District Franchise (Snohomish County) § 2.1; Whitworth Water District No. 2 Franchise (Spokane County) § 7; Lake Whatcom Water & Sewer District (Whatcom County) § 7.

[25] *See* Peshastin Water District Franchise (Chelan County) § 3.G; Silver Lake Water & Sewer District Franchise (Snohomish County) §§ 8.1, 9.8; Whitworth Water District No. 2 Franchise (Spokane County) §§ 11, 15.

[26] Silver Lake Water & Sewer District Franchise (Snohomish County) § 11; Whitworth Water District No. 2 Franchise (Spokane County) § 22.

[27] Silver Lake Water & Sewer District Franchise (Snohomish County) § 12; Whitworth Water District No. 2 Franchise (Spokane County) § 21.

[28] *See* Peshastin Water District Franchise (Chelan County) § 23 ("The Grantee agrees that it shall be subject to all authority now or later possessed by the county or any other governing body having jurisdiction to fix just, reasonable, and compensatory rates for services under this franchise."); Lake Whatcom Water & Sewer District (Whatcom County) § 23 ("No privileged or rights granted hereunder shall exempt Grantee from any future uniform rent, license, tax charge or impost which may hereafter be required by the Grantor, for revenue or as reimbursement for use and occupancy of public ways."); *cf.* Jopp Water Company Franchise (Pierce County) § IX (requiring water company to provide "business records, gross revenue reports, or rules and regulations relevant to a determination of the gross revenues received by Grantee from the area served by the facilities permitted by this Franchise").

representative franchise agreements from counties around the state, Washington counties use franchise agreements to impose terms and conditions upon utilities relating to the utilities' use of county-controlled ROW. Should the trial court's order holding that counties do not have authority to require utilities to enter franchise agreements be upheld, Washington counties and the public would suffer significant harm. Additionally, without franchise agreements to guide interested parties' conduct, litigation is likely to multiply.

1. Counties and the Public Will Suffer Harm if Counties Cannot Require Utilities to Enter Franchise Agreements.

As illustrated by the franchise agreements attached to the appendix hereto, counties impose a wide variety of terms and conditions upon utilities' use of public ROW. The harms counties and the public will face if counties are unable to require utilities to enter such franchise agreements include but are not limited to:

Charges for ROW Use. Franchise agreements require utilities to pay counties various fees, charges, and in-kind compensation in connection with their use of county-controlled ROW.[29] Without a

[29] *See* Peshastin Water District Franchise (Chelan County) §§ 12, 23; Zirkle Fruit Company Franchise (Kittitas County) § 10; Jopp Water Company Franchise (Pierce County) § IX; Silver Lake Water & Sewer District Franchise (Snohomish County) § 15; Whitworth Water District No. 2 Franchise (Spokane County) §§ 15, 24; Lake Whatcom Water & Sewer District (Whatcom County) § 23.

contractual commitment by the utilities to pay those fees, charges, and compensation, counties will face uncertainty regarding recoupment of costs (permitting, costs of use of roads, county-incurred expenses, administrative fees, and the like) associated with utilities' use of county-controlled ROW and other compensation. Moreover, charging reasonable rental compensation for use of the ROW by secondary users such as utilities is consistent with longstanding constitutional prohibitions on gifts of public funds (as to private utilities) and accountancy principles (as to public utilities).

Road Restoration. Virtually all franchise agreements provide that after a utility performs work on, over, under, or adjacent to an ROW, the utility is responsible for promptly restoring the road to a condition at least as good as it was prior to the work, a standard often evaluated by the County Engineer or similar official. *See, e.g.*, n.12, *supra*. Often those agreements further provide that should a utility not sufficiently restore a road, the county may do so and pass the costs (including overhead) on to the utility. Without the ability to enforce such provisions, the responsibility for and cost of restoring county roads to safe and suitable conditions for their primary purpose – public travel – may fall to the

counties.[30]

Indemnification. Franchise agreements commonly include strong indemnification and hold harmless clauses, often waiving the utility's immunity under the workers' compensation statute and covering claims not only for which the utility was negligent, but also where the county or third parties were negligent. *See, e.g.*, n.7, *supra.* Such clauses, combined with the insurance clauses described below, provide counties robust protection from claims arising from utility-related work by the utility's employees, county employees, and third parties. Without such provisions, counties would bear added risk and expense for utility-related work. Indemnification clauses are particularly important for work relating to ROW because the most common ROW – roads – can be inherently dangerous. *See Wuthrich v. King Cty.*, 185 Wn.2d 19, 25, 366 P.3d 925 (2016); *Ruff v. King Cty.*, 125 Wn.2d 697, 700, 887 P.2d 886 (1995) ("A county has a duty to maintain its roadways in a reasonably safe condition for ordinary travel by persons using them in a proper manner."); *Provins v. Bevis*, 70 Wn.2d 131, 138, 422 P.2d 505 (1967); *see also* Don F. Vaccaro, Annotation, *Liability of Governmental Entity or Public Officer for*

[30] It is "well established" that a county has a duty "to maintain its roadways in a condition safe for ordinary travel." *Wuthrich v. King Cty.*, 185 Wn.2d 19, 25, 366 P.3d 926, 929 (2016). Such a duty extends into the ROW along the road. *Id.* at 27 (noting that the duty extends to "the situation along the highway").

Personal Injury or Damages Arising Out of Vehicular Accident Due to Negligent or Defective Design of a Highway, 45 A.L.R.3d 875 (1972).

Insurance. Most franchise agreements provide that the utility have minimum levels of insurance coverage and require that the county be a named insured. *See, e.g.*, n.8, *supra.* Without such protections as are now required in franchise agreements, counties may be required to obtain additional insurance or pay higher premiums to protect against claims by third parties due to harm from utilities' facilities and equipment.

Bond Posting. Certain franchise agreements provide that the utility must post a bond to ensure performance and restoration of county ROW. *See, e.g.*, n.20, *supra.* Such bonds permit counties to protect themselves financially from utilities' failure to perform, without the necessity, expense, or delay of going to court or seeking reimbursement from utilities. They also protect counties against utility insolvency. The inability to require a bond in a franchise agreement will deprive counties of these protections.

Right-of-Way Preferences. Many franchise agreements provide that owners of authorized facilities or equipment installed in, on, across, over, under, or through ROW have priority in the placement of their facilities or equipment over later users, including utilities. *See, e.g.*, n.24, *supra.* These provisions ensure coordination of secondary uses of ROW

and establish priority for those users. Without such bright-line rules, counties (and courts) would be caught between competing secondary users of ROW. Further, if counties are not permitted to set such priority, disputes between utilities are likely to be more common.

Use and Remediation of Hazardous Materials. Installation of utilities, including water systems, frequently involves the use of hazardous materials. Certain franchise agreements govern utilities' use of hazardous materials and chemicals, and further require reporting to both the county and the State Department of Ecology of releases of such harmful materials. *See, e.g.*, n.27, *supra*. Franchise agreements often provide that utilities are to promptly remediate any such release, and that the county has the option to address any such release (at the utility's cost). Without the ability to impose these terms on utilities, public welfare could be put at risk and counties would incur significant additional exposure to liability. Additionally, without such provisions, counties could be responsible for the cost of remediating utilities' releases of hazardous materials on county-controlled ROW and adjoining property.

2. Allowing Utilities to Use County-Controlled Rights-of-Way Without Franchise Agreements Will Multiply Litigation.

The trial court's ruling that counties cannot, through franchise agreements, impose reasonable terms and conditions on utilities' use of

county-controlled ROW may also result in an abundance of litigation in which trial courts across the state could become the permitting arbiter for such matters. This is contrary to established law, is illogical, and will place undue burden on the courts.

As noted above, this Court has already established that municipalities have authority to regulate and restrict uses in maintaining the public roadways for public travel:

> It would seem that, within the fundamental limitations mentioned, ***the legislative control of ways and streets for the secondary use is absolute and that the legislative discretion in this regard is not subject to judicial intervention. That the legislature may delegate to municipalities such powers and act through their instrumentality is unquestioned*** … The [public] streets are limited in dimension. It is apparent that the secondary uses of the streets are physically restricted. When such limit is approached or reached must be determined by some competent authority. The inconvenience, too, of the obstruction of the streets for any secondary uses, and also the breaking up of the solid surface, which is frequently of stone and other expensive material, ***all suggest the propriety of the control of such uses in the discretion of the municipality.***

City of Spokane, 24 Wash. at 59-60 (emphasis added); *see also* 1952 Op. Att'y Gen. No. 425, 1952 WL 45039, at *1 ("Considering the primary use of county roads is for public highways, the board [of county commissioners] will then exercise its discretion as to whether secondary

uses, such as franchises for electric power lines, will substantially interfere with the primary use, granting or denying the application upon a consideration of whether its final action is in the best public interest.”). If a proposed secondary use will unreasonably interfere with the primary user’s purpose or is inconsistent with previously established secondary uses, a county may therefore decide not to issue a franchise.

The trial court’s ruling and the utilities’ argument that they have unfettered authority to use county ROW is incorrect under Washington law. Any argument that public utilities themselves may set the parameters of their use of ROW is equally wrong. To so hold would allow the secondary user of county ROW (the utilities) priority over the county (the representative of the primary users, *i.e.*, the public). Further, if a county is unable to grant or deny a franchise with stated, required parameters of use, utilities could engage in whatever behavior they chose on the county ROW– whether or not it negatively impacts the primary user or other secondary users.

The absence of county authority therefore likely would result in numerous disputes and increased litigation. In some cases, disputes may involve emergency injunctive relief where the trial court would essentially become the permitting authority over the ROW for that issue at that time. In other cases, the dispute may be resolved through long litigation over

appropriate uses of the county ROW and damages for improper use (or damages for restrictions on use). Not only will courts be burdened by these matters, but there is real risk of inconsistent results. As shown by the statutes, the legislature did not intend the courts to step into this role. Rather, counties possess permitting authority and the authority to impose certain reasonable restrictions on secondary users through franchise agreements, including reasonable compensation for use of a public asset. The trial court's ruling and the utilities' arguments to the contrary should be rejected.

IV. CONCLUSION

The trial court's order, if upheld, would eliminate the ability of Washington counties to preserve the primary purpose of ROW, public travel, and prevent counties from imposing reasonable terms and conditions for utilities' use of those ROW. The trial court's order granting summary judgment for the utilities should be reversed and this matter should be remanded with instructions to enter summary judgment for King County upholding Ordinance 18403.

RESPECTFULLY SUBMITTED this 9th day of August, 2019.

ARETE LAW GROUP PLLC

By: *s/ Jeremy E. Roller*
Denise L. Ashbaugh, WSBA # 28512
Jeremy E. Roller, WSBA # 32021

WASHINGTON STATE
ASSOCIATION OF COUNTIES

By: *s/ Mellani McAleenan*
Mellani McAleenan, WSBA # 29327

Attorneys for *Amicus Curiae* Washington State Association of Counties

PROOF OF SERVICE

I am and at all times hereinafter mentioned was a citizen of the United States, a resident of the State of Washington, over the age of 21 years, and not a party to this action. On the 9th day of August, 2019, I caused to be served, via the Washington State Appellate Court's Portal System, a true copy of the foregoing document upon the parties listed below:

David Hackett
Mackenzie Brown
DANIEL T. SATTERBERG
King County Prosecuting Attorney's Office
500 Fourth Avenue, 9th Floor
Seattle, WA 98104
david.hackett@kingcounty.gov
Mackenzie.brown@kingcounty.gov
Kris.bridgman@kingcounty.gov
rmunozcintron@kingcounty.gov

Matthew J. Segal
Kymberly Kathryn Evanson
Sarah S. Washburn
Pacifica Law Group LLP
1191 Second Avenue,
Suite 2000
Seattle, WA 98101
kymberly.evanson@pacificalawgroup.com
matthew.segal@pacificalawgroup.com
sarah.washburn@pacificalawgroup.com
Attorneys for Appellant King County

Richard Jonson
Jonson & Jonson, P.S.
2701 1st Ave, Suite 350
Seattle, WA 98121
Richard@jonson-jonson.com
Attorneys for Intervenor-Respondents

David F. Jurca
Helsell Fetterman LLP
1001 4th Ave, Suite 4200
Seattle, WA 98154
djurca@helsell.com
Attorneys for Intervenor-Respondents

Eric C. Frimodt
John W. Milne
Inslee, Best, Doezie & Ryder, P.S.
10900 NE 4th Street,
Suite 1500
Bellevue, WA 98009
efrimodt@insleebest.com
jmilne@insleebest.com
laddis@insleebest.com
jkovalenko@insleebest.com
Attorneys for Respondents

Hugh D. Spitzer
5604 16th Avenue NE
Seattle, WA 98105
spitzerhd@gmail.com
Attorney for Respondents

Philip A. Talmadge
Talmadge/Fitzpatrick/Tribe
2775 Harbor Ave SW, 3rd Fl,
Suite C
Seattle, WA 98126
Phil@tal-fitzlaw.com
matt@tal-fitzlaw.com
Attorneys for Respondents

Joel C. Merkel
Merkel Law Office
1001 Fourth Ave,
Suite 4050
Seattle, WA 98154
joel@merkellaw.com
Attorneys for Amicus Washington Rural Electric Cooperative Association

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 9th day of August, 2019.

s/ Annabel Barnes
Annabel Barnes

APPENDIX

Peshastin Water District Franchise (Chelan County) ..... APP. 1

Zirkle Fruit Company Franchise (Kittitas County) ..... APP. 13

Jopp Water Company Franchise (Pierce County) ..... APP. 22

Silver Lake Water & Sewer Distrct Franchise (Snohomish County) ..... APP. 43

Whitworth Water District No. 2 Franchise (Spokane County) ..... APP. 71

Lake Whatcom Water & Sewer District Franchise (Whatcom County) ..... APP. 100

Peshastin Water District Franchise
(Chelan County)

Return Address:

Penny Goehner
Chelan County Public Works
350 Orondo Avenue
Wenatchee, WA 98801

The information contained in this boxed section is for recording purposes only pursuant to RCW 36.18 and RCW 65.04, and is not to be relied upon for any other purpose, and shall not affect the intent of the warranty contained in the document itself.
Document Title: Peshastin Water District Franchise Grantor(s): Chelan County Grantee(s): Peshastin Water District Legal Description: N/A Assessor's Tax Parcel ID: N/A
Filed with the Auditor pursuant to RCW 39.34.040

RESOLUTION NO. 2003- 19

PESHASTIN WATER DISTRICT FRANCHISE

WHEREAS, Peshastin Water District of Chelan County, Washington, doing business in the State of Washington, has applied for a nonexclusive franchise to construct, operate and maintain a domestic water distribution system in, over, upon, across, along and under certain county roads, highways, and other county property in Chelan County, Washington, as hereinafter set forth; and

WHEREAS, the Chelan County Board of Commissioners has no basis to believe that the Peshastin Water District is not in compliance with all applicable laws, regulations, and agreements;

NOW, THEREFORE BE IT HEREBY RESOLVED by the Chelan County Board of Commissioners that:

The franchise is hereby given and granted to the Peshastin Water District of Chelan County, Washington, doing business in the State of Washington, County of Chelan, its successors, and assigns, hereinafter referred to as the Grantee, for a period of twenty (20) years, from and after the date of this Resolution to construct, operate, and maintain a domestic water distribution

pipeline system for the transportation and disposition of domestic water in, upon, under, across, along and over those certain county roads, highways and county property in Chelan County, Washington, described on said franchise.

EXHIBIT "A"

Terms and Conditions Applicable to Utility Franchises Granted by Chelan County

This Franchise is subject to the following terms and conditions:

1. Definitions.

County Road Right-of-Way. The term "County Road Right-of-Way" includes any road, street, avenue, or alley located within the area described in the attached Exhibit "A".

Director. The term "Director" refers to the director of the Chelan County Department of Public Works.

Grantee. The term "Grantee" refers to Peshastin Water District, its successors and those assignees approved pursuant to paragraph 16 herein.

Utility. The term "Utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the county property described in Exhibit "A".

Commission. The term "Commission" refers to the Chelan County Commission acting in its official capacity.

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the county property described in Exhibit "A".

District. The term "District" refers to the Peshastin Water District acting in its official capacity.

2. Acceptance by Grantees of Terms and Conditions

The full acceptance of this franchise and all of its terms and conditions shall be filed with the Clerk of the Commission within thirty (30) days from December 20, 2002, by the

Grantee. Full acceptance of this franchise is a condition precedent to its taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

Grantee shall also file this franchise for recording in the Office of the Chelan County Auditor.

3. Non-Exclusive Franchise

This franchise is not exclusive. It does not prohibit Chelan County from granting franchises for other public or private utilities, in, under, over, across, and along any county property, including county road rights-of-way.

This franchise does not prevent or prohibit Chelan County from constructing, altering, maintaining, or using any county road rights-of-way covered by this franchise. County retains full power to make all changes, relocations, repair, maintenance, etc., as it may deem fit.

4. Jurisdiction

This franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which Chelan County has an actual interest. It is not a warranty of title or of interest in county road rights-of-way.

Whenever any of the county road rights-of-way as designated in this franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this franchise shall continue in force and effect until such time as the incorporation and/or annexation is complete according to applicable state law, after which time the county will no longer have any responsibility for maintenance of any county roads, rights of way or other county property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of Chelan County over county road rights-of-way or the county's power to perform work upon its roadways; rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting, or excavating.

5. Regulation of Use and Control

This franchise does not deprive Chelan County of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the county road rights-of-way covered by this franchise.

6. Eminent Domain

This franchise and the limited rights and interests for the operation, maintenance, repair, and construction of Grantee's transmission and service lines and appurtenances are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by Chelan County within its existing right of way, the value to be attributed to all the rights and interests granted under this franchise shall not exceed the actual amount the Grantee paid to Chelan County in obtaining this franchise.

7. Enforcement.

Failure of Chelan County to enforce any provision of this agreement does not constitute a waiver of its right to enforce that provision or any other provisions of this agreement.

8. Indemnity and Hold Harmless

The Grantee agrees to indemnify and hold harmless Chelan County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors, and assigns to defend, indemnify and hold harmless Chelan County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Grantee's exercise of rights and privileges granted by this franchise. The Grantee's obligations under this section shall include:

(a) Indemnification for such claims which arise from the sole negligence of the Grantee, the concurrent negligence of both parties, or the negligence of one or more third parties.

(b) The duty to promptly accept tender of defense and provide defense to the county at the Grantee's own expense.

(c) Indemnification of claims made by the Grantee's own employees or agents.

(d) Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the county to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this franchise agreement, the Grantee agrees to defend, hold harmless and indemnify Chelan County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of Chelan County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify and hold harmless the county for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

9. Insurance.

Grantee shall obtain and maintain general comprehensive liability insurance on a per occurrence basis naming Chelan County as an additional insured with limits no less than two million dollars ($2,000,000.00) for each occurrence of bodily injury liability or property damage liability and shall provide Grantor with certificates of said insurance. The amounts listed in this paragraph shall not constitute any limitation of liability.

10. Vacation

If at any time Chelan County vacates any county road rights-of-way covered by this franchise, Chelan County will not be held liable for any damages or loss to the Grantee by reasons of such vacation. Chelan County may, after giving thirty (30) day's written notice to the Grantee, terminate this franchise with respect to any county road rights-of-way vacated.

11. Installation, Repair, Removal or Relocation

The Grantee hereby covenants, at its own expense, to install, repair, remove or relocate existing facilities including all appurtenant facilities and service lines connecting its services to users within county road rights-of-way if such installation, repair, removal, or relocation is required by the county for any purpose.

12. Requirement of Construction Permits

The Grantee, its successors or assigns, has the right, privilege and authority to enter the county road rights-of-way for the purpose of operating, maintaining, repairing, or constructing its transmission and service lines, and appurtenances, on the condition permits approved by the Director are obtained. Applications for work permits shall be presented to the Public Works Department, which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonable necessary repair or restoration to the county road rights-of-way. All work shall be done to the satisfaction of the Director and at Grantee's expense.

All equipment, lines, and appurtenances which are used in the operation, maintenance, repair, or construction of the Grantee's service and which are located within the county road rights-of-way shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee. All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

Grantee shall abide by all terms and conditions of any permits issued by Grantor, shall perform all work consistent with all permit provisions, and shall be responsible for traffic management during the performance of any work undertaken in the right of way.
The Grantee shall post a bond to Chelan County in an amount sufficient for any road repair or restoration. The amount of the bond shall be set by the Director and must be filed with Chelan County before a permit will be issued.

13. Restoration of County Road Rights-of-Way

After work on, over, under or adjacent to county road rights-of-way, the Grantee is responsible for and will leave all county road rights of way in as good a condition as they were before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore county road rights-of-way to the satisfaction of the Director, Chelan County may make such repairs or restorations as are necessary to return the county road rights-of-way to their pre-work condition. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee shall pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of Chelan County, then the Grantee shall pay all of the actual costs,

including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

14. Performance of Work

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on county road rights-of-way shall conform to all county requirements including, but not limited to, the requirements of the current edition of the county road standards in force when the work is performed and all traffic control shall also conform to the current edition of the manual of Uniform Traffic Control Devices in force when the work is performed.

15. Blasting Requirements

The right to operate, maintain, repair and construct Grantee's transmission and service lines and appurtenances granted by this franchise, does not preclude Chelan County, its agents or contractors from blasting, grading, or doing other road work contiguous to the Grantee's lines, and appurtenances. When practical, the Grantee will be given forty-eight (48) hours notice of any blasting or excavating so that the Grantee may protect its lines and appurtenances.

16. Survey Markers and Monuments

Before any work is performed under this franchise, the Grantee shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights of way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of Grantee's operations under this franchise. The method of referencing monuments or other markers or points shall be approved by the Director before placement. The replacement of all markers or monuments disturbed during any construction of the Grantee shall be made as promptly as conditions permit and as ordered by the Director. The cost of monuments or markers lost, destroyed, or disturbed and the expense of replacement with approved markers or monuments shall be borne by the Grantee.

17. Assignment

The Grantee shall not have the right to assign this franchise without consent of the Chelan County Board of Commissioners. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as surety bonds which either the Director or the Commission deems necessary to be posted are received. Commission approval of the

assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

18. Modifications and/or Revocation

If the Grantee, its successors or assigns shall violate or fail to comply with any of the terms, conditions or stipulations or any modifications of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise, either the Director or Commission may notify the Grantee of the county's intent to revoke, amend, alter, change or supplement this franchise. Chelan County shall give the Grantee thirty (30) days written notice of its intention to amend, alter, change or supplement this franchise, during which period the Grantee shall have the opportunity to remedy the failure to comply.

If Chelan County intends to revoke the franchise, the Grantee will be given written notification. A public hearing shall be scheduled within ninety (90) days following the notification. The decision to revoke this franchise will become effective ninety (90) days following the public hearing if the Commission finds the revocation to be in the public interest.

Chelan County specifically reserves for itself the right to impose taxes, use fees, costs, service requirements, or other fees on the Grantee for the privilege of conducting this business in Chelan County, for the use of the county's property, to pay for the cost of regulating this activity, or for any other public purpose so long as those taxes, use fees, costs, service requirements or other fees are imposed by ordinance, or resolution, and after one hundred eighty days (180) days written notice to the Grantee.

19. Expiration and Renewal

To the extent described in Exhibit "A", all rights granted by this franchise to county road rights-of-way outside incorporated towns and cities apply to all existing county road rights-of-way acquired by Chelan County during the term of this franchise.

If the Grantee has initiated a renewal of this franchise before it expires, the county may, at its sole discretion, extend the term of the franchise on a month-to-month basis for up to one year. Should the county elect to extend the franchise, written notice shall be provided to the Grantee before the franchise expiration date.

If the Grantee has not applied for a renewal of this franchise before it expires, Chelan County has the right to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including,

but not limited to, the safe operation of county roads, franchise holders, or for the construction, renewing, altering, or improving of any county road rights-of-way, or for the installation of lines and/or facilities of other franchise holders.

Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment, provided that any removal is effected within two (2) years from the expiration date of this franchise.

Upon expiration of this franchise, the Grantee shall continue to be responsible for the operation and maintenance of existing facilities in the county road rights-of-way but shall not have the right to provide additional services.

20. Compliance with Laws

Grantee shall conform to all applicable federal, state, and local laws and regulations including but not limited to the State Environmental Policy Act and the Chelan County Code.

21. Non-Discrimination Clause

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, religion, ancestry, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, religion, ancestry, national origin, age except, minimum age and retirement provisions, marital status, or the presence of any sensory, mental, or physical handicap.

Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination, or suspension in whole or in part, of the agreement by the county and may result in ineligibility for further county agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons.

22. Penalty for Violation of Conditions

If the Grantee shall violate or fail to comply with any of the terms, conditions or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise, the Commission may revoke, amend, alter, change or supplement this franchise. The Commission shall give thirty (30) day's written notice to the Grantee of its intention to do so, during which period the Grantee shall have the opportunity to remedy the failure to comply.

23. Rates

The Grantee agrees that it shall be subject to all authority now or later possessed by the county or any other governing body having competent jurisdiction to fix just, reasonable, and compensatory rates for services under this franchise.

24. Right of Appeal and Venue

Decisions, requirements, or approvals of the Director are binding on the parties to this document. Appeals from the Director's determinations will be made by filing a complaint with the Chelan County Superior Court.

25. Conformance with County Code

This franchise does not authorize the Grantee to engage in any activities regulated by the Chelan County Code or any other franchise. If the Grantee wants to engage in any such activities, it must first obtain from Chelan County a separate franchise which conforms to the requirements of said Code.

26. Severance

This agreement gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any provision of this franchise, or its application is determined to be invalid by a court of law, then the remaining provisions of this franchise shall continue and remain valid unless the dominant purpose of the franchise would be prevented or the public interest is no longer served.

Dated this 14th day of January 2003.

PESHASTIN WATER DISTRICT

By _____
Dennis Mengelos, President

ATTEST:

_____
Pam Gorton, Clerk of the Board

BOARD OF COUNTY COMMISSIONERS

_____
BUELL HAWKINS, Chairman

_____
RON WALTER, Commissioner

_____
KEITH GOEHNER, Commissioner

ATTEST: JANET K. MERZ

_____
Clerk of the Board

Date: 1/28/03

CHELAN COUNTY COMMISSIONERS SEAL

Zirkle Fruit Company Franchise
(Kittitas County)

RECORDER'S USE ONLY

01/22/2019 01:33:43 PM 201901220038
$106.00 Page:1 of 8
Miscellaneous Document KC PUBLIC WORKS
Kittitas County Auditor

TREASURER'S USE ONLY

REVIEWED BY
KITTITAS COUNTY TREASURER
DEPUTY Kylie Wiedhoff
DATE 1/22/2019

Return To:
Kittitas County Public Works
411 North Ruby Street, Suite 1
Ellensburg, WA 98926

Kittitas County Auditor/Recorder's Indexing Form

Please Print Or Type All Information in Black Ink

A. *Document Titles (or transactions contained therein):*
1 Non-Exclusive Irrigation Franchise
2

B. *Grantor (last name, first name, middle initial):*
1 Kittitas County
2
Additional grantors on page_____ of document.

C. *Grantee (last name, first name, middle initial):*
1 Zirkle Fruit Company
2
Additional grantees on page_____ of document.

D. *Legal description (lot, block, plat or section, township, range):*
Section 34, Township 17N, Range 19E, W.M.
Additional legal description on page_____ of document.

E. *Assessor's property tax parcel/account number(s)*:
850433 and 880433

F. *Reference numbers of documents assigned or released*:
N/A
Additional references on page_____ of document.

The auditor or recording officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

_____I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document

KITTITAS COUNTY PUBLIC WORKS
STATE OF WASHINGTON

NON-EXCLUSIVE IRRIGATION WATER FRANCHISE TO USE COUNTY ROADS, RIGHTS-OF-WAY AND OTHER COUNTY PROPERTY WITHIN KITTITAS COUNTY

Application of **ZIRKLE FRUIT COMPANY,** (OR HIS/HER SUCCESSORS), hereafter referred to as "FRANCHISEE" for irrigation water crossing over, along and under county roads, rights-of-way and other county property in Kittitas County, Washington, as hereinafter set forth, having come on regularly for hearing before the County under the provisions of RCW Chapter 36.55, and it appearing to the Board that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the franchise herein granted;

WHEREAS, the COUNTY also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the needs for the listed parcels as described at this date as **Tax Lot Number 850433 and Tax Lot Number 880433,** and that the coordination, planning, and management of the COUNTY's rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

WHEREAS, the COUNTY has determined that the development of a comprehensive plan for rights-of-way use and management is the most effective means for managing the current use of rights-of-way and ensuring prudent and appropriate decisions concerning the use of rights-of-way in the future; and

WHEREAS, "FRANCHISEE", has determined that it is in their best interests to move forward with the installation of facilities within the public rights-of-way prior to the completion of the comprehensive rights-of-way use and management plan and has agreed to abide by the terms and conditions of such a plan once it has been completed;

NOW THEREFORE; IT IS ORDERED:

Section 1. Non-exclusive Franchise Granted. The county of Kittitas hereby grants to "FRANCHISEE", subject to the conditions prescribed in this Franchise Agreement, the franchise rights and authority to construct, replace, repair, monitor, maintain, use and operate the equipment and facilities necessary for a irrigation water crossing, within the COUNTY-owned rights-of-way generally described below, and hereinafter referred to as the "franchise area":

Such franchise shall not be deemed to be exclusive to "FRANCHISEE", and shall in no way prohibit or limit the COUNTY's ability to grant other franchises, permits, or rights along, over, or under the areas to which this franchise has been granted to "FRANCHISEE"; provided, that such other franchises do not unreasonably interfere with "FRANCHISEE", exercise of franchise rights granted herein as determined by the COUNTY. This franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent, the COUNTY from using the franchise area or affect the COUNTY's jurisdiction over such area in any way.

Section 2. Authority. The Director of Public Works or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise and may develop such rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

Section 3. Construction Provisions and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this franchise and may result in some or all of the penalties specified in Section 4. See KCC 12.56

A. **Permit Required** - No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the franchise area without first obtaining a permit to Perform Work in the County Right-Of-Way from the COUNTY of Kittitas, Department of Public Works. "FRANCHISEE" shall post a bond in the amount deemed necessary by the Kittitas County Director of Public Works.

B. **Coordination** - All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with COUNTY infrastructure, future COUNTY of Kittitas Capital Improvement Projects, all developer improvements, and pertinent codes and franchises.

C. **Construction Standards** - Any construction, installation, maintenance, and restoration activities performed by or for "FRANCHISEE", within the franchise area shall be conducted and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All construction, installation, maintenance, traffic control and restoration activities shall be conducted such that they conform to the most current COUNTY of Kittitas standards in effect at the time that such activities take place, and as detailed in the Manual on Accommodating Utilities.

D. **Underground Installation Required** - All irrigation water system components shall be installed underground unless otherwise exempted from this requirement, in writing, by the Director of Public Works for the COUNTY.

E. **Removal or Abandonment** - Upon the removal from service of any irrigation water lines or other associated structures, facilities and amenities, "FRANCHISEE", shall comply with all applicable standards and requirements prescribed by the COUNTY of Kittitas Public Works Department for the removal or abandonment of said structures and irrigation water facilities.

F. **"One-Call" Location & Liability** – Kittitas County will not locate private infrastructure. The "One-Call" locate will be the responsibility of the "FRANCHISEE".

G. **As-Built Plans Required** - "FRANCHISEE" shall present as-built plans to be inspected and approved by the Kittitas County Public Works Director.

H. **Protect Public Interest** -Applicant understands and agrees that Kittitas County Code Chapter 12.56 Incorporates provisions necessary to protect the public interest and investment with regard to utilization of County road right-of-way and further, that the provisions of Chapter 12.56 are in full force and effect as if herein included or attached to or made a part of this franchise. Detailed restoration requirements are provided in the Manual on Accommodating Utilities.

I. **Relocation** - Whenever the COUNTY determines that it is necessary for any of "FRANCHISEE", facilities or other system components to be moved or relocated to accommodate the construction, or enhancement of any COUNTY-owned public amenity in the franchise area, the COUNTY shall notify "FRANCHISEE", in writing of such determination, and "FRANCHISEE", shall promptly submit plans for such relocation. Within ninety (90) days of the approval by the COUNTY of the plans for relocation, "FRANCHISEE", shall relocate those facilities or structures designated by the COUNTY. The costs of moving or relocating "FRANCHISEE" facilities or structures, including but not limited to costs for design, engineering and construction is the responsibility of the "FRANCHISEE".

Section 4. Franchise Compliance.

A. **Franchise Violations** - The failure by "FRANCHISEE" to comply fully with any of the provisions of this Franchise Agreement may result in a written notice from the COUNTY which describes the violations of the franchise and requests remedial action within thirty (30) days of receipt of such notice. If "FRANCHISEE", has not attained full compliance at the end of the thirty (30) day period following receipt of the violation notification, the COUNTY may declare an immediate termination of all franchise rights and privileges; provided that full compliance was reasonably possible within that thirty (30) day period. The demonstration of due diligence on the part of "FRANCHISEE", may be grounds for the grant of an extension in the period during which compliance is to be attained; provided that, "FRANCHISEE", continues to pursue correction of any violations of the Franchise Agreement noted by the COUNTY.

B. **Emergency Actions** - If any of "FRANCHISEE", actions, or any failure by "FRANCHISEE", to act to correct a situation caused by "FRANCHISEE", is deemed by the COUNTY to create a threat to life or property, the COUNTY may order "FRANCHISEE", to immediately correct said situation threat or, at the COUNTY's discretion, the COUNTY may undertake measures to correct said situation threat itself; provided that, when possible, the COUNTY shall notify "FRANCHISEE", of said threat and give "FRANCHISEE", an opportunity to correct said threat before undertaking such measures itself. "FRANCHISEE", shall be liable for all costs, expenses, and damages attributable to the correction of such an emergency situation as undertaken by the COUNTY to the extent that such situation was caused by "FRANCHISEE", and shall further be liable for all costs, expenses, and damages resulting to the COUNTY from such situation and any reimbursement of such costs to the COUNTY shall be made within thirty (30) days of written notice of the completion of such action or determination of damages by the COUNTY. The failure by "FRANCHISEE", to take appropriate action to correct a situation caused by "FRANCHISEE", and identified by the COUNTY as a threat to public or private safety or property shall be considered a violation of franchise terms and each day that such a situation continues to exist and "FRANCHISEE", fails to take appropriate action to abate said situation shall be regarded as a separate violation.

C. **Other Remedies** - Nothing contained in this Franchise Agreement shall limit the COUNTY's available remedies in the event if "FRANCHISEE" (OR HIS SUCCESSORS), failure to comply with the provisions of this Franchise Agreement, to include but not limited to, the COUNTY's right to sue for specific performance and/or damages.

D. **Removal of System** - In the event that this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, "FRANCHISEE", shall at his sole expense, promptly remove all irrigation water system components and facilities, provided that, the COUNTY, at its sole option, may allow "FRANCHISEE", to abandon its facilities in place.

Section 5. Insurance. "FRANCHISEE" shall present such insurance deemed necessary by the Kittitas County Public Works Director.

Section 6. Other Permits & Approvals. Nothing in this agreement shall relieve "FRANCHISEE", from any obligation to obtain approvals or necessary permits from applicable federal, state, and COUNTY authorities for all activities in the franchise area.

Section 7. Transfer of Ownership. The rights, privileges, benefits, title, or interest provided by this franchise shall be transferred to the new owner if any of these parcels change ownership.

Section 8. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of fifteen (15) years from the effective date of this franchise and will be renegotiable at the end of that time.

Section 9. Administrative Fees. NOT APPLICABLE

Section 10. Franchise Fee: $1,615.00

Section 11. Capacity for COUNTY Use. NOT APPLICABLE

Section 12. Notices. Any notices to be served upon the COUNTY or "FRANCHISEE", shall be delivered to the following addresses respectively:

COUNTY of Kittitas
Department of Public Works
411 N. Ruby St. Suite #1
Ellensburg, WA 98926

Zirkle Fruit Company
PO Box 190
Selah, WA 98942

Section13. Claims for Damages. In the construction, installation, repair, operation, and maintenance of its structures and facilities, "FRANCHISEE", shall use reasonable and appropriate precautions to avoid damage to persons or property. "FRANCHISEE", shall indemnify and save harmless the COUNTY from all claims, actions or damages of every kind or description, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any negligent act or omission of "FRANCHISEE", its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to "FRANCHISEE", by this franchise. In the event any claim or demand is presented to or filed with the COUNTY which gives rise to "FRANCHISEE", obligation pursuant to this section, the COUNTY shall within a reasonable time notify "FRANCHISEE", thereof and "FRANCHISEE", shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the COUNTY is named a party, and which suit or action is based on a claim or demand which gives rise to "FRANCHISEE", obligation pursuant to this section, the COUNTY shall promptly notify "FRANCHISEE", thereof, and "FRANCHISEE", shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, "FRANCHISEE", may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require "FRANCHISEE", to: (i) protect and save the COUNTY harmless from any claims, actions, or damages; (ii) settle or compromise any claim, demand, suit, or action; (iii) appear in or defend any suit or action; or, (iv) pay any judgment or reimburse the COUNTY's costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the sole negligence of the COUNTY. To the extent of any concurrent negligence between "FRANCHISEE", and the COUNTY, "FRANCHISEE", obligations under this paragraph shall only extend to its share of negligence or fault. The COUNTY shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege, and authority granted by or exercised pursuant to this franchise when the COUNTY determines that such participation is required to protect the interests of the COUNTY or the public. Such participation by the COUNTY shall be at the COUNTY's sole cost and expense.

Section 14. Severability. If any section, sentence, clause or phrase of this Franchise is held to be invalid or unconstitutional by a court of competent jurisdiction, the COUNTY may, at its sole option, deem the entire franchise to be affected and thereby nullified. However, in the event that a determination is made that a section, sentence, clause, or phrase in this Franchise is invalid or unconstitutional, the COUNTY may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this Franchise; provided that, if the COUNTY elects to enforce the remaining provisions of the Franchise, "FRANCHISEE", shall have the option to terminate the franchise.

Section 15. Indemnification. "FRANCHISEE", its successors and assigns, agrees and covenants to indemnify and hold harmless the County of Kittitas from and against any and all liability, loss, cost, damages, whether to persons or property, or expense of any type or nature, including reasonable attorney's fees and expert witness fees, to the extent it arises from any negligent act or omission or willful misconduct of "FRANCHISEE", its successors and assigns arising from or connected to "FRANCHISEE",

work under this franchise, provided however, that in case any suit or action is instituted against the County by reason of any such damage or injury, County shall: (i) cause written notice thereof to be given unto "FRANCHISEE"; and (ii) provide all reasonably requested assistance in defense or settlement of such claim at "FRANCHISEE", expense; and (iii) retain the right to control the defense of settlement or such claims.

Section 16. Effective Date. This Franchise shall take effect and be in full force and effect five (5) days after approval of the Kittitas County Board of Commissioners which is hereby approved.

Section 17. Other Conditions: None

This franchise is not valid until accepted and signed by "FRANCHISEE"

DATED this 15th day of January, 2019, at Ellensburg, Washington.

BOARD OF COUNTY COMMISSIONERS
KITTITAS COUNTY, WASHINGTON

Chair

Vice-Chair

Commissioner

COUNTY COMMISSIONERS SEAL KITTITAS COUNTY WASHINGTON

ATTEST:

Clerk of the Board

APPROVED:

Approved as to Form:
Prosecuting Attorney
WSBA #_____

ACCEPTED:

Scott C. Cluff ***-"FRANCHISEE"-Signature***

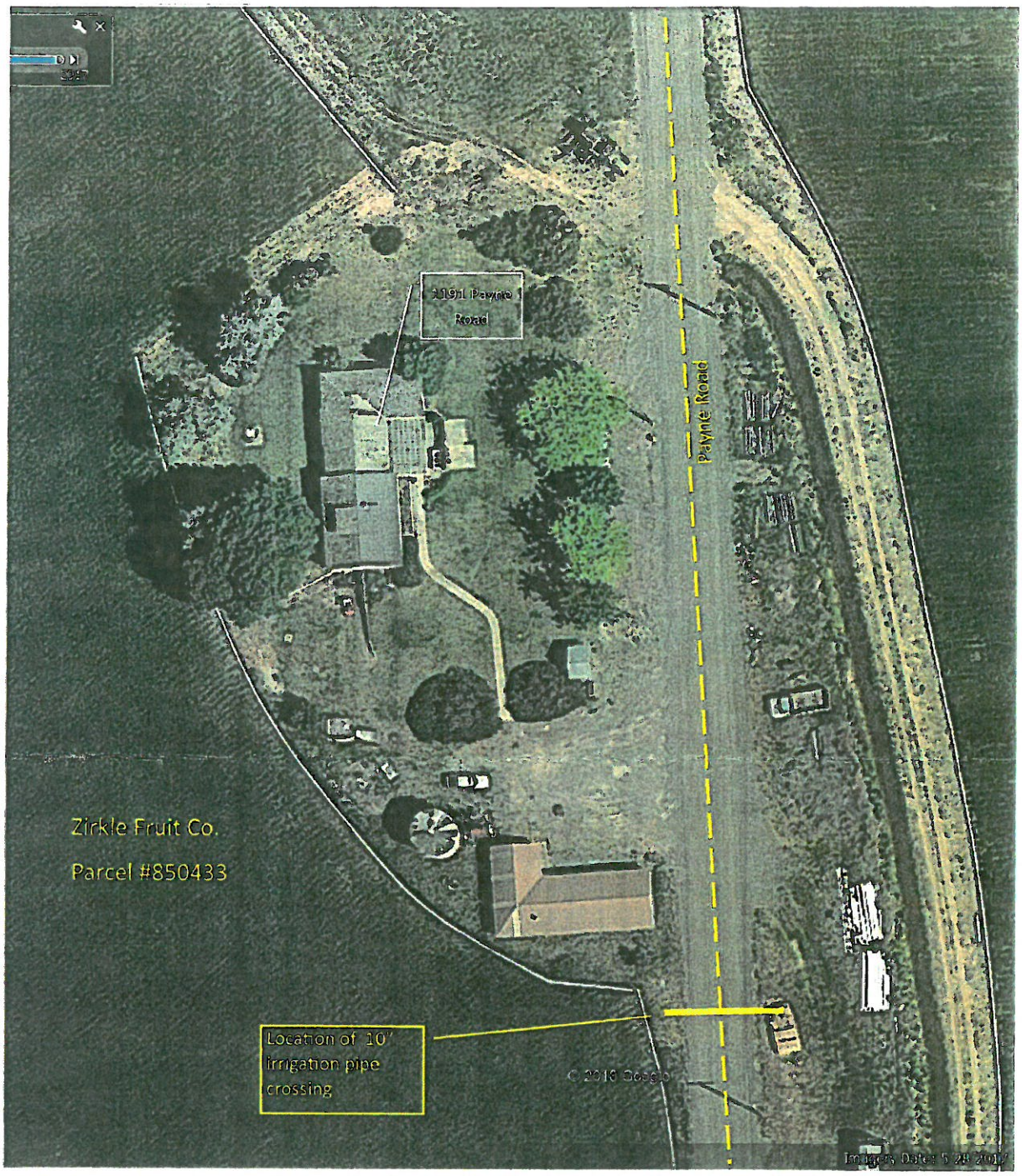
_____ ***-"FRANCHISEE"-Signature***

Print name: Scott C Cluff, Zirkle Fruit ***DATED:*** 1-7-19

Title: CFO / Treasurer

Print Name:_____ ***DATED:***_____

Title:_____


1191 Payne Road
Payne Road
Zirkle Fruit Co.
Parcel #850433
Location of 10" irrigation pipe crossing

Zirkle Fruit Company
P.O. Box 190
Selah, WA 98942

Phil Hull
509-969-7832

Jopp Water Company Franchise
(Pierce County)

NOT OFFICAL DOCUMENT

FILE NO. 81 PROPOSAL NO. 2005-74

Sponsored by: Councilmember Terry Lee

Requested by: County Executive/Public Works & Utilities Dept.

ORDINANCE NO. 2005-74

AN ORDINANCE OF THE PIERCE COUNTY COUNCIL GRANTING A NONEXCLUSIVE FRANCHISE TO JOPP WATER COMPANY, FOR LOCATION OF WATERLINES ON CERTAIN COUNTY OWNED RIGHTS-OF-WAY; AND AUTHORIZING THE COUNTY EXECUTIVE TO EXECUTE SAID FRANCHISE.

WHEREAS, Jopp Water Company of Pierce County, Washington, has applied for a nonexclusive Franchise to construct, operate, and maintain a waterline system under and along certain county roads, highways, and other county property in Pierce County, Washington, as hereinafter set forth; and

WHEREAS, An application for Franchise came on regularly for hearing before the Pierce County Council on the date set forth below under the provisions of Chapter 36.55, Revised Code of Washington; and

WHEREAS, It appears to the Council that notice of said hearing has been duly given to the public and those interested in providing the same service applied for by the applicant as

required by law and that it is in the public interest to grant the Franchise; NOW, THEREFORE,

BE IT ORDAINED by the Council of Pierce County:

Section 1. A nonexclusive Franchise, a copy of which is attached hereto and identified as Exhibit "A," is hereby given and granted to Jopp Water Company, of Pierce County, Washington, hereinafter referred to as the Grantee, for a period of 15 years, from and after the date of filing of the Franchise to be granted with the Clerk of the Pierce County Council.

Section 2. The Executive of Pierce County is hereby authorized to execute said Franchise.

PASSED this _____ day of _____, 2005.

ATTEST:

PIERCE COUNTY COUNCIL
PIERCE COUNTY, Washington

_____
Denise D. Johnson
Clerk of the Council

_____
Shawn Bunney
Council Chair

PIERCE COUNTY EXECUTIVE

_____
John W. Ladenburg
Approved _____ Vetoed _____
this _____ day of _____,
2005.

Dates of Publication of
Notice of Public Hearing: _____

Effective Date of Ordinance: _____

EXHIBIT "A" TO ORDINANCE NO. 2005-74

In the Matter of the Application of Jopp Water Company, of Pierce County, State of Washington, for a Franchise to construct, operate, and maintain pipelines for a Water System under and along certain Public Roads and Highways in Pierce County, Washington	)))))))	EXHIBIT "A" F R A N C H I S E

Application of Jopp Water Company, of Pierce County, Washington, for a nonexclusive Franchise to construct and maintain water pipelines with appurtenances for a water system under and along certain public roads, highways, and other County property in Pierce County, Washington, as hereinafter set forth, having come on regularly for hearing before the County Council of Pierce County, Washington, under the provisions of Chapter 36.55, Revised Code of Washington (RCW), and it appearing to the Council that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the Franchise herein requested;

NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the same is, hereby given and granted to Jopp Water Company, of Pierce County, Washington, hereinafter called "Grantee" for a term of 15 years from and after the date of filing this Franchise with the Clerk of the Pierce County Council. This Franchise is a license for the privilege, and authority to construct, maintain, and operate for the said period of time, a water pipeline with appurtenances for a water system under and

along public roads, highways, and other County property in Pierce County, Washington, as follows:

Section 7, Township 20 North, Range 1 East, W.M. All Pierce County roads in said section.

Section 12, Township 20 North, Range 1 East, W.M. All Pierce County roads in the Northeast, Southeast, and Southwest quarters of said section.

I

In the construction and installation of water system appurtenances and the excavation of trenches on County roads for the purposes of laying, relaying, connecting, disconnecting, and repairing mains and pipes and making connections between the same to the dwellings and other buildings of the consumers, Grantee shall be governed by and conform to the general rules adopted by Pierce County Public Works and Utilities - Transportation Services of Pierce County, Washington; and Grantee, at no expense to the County, shall complete all such work and shall repair the County roads and leave the same in as a good condition as before the work was commenced;

PROVIDED, HOWEVER, that no such work shall be done prior to obtaining permits therefore issued by the Pierce County Engineer (hereinafter "Engineer"), which permits shall set forth conditions pertaining to the work to be done and specifications

for the restoration of the roads to the same condition as they were prior to such work; and

PROVIDED FURTHER, the Engineer, in his or her discretion, may require a bond in a sum sufficient to guarantee to Pierce County that such roads shall be restored to the same condition as existed prior to such work. If Grantee does not repair County roads to the satisfaction of the Engineer, Pierce County Public Works and Utilities - Transportation Services may, at its sole discretion, repair such County roads, or cause them to be repaired, and Grantee hereby agrees to reimburse the County of Pierce for the cost of such work, including overhead costs.

Before any work is performed under this Franchise, which may affect any existing monuments or markers of any nature relating to section subdivisions, plats, roads, and all other surveys, Grantee shall reference all such monuments and markers in accordance with RCW 58.09.130. The reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement with approved monuments shall be borne by Grantee.

A complete set of reference notes for monuments and other ties shall be filed with Pierce County Public Works and Utilities - Transportation Services.

II

The water mains and pipes shall be laid down as directed by the Engineer at a depth of not less than 36 inches below the surface of the ground under and along the County roads, and in such a manner as not to interfere unnecessarily with the construction of sewers and drains, nor with the grading of County roads. All surface appurtenances to the water system shall be installed or constructed as approved by the Engineer.

III

All work done under this Franchise shall be done in a thorough and professional manner. In the laying of water pipes and conduits and the digging of ditches therefore, Grantee shall leave ditches in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to ensure that damage or injury shall not occur or arise by reason of such work; and that where any ditches or trenches are left open at night, Grantee shall place at all crossings suitable lights in such a position to guard against danger, and Grantee shall be liable for all property damage or personal injury that may be caused by reason of any injury sustained through Grantee's negligence by reason of any person, animal or property being injured through any negligence of

Grantee, or by reason of any damage caused through the neglect to properly guard any ditches or trenches dug or maintained by Grantee. The Engineer may specify actions to be taken to ensure the safety of the public and Grantee shall comply with such specifications.

IV

The County of Pierce, in granting this Franchise does not waive any rights that it now holds or may hereafter acquire and shall not be construed to deprive the County of Pierce of any powers, rights, or privileges that it now has or may hereafter acquire, including the right of eminent domain to regulate use and control of County roads covered by this Franchise, or to go upon any and all County roads and highways for the purpose of constructing and improving the same in such a manner as the County of Pierce, or its representatives may elect.

V

Grantee shall provide a certificate of insurance showing evidence of commercial general liability and property damage liability insurance that includes but is not limited to the operations of Grantee, Grantee's protective liability, products completed operation's coverage, broad form blanket contractual liability:

COVERAGES	LIMITS OF LIABILITY
Commercial General Liability Insurance Bodily Injury Liability	$2,000,000 Each Occurrence
Property Damage Liability	$250,000 Each Occurrence

or
COMBINED SINGLE
LIMIT COVERAGE OF
$2,000,000

The general requirements of the policy shall contain:

Pierce County is named as an additional insured in this Franchise, to applicable coverage.

In the event of nonrenewal, cancellation, or material change in the coverage provided, 30 days' written notice will be furnished to the County prior to the date of nonrenewal, cancellation, or change. Such notice shall be sent to the Engineer, Pierce County Public Works and Utilities - Transportation Services, 2401 South 35th Street, Room 150, Tacoma, WA 98409.

Pierce County has no obligation to report occurrences to the insurance companies unless a claim is filed with the County; and Pierce County has no obligations to pay premiums.

Grantee's insurance policies shall contain a "cross-liability" endorsement substantially as follows:

> The inclusion of more than one Insured under this policy shall not affect the rights of any Insured with respect to any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy has been issued to each, except that nothing herein shall operate to increase Grantee's liability beyond the amount or amounts for which Grantee would have been liable had only one Insured been named.
>
> Grantee's insurance is primary over any insurance that may be carried by Pierce County. Grantee agrees to provide proof of insurance each year to Pierce County.
>
> Grantee agrees to defend, indemnify, and save harmless Pierce County, its appointed and elected officials and employees, from and against all loss or expense, including but not limited to, judgments, settlements, attorney's fees, and costs by reasons of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury including death at any

time resulting therefrom, sustained by any person or persons, and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Grantee, its contractors, its or their employees or agents, Pierce County, its appointed or elected officers, or its employees or agents, except only such injury or damage as shall have been occasioned by the sole negligence of Pierce County, its appointed or elected officials or employees.

If the claim, suit, or action for injuries, death, or damages as provided for in this Franchise agreement is caused by or results from the concurrent negligence of (a) Pierce County or Pierce County's agents or employees; or (b) Grantee, or Grantee's agents or employees, the indemnity provisions provided for in this Franchise shall be valid and enforceable only to the extent of Grantee's negligence.

Grantee specifically and expressly waives any immunity under Industrial Insurance Title 51 RCW, and acknowledges that this waiver was mutually agreed upon by the parties herein.

VI

If, at any time, the County of Pierce shall vacate any County street, road or alley that is subject to rights granted by this Franchise, the Pierce County Council may, at its option, and by giving 30 days written notice to Grantee, its successors and assigns, terminate this Franchise with reference to such County road, street, or alley so vacated and the County of Pierce shall not be liable for any damages or loss to Grantee by reason of such termination.

VII

If, at any time, a new County road is created or established, and constructed, or an existing County road is reconstructed, realigned, or its grade is changed, or if sewer or drainage facilities, or any other facilities within future or existing County road rights-of-way are constructed, reconstructed, maintained, or relocated (all such work to be called "County Projects" hereinafter) and if the installation of the facilities as allowed in this Franchise, and all supplements and changes thereto, should interfere in any manner with any such County Projects then Grantee at no expense to Pierce County shall, upon notice, change the location or adjust the elevation of its facilities so that such facilities shall not interfere with such County Projects.

When relocation of Grantee's facilities are required by such County Projects, the following procedures shall be followed:

1. Pierce County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably possible.

2. Pierce County shall provide to Grantee two sets of preliminary plans for individual projects as soon as such plans are developed to a state of reasonable certainty, and shall advise Grantee of the anticipated date of start of work on such projects.

3. Grantee shall, when requested by Pierce County in writing, locate its facilities in the field, show those locations on one set of preliminary plans provided, and return that set to Pierce County Public Works and Utilities - Transportation Services within four weeks of receiving the written request.

4. Pierce County shall provide to Grantee final plans for such projects as soon as such plans are available and shall confirm or correct the anticipated date of start of work on such projects.

5. Pierce County shall assist Grantee in determining how its facilities shall be relocated. Such assistance by Pierce County shall include, at a minimum, copies of plans (as required above) and specifications for such County Projects, and information known to Pierce County as to existing survey control available for location of such County Projects. Such assistance shall not subject Pierce County to any liability for the costs of relocating the subject facilities a second time if Grantee incorrectly relocated its facilities the first time.

6. When requested, Pierce County and Grantee shall meet to discuss how County Projects and utility relocations can be accomplished with the least impact on the other. Pierce County's decision shall be final in such matters, but shall not be unreasonable.

7. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

> Relocation of Grantee's facilities shall normally be accomplished in advance of County Projects. In the event relocation of Grantee's facilities is done concurrently with such Projects, Pierce County shall be so notified and agree to a written schedule for relocation. Compliance with

such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with County Projects.

8. If Grantee does not relocate its facilities in a timely manner as required above, Pierce County may relocate, or cause to be relocated, such facilities of Grantee as Pierce County deems necessary, and in the manner Pierce County deems necessary, in its sole discretion. Grantee hereby indemnifies and holds Pierce County, its employees, officers, officials, and agents totally free and harmless from all and any liability which may arise from damages caused by the relocation by Pierce County of the facilities of Grantee, even if such damages and liability arise from the negligence of Pierce County, its employees, officers, officials, and agents.

9. Grantee hereby indemnifies and holds harmless Pierce County, its officers, officials, and employees, from damages that may arise from Grantee's failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above, or any other act or omission by Grantee, its contractor(s), agents, officers, or employees related to the provisions of this Franchise.

10. It shall be conclusively presumed that Pierce County will have suffered damages as a result of exercising its rights as set forth in Item 8 above, and compensation for such damages will be difficult to ascertain, and therefore, Grantee shall compensate Pierce County for such damages in the amount of twice the amount of the cost of such relocation of Grantee's facilities by Pierce County.

11. The exercise of its rights, as set forth in Item 8 above, by Pierce County in no way relieves Grantee of completing and/or finalizing the relocation of its facilities at no expense to Pierce County, if the relocation work done by Pierce County is incomplete.

12. In the event a lawsuit is brought by Pierce County against Grantee to collect damages presumed under Item 10 above for the exercise by Pierce County of its rights under Item 8 above, Grantee hereby agrees the only issue will be the actual cost to Pierce County for relocating Grantee's facilities. The party prevailing in such an action shall be allowed its legal fees and costs.

VIII

Grantee shall not sell, transfer, or assign this Franchise without first notifying the Pierce County Council. The terms

and conditions set forth herein shall be binding on Grantee's successors and assigns unless amended by the Council of Pierce County.

IX

This Franchise is granted upon the further express condition that it shall not be an exclusive Franchise and shall not, in any manner, prohibit the County of Pierce from granting any other Franchise under and along any of the said County roads of any kind and character or territories that may be deemed proper by the Pierce County Council, and this Franchise shall not in any way prevent the County of Pierce from using the County rights-of-way, or affect the jurisdiction over them, and every part of them by the County of Pierce with full power to make the necessary repairs, changes and alterations in the same and like manner as though this Franchise had never been granted.

Pierce County reserves for itself the right to so change, amend, modify, or amplify this Franchise to conform to any State statute, order of the Washington Utilities and Transportation Commission, or County regulation, ordinance, or right-of-way regulation, as may hereafter be enacted, adopted, or promulgated. This Franchise may be terminated at any time upon 90 days written notice to Grantee to terminate this Franchise if Grantee fails to comply with its terms and conditions, or if Grantee fails to comply with such changes, amendments, modifications, or amplifications and upon termination Pierce

County shall have a lien upon all equipment and materials erected or placed under this Franchise, which lien may be enforced to reimburse Pierce County for any reasonable expenses and payments incurred in terminating this Franchise, and to cure defaults by Grantee.

Grantee agrees to and shall provide available financial information to the County upon reasonable request. Grantee agrees to and shall during regular business allow agents of Pierce County access for inspection and reproduction of all of Grantee's business records, gross revenue reports, or rules and regulations relevant to a determination of the gross revenues received by Grantee from the area served by the facilities permitted by this Franchise.

X

In the event that the territory covered by this Franchise shall at any time during the Franchise period be included within the limits of any incorporated city or town, the authorities of said city or town shall have the right, to be exercised at their discretion, to acquire by purchase or condemnation, any part of such pipes, conduits, and water system other than transmission lines at a price to be based upon the reasonable value of the same at the time, without any additional value for the Franchise or any unexpired period thereof, and upon such acquirement, this grant and Franchise shall immediately terminate, only that portion to be incorporated.

XI

Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in part: All Franchises shall be subject to the right of the Council, or the people acting for themselves through referendum, to repeal for cause, amend, or modify the Franchise in the interest of the public, and agrees to said condition.

XII

Any failure to render adequate service to the patrons of said water system, or the discontinuance of such water services without fault on the part of the patron or patrons involved, for a period of 30 days, shall work a forfeiture of this Franchise, at the discretion of the Pierce County Council, unless the failure should result from causes beyond human control.

XIII

Venue and jurisdiction for any controversy arising from the Franchise shall be in Pierce County, Washington.

XIV

Grantee shall provide full acceptance of this Franchise and all its terms and conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County Council within 60 days from _____, 2005. This requirement shall be a condition precedent to the Franchise taking effect. If Grantee does not provide a signed copy of the Franchise as

set forth in this Section, this Franchise shall be null and void.

Pursuant to RCW 36.55.080, a copy of this Franchise shall be recorded in the Office of the Pierce County Auditor.

DATED at Tacoma, Washington, this _____ day of _____, 2005.

PIERCE COUNTY EXECUTIVE

_____
John W. Ladenburg

Jopp Water Company accepts and agrees to comply with all terms and conditions of this Franchise.

_____
Name

_____
Title

_____
Company, Corporate Name, or Individual

_____
Date

Silver Lake Water & Sewer District Franchise
(Snohomish County)

After Recording Return To:

Asst. Clerk of the Council
Snohomish County Council
3000 Rockefeller, M/S 609
Everett, WA 98201

201712010108 27 PGS
12/01/2017 9:12am $100.00
SNOHOMISH COUNTY, WASHINGTON

Grantor:	Snohomish County
Grantee:	Silver Lake Water and Sewer District
Tax Account No:	Not Assigned
Legal Description:	Unincorporated Snohomish County
Ref. # of Docs. Affected:	200205300744
Document Title:	An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington to Silver Lake Water and Sewer District

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 17-054

GRANTING A NONEXCLUSIVE FRANCHISE AUTHORIZING LIMITED USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH COUNTY, WASHINGTON TO SILVER LAKE WATER AND SEWER DISTRICT

WHEREAS, the Washington State Constitution, by and through its general grant of police power, and Section 36.55.010 of the Revised Code of Washington authorize counties to grant franchises for use of public rights-of-way; and

WHEREAS, Section 9.20 of the Snohomish County Charter and Title 13 of the Snohomish County Code specify requirements for franchises in Snohomish County rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way, however, actual construction and activities in the rights-of-way will also be subject to approved right-of-way use permits after review of specific plans; and

WHEREAS, Silver Lake Water and Sewer District has applied to Snohomish County, Washington, for a nonexclusive franchise to construct, maintain, operate, replace and repair water and sewer lines in, on, across, over, along, under, and/or through public rights-of-way within unincorporated Snohomish County; and

WHEREAS, the Snohomish County Council considered the Engineer's Report of the Department of Public Works, attached to and incorporated into this ordinance by reference, which report recommends that the subject franchise be granted, and further sets out guidelines and expectations for the right-of-way use permit process; and

WHEREAS, the Snohomish County Council held a public hearing on August, 30 2017, to solicit comments from the public and to consider whether to grant the requested franchise to Silver Lake Water and Sewer District; and

WHEREAS, it has been found to be in the public interest that a franchise, authorizing use of public rights-of-way for water and sewer lines, be granted to Silver Lake Water and Sewer District.

NOW, THEREFORE, BE IT ORDAINED:

TABLE OF CONTENTS

Section 1. **Grant of Franchise.**
Section 2. **Non-Exclusive Franchise.**
Section 3. **Term; Early Termination.**
Section 4. **Regulation of Use; Permits Required.**
Section 5. **Emergency Work.**
Section 6. **Compliance with Applicable Laws; Performance Standards.**
Section 7. **Restoration of Public Rights-of-Way.**
Section 8. **Record Plans, Record Drawings, and Records of Grantee Facility Locations.**
Section 9. **Relocation of Grantee Facilities.**
Section 10. **Undergrounding of Grantee Facilities.**
Section 11. **Maintenance of Grantee Facilities.**
Section 12. **Hazardous Materials.**
Section 13. **Dangerous Conditions, Authority for County to Abate.**
Section 14. **Removal of Grantee Facilities; Abandonment of Grantee Facilities.**
Section 15. **Fees, Compensation for Use of Public Rights-of-Way, and Taxes.**
Section 16. **Hold Harmless and Indemnification.**
Section 17. **Limitation of County Liability.**
Section 18. **Insurance.**
Section 19. **Performance Security.**
Section 20. **Annexation.**
Section 21. **Vacation.**
Section 22. **Assignment.**
Section 23. **Termination, Revocation, and Forfeiture.**
Section 24. **Remedies to Enforce Compliance; No Waiver.**
Section 25. **County Ordinances and Regulations – Reservation of Police Power.**
Section 26. **Eminent Domain, Powers of the People.**
Section 27. **Survival and Force Majeure.**
Section 28. **Governing Law and Stipulation of Venue.**
Section 29. **Severability.**
Section 30. **Notice and Emergency Contact.**
Section 31. **Acceptance.**
Section 32. **Effective Date.**

Section 1. Grant of Franchise.

1.1 Pursuant to Section 36.55.010 of the Revised Code of Washington ("RCW"), Section 9.20 of the Snohomish County Charter and Chapter 13.80 of the Snohomish County Code ("SCC"), Snohomish County, a political subdivision of the State of Washington (the "County"), hereby grants to Silver Lake Water and Sewer District, a municipal corporation, (the "Grantee"), a non-exclusive franchise to use those portions of the County's rights-of-way described in Section 1.3 below, for the purposes described in Section 1.2 below, subject to compliance with all applicable provisions of the SCC, the Engineering Design & Development Standards (EDDS) and the terms and conditions contained in this franchise ordinance (the "Franchise").

1.2 This Franchise grants the Grantee the right, privilege and authority to use portions of the Public Rights-of-Way (as such term is defined below) of the County for the sole purposes of constructing, maintaining, operating, replacing and repairing its water and sewer utility facilities (the "Permitted Use") and for no other purpose or use whatsoever. The term "Public Rights-of-Way" as used in this Franchise shall mean all public streets, roads, ways, or alleys of the County as now or hereafter laid out, platted, dedicated or improved. Pursuant to this Franchise, the Grantee shall have the right to install, locate, construct, operate, maintain, use, replace and/or remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the "Grantee Facilities"), in, on, across, over, along, under or through certain Public Rights-of-Way of the County, subject to all applicable provisions of Title 13 SCC (including EDDS), Chapter 36.55 RCW, and the terms and conditions of County right-of-way use permits issued pursuant to Title 13 SCC and Section 4 of this Franchise. This Franchise merely authorizes the Grantee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Grantee.

1.3 This Franchise covers all Public Rights-of-Way located within the following portions of unincorporated Snohomish County:

Township	Range	Sections
Twp. 28N	Rge. 5E	Sects. 16, 17, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36
Twp. 27N	Rge. 5E	Sects. 2, 3, 4, 5, 6 and 9

Section 2. Non-Exclusive Franchise.

2.1 This Franchise is granted upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the County from granting to other parties, at other times and under such terms and conditions as the County, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public Rights-of-Way. Owners, whether public or private, of any authorized facilities or equipment installed in, on, across, over, along, under, and/or through a Public Right-of-Way prior to the construction and/or installation of Grantee's Facilities in the same location, shall have preference as to positioning and location of their

facilities. The position and location of all Grantee's Facilities in the Public Rights-of-Way shall be subject to the authority of the County Engineer.

2.2 This Franchise shall in no way prevent, inhibit or prohibit the County from using any of the Public Rights-of-Way covered or affected by this Franchise, nor shall this Franchise affect the County's jurisdiction, authority or power over any of them, in whole or in part. The County expressly retains its power to make or perform any and all changes, relocations, repairs, maintenance, establishments, improvements, dedications, or vacations of or to any of the Public Rights-of-Way as the County may, in its sole and absolute discretion, deem fit, including the dedication, establishment, maintenance and/or improvement of new Public Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 3. Term; Early Termination.

3.1 The initial term of the Franchise shall be for a period of ten (10) years (the "Initial Term"), beginning on the Effective Date (as such term is defined in Section 32 of this Franchise) of the Franchise, and continuing until the date that is one day prior to the tenth (10th) anniversary of the Effective Date (the "Initial Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise.

3.2 This Franchise shall automatically renew for an additional term of ten (10) years (the "Extended Term," and, together with the Initial Term, the "Term"), subject to the County's right to renegotiate and/or unilaterally terminate the Franchise at any time after the Initial Term Expiration Date, as more fully described in Section 3.3 below.

3.3 The County shall have the right, in its sole and absolute discretion, at any time after the Initial Term Expiration Date, to unilaterally elect to open negotiations with the Grantee regarding proposed amendments, alterations or other changes (collectively, the "Amendments") to the terms and conditions of this Franchise. In such event, the County shall deliver written notice to the Grantee stating the County's general desire to amend the terms and conditions of the Franchise. Within thirty (30) days after the date on which the Grantee receives the County's notice letter, the Grantee and the County shall enter into good faith negotiations regarding potential Amendments to the terms and conditions of the Franchise. Should the parties reach agreement regarding any such Amendments, the parties shall memorialize such Amendments and seek approval of same from the County Council or such other County authority as may be proper. Should the parties prove unable to reach agreement regarding any proposed Amendments within ninety (90) days after the date on which negotiations commenced, then this Franchise shall automatically terminate.

Section 4. Regulation of Use; Permits Required.

4.1 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities occurring in, on, across, over, along, under, and/or through any Public Right-of-Way covered by this Franchise, shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

4.2 The Grantee shall not commence any work within Public Rights-of-Way until a right-of-way use permit authorizing such work has been issued by the County pursuant to Title 13 SCC for a site-specific location or installation, including, but not limited to, relocations. This requirement may be met by the County issuing a blanket utility permit (Type D7) to the Grantee to cover certain types of work within the Right-of-Way. In addition to any standards of performance imposed by this Franchise, any and all work performed by Grantee pursuant to this Franchise shall be performed in accordance with all current County standards applicable to such work, including the County approved plans and specifications for the work, and the terms and conditions of any right-of-way use permit and/or other permits and/or approvals required under Title 13 SCC in order to accomplish the work (e.g., lane closure or road detour permits). Grantee understands and acknowledges that some or all of Grantee's activities may require additional project permits and approvals under County land use codes and development regulations, and Grantee accepts full responsibility for obtaining and complying with same.

4.3 In addition to any criteria set forth in Title 13 SCC, the EDDS, and the County's utility accommodation policies, in reviewing the Grantee's application for any right-of-way use permit pursuant to this Franchise, the County Engineer may apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of such permit:

(i) the capacity of the Public Rights-of-Way at issue to accommodate the proposed Grantee Facilities;

(ii) the capacity of the Public Rights-of-Way at issue to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;

(iii) the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;

(iv) the public interest in minimizing the cost and disruption of construction within the Public Rights-of-Way at issue, including, but not limited to, coordination with future utility installation or County projects;

(v) recent and/or proposed construction and/or improvements to the Public Rights-of-Way at issue;

(vi) the availability of alternate routes, locations, and/or methods of construction or installation for the proposed Grantee Facilities, including, but not limited to, whether other routes are preferred; and

(vii) whether the Grantee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Grantee.

(viii) the public interest in having new, upsized, or improved water or sewer facilities installed in the right-of-way to serve the surrounding community;

4.4 Prior to commencing any work in a critical area as defined by SCC 30.91C.340, the Grantee shall comply with all applicable requirements of the County's critical areas regulations

in chapters 30.62A, 30.62B, 30.62C and 30.65 SCC, and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Grantee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work.

Should any of the Grantee Facilities in the Public Rights-of-Way break or become damaged such that an immediate danger to the property, life, health or safety of any individual is presented, or should any site upon which the Grantee is engaged in construction or maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to the property, life, health or safety of any individual is presented, the Grantee shall immediately take such measures as are reasonably necessary to repair the Grantee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect the property, life, health or safety of individuals. In the event of an emergency described above, the Grantee may take corrective action immediately, without first applying for or obtaining any permits or other authorizations that might otherwise have been required by the SCC and/or this Franchise. However, the emergency provisions contained in this Section 5 shall not relieve the Grantee from its obligation to obtain any permits necessary for the corrective actions taken, and the Grantee shall apply for all such permits as soon as is reasonably possible after the occurrence of the emergency. In the event of any emergency described in this Section 5, the Grantee shall notify the County of the emergency as soon as may be reasonably feasible after the Grantee discovers the emergency (such notice may be telephonic).

Section 6. Compliance with Applicable Laws; Performance Standards.

6.1 The Grantee shall at all times during the Term of the Franchise undertake the Permitted Use in compliance with all federal, state and local laws, rules and regulations (including, but not limited to, the County's comprehensive plan, zoning code, and other development regulations) that are applicable to any and all work or other activities performed by Grantee pursuant to or under authority of the Franchise.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Grantee Facilities subject to this Franchise, Grantee shall use industry accepted best-practices to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the Public Rights-of-Way at issue for vehicular and pedestrian transportation; (ii) construction and/or maintenance within Public Rights-of-Way and other authorized facilities, equipment and improvements; (iii) the operation, maintenance or improvement by the County of the Public Rights-of-Way or other public property impacted by Grantee's work; or (iv) use of the Public Rights-of-Way for other governmental purposes.

6.3 During any periods of construction within the Public Rights-of-Way, the Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by the SCC, the EDDS, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

6.4 Before the Grantee commences any work under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Grantee shall reference all such monuments and markers using a method or methods approved by the County Engineer, and a complete set of reference notes for monument and other ties shall be filed with the County prior to the commencement of construction. Reference points shall be so located that they will not be disturbed during Grantee's operations. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, as directed by the County Engineer, and to federal, state and local standards. All costs incurred pursuant to this Section 6.4 shall be borne by Grantee.

6.5 If the Grantee shall at any time plan to make excavations in any area covered by the Franchise, the Grantee shall, upon receipt of a written request to do so, provide an opportunity for the County and/or any other grantees or authorized users of the Public Right-of-Way at issue to participate in such excavation, and shall coordinate the location and installation of its Grantee Facilities with the County or such other grantees or authorized entities, PROVIDED THAT, Grantee need not permit the County or any other party (ies) to participate in an excavation if the County Engineer determines that any of the following are true in the reasonable judgment of the County and the Grantee:

(i) such joint use would unreasonably delay the performance of Grantee's work;

(ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or

(iii) valid safety reasons exist for denying a request for such joint use.

6.6 If the Grantee shall at any time plan to include communication facilities in furtherance of the Permitted Use, the Grantee shall provide an opportunity for the County to enter into negotiations for shared use of such communication facilities, and shall coordinate negotiation of shared use of its communication facilities with the County; PROVIDED THAT, Grantee need not permit the County to participate in shared use of communication facilities if any of the following are true, in the reasonable judgment of the County and the Grantee:

(i) such shared use would unreasonably delay the performance of Grantee's work;

(ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions, including but not limited to allocation of costs amongst various parties, for accomplishing such shared use;

(iii) valid safety reasons exist for denying a request for such shared use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Grantee; or

(iv) the installation of communication facilities is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

Section 7. Restoration of Public Rights-of-Way.

Promptly after completing any work in, on, under, over, across or upon any Public Rights-of-Way, including, but not limited to any excavation, installation, construction, relocation, maintenance, repair or removal of any Grantee Facilities, Grantee shall, at Grantee's sole cost and expense, restore the Public Rights-of-Way and any adjacent affected areas as required by the EDDS. Grantee shall also comply with any and all restoration conditions contained in applicable permits or approvals. The County Engineer shall have final authority to determine in each instance of restoration, whether adequate restoration has been performed.

Section 8. Record Plans, Record Drawings, and Records of Grantee Facility Locations.

8.1 The Grantee shall maintain adequate records to document obligations performed under this Franchise. The Grantee agrees and covenants that it shall, promptly upon substantial completion of any construction project involving a Public Right-of-Way, provide to the County, at no cost to the County, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Grantee Facilities located within such Public Right-of-Way. Additionally, the County may, at any time, deliver a written request to the Grantee for copies of maps and records showing the approximate location of all or any portion of the Grantee Facilities. In such event, the Grantee shall provide the County, at no cost to the County, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the County's request for same. The County shall have the right to review the Grantee's records regarding the subject matter of this Franchise at reasonable times, upon reasonable notice. The right to review records shall last for six (6) years from the expiration or earlier termination of this Franchise. In addition to the maps and records of the Grantee Facility locations, the Grantee shall provide the County, upon the County's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all Grantee Facilities subject to this Franchise as may be deemed necessary by the County, in its sole discretion, to manage the county roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare. Nothing in this Section 8 shall be construed to require Grantee to violate state or federal law concerning customer privacy, nor shall this Section 8 be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

8.2 If the Grantee considers any portion of its records provided to the County, whether in electronic or hard copy form, to be protected from disclosure under law, the Grantee shall clearly identify any specific information that it claims to be confidential or proprietary. If the County receives a request under the Public Records Act, Chapter 42.56 RCW, to inspect or copy the information so identified by the Grantee and the County determines that release of the information is required by the Act or otherwise appropriate, the County's sole obligations shall be to notify the Grantee (a) of the request and (b) of the date that such information will be released to the requester unless the Grantee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. If the Grantee fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this section assumes, no obligation on behalf of the Grantee to claim any exemption from disclosure under the Act. The County shall not be liable to the Grantee for releasing records not clearly identified by the Grantee as confidential or proprietary. The County shall not be liable to the Grantee for any records that

the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Grantee Facilities.

9.1 The Grantee agrees and covenants that it will promptly, at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from the Public Rights of Way any Grantee Facilities when the County Engineer determines after full and fair consideration that such a relocation is necessary for any of the following reasons: (i) traffic conditions; (ii) public safety; (iii) dedications of new Public Rights-of-Way and the establishment and/or improvement thereof; (iv) widening and/or improvement of existing Public Rights-of-Way; (v) vacations of Public Rights-of-Way; (vi) freeway construction; (vii) change or establishment of road grade; or (viii) the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; PROVIDED that the Grantee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the County Engineer, any Grantee Facilities required to be temporarily disconnected or removed. In the event of a conflict between this Section 9 and the specific terms of any existing real property interests and rights owned by the Grantee, such as a utility easement or other servitude, the terms of this Section 9 shall be subject to the specific terms of the real property interests and rights owned by the Grantee unless and until those rights are extinguished or amended (i) by mutual agreement, (ii) pursuant to a judicial condemnation order, (iii) by negotiated sale of said property rights between Grantee and the County in-lieu of condemnation, or (iv) by any other lawful means.

9.2 Upon the request of the County and in order to facilitate County improvements to Public Rights-of-Way, the Grantee agrees to locate and, if reasonably determined necessary by the County, to excavate and expose, at its sole cost and expense, portions of the Grantee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design.

9.3 Grantee shall, upon reasonable prior written request of any person or entity holding a permit issued by the County to move any structure, temporarily move its facilities to allow the moving of such structure; PROVIDED (i) Grantee may impose a reasonable charge on the permittee for the movement of Grantee's Facilities; (ii) Grantee is granted a permit by the County for such work if a permit is needed; and (iii) Grantee is given not less than ten (10) business days' notice to arrange for such temporary relocation; EXCEPT in any case where the County Engineer determines Grantee Facilities are not reasonably movable.

9.4 Where the County imposes conditions or requirements on a third party development requiring the relocation of any Grantee Facilities, the County shall not be responsible for paying any costs related to such relocation. Nothing in this Franchise is intended or shall be construed to prohibit the Grantee from assessing on such person or entity, other than the County, the costs of relocation as a condition of such relocation.

9.5 To assist Grantee with anticipating relocations of Grantee Facilities related to County improvements to the Public Rights-of-Way, upon request, the County will provide the Grantee with copies of the most recently adopted Six-Year Transportation Improvement Program ("TIP") and Annual Construction Program ("ACP").

9.6 If the County determines that a County project necessitates the relocation of existing Grantee Facilities, the parties shall proceed as follows:

(i) The County shall provide the Grantee at least ninety (90) days written notice prior to the commencement of the construction phase of the County project at issue; PROVIDED, that under the following circumstances the County need only provide the Grantee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health or welfare; (b) in the event of an emergency beyond the control of the County and which will result in adverse financial consequences to the County; or (c) where the need to relocate the Grantee Facilities could not reasonably have been anticipated by the County.

(ii) The County shall provide the Grantee with copies of pertinent portions of the designs and specifications for the County project as well as a proposed new location for the Grantee Facilities at least ninety (90) days prior to the commencement of the construction phase of the County project to enable Grantee to promptly relocate such Grantee Facilities. Upon request of the Grantee, thirty-percent (30%), sixty-percent (60%) and ninety-percent (90%) design plans shall be provided to the Grantee. The County and the Grantee shall, upon the request of either party, meet to discuss the plans, specifications and schedule of the County project at issue at a mutually agreed time in a location determined by the County.

(iii) After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities within the Public Right-of-Way at least ten (10) days prior to commencement of the construction phase of the County project at no charge, cost or expense to the County, unless otherwise agreed to within a separate agreement executed by both Parties. Relocation shall be accomplished in such a manner as to accommodate the County's project. In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the County Engineer.

(iv) The County and the Grantee may, for each individual County project, enter into an agreement for costs incurred by the County for relocation of Grantee's Facilities and associated work tied to the relocation.

(v) In the event of an emergency, the Grantee shall relocate the Grantee Facilities at issue within a time period reasonably specified by the County Engineer.

9.7 The Grantee may, after receipt of written notice requesting a relocation of any Grantee Facilities in accordance with Section 9.6, submit to the County proposed written alternatives to such relocation. The County shall evaluate such alternatives and advise the Grantee in writing if

one or more of the alternatives are suitable to accommodate the County project. If so requested by the County, the Grantee shall submit additional information to assist the County in making such evaluation. The County shall give each alternative proposed by the Grantee full and fair consideration. Where, upon the request of the Grantee, the County incurs additional costs in performing any maintenance, operation, or improvement of or to public facilities due to measures taken by the County to avoid damaging or to otherwise accommodate one or more Grantee Facilities, the Grantee shall reimburse the County for the full amount of such additional costs promptly upon receiving the County's invoice for same. In the event the County ultimately determines that there is no reasonable or feasible alternative to relocation, the Grantee shall relocate the Grantee Facilities at issue as otherwise provided in this Section 9.

9.8 The provisions of this Section 9 shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of any Grantee Facility by any person or entity other than the County, where the facilities to be constructed by said person or entity are not or will not become County-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any County projects. The Grantee shall provide certified record drawings (or as-built drawings) detailing the location of Grantee's Facilities within the Public Right-of-Way required to be relocated or removed for the purpose of the non-County project.

9.9 Should relocation be required for a County project pursuant to this Section 9, the Grantee shall be responsible for timely relocation of the Grantee Facilities at issue and the coordination of such relocation with the County (or the County's contractor for the County project). The Grantee shall be fully responsible for the costs of any delays to County projects resulting from relocations of any Grantee Facilities if the Grantee is the reason for the delay. The Grantee shall indemnify, defend and hold harmless the County from and against any and all claims, lawsuits, or damages, including those brought by a contractor of the County engaged in a County project, arising out of or caused in whole or in part by the location or relocation of one or more Grantee Facilities, as more fully set forth in Section 16 of this Franchise.

9.10 In order to assist in planning efforts, increase coordination, and minimize expenses and disruption of public travel and utility service, to the extent resources are available in the sole determination of each Party, the Parties agree to coordinate facility planning and construction efforts, including:

(i.) Meeting and sharing plans and documents as needed to stay informed on respective capital and maintenance programs, including providing adopted Capital Improvement Plans, and annual schedules of projects which may affect Rights-of-Way;

(ii.) Providing detailed information about the location and capacity of respective facilities;

(iii.) Assigning representatives to coordinate planning for capital projects;

(iv.) Meeting as necessary to schedule and coordinate construction activities; and

(v.) Cooperating in the planning and implementation of emergency operations response procedures.

Section 10. Undergrounding of Grantee Facilities.

10.1 The undergrounding requirements of this Section 10 shall apply where the Grantee Facilities consist of cable or any other facilities, equipment or systems which are reasonably capable of being placed underground. Where the Grantee Facilities consist of antennae or other facilities, equipment or systems which are required to remain above ground in order to be functional, the terms and conditions of this Section 10 shall not apply.

10.2 In any area of the County in which there are no aerial facilities other than antennae or other facilities required to remain above ground in order to be functional, or in any area in which telephone, electric power wires or other cables have been placed underground, the Grantee shall not be permitted to erect poles or to run or suspend wires, cables or other similar facilities thereon, but shall lay all such wires, cables or other facilities underground in the manner required by the County. The Grantee acknowledges and agrees that, even if the County does not require the undergrounding of all or any portion of the Grantee Facilities at the time the Grantee applies for the applicable right-of-way use permit, the County may, at any time in the future, and in the County's sole and absolute discretion, require the Grantee to convert all or any portion of the aerial Grantee Facilities to underground installation at the Grantee's sole cost and expense.

10.3 Whenever the County may require the undergrounding of the aerial facilities in any area of the County, the Grantee shall underground the aerial Grantee Facilities in that area of the County in the manner specified by the County, and concurrently with the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Grantee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Grantee Facilities. "Common costs" shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of the Grantee Facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

Section 11. Maintenance of Grantee Facilities.

11.1 The Grantee shall maintain all Grantee Facilities in good condition and repair, in accordance with industry accepted best practices.

11.2 The Grantee shall take necessary steps to maintain a reasonably clear area around all Grantee Facilities installed above ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility from the roadway for County operations and maintenance. Prior to using any chemical sprays within the Public Rights-of-Way to control or kill weeds and brush, the Grantee must obtain the County's permission. The County may limit or restrict the types, amounts, and timing of

applications provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

Section 12. Hazardous Materials.

12.1 The County understands and agrees that the Permitted Use contemplated by the Grantee involves the use by Grantee of certain chemicals and/or materials within the Public Rights-of-Way that are classified as hazardous or otherwise harmful to life, health and/or safety (any such chemical or material, a "Hazardous Material") under one or more applicable federal, state or local laws, rules, regulations or ordinances (collectively, the "Hazardous Materials Laws"). The Grantee shall be permitted to use such Hazardous Materials within the Public Rights-of-Way as are reasonably necessary for the Grantee's conduct of the Permitted Use and which are customary for the industry in which the Grantee is engaged; PROVIDED, however, that the Grantee's use of any such Hazardous Materials within the Public Rights-of-Way shall at all times be undertaken in full compliance with all Hazardous Materials Laws, including any orders or instructions issued by any authorized regulatory agencies.

12.2 The Grantee covenants and agrees that it will neither intentionally nor negligently cause nor permit, in any manner, the release, seepage or spill of any Hazardous Material upon, into, under, over, across or through any Public Right-of-Way or property adjacent thereto, whether public or private, in violation of any applicable Hazardous Materials Law. Any such release, seepage or spill of any Hazardous Material within the Public Rights-of-Way that is in violation of any applicable Hazardous Materials Law and is caused by Grantee or its directors, officers, agents, employees or contractors, is, referred to as "Release."

12.3 Should a Release occur, the Grantee shall immediately upon receiving notice thereof provide written notice of the Release to the County and the Washington State Department of Ecology. The Grantee agrees it shall indemnify, defend and hold the County, its elected and appointed officials, employees, agents and volunteers (collectively, the "County Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the County Parties, to the extent the Release is caused by any act or omission of Grantee or its directors, officers, agents, employees or, contractors (collectively, the "Grantee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Grantee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any Release caused by any Grantee Party within Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Grantee's obligation to completely remediate same, in the event of any Release by a Grantee Party, the County may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the County choose to take any actions pursuant to the preceding sentence, the County shall be entitled to repayment from the Grantee of any and all reasonable costs and expenses incurred by the County in performing such actions.

12.4 Should the Grantee cause a Release as described in Section 12.3 above, failure to promptly comply with all orders or instructions lawfully issued by any authorized regulatory agencies regarding clean-up and remediation shall constitute a material breach of this Franchise, and the County Council may terminate or suspend the Franchise in accordance with Section 23.

Section 13. Dangerous Conditions, Authority for County to Abate.

13.1 Whenever the Grantee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Grantee Facilities authorized by this Franchise has caused or contributed to a condition that, in the reasonable opinion of the County Engineer, substantially impairs the lateral support of the adjoining road or public or private property, or endangers the public, an adjoining public place, road facilities, County property or private property, the County Engineer may direct the Grantee to remedy the condition or danger to the satisfaction of the County Engineer, within a specified period of time and at the Grantee's sole cost and expense.

13.2 In the event that the Grantee fails or refuses to promptly take the actions directed by the County Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, in accordance with Section 13.1 above, the County may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Grantee shall be liable to the County for all reasonable costs and expenses incurred by the County in performing such actions.

Section 14. Removal of Grantee Facilities; Abandonment of Grantee Facilities.

14.1 In no event may all or any portion of any Grantee Facility located in, on, under, over, across or through the public right-of-way be abandoned or temporarily abandoned in place by the Grantee without the express written consent of the County. Should the Grantee desire to deactivate, abandon, or temporarily abandon in place all or any portion of the Grantee Facilities, the Grantee shall request the County's permission to do so by delivering a written request to the County not later than thirty (30) days after the date on which the Grantee discontinues use of any Grantee Facilities for any reason or this Franchise expires or terminates, whichever is earlier. The Grantee's request shall specify which Grantee Facilities the Grantee desires to deactivate or abandon in place. Within a reasonable time after the date on which the County receives the Grantee's written request, the County shall deliver a written response to the Grantee setting forth the County's decision, which shall be made in the County's sole and absolute discretion. If the County denies the Grantee's request with respect to all or any portion of the Grantee Facilities at issue, then the Grantee must promptly proceed to remove those Grantee Facilities for which the Grantee's request for abandonment has been denied.

14.2 If the County grants its approval to the Grantee's request for deactivation or abandonment, either in whole or in part, the County may impose conditions on such approval. The Grantee shall, at its sole cost and expense, as directed by the County, purge the Grantee Facilities that will be deactivated, abandoned, or temporarily abandoned of any product, Hazardous Material and/or other substance so as to render such Grantee Facilities safe in accordance with applicable law or such other standards as may be reasonably deemed

appropriate by the County. The County's consent to such action by the Grantee shall not relieve the Grantee of the obligation and/or costs to remove or to alter such Facilities in the future in the event it is reasonably determined by the County that removal or alteration is necessary or advisable for the health and safety of the public, in which case the Grantee shall perform such work at no cost to the County. This paragraph shall survive the expiration, revocation or termination of this Franchise.

14.3 Should the Grantee fail to comply with the requirements of Section 14.1 within a reasonable time after either: (i) the expiration or earlier termination of the Franchise; or (ii) the County's denial of the Grantee's request for permission to deactivate or abandon all or any portion of the Grantee Facilities, the Grantee shall be deemed to have deactivated or abandoned the Grantee Facilities without authorization. In the event of any unauthorized abandonment of all or any portion of the deactivated or abandoned Grantee Facilities by the Grantee, the County may, at its election, and in addition to any other remedies or enforcement options available to the County under this Franchise, at law or in equity, remove all or any portion of the deactivated or abandoned Grantee Facilities on behalf of the Grantee and restore the Public Rights-of-Way following such removal. Should the County choose to perform any such removal and restoration activities on the Grantee's behalf, the County may dispose of the removed Grantee Facilities in any manner it deems fit and in accordance with applicable laws, and the Grantee shall be liable to the County for all costs and expenses incurred by the County in performing such removal and restoration activities.

Section 15. Fees, Compensation for Use of Public Rights-of-Way and Taxes.

15.1 The Grantee shall be subject to all permit fees allowed by law associated with activities undertaken within Public Rights-of-Way through the authority granted to the Grantee by this Franchise or under applicable provisions of the SCC.

15.2 Grantee shall pay itemized costs and expenses incurred by the County in the examination and report of the proposed franchise under SCC 13.80.030(4) and any other fees required under chapter 13.110 SCC.

15.3 In addition, the Grantee shall reimburse the County for any and all documented costs the County reasonably and necessarily incurs in response to an emergency involving any Grantee Facilities. The Grantee shall promptly reimburse the County, upon submittal by the County of an itemized billing, for the Grantee's proportionate share of all actual, identified costs and expenses incurred by the County in repairing any County facility, or altering such County facility if at the Grantee's request, as the result of the presence of any Grantee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Grantee's proportionate share of the costs of County personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Grantee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual basis, but the County shall provide the Grantee with the County's itemization of costs at the conclusion of each project for informational purposes.

Section 16. Hold Harmless and Indemnification.

16.1 Grantee agrees to indemnify, defend, and hold harmless any County Party (as such term is defined in Section 12 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Grantee Parties (as such term is defined in Section 12 above) in the use of a Public Right-of-Way pursuant to this Franchise. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Grantee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Grantee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work plan and schedule agreed to by the County and Grantee. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Grantee and the County, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence.

16.2 In the event the County incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 16 against Grantee, all such fees, expenses, and costs shall be recoverable from Grantee to the extent the County prevails in such enforcement action.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 16, Grantee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

16.4 The County shall give Grantee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 16. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to Grantee and Grantee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

16.5 The County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Grantee Parties in connection with work authorized on Grantee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 16.

16.6 The indemnification, defense and save harmless obligations contained in this Section 16 shall survive the expiration, abandonment or termination of this Franchise.

Section 17. Limitation of County Liability.

The County's administration of this Franchise shall not be construed to create the basis for any liability on the part of the County Parties, except for and only to the extent of the County's negligence.

Section 18. Insurance.

18.1 Insurance Requirements

A. Insurance Required

Grantee shall procure, and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, the performance of work hereunder by the Grantee, its agents, representatives, employees and/or contractors /subcontractors. The Grantee or contractor/subcontractor shall pay the costs of such insurance. The Grantee shall furnish separate certificates of insurance and policy endorsements from each contractor/subcontractors as evidence of compliance with the insurance requirements of this Franchise.

The Grantee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by the Grantee, its agents, employees, officers, contractor/subcontractors to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.

Each insurance policy shall be written on an "occurrence" form; except that insurance on a "claims made" form may be acceptable with prior County approval. If coverage is approved and purchased on a "claims made" basis, the Grantee warrants continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date of Franchise termination, and/or conversion from a "claims made" form to an "occurrence" coverage form.

Nothing contained within these insurance requirements shall be deemed to limit the scope, application and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(s). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise.

B. Risk Assessment by Grantee

By requiring such minimum insurance, the County shall not be deemed or construed to have assessed the risks that may be applicable to the Grantee under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by the Grantee. The Grantee shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

C. Minimum Scope and limits of Insurance. Coverage shall be at least as broad as and with limits not less than the following:

(i) General Liability

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY including XCU coverage: $ 1,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a $ 2,000,000 aggregate limit.

(ii) Automobile Liability

Insurance Services Office form number (CA 00 01) covering BUSINESS AUTO COVERAGE, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9: $ 1,000,000 combined single limit per accident for bodily injury and property damage if the use of motor vehicles is contemplated.

(iii) Workers' Compensation

Workers' Compensation coverage, as required by the Industrial Insurance Act of the State of Washington, as well as any similar coverage required for this work by applicable federal or "Other States" state law: Statutory requirements of the state of residency.

(iv) Stop Gap/Employers Liability

Coverage shall be at least as broad as the indemnification, protection provided by the Workers' Compensation policy Part 2 (Employers Liability) or, in states with monopolistic state funds, the protection provided by the "Stop Gap" endorsement to the general liability policy: $ 1,000,000 .

D. Minimum Limits of Insurance - Construction Period

Prior to commencement of Construction and until Construction is complete and approved by the Grantee and the County, the Grantee shall cause the Construction Contractor and related professionals to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. The Grantee and the County shall be named as additional insureds on liability policies except Workers Compensation and Professional Liability. The cost of such insurance shall be paid by the Grantee and/or any of the Grantee's contractor/subcontractors. The Grantee shall cause the Construction Contractor and related professionals to maintain limits no less than the following:

(i) Commercial General Liability: $ 1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and $ 1,000,000 in the aggregate.

(ii) Automobile Liability: $ 1,000,000 combined single limit per accident for bodily injury and property damage.

(iii) Professional Liability, Errors & Omissions: $ N/A, Per Claim and in the Aggregate.

(iv) Workers Compensation: Statutory requirements of the state of residency.

(v) Stop Gap or Employers Liability Coverage: $ 1,000,000 .

E. Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to, and approved by, the County. The deductible and/or self-insured retention of the policies shall not apply to the Grantee's liability to the County and shall be the sole responsibility of the Grantee.

F. Other Insurance Provisions

The insurance policies required in this Franchise are to contain, or be endorsed to contain, the following provisions:

(i) All Liability Policies except Professional and Workers Compensation.

a. The County, its officers, officials, employees, and agents are to be covered as additional insured as respects liability arising out of activities performed by or on behalf of the Grantee/contractor in connection with this Franchise. Such coverage shall include Products-Completed Operations.

b. To the extent of the Grantee's/contractor's negligence, the Grantee's/contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and agents. Any insurance and/or self-insurance maintained by the County, its officers, officials, employees, or agents shall not contribute with the Grantee's insurance or benefit the Grantee in any way.

c. The Grantee's insurance shall apply separately to each insured against whom claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(ii) All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by

claims paid, until after 45 days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, the Grantee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in suspension of the Franchise.

G. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A-VII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.

Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

If, at any time, the foregoing policies shall fail to meet the above requirements, the Grantee shall, upon notice to that effect from the County, promptly obtain a new policy, and shall submit the same to the County, with appropriate certificates and endorsements, for approval.

H. Verification of Coverage

The Grantee shall furnish the County with certificates of insurance and endorsements required by this Franchise. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy are to be on forms approved by the County prior to the commencement of activities associated with the Franchise. The County reserves the right to require complete, certified copies of all required insurance policies at any time.

I. Subcontractors

The Grantee shall include all subcontractors as insured under its policies or shall require separate certificates of insurance and policy endorsements from each subcontractor. If the Grantee is relying on the insurance coverage provided by subcontractors as evidence of compliance with the insurance requirements of this Franchise, then such requirements and documentation shall be subject to all of the requirements stated herein.

J. Insurance Review

In consideration of the duration of this Franchise, the parties agree that the Insurance section herein, at the discretion of the County Risk Manager, may be reviewed and adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the term of this Franchise and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance

industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of the Grantee. Any failure by the County to exercise the right to review and adjust at any of the aforementioned timings shall not constitute a waiver of future review and adjustment timings.

18.2 Grantee shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of the Grantee before commencement of the work.

18.3 In satisfaction of the insurance requirements set forth in this Section 18, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice. Grantee shall provide the County with reasonable written evidence that Grantee is maintaining such self-insurance.

Section 19. Performance Security.

In accordance with RCW 36.32.590 and SCC 13.10.104(4), Grantee is a unit of local government and shall not be required to secure the performance of a County-issued permit with a surety bond or other financial security device.

Section 20. Annexation.

If any Public Right-of-Way, or portion thereof, is incorporated into the limits of any city or town, it shall not be subject to the terms of this Franchise.

Section 21. Vacation.

If any Public Right-of-Way, or portion thereof, is vacated, it shall not be subject to the terms of this Franchise. The County may retain a utility easement as allowed under RCW 36.87.140 when a Public Right-of-Way, or portion thereof, is vacated. In the event of any such proposed vacation, the County shall notify the Grantee at least sixty (60) days prior to taking final action. Should the Grantee desire the County to retain a utility easement in the property at issue, the Grantee may request that the County retain such an easement over the property at issue as a part of any proposed action taken by the County Council on the particular vacation. Should the Grantee make such a request, the County may retain said easement in the manner and to the extent allowed by law.

Section 22. Assignment.

22.1 Neither this Franchise nor any interest therein shall be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Grantee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the County Council. Should any such Transfer be approved by the County, then each and every one of the provisions, conditions, regulations and requirements contained in this

Franchise shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Grantee is named herein.

22.2 In the case of a Transfer to secure indebtedness, whether by mortgage or other security instrument, the County's consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the County of any assignment to secure indebtedness.

22.3 Any attempt by Grantee to Transfer this Franchise in violation of this Section 22 shall constitute a material breach by Grantee.

Section 23. Termination, Revocation, and Forfeiture.

If the Grantee (i) defaults on any material term or condition of this Franchise; (ii), willfully violates or fails to comply with any of the provisions of this Franchise; or, (iii) through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the County under the provisions of this Franchise, then the Franchise may be terminated by the County Council as provided in Title 13 SCC. Upon termination for any cause, all rights of the Grantee granted hereunder or under any right-of-way use permit shall cease,

Section 24. Remedies to Enforce Compliance; No Waiver.

24.1 In lieu of termination, revocation or forfeiture as provided in Section 23, and without prejudicing any of its other legal rights and remedies, the County may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Grantee to comply with the provisions of this Franchise and to recover damages and costs incurred by the County by reason of the Grantee's failure to comply. In addition to any other remedy provided herein, the County reserves the right to pursue any remedy to compel or force the Grantee and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

24.2 Failure of the County to exercise any rights or remedies under this Franchise shall not constitute a waiver of any such right or remedy and shall not prevent the County from pursuing such right or remedy at any future time.

24.3 Nothing in this Franchise is or was intended to confer third-party beneficiary status on any person or entity to enforce the terms of this Franchise.

Section 25. County Ordinances and Regulations – Reservation of Police Power.

Nothing in this Franchise shall restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise, including, but not limited to, any ordinances adopted under the County's police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at

all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Grantee Facilities located within any Public Right-of-Way, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the County's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 26. Eminent Domain, Powers of the People.

This Franchise is subject to the power of eminent domain and the right of the County Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the Franchise in the interest of the public. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival and Force Majeure.

27.1 Until such time as all of the Grantee Facilities have been removed from the Public Rights-of-Way in accordance with Section 14.1 above, or have been deactivated or abandoned in place in accordance with Sections 14.2 and 14.3 above, all of the provisions, conditions and requirements contained in the following sections of this Franchise shall survive the expiration, revocation, forfeiture or early termination of the Franchise: (i) Section 4 (Regulation of Use; Permits Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (vi) Section 10 (Undergrounding of Grantee Facilities); (vii) Section 12 (Hazardous Materials); (viii) Section 13 (Dangerous Conditions, Authority for County to Abate); (ix) Section 14 (Removal of Grantee Facilities; Abandonment of Grantee Facilities); (x) Section 15 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (xi) Section 16 (Hold Harmless and Indemnification); (xii) Section 17 (Limitation of County Liability); (xiii) Section 18 (Insurance); (xiv) Section 19 (Performance Security); and (xv) Section 24 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Grantee Facilities have been either removed from the Public Rights-of-Way or abandoned/deactivated in place to the County's satisfaction pursuant to Section 14 above, only the following provisions shall survive the expiration or earlier termination of the Franchise: (i) Section 8 (Record Plans, Record Drawings, and Records of Grantee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of County Liability.

27.3 If the Grantee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of a Force Majeure, then Grantee's performance shall be excused during a Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence the Grantee shall promptly perform its obligations in an orderly and expedited manner using industry accepted best practices. Grantee's performance shall not be excused by economic hardship nor by the misfeasance or malfeasance of its directors, officers, or employees.

27.4 For the purposes of this Franchise, "Force Majeure" means any event or circumstance (or combination thereof) and the continuing effects of any such event or circumstance (whether or not such event or circumstance was foreseeable or foreseen) that delays or prevents performance by the Grantee of any of its obligations under this Franchise, but only to the extent that and for so long as the event or circumstance is beyond the reasonable control of the Grantee and shall include, without limitation, all of the following events and circumstances: (i) acts of nature, including volcanic eruption, landslide, earthquake, flood, lightning, tornado or other unusually severe storm or environmental conditions, perils of the sea, wildfire or any other natural disaster; (ii) acts of public enemies, armed conflicts, act of foreign enemy, acts of terrorism (whether domestic or foreign, state-sponsored or otherwise), war (whether declared or undeclared), blockade, insurrection, riot, civil disturbance, revolution or sabotage; (iii) any form of compulsory government actions, acquisitions or condemnations, changes in applicable law, export or import restrictions, customs delays, rationing or allocations; (iv) accidents or other casualty, damage, loss or delay during transportation, explosions, fire, epidemics, quarantine or criminal acts; (vi) inability, after the use of commercially reasonable efforts, to obtain from any governmental authority any permit, approval, order, decree, license, certificate, authorization or permission to the extent required by applicable law; (vii) inability, after the use of commercially reasonable efforts, to obtain any consent or approval required by the Franchise; and (viii) third-party litigation contesting all or any portion of the Franchise or Grantee's rights under this Franchise.

Section 28. Governing Law and Stipulation of Venue.

This Franchise and all use of Public Rights-of-Way granted herein shall be governed by the laws of the State of Washington, unless preempted by federal law. Any action relating to this Franchise shall be brought in the Superior Court of Washington for Snohomish County, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

Section 29. Severability and Construction.

If any section, sentence, clause, phrase or provision of this Franchise or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise nor the application of the provision at issue to any other person or entity. Section Headings used in this Franchise are for reference purposes only and do not have any effect on the interpretation of this Franchise agreement.

Section 30. Notice and Emergency Contact.

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

SNOHOMISH COUNTY Department of Public Works 3000 Rockefeller Avenue, M/S 607 Everett, WA 98201	Silver Lake Water & Sewer District 15205 41st Ave. SE Bothell, WA. 98012
Attn. Right-of-Way Coordinator Phone: (425) 388-3488	Attn. Curt Brees Phone: 425 337-3647

The Grantee shall also provide the County a current emergency contact name (or title) and phone number available 24-hours a day, seven days a week. The Grantee shall promptly notify the County of any change in the notice address or emergency contact (or title) and phone number.

Section 31. Acceptance.

Within ninety (90) days after the passage and approval of this Franchise by the County Council, the Franchise may be accepted by the Grantee by its filing with the County Council an unconditional written acceptance thereof. Failure of the Grantee to so accept the Franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall automatically cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 32. Effective Date.

This Franchise shall take effect, if at all, on the date on which each and every one of the following conditions have been met (the "Effective Date"): (i) ten (10) days have passed since the County Executive executed this Franchise, or this ordinance was otherwise enacted; (ii) the Grantee executes a copy of this Franchise and returns it to the County Council within the time provided in Section 31 above; (iii) the Grantee presents to the County acceptable evidence of insurance as required in Section 18 above; and (iv) the Grantee pays all applicable fees as set forth in Section 15 above.

PASSED this 30th day of August, 2017.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Council Chairperson

ATTEST:

Asst. Clerk of the Council

(✓) APPROVED
( ) VETOED
( ) EMERGENCY

Dave Somers
Snohomish County Executive

DATE: 9/5/17

ATTEST:

Cora E. Palmer

Approved as to Form Only:

Deputy Prosecuting Attorney

Date: 6/23/2017

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, Silver Lake Water and Sewer District covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Snohomish County Charter, Snohomish County Code, and this Franchise.

Dated: Sept 14th, 2017

Silver Lake Water and Sewer District

By: _____

Printed Name: Curt Bazzes

Title: General Manager

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Grantee returned a signed copy of this Franchise to the County Council within the time provided in Section 31; (2) the Grantee has presented to the County acceptable evidence of insurance as required in Section 18 of this Franchise; and (3) the Grantee has paid all applicable processing costs and fees as set forth in Section 15 of this Franchise.

THE EFFECTIVE DATE OF THIS ORDINANCE IS:

Wednesday, November 29, 2017

By: Randy Reed

Name: Randy Reed

Title: Assistant Clerk of the Council

Whitworth Water District No. 2 Franchise
(Spokane County)

Spokane County Engineer
Attn: Engineering Administration
1026 W. Broadway Avenue
Spokane, WA 99260

SPOKANE CO ENGINEERING RES $0.00

5456119
Page: 1 of 28
11/02/2006 12:13P
Spokane Co, WA

Resolution No. 6 0887

Document Title: Franchise
Grantor: Government, County of Spokane
Grantee: Whitworth Water District No. 2
Legal Description: All roads, highways and rights of way contained within the limits of Spokane County in the following sections:

Quarter	Section	Township	Range
All	1, 2, 3 11, 12 and 13	26N	42E
All	13, 14, 23, 24, 25, 26, 35 and 36	27N	42E
NW,NE	1, 2 and 4	27N	42E
NW, SW	9	27N	42E
NW	20	27N	42E
All	3, 5, 6, 7, 8, 16, 17, 18, 19 and 30	26N	43E
All	1 – 36	27N	43E
All	25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36	28N	43E

Assessor's Tax Parcel Number: NA

10.

After Recording Return to: Spokane County Engineer
Attn: Engineering Administration

SPOKANE CO ENGINEERING RES $0.00

5456119
Page: 2 of 28
11/02/2006 12:13P
Spokane Co, WA

RESOLUTION NO. 6 0887

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON

IN THE MATTER OF THE APPLICATION OF THE WHITWORTH WATER DISTRICT NO. 2 FOR A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN AN WATER SYSTEM WITHIN COUNTY ROADS, HIGHWAYS AND RIGHTS OF WAY WITHIN SPOKANE COUNTY, WASHINGTON	)	**WATER FRANCHISE**

Application of Whitworth Water District No. 2, doing business in Washington, at Spokane, for a franchise to operate and maintain a water system in Spokane County roads, highways and rights of way in the Spokane County, Washington, as hereinafter set forth, having come on regularly for hearing before the County Commissioners of Spokane County, Washington, on the **17th day of October, 2006**, at the hour of 5:00 p.m., under the provisions of Chapter 187, State Sessions Laws of 1937, and it appearing to the Board that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the franchise herein granted;

1. DEFINITIONS

Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

Definitions: For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

1. **"Construction or Construct"** shall mean constructing, digging, excavating, laying, testing, operating, extending, upgrading, renewing, removing, replacing, and repairing a facility

2. **"Consumer"** shall mean any person, persons, customer, firm, association, municipal corporation, and/or corporation that uses the product, including residential, commercial, and industrial users.

3. **"County"** - The County of Spokane, a municipal corporation of the State of Washington, which specifically includes all areas incorporated therein as of the effective date of this Franchise and any other areas later added thereto by annexation or other means. Also to have the meaning of an entity, depending on the context, its authorized agents, successors, and assigns.

4. **"County Engineer"** - The head of the Division of Engineering, or the designee or authorized representative of the County Engineer.

5. **"County Project"** - Any public work or improvement under direction of the County Engineers.

6. **"Distribution System, System, and Lines"** used either in the singular or plural shall mean and include the poles, conductor, pipe lines, mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and all attachments, appurtenances equipment and appliances necessary and incidental thereto or in any way appertaining to the distribution of the product and which are located within the County Right of Way.

7. **"Days"** - Calendar days.

8. **"Facility"** means any tangible component of the water system within the County Right of Way or on County Property, including supporting structures, located in the operation of activities authorized by this Franchise. The abandonment by Grantee of any facilities as defined herein shall not act to remove the same from this definition.

9. **"Franchise"** means this Franchise agreement, as fully executed by the County and the Grantee.

10. **"Grantee"** - An entity or natural person with whom this Franchise agreement is made.

11. **"Maintenance, Maintaining, or Maintain"** shall mean the work involved in the replacement and/or repair of Facilities; including constructing, relaying, repairing, replacing, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.

12. **"Permittee"** - A person who has been granted a permit by the Permitting Authority.

13. **"Permitting Authority"** - The head of the County department authorized to process and grant permits required to perform work in the County's Right of Way, or the head of any agency authorized to perform this function on the

County's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

14. **"Person"** - An entity or natural person.

15. **"Product"** - Refers to the item for consumption or service provided by the Grantee.

16. **"Public Properties"** - Any real-estate or any facility owned by the county.

17. **"Public Works Director"** - The head of the Public Works Department of the County, or in the absence thereof, the head of the Division of Engineering, or the designee of either of these individuals.

18. **"Right of Way",** as used herein, shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, Grantee easement, and/or road Right of Way now or hereafter held or administered by the County of Spokane.

19. **"Standard Specifications for Road, Bridge, and Municipal Construction"** is the most current edition. Where this standard refers to "the State" substitute "the County."

20. **"Streets", "Highways"** mean the surface of, and the space above and below, any public street, road, alley or highway, within the County used or intended to be used by the general public, to the extent the County has the right to allow the Grantee to use them.

2. RIGHTS GRANTED

Whitworth Water District No. 2, its successors and assigns (hereinafter designated as the "Grantee"), shall have the right and authority to enter upon the County roads, highways and rights-of-way as herein described for the purpose of constructing and installing its Facilities (hereinafter referred to as the "system") and for repairing, operating, maintaining, removing and replacing all or any portion of its system, as approved under County permits (if required) issued by the Permitting Authority pursuant to this Franchise and applicable County resolutions and ordinances.

3 TIME PERIOD

The granted Franchise shall Commence on the date this Franchise becomes effective and **expires October 17, 2020**; provided that Grantee shall have no rights under this Franchise unless, and until, Grantee files with the County a written consent to all terms and conditions of this

Franchise Agreement, and the Franchise granted by this agreement shall be null and void if such written consent is not filed within thirty (30) days after the effective date of this Franchise. Application for extension or renewal of the term may be made no sooner than one year before expiration thereof.

4. SUPERCEDES OTHER AGREEMENTS

This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

This Franchise shall also supersede and cancel any previous right or claim of Grantee to occupy the County roads as herein described.

5. ALL FACILIITIES UNDER FRANCHISE

Any facilities and appurtenances in streets, alleys, and rights-of-way described in Exhibit "A" incidental to the Franchise system, that have been or are at any future time acquired, leased, or utilized in any manner by Grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this Franchise.

6. NOT EXCLUSIVE

This Franchise is granted upon the further express condition that it shall not be an exclusive Franchise and shall not, in any manner, prohibit the County of Spokane from granting any other Franchise over, in, along, under, below, upon, and across any of the said County roads of any kind and character or territories that may be deemed proper by the Spokane County Commissioners, and this Franchise shall not in any way prevent the County of Spokane from using the said County roads and highways of any kind and character or territories, or affect the jurisdiction over them and every part of them by the County of Spokane. The County shall retain full authoritative power to make all necessary repairs, changes, maintenance, relocations, establishment, improvement, dedication, vacation, alterations, etc., in the same and like manner as though this Franchise had never been granted.

7. NON INTERFERENCE WITH EXISTING FACILITIES

The County shall have prior and superior right to the use of its roads, streets, and alleys, and Public Properties for installation and maintenance of its facilities and other governmental purposes, and should a conflict arise with the Grantee's facilities, the Grantee shall, at its own expense and cost, conform to the County's facilities and other government purposes of the County.

The owners of all utilities, public or private, installed in such Public Properties prior to the installation of the lines and facilities of the Grantee, shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such Public Properties.

Grantee's system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the County, or with any other pipes, wires, conduits or other facilities that may have been laid in the Rights of Way by or under the County's authority.

8. COUNTY'S RIGHT TO THE ROAD NOT SUPERSEDED

Spokane County, in the granting of this Franchise, does not waive any rights which it now holds or may hereafter acquire, and this Franchise shall not be construed so as to deprive Spokane County any powers, rights, or privileges which it now has, or may hereafter acquire, including the right of eminent domain, to regulate the use and control of the County roads covered by this Franchise, or to go upon any and all County roads and highways for any purpose including constructing, repairing, or improving the same in any such manner as Spokane County, or its representatives may elect. The County shall retain full authoritative power in the same and like manner as though this Franchise had never been granted.

Nothing in this Franchise shall be construed to prevent the County from constructing facilities, grading, paving, repairing and/or altering any street, or laying down, repairing or removing facilities or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of the facilities of the Grantee under this Franchise. However, if any of the Grantee's facilities interferes with County projects, Grantee's facilities shall be removed or replaced. Any and all such removal or replacement shall be at the sole expense of the Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by the County Engineer's written notice to Grantee, the County may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the County due to Grantee's delay.

9. RELOCATION OF FACILITIES

The County shall have the right to require Grantee to change the location of its facilities within the Rights of Way when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The County shall provide the Grantee with the standard notice, as stated below. Should Grantee fail to remove or relocate any such facilities by the date established by the County, the County may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the County due to Grantee's delay. If the County requires Grantee to relocate its facilities located within the County's Rights of Way, the County will make a reasonable effort to provide Grantee with an alternate location for its facilities within the County's Rights of Way.

During the life of this Franchise, the County reserves the right to order any Facility moved or changed as ordered and determined by the County Engineer, so as to accommodate building or other changed conditions in the vicinity.

The relocation of Grantee's facilities shall be at the sole expense of Grantee unless the County Engineer determines, after consultation with Grantee and at Grantee's request, that the benefit of such improvements or changes to the County road, highway or Right of Way inures primarily to adjacent property owners or developers and not the general public. In such case, the County agrees to make reasonable efforts to facilitate an agreement between such owners or developers and Grantee, and where appropriate, as determined by the County Engineer, withhold approval and/or acceptance of the improvements or development until the owner or developer has entered into an agreement to pay for the costs of relocation.

The County shall in no way be held liable for any damages to Grantee that may occur by reason of any of the County's improvements, changes or works above enumerated, except for damage caused by the negligence of the County, its employees or agents.

Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any Right of Way its facilities when so required by the County, provided that Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Right of Way upon approval by the County, any facilities required to be temporarily disconnected or removed.

When relocation of Grantee's facilities are required by County projects the following Standard Notice shall be sent unless emergency conditions dictate otherwise, as determined by the County Engineer:

1. Spokane County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably practicable.

2. Spokane County shall send a Preliminary Utility Notice with a section map showing the job limits and a typical section or a preliminary plan if it is available.

3. Spokane County shall send a Second Utility Notice once the plans are available to show the existing utilities.

4. Spokane County shall hold a Utility Design Meeting for all the utilities affected.

5. Spokane County shall send a "Utility Notice to Proceed" with the proposed bid opening date and final plans.

6. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

   Relocation of Grantee's facilities shall normally be accomplished ten (10) days in advance of County projects. In the event relocation of Grantee's facilities shall be done concurrently with such projects, Spokane County shall be so notified and agree to a written schedule for relocation. Compliance with such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with the progression and completion of County projects.

7. If the Grantee does not relocate its facilities in a timely manner as required above, Spokane County may relocate, or cause to be relocated, such facilities of Grantee as Spokane County deems necessary, and in the manner Spokane County deems necessary, in its sole discretion the cost of which to be solely borne by the Grantee. Grantee hereby indemnifies and holds Spokane County, its employees, officers, officials, and agents totally free and harmless from all and any liability which may arise from damages caused by the relocation by Spokane County of the facilities of Grantee except to the extent that such damages and liability arise from the negligence of Spokane County, its employees, officers, officials, and agents.

8. Grantee hereby indemnifies and holds harmless Spokane County, its officers, officials, and employees, from damages which may arise from Grantees' failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above.

9. The exercise of its rights, as set forth in Item 7, above, by Spokane County in no way relieves Grantee of completing and/or finalizing the relocation of its facilities at no expense to Spokane County if the relocation work done by Spokane County is incomplete.

10. In the event that the Grantee does not comply with the aforementioned stipulations, after a reasonable opportunity to remedy its non-compliance the Grantee shall forfeit all rights granted under this Franchise, and said Franchise shall be null and void. Grantee shall then remove all of its Facilities from the County Right of Way. If Grantee has the right to be within County Right of Way by another method other than a Franchise the County shall use any other means at its disposal to bring the Grantee into compliance with this Franchise Document.

    The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person other than the County, where the improvements to be constructed by said person are not or will not become County-owned, operated or maintained, provided that such arrangements do not unduly delay a County construction project.

10. BUILDING MOVING

Whenever any person shall have obtained permission from the County to use any Right of Way for the purpose of moving any building or other oversized structure, Grantee, upon fourteen (14) days written notice from the County, shall raise or remove, at the expense of the Permittee desiring to move the building or structure, any of Grantee's facilities that may obstruct the movement thereof; provided, that the path for moving such building or structure is the path of least interference to Grantee's Facilities, as determined by the County.

11. PUBLIC RECORDS

As a condition of this Franchise, and at its sole expense, Grantee agrees to provide the County with available as-built plans, potential improvement plans, field locates, maps, plats, specifications, profiles, and records of its Facilities within Spokane County Right of Way. Such documents shall be provided within six months of the execution of said Franchise by Grantee. These records shall be in a digital electronic format acceptable to the County, unless the County Engineer deems it to be a hardship to the Grantee, in which case a hard copy in a format acceptable to the County Engineer shall be provided. Grantee shall provide the County a plan map updated annually showing all Grantee's facilities located within the County Right of Way or Public Properties.

To the extent such requests are limited to specific facilities at a given location within the Franchise area in connection with the construction of any County project, Grantee shall provide to the County, upon the County's reasonable request, copies of available drawings in use by Grantee showing the location of such facilities. Grantee shall field locate its facilities in order to facilitate design and planning of County improvement projects.

Upon written request of the County, Grantee shall provide the County with the most recent update available of any plan of potential improvements to its facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes only, and shall not obligate Grantee to undertake any specific improvements within the Franchise Area.

Public Disclosure Act: Grantee acknowledges that information submitted to the County may be subject to inspection and copying under the Washington Public Disclosure Act codified in chapter 42.17 RCW. Grantee shall mark as "CONFIDENTIAL" each page or portion thereof of any documentation/information which it submits to the County and which it believes is exempt from public inspection or copying. The County agrees to provide the Grantee with a copy of any public disclosure request to inspect or copy documentation/information which the Grantee has provided to the County and marked as "CONFIDENTIAL" prior to allowing any inspection and/or copying as well as provide the Grantee with a time frame, consistent with RCW 42.17.320, to provide the County with its written basis for non-disclosure of the requested documentation/information. In the event the County disagrees with the Grantee's basis for non-disclosure, the County agrees to withhold release of the requested documentation/information in dispute until the Grantee can file a legal action under RCW 42.17.330.

12. INCORPORATION INTO A CITY OR TOWN

Whenever any of the County roads or rights-of-way designated in this Franchise by reason of the subsequent incorporation of any city or town, or extension of the limits of any city or town, shall fall within the city or town limits, then this Franchise shall terminate in respect to said roads or rights-of-way so included within said limits by the time period specified by law; but this Franchise shall continue in force and effect as to all County roads or rights-of-way not so included within city or town limits.

13. ROAD VACATIONS

In the event that the Grantor shall vacate any road, right of way, or other public property, and if at the time of the vacation the Grantee is utilizing the property that is the subject of the vacation for the purposes expressly provided for under this Franchise, then said Grantee may request that a perpetual easement by reserved in the favor of the Grantee for the purpose of enabling the Grantee to continue to operate and maintain its facilities permissible under this Franchise that was installed prior to the vacation. Such easement shall also expressly prohibit any use of the vacated properties which will interfere with the Grantee's use of the vacated properties in the manner set forth in this Franchise.

14. GRANTOR ATTACHMENTS

Whenever it is deemed necessary for the benefit and safety of the traveling public, the County Engineer hereby reserves the right to attach and maintain upon any facility owned by the Grantee under this document any required traffic control devices, such as traffic signals, luminaries, and overhead suspended signs, when the use of such devices or attachments does not interfere with the use for which the facility was constructed. The County shall bear the cost of attachment and maintenance of such traffic control devices, including the reasonable cost of any extra construction beyond normal; such extra cost to be determined jointly by the County and the Grantee of this document. It is not to be construed that the County is to share in the normal cost of installation, operation, or maintenance of any of the Facilities installed under this document.

15. CONSTRUCTION

Notification of Work to be Done:

County Ordinances, including Section 9.55.55, provide minimum rules governing when and how utilities are to notify neighboring property owner of plans to construct Facilities. Additionally, Grantee is to maintain their own standard notification procedures intended to provide reasonable advance notice of construction plans. In the event the County determines that such notification rules are not meeting the public's needs, the County can require additional notification requirements.

All costs associated with this section of the franchise document including meetings, the notification of the property owners shall be borne by Grantee.

Permits:

Prior to doing any construction within the County Right of Way, the Grantee must apply for, and obtain, appropriate permits from the County, unless such work is authorized by County Ordinance(see County Code 9.55.055).

All facilities shall be constructed and maintained at such locations as approved by the County through the permit process so as to least interfere with existing and planned utilities and with free passage of traffic and in accordance with the laws of the State of Washington and the Franchises and standards of the County regulating such construction. Grantee shall be responsible to obtain all permits and approvals otherwise required by the County unless expressly provided to the contrary herein. Fees associated with such permits shall be in addition to the herein Administrative Fee.

Responsibility:

All construction, maintenance, installation, relocation, abandonment, and repair of any and all Grantee's Facilities within County Rights-of-way shall, regardless of who performs installation and/or construction, shall be and remain the responsibility of Grantee. The Grantee, not a contractor, shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any of its Facilities within County Rights of Way. Grantee shall pay all applicable fees due for County construction permits.

Post-Construction:

One year after the effective date of this Franchise, and annually thereafter, Grantee shall provide an electronic map, in a format acceptable to the County Engineer, to the County Engineer's Office, or its successor, showing the location of Grantee's facilities within the County Right of Way with identifying features, such as street intersections or section corners. If an electronic map is deemed a hardship by the County Engineer, the County will accept a paper copy of the map in a format acceptable to the County Engineer.

Poles in Right of Way:

In the event Grantee elects to use above ground poles for construction parallel to and within County Right of Way, only one line of poles shall be erected or maintained hereunder. Two-pole structures may be used for road crossings provided they are determined necessary and are in conformance with sound engineering practices that promote public safety. Each pole, brace, and guy pole shall be placed and maintained along said County roads and highways in such positions and at such points as approved by the County Engineer. Grantee's facilities shall, when crossing above the roadway, provide a minimum clearance in accordance with the standards set forth in the applicable "Washington State Construction Code."

The work of constructing, removing, and relocation of any and all poles, wires, or appurtenances, shall be done at the expense of the Grantee. Grantee or its facilities shall not interfere with traffic upon or along any of said highways, and said construction shall be to the entire satisfaction and under the supervision of the County Engineer, and none of such construction shall be undertaken or carried on without first obtaining necessary permits therefore from said County Engineer.

Restoration of Streets:

Whenever Grantee disturbs the surface of any County Right of Way for any purpose, Grantee shall promptly restore the County Right of Way to at least its prior condition, before the work commenced to the satisfaction of the County Engineer. When any opening is made by Grantee in a hard surface pavement in any County Right of Way, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the County Engineer. If Grantee excavates the surface of any County Right of Way, Grantee shall be responsible for restoration of the County Right of Way and its surface within the area affected by the excavation. The County may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the County Right of Way, and the expense thereof shall be paid by Grantee. The County reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the County Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the County Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Franchise shall be done in strict compliance with all applicable rules and regulations of the County.

PROVIDED, HOWEVER, that no such disturbance of the surface of said County Right of Way shall be done prior to obtaining a permit issued by the County Engineer, which permit shall contain specifications for the restoration of said roads to the same conditions as they were prior to such disturbance; and

PROVIDED FURTHER, that said County Engineer will require a bond in a sum sufficient to guarantee to Spokane County that such Right of Way shall be restored to the same condition as it was prior to such disturbance.

During the progress of the construction, the Grantee shall not unnecessarily obstruct the passage or use of the Right of Way, and shall provide the County with plans, maps, and information showing the proposed and final location of any Facilities in accord with this Franchise.

Damage and Non-compliance:

Any and all damage, or injury, done or caused to County Right of Way, County Facilities, or any portion thereof in the construction, operation, maintenance or repair of Grantee's facilities shall be immediately repaired and reconstructed to the satisfaction of the County Engineer; and in the event the Grantee shall fail, neglect, or refuse to immediately repair and reconstruct said damage or injury to said County Right of Way or Facilities, the same may be done by the County and the expense and cost thereof and a penalty of three times the cost and expense shall be immediately paid by the Grantee to the County.

If it is determined that Grantee has damaged, injured, or failed to restore the Right of Way in accordance with this Franchise, the County shall provide the Grantee with written notice including a description of actions the County believes necessary to restore the Right of Way. If the Right of Way is not restored in accord with the County's notice within ten (10) days of that notice, the County, or its authorized agent, may restore the Right of Way and Facilities. Unless the damage or injury or failure to restore the Right of Way or Facilities presented an unsafe or dangerous condition, in which case the County shall take immediate action to either make Grantee conform or perform the work or the County or its authorized agent shall do the work at the cost of the Grantee. The Grantee is responsible for all costs and expenses incurred by the County and a penalty of three times what the expense and cost of the repair and reconstruction in restoring the Right of Way and Facilities in

accordance with this Franchise. The rights granted to the County under this paragraph shall be in addition to those otherwise provided by this Franchise.

Construction Standards:

All facilities shall be laid and installed in conformity with the maps and specifications filed with the County, except in instances in which deviation may be allowed thereafter in writing by the County Engineer pursuant to application by the Grantee. All plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction and installation, backfill, erection of temporary structures, erection of permanent structures, and the traffic control mitigation measures as provided by the Manual on Uniform Traffic Control Devices, or similar standards as may be applicable from time to time. The plans must meet all Federal, State, County Codes and the Utility Accommodation Plan Standards. No such construction shall be commenced without the Grantee first securing a permit, where such permit is required, in writing from the County Engineer and notifying the County Engineer's representative at least 48 hours prior to permitted construction. All such permitted work shall be subject to the approval of and shall pass the inspection of the County by and through its County Engineer or other designated official.

Notwithstanding any provision herein to the contrary, any excavations and installations by the Grantee in any of the public properties within the corporate limits of the County shall be done in accordance with such reasonable rules, regulations, resolutions, and resolutions of general application now enacted or to be enacted by the Board of County Commissioners, relating to excavations in public properties of the County, and authorized by the County Engineer. Said rules, regulations, authorizations, and resolutions shall be for the purposes of fulfilling the County's public trustee role in administering the primary use and purpose of public properties, and not for relieving the Grantee of any duty, obligation, or responsibility for the competent design, construction, maintenance, and operation of its facilities. All of the County's actual reasonable administrative expenses directly related to its administration of public properties under this Franchise, shall be paid by the Grantee to the County upon invoice. Grantee is responsible for the supervision, condition, and quality of the work done, whether it is by itself or by contractors, assigns or agencies.

Construction:

1. The County Engineer or his representative may request a preconstruction conference for a particular job after reviewing the permit application. In such a situation, the Grantee agrees to promptly attend said meeting and discuss the scope of the project.

2. The Grantee agrees to schedule the construction herein referred to and perform said construction in such a manner as not to delay County projects.

3. A copy of the permit and plans must be on the job site, and protected from the elements, at all times during any of the construction authorized by said permit or Franchise.

4. Construction within the Right-of Way shall be restricted to between hours that will accommodate the Noise Disturbance Ordinance and no construction shall be allowed on the Right of Way on Saturday, Sunday, or holidays, unless authorized by the County Engineer. The proceeding restrictions do not apply to emergency work. Any lane closures must be submitted for approval in advance of use. The hours of permitted closure may differ from the above noted hours.

5. Should the Grantee choose to perform the work outlined herein with other than its own employees, a representative of the Grantee shall be responsible for the work of the contractor. All contact between the County and the Grantee's contractor shall be through the representative of the Grantee. Where the Grantee chooses to perform the work with its own employees, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the Grantee within the County Right of Way until said requirement is met. The Grantee, at its own expense, shall adequately police and supervise all work on the above described project by itself, its contractor, subcontractor, agent, and others, so as not to endanger or injure any person or property.

6. The Grantee shall install detector tape or cable approximately 6-12 inches above the underground facility. The tape shall conform to the standards of the American Public Works Association Uniform Color Code.

7. During the construction and/or maintenance of this facility, the Grantee shall comply with the current addition of the Manual on Uniform Traffic Control Devices for Streets and Highways. If determined necessary by the County Engineer, the Grantee shall submit a signing and traffic control plan to the County Engineer's representative for approval prior to construction or maintenance operations.

8. The shoulders, where disturbed shall be surfaced with crushed surfacing top course six inches minimum compacted depth, or as directed by the County Engineer's representative. The surface of the finished shoulder shall slope down from the edge of pavement at the rate of 0.02 foot per foot unless otherwise directed. The restored shoulder must not have any strips less than 2 feet wide. The restored shoulder shall be surfaced with crushed surfacing top course.

9. The Grantee shall notify the County Engineer's representative upon completion of the permitted construction under this permit/Franchise so that a final inspection can be made and shall immediately furnish to the County Engineer a revised plan of the final location or relocation of its facilities if the original permit/Franchise plans have been revised during the course of construction.

10. In the event that construction and maintenance of the highway facility within the proximity of the Grantee's installation becomes necessary during the period which the Grantee will occupy a portion of the Right of Way, it is expressly understood that, upon request from the County Engineer's representative, the Grantee will promptly identify and locate by suitable field markings any and all of their underground facilities so that the County or its contractor can be fully apprised at all times of its precise location and at no cost or expense to the County or its contractor.

11. The Grantee agrees to be responsible for any construction deficiencies as a result of its own construction.

12. The responsibility of the Grantee for proper performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the County's approval of plans, specifications or work, or by the presence at the work site of the County's representatives, or by compliance by the Grantee with any requests or recommendations made by such representatives.

Shared Use Excavation:

If, at any time, or from time to time, either Grantee or the County shall cause excavations to be made within the Franchise area, the party causing such excavation to be made shall afford the other upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (I) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; (II) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (III) either party may deny such a request for reasons of safety.

Final Condition:

After performing any work within the County's Right of Way, Grantee shall leave every road or public highway in as good and safe condition in all respects as they were before the commencement of said work, and whenever Grantee shall discontinue the use of any pole or facility it shall immediately remove such unused pole or facility from said roads or abandon said facilities in place at the discretion of the County Engineer.

16. EMERGENCY RESPONSE

The Grantee shall, within six months of the execution of this Franchise by the Grantee, prepare and file with the County and adhere to an Emergency Management Plan for responding to any spill, break, or other emergency condition. The plan shall designate responsible officials and emergency 24-hour on-call personnel and the procedures to be followed when responding to an emergency. When developing such plan, the Grantee shall work with the County Engineer and Sheriff's Office to determine when and how the same should be contacted during emergencies. After being notified of an emergency, Grantee shall cooperate with the County and make every effort to respond as fast as practical with action to minimize damage and to protect the health and safety of the public.

In the event the Grantee fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the County may take such actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the County for its costs and any penalties.

17. SAFETY:

The Grantee, in accordance with applicable federal, state, and local safety rules and regulations, shall, at all times, employ ordinary care in the installation, abandonment, relocation, construction, maintenance, and/or repair, utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.

All of Grantee's facilities in the Right of Way shall be constructed and maintained in a safe and operational condition. Grantee shall follow all safety codes and other applicable regulations in the installation, operation, and maintenance of the facilities.

18. DRAINAGE:

If the work done under this Franchise interferes in any way with the drainage of the County Right of Way, the Grantee shall wholly and at its own expense make such provisions as necessary to eliminate the interference to the drainage to the satisfaction of the County Engineer.

19. PROTECTION OF MONUMENTS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. All concrete encased recorded monuments which have been disturbed or displaced by such work shall be restored pursuant to Federal standards and specifications. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as the conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments and other marker ties which have been re-established or disturbed shall be borne by the Grantee.

20. TREES

The Grantee shall have the ability to cut or remove vegetation, on, or hanging over any County road, right-of-way, streets, alleys or County property consistent with the provisions of RCW 64.12.035 as it presently exists or may be hereinafter amended.

21. HAZARDOUS SUBSTANCES

Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Facilities in the Right of Way.

Grantee shall maintain and inspect its Facilities located in the Rights of Way. Upon reasonable notice to Grantee and in the presence of an authorized representative of Grantee, the County may inspect Grantee's facilities in the Rights of Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Facilities. This inspection is not to remove the burden of inspection from the Grantee on a periodic basis of its facilities for Hazardous substances, nor is to remove the responsibility of the Hazardous substance from the Grantee.

In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto.

Grantee agrees to forever indemnify the County against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the County arising out of the release or threat of release of Hazardous Substances caused by Grantee's ownership or operation of its Facilities within the County Right of Way.

22. MAINTENANCE

Grantee shall provide and put in use all Facilities necessary to control and carry Grantee's products so as to prevent injury to the County's property or property belonging to any Person within the County. Grantee, solely at its own expense, shall repair, renew, change, and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Facilities in a manner that requires any customer to install cables, ducts, conduits, or other facilities, in, under, or over the County's Rights of Way.

23. LOCATES - One-Call System

Pursuant to RCW 19.122, Grantee is responsible for becoming familiar with, and understanding, the provisions of Washington's One Call statutes. Grantee shall comply with the terms and conditions set forth in the One-Call statutes.

24. FEES

For and in consideration of the rights and privileges set forth herein, the Grantee agrees that Spokane County, to the extent authorized by law, may during the term of this Franchise, by

Franchise or resolution, impose fees for the rights and privileges granted herein. Such fees shall be based upon reasonable costs for the administration of such Franchise as well as reasonable costs for the use of County roads or rights-of-way. The Board of County Commissioners of Spokane County agrees to provide not less than thirty (30) days written notice prior to the imposition of such fees in order to negotiate the actual fee to be assessed and payments scheduled. Nothing in this section or agreement shall be construed to prohibit the County or its successor from imposing any license fee, tax or assessment which it is specifically authorized by law to impose.

Recovery of Costs. Nothing herein shall preclude the County from recovering all actual reasonable costs of and expense necessarily incurred by Grantor in the examination, inspection, and approval of all plans and specifications for, and all details of construction of, all facilities involved herein as necessary to insure conformity with the integrity of the County roads, traffic flow, and other Franchisees within the County Right of Way. This shall also include the costs of permits for any work done in the County Right of Way. Grantee shall reimburse any actual costs reasonably incurred by the County in responding to emergencies involving Grantee's facilities.

25. BOND

Faithful Performance Bond:

A. Upon the effective date of the Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the County, with a good corporate surety authorized to do a surety business in the State of Washington, in the penal sum of $1,000,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of Grantee's Facilities installed in the County's Rights of Way. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without a prior 30 day written notice first being given to the County Engineer. The bond shall be reviewed and approved as to form by the County Attorney. This performance bond shall be in accordance with all the provisions of the current "Standard Specifications for Road, Bridge, and Municipal Construction."

B. During the term of the Franchise, Grantee shall file with the County Engineer a duplicate copy of the bond along with written evidence of payment of the required premiums.

Construction Bond: During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the County, with good a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the County Engineer as sufficient to ensure performance of Grantee's obligations under this Franchise. The bond shall be conditioned so that Grantee shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to erect or replace any defective work or materials discovered in the replacement of the County's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the County. The bond or letter of credit shall be conditioned that the Grantee

shall well and truly observe, fulfill and perform each term and condition under the Franchises for Construction and Relocation. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the streets by the County Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the County agrees to sign all documents necessary to release the bond in accordance with the terms of this Franchise. During the duration of the construction work, Grantee shall file with the County Engineer a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of the County Engineer as to its adequacy under the requirements of this Franchise.

Recourse Against Bonds and Other Security. So long as the bond is in place, it may be utilized by the County for the following purposes, including, but not limited to, reimbursement of the County by reason of Grantee's failure to pay the County for actual costs and expenses incurred by the County to make emergency or safety or to correct Franchise violations not corrected by the Grantee after notice, and monetary remedies or damages assessed against Grantee due to default or violations of the requirements of County Franchise Agreements.

In the event Grantee has been declared to be in default by the County and if Grantee fails, within thirty (30) days of mailing of the County's default notice, to pay the County any penalties, or monetary amounts, or fails to perform any of the conditions of this Franchise, the County may thereafter obtain from the performance bond an amount sufficient to compensate the County for damages. Upon such withdrawal from the bond, the County shall notify Grantee in writing, by Certified Mail, of the amount withdrawn and date thereof.

Thirty (30) days after the County's mailing of notice of the bond forfeiture or withdrawal authorized herein, Grantee shall deposit such further bond, cash, or other security, as the County may require, which is sufficient to meet the requirements of this Franchise.

The rights reserved to the County with respect to any bond are in addition to all other rights of the County whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the County may have.

26. ABANDONMENT OF FACILITIES

In the event the County declares that the Grantee's facilities must be abandoned, or if the Grantee abandons its facilities in place, those facilities abandoned must be treated at the expense of the Grantee, so as to render them completely safe and purged of hazardous materials. The Grantee shall be responsible for undertaking any environmental review required by the abandonment of such facilities, and for the payment of any costs of conducting such environmental review. The Grantee shall remove said abandoned facilities when either the Grantee or the County opens that section of Right of Way for maintenance, repair, installation, or replacement of facilities. Said removal shall be at the County's convenience and shall be done in a manner so as not to interfere with County projects.

27. CONSENT TO OWNERSHIP CHANGE

County's Written Consent Required for Assignment, Transfer, Merger. Neither this Franchise nor any of Grantee's Facilities located in the County Right of Way by authority of this Franchise shall be sold, transferred, leased, assigned or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the prior written consent of the County after appropriate public process. The County's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

All leases or subleases of Grantee's Facilities located within the Public Right of Way by authority of this Franchise shall be subject to all the provisions of this Franchise.

Within ten (10) days after execution and delivery of any instrument so consented to by the County, Grantee shall file with the Auditor an executed counterpart or certified copy thereof. No sale, lease, assignment, transfer or merger may occur until the successor, assignee or lessee has complied with the requirements of this Franchise, which requires a performance bond.

For the purpose of determining whether the County will consent to any assignment, transfer, merger, or lease, the County may inquire into the qualifications of the prospective party. The Grantee shall assist the County in any such inquiry. The County may condition any such sale, assignment, transfer, merger, or lease upon such conditions as it deems reasonably appropriate.

All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges as well as all obligations and liabilities of the Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

The County's approval shall not be unreasonably withheld or delayed. Any costs associated with the County's review of any transfer proposed by the Grantee shall be reimbursed to the County by the new prospective Franchisee, if the County approves the transfer, or by the Grantee if said transfer is not approved by the County.

An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

Except as otherwise provided herein, the Grantee shall promptly notify the County prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Every change, transfer, or acquisition of control of the Grantee's company shall cause a review of the proposed transfer. In the event that the County denies its consent and such change, transfer or acquisition of control has been affected; the County may cancel the Franchise. Grantee shall notify the County of any transfers to such entities within ten (10) days of such transfers. Grantee may mortgage or otherwise encumber its Facilities in the ordinary course of its financing activities provided that any such mortgage, pledge or assignment shall be subject to the County's other rights contained in this Franchise.

28. NON-COMPLIANCE WITH FRANCHISE TERMS

Remedies to Enforce Compliance. In addition to any other remedy provided herein, the County reserves, and has the right to pursue any remedy to compel or force the Grantee, and/or its successors and assigns, to comply with the terms hereof. The pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture pursuant to this Franchise.

(a) If the Grantee shall fail to comply with any material provision of this Franchise, the County may compel compliance by serving upon the Grantee a written notice of the violation and the direction to comply within thirty (30) days from the date the order is received by the Grantee. If the Grantee is not in compliance with this Franchise after expiration of said thirty (30) day period, the County may declare an immediate forfeiture and termination of this Franchise, provided however, that if any failure to comply with this Franchise by the Grantee cannot be corrected with due diligence within said thirty (30) day period then the County may extend the time for compliance for such time as may be reasonably necessary for the Grantee to comply, so long as the Grantee commences promptly and diligently to effect such compliance.

The notice requirements of paragraph (a) of this section shall not apply if the noncompliance of the Grantee results, in the sole opinion of the County, in any emergency or life-threatening condition. In such case, the County may set a period of less than thirty (30) days for the Grantee to comply and may set such conditions and specifications for compliance as the County may deem reasonable under the circumstances. In the event that the Grantee fails to comply with any time set for compliance or with any condition set for compliance under this paragraph, the County may declare an immediate forfeiture and termination of this Franchise and may take all reasonable and necessary steps to correct the emergency condition to restore safety. In such event, the Grantee shall be liable to the County for all costs and expenses incurred in taking such corrective action.

(b) Nothing herein shall limit the remedies available to the County in the event of noncompliance by the Grantee. The County may sue for specific performance and/or damages in addition to the remedies provided herein.

(c) The County reserves the right in addition to any other remedy provided for under the terms of this Franchise, in the event of a material breach by the Grantee of any terms of this franchise, to apply any of the following, alone or in combination:

(A) Impose a financial penalty

(B) Suspend the Grantee's Franchise rights, until the Grantee corrects or otherwise remedies the violation.

(C) In determining which remedy or remedies are appropriate, the County shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent

further such violations, and any other matters the County deems appropriate.

(a) In the event this Franchise is forfeited or terminated for any reason stated herein, the Grantee shall, upon notice from the County, remove promptly all of its equipment and facilities and return said property to its original state as if the Grantee had never had its equipment or facilities on or within said property, at the Grantee's sole cost and expense, provided that, as an alternative to removal the County may, at the County's sole option, allow the Grantee to abandon its equipment and facilities in place.

29. Choice of Forum

Any litigation between the County and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Spokane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the Eastern District of Washington.

30. NATURAL DISASTER

A. For purposes of this subsection, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.

B. If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the County prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

31. NON-ENFORCEMENT BY THE COUNTY

Regulation and Non-enforcement by the County: The County shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the County to enforce prompt compliance,

nor does the County waive or limit any of its rights under this Franchise by reason of such failure or neglect.

32. ENVIRONMENTAL OBLIGATIONS

Environmental Obligations of Grantee: Grantee shall comply with all environmental protection laws, rules, recommendations, and regulations of the United States and the State of Washington, and their various subdivisions and agencies as they presently exist or may hereafter be enacted, promulgated, or amended, and shall indemnify and hold the County harmless from any and all damages arising, or which may arise, or be caused by, or result from the failure of Grantee fully to comply with any such laws, rules, recommendations, or regulations, whether or not Grantee's acts or activities were intentional or unintentional. Grantee shall further indemnify the County against all losses, costs, and expenses (including legal expenses) which the County may incur as a result of the requirement of any government or governmental subdivision or agency to clean and/or remove any pollution caused or permitted by Grantee, whether said requirement is during the term of the Franchise or subsequent to its termination.

33. INDEMNIFICATION

Grantee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the County, its elected officials, employees, agents, and volunteers from any and all claims, cost and expense, judgments, cause of action, damages, loss, awards or liability to any person, including claims by Grantee's own employees to which Grantee might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property, to the extent caused by the negligent acts or omissions of Grantee, its agents, servants, officers or employees in performing activities authorized by this Franchise.

Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the County, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any persons (including claims by Grantee's own employees, including those claims to which Grantee might otherwise have immunity under Title 51 RCW) arising against the County solely by virtue of the County's ownership or control of the rights of way or other public properties, by virtue of Grantee's exercise of the rights granted herein, or by virtue of the County's permitting Grantee's use of the Right of Way or other public property based upon the inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on the County's property or property over which the County has control, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the County arising as a result of the negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any Right of Way or other public place in performance of work or services permitted under this Franchise.

If final judgment is rendered against the County, its elected officials, employees, agents, and volunteers, or any of them, Grantee, its successors or assigns, shall fully satisfy said judgment within ninety (90) days.

Grantee also hereby agrees to indemnify the County for any damages, claims, additional costs or expenses assessed against or payable by the County arising out of or resulting, directly or indirectly, from Grantee's failure to remove, adjust or relocate any of its Facilities in the Rights of Way in a timely manner in accordance with a reasonable relocation schedule furnished to Grantee by the County Engineer, unless Grantee's failure arises directly from the County's negligence or willful misconduct.

Inspection or acceptance by the County of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event Grantee refuses to undertake the defense of any suit or any claim, after the County's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and Grantee's refusal is subsequently determined by a court having jurisdiction, or such other tribunal that the parties shall agree to decide the matter, to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the County's costs and expenses for defense of the action, including reasonable attorneys' fees of recovery under this indemnification clause as well as any judgment against the County.

Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee or the County, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence. It is further specifically and expressly understood that the indemnification provided in Section 16 constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

34. INSURANCE

During the term of this Franchise, the Grantee shall obtain and maintain commercial general liability insurance with limits of at least one million dollars ($1,000,000.00) per occurrence and two million dollars ($2,000,000.00) aggregate, subject only to such reasonable risk retention to the Grantee as is specified in any such policy. The County shall be named as an additional named insured. The County reserves the right to increase the limits of such insurance during the term of the Franchise to amounts that are reasonable, prudent and consistent with good commercial insurance practice. The County will provide the Grantee three (3) months advance written notification of any increase in the amount of insurance coverage. In the event the Grantee disagrees with any increase in the amount of insurance coverage, it may employ, at its own expense, a Risk Analysis familiar with public entity utility liability issues. The Risk Analysis shall be jointly selected by the County and Grantee. The County agrees to accept the opinion of the Risk Analysis as to any increase in the amount of insurance coverage required by the County.

On or before thirty (30) days of the anniversary date of the franchise, Grantee shall file with the County Clerk, with a copy to the County Risk Manager, proof of continued insurance coverage, at

least in the amounts required in this Section, through a Certificate of Insurance including the additional insured endorsement indicating County coverage required herein and a provision that said coverage may not be canceled or reduced without at least thirty (30) days notice to the County, filed as above provided.

In those situations where, through the Grantee's negligent or intentional acts or omissions, damage has occurred, Grantee's insurance shall be primary to any County insurance coverage or, in the event the County is self insured, any Grantee policy shall afford first dollar protection coverage for risks included in Grantee's operations.

35. ACQUIRING NEW FACILITIES

Upon Grantee's acquisition of any new Facilities in the Rights of Way, or upon any addition or annexation to the County of any area in which Grantee retains any such Facilities in the Rights of Way, the Grantee shall submit to the County a written statement describing all Facilities involved, whether authorized by Franchise or any other form of prior right, and specifying the location of all such Facilities. Such Facilities shall immediately be subject to the terms of this Franchise.

36. COMPLIANCE WITH NEW REGULATIONS

Spokane County reserves for itself the right to change, amend, modify, or amplify this Franchise to conform to any state statute, or County regulation, Utility Accommodation Plan, or Right of Way regulation, State and National Codes, Standards, and Regulations as may hereafter be enacted, adopted or promulgated. If the Grantee fails to comply with its terms and conditions, or if the Grantee fails to comply with such changes, amendments, modifications, and/or amplifications, this Franchise may be terminated at any time upon ninety (90) days written notice to the Grantee to terminate this Franchise and upon termination Spokane County shall have a lien upon all equipment and materials erected or placed under this Franchise, which lien may be enforced to reimburse Spokane County for any reasonable expenses and payments incurred in terminating this Franchise and to cure defaults by the Grantee.

The County and Grantee hereby reserve the right to also alter, amend or modify the terms and conditions of the Franchise upon written agreement of both parties to such amendment.

37. SEVERABILITY

If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise. In the event that any of the provisions of this Franchise are held to be invalid by a court of competent jurisdiction, the County reserves the right to reconsider the grant of this Franchise and

may amend, repeal, add, replace or modify any other provision of this Franchise, or may terminate this Franchise.

38. NOTICE

Any notice provided for under this Franchise shall be sufficient if it is in writing and delivered personally to the following addressee or delivered by certified mail with a return receipt requested.

Spokane County Public Works
Division of Engineering and Roads
1026 West Broadway Avenue
Spokane, Washington 99260-0170

39. ACCEPTANCE

As a condition precedent to this Franchise taking effect, a written letter of full acceptance must be filed with the Clerk of the Board of County Commissioners of Spokane County and recorded with the County Auditor accepting all terms and conditions as set forth in this Franchise within thirty days from the date signed by the Board of County Commissioners. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Franchise. The Grantee's written acceptance shall include the identification of an official liaison that will act as the County's contact for all issues regarding this Franchise. The Grantee shall notify the County of any change in the identity of its liaison. A failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this Franchise Agreement shall be null and void.

ADOPTED by the Board of County Commissioners of Spokane County, Washington this 17th day of October, 2006.

BOARD OF COMMISSIONERS SPOKANE COUNTY SEAL SPOKANE COUNTY, WA

Todd Mielke, Chair

ATTEST:

Mark Richard, Vice-Chair

Daniela Erickson

Daniela Erickson

Phillip D. Harris, Commissioner

The Grantee, Whitworth Water District #2, a corporation, hereinbefore referred to, for itself, and for its successors and assigns, does accept all of the terms and conditions of the foregoing franchise.

Susan McGeorge
Manager

STATE OF WASHINGTON)
COUNTY OF SPOKANE) ss

I certify that I know or have satisfactory evidence that Susan McGeorge

(is/are) the individual(s) who appeared before me, and said individual(s) acknowledged that (he/she/they) signed this instrument, on oath stated that (he/she/they) (was/were) authorized to execute the instrument and acknowledged it as the Manager of Whitworth Water District No. 2 to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated this 23rd day of October, 2006.

LINDA M. HAASE
Commission Expires
NOTARY
PUBLIC
JULY 1, 2007
STATE OF WASHINGTON

Linda M. Haase
NOTARY PUBLIC
In and for the State of Washington,
residing at Spokane.
My appointment expires: 7/1/07.

Exhibit "A"

6 0887

All roads, highways and rights of way contained within the limits of Spokane County in the following sections:

Section	Township	Range
1, 2, 3 11, 12 and 13	26N	42E
13, 14, 23, 24, 25, 26, 35 and 36	27N	42E
N ½ of 1, 2 and 4 W ½ of 9 NW ¼ of 20 3, 5, 6, 7, 8, 16, 17, 18, 19 and 30	26N	43E
1 - 36	27N	43E
25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35 and 36	28N	43E

Lake Whatcom Water & Sewer District Franchise

(Whatcom County)

INTRODUCED BY: Cosent

PROPOSED BY: PUBLIC WORKS

DATE INTRODUCED: 9/13/05

ORDINANCE NO: 2005-070

AN ORDINANCE IN THE MATTER OF GRANTING A NON-EXCLUSIVE FRANCHISE TO LAKE WHATCOM WATER & SEWER DISTRICT FOR A PERIOD OF 25 YEARS PURSUANT TO STATE LAW AND SECTION 9.30 OF THE WHATCOM COUNTY HOME RULE CHARTER, TO OPERATE AND MAINTAIN WATER MAINS, WATER DISTRIBUTION LINES, SEWER MAINS, SEWER COLLECTION LINES, AND ALL ELECTRICAL AND COMMUNICATIONS UTILITIES (OWNED AND OPERATED BY THE DISTRICT) FOR OPERATION OF THE WATER AND SEWER UTILITIES, ALONG CERTAIN ROADS WITHIN THE UNINCORPORATED AREAS OF WHATCOM COUNTY

WHEREAS, the Home Rule Charter for Whatcom County authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road or public place;

WHEREAS, R.C.W. 36.55.010 provides that the county legislative authority may grant franchises to persons or private or municipal corporations to use the right-of-way of County roads in their respective counties for the construction and maintenance of water works, gas pipes, telephones, telegraph and electrical light lines, sewers and other such facilities and including cable television wires and other cable television facilities; and

WHEREAS, Lake Whatcom Water & Sewer District, formerly Whatcom County Water District No. 10, has operated a system of water mains and water distribution lines and other facilities within a portion of Whatcom County under a previous twenty-five year franchise ordinance, adopted by the County Council on July 5, 1979 and approved by the County Executive on August 13, 1979; and

WHEREAS, said District has operated a system of sewer force and gravity mains, collector sewers, and pump stations within a portion of Whatcom County under a previous fifty year franchise ordinance, adopted by the Board of County Commissioners on October 7, 1971; and

WHEREAS, the twenty-five year water franchise ordinance states that, if the grantee seeks renewal of this franchise at the end of the twenty-five year term and has observed the material terms of the franchise, renewal shall not be unreasonably withheld;

WHEREAS, Lake Whatcom Water & Sewer District has applied for a 25-year nonexclusive franchise for installation, operation, maintenance, repair and replacement of water mains and water distribution lines, sewer force and gravity mains, collector sewers and sewer pump stations, and related facilities in and along certain roads in Whatcom County, Washington, and notice of this hearing having been duly published on Sept. 17, 2005 and September 24 2005 in the Bellingham Herald, the official newspaper for Whatcom County, and it appearing to the County Council that notice of said hearing has been given as required by law and that it is in the public interest to renew the franchise for a period of 25 years; and

WHEREAS, this matter has come on regularly for hearing before the Whatcom County Council at 7:00 p.m. on the 27th day of Sept, 2005 in accord with the notice given; and

WHEREAS, Lake Whatcom Water & Sewer District has agreed to the addition of certain administrative provisions to the franchise as provided herein;

NOW, THEREFORE, BE IT ORDAINED by the Council of Whatcom County, Washington:

Section 1. Franchise Granted.

A non-exclusive franchise for Lake Whatcom Water & Sewer District, together with any successors and assigns, referred to herein as the grantee, is hereby granted for a period of 25 years, the non-exclusive right and privilege to construct, erect, operate, maintain, repair and replace water mains and water distribution lines, sewer force and gravity mains, collector sewers and pump stations, and electrical and communications utilities, and related facilities (hereafter collectively referred to as "facilities") in, along and across public county roads and county property within the boundaries of the Lake Whatcom Water & Sewer District, within an area generally described as follows:

Sections 23, 24, 25, 26, 27, 34, 35, and 36, Township 38 North, Range 3 East; Sections 19, 29, 30, 32 and 33, Township 38 North, Range 4 East; Sections 1, 2, and 3, Township 37 North, Range 3 East; Sections 4, 5, 6, 7, 8, 9, 15, 16, 17, 20, 21, 22, 23, 25, 26, 27, 28, and 29, Township 37 North, Range 4 East, and Section 30, Township 37 North, Range 5 East of the Willamette Meridian, in Whatcom County, Washington.

The rights and privileges shall also apply to the portions of roads and rights-of-way that are part of or that abut those portions of roads that lie just over the section lines that bisect or intersect the roads in the above-listed areas.

Section 2. Acceptance of Franchise.

(a) No franchise hereunder shall become effective for any purpose unless and until written acceptance therefor shall have been filed with the Whatcom County Council and County Director of Public Works and such written acceptance shall be in form and substance as shall be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance of each and every term and condition and limitation in this ordinance, and in such franchise;

(b) Such written acceptance shall be filed by Grantee not later than the thirtieth day

following the effective date of the ordinance granting such franchise; and in default of the filing of such written acceptance as herein required, Grantee shall be deemed to have rejected the same.

Section 3. Entering Rights of Way.

The Grantee, its successors and assigns, shall, subject to the requirements of Section 5 below, have the right and authority to enter upon the above-mentioned county roads, rights-of-way and other county property as designated hereinbefore, for the purposes of constructing, operating, maintaining, repairing, and replacing water and sewer lines and facilities.

Section 4. Construction Standards.

All construction and installation work along and under county roads or rights-of-way or other County property outside the corporate limits of any incorporated town shall be subject to the approval and pass the inspection of the Director of Public Works and shall conform to all applicable County and State codes or regulations, and the County expressly reserves the right to prescribe how and where the facilities shall be installed and may from time to time, upon six months or otherwise reasonable notice, whichever is longer,[1] require the removal and replacement thereof in the public interest, at the expense of the franchise holder.

Section 5. Construction Application.

(a) Prior to commencement of construction of said water and sewer mains, lines and other facilities, Grantee shall first file with the Director of Public Works its application for permit to do such work, together with plans and specifications in duplicate showing the position and location of all such lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing county roads, rights-of-way or other county property upon plans drawn to scale, hereinafter collectively referred to as the "map of definite location."

(b) The water and sewer lines and related facilities shall be laid in exact conformity with said map of definite location, except in instances in which deviation may be allowed thereafter in writing by the Director of Public Works pursuant to application by Grantee. The plans and specifications shall specify the class and type of material and equipment to be used, the manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turn-outs and road obstruction, etc. No such construction shall be commenced without the Grantee first securing a written permit from the Director of Public Works, including approval endorsed on one set of plans and specifications returned to the Grantee. All such work shall be subject to the approval of and shall pass the inspection of the Director of Public Works. The Grantee shall pay all actual and necessary costs of and expenses incurred in the examination, inspection and approval of such work on account of granting said permits.

Section 6. Construction on Roadways/Other County Property.

---

[1] While the period of time is stated as "six months or otherwise reasonable notice, whichever is longer", the parties are generally willing to work to accommodate each other.

(a) In any work which requires the breaking of soil of county roads, rights-of-way or other county property subject to this franchise for the purpose of laying, relaying, connecting, disconnecting and repairing the said lines and facilities, and making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and conform to the general rules adopted by the officers charged with the supervision and care of such county roads, rights-of-way, and other county property; and the Grantee at its own expense and with all convenient speed shall complete the work for which the soil has been broken and forthwith replace the work and make good the county road, rights-of-way or other county property and leave the same in as good condition as before the work was commenced.

(b) Applications for permits referred to in Section 5 above shall be accompanied by specifications for the restoration of the county road, rights-of-way or other county property to the same condition it was prior to such breaking of the soil, and such specifications must be approved by the Director of Public Works before such breaking of the soil is commenced. Provided, that the Director of Public Works may require a performance bond in the sum sufficient to guarantee that such county roads, rights-of-way or other county property shall be restored to the same condition as they were prior to the breaking of the soil. Said bond shall be in addition to any other such requirements contained herein.

(c) The Director of Public Works may at any time order, or have done, any and all work that it considers necessary to restore to a safe condition any such county road, rights-of-way or other county property left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee upon demand shall pay to the County all costs of such work; provided that, where reasonably feasible, the Grantee shall be provided prior notice of the condition and allowed seventy-two (72) hours to complete the necessary restoration work itself.

Section 7. Construction—Other Lines and Facilities.

(a) All construction or installation of such mains, lines or other facilities, service, repair or relocation of same, performed above, along or within the county rights-of-way or other county property subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities' lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures located therein, nor change the drainage flow therein, nor interfere with the grading or improvement of such county roads, rights-of-way or other county property.

(b) The owners of all utilities, public or private, installed prior in time to the line and facilities of the Grantee shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such county road or right-of-way.

Section 8. Construction – Public Safety and Inconvenience.

All work done under this franchise shall be done in a thorough and workmanlike manner. In the laying of water and sewer lines and the construction of facilities within rights-of-way or other county property, the Grantee shall leave such trenches, ditches and tunnels in such a way as

to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work; and where any of such trenches, ditches, or tunnels are left open at night, the Grantee shall place warning lights and barricades at such a position as to give adequate warning of such work per the MUTCD (Manual on Uniform Traffic Control Devices). The Grantee shall be liable for any injury to person or persons or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

Section 9. County Rights Reserved.

The County of Whatcom in granting this franchise, does not waive any rights which it has now or may hereafter acquire with respect to county roads, rights-of-way or other county property and this franchise shall not be construed to deprive the County of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the county roads, rights-of-way or other County property covered by this franchise. This franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the franchise itself shall have no value.

Section 10. Relocation of Lines and Facilities.

(a) If at any time the County of Whatcom shall improve or change any county road, right-of-way or other county property subject to this franchise by grading or regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing drainage facilities, or in the event that such county road, right-of-way or other county property subject to this franchise shall become a Primary State Highway as provided by law, the Grantee upon written notice from the Director of Public Works or the Director of Highways, shall at its sole expense and within six months or a reasonable time, whichever is longer,[2] change the location or readjust the elevation of its lines and other facilities so that the same shall not interfere with such County work and so that such lines and facilities shall conform to such new grades or routes as may be established. The County of Whatcom shall in no way be held liable for any damage to said Grantee that may occur by reason of any of the County's improvements, changes or works above enumerated.

(b) All work to be performed by the Grantee under this section shall be under the direction and approval, and shall pass the inspection of the Director of Public Works. The Grantee shall pay all actual and necessary costs and expenses incurred in the examination, inspection and approval of such work.

Section 11. County Road Work Permitted.

The laying, construction, operation and maintenance of the Grantee's lines and facilities authorized by this franchise shall not preclude the County of Whatcom, its agents or its contractors from blasting, grading, excavating or doing other necessary road work contiguous to the said lines and facilities of the Grantee provided that the Grantee shall be given forty-eight (48) hours notice of said blasting or other work in order that the Grantee may protect its lines and

---

[2] See footnote 1.

facilities.

Section 12. Monuments and Survey Markers.

(a) Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director of Public Works. The replacement of all such monuments or other points to be referenced shall be approved by the Director of Public Works. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the Director of Public Works. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

(b) A complete set of reference notes for monuments and other ties shall be filed with the Whatcom County Director of Public Works.

Section 13. Vacations.

If at any time the County of Whatcom shall vacate any county road, right-of-way or other county property which is subject to the rights granted by this franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, rights-of-way or other county property for the use of Whatcom County, in either its proprietary or governmental capacity, then the Council of Whatcom County may at its option and by giving thirty (30) days written notice to the Grantee, terminate this franchise with reference to such county road, right-of-way or other county property so vacated and the County of Whatcom shall not be liable for any damages or loss to the Grantee by reason of such termination. Prior to vacation, the County of Whatcom shall reserve for use by the Grantee a minimum twenty-five foot (25') wide permanent easement for the existing water and/or sewer line and facilities in the subject right-of-way or County property.

Section 14. Indemnification.

(a) The Grantee by acceptance of the privileges granted hereunder, does hereby agree and covenant to indemnify, defend, and save harmless Whatcom County and those persons who were, are now, or shall be duly elected or appointed officials or members or employees thereof, against and from any loss, damage, costs, charges, expenses, liability, claims, demands or judgments of whatsoever kind or nature, whether to persons or property, arising wholly or partially out of any act, action, neglect, omissions or default on the part of the Grantee, its subcontractors and/or employees which may occur by reason of the construction, operation and maintenance of the Grantee's said lines and facilities. In case that suit or action is brought against the County of Whatcom for damages arising out of or by reason of the above-mentioned causes, the Grantee will upon notice to it of the filing of a claim or the commencement of said action, appear and defend the same at its sole cost and expense, and in case judgment shall be rendered against the County of Whatcom in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined, if determined adversely to Whatcom County. Upon the Grantee's failure to satisfy said judgment

within a ninety (90) day period, this franchise shall at once cease and terminate and the County of Whatcom shall have a lien upon the lines and all other facilities used in the construction, operation and maintenance of the Grantee's system, which may be enforced against the property for the full amount of any such unsatisfied judgment so taken against Whatcom County.

(b) Acceptance by the County of any work performed by the Grantee at the time of completion shall not be grounds for avoidance of this covenant.

Section 15. Non-Exclusive Franchise.

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the County of Whatcom from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over and upon any of the county roads, rights-of-way, or other County property subject to franchise, and shall in no way prevent or prohibit the County of Whatcom from constructing, altering, maintaining, using or vacating any of said roads, rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them with full power to make all necessary changes, relocations, repairs, and maintenance as the County may deem fit.

Section 16. Successors and Assigns.

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned herein.

Section 17. Transferability.

Neither this franchise nor any interest therein shall be sold, transferred or assigned without prior written consent of the Whatcom County Council, which consent shall not be unreasonably withheld.

Section 18. Incorporation.

Whenever any of the county roads, rights-of-way or other county property as designated in this franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this franchise shall continue in force and effect as to all county roads, rights-of-way or other county property not so included in city or town limits.

Section 19. Enforcement/Remedies.

If the Grantee shall willfully violate, or fail to comply with any of the provisions of this franchise through willful or unreasonable neglect, or fail to heed or comply with any notice given the Grantee under the provisions of this franchise, then the said Grantee shall forfeit all rights conferred hereby, and this franchise may be revoked or annulled by the Council of Whatcom County. In addition to any rights implied or set out elsewhere in this ordinance, the Council reserves the right to require the Grantee to specifically comply with the terms and conditions of the franchise ordinance, or any lawful order, statute, or regulation, and this franchise may be

terminated at any time if the Grantee's lines and facilities are not operated or maintained in accordance with such ordinance, order, statute, or regulation.

Section 20. Reservation of Home Rule Charter Rights.

This franchise is subject to the provisions of the Home Rule Charter for Whatcom County and, in particular, Section 9.30 thereof, which provides as follows: All franchises granted by the County Council shall be for a fixed term not to exceed twenty-five (25) years and no exclusive franchise shall be granted for the use of any street, road, or public place. All franchises shall be subject to the power of eminent domain and the right of the Council or the people acting for themselves through initiative or referendum to repeal, amend or modify the franchise in the interest of the public; and every ordinance granting a franchise shall contain a reservation of these rights. In any proceeding under eminent domain the franchise itself shall have no value.

Section 21. Compliance with Laws and Regulations.

This franchise is subject to, and the Grantee shall comply with, all applicable Federal, State, County or municipal laws, regulations and policies affecting performance under this franchise.

Section 22. Insurance.

(a) Upon acceptance of this franchise, the Grantee shall file with the Whatcom County Council, and shall thereafter, during the entire term of such franchise, maintain in full force and effect, a corporate insurance policy or other adequate surety agreement in the amount of ONE MILLION DOLLARS ($1,000,000.00) for property damage coverage, and ONE MILLION DOLLARS ($1,000,000.00) for public liability coverage, so as to protect the County against damages or costs as set forth in Section 14 above, and there shall be recoverable, jointly and separately from the principal and surety, any such damages or costs suffered or incurred by the County, including attorneys' fees and costs of any action, or proceedings, and including the full amount of any compensation, indemnification, cost of removal of any property or other costs which may be incurred up to the full principal amount of such insurance policy; and said condition shall be a continuing obligation during the entire term of such franchise and thereafter until Grantee shall have satisfied in full any and all obligations to the County and any user which arise out of or pertain to said franchise. Neither the provisions of this section, nor any insurance policy accepted by the County pursuant hereto, nor any damages recovered by the County thereunder, shall be construed to excuse faithful performance by the Grantee, or limit the liability of the Grantee under any franchise issued pursuant to this ordinance.

(b) The County reserves the right to have its legislative body review the dollar amount of said insurance policy and adjust the amount of coverage as deemed appropriate upon an annual basis.

Section 23. License, Tax and Other Charges.

No privileges or rights granted hereunder shall exempt Grantee from any future uniform rent, license, tax charge or impost which may hereafter be required by the Grantor, for revenue or as reimbursement for use and occupancy of public ways, and failure to timely remit any sums properly due thereby, shall be cause for forfeiture of rights hereunder.

Section 24. Repealer.

All other prior existing franchises granted to Lake Whatcom Water & Sewer District shall be repealed, and the terms of the franchise granted hereunder shall become effective at such time as an acceptance of franchise is filed by the Grantee with the County in accordance with Section 2 herein.

Section 25. Severability.

If any portion of this ordinance is deemed invalid, the remainder shall remain in effect.

Section 26. Titles.

The section titles used herein are for reference only and should not be used for the purpose of interpreting this ordinance.

PASSED this 27th day of September, 2005.

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

L. Caskey-Schreiber

LAURIE CASKEY-SCHREIBER,
CHAIRPERSON

ATTEST:

Dana Brown-Davis,
Clerk of the County Council

( ) APPROVED ( ) VETOED

PETE KREMEN, COUNTY EXECUTIVE

APPROVED AS TO FORM:

Daniel L. Gibson

DANIEL L. GIBSON
Deputy Prosecuting Attorney

Published on Sept 17 and September 24, 2005

This ordinance shall become effective on October 9, 2005

Exhibit B

ACCEPTANCE OF FRANCHISE

Lake Whatcom Water & Sewer District

The Whatcom County Council at its meeting of September 27, 2005, adopted Ordinance 2005-070 approving the petition for franchise filed by Lake Whatcom Water & Sewer District. The petition and all related documents are available for review in the Council Office as file number 2005-361.

Lake Whatcom Water & Sewer District hereby accepts, subject to all the conditions contained in Ordinance 2005-070, that certain non-exclusive franchise to lay, construct, erect, install, operate, maintain, repair and/or replace water mains and water distribution lines, sewer force and gravity mains, collector sewers and pump stations, and electrical and communications utilities, and related facilities in, along and across public county roads and county property within the boundaries of the Lake Whatcom Water & Sewer District, within an area generally described as follows:

> Sections 23, 24, 25, 26, 27, 34, 35, and 36, Township 38 North, Range 3 East; Sections 19, 29, 30, 32 and 33, Township 38 North, Range 4 East; Sections 1, 2, and 3, Township 37 North, Range 3 East; Sections 4, 5, 6, 7, 8, 9, 15, 16, 17, 20, 21, 22, 23, 25, 26, 27, 28, and 29, Township 37 North Range 4 East, and Section 30, Township 37 North, Range 5 East of the Willamette Meridian, in Whatcom County, Washington.

The rights and privileges shall also apply to the portions of roads and rights-of-way that are part of or that abut those portions of roads that lie just over the section lines that bisect or intersect the roads in the above-listed areas.

Granting of this franchise becomes official upon receipt from the petitioner of this signed and notarized document, and payment by petitioner of publication costs incurred by the County Council Office.

This franchise, when granted, shall be in effect for a period of twenty-five (25) years.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis
Clerk of the Council

Laurie Caskey-Schreiber
Council Chair

Agent for the petitioner, Lake Whatcom Water & Sewer District:

James F. Neher

Date: 10/5/05

State of Washington)
) ss.
County of Whatcom)

Signed and sworn to before me on this 5th day of October 2005, by James F. Neher.

Jacqueline Hager
Notary Public in and for the State of Washington, residing at Bellingham

My notary commission expires: 7/20/07

ARETE LAW GROUP

August 09, 2019 - 3:40 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	96360-6
Appellate Court Case Title:	King County v. King County Water Districts, et al

The following documents have been uploaded:

- 963606_Briefs_20190809152221SC500389_5871.pdf
  This File Contains:
  Briefs - Amicus Curiae
  The Original File Name was 2019-08-09 WSAC - Amicus Final.pdf

A copy of the uploaded files will be sent to:

- DJurca@Helsell.com
- Jessica.skelton@pacificalawgroup.com
- ack@vnf.com
- awg@vnf.com
- bill@seversonlaw.com
- dashbaugh@aretelaw.com
- david.hackett@kingcounty.gov
- dawn.taylor@pacificalawgroup.com
- dbarnett@perkinscoie.com
- dmg@vnf.com
- efrimodt@insleebest.com
- jburt@helsell.com
- jcmerkel@gmail.com
- jmilne@insleebest.com
- joel@merkellaw.com
- jrm@vnf.com
- kma@vnf.com
- kymberly.evanson@pacificalawgroup.com
- laddis@insleebest.com
- mackenzie.brown@kingcounty.gov
- matt@tal-fitzlaw.com
- matthew.segal@pacificalawgroup.com
- neilrobblee@gmail.com
- nrobblee@hotmail.com
- nrobblee@hotmail.com
- phil@tal-fitzlaw.com
- richard@jonson-jonson.com
- rthomas@perkinscoie.com
- ryancrawfordthomas@gmail.com
- spitzerhd@gmail.com
- sydney.henderson@pacificalawgroup.com

Comments:

Brief of Amicus Curiae Washington State Association of Counties

---

Sender Name: Annabel Barnes - Email: abarnes@aretelaw.com
Filing on Behalf of: Jeremy E Roller - Email: jroller@aretelaw.com (Alternate Email: abarnes@aretelaw.com)

Address:
1218 Third Avenue
Suite 2100
Seattle, WA, 98101
Phone: (206) 428-3250

Note: The Filing Id is 20190809152221SC500389