

KLICKITAT COUNTY PUBLIC WORKS DEPARTMENT

TO: WHOM IT MAY CONCERN

FROM: GORDON KELSEY, .P.E.
DIRECTOR OF PUBLIC WORKS/COUNTY ENGINEER

SUBJECT: FRANCHISING PROCESS

Pursuant to the authority provided in RCW 36.55 and in accordance with Klickitat County's Accommodation of Utilities on County Road Right-of-Way Policy, the Board of Klickitat County Commissioners may grant a non exclusive franchise to use the right-of way of county roads for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities and right to build and maintain tramroads and railway roads upon county roads. To apply for a franchise, complete the application and submit to address listed on the application form along with the appropriate Fee as set forth in the Klickitat County's Accommodation of Utilities Policy. Refer to the Klickitat Counties Accommodation of Utilities Policy to determine whether or not a franchise is required.

This office will review all applications received and make contact with the applicant for additional information as required. Once all the required additional information is received and reviewed, the application process will be considered complete. Once the application process is completed, the county will schedule a public hearing date and time with the Board of County Commissioners. Scheduling a hearing on the application with the Board of County Commissioners does not imply this Department is for or against the issuance of a franchise, only that the application contains sufficient information to proceed to a public hearing.

It may take up to thirty (30) days from the date that the application process is complete until a public hearing is held and final consideration of your application can be given by the Board of County Commissioners. The Board of County Commissioners reserve the right to reject completely or accept applications as submitted. The Board of County Commissioners also reserve the right to impose any kind of special franchise conditions as part of the final consideration given. Once the final consideration is given by the Board of County Commissioners, a formal Franchise Agreement will be forwarded to the Applicant for Signature. The Applicant will be required to sign and have notarized the Certificate of Acceptance page included in the Franchise Agreement and return the original to the County for final execution and recording. A copy will then be returned to the applicant.

If you have other questions concerning the process or how to complete the form, please call this office at (509) 773-4616.

Klickitat County's Accommodation of Utilities Policy was developed based on RCW 36.55.

For informational purposes, the following are those sections of the Revised Code of Washington.

**Chapter 36.55 RCW
Franchises on roads and bridges**

36.55.010 Pipe line and wire line franchises on county roads.

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 maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities.

[1963 c 4 § 36.55.010. Prior: 1961 c 55 § 2; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.020 Cattleguards, tramroad, and railway rights.

Any board of county commissioners may grant to any person the right to build and maintain tramroads and railway roads upon county roads under such regulations and conditions as the board may prescribe, and may grant to any person the right to build and maintain cattleguards across the entire right-of-way on any county road, under such regulations and conditions as the board may prescribe: PROVIDED, That such tramroad or railway road shall not occupy more than eight feet of the county road upon which the same is built and shall not be built upon the roadway of such county road nor in such a way as to interfere with the public travel thereon.

[1963 c 4 § 36.55.020. Prior: 1941 c 138 § 1; 1937 c 187 § 39; Rem. Supp. 1941 § 645039.]

36.55.030 Franchises on county bridges.

Any board of county commissioners may grant franchises upon bridges, trestles, or other structures constructed and maintained by it, severally or jointly with any other county or city or town of this state, or jointly with any other state or any county, city or town of any other state, in the same manner and under the same provisions as govern the granting of franchises on county roads.

[1963 c 4 § 36.55.030. Prior: 1937 c 187 § 40; RRS § 6450-40.]

36.55.040 Application — Notice of hearing.

On application being made to the county legislative authority for franchise, it shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, by posting notices in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing. The county legislative authority shall also publish a like notice two times in the official newspaper of the county, the last publication to be not less than five days before the day fixed for the hearing. The notice shall state the name or names of the applicant or

applicants, a description of the county roads by reference to section, township and range in which the county roads or portions thereof are physically located, to be included in the franchise for which the application is made, and the time and place fixed for the hearing. [1985 c 469 § 49; 1963 c 4 § 36.55.040. Prior: 1961 c 55 § 3; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.050 Hearing — Order.

The hearing may be adjourned from time to time by the order of the board of county commissioners. If, after the hearing, the board deems it to be for the public interest to grant the franchise in whole or in part, it may make and enter a resolution to that effect and may require the applicant to place his utility and its appurtenances in such location on or along the county road as the board finds will cause the least interference with other uses of the road.

[1963 c 4 § 36.55.050. Prior: 1961 c 55 § 4; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.060 Limitations upon grants.

(1) Any person constructing or operating any utility on or along a county road shall be liable to the county for all necessary expense incurred in restoring the county road to a suitable condition for travel.

(2) No franchise shall be granted for a period of longer than fifty years.

(3) No exclusive franchise or privilege shall be granted.

(4) The facilities of the holder of any such franchise shall be removed at the expense of the holder thereof, to some other location on such county road in the event it is to be constructed, altered, or improved or becomes a primary state highway and such removal is reasonably necessary for the construction, alteration, or improvement thereof.

(5) Counties shall, in the predesign phase of construction projects involving relocation of sewer and/or water facilities, consult with public utilities operating water/sewer systems in order to coordinate design.

[2007 c 31 § 6; 1963 c 4 §36.55.060 . Prior: 1961 c 55 § 5; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

36.55.070 Existing franchises validated.

All rights, privileges, or franchises granted or attempted to be granted by the board of county commissioners of any county prior to April 1, 1937, when such board of county commissioners was in regular or special session and when the action of such board is shown by its records, to any person to erect, construct, maintain, or operate any railway or poles, pole lines, wires, or any other thing for the furnishing, transmission, delivery, enjoyment, or use of electric energy, electric power, electric light, and telephone connection therewith, or any other matter relating thereto; or to lay or maintain pipes for the distribution of water, or gas, or to or for any other such facilities in, upon, along, through or over any county roads, are confirmed and declared to be valid to the extent that such rights, privileges, or franchises specifically refer or apply to any county road or county roads, or to the extent that any such county road has prior to April 1, 1937, been actually occupied by the bona fide construction and operation of such utility, and such rights, privileges, and franchises hereby confirmed shall have the same force and effect as

if the board of county commissioners prior to the time of granting said rights, privileges, and franchises, had been specifically authorized to grant them.

[1963 c 4 § 36.55.070. Prior: 1937 c 187 § 41; RRS § 6450-41.]

36.55.080 Record of franchises.

The board of county commissioners shall cause to be recorded with the county auditor a complete record of all existing franchises upon the county roads of its county and the auditor shall keep and maintain a currently correct record of all franchises existing or granted with the information describing the holder of the franchise, the purpose thereof, the portion of county road over or along which granted, the date of granting, term for which granted, and date of expiration, and any other information with reference to any special provisions of such franchises.

[1963 c 4 § 36.55.080. Prior: 1937 c 187 § 42; RRS § 6450-42.]

KLICKITAT COUNTY Department of Public Works 228 West Main; MS-CH-19 Goldendale, WA 98620 PH: (509) 773-4616 FAX: (509) 773-5713	APPLICATION FOR FRANCHISE Date Received: <input style="width: 100%;" type="text"/> Franchise Number: <input style="width: 100%;" type="text"/>
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Applicant (Owner or Company)	Location & Description of Franchise Facility
Name/Company	
Address	
City WA	
Phone: e-mail	
Signature:	

FRANCHISE TYPE: Project Specific County Wide. Renewal . New
 (check all that apply) (blanket)

FRANCHISE USE: Water .. Sewer .. Solid/Liquefied Waste .. Electric
 (check all that apply) Natural Gas .. Oil/Petroleum Fiber Optic . Cable TV
 Telecommunications Oil/Petroleum
 Other _____
(describe)

Methods of Construction: Boring . Trenching . Plowing .. Aerial Other
 (check all that apply)

APPLICANT INSTRUCTIONS (Please Read)

- 1) Please print information Clearly and Neatly and be complete with the Location & Description of franchise being requested.
- 2) Prior to any and all work, the Applicant is required to obtain any necessary permits and approvals, including but not limited to Right-of-Way Use Permits, Conditional Use Permits, etc.
- 3) Franchises are required for persons or private or municipal corporations or any other entity that need to use, enter upon, cross, go under County Road Right-of-Way for the purpose of constructing, maintaining, operating, etc. a utility or other similar type of facility, including any appliances and appurtenances in connection there with. Most individual, private, and single residential/farm utility installations on county right-of-way that only affect one property owner do not require franchises.
- 4) Franchise Conditions and requirements are set forth by RCW 36.55 and Klickitat County's Accommodation of Utilities Policy.
- 5) Franchise Fee's and Charges are set forth by Klickitat County's Accommodation of Utilities Policy. Applicants are required to reimburse the County for any and all costs that are in excess of the basic fees paid with the application. The appropriate application fee must be submitted with the application.
- 6) Upon the county receiving an application, the county will fix a time and place for a public hearing and a public notice will be posted in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing. The county will also have published a like notice two times in the official newspaper of the county, the last publication to be not less than five days before the day fixed for the hearing. The notice will state the name or names of the applicant or applicants, a description of the county roads by reference to section, township and range in which the county roads or portions thereof are physically located, what is to be included in the franchise for which the application is made, and the time and place fixed for the hearing by the Board of County Commissioners. It may take up to thirty (30) days from the date that the application process is complete until a public hearing is held and final consideration of your application can be given by the Board of County Commissioners.
- 7) Applications must be returned to the Klickitat County Public Works – 228 W. Main Street, MS-CH-19, Goldendale, WA 98620

If you have any questions, please call Klickitat County Public Works at (509)773-4616. Klickitat County Public Work will contact

FRANCHISE AGREEMENT NO. _____

THIS AGREEMENT, made and entered into this ____ day of _____, 20____, by and between Klickitat County, hereinafter designated as the "County", and _____ hereinafter designated as "Grantee"

WHEREAS, Grantee has made application with the County requesting to be granted a non-exclusive, County Wide Right-of-Way Franchise attached as Exhibit "B"; and

WHEREAS, the County pursuant to the authority provided in RCW 36.55 and in accordance with Klickitat County's Accommodation of utilities on County Road Right-of-Way Policy, the Board of Klickitat County Commissioners may grant a non exclusive franchise to use the right-of-way of county roads for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities and right to build and maintain tramroads and railway roads upon county roads; and

WHEREAS, the County Auditor gave public notice thereof at the expense of the Grantee, by posting notices in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing; and

WHEREAS, the Board of County Commissioners also published a like notice two times in the official newspaper of the county, the last publication not less than five days before the day fixed for the hearing; and

WHEREAS, the Board of County Commissioners did hold a Public Hearing to take public comment at _____ and has deemed it to be for the public interest to grant such franchise under the provisions of RCW 36.55.

NOW, THEREFORE, in consideration of the terms, conditions, and covenants contained herein as EXHIBIT "A", it is mutually agreed as follows:

EXHIBIT “A”
KCLICKITAT COUNTY
TERMS AND CONDITIONS OF FRANCHISE

INDEX OF TERMS AND CONDITIONS OF FRANCHISE

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1. **Scope and Duration**

_____ its successors and assigns (hereinafter called “Grantee”) are hereby granted a franchise to set, erect, install, place, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use electric transmission and distribution systems, including, but not limited to poles and towers (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, meter-reading devices, and communication systems, together with any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground (collectively, "Facilities") in, upon, over, under, along, across and through the Klickitat County roads and rights-of-way falling within the area

described on the attached Appendix 1 (such roads and rights-of-way being hereafter referred to at times as the "Franchise Area"), for a period of fifty (50) years, all in accord with the ordinance granting this Franchise, all applicable provisions of Klickitat County Utility Accommodation Policy, Codes and Ordinances, whether specifically referred to or not, and this Exhibit A; provided that, notwithstanding the County's continued right to enact codes and ordinances, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this Exhibit A), the terms and conditions of this Franchise shall govern and control.

2. Definition of Terms

COUNTY WIDE (BLANKET) RIGHT-OF-WAY PERMIT	A single permit granted to a franchised entity to cover a series of activities in rights-of-way within the entire county.
COUNTY	Klickitat County.
COUNTY COMMISSIONERS	Klickitat County Commissioners.
COUNTY ENGINEER	Klickitat County Engineer
COUNTY ROAD STANDARDS	The policy titled "Klickitat County Minimum Road Standards for Developments" or the policy's successor.
COUNTY UTILITY POLICY	The policy titled "Accommodation of Utilities on County Road Right of Way for Klickitat County" approved by the County Commissioners February 9, 1998 or the policy's successor.
FRANCHISE	The terms and conditions of this franchise agreement, as set forth in this Exhibit A. In accordance with RCW 36.55 and RCW 80.32.
GRANTEE	Company Name , its successors and assigns, and any other person named in any permit as permittee, and any successor to any rights or interests of a permittee under a permit or in property installed on the right-of-way pursuant to a permit.
MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)	Latest edition of the MUTCD, Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration.

MAP OF DEFINITE LOCATION – for new construction not pre-existing facilities.	Construction plans; plans and specifications; design standards and specifications.
PERMIT	A document including any license, permit, or franchise, authorizing specified use of county rights-of-way and granted under the provisions of this franchise and (county code).
RESTORATION	A general term denoting replacing, repairing, or otherwise restoring the right-of-way to same or equal condition as before any change or construction began thereon.
RIGHT-OF-WAY	All property falling within the area described on the attached Appendix 1 in which the County has any form of ownership or title and which is held for public road, right-of-way or other public purposes, regardless of whether or not any road or facility exists thereon or whether or not it is used, improved, or maintained for public travel.
ROADWAY	The portion of the right-of-way, within the outside limits of the side slopes (shld. to shld.) or between curb lines, used for vehicular travel.
TRAFFIC CONTROL	A general term more specifically defined in the MUTCD.

3. **Permits, Plans, and Specifications**

- A. Prior to commencing any work within the Franchise Area on any county road or right-of-way, the Grantee shall comply with and obtain all necessary permits to do such work. Permits required may include, but are not limited to, Right-of-Way Use Permits, Approach Permits, Conditional Use Permits, Haul Road Permits and/or any other County, State or Federal Permit required. Refer to the Klickitat County Utility Accommodation Policy, Comprehensive Plan and other County Development Regulations for necessary county permitting.

Right-of-Way Use permits will require, at a minimum, plans and specifications in duplicate showing: the position, depth, and location of Facilities to be constructed within the Franchise Area at that time and their positions in relation to any involved county road and their locations within the right-of-way. These plans, all drawn to scale, shall be known as the “map of definite location”. Specifications will include class and type of materials and equipment to be used, manner of excavation,

construction, installation, and backfill; location of temporary and permanent structures to be erected; description of road facilities which will be disturbed and plans for their restoration; traffic controls; traffic turnouts and detours; road obstructions; and such other details as are required by the County Engineer.

To the extent that work is permitted under a then-existing permit issued by the County in connection with the detailed plans and specifications stated above are not required. Grantee shall pay all costs and expenses incurred by the County in reviewing plans and specifications, as and to the extent required by applicable provisions of the Klickitat County Utility Accommodation Policy.

4. **Performance of Work**

- A. No work on any County road or right-of-way shall be commenced until all necessary permits have been obtained and a set of plans and specifications, reviewed, approved, and endorsed by the County Engineer, has been returned to the Grantee.

All work shall be performed in accordance with the approved plans and specifications, and shall be subject to inspection and incremental approval by the County Engineer. Grantee shall pay all reasonable costs and expenses incurred by the County in inspecting and approving the work, as and to the extent required by applicable provisions of the County Utility Policy. Grantee shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of Grantee's Facilities within the Franchise Area. The Grantee shall notify the County Engineer at a minimum of 48 hours prior to starting any construction activity.

If and to the extent Grantee reasonably determines that action on Grantee's part is necessary to respond to an emergency situation involving Grantee's Facilities within the Franchise Area, and such action would otherwise require the notice specified above, the County hereby waives the requirement that Grantee give such notice as a prerequisite to undertaking such activity; provided, however, Grantee shall notify the County Engineer, verbally or in writing, as soon as practicable and no later than 24 hours following the emergency if the roadway shoulders, embankment or cut slopes, or drainage facilities are disturbed.

- B. Grantee's Facilities within the Franchise Area shall be laid in exact conformance with the map of definite location except where deviations are allowed in writing by the County Engineer pursuant to application

by Grantee, in which case Grantee shall file a corrected map of definite location.

- C. Any work which disturbs any soil, surface, or structure of any County road or right-of-way shall be controlled by applicable design standards and specifications of the County, and applicable provisions of the Klickitat County Accommodation of Utility Policy and County Road Standards. Grantee, at its expense, shall restore such surface or other facility to at least a condition the same as it was in immediately prior to such disturbance (or make provisions therefore), all to the reasonable satisfaction of the County Engineer. The County Engineer may cause to be done, at the expense of the Grantee, all work necessary to render any County road or right-of-way safe where a condition which is dangerous to life, health, or property is created by Grantee as a result of work undertaken by Grantee within the Franchise Area or where Grantee fails to restore any surface or other facility within the Franchise Area as required in this paragraph, but in each case only if Grantee does not promptly take corrective action after receiving written notice from the County Engineer regarding such condition or failure.
- D. All work within the Franchise Area shall be done in accordance with the current County standards in a thorough, professional, and workmanlike manner with minimum interference in public use of the county road. Where any work includes opening of trenches and/or ditches and/or tunneling under a county road or right-of-way, Grantee shall take all reasonable precautions necessary to protect and guard the public from any condition caused by the work. Grantee shall conform to the MUTCD, including directing traffic, signs, and barricades. Subject to Section 8, below, and specifically the rights of Grantee with respect to third parties under Section 8(C), if any line, pole or other facility of Grantee is located that, in the opinion of the County Engineer, any hazard to travel of the public is created, Grantee shall relocate the line, pole, or other facility at its expense upon request of the County Engineer. Grantee shall be liable for any damages, including any costs incurred by the County in remedying any failure to provide adequate traffic controls and protection to members of the public and their property.
- E. Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed by Grantee within the Franchise Area under this Franchise, Grantee shall reference all such monuments and markers. Reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing 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 markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments shall be borne by the Grantee. A complete set of reference notes for monument and other ties shall be filed with the County.

- F. All work undertaken by Grantee within the Franchise Area shall be performed by the Grantee in compliance with all applicable Federal, State, and County laws, regulations, and policies (including, without limitation, applicable environmental and land use laws and regulations); provided that, notwithstanding the County's continued right to enact codes and ordinances under the Klickitat County Utility Accommodation Policy, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this Exhibit A), the terms and conditions of this Franchise shall govern and control.

5. **Aesthetic/Scenic Considerations**

- A. If Grantee intends to use pesticides within the Franchise Area to control or kill weeds and brush in scenic areas, prior approval must be granted by the County at least annually (which approval shall not be unreasonably withheld or delayed). The County may limit or restrict the types, amounts, and timing of applications if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.
- B. Refuse and debris resulting from the installation or maintenance of the Facilities by Grantee shall be promptly removed once the work is completed.

6. **Maintenance of Facilities**

The County will not assume responsibility for damage to the Grantee's property and various objects that are placed in county roads and rights-of-way. The Grantee will maintain its above-ground Facilities within the Franchise Area so as not to unreasonably interfere with county maintenance or free and safe passage of traffic.

7. **Hazardous Wastes, Substances**

Grantee agrees that it will not negligently or intentionally cause the release of any hazardous substance, waste, or pollutant or contaminant (as defined by applicable law) into or upon any County road or right-of-way in violation of any state or federal law with respect thereto. Grantee shall

notify the County and the State Department of Ecology in writing of any such illegal release. Grantee shall be completely liable for any and all consequences of such illegal release, including liability under any federal or state statute or at common law. Grantee shall indemnify and hold the county harmless, as provided in paragraph 10, from any and all liability resulting from such an illegal release and shall have full responsibility for completely cleaning up, as required by any government agency, any and all contamination from such release. The County shall be entitled to full contribution for all costs incurred by it as the result of any release of such materials by Grantee in violation of any state or federal law. Upon any such illegal release of a hazardous substance by Grantee, the County may give immediate notice of termination of this Franchise, or enter the Franchise Area and take whatever steps it deems appropriate to cure the consequences of any such release, all at the expense of the Grantee, but only if Grantee does not promptly take corrective action after receiving written notice from the County Engineer.

8. **Relocation**

A. Utility Installations shall be located to minimize need for later adjustment to accommodate future roadway improvement and to permit access to servicing such installations with minimum interference to roadway traffic. If the County causes any County road or right-of-way to be constructed, improved, relocated, realigned, or otherwise changed within the Franchise Area; including traffic controls, drainage, and illumination; or if any part of such road or right-of-way becomes a state highway and relocation or readjustment is directed by the State Director of Transportation so as to reasonably necessitate relocation of any Facility of the Grantee on such road or right-of-way within the Franchise Area (in any case for purposes other than those described in Section 8(C), below), the County will:

- (a) provide Grantee, within a reasonable time prior to the commencement of the road or right-of-way project, written notice requesting the relocation; and
- (b) provide Grantee with reasonable plans, timetables and specifications for such road or right-of-way project.

After receipt of such notice and such plans, timetables and specifications, Grantee shall relocate such Facilities within the Franchise Area at no charge to the County. If the County requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section or within five (5) years after the original installation of the Facilities, the County shall bear the entire cost of such subsequent relocation. The County will also provide Grantee a copy of its six year road transportation improvement program.

- B. The County Engineer shall have the final approval of the relocation schedule. Grantee shall be responsible for timely compliance with Facility relocation and coordinate with the County or the County's contractor.

The construction, operations, maintenance, and repair of Grantee's Facilities authorized by this Franchise shall not preclude Klickitat County, its agents, or its contractors from blasting, grading, excavating, or doing necessary road work contiguous to the said Facilities of the Grantee, provided that the Grantee shall be given forty-eight (48) hours notice of said blasting or other work, and provided further that the foregoing shall be subject to all other provisions of this Franchise and shall not substantially or unreasonably impair the rights granted to Grantee under this Franchise.

- C. Whenever (a) any public or private development within the Franchise Area, other than a public right of way improvement of the type described in Section 8(A), above, requires the relocation of Grantee's Facilities within the Franchise Area to accommodate such development; or (b) the County requires the relocation of Grantee's Facilities within the Franchise Area for the benefit of any person or entity other than the County, then in such event, Grantee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.
- D. Any condition or requirement imposed by the County upon any person or entity, other than Grantee, that requires the relocation of Grantee's Facilities shall be a required relocation for purposes of Section 8(C), above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).
- E. Nothing in this Section 8 shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

9. **Non-Exclusive/Other Occupants**

- A. This Franchise is not exclusive. It shall not prohibit the County from granting other franchises or permits for use of any County roads or rights-of-ways or parts thereof. Subject to this Franchise, Grantee shall not prevent or prohibit the County from constructing, altering,

maintaining, or using any of said roads or rights-of-way, or affect its jurisdiction over them or any part of them, the County having full power to make all necessary changes, relocations, repairs, maintenance, etc., of the same as the County may deem fit.

- B. All installation, operation, maintenance, and repair by the Grantee of its Facilities on any county road or right-of-way within the Franchise Area shall be done so as not to unreasonably interfere with installation, construction, operation, maintenance, or repair of other utilities, drains, ditches, structures, or other improvements permitted upon such road or right-of-way, subject to the preference and priority rules set forth below. Owners, public or private, of any such facilities installed prior to construction and/or installation of the Facilities of Grantee, shall have preference as to positioning and location of such facilities. Likewise, Grantee's Facilities shall have preference as to positioning and location over any such other facilities that are installed after the construction and/or installation of the Facilities of Grantee. Such preference shall continue if relocation is required as a result of any construction relocation, realignment, and/or change of grade by the County.

10. **Insurance and Security**

- A. For the period after the assignment of this Franchise by **Company Name** to the Utility Assignee under Section 18, below, the following insurance provisions shall apply:

Prior to the effective date of this franchise and during its life, the franchisee shall obtain and maintain continuously liability insurance necessary to comply with the hold harmless agreement herein with limits of liability not less than:

\$2,000,000.00 per occurrence

The County Engineer may further determine that Business Auto Liability Insurance may also be required. Such insurance shall include Klickitat County, its officers, elected officials, agents, and employees as an additional insured and shall not be reduced or cancelled without thirty days written prior notice to the County. Such insurance, in its provision for additional insured, shall include a "Cross Liability Endorsement", "Severability of Interests", or "Separation of Insured's" provision indicating:

"The inclusion of more than one insured under this policy shall not affect the rights of any insured as respects any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other insured. The policy shall protect each

insured in the same manner as though a separate policy had been issued to each except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the insurer would have been liable had only one insured been named."

All insurance policies will be issued on an occurrence basis. Claims made policies are unacceptable. Grantee shall maintain coverage for the duration of this Franchise. Grantee shall provide the County annually a signed certificate of insurance naming Klickitat County as an additional insured. Proof of all insurance shall be in a form acceptable to the County, and all conditions and requirements of insurance stated in this clause 10.A shall be satisfied prior to commencement of construction. All insurance documentation shall be submitted and reviewed by the Klickitat County Prosecuting Attorney prior to commencement of construction.

The County may require additional bond, deposit or security as provided in the Klickitat County Accommodation of Utility Policy. Acceptance by the County of any work performed by the Grantee at the time of completion shall not be a ground for avoidance of this covenant.

In lieu of the insurance requirements set forth in this Section 10, Grantee may self-insure against such risks in such amounts as are consistent with good utility practice and the per occurrence minimum of \$2,000,000.00. Grantee shall provide the County with a self-insurance letter as evidence that Grantee maintains a self-insurance program.

11. **Hold Harmless and Indemnity**

- A. The Grantee shall defend, indemnify and hold harmless the County, its appointed and elected officials, agents, and employees, against all third party claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees on account of any injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence, willful misconduct, or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of Grantee, Grantee's employees, agents, or subcontractors, in exercising the rights granted to Grantee in this Franchise.
- B. For the avoidance of doubt, for those provisions of this Franchise which a court of competent jurisdiction determines are subject to RCW 4.24.115, then, in the event of damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the County, its appointed and elected

officials, agents or employees, and the Grantee or the Grantee's agents or employees, the Grantee's liability to hold harmless and indemnify the County is enforceable only to the extent of the Grantee's negligence.

- C. The Grantee's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from any negligent act, error, or omission or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of the Grantee or its employees, agents, or subcontractors.
- D. In the event any claim or demand is presented to or filed with the County by reason of the above-mentioned causes, the County shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand. In case suit or action is brought against Klickitat County for damages arising out of or by reason of the above-mentioned causes, the County shall promptly notify Grantee thereof and the Grantee will, upon notice to it of the commencement of said action, settle, compromise or defend the same at its sole cost and expense, and in case judgment shall be rendered against the County in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after suit or action shall have finally been determined, if determined adversely to Klickitat County. In the event Grantee refuses a tendered defense by the County pursuant to section 11 of this Franchise and if 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, then Grantee shall pay all of the County's reasonable costs for defense of the action including all legal costs, witness fees and attorney fees and indemnify the County for any settlement made by the County of the wrongfully refused claim or demand.
- E. Solely to the extent required for the County to enforce Grantee's indemnification obligations under this Section 11, Grantee waives its immunity under RCW Title 51; provided that 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.
- F. The provisions of this Section 11 shall survive the expiration or termination of this agreement.

12. **Reservation of Police Power**

In granting this Franchise, the County does not waive any of its police powers to regulate the use of County roads or rights-of-way in the interest of public health, safety, and general welfare; provided, however, that the County shall adopt ordinances and regulations in a manner consistent with the terms of this Franchise.

13. **Applicable Laws**

Grantee shall comply with all federal, state, and local laws, rules, and regulations applicable to any work, facility, or operation of Grantee upon County roads or rights-of-way during the life of this Franchise.

14. **Eminent Domain, Powers of the People**

This Franchise is subject to the power of eminent domain and its existence shall not preclude the County from acquiring by condemnation, in accordance with applicable law, all or a portion of Grantee's Facilities within the Franchise Area for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the Franchise Area conferred by this Franchise. Nothing herein, however, is intended to or will limit any severance damages arising out of any impact of any such condemnation on the Name of Project or related Facilities.

15. **Annexation**

If any road or right-of-way covered by this Franchise is incorporated into the limits of any city or town, this Franchise shall terminate as to any road or right-of-way within the corporate limits of such city or town (except as otherwise provided by applicable law); but this Franchise shall continue as to county roads and rights-of-ways not incorporated into a city or town.

16. **Vacation**

If the County vacates all or a portion of any county road or right-of-way which is subject to this Franchise, and said vacation is for the purpose of acquiring the fee or other property interest in said road or right-of-way for the use of the County in either its proprietary or governmental capacity, the County Commission may, at its option and by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to any county road or right-of-way so vacated and, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities, and the County shall not be liable for any damages or loss to the Grantee by reason of such termination.

Whenever a county road or right-of-way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the County may retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time of the vacation are specifically authorized under paragraph 3 or physically located on a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140. In such event, the County shall also, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities. The County shall not otherwise be liable for any damages or loss to the Grantee by reason of any such vacation.

17. **Termination**

- A. If Grantee defaults on any term or condition of this Franchise, the County may serve upon Grantee a written order to so comply within sixty (60) days from the date such order is received by Grantee. If Grantee is not in compliance with this Franchise after expiration of said sixty (60) day period, the County may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by Grantee cannot be corrected with due diligence within said sixty (60) day period (Grantee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee commences promptly and diligently to effect such compliance. Upon such termination, all rights of the Grantee hereunder shall cease. Should any action or proceeding be commenced to enforce any of the provisions of this Franchise, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.
- B. The County, at its option, may terminate this Franchise by ordinance, as to those roads and rights-of-way upon which Grantee has not constructed or placed any Facilities within five (5) years of the effective date of this Franchise.
- C. In the event that the use of all or any part of Grantee's Facilities is permanently discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of the Facilities, or the abandonment, termination, or expiration of this Franchise, the Grantee is solely responsible for the removal and proper disposal of the abandoned/surplus Facilities within the Franchise Area. The Grantee is not entitled to abandon any Facilities in place without the County's

prior express agreement and written consent. The Grantee shall restore the county roads and rights-of-way from which such facilities have been removed to the same or equal conditions as before.

D. Upon the expiration of this Franchise for any reason other than a default by Grantee or abandonment of the Facilities, the Grantee shall have the first and preferential right to take and receive such authority upon similar terms and conditions.

18. **Assignment**

All terms and conditions of this Franchise are burdens upon the successors and assigns of Grantee, and all privileges as well as all obligations and liabilities of the Grantee inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned. Neither this Franchise nor any interest therein shall be sold, transferred, or assigned without the prior written consent of the County which consent shall not be unreasonably withheld or delayed; provided, however, that Grantee (including, without limitation, (Company Name)) may at any time, without the consent of the County, assign and transfer this Franchise and all of its rights and interest in and to this Franchise to (Company Name) or any other regulated utility (the "Utility Assignee"). For the avoidance of doubt, upon any assignment of this Franchise by Grantee to a Utility Assignee, Grantee shall remain liable for all obligations and liabilities arising under or in any way pertaining to this Franchise prior to the effective date of such assignment, and shall be discharged and released of all obligations and liabilities to the County arising under or in any way pertaining to this Franchise after the effective date of such assignment. Further, notwithstanding the foregoing, the Utility Assignee shall have the right, without the consent of or notice to the County, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders.

19. **Effective Date**

This Franchise shall be effective thirty (30) days after approval by the County Commissioners; PROVIDED that Grantee within such time has signed a copy thereof and returned it to the County Commissioners.

20. **Severability**

If any provision of this Franchise or its application to any person or circumstance is held to be invalid, such decision shall not affect the validity of the remaining portions of this Franchise or its application to other persons or circumstances.

21. **Limitation of Liability**

Administration of this Franchise shall not be construed to create the basis for any liability on the part of the County, its appointed and elected officials, and employees for any injury or damage from the failure of the Grantee to comply with the provisions of this Franchise; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the County, or for the accuracy of plans submitted to the County.

22. **Hazardous Conditions**

Whenever any conditions or operations caused by any activity undertaken by Grantee pursuant to this Franchise have become a hazard to life and limb, endanger property or public resources, or adversely affect the safety, use, or stability of a public way or drainage channel, the County Engineer shall notify the Grantee in writing of the property upon which the condition or operation is located, or other person or agent in control of said property, and direct them to repair or eliminate such condition or operation within the period specified therein so as to eliminate the hazard and be in conformance with the requirements of this Franchise.

Should the County Engineer have reasonable cause to believe that the situation is so adverse as to preclude written notice, he/she may take the measures necessary to eliminate the hazardous situation, provided that he/she shall first make a reasonable effort to notify the Grantee before acting. In such instance, the Grantee (responsible for the creation of the hazardous situation) shall be responsible for the payment of any reasonable costs incurred. If costs are incurred and the hazardous situation has been created in conjunction with or as a result of an operation for which a bond has been posted pursuant to this title or any other County authority, the County Engineer shall have the authority to forfeit the bond or other security to recover the costs incurred.

23. **Miscellaneous**

This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.

This Franchise is subject to the provisions of any applicable tariff on file with the Washington Utilities and Transportation Commission or its successor. In the event of any conflict or inconsistency between the

provisions of this Franchise and such tariff, the provisions of such tariff shall control.

24. **Notices**

Notices provided for in this Franchise shall be sent to the following addresses:

1) Klickitat County Public Works Department
228 W. Main; MS-CH-19
Goldendale, WA 98620

2) Grantee:

If to Company Name:

Company Name

Address

Attn:

with a copy to:

Attn: _____

If to the Utility Assignee:

Attn: _____

25. **Governing Law and Stipulation of Venue**

The Grantee shall promptly notify the County of any change in notice address. The Grantee hereby agrees to be bound by the laws of the State of Washington and subjected to the jurisdiction of the State of Washington. The parties hereby stipulate that this Franchise shall be governed by the laws of the State of Washington and that any lawsuit regarding this contract must be brought in Klickitat County, Washington, or in the case of a federal action, in the United States District Court for the Eastern District of Washington at Spokane, Washington.

APPENDIX 1
Franchise Area Boundaries

Entire County.

APPENDIX 2

Construction Work Technical Standards

Grantee shall submit drawings for the construction work, if required by the County Engineer. Drawings shall be to a working scale, showing position and location of work. Names or number and width of roads, streets, etc., showing their location in plats, or subdivisions of sections, township and range, showing the relative position of such work to existing utilities, constructed, laid installed or erected upon such roads, streets or public places.

Grantee shall specify the type of construction by submitting plans showing the class of material and the manner in which the work is to be accomplished. All such materials and equipment shall be of the highest quality and the manner of excavation, fills, construction, installation, erection of temporary structures, traffic turnouts, road obstruction, barricades, etc., shall meet with provisions of the County Utility Accommodation Policy (WAC136-40), and shall require approval of the County Engineer. Signing, barricades, and traffic control in the vicinity of the work shall strictly conform to provisions of "the Manual on Uniform Traffic Control Devices for Street and Highways." Grantee shall pay to the County all applicable fees and charges prescribed by the policy for "Accommodation of Utilities on County Road Right of Way for Klickitat County."

The location, type of work, materials, and equipment used, manner of erection or construction, safeguarding of public traffic during work or after doing same, mode of operation and manner of maintenance of project petitioned for, shall be approved by the County Engineer prior to start of work and shall be subject to inspection of the County Engineer so as to assure proper compliance with the terms of this Franchise.

Grantee shall leave all roads, streets, alleys, public places, and structures after installation and operation or removal of utility, in a good and safe condition in all respects as same were in before commencement of work by Grantee.

In case of any damage to any roads, streets, public places, structures or public property of any kind on account of said work by Grantee, Grantee will repair said damage at its own sole cost and expense.

The County Engineer, his agents or representative may do, order, or have done any and all work considered necessary to restore to a safe condition any street, alley, public place or structure which is in a condition dangerous to a life, or property resulting from Grantee's Facilities within the Franchise Area or its installation as permitted herein, and upon demand Grantee shall pay to the County all costs of such work and material.

CERTIFICATE OF ACCEPTANCE

The undersigned grantee hereby accepts all the terms and conditions of this franchise as set forth in Exhibit A for himself and for his heirs, executors, administrators, successors and assigns, being Franchise No. _____

DATE: _____

DATE: _____

APPLICANT:

BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington

(Company or Organization)

Chairman

(authorizing signature of applicant)

Vice Chairman

(Type or print name and title)

Member

(address)

ATTEST:

Clerk of the Board
Klickitat County, Washington

Approved as to Form:

Lori Lynn Hocter
Klickitat County Prosecuting Attorney