

IN THE MATTER OF THE APPLICATION OF _____
FOR A FRANCHISE PERMIT TO CONSTRUCT, OPERATE, AND MAINTAIN
_____ UTILITY FACILITIES,
OVER, ALONG AND UNDER COUNTY ROADS AND HIGHWAYS LOCATED IN MASON
COUNTY, WASHINGTON

Application of (*Name of Operator*) _____,
doing business in Washington as _____,
with its principal offices located at _____,
by and through (*person authorized to act for and on behalf of applicant*) _____,
for a franchise to construct, operate and maintain (*description of type*) _____ utility
facilities in, over, along and under county roads and highways in Mason County, Washington, as set
forth in attached Exhibit "B" (Franchise Area), having come on regularly for hearing before the
County Commissioners of Mason County, Washington, on the _____ day of
_____, 20____, at the hour of _____, under the provisions of RCW 36.55, RCW
80.32.010 and RCW 80.36.040, 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 allow the franchise herein
granted;

NOW THEREFORE, IT IS ORDERED that a non-exclusive franchise be, and the same is hereby
given and granted to Operator, and its successors and assigns, hereinafter referred to as the
Franchisee, for a period of 10 years with automatic renewal at the end of each term of 10 years
unless either party gives the other written notice of termination at least 30 days prior to the end of
the relevant term. (no more than ten years each term and can only be renewed 3 times) from and
after the date of the entry of this order for the purposes, at the location(s), and upon the express
terms and conditions as described herein.

I. DEFINITIONS

For the purposes of this franchise, terms, phrases, words, and their derivations not defined herein that
are defined in Title 12 of the Mason County Code or the Manual on Accommodating Utilities in the
Mason County Right-of-Way published by the County Engineer (the "Manual"), shall have the same
meaning or be interpreted as provided in Title 12 of the Mason County Code or the Manual. Words
not defined here, in Title 12 of the Mason County Code or the Manual shall have their ordinary
meaning. A reference to Title 12 of the Mason County Code or the Manual refers to the same as may
be amended, revised, updated, re-enacted or re-codified from time to time.

II. GRANT

The County of Mason hereby grants to the Franchisee a non-exclusive franchise which, once it
becomes effective shall authorize the Franchisee to enter upon the road rights-of-way located

within the Franchise Area identified in attached Exhibit “B”, for the purpose of installing, constructing, maintaining, repairing, replacing, adjusting, relocating and operating the utility facilities, which grant shall be limited to the following described purpose(s): _____

Such grant is subject to and must be exercised in strict accordance with and subject to this franchise, Title 12 of the Mason County Code, the Manual and all applicable laws, rules, regulations and ordinances. Franchisee’s exercise of any rights granted pursuant to the franchise is subject to the exercise of the County’s police powers, and other regulatory powers as it may have or obtain in the future. No rights shall pass to the franchisee by implication. This franchise does not include permission to enter into or upon the road rights-of-way for any purposes others than the purposes expressly described herein. Permittee has a duty to notify the County of any change in use or condition of the utility facilities that may affect the status of the utility facilities or the impact of the utility facilities upon the road rights-of-way.

III. UTILITY PERMIT REQUIRED

Franchisee shall not commence or perform work (hereafter “Work”) to install, construct, maintain repair, replace adjust, connect, disconnect, rebuild, or relocate its utility facilities within the road rights-of-way, without first applying for, paying all associated fees, and obtaining a utility permit as required pursuant to Title 12 of the Mason County Code. In any utility permit so issued, the County may impose, as a condition of the granting the utility permit, such conditions and regulations as may be necessary for the protection, preservation and management of the road rights-of-way, including, by way of example and not limitation, for the purpose of protecting any structures in the road rights-of-way, maintaining proper distance from other utilities, ensuring the proper restoration of such road rights-of-way and structures, and for the protection of the County and the public and the continuity of pedestrian and vehicular traffic.

Franchisee shall first file with the County Engineer its application for a utility permit to do such Work together with plans and specifications in triplicate showing at a minimum:

- A. The position, depth and location of all such utility 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 class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions;
- C. The manner in which the utility facility is to be installed;
- D. Measures to be taken to preserve safe and free flow of traffic;

E. Structural integrity of the roadway, bridge, or other structure;

F. Specifications for the restoration of the county road, right-of-way or other county property in the event that the road right of way will be disturbed by the Work; and

G. Provision for ease of future road maintenance and appearance of the roadway.

Provision shall be made for known or planned expansion of the utility facilities, particularly those located underground or attached to bridges or other structures within the road right-of-way.

The location, alignment and depth of the utility facilities shall conform with said map of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer pursuant to application by Franchisee.

All such Work shall be subject to the approval of and shall pass the inspection of the County Engineer. The Franchisee shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said utility permits.

IV. RESTORATION OF ROAD RIGHT OF WAY

In any Work which disturbs or causes damage to the road rights-of-way subject to this franchise, public or private property, the Franchisee shall at its own expense and with all convenient speed, complete the work to repair and restore the county road right-of-way, or the public or private property so disturbed or damaged, and leave the same in as good or better condition as before the Work was commenced, to the reasonable satisfaction of the County Engineer. The Franchisee shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration or repair.

The County Commissioners and/or County Engineer may at any time do, order or have done any and all work that they consider necessary to restore to a safe condition such County road right-of-way or other County property left by the Franchisee or its agents in a condition dangerous to life or property, and the Franchisee, upon demand, shall pay to the County all costs of such work.

V. FRANCHISEE WORK IN RIGHT OF WAY

Franchisee expressly agrees and understands that, with regard to Work within the road rights-of-way:

A. All of Franchisee's utility facilities and Work within the road rights-of-way or other County property shall be in compliance with the provisions of Title 12 MCC, the Manual, the administrative regulations adopted by the County Engineer, other County established requirements for placement of utility facilities in road rights-of-way, including the specific location of utility facilities in the road rights-of-way, and all applicable laws, rules, regulations and ordinances;

B. In preparing plans and specifications for Work of utility facilities in the road rights-of-

way the Franchisee shall use the Manual. Prior to commencement of work in the road rights-of-way, Franchisee shall submit such plans and specifications to the Mason County Engineer for review and approval together with adequate exhibits depicting existing or proposed location of the utility facility in relation to the road, including right-of-way or easement lines; relationship to currently planned road revisions, if applicable; and all locations and situations for which deviations in depth of cover (including the proposed method of protection) or other locational standards that are anticipated;

C. All Work to utility facilities located within the road rights-of-way or other county property subject to this franchise shall be done in such a manner as not to interfere, other than in ways approved by the County, with the construction, operation and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvements of such County roads, rights-of-way or other County property;

D. The owners and operators of all utility facilities (public or private) installed in the Franchise Area or other county property prior in time to the utility facilities of the Franchisee, shall have preference as to the alignment and location of such utilities so installed with respect to the Franchisee. 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;

E. Franchisee shall perform the Work and operate its utility facilities in a manner that minimizes interference with the use of the road rights-of-way by others, including others that may be installing utility facilities; and

F. The County may require that Franchisee's utility facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular road right-of-way; may deny access if a Franchisee is not willing to comply with the County's requirements; and may remove, or require removal of, any utility facility that is not installed in compliance with the requirements established by the County, or which is installed without prior County approval of the time, place, or manner of installation and charge the Franchisee for all the costs associated with removal; and may require Franchisee to cooperate with others to minimize adverse impacts on the road rights-of-way through joint trenching and other arrangements.

G. The County may inspect the utility facilities at any time reasonable under the circumstances to ensure compliance with this franchise and applicable law, including to ensure that the utility facilities are constructed and maintained in a safe condition. If an unsafe condition is found to exist, the County, in addition to taking any other action permitted under applicable law, may order the Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a time-table established by the County which is reasonable in light of the unsafe condition. The County has the right to correct, inspect, administer, and repair the unsafe condition if the Franchisee fails to do so, and to charge the Franchisee therefore. The right of the County to conduct such inspections and order or make repairs shall not be construed to create an obligation therefore, and such obligation to construct and maintain its utility

facilities in a safe condition shall at all times remain the sole obligation of the Franchisee.

H. When required by the County, Franchisee shall make information available to the public regarding any work involving the ongoing installation, construction, adjustment, relocation, repair or maintenance of its utility facilities sufficient to show (1) the nature of the work being performed; (2) where it is being performed; (3) its estimated completion date; and (4) progress to completion.

I. FRANCHISEE IS PLACED ON NOTICE THAT FIBER OPTIC, COMMUNICATIONS, POWER, CONTROL SYSTEMS, OTHER TYPES OF CABLES, AND PIPELINES MAY BE BURIED ON THE RIGHT OF WAY. Before beginning any underground work, Franchisee will contact the appropriate personnel to have such facilities located and make arrangements as to protective measures that must be adhered to prior to the commencement of any work within the Road rights-of-way. In addition to the liability terms elsewhere in this Agreement, Franchisee shall indemnify and hold the County and its elected and appointed officers, employees and agents harmless against and from all cost, liability, and expense whatsoever (including, without limitation, attorney's fees and court costs and expenses) arising out of or in any way contributed to by any act or omission of Franchisee, its contractor, agents and/or employees, that cause or in any way or degree contribute to (1) any damage to or destruction of any such facilities by Franchisee, and/or its contractor, agents and/or employees, on the County's property, (2) any injury to or death of any person employed by or on behalf of any entity, and/or its contractor, agents and/or employees, on the road rights-of-way, and/or (3) any claim or cause of action for alleged loss of profits or revenue, or loss of service, by a customer or user of services or products of such company(ies) (collectively "Liabilities" for purposes of this Section V.I). The only Liabilities with respect to which Franchisee's obligation to indemnify the County and its elected and appointed officers, employees and agents does not apply are Liabilities to the extent arising out of, caused by or resulting from the negligence of the County, and its elected and appointed officers, employees and agents and Liabilities that by law the County and its elected and appointed officers, employees and agents for which the County cannot be indemnified.

J. Franchisee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or an approved equivalent, and shall comply with all such applicable rules and regulations.

K. Except in the event of emergency as described below, Franchisee and its Agents may not enter upon the Franchise Area to perform work for which a utility permit is not required, unless and except upon two-business days notice to the County Engineer.

L. In the event of an emergency involving the threat of imminent harm to persons or property, and for purposes of taking immediate corrective action, Franchisee and its agents may enter the Franchise Area without advance notice to the County as long as such entry is for the sole purpose of addressing the emergency; provided however, that if any entry for such purposes would require issuance of a utility permit, Franchisee shall give the County verbal or telephonic notice of the places where and the manner in which entry is required prior to such entry, promptly followed by written notice. In all cases, notice to the County shall be given as far in advance as practical prior to entry or as soon as practicable after entry upon the road right-of-Way.

M. Franchisee shall promptly reimburse the County for their reasonable and direct costs incurred in responding to an emergency that is caused, created by or attributable to the presence, construction, maintenance, repair, or operation of the Franchisees utility facilities in the road rights-of-way.

N. If, during installation, construction, relocation, realignment, adjustment, maintenance, or repair of the Franchisee's utility facilities in the road rights-of-way, Franchisee or its agents discover scientific or historic artifacts, Franchisee shall immediately notify the County of said discovery and shall protect such artifacts in a manner as specified by the County. Any such artifact shall be the property of the County if the County wishes to own it.

VI. PROTECTION OF PUBLIC

All work done under this franchise shall be done in a thorough and workman-like manner. In the performance of Work within or near the road rights-of-way, including without limitation, the opening of trenches and the tunneling under county roads, rights-of way or other county property, the Franchisee 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 and tunnels are left open at night, the Franchisee shall place warning lights, barricades and other appropriate protective devices at such a position as to give adequate warning of such Work. The Franchisee shall be liable for any injury to person or persons or damage to property sustained arising out of 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 Franchisee.

VII. POLICE POWERS

The County of Mason, in granting this franchise, does not waive any rights which it now has 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 and other county property covered by this franchise. The County retains the right to administer and regulate activities of the Franchisee up to the fullest extent of the law. The failure to reserve a particular right to regulate, or reference a particular regulation, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation to the Franchisee.

VIII. RELOCATION

Franchisee shall, in the course of any Work , comply with the following requirements:

A. The Franchisee shall, by a time specified by the County, protect, support, temporarily disconnect, relocate, or remove any of its utility facilities when required by the County by reason of traffic conditions; public safety; road right-of-way construction; road right-of-way repair (including

resurfacing or widening); change of road right-of-way grade; construction, installation, or repair of County-owned sewers, drains, water pipes, power lines, signal lines, tracks, communications system, other public work, public facility, or improvement of any government-owned utility; road right-of-way vacation; or for any other purpose where the County work involved would be aided by the removal or relocation of the utility facilities. Collectively, such matters are referred to below as the "public work."

Franchisee acknowledges and understands that any delay by Franchisee in performing the herein described work may delay, hinder, or interfere with the work performed by the County and its contractors and subcontractors done in furtherance of such Public Work and result in damage to the County, including but not limited to, delay claims. Franchisee shall cooperate with the County and its contractors and subcontractors to coordinate such Franchisee work to accommodate the Public Work project and project schedules to avoid delay, hindrance of, or interference with the Public Work. The County of Mason shall make available to the Franchisee a copy of the Six Year Transportation Program and the County's annual construction program after adoption each year. It is anticipated these programs will aid the utility in planning construction programs.

B. Franchisee has a duty to protect its utility facilities from work performed by the County within the road rights-of-way. The rights granted to the Franchisee herein do not preclude the County of Mason, its employees, contractors, subcontractors, and agents from blasting, grading, excavating, or doing other necessary road work contiguous to Franchisee's utility facilities; providing that, the Franchisee shall be given a minimum of forty-eight (48) hours notice of said blasting or other work in order that the Franchisee may protect its utility facilities.

C. In the event of an emergency, or where the utility facility creates or is contributing to an imminent danger to health, safety, or property, the County may protect, support, temporarily disconnect, remove, or relocate any or all parts of the utility facility without prior notice, and charge the Franchisee for costs incurred.

D. If any Person that is authorized to place facilities in the road right of way requests the Franchisee to protect, support, temporarily disconnect, remove, or relocate the Franchisee's utility facilities to accommodate the construction, operation, or repair of the facilities of such other person, the Franchisee shall, after 30 days' advance written notice, take action to effect the necessary changes requested; provided that, if such project is related to or competes with Franchisee's service, or if the effect of such changes would be to permanently deprive Franchisee of the beneficial enjoyment of this franchise for its intended purposes through interference with the operation of Franchisee's utility facilities or otherwise, Franchisee shall not be required to relocate its utility facilities. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Franchisee's utility facilities were not properly installed, the reasonable cost of the same shall be borne by the Person requesting the protection, support, temporary disconnection, removal, or relocation at no charge to the County, even if the County makes the request for such action.

E. The Franchisee shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same.

The County of Mason will accept liability for direct and actual damages to said Franchisee that are the result of the negligence of Mason County, its trustees, officers, employees, contractors, subcontractors or agents while performing County improvement or Public Works projects enumerated in the original franchise agreement under Section VIII, paragraph B. Direct and actual damages are specifically limited to physical damage to properly installed and located infrastructure of the Franchisee and the cost to repair such physical damage. Mason County retains the right to assert all applicable defenses in the event of a dispute including contributory negligence on the part of the Franchisee. Mason County shall in no way be liable for incidental damages claimed to arise from such actions.

All Work to be performed by the Franchisee under this section shall pass the inspection of the County Engineer. The Franchisee shall pay all costs of and expenses incurred in the examination, inspection and approval of such work.

IX. PRESERVATION OF MONUMENTS/MARKERS

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 Franchisee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Franchisee'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 by approved monuments shall be borne by the Franchisee.

A complete set of reference notes for monument and other ties shall be filed with the office of the Mason County Engineer.

X. VACATION OF ROAD RIGHT-OF-WAY

If at any time the County shall vacate any County road, right-of-way or other County property which is subject to rights granted by this franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way or other county property for the use of Mason County, in either its proprietary or governmental capacity, then the Board of Mason County Commissioners may, at its option, and by giving thirty (30) days written notice to the Franchisee, terminate this franchise with reference to such county road, right-of-way or other county property so vacated, and the County of Mason shall not be liable for any damages or loss to the Franchisee by reason of such termination. It has been the practice of Mason County to reserve easements for

utilities at the time of road vacation, and will continue to be the practice until such time the Board of Mason County Commissioners direct a change of practice.

XI. FINANCIAL SECURITY

A. Insurance Except as otherwise provided herein, Franchisee shall maintain for itself and the County, throughout the entire period any part of Franchisee's utility facilities are located in the Franchise Area, adequate insurance to protect the Parties and their elected and appointed officers, agents, employees against all of County's and Franchisee's liability arising out of Franchisee's use and occupancy of the Franchise Area or any part thereof. This obligation shall require the Franchisee to maintain insurance at least in the following amounts:

1. COMMERCIAL GENERAL LIABILITY insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate limit location endorsement for the Franchise Area, and shall provide coverage for any and all costs, including defense costs, and losses and damages resulting from personal injury, bodily injury and death, property damage, products liability and completed operations. Such insurance shall include blanket contractual coverage, including coverage for the Franchise as now or hereafter amended and specific coverage for the indemnity provisions set forth herein. Coverage must be written with the following limits of liability:

Bodily and Personal Injury & Property Damage

\$ 1,000,000 per Occurrence

\$ 2,000,000 aggregate

2 WORKERS' COMPENSATION insurance shall be maintained to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees. The Franchisee shall also maintain, during the life of this policy, employer's liability insurance; provided that this obligation shall not apply to any time period during which Franchisee has no employees. The following minimum limits must be maintained:

Workers' Compensation	Statutory
Employer's Liability	\$ 1,000,000 each occurrence

3. COMPREHENSIVE AUTO LIABILITY insurance shall include owned, hired, and non-owned vehicles operated by Franchisee employees on an occurrence basis with coverage of at least \$2,000,000 per occurrence.

If the Franchisee, its contractors, or subcontractors do not have the required insurance, the County may require such entities to stop operations until the insurance is obtained and approved.

Certificates of Insurance reflecting evidence of the required insurance and approved by the County's

Risk Manager for the GENERAL LIABILITY policies described above, shall be sent to the County's risk manager. The certificate shall be filed with the acceptance of the franchise, and annually thereafter, and as provided below. All coverage shall be listed all on one certificate with the same expiration dates.

The certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the County.

In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the franchise, then, in that event, the Franchisee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the franchise.

The County reserves the right, during the term of the franchise, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures.

Each insurance policy required pursuant to this franchise shall be primary and non-contributing as respects any coverage maintained by the County and shall include an endorsement reflecting the same. Any other coverage maintained by County shall be excess of this coverage herein defined as primary and shall not contribute with it. The certificate of insurance must reflect that the above wording is included in all such policies.

Each insurance policy obtained pursuant to this franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial rating at all times during coverage of no less than rating of "A" and a class of "X" or better in the latest edition of "Best's Key Rating Guide" published by A.M. Best Company, or such other financial rating or rating guide approved in writing by the County's risk manager. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the County and shall seek coverage from an insurer that meets the foregoing standards. The County reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

Comprehensive general liability insurance policies and coverage obtained pursuant to this franchise shall include an endorsement (**standard ISO form CG 24-17**) deleting all exclusions for work or incidents occurring within any distance from a railroad track or railroad property, or on, over, or under a railroad track.

Insurance policies required pursuant to this franchise shall have no non-standard exclusions unless approved of by the County Risk Manager or designee.

Commercial general liability insurance policies obtained pursuant to this franchise shall name the

County as an additional insured without limitation, pursuant to an endorsement approved of by the County's Risk Manager or designee.

Franchisee and Franchisee's Contractors' insurers, through policy endorsement, shall waive their rights of subrogation against the County for all claims and suits. The certificate of insurance must reflect this waiver of subrogation rights endorsement.

Commercial General Liability Insurance policies and coverage required herein of public utility operators may include a reasonable deductible or self-insured retention; provided, however, that as to any Loss or Damage covered as provided herein, if Franchisee elects to include any deductible or self-insured retention, Franchisee shall itself directly cover, in lieu of insurance, any and all County liabilities that would otherwise in accordance with the provisions of this Franchise be covered by Franchisee's insurance if Franchisee elected not to include a deductible or self-insured retention. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible or self-insured retention. Franchisee shall be required to provide a certification of self-insurance retention to the county in a form and content acceptable to the county engineer.

B. Performance/Payment Bond. At the same time Franchisee provides its acceptance of this Franchise, the Franchisee shall, if required by the County Engineer, provide a performance and payment bond to ensure the full and faithful performance of all of its responsibilities under this franchise and applicable rules, regulations and ordinances, including, by way of example, but not limited to, its obligations to relocate and remove its utility facilities, to restore the road rights-of-way and other property when damaged or disturbed, and to reimburse the County for its costs. The amount of the performance and payment bond shall be for ZERO (\$0). The amount of the bond, or cash deposit as described below, may be adjusted by the County every five years from the date of execution of this franchise, to take into account cumulative inflation or increased risks to the County. The Franchisee may be required to obtain additional bonds in accordance with the County's ordinary practices. The bond shall be in a form with terms and conditions acceptable to the County and reviewed and approved by the County Engineer. The bond shall be with a surety with a rating no less than "A X" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide. The Franchisee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the County, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

Franchisee, may at its election or upon order by the County, substitute an equivalent cash deposit instead of a performance and payment bond. This cash deposit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Permit and all applicable laws, rules, regulations or ordinances. This includes, but is not limited to, its obligations to relocate or remove its facilities, restore the road rights-of-way and other property to their original condition, reimbursing the County for its costs, and keeping Franchisee's insurance in full force.

The County shall notify Franchisee in writing, by certified mail, of any default and shall give

Franchisee thirty (30) days from the date of such notice to cure any such default. In the event that the Franchisee fails to cure such default to the satisfaction of the County, the County may, at its option, forfeit the entire amount of the cash deposit or draw upon the cash deposit up to the amount of the County's costs incurred to cure Franchisee's default. Upon the County's cure of Franchisee's default, the County shall notify Franchisee in writing of such cure.

In the event that the County draws upon the cash deposit or forfeits the same, Franchisee shall thereupon replenish the cash deposit to the full amount as specified herein or provide a replacement performance and payment bond.

Before any Work commences in the road right-of-way, the County Engineer may require the operator to provide a performance and payment bond for each separate project in an amount to be determined by the County Engineer, but not less than five hundred dollars, written by a surety company acceptable to the County Risk Manager and authorized to do business in the state of Washington. The purpose of the bond is to insure completion of construction, including the restoration of surfacing, slopes, slope treatment, topsoil, landscape treatment, and drainage facilities, and cleanup of rights-of-way, and payment of costs incurred by the County to enforce the requirements of this Chapter. The performance and payment bond shall be in place for a period ending not more than one year after the date of completion.

A project specific performance bond shall not be required in the event that the franchisee has in place a blanket performance bond and, when required, a payment bond, maintained pursuant to the requirements of this franchise.

A performance and payment bond for work in the road right-of-way will not be required of the United States Government or any of its agencies or of any municipal corporation or department of the state of Washington and its local subdivisions.

C. Limitation of Liability. To the fullest extent permitted by law, the Franchisee shall, and shall cause its contractor(s) to release, indemnify, defend and hold harmless the county and the county's legal representatives, officer (elected or), appointed) employees and agents (collectively, "indemnitees") for, from and against any and all claims, liabilities, fines, penalties, cost, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitations, court costs, attorneys' fees and costs of investigation, removal and remediation and governmental oversight costs), Environmental or otherwise (collectively "liabilities") of any nature, kind, or description, of any person or entity, directly or indirectly, arising out of, resulting from, or related to (in whole or in part):

1. this franchise;
2. any rights or interests granted pursuant to this franchise;
3. franchisee's occupation and use of the road right of way;

4. franchisee's operation of its utility facilities;
5. the presence of utility facilities within the right of way;
6. the environmental condition and status of the road right-of-way caused by, aggravated by, or contributed to, in whole or in part, by franchisee or its agents; or
7. The acts, errors, or omissions of third parties when arising out of the installation, construction, adjustment, relocation, replacement, removal, or maintenance of such third party utility facilities within the road rights-of-way when such work is performed under authority of the operator's utility permit or at the direction or under the control of the operator; or
8. any act or omission of franchisee or franchisee's agents;

The only liabilities with respect to which franchisee's obligation to indemnify the indemnitees do not apply are liabilities to the extent arising out of, caused by or resulting from the negligence of the county, its officers, agents, employees or contractors and liabilities that by law the indemnities cannot be indemnified for.

Upon written notice from the county, franchisee agrees to assume the defense of any lawsuit or other proceeding brought against any indemnitee by any entity, relating to any matter covered by this franchise for which franchisee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Franchisee shall pay all cost incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments and amounts paid in satisfaction of judgments. Franchisee will fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined if determined adversely to Mason County.

Upon the Franchisee's failure to satisfy said judgment within the ninety (90) day period, this franchise shall at once cease and terminate.

Acceptance by the County of any Work performed by the Franchisee at the time of completion shall not be grounds for avoidance of this covenant.

XII. FRANCHISE NONEXCLUSIVE

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the County of Mason from granting other utilities under, along, across, over and upon any of the County roads, rights-of-way or other County property subject to this franchise and shall in no way prevent or prohibit the County of Mason from constructing, altering, maintaining or using 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 or any part of them with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the county may deem fit.

XIII. SUCCESSORS AND ASSIGNS

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Franchisee, and all privileges, as well as all obligations and liability of the Franchisee, shall ensure to its successors and assigns equally as if they were specifically mentioned wherever the Franchisee is mentioned. Any reference in this franchise to a specifically named party shall be deemed to apply to any successor, heir, administrator, executor or assign of such party who has acquired its interest in compliance with the terms of this franchise, or under law.

XIV. TRANSFER/ASSIGNMENT

Franchisee may assign or transfer this franchise after prior written notice to County of Mason and assignee's written commitment, in a form and content approved by the County Prosecutor, delivered to County of Mason, that assignees shall thereafter be responsible for all obligations of Franchisee with respect to the franchise and guaranteeing performance under the terms and conditions of the franchise and that transferee will be bound by all the conditions of the franchise and will assume all the obligations of its predecessor. Such an assignment shall relieve the Franchisee of any further obligations under the franchise, including any obligations not fulfilled by Franchisee's assignee; provided that, the assignment shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the assignment. No franchise or master road use permit may be assigned or transferred without filing or establishing with the county the insurance certificates and performance bond as required pursuant to this franchise.

XV. ANNEXATION

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 and shall by operation of law or otherwise terminate in respect to the said roads, rights-of-way or other county property so included with city or town limits; this franchise shall continue in force and effect to all county roads, rights-of-way or other county property not so included in city or town limits.

XVI. REVOCATION/REMEDIES

A. Revocation. In addition the right to revoke this franchise as set forth in Title 12 of the Mason County Code, if the Franchisee 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 Franchisee under the provision of this grant, then Franchisee shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled, after a public hearing by the Board of County Commissioners. The Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of this franchise by reason of any failure of the County to enforce prompt compliance, and the County's failure to enforce shall not constitute a waiver of rights

or acquiescence in the Licensee's conduct.

Subject to the required consent, adjudication, permission or authorization of a federal or state regulatory agency with jurisdiction over the subject matter, upon revocation of the franchise, the County may require the Franchisee to remove its utility facilities from any road rights-of-way, and restore such road right-of-way to its same or better condition as existed just prior to such removal, or de-commission and abandon such utility facilities in place in whole or in part and in a manner approved by the County Board of Commissioners. If the Franchisee fails to remove utility facilities that the County requires it to remove, the County may perform the work and collect the cost thereof from the Franchisee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all utility facilities of the Franchisee within the franchise Area effective upon filing of the lien with the Mason County Auditor.

B. Remedies. The County has the right to exercise any and all of the following remedies, singly or in combination, in the event of Default. "Default" shall mean any failure of Franchisee or its agents to keep, observe, or perform any of Franchisee's or its agent's duties or obligations under this franchise:

1. Damages. Franchisee shall be liable for any and all damages incurred by County.

2. Specific Performance. County shall be entitled to specific performance of each and every obligation of Franchisee under this franchise without any requirement to prove or establish that County does not have an adequate remedy at law. Franchisee hereby waives the requirement of any such proof and acknowledges that County would not have an adequate remedy at law for Franchisee's commission of an Event of Default hereunder.

3. Injunction. County shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Agreement without, in either case, being required to prove or establish that County does not have an adequate remedy at law. Franchisee hereby waives the requirement of any such proof and acknowledges that County would not have an adequate remedy at law for Franchisee's commission of an Event of Default hereunder.

4. Alternative Remedies. Neither the existence of other remedies identified in this franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County to commence an action for equitable or other relief, and/or proceed against Franchisee and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

XVII. SUBSEQUENT ACTION

In the event that after this franchise becomes effective, (a) there is a change in the law which

broadens the authority of the County of Mason or the Franchisee with respect to any act permitted or authorized under this franchise; or (b) the County of Mason or the Franchisee believe that amendments to this franchise are necessary or appropriate, then the County of Mason and the Franchisee agree to enter into good faith negotiations to amend this franchise so as to enable the Parties to address, in a manner reasonably acceptable to all Parties, such change or other development which formed the basis for the negotiations. The Parties recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with law, the scope and purpose of this franchise.

Mason County reserves for itself the right at any time upon ninety (90) days written notice to the Franchisee, to so change, amend, modify or amplify any of the provisions or conditions herein enumerated to conform to any state statute or county regulation, relating to the public welfare, health, safety or highway regulation, as may hereafter be enacted, adopted or promulgated and this franchise may be terminated at such time a public hearing is held by the Board of County Commissioners, and the Franchisee's utility facilities are found not to be operated or maintained in accordance with such statute or regulation.

XVIII. ACCEPTANCE

Franchisee shall execute and return to the County of Mason a signed acceptance of the franchise granted hereunder. The acceptance shall be in the form of the acceptance attached hereto as Exhibit "A", and in accepting the franchise, Franchisee warrants that it has carefully read the terms and conditions of this franchise and accepts all of the terms and conditions of this franchise and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a franchise, that this franchise represents the entire agreement between the Franchisee and the County of Mason. In the event the Franchisee fails to submit the countersigned ordinance and acceptance as provided for herein within the time limits set forth in this section, the grant herein is and shall become null and void.

XIX. MISCELLANEOUS PROVISIONS

A. **Controlling Law/Venue.** Any disputes concerning the application or interpretation of any of the provisions of this franchise shall be governed by the laws of the State of Washington. Venue of any action or arbitration brought under this franchise shall be in Mason County, Washington or the Western District of Washington if an action is brought in federal court, provided, however, that venue of such action is legally proper.

B. **Liens.** Franchisee shall promptly pay and discharge any and all liens arising out of any Work done, suffered or permitted to be done by Franchisee on any Franchise Area.

C. **Waiver.** No waiver by either party of any provision of this franchise shall in any way impair the right of such party to enforce that provision for any subsequent breach, or County of

Mason's right to enforce all other provisions of this franchise.

D. Attorney's Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this franchise, the substantially prevailing Party or Parties shall be entitled to reasonable attorney's fees, costs and necessary disbursements in addition to any other relief to which such Party or Parties may be entitled.

E. Amendment. This franchise may be amended only by a written contract signed by authorized representatives of Franchisee and County of Mason.

F. Severability. If any provision of this franchise is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this franchise will be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof will remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, there will be added automatically as a part of this franchise; a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.

G. Joint and Several Liability. Franchisee acknowledges that, in any case in which Franchisee and Franchisee's Contractors are responsible under the terms of this franchise, such responsibility is joint and several as between Franchisee and any such Franchisee's Contractors; provided that, the Franchisee is not prohibited from allocating such liability as a matter of contract.

H. Notices. Any notice contemplated, required, or permitted to be given under this franchise shall be sufficient if it is in writing and is sent either by: (a) registered or certified mail, return receipt requested; or (b) a nationally recognized overnight mail delivery service, to the Party and at the address specified below, except as such Party and address may be changed by providing notice to the other Party no less than thirty (30) days' advance written notice of such change in address.

Franchisee: _____

Attn: _____

Grantor: County of Mason Public Works
100 Public Works Drive
Shelton, WA 98584

I. Approvals. Nothing in this franchise shall be deemed to impose any duty or obligation upon the County of Mason to determine the adequacy or sufficiency of Franchisee's plans and specifications or to ascertain whether Franchisee's proposed or actual construction, testing,

maintenance, repairs, replacement, relocation, adjustment or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the County of Mason. No approval given, inspection made, review or supervision performed by the County of Mason pursuant to this franchise shall constitute or be construed as a representation or warranty express or implied by County of Mason that such item approved, inspected, or supervised, complies with laws, rules regulations or ordinances or this franchise or meets any particular standard, code or requirement, or is in conformance with the plans and specifications, and no liability shall attach with respect thereto. County and inspections as provided herein, are for the sole purpose of protecting the County of Mason's rights as the owner or manager of the road rights-of-way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design, construction, repair, or maintenance of the utility facilities, suitability of the Franchise Area for construction, maintenance, or repair of the utility facilities, or any obligation on the part of the County of Mason to insure that work or materials are in compliance with any requirements imposed by a governmental entity. County of Mason is under no obligation or duty to supervise the design, construction, installation, relocation, adjustment, realignment, maintenance, repair, or operation of the utility facilities.

J. Force Majeure. Neither Party hereto shall be liable to the other Party for any failure to perform an obligation set forth herein to the extent such failure is caused by war, act of terrorism or an act of God, provided that such Party has made and is making all reasonable efforts to perform such obligation and minimize any and all resulting loss or damage.

K. Construction. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the identity of the Party or Parties may require. The provisions of this franchise shall be construed as a whole according to their common meaning, except where specifically defined herein, not strictly for or against any party and consistent with the provisions contained herein in order to achieve the objectives and purposes of this franchise.

L. Incorporation by Reference. All exhibits annexed hereto at the time of execution of this franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

M. Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington.

N. Entire Agreement. This franchise is the full and complete agreement of County of Mason and Franchisee with respect to all matters covered herein and all matters related to the use of the Franchise Area by Franchisee and Franchisee's Contractors, and this franchise supersedes any and all other agreements of the Parties hereto with respect to all such matters, including, without limitation, all agreements evidencing the franchise.

O. No Recourse. Without limiting such immunities as the County or other persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the County or its officials, boards, commissions, agents, or employees for any loss or damage arising out of the County's exercising its authority pursuant to this Franchise or other applicable law.

P. Responsibility for Costs. Except as expressly provided otherwise, any act that Franchisee is required to perform under this franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within the time provided for performance, the County may perform the work and bill the Franchisee. The Franchisee shall pay the amounts billed within 30 days.

Q. Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work was performed by the Franchisee. The Franchisee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf, under its control, or under authority of its utility permit, as if the work were performed by it and shall ensure that all such work is performed in compliance with this franchise, Title 12 MCC, the Manual and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is the Franchisee's responsibility to ensure that contractors, subcontractors, or other Persons performing work on the Franchisee's behalf are familiar with the requirements of the franchise, Title 12 MCC, the Manual, and other applicable laws governing the work performed by them.

R. Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the franchise, the Franchisee shall no longer have the right to occupy the franchise area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this franchise to the County shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's utility facilities shall remain in whole or in part in the road rights of way. By way of illustration and not limitation, Franchisee's obligations to indemnify, defend and hold harmless the County, provide insurance and a performance/payment bond pursuant to Section XI and Franchisee's obligation to relocate its utility facilities pursuant to Section VIII, shall continue in effect as to the Franchisee, notwithstanding any expiration, termination, revocation or forfeiture of the franchise, except to the extent that a County-approved transfer, sale, or assignment of the utility system is completed, and another entity has assumed full and complete responsibility for the utility system or for the relevant acts or omissions.

S. Warranties. By acceptance of this franchise, Franchisee warrants:

1. That Franchisee has full right and authority to enter into and perform this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject; and

2. That the execution, delivery, and performance of this Franchise by Franchisee has been duly authorized by all requisite Board/Commission action, that the signatories for Franchisee of the

acceptance hereof are authorized to sign this Franchise, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise and acceptance.

DATED at Shelton, Washington this ____ day of _____ 20__.

APPROVED:

BOARD OF COMMISSIONERS
MASON COUNTY, WASHINGTON

County Engineer

Chair

Approve as to form:

Vice Chair

Chief D.P.A.

Commissioner

Exhibit A
ACCEPTANCE OF FRANCHISE

Ordinance No. 115-06, effective November 14, 2006.

I, _____, am the _____ of _____

and am the authorized representative to accept the above-referenced franchise on behalf of

_____.

I certify that this franchise and all terms and conditions thereof are accepted by

_____, without qualification or reservation.

DATED this ____ day of _____, 20__.

FRANCHISEE

By: _____

Its: _____

Tax Id. No. _____

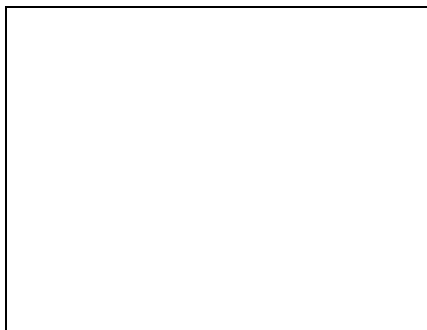
STATE OF _____)

) ss.

COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was authorized to execute the instrument and acknowledged it as the _____ of the _____ to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____



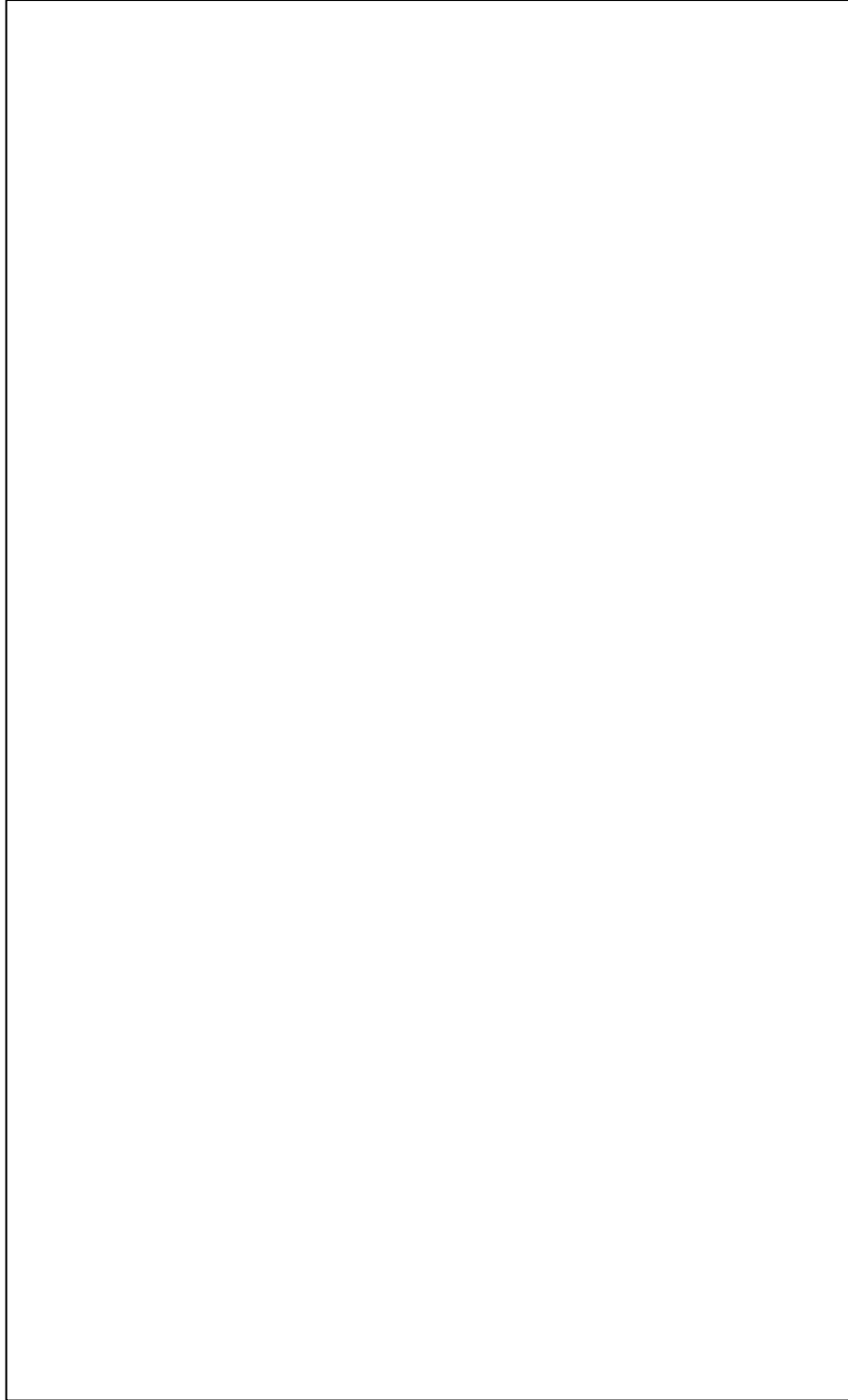
Notary Public

Print Name _____

My commission expires _____

EXHIBIT B

Description of Franchise Area



RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

County of Mason
100 West Public Works Drive
Shelton WA 98584
Attn: County Engineer

Grantor: COUNTY OF MASON, a legal subdivision of the state of Washington

Grantee: _____

Legal Description of Benefited Property

Legal Description: _____

Assessor's Tax Parcel ID#: _____