SEATTLE CITY COUNCIL

Legislative Summary

CB 118648

Record No.: CB 118648 **Type:** Ordinance (Ord) **Status:** Passed

Version: 1 125018 **In Control:** City Clerk

File Created: 02/16/2016

Final Action: 04/01/2016

Title: AN ORDINANCE relating to the City Light Department; accepting a ten-year franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington by Seattle City Light to construct, maintain, operate, replace, and repair electric power system facilities.

Date

Notes:

Filed with City Clerk:

Mayor's Signature:

Sponsors: Sawant

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Attachments: Att 1 - Snohomish County Ordinance No. 15-085

Drafter: sandi.fukumoto@seattle.gov

Filing Requirements/Dept Action:

History of Legislative File

Legal Notice Published: ☐ Yes ☐ No

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	03/01/2016	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk **Notes:**						
1	City Clerk	03/01/2016	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office **Notes:**						
1	Council President's Office	03/03/2016	sent for review	Energy and Environment Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Energy and Environment Committee **Notes:**						
1	Full Council	03/21/2016	referred	Energy and Environment Committee			

Action Text: The Council Bill (CB) was referred. to the Energy and Environment Committee
Notes:

1	Energy and Environment Committee	03/22/2016	pass		Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).
Notes:

In Favor: 3 Chair Sawant, Vice Chair Juarez, Member González

Opposed: 0

1	Full Council	03/28/2016	passed		Pass

Action Text: The Council Bill (CB) was passed by the following vote, and the President signed the Bill:
Notes:

In Favor: 8 Councilmember Bagshaw, Councilmember González , Council President Harrell, Councilmember Herbold, Councilmember Johnson, Councilmember Juarez, Councilmember O'Brien, Councilmember Sawant

Opposed: 0

1	City Clerk	03/29/2016	submitted for Mayor's signature	Mayor

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor
Notes:

1	Mayor	04/01/2016	Signed	

Action Text: The Council Bill (CB) was Signed.
Notes:

1	Mayor	04/01/2016	returned	City Clerk

Action Text: The Council Bill (CB) was returned. to the City Clerk
Notes:

1	City Clerk	04/01/2016	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.
Notes:

CITY OF SEATTLE

ORDINANCE 125018

COUNCIL BILL 118648

AN ORDINANCE relating to the City Light Department; accepting a ten-year franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington by Seattle City Light to construct, maintain, operate, replace, and repair electric power system facilities.

WHEREAS, The City of Seattle, Seattle City Light Department ("City Light") owns overhead transmission and protective relay facilities and equipment systems, constructed, located, operated and maintained within fee-owned property and easements held by City of Seattle that, within certain locations, cross the Public Rights-of-Way in Snohomish County; and

WHEREAS, in 1938, The City of Seattle was granted a fifty year franchise by Snohomish County for City Light's transmission corridor and facilities within Snohomish County's Public Rights-of-Way; and

WHEREAS, City Light has applied to Snohomish County, Washington, for a nonexclusive franchise to construct, maintain, operate, replace and repair electric power transmission facilities system in, on, across, over, along, under, or through Public Rights-of-Way within unincorporated Snohomish County; and

WHEREAS, representatives of City Light and Snohomish County have been meeting on a regular basis to come to agreement on the terms of a new long-term franchise; and

WHEREAS, the terms of such a long-term franchise have been agreed upon and are acceptable to both The City of Seattle and Snohomish County; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City of Seattle hereby approves a franchise for the operation of an electric light and power system by the City Light Department within the public rights-of-way in Snohomish County substantially in the form of Ordinance No. 15-085 of Snohomish County, a copy of which is attached to this ordinance as Attachment 1. The General Manager and Chief Executive Officer of the City Light Department is authorized to accept the franchise on the City of Seattle's behalf.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 28th day of MARCH, 2016, and signed by me in open session in authentication of its passage this 28th day of MARCH, 2016.

President _____ of the City Council

Approved by me this 1st day of April, 2016.

Edward B. Murray, Mayor

Filed by me this 1st day of April, 2016.

Monica Martinez Simmons, City Clerk

(Seal)

Attachments:
Attachment 1: Snohomish County Ordinance No. 15-085

After Recording Return To:

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

Grantor: Snohomish County
Grantee: City of Seattle, City Light Department

Tax Account No: Not Assigned
Legal Description: Unincorporated Snohomish County, WA
Ref. # of Docs. Affected: N/A
Document Title: An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington to City of Seattle, City Light Department

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. 15-085

GRANTING A NONEXCLUSIVE FRANCHISE AUTHORIZING LIMITED USE OF THE PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH COUNTY, WASHINGTON TO CITY OF SEATTLE, SEATTLE CITY LIGHT DEPARTMENT

WHEREAS, the City of Seattle, Seattle City Light Department owns overhead transmission and protective relay facilities and equipment systems, constructed, located, operated and maintained within fee-owned property and easements held by City of Seattle, Seattle City Light Department that, within certain locations, cross the Public Rights-of-Way in Snohomish County; and

WHEREAS, in 1938, the City of Seattle, Seattle City Light Department was granted a fifty year franchise by Snohomish County for Seattle City Light's transmission corridor and facilities within Snohomish County's Public Rights-of-Way; and

WHEREAS, the City of Seattle, Seattle City Light Department has applied to Snohomish County, Washington, for a nonexclusive franchise to construct, maintain, operate, replace and repair electric power transmission facilities system in, on, across, over, along, under, or through Public Rights-of-Way within unincorporated Snohomish County; and

WHEREAS, Public Rights-of-Way as used herein shall mean all public streets, roads, ways, or alleys of the County as now or hereafter laid out, platted, dedicated or improved and held or administered by Snohomish County; and

WHEREAS, The Washington State Constitution, by and through its general grant of police power, and Section 36.55.010 of the Revised Code of Washington authorize counties to grant franchises for use of Public Rights-of-Way; and

WHEREAS, Section 9.20 of the Snohomish County Charter and Chapter 13.80 of the Snohomish County Code specify requirements for franchises in Snohomish County rights-of-way; and

WHEREAS, a franchise is a legislative authorization to use Public Rights-of-Way and actual construction and activities in the Public Rights-of-Way will be subject to administratively approved Public Rights-of-Way Use Permits after review of specific plans; and

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

WHEREAS, the Snohomish County Council held a public hearing on December 16, 2015, to solicit comments from the public and to consider whether to grant the requested franchise to the City of Seattle, City Light Department.

WHEREAS, it had been found to be in the public interest for a franchise authorizing use of Public Rights-of-Way for electric power transmission facilities to be issued to the City of Seattle, Seattle City Light Department by enactment of an ordinance;

NOW, THEREFORE, BE IT ORDAINED:

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Section 1. Grant of Franchise.

1.1 Pursuant to Section 36.55.010 of the Revised Code of Washington ("RCW") and Chapter 13.80 of the Snohomish County Code ("SCC" or "County Code"), Snohomish County, a political subdivision of the State of Washington (the "County"), hereby grants to the City of Seattle, Seattle City Light Department, a municipal corporation of the State of Washington, its successors and assigns (the "Franchisee"), subject to the terms and conditions in the County Code, the Engineering Design & Development Standards ("EDDS") and the terms and conditions contained in this franchise ordinance (the "Franchise Ordinance"), a non-exclusive franchise (the "Franchise").

1.2 This Franchise Ordinance grants the Franchisee the right, privilege and authority to use portions of certain Public Rights-of-Way (as such term is defined below) of the County for the sole purposes of installing, locating, constructing, operating, maintaining, improving, altering, using, replacing and repairing overhead electric power transmission, protective relay systems and fiber optic communications cable facilities and all necessary appurtenances connected with such facilities or for the purposes for operating such facilities to provide power to Franchisee's customers (the "Permitted Use") and for no other purpose or use whatsoever. The term "Public Right(s)-of-Way" as used in this Franchise Ordinance shall mean all public streets, roads, ways, or alleys as now or hereafter laid out, platted, dedicated or improved that are held or administered by Snohomish County. Pursuant to the Franchise granted by this Franchise

Ordinance, the Franchisee shall have the right to install, locate, construct, operate, maintain, improve, alter, use, replace, repair, and remove such equipment and facilities as may be reasonably necessary or convenient for the conduct of the Permitted Use (the "Franchisee Facilities"), in, on, across, over, along, under or through certain Public Rights-of-Way of the County, subject to all applicable provisions of Title 13 SCC (including EDDS), Chapter 36.55 RCW, and the terms and conditions of County right-of-way use permits issued pursuant to Title 13 SCC and Section 4 of this Franchise Ordinance. This Franchise Ordinance merely authorizes the Franchisee to occupy and use the Public Rights-of-Way at issue, and does not transfer, convey or vest any easement, title, servitude, or other real property interest in or to any Public Right-of-Way or portion thereof in or to the Franchisee provided that this Franchise shall be subject to existing real property interests and rights of the Franchisee within Public Rights-of-Way, if any.

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

Township	Range	Sections
27N	4E	23, 25, 26, 33, 34
27N	5E	4, 5, 8, 9, 16, 17, 18, 19, 21, 28, 33
28N	5E	1, 2, 11, 14, 23, 27, 33, 34
29N	5E	1, 25, 36
30N	5E	12, 13, 24, 25, 36
30N	6E	6, 7, 18
31N	6E	2, 3, 9, 10, 16, 17, 9, 20, 30, 31
32N	6E	25, 35, 36
32N	7E	10, 11, 12, 15, 16, 17, 19, 20, 30
32N	8E	7, 8, 9,10, 11, 12
32N	9E	1, 7, 8, 9, 10, 11, 12, 13, 24
32N	10E	5, 6, 7, 8

Section 2. Non-Exclusive Franchise.

2.1 The Franchise granted by this Franchise Ordinance is granted to the Franchisee upon the express condition and understanding that it shall be a non-exclusive Franchise which shall not in any manner prevent or hinder the County from granting to other parties, at other times and under such terms and conditions as the County, in its sole discretion, may deem appropriate, other franchises or similar use rights in, on, to, across, over, upon, along, under or through any Public

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

2.2 The installation, location, maintenance, operation, relocation, removal or any other work related to any of the Franchisee Facilities occurring within, upon, over, under, across or through any Public Right-of-Way covered by this Franchise Ordinance shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private. Owners, whether public or private, of any authorized facilities or equipment installed within, upon, under or across a Public Right-of-Way prior to the construction and/or installation of Franchisee's Facilities in the same location, shall have preference as to positioning and location of their facilities, subject to the authority of the County Road Engineer to direct the position and location of all facilities in the Public Right-of-Way, and subject to State and Federal laws.

Section 3. Term; Early Termination.

3.1 The initial term of the Franchise shall be for a period of ten (10) years (the "Initial Term"), beginning on the Effective Date (as such term is defined in Section 31 of this Franchise Ordinance) of the Franchise, and continuing until the date that is one day prior to the tenth anniversary of the Effective Date (the "Initial Term Expiration Date"), unless earlier terminated, revoked or modified pursuant to the provisions of this Franchise Ordinance.

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

3.3 The County shall have the right, in its sole and absolute discretion, at any time after the Initial Term Expiration Date, to elect to open negotiations with the Franchisee regarding proposed amendments, alterations or other changes (collectively, the "Amendments") to the terms and conditions of the Franchise granted by this Franchise Ordinance. In such event, the County shall deliver written notice to the Franchisee stating the County's general desire to alter the terms and conditions of the Franchise. Within thirty (30) days after the date on which the Franchisee receives the County's notice letter, the Franchisee and the County shall enter into

good faith negotiations regarding potential Amendments to the terms and conditions of the Franchise. Should the parties reach agreement regarding any such Amendments, the parties shall memorialize such Amendments and seek approval of same from the County Council and the Seattle City Council (Franchisee's legislative body) or such other County or Franchisee authority as may be proper. Should the parties prove unable to reach agreement regarding any proposed Amendments within ninety (90) days after the date on which negotiations commenced, then the Franchise granted by this Franchise Ordinance shall automatically terminate.

Section 4. Right-of-Way Use Permit Required; Critical Areas Permit Required.

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

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

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

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

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

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

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

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

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

4.3 Prior to commencing any work in a critical area as defined by SCC 30.91C.340, the Franchisee shall comply with all applicable requirements of the County's critical areas regulations in chapters 30.62A, 30.62B. 30.62C, and 30.65 SCC and shall obtain any and all required permits and approvals. The granting of this Franchise shall in no way relieve the Franchisee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 U.S.C. § 1531, et seq., as amended, in the performance of any work authorized by this Franchise and/or any right-of-way use permits.

Section 5. Emergency Work.

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

Section 6. Compliance with Applicable Laws; Performance Standards.

6.1 The Franchisee shall at all times during the Term of the Franchise granted by this Franchise Ordinance comply with all federal, state and local laws, rules, regulations and utility standards (including, but not limited to, the County's comprehensive plan, zoning code, and other development regulations, and the American National Standards Institute (ANSI), the North American Electrical Reliability Corporation (NERC), the National Electrical Code (NEC), and the National Electrical Safety Code (NESC)) that are applicable to any and all work or other

activities performed by Franchisee pursuant to or under authority of the Franchise granted by this Franchise Ordinance. Notwithstanding any provisions to the contrary, to insure integrity, reliability and compliance with applicable utility standards and the safety of Franchisee's utility facilities, the Franchisee shall have sole discretion in accordance with reasonable utility engineering standards to select, design and install, inspect and approve the constituent components of its facilities.

6.2 During any period of installation, maintenance, operation, relocation, removal or any other work related to any of the Franchisee Facilities occurring within, upon, over, under, across or through any Public Rights-of-Way covered by this Franchise Ordinance, Franchisee shall use its best efforts to ensure that, to the extent reasonably feasible, such work does not impede: (i) public use of the county road and/or Public Right of Way at issue for vehicular and pedestrian transportation; (ii) the construction and/or maintenance on the site at issue of other authorized facilities, equipment and improvements, whether public or private; (iii) the operation, maintenance or improvement by the County of the site at issue or any county road, Public Right-of-Way or other public property impacted by Franchisee's work; or (iv) the use of the site at issue for other governmental purposes.

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

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

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

(i) such joint use would unreasonably delay the performance of Franchisee's work;
(ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint use; or
(iii) valid safety reasons exist for denying a request for such joint use and/or the proposed facilities of the third party are in conflict with the best practices employed by the Franchisee; or
(iv) the excavation is for the purpose of an emergency action to protect the property, life, health or safety of individuals.

6.6 If the Franchisee shall at any time plan to include communication facilities not related to SCL's operations as part of installations in any Public Rights-of-Way covered by this Franchise, the Franchisee shall, at the planning stage, notify and provide an opportunity for the County to discuss with the Franchisee, the possible shared use of such communication facilities. Discussion of possible shared use of such communication facilities may include:

(i) potential for delay in the performance or scheduling of Franchisee's work;
(ii) whether safety reasons exist for denying a request for such shared use;
(iii) potential conflict with the best practices employed by the Franchisee, and;
(iv) potential breach of Franchisee's systems security.

If it is agreed there is an opportunity for shared use of such facilities, the Franchisee shall coordinate negotiation of shared use of its communication facilities with the County.

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

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

Section 8. Maps and Records of Franchisee Facility Locations.

8.1 The Franchisee shall maintain adequate records to document obligations performed under the Franchise granted by this Franchise Ordinance. The County shall have the right to review the Franchisee's records regarding the subject matter of this Franchise, at reasonable times, upon reasonable notice. The right to review records shall last for six (6) years from the expiration or earlier termination of the Franchise granted by this Franchise Ordinance. In addition to the maps and records of the Franchisee Facility locations under Section 8.2, the Franchisee shall provide the County, upon the County's request, with copies of records of construction, maintenance,

operation, inspections, or regulatory compliance for all Franchisee Facilities subject to this Franchise as may be deemed necessary by the County, in its sole discretion, to manage the county roads, Public Rights-of-Way, or other property, or to protect the public health, safety, and welfare.

8.2 The Franchisee agrees and covenants that it shall, promptly upon substantial completion of any construction project involving a Public Right-of-Way, provide to the County, at no cost to the County, a copy of all as-built plans, maps and records revealing the approximate final locations and conditions of the Franchisee Facilities located within such Public Right-of-Way. Additionally, the County may, at any time, deliver a written request to the Franchisee for copies of maps and records showing the approximate location of all or any portion of the Franchisee Facilities. In such event, the Franchisee shall provide the County, at no cost to the County, with copies of the requested record plans, record drawings and other records within a reasonable time after receiving the County's request for same. As to such record plans, record drawings and records so provided, the Franchisee does not warrant the accuracy of the final locations and conditions shown and, to the extent the location of Franchisee Facilities are shown, such Franchisee Facilities are shown in their approximate location. Franchisee shall within a reasonable time update Franchisee's records to show any and all Franchisee Facilities not shown. With respect to any excavations within Public Rights-of-Way undertaken by or on behalf of Franchisee or the County, nothing herein is intended (nor should be construed) to relieve either party of their respective obligations arising under Chapter 19.122 RCW with respect to determining the location of utility facilities. Subject to applicable law(s), when the County makes a request for Franchisee records, County's request must provide a justification in conformance with applicable law(s). Upon Franchisee's approval of the records request, such records will be provided to County in a format maintained by Franchisee, subject to the provisions of Section 8.4.

8.3 At the Franchisee's request, the County shall provide the Franchisee, within a reasonable time period, at no cost to Franchisee, with copies of maps and records pertinent to the Public Rights-of-Way in which the Franchisee's facilities are located.

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

releasing records not clearly identified by the Franchisee as confidential or proprietary. The County shall not be liable to the Franchisee for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

Section 9. Relocation of Franchisee Facilities; Franchisee Real Property Interests.

9.1 The Franchisee agrees and covenants that it will promptly, at its sole cost and expense, protect, support, temporarily disconnect, relocate, or remove from any Public Right-of-Way any of the Franchisee Facilities when so required by the County due to any of the following reasons: (i) traffic conditions, (ii) public safety, (iii) dedications of new rights-of-way and the establishment and/or improvement thereof by the County, (iv) widening and/or improvement of existing rights-of-way, (v) right-of-way vacations, (vi) freeway construction, (vii) change or establishment of road grade, or (viii) the construction of any County public improvement or structure; PROVIDED that the Franchisee shall generally have the privilege to temporarily bypass, in the authorized portion of the same Public Right-of-Way, upon approval by the County Engineer, any Franchisee Facilities required to be temporarily disconnected or removed. The provisions of this Section 9 apply to all Franchisee Facilities wherever situated within any Public Rights-of-Way; PROVIDED, said provisions shall be subject to any existing real property interests and rights owned by the Franchisee, such as a utility easement or other servitude, unless and until such rights are extinguished, replaced, or amended (i) by mutual agreement, (ii) pursuant to a judicial condemnation order, or (iii) by negotiated sale of said property rights between Franchisee and the County in-lieu of condemnation.

9.2 Upon the request of the County and in order to facilitate County improvements to Public Rights-of-Way, the Franchisee agrees to locate and, if reasonably determined necessary by the County, to excavate and expose, at its sole cost and expense, portions of the Franchisee Facilities for inspection so that the location of the facilities may be taken into account in the improvement design; PROVIDED, that Franchisee shall not be required to excavate and expose the Franchisee Facilities for inspection unless the Franchisee's record plans and record drawings of the Franchisee Facilities submitted pursuant to Section 8 of this Franchise Ordinance are reasonably determined by the County Engineer to be inadequate for the County's planning purposes. The decision to require relocation of any Franchisee Facilities in order to accommodate road improvements shall be made by the County Engineer upon review of the location and construction of the Franchisee Facilities at issue.

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

9.4 Any condition or requirement imposed by the County upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permits for zoning, land use, construction or development) which reasonably necessitates the relocation of any Franchisee Facilities within the Public Right-of-Way shall constitute a required relocation for purposes of Sections 9.1 and 9.2 above, PROVIDED, that nothing in this Franchise is intended or shall be construed to prohibit the Franchisee from assessing on such person or entity, other than the County, the costs of relocation as a condition of such relocation pursuant to Section 9.7.

9.5 If the County determines that a County project necessitates relocation of then-existing Franchisee Facilities within the Public Right-of-Way, the parties shall proceed as follows:

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

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

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

(iv) If upon review of County notice, plans, and specifications as described above, Franchisee determines that relocation cannot reasonably be completed within the time period provided, Franchisee shall so advise the County and propose a

schedule to the County for completion of such relocation work. If the County and the Franchisee agree upon a schedule to relocate Franchisee's Facilities, the Franchisee shall complete the relocation of Franchisee Facilities in accordance with the agreed upon schedule. If the County and Franchisee are unable to agree upon a relocation schedule, Franchisee shall relocate Franchisee Facilities according to a schedule reasonably established by the County.

9.6 The Franchisee may, after receipt of written notice requesting a relocation of any Franchisee Facility, submit to the County proposed written alternatives to such relocation. The County shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives are suitable to accommodate the County's work. If so requested by the County, the Franchisee shall submit additional information to assist the County in making such evaluation. The County shall give each alternative proposed by the Franchisee full and fair consideration. Where, upon the request of the Franchisee, the County agrees to incur additional costs in performing any maintenance, operation, or improvement of or to public facilities that are located within the Public Right-of-Way due to measures taken by the County to avoid damaging or to otherwise accommodate one or more Franchisee Facilities, the Franchisee shall reimburse the County for the full amount of such additional costs promptly upon receiving the County's invoice for same. In the event the County ultimately determines that there is no reasonable or feasible alternative to relocation, the Franchisee shall relocate the Franchisee Facilities at issue as otherwise provided in this Section 9.

9.7 The provisions of this Section 9 shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of any Franchisee Facility by any person or entity other than the County, where the facilities to be constructed by said person or entity are not or will not become County-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any County construction projects.

9.8 Should relocation be required, the Franchisee shall be responsible for timely relocation of the Franchisee Facilities at issue and the coordination of such relocation with the County (or the County's contractor for the project). The Franchisee shall be fully responsible for the costs of any delays to County projects resulting from relocations of any Franchisee Facilities to the extent the Franchisee is responsible for said delay.

Section 10. Maintenance of Franchisee Facilities.

10.1 Except as provided by law, the Franchisee shall maintain all Franchisee Facilities in accordance with accepted standards of practice for the industry in which Franchisee is engaged.

10.2 The Franchisee shall take necessary steps to maintain a reasonably clear area around all objects permitted and installed above ground within Public Rights-of-Way. A minimum of five (5) feet of clearance will be maintained around each such object so as to provide clear visibility for County operations and maintenance. If the Franchisee intends to use chemical sprays to

control or kill weeds and brush, the County must grant prior approval at least annually. The County may limit or restrict the types, amounts, and timing of applications of chemical sprays if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

10.3 The Franchisee shall at all times comply with Chapter 7.53 SCC, Water Pollution Control.

Section 11. Hazardous Materials.

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

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

11.3 Should a Release occur, the Franchisee shall immediately provide written notice of the Release to the Washington State Department of Ecology and to Snohomish County. The Franchisee agrees it shall indemnify, defend and hold the County, its elected and appointed officials, employees, agents and volunteers (collectively, the "County Parties") harmless from and against any and all claims, lawsuits, actions, judgments, awards, penalties, fines and other damages (including, but not limited to, reasonable attorneys' fees and costs) incurred or suffered by any of the County Parties, arising out of or related to the Release caused by any act or omission of Franchisee or its directors, officers, agents, employees, contractors or licensees (collectively, the "Franchisee Parties") within Public Rights-of-Way or property adjacent thereto, whether public or private. Franchisee shall be responsible, at its sole cost and expense, for completely cleaning up and remediating, as required by any governmental agency having jurisdiction, any and all Hazardous Materials released or spilled by any Franchisee Party within

Public Rights-of-Way or property adjacent thereto, whether public or private. Notwithstanding the Franchisee's obligation to completely remediate same, in the event of any Release by a Franchisee Party, the County may (but need not), in the interest of protecting the health, safety, welfare and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, clean up or remediate the Release at issue. Should the County choose to take any actions pursuant to the preceding sentence, the County shall be entitled to repayment from the Franchisee of any and all costs and expenses incurred by the County in performing such actions in accordance with state and federal law.

11.4 Should any Franchisee Party cause a Release as described in Section 11.2 above, the County may thereafter choose to terminate the Franchise granted by this Franchise Ordinance, by giving Franchisee written notice of termination within ninety (90) days after the date on which the Release was first reported to the County by the Franchisee as required in Section 11.3 above.

Section 12. Dangerous Conditions, Authority for County to Abate.

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

12.2 In the event that the Franchisee fails or refuses to promptly take the actions directed by the County Engineer, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the County may enter upon the property and take such actions as are reasonably necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Franchisee shall be liable to the County for the costs thereof, but only to the extent that Franchisee has caused or contributed to the emergency condition.

Section 13. Abandonment of Franchisee Facilities.

13.1 In no event may all or any portion of any Franchisee Facility located in, on, under, over, across or through a Public Right-of-Way be abandoned in place by the Franchisee without the express written consent of the County, which may be granted or withheld in its sole discretion, unless otherwise provided by law. Should the Franchisee desire to abandon in place all or any portion of the Franchisee Facilities within the Public Right-of-Way, the Franchisee may request the County's permission to do so by delivering a written request to the County within thirty (30) days after the date on which the Franchise expires or terminates. The Franchisee's request shall specify which Franchisee Facilities the Franchisee desires to abandon in place within the Public Right-of-Way. Within a reasonable time after the date on which the County receives the

Franchisee's written request, the County shall deliver a written response to the Franchisee setting forth the County's decision, which shall be made in the County's sole and absolute discretion. The County may (i) deny the Franchisee's request with respect to all of the Franchisee Facilities at issue, (ii) deny the Franchisee's request with respect to certain Franchisee Facilities, but approve the Franchisee's request with respect to other Franchisee Facilities, (iii) approve the Franchisee's request with respect to all of the Franchisee Facilities at issue, (iv) request additional information from the Franchisee on which to base its decision; or (v) authorize the temporary abandonment of all or any portion of the Franchisee Facilities at issue. If the County denies the Franchisee's request with respect to all or any portion of the Franchisee Facilities at issue, then the Franchisee must promptly proceed to remove those Franchisee Facilities within the Public Right-of-Way for which the Franchisee's request for abandonment has been denied. If the County grants its approval to the Franchisee's request for abandonment, either in whole or in part, the County may impose conditions on such approval. If the County authorizes the temporary abandonment of all or any portion of the Franchisee Facilities, the County shall specify at what times or under what conditions the Franchisee Facilities must in the future be removed. In the event of any approved abandonment or temporary abandonment, the provisions of Section 13.2 below shall apply.

13.2 In the event the County authorizes the Franchisee to abandon or temporarily abandon in place all or any portion of the Franchisee Facilities within the Public Right-of-Way, the Franchisee shall, at its sole cost and expense, as directed by the County, purge the Franchisee Facilities that will be abandoned (or temporarily abandoned) within the Public Right-of-Way of any product, Hazardous Material and/or other substance so as to render such Franchisee Facilities safe in accordance with applicable law or such other standards as may be deemed appropriate by the County.

13.3 Should the Franchisee fail to comply with the requirements of Section 13.1 within a reasonable time after the County's denial of the Franchisee's request for permission to abandon all or any portion of the Franchisee Facilities within the Public Right-of-Way, the Franchisee shall be deemed to have abandoned the Franchisee Facilities without authorization. In the event of any unauthorized abandonment of all or any portion of the Franchisee Facilities by the Franchisee within the Public Right-of-Way, the County may, at its election, and in addition to any other remedies or enforcement options available to the County under this Franchise Ordinance, at law or in equity, remove all or any portion of the abandoned Franchisee Facilities within the Public-Right-of-Way on behalf of the Franchisee and restore the Public Rights-of-Way following such removal. Should the County choose to perform any such removal and restoration activities on the Franchisee's behalf, the County may dispose of the removed Franchisee Facilities within the Public Right-of-Way in any manner it deems fit, and the Franchisee shall be liable to the County for all costs and expenses incurred by the County in performing such removal and restoration activities.

13.4 Should, at any time during the Term of the Franchise granted by this Franchise Ordinance, the Franchisee permanently cease to use all or any part of the Franchisee Facilities

within the Public Right-of-Way for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of any such Franchisee Facility, the Franchisee shall promptly thereafter remove or request to abandon in place such Franchisee Facility from the Public Right-of-Way in accordance with Section 13.1 above.

Section 14. Fees, Compensation for Use of Public Rights-of-Way and Taxes.

14.1 The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted to the Franchisee by this Franchise Ordinance or under the laws of the County. Where the County incurs costs and expenses for review, inspection or supervision of activities undertaken by Franchisee through the authority granted to Franchisee by this Franchise Ordinance or any ordinances relating to the subject matter of this Franchise Ordinance for which a permit fee is not established, the Franchisee shall pay the County's reasonable actual costs and expenses directly to the County.

14.2 The Franchisee shall pay applicable fees as specified in Chapter 13.110 SCC to cover the County's costs in drafting and processing this Franchise Ordinance and all work related thereto. The fees shall be paid at the time of acceptance of the Franchise granted by this Franchise Ordinance as set forth in Section 31 and said Franchise shall not become effective until payment of the fees. The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in the Franchise or under the laws of the County.

14.3 In the event of an emergency involving Franchisee Facilities within the Public Right-of-Way, the County will first make a good faith effort, taking into account the exigency of the circumstances, to contact the Franchisee to remedy the emergency. If the County is unable to contact the Franchisee or the Franchisee is unable to remedy the Emergency in a timely manner, the County may reasonably respond to the emergency and the Franchisee shall reimburse the County for any and all documented direct costs the County reasonably incurs in response to an emergency involving any Franchisee Facilities. The Franchisee shall promptly reimburse the County, upon submittal by the County of an itemized billing, for the Franchisee's proportionate share of all actual, identified costs and expenses incurred by the County in repairing any County facility, or altering such County facility at the Franchisee's request, to accommodate the presence of any Franchisee Facilities in the Public Right-of-Way. Such costs and expenses shall include, but not be limited to, the Franchisee's proportionate share of the costs of County personnel assigned to review construction plans or to oversee or engage in any work in the Public Right-of-Way as a result of the emergency and the presence of the Franchisee Facilities in the Public Right-of-Way. Any and all costs will be billed on an actual cost basis. The billing may be on an annual basis, but the County shall provide the Franchisee with the County's itemization of costs at the conclusion of each project for informational purposes.

14.4 The Franchisee acknowledges that, to the extent permitted by law, it may be subject to state and local taxes, including personal property tax. The Franchisee shall keep such tax accounts current as a special condition precedent to the continuation of the Franchise granted by this Franchise Ordinance.

Section 15. Hold Harmless and Indemnification.

15.1 Franchisee agrees to indemnify, defend, and hold harmless any County Party (as such term is defined in Section 11 above) from any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for bodily injury to persons, death, or property damage arising out of the acts or omissions of any of the Franchisee Parties (as such term is defined in Section 11 above) in the use of a Public Right-of-Way pursuant to this Franchise Ordinance. This covenant of indemnification shall include, but not be limited to, any and all claims, demands, liability, suits, and judgments arising out of the placement of Franchisee's existing utility fixtures and any and all third party claims, demands, liability, suits, and judgments arising out of any of the Franchisee Parties' failure to complete all utility related adjustments, relocations, repairs, or work in accordance with this Franchise and the work plan and schedule agreed to by the County and Franchisee. In the event of liability for damages arising out of bodily injury to persons, death or property damage caused by or resulting from the concurrent negligence of Franchisee and the County, its officers, employees and agents, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence.

15.2 In the event the County incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 15 against Franchisee, all such fees, expenses, and costs shall be recoverable from Franchisee to the extent the County prevails in such enforcement action.

15.3 It is specifically and expressly understood that, solely to the extent required to enforce the indemnification, defense and hold harmless obligations contained in this Section 15, Franchisee waives its immunity under RCW Title 51; provided, however, the foregoing waiver shall not in any way preclude Franchisee from raising such immunity as a defense against any claim brought against Franchisee by any of its employees. This waiver has been mutually negotiated by the parties.

15.4 The County shall give Franchisee timely written notice of the matter of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnification, defense and hold harmless obligations contained in this Section 15. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to Franchisee and Franchisee shall have the right and duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

15.5 The County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Franchisee Parties in connection with work authorized on Franchisee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 15.

15.6 The indemnification, defense and save harmless obligations contained in this Section 15 shall survive the expiration, abandonment or termination of this Franchise.

Section 16. Limitation of County Liability.

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

Section 17. Insurance Requirements.

17.1 Insurance Requirements

A. Insurance Required

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

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

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

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

B. Risk Assessment by Franchisee

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

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

(i) General Liability

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY including XCU coverage: $5,000,000 combined single limit per occurrence by bodily injury, personal injury, and property damage; and for those policies with aggregate limits, a $5,000,000 aggregate limit.

(ii) Automobile Liability

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

(iii) Workers' Compensation

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

(iv) Stop Gap/Employers Liability

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

D. Minimum Limits of Insurance - Construction Period

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

(i) Commercial General Liability: $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and $2,000,000 in the aggregate.

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

(iii) Professional Liability, Errors & Omissions: $1,000,000, Per Claim and in the Aggregate.

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

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

E. Deductibles and Self-Insured Retentions

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

F. Other Insurance Provisions

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

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

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

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

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

(ii) All Policies

Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after 45 days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, the Franchisee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in suspension of the Franchise.

G. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with a Bests' rating of no less than A-VII, or, if not rated with Bests, with minimum surpluses the equivalent of Bests' surplus size VIII.
Professional Liability, Errors, and Omissions insurance may be placed with insurers with a Bests' rating of B+VII. Any exception must be approved by the County.

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

H. Verification of Coverage

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

I. Subcontractors

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

J. Insurance Review

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

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

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

17.3 In satisfaction of the insurance requirements set forth in this Section 17, Franchisee may self-insure against such risks in such amounts as are consistent with good utility practice. Franchisee shall provide the County with reasonable written evidence that Franchisee is maintaining such self-insurance.

Section 18. Bond or Performance Security.

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

Section 19. Annexation.

If any road or Public Right-of-Way covered by this Franchise Ordinance is incorporated into the limits of any city or town, the Franchise granted herein shall terminate as to any road or Public Right-of-Way within the corporate limits of such city or town; but the Franchise shall continue as to County roads and Public Rights-of-Way not incorporated into a city or town.

Section 20. Vacation.

20.1 If all or any portion of a Public Right-of-Way which is subject to this Franchise Ordinance is vacated, the Franchise granted by this Franchise Ordinance shall automatically terminate with respect to the vacated portion of such Public Right-of-Way. The County shall not be liable for any damages or loss to the Franchisee by reason of such vacation and termination.

20.2 Whenever a Public Right-of-Way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the County may retain an easement with respect to the vacated land for the construction, repair and maintenance of public utilities and services which at the time of the vacation are specifically authorized or are physically located upon, over, under, across or through a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140 as now existing or hereafter amended. In the event of any such vacation, the County shall notify the Franchisee at least sixty (60) days prior to taking final action. Should the Franchisee desire the County to retain a utility easement in the property at issue, the Franchisee may request that the County retain such an easement over the property at issue as a part of any proposed action taken by the County Council on the particular vacation. Should the Franchisee make such a request, the County may retain said easement in the manner and to the extent allowed by law.

Section 21. Assignment.

21.1 The Franchise granted to Franchisee by this Franchise Ordinance may not be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Franchisee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the County Council. Should any such Transfer be approved by the County, then each and every one of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall be binding upon the approved transferee beginning on the date of the Transfer, and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to such transferee equally as if such transferee was specifically mentioned wherever the Franchisee is named herein.

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

21.3 Any attempt by Franchisee to Transfer the Franchise granted by this Franchise Ordinance in violation of this Section 21 shall constitute a material breach by Franchisee and cause the Franchise to immediately and automatically terminate.

Section 22. Termination, Revocation and Forfeiture.

22.1 If the Franchisee defaults on any term or condition of this Franchise Ordinance, the County may terminate the Franchise granted hereunder as provided in Title 13 SCC. Upon termination for any cause, all rights of the Franchisee granted hereunder or under any right-of-way use permit shall cease.

22.2 If the Franchisee willfully violates or fails to comply with any of the provisions of this Franchise Ordinance, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Franchisee by the County under the provisions of this Franchise Ordinance, then the Franchisee shall, at the election of the County Council, forfeit all rights conferred hereunder and the Franchise granted by this Franchise Ordinance may be revoked or annulled by the Council.

22.3 In the event that the use of all or any part of the Franchisee Facilities is discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of any such Franchisee Facility, or the abandonment, termination, expiration, revocation, or forfeiture of the Franchise granted by this Franchise Ordinance, the Franchisee is solely responsible for the removal and proper disposal of all Franchisee Facilities. The Franchisee is not entitled to abandon any Franchisee Facilities in place without the County's prior written consent in accordance with Section 13 of this Franchise Ordinance. The Franchisee shall restore the county roads and Public Rights-of-Way from which any Franchisee Facilities are removed in accordance with Section 7 of this Franchise Ordinance.

Section 23. Remedies to Enforce Compliance; No Waiver.

23.1 In lieu of termination, revocation or forfeiture as provided in Section 22, and without prejudicing any of its other legal rights and remedies, the County may elect to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Franchisee to comply with the provisions of this Franchise Ordinance and to recover damages and costs incurred by the County by reason of the Franchisee's failure to comply. In addition to any other remedy provided herein, the County reserves the right to pursue any remedy to compel or force the Franchisee and/or its permitted successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

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

Section 24. County Ordinances and Regulations – Reservation of Police Power.

Nothing in this Franchise Ordinance shall be deemed to restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise granted by this Franchise Ordinance, including, but not limited to, any valid ordinance made in the exercise of the County's police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any Franchisee Facilities located within any Public Right-of-Way or affecting any Public Right-of-Way, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise Ordinance and any other ordinance(s) enacted under the County's police power authority, such other ordinance(s) shall take precedence over the regulatory provisions set forth herein.

Section 25. Eminent Domain, Powers of the People.

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

Section 26. Survival.

27.1 Until such time as all of the Franchisee Facilities have been removed from the Public Rights-of-Way in accordance with Section 13 above, or have been abandoned in place in accordance with Section 13 above, all of the provisions, conditions and requirements contained in the following Sections of this Franchise Ordinance shall survive the expiration, revocation, forfeiture or early termination of the Franchise granted by this Franchise Ordinance:
(i) Section 4 (Right of Way Use Permit Required; Critical Areas Permit Required); (ii) Section 5 (Emergency Work); (iii) Section 6 (Compliance with Applicable Laws; Performance Standards); (iv) Section 7 (Restoration of Public Rights-of-Way); (v) Section 8 (Maps and Records of Franchisee Facility Locations); (vi) Section 11 (Hazardous Materials); (vii) Section 12 (Dangerous Conditions, Authority for County to Abate); (viii) Section 13 (Abandonment of Franchisee Facilities); (ix) Section 14 (Fees, Compensation for Use of Public Rights-of-Way and Taxes); (x) Section 15 (Hold Harmless and Indemnification); (xi) Section 16 (Limitation of County Liability); (xii) Section 17 (Insurance Requirements); (xiii) Section 18 (Bond or Performance Security); and (xiv) Section 23 (Remedies to Enforce Compliance; No Waiver).

27.2 After such time as all Franchisee Facilities have been either removed or abandoned in place to the County's satisfaction pursuant to Section 13 above, only the following provisions shall survive the expiration or earlier termination of the Franchise granted by this Franchise Ordinance: (i) Section 8 (Maps and Records of Franchisee Facility Locations); (ii) Section 11

(Hazardous Materials); (iii) Section 15 (Hold Harmless and Indemnification); and (iv) Section 16 (Limitation of County Liability).

Section 27. Governing Law and Stipulation of Venue.

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

Section 28. Severability.

If any section, sentence, clause, phrase or provision of this Franchise Ordinance or the application of such provision to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, phrase or provision of this Franchise Ordinance nor the application of the provision at issue to any other person or entity.

Section 29. Notice and Emergency Contact.

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

SNOHOMISH COUNTY
Department of Public Works
3000 Rockefeller
Everett, WA 98201

Attn: Right-of-Way Coordinator

Phone: (425) 388-3488

CITY OF SEATTLE
City Light Department
700 - 5th Avenue, Suite 3400
Seattle, WA 98124-4023

Attn: Manager, Energy Delivery Technical Services
Phone: 206-684-4956

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

Section 30. Acceptance.

Within one-hundred-and-eighty (180) days after the passage and approval of this Franchise Ordinance by the County Council, the Franchise granted by this Franchise Ordinance may be

accepted by the Franchisee by its filing with the County Council an unconditional written acceptance thereof. Failure of the Franchisee to so accept the Franchise granted by this Franchise Ordinance within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights and privileges herein granted shall automatically, after the expiration of the one-hundred-and-eighty (180) day period, cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 31. Effective Date.

The Franchise granted by this Franchise Ordinance shall take effect, if at all, on the date on which each and every one of the following conditions have been met (the "Effective Date"): (i) a minimum of ten (10) days have passed since the County Executive executed this Franchise Ordinance, or this Franchise Ordinance was otherwise enacted; (ii) the Seattle City Council has approved acceptance of this Franchise by its own ordinance and the Franchisee executes a copy of this Franchise Ordinance and returns it to the County Council within the time provided in Section 30 above; (iii) the Franchisee presents to the County acceptable evidence of insurance as required in Section 17 above; and (iv) the Franchisee has paid all applicable outstanding fees as set forth in Section 14 above.

PASSED this 16th day of December, 2016.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Terry Ryan
Council Vice Chairperson

ATTEST:

Asst. Clerk of the Council

(X) APPROVED
( ) VETOED
( ) EMERGENCY

Snohomish County Executive

DATE: 12-18-15

ATTEST:

D-18

Approved as to Form Only:

Christie J. Kiel

Deputy Prosecuting Attorney

Date: 9/9/2015

COUNCIL USE ONLY
Approved: 12-16-15
Docfile: D-18

ACCEPTANCE:

The provisions of this Franchise are agreed to and hereby accepted. By accepting this Franchise, the City of Seattle, Seattle City Light Department covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Snohomish County Charter, the Snohomish County Code and this Franchise.

Dated: _____, 20___ _____

By: _____

Printed Name: _____

Title: _____

CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this Franchise to the County Council within the time provided in Section 30; (2) the Franchisee has presented to the County acceptable evidence of insurance as required in Section 17 of this Franchise Ordinance; and (3) the Franchisee has paid all applicable processing costs and fees as set forth in Section 14 of this Franchise Ordinance.

THE EFFECTIVE DATE OF THIS FRANCHISE ORDINANCE IS:

_____

By: _____
Name: _____
Title: _____