

IN THE MATTER OF THE APPLICATION OF _____
FOR A PRIVATE LINE UTILITY OCCUPANCY PERMIT TO CONSTRUCT, OPERATE,
AND MAINTAIN _____
ALONG AND UNDER _____, A COUNTY MAINTAINED
ROAD LOCATED IN MASON COUNTY, WASHINGTON

Application of _____, with principal residence located at _____
_____, by and through _____, for a private line utility
occupancy permit to construct, operate and maintain a private waterline under county roads and
highways in Mason County, Washington, as set forth in attached Exhibit "A", having come before
the County Commissioners of Mason County, Washington during a regularly scheduled public
meeting, on the ___ day of _____, 20___, and that it is in the public interest to allow
the private line utility occupancy permit herein granted;

NOW THEREFORE, IT IS ORDERED that a non-exclusive private line utility occupancy permit
be, and the same is hereby given and granted to operator, and its successors and assigns,
hereinafter referred to as the "Permittee", for a period commencing 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, and terminating as provided herein.

I. DEFINITIONS

For the purposes of this private line utility occupancy permit, 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 (hereafter the "County") hereby grants to the Permittee a non-exclusive
private line utility occupancy permit (hereinafter "Permit") which, once it becomes effective
shall authorize the Permittee to enter upon the road rights-of-way located within the Permit
Area for the purpose of maintaining, repairing, replacing, 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 Permit, Title 12 of the Mason County Code, the Manual and all applicable laws, rules, regulations and ordinances. Permittee's exercise of any rights granted pursuant to the Permit 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 Permittee by implication. This Permit 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 as (a) private line(s) or the impact of the utility facilities upon the road rights-of-way.

III. UTILITY PERMIT REQUIRED

Permittee shall not commence or perform work to install, construct, maintain repair, replace adjust, connect, disconnect, rebuild, or relocate its utility facilities within the road rights-of-way (hereafter collectively or individually the "Work"), 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.

Permittee shall first file with the County Engineer its application for a utility permit to do such Work together with plans and specifications 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 Permittee.

All such Work shall be subject to the approval of and shall pass the inspection of the County Engineer. The Permittee 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 Permit, public or private property, the Permittee 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 Permittee 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 Permittee or its agents in a condition dangerous to life or property, and the Permittee, upon demand, shall pay to the County all costs of such work.

V. PERMITTEE WORK IN RIGHT OF WAY

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

A. All of Permittee's utility facilities and Work within the road rights-of-way or other County property shall be performed 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 the Work the Permittee shall use the Manual. Prior to commencement of any Work, Permittee shall submit such plans and specifications to the County Engineer for review and approval together with the adequate exhibit depicting the 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 subject to this Permit 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 Permit Area or other county property prior in time to the utility facilities of the Permittee, shall have preference as to the alignment and location of such utilities so installed with respect to the Permittee. 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. Permittee 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 Permittee'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 or road right-of-way; may deny access if a Permittee 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 Permittee for all the costs associated with removal; and may require Permittee to cooperate with others to minimize adverse impacts on the road and 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 Permit and applicable law, including to ensure that the private line 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 Permittee, 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 Licensee fails to do so, and to charge the Permittee therefor. 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 Permittee.

H. When required by the County, Permittee 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. PERMITTEE 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, Permittee 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 and road rights-of-way. In addition to the liability terms elsewhere in this Agreement, Permittee 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 Permittee, 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 Permittee, 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).

J. Permittee 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, Permittee and its agents may not enter upon the permit area to perform work for which a utility permit is 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, Permittee and its agents may enter the Permit 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, Permittee 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. Permittee shall promptly reimburse the County for its 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 Permittee's utility facilities in the road rights-of-way.

N. If, during any Work, Permittee or its agents discover scientific or historic artifacts, Permittee or its agents 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 Permit shall be done in a thorough and workman-like manner. In the performance of any Work, including without limitation, the opening of trenches and the tunneling under county roads, right-of way or other county property, the Permittee 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 Permittee shall place warning lights, barricades and other appropriate protective devices at such a position as to give adequate warning of such Work. The Permittee 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 Permittee.

VII. POLICE POWERS

The County, in granting this Permit, 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 Permit 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, right-of-way and other county property covered by this Permit. The County retains the right to administer and regulate activities of the Permittee 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 Permittee.

VIII. RELOCATION

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

A. The Permittee 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."

Permittee acknowledges and understands that any delay by Permittee in performing the above 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. Permittee shall cooperate with the County and its contractors and subcontractors to coordinate such Permittee work to accommodate the Public Work project and project schedules to avoid delay, hindrance of, or interference with the Public Work. The County shall make available to the Permittee 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 Permittee in planning construction programs.

B. Permittee 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 Permittee herein do not preclude the County, its employees, contractors, subcontractors, and agents from blasting, grading, excavating, or doing other necessary road work contiguous to Permittee's utility facilities; providing that, the Permittee shall be given a minimum of forty-eight (48) hours notice of said blasting or other work in order that the Permittee 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 Permittee for costs incurred.

D. If any Person that is authorized to place facilities in the road right of way requests the Permittee to protect, support, temporarily disconnect, remove, or relocate the Permittee's utility facilities to accommodate the construction, operation, or repair of the facilities of such other person, the Permittee 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 Permittee's service, or if the effect of such changes would be to permanently deprive Permittee of the beneficial enjoyment of this Permit for its intended purposes through interference with the operation of Permittee's utility facilities or otherwise, Permittee 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 Permittee'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 Permittee 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 Permittee 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 Section VIII, paragraph B. Direct and actual damages are specifically limited to physical damage to properly installed and located infrastructure of the Permittee 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 Permittee. Mason County shall in no way be liable for incidental damages claimed to arise from such actions.

All Work to be performed by the Permittee under this section shall pass the inspection of the County Engineer. The Permittee 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 permit which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, the Permittee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Permittee's Work and operations under this Permit. 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 in accordance with RCW 58.24 and WAC 332-120, 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 Permittee.

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 or right-of-way or other County Property which is subject to rights granted by this Permit and said vacation shall be 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, then the Board of Mason County Commissioners may, at its option, and by giving thirty (30) days written notice to the Permittee, terminate this Permit 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 Permittee 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 It is intended that the following insurance requirements shall apply to the person performing the Work in the road right-of-way. Permittee and Permittee's contractors shall not perform or cause to be performed any Work, unless and until Permittee (to the extent Permittee performs any of the Work in the road right-of-way) or its contractors (to the extent Permittee's contractor performs any of the Work in the road right-of-way) provide certificates of insurance evidencing that Permittee or Permittee's contractors are in compliance with the following requirements, including, maintaining insurance in 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 Permit 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 arising out of the Work. 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 by Permittee's contractor to comply with statutory limits for all employees, and in the case any work is sublet, the contractor shall require its subcontractors similarly to provide workers' compensation insurance for all the employees.

3. COMPREHENSIVE AUTO LIABILITY insurance shall include owned, hired, and non-owned vehicles on an occurrence basis with coverage of at least \$500,000 per occurrence.

The required insurance shall be maintained from the time that Work in the road right-of-way commences until the Work is complete and the utility permit issued for said Work has been released by the County Engineer, or his or her designee.

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

Permittee shall, or shall cause its contractors to, file with the application for a utility permit, certificates of insurance reflecting evidence of the required insurance in a form and content approved by the County's Risk Manager. All coverage shall be listed 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 Work, then, in that event, the Permittee 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 Permit.

The County reserves the right, during the term of the Permit, 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 Permit 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 Permit 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, Permittee shall give or shall cause its contractors to 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 Permit 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 Permit 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 Permit shall name the County as an additional insured without limitation, pursuant to an endorsement approved of by the County's Risk Manager or designee.

Permittee or Permittee'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.

B. Contractor Bond. All contractors performing Work on behalf of Permittee shall be licensed and bonded.

C. Limitation of Liability. to the fullest extent permitted by law, permittee shall, and shall cause its contractor(s) only as to subsection (9) below, to release, indemnify, defend and hold harmless the county and the county's legal representatives, officers (elected or appointed), employees and agents (collectively, "indemnitees") for, from and against any and all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments and expenses (including, without limitation, 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 permit;
2. any rights or interests granted pursuant to this permit;
3. permittee's occupation and use of the road right of way;
4. permittee'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 permittee 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 permittee or permittee's agents; or
9. any act or omission of contractor or its employees, agents, or subcontractors when arising out of the work.

Even if such liabilities arise from or are attributed to, in whole or in part, any negligence of any indemnitee. The only liabilities with respect to which permittee's obligation to indemnify the indemnitees does not apply are liabilities to the extent proximately caused by the sole negligence or intentional misconduct of an indemnitee or for liabilities that by law the indemnitees cannot be indemnified for.

Upon written notice from the county, permittee 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 permit for which permittee has an obligation to assume liability for and/or save and hold harmless any indemnitee. Permittee shall pay all costs 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. Permittee 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 permittee's failure to satisfy said judgment within the ninety (90) day period, this permit shall at once cease and terminate and the county of mason shall have a lien upon permittee's utility facilities and all other facilities used in the construction, operation and maintenance of the permittee's utility system which may be enforced against the property for the full amount of any such judgment so taken against any of the indemnitees

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

XII. PERMIT NONEXCLUSIVE

This Permit shall not be deemed to be an exclusive Permit. It shall in no manner prohibit the County of Mason from granting rights to other utilities under, along, across, over and upon any of the County roads, rights-of-way or other County property subject to this Permit 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 Permittee and all privileges, as well as all obligations and liability of the Permittee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Permittee is mentioned. Any reference in this Permit 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 Permit or under law.

XIV. TRANSFER/ASSIGNMENT

Permittee may assign or transfer this Permit by contacting the County of Mason to obtain an Assignment Agreement. The Agreement must be signed and delivered back to the County of Mason. Assignees shall thereafter be responsible for all obligations of Permittee with respect to the Permit and guaranteeing performance under the terms and conditions of the Permit and that transferee will be bound by all the conditions of the Permit and will assume all the obligations of its predecessor. Such an assignment shall relieve the Permittee of any further obligations under

the Permit, including any obligations not fulfilled by Permittee's assignee; provided that, the assignment shall not in any respect relieve the Permittee, 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 Permit may be assigned or transferred without filing or establishing with the county the insurance certificates, security fund and performance bond as may be required pursuant to this Permit.

XV. ANNEXATION

Whenever any of the County road rights-of-way or other county property as designated in this Permit, 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; then, except to the extent allowed by law, this Permit shall terminate in respect to the said roads, rights-of-way or other county property so included with city or town limits; but this Permit shall continue in force and effect to all county road rights-of-way or other county property not so included in city or town limits.

XVI. TERM/TERMINATION/REMEDIES

A. Term. This Permit shall commence upon acceptance by the Permittee as provided at Section XVIII herein and continue in PERPETUITY until terminated or otherwise superseded by a subsequent franchise, private line utility occupancy permit, master road use permit or other agreement of the Parties. In the event that it is determined by a court of competent jurisdiction that, as a matter of law, the term provided for herein is unlawful, this Permit shall be deemed to have a term for the maximum period allowed by law, and if no such maximum period is readily and easily capable of being identified, for a term of not longer than fifty (50) years.

B. Termination by County. Permittee has elected to obtain a Permit in lieu of a franchise agreement. Permittee understands and agrees that, unlike a franchise, this Permit may be terminated by the County with or without cause. This means that the County is not required to have or provide a reason for the termination and that the County may terminate this Permit in its sole discretion without penalty to the County and regardless of whether or not Permittee is or is not in default; provided that, the County may not terminate this Permit for a reason that is unlawful. The Parties agree that the only condition of termination by the County of this Permit is that the County must give not less than ninety (90) days written notice to the Permittee of termination. The County Engineer is authorized to exercise the right of the County to terminate this Permit.

C. Termination upon Transfer/Assignment/Conveyance. This Permit shall automatically terminate upon: (1) assignment of the Permit without the prior written consent of the County in substantially the form of an Assignment Agreement (obtained by request), (2) transfer of the utility facilities located with the Permit Area without prior written notice to the County and mutual acceptance of an assignment of the Permit, (3) conveyance of the real property or any part thereof benefited by the installation and operation of the utility facilities without prior written notice to the County and mutual acceptance of an assignment of the Permit, or (4) use of the

utility facilities for the benefit of persons other than the owner/operator in a manner that no longer constitutes a de-minimis use of the road right-of-way.

D. Termination upon Removal of Utility Facilities. This Permit and all of the rights, duties and obligations contained herein, shall terminate upon removal of all Permittee utility facilities from the road right-of-way or abandonment and de-commissioning in place to the reasonable satisfaction of and in the manner approved by the County Engineer and restoration of the road right-of way to the satisfaction of the County Engineer.

E. Effect of Termination. On or before the effective date of termination or as otherwise mutually agreed to by the Parties, Permittee shall remove its utility facilities from the road rights-of-way and restore the road rights-of-way to the reasonable satisfaction of the County Engineer. In lieu of removal, the County Engineer may authorize abandonment in place and de-commissioning of the utility facilities in the manner approved by and to the reasonable satisfaction of the County Engineer. In the event that the Permittee fails to timely and completely perform such work, the County may perform or complete such work at the cost of the Permittee and Permittee shall be obligated to reimburse the County for such work within 30 days of invoice by the County.

F. Remedies. In addition to the right of the County to terminate this Permit, 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 Permittee or its agents to keep, observe or perform any of Permittee's or its agent's duties or obligations under this Permit:

1. Damages. Permittee 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 Permittee under this Permit without any requirement to prove or establish that County does not have an adequate remedy at law. Permittee hereby waives the requirement of any such proof and acknowledges that County would not have an adequate remedy at law for Permittee'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 Permit agreement without, in either case, being required to prove or establish that County does not have an adequate remedy at law. Permittee hereby waives the requirement of any such proof and acknowledges that County would not have an adequate remedy at law for Permittee's commission of an Event of Default hereunder.
4. Alternative Remedies. Neither the existence of other remedies identified in this Permit 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 Permittee 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

The County reserves for itself the right at any time upon ninety (90) days written notice to the Permittee, 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.

XVIII. ACCEPTANCE

Permittee shall execute and return to County a signed acceptance of the Permit granted hereunder. The acceptance shall be in the form of the acceptance attached hereto as Exhibit "A", and in accepting the Permit, Permittee warrants that it has carefully read the terms and conditions of this Permit and accepts all of the terms and conditions of this Permit 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 or an opportunity to have assistance of counsel, that it was not induced to accept a Permit, that this Permit represents the entire agreement between the Permittee and the County. In the event the Permittee fails to submit the 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. RECORDING OF MEMORANDUM OF PERMIT

The Parties agree that a "Memorandum of Permit" in substantially the form attached hereto as Exhibit "A", shall be filed for record with the Office of the Mason County Auditor upon written acceptance by the Permittee. The cost and expense of such filing shall be borne by the Permittee if not already included in the fee for issuance of this Permit. Notwithstanding the foregoing, this Permit is not intended nor shall it be construed to create an interest in land or constitute the grant or conveyance of a real property interest by the County to the Permittee. The requirements of this Section XIX are intended solely to provide notice of the existence of this Permit and the terms and conditions there under, including inter-alia, the limitations upon assignment of the Permit. Permittee shall at the time of its acceptance of this Permit identify the assessor's tax identification

number of the parcel or parcels benefited by this Permit and a legal description of each such parcel to be included in the Memorandum of Permit.

XX. MISCELLANEOUS PROVISIONS

A. Controlling Law/Venue. Any disputes concerning the application or interpretation of any of the provisions of this Permit shall be governed by the laws of the State of Washington. Venue of any action or arbitration brought under this Permit 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. Permittee shall promptly pay and discharge any and all liens arising out of any Work done, suffered or permitted to be done by Permittee on any Permit area.

C. Waiver. No waiver by either party of any provision of this Permit shall in any way impair the right of such party to enforce that provision for any subsequent breach, or either party's right to enforce all other provisions of this Permit.

D. Attorney's Fees. If any action at law or in equity is necessary to enforce or interpret the terms of this Permit, 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 Permit may be amended only by a written contract signed by authorized representatives of Permittee and County of Mason.

F. Severability. If any provision of this Permit is held to be illegal, invalid or unenforceable under present or future laws, such provision will be fully severable and this Permit 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 Permit, 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. Permittee acknowledges that, in any case in which Permittee and Permittee's contractors are responsible under the terms of this Permit, such responsibility is joint and several as between Permittee and any such Permittee's contractors; provided that, the Permittee 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 Permit 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 no less than thirty (30) days' advance written notice of such change in address.

Permittee: _____

Attn: _____

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

I. Approvals. Nothing in this Permit shall be deemed to impose any duty or obligation upon the County to determine the adequacy or sufficiency of Permittee's plans and specifications or to ascertain whether Permittee's proposed or actual construction, installation, testing, maintenance, repairs, replacement, relocation, adjustment or removal is adequate or sufficient or in conformance with the plans and specifications reviewed by the County. No approval given, inspection made, review or supervision performed by the County pursuant to this Permit shall constitute or be construed as a representation or warranty express or implied by County that such item approved, inspected, or supervised, complies with laws, rules regulations or ordinances or this Permit 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's rights as the owner and 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 permit area for construction, maintenance, or repair of the utility facilities, or any obligation on the part of the County to insure that work or materials are in compliance with any requirements imposed by a governmental entity. County 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 Permit 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 Permit.

L. Incorporation by Reference. All exhibits annexed hereto at the time of execution of this Permit 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 Permit is the full and complete agreement of County and Permittee with respect to all matters covered herein and all matters related to the use of the Permit Area by Permittee and Permittee's Contractors, and this Permit supersedes any and all other agreements of the Parties hereto with respect to all such matters, including, without limitation, all agreements evidencing the Permit.

O. No Recourse. Without limiting such immunities as the County or other persons may have under applicable law, Permittee 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 Permit or other applicable law.

P. Responsibility for Costs. Except as expressly provided otherwise, any act that Permittee is required to perform under this Permit shall be performed at its cost. If Permittee 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 Permittee. The Permittee shall pay the amounts billed within 30 days.

Q. Work of Contractors and Subcontractors. Work by contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the Work was performed by the Permittee. The Permittee 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 Permit, 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 Permittee's responsibility to ensure that contractors, subcontractors, or other Persons performing work on the Permittee's behalf are familiar with the requirements of the Permit, Title 12 MCC, the Manual, and other applicable laws governing the work performed by them and further, for ensuring that such contractors and subcontractors maintain insurance as required herein.

R. Survival of Terms. Upon the termination of the Permit, the Permittee shall no longer have the right to occupy the Permit area. However, the Permittee's obligations under this Permit to the County shall survive the termination of these rights according to its terms for so long as the Permittee's utility facilities shall remain in whole or in part in the road rights-of-way, except to the extent the County Engineer has approved abandonment in place. By way of illustration and not limitation, Permittee's obligations to indemnify, defend and hold harmless the County, provide insurance and a performance/payment bond pursuant to Section XI and Permittee's obligation to relocate its utility facilities pursuant to Section VIII, shall continue in effect as to the Permittee, notwithstanding any termination of the Permit, 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 facilities or for the relevant acts or omissions.

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

APPROVED:

BOARD OF COMMISSIONERS
MASON COUNTY, WASHINGTON

County Engineer

Chair

Approved as to form:

Vice Chair

Chief D.P.A.

Commissioner

RECORDED AT THE REQUEST OF
AND AFTER RECORDING RETURN TO:

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

EXHIBIT "A"

MEMORANDUM OF PERMIT

Title: Private Line Occupancy Permit

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

Grantee:

Description of Franchise Area: SEE EXHIBIT A-4

THIS MEMORANDUM OF PERMIT is dated as of the ____ day of _____, 20 __
between the County of Mason, a legal subdivision of the state of Washington (“County”) and
_____ (Permittee”).

1. Property. County has, pursuant to Private Line Utility Occupancy Permit granted to Permittee, the right, revocable at the will of the County, to use and occupy certain road rights-of-way for the construction, installation, adjustment, maintenance, removal, repair, relocation and operation of Permittee’s utility facilities for the benefit of the herein described Property, upon the terms and conditions of that certain permit agreement between the parties accepted the ____ day of _____, 2020 (the “Permit”), which terms and conditions are incorporated herein by this reference. The property to be benefited by this permit is situated in the Mason County, Washington, legally described in Exhibit A attached hereto (herein called the "Property"). The road right-of-way permit area (“Permit Area”) is also described in attached Exhibit A.

2. Term. The term of the Permit is in perpetuity unless terminated.

3. Termination. County in its sole discretion may terminate all or part of the Permit with or without cause upon no less than ninety (90) days written notice to the Permittee. Further, this Permit will automatically terminate upon assignment without the prior written consent of the County, or upon transfer of the Property without the prior written consent of the County to an assignment of the Permit or upon transfer of all or part of the utility facilities located in the Permit Area without the prior written consent of the County to an assignment of the Permit.

4. Purpose of Memorandum of Permit. This memorandum of permit is prepared for the purpose of recordation and notice and in no way modifies the Permit and is in no way intended to or should be construed to create or convey an interest in land or the road right-of-way.

DATED this _____ day of _____, 20 __.

COUNTY OF MASON

County Engineer

Approved as to form:

Chief D.P.A.

FORM OF MEMORANDUM OF PERMIT

Permit Area Map

