

ORDINANCE NO. 125 -97

AN ORDINANCE PRESCRIBING TERMS AND CONDITIONS
APPLICABLE TO FRANCHISES GRANTED TO PUBLIC AND
PRIVATE UTILITY CORPORATIONS AND INDIVIDUALS TO
USE PUBLIC ROADWAYS AND OTHER COUNTY PROPERTIES
WITHIN WAHIAKUM COUNTY, WASHINGTON

WHEREAS, Section 36.55.010 of the Revised Code of Washington authorizes counties to grant Franchises; and

WHEREAS, the County Road Administration Board by virtue of Section 136-40-010(3) of the Washington Administrative Code requires each county to adopt a policy relating to the accommodation of utilities on county road rights-of-way; and

WHEREAS, Wahkiakum County currently is without a comprehensive policy governing the granting of franchises; and

WHEREAS, it is in the best interests of the efficient management of the affairs of Wahkiakum County to adopt a detailed policy governing franchises;

NOW, THEREFORE,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF WAHIAKUM COUNTY, WASHINGTON, as follows:

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Section 1. General Provisions and Intent.

(1) It is unlawful for any person or private or municipal corporation to use the right of way of any county road or county bridge within unincorporated Wahkiakum County for the construction or maintenance of waterworks, pipelines, gas pipes, telephone, telegraph, electric light and cable television lines, sewers, or any other such facilities or appliances, without first having been granted a franchise by the Board of County Commissioners in accord with the terms, conditions, and procedures set forth in this Ordinance. Any person violating this subsection shall be subject to the general penalty set forth in RCW 36.75.290.

(2) Franchises shall be granted by Resolution of the Board of County Commissioners of Wahkiakum County, Washington, and shall be subject to the provisions of this Ordinance.

(3) The terms and conditions set forth in this Ordinance shall be subject to the Constitution and statutes of the State of Washington and shall apply and shall be deemed to be terms and conditions of any franchises to use the roads, streets, avenues, highways, alleys, rights-of-way or other county properties of Wahkiakum County hereafter granted by the county to any person or municipal or private corporation engaged in the public service or utility business, unless and except to the extent that the resolution granting such franchise expressly provides terms or conditions contrary to those herein contained.

(4) It is the intent of this Ordinance to protect the public interest and investment of the citizens of Wahkiakum County in roads, streets, avenues, highways, alleys, rights-of-way and other county properties. It is further the intent of this Ordinance that any franchise grantee shall construct, operate and maintain facilities or systems in full compliance with all laws, rules, regulations, standards of performance and levels of service applicable to the industry.

(5) All work done under any franchise shall be done in a thorough and workmanlike manner. In the laying of underground pipelines and cables, the construction of other facilities, the opening of trenches, and the tunneling under county roads, rights-of-way or other county properties, the grantee shall leave such trenches, ditches and tunnels in such a way as to interfere as little as possible with public travel, and shall take all due and necessary precautions to guard the same so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches or tunnels are left open at night, the grantee shall place adequate warning of and/or barriers around such work. The grantee shall be liable for any injury to a person or persons or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by the grantees.

Section 2. Definitions.

The following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning.

(1) "Appurtenance" means the equipment and/or accessories which are a necessary part of an operating utility system or subsystem.

(2) "Backfill" means the replacement of excavated material with suitable material compacted as specified.

(3) "Board" means the Board of Wahkiakum County Commissioners.

(4) "Boring" means the grade and alignment-controlled mechanical or other method of installing a pipe or casing under a road without disturbing the surrounding medium.

(5) "Carrier" means the pipe directly enclosing a transmitted fluid or gas.

(6) "Casing" means a larger pipe enclosing a carrier for the purpose of providing structural or other protection to the carrier and/or to allow for carrier replacement without re-excavation, jacking or boring.

(7) "Coating" means the protective material applied to the exterior of a pipe or conduit to prevent or reduce abrasion and/or corrosion damage.

(8) "Company" or "Utility Company" means any person, sole proprietorship, firm, partnership, association, joint venture, corporation, municipal corporation or other entity which owns or provides any utility service of any kind whatsoever, including but

not limited to, gas companies, electrical companies, telecommunications companies, cable television companies, water companies, public utility districts, cities, and towns.

(9) "Conduit" means an enclosed tubular runway for protecting wires or cables.

(10) "County" means the unincorporated area of the County of Wahkiakum, Washington.

(11) "Cover" means the depth to the top of a pipe, conduit, casing or gallery below the grade of a road or ditch.

(12) "Drain" means the appurtenances to discharge accumulated liquids from casings or other enclosures.

(13) "Encasement" means the structural elements surrounding a pipe or conduit for the purpose of preventing future physical damage to the pipe or conduit.

(14) "Franchise" means the occupancy and use document granted by the county required for occupancy of road rights-of-way in accordance with Chapter 36.55 RCW and Chapter 80.32 RCW.

(15) "Franchise Area" means the geographic area within which utility or cable television services are authorized or required to be provided pursuant to a franchise issued by the county.

(16) "Gallery" means the underpass for two or more utility lines.

(17) "Manhole" means an opening in an underground utility system into which workers or others may enter for the purpose of making installations, inspections, repairs, connections, cleaning, and testing.

(18) "Pavement" means the combination of subbase, base course, and surfacing placed on a subgrade to support the traffic load and distribute it to the subgrade.

(19) "Permit" means a document issued under the authority of (1) the County Public Works Director and/or (2) a franchise granted by the county's legislative authority. The permit provides specific requirements and conditions for specific utility work at specific locations within the right of way.

(20) "Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company or any branch of state or local government.

(21) "Pipe" means a structural tubular product designed, tested, and produced for the transmittance of specific liquids and gases under specific conditions.

(22) "Plowing" means the direct burial of utility lines by means of a "plow" type mechanism which breaks the ground, places the utility line at a predetermined depth, and closes the break in the ground.

(23) "Pressure" means the internal gage pressure in a pipe in pounds per square inch, gage (psig).

(24) "Private Lines" means the privately owned, operated and maintained utility facilities devoted exclusively to the use of the owner.

(25) "Relocation" means the planned change of location of an existing facility to a more advantageous place without changing the character or general physical nature of the facility.

(26) "Replacement" means the installation of a like element of a utility system or subsystem in the same or near-same physical location normally due to damage, wear or obsolescence of the element.

(27) "Restoration" means all work necessary to replace, repair or otherwise restore the right-of-way and all features contained within the right-of-way to the same or equal condition as before any change or construction thereto.

(28) "Right-of-way" is a general term denoting public land, property, or interest therein, usually in a strip, acquired for or devoted to transportation or secondary purposes.

(29) "Road" (or "Roadway or County Road") is a general term denoting a street, road or other public way, including shoulders, designated for the purpose of vehicular traffic.

(30) "Sleeve" means the short casing through a pier, wall or abutment of a highway structure.

(31) "Street" means the surface of and the space above and below any public street, road, highway, freeway, lane, path, public way or place, sidewalk, alleycourt, boulevard, parkway, drive or easement now or hereafter held by the county, the State of Washington, or other governmental entity for the purpose of public travel and shall include other easements or rights-of-way as shall be now held or hereafter held by any of the entities cited above.

(32) "Traffic Control" means those activities necessary to safeguard the general public, as well as all workers, during the construction and maintenance of utility facilities within the right-of-way.

(33) "Trenched" means the installation of a utility in an open excavation.

(34) "Untrenched" means the installation of a utility without breaking the ground or pavement surface such as by jacketing or boring.

(35) "Vent" means the appurtenance to discharge gaseous contaminants from casings or other enclosures.

Section 3. Rights terminated when.

(1) Whenever any of the streets, avenues, alleys, roads, highways, rights-of-way or public places designated in such franchise shall be eliminated from county jurisdiction by reason of the incorporation or annexation to a city or town, then all the rights, privileges and franchises so granted shall terminate in respect to said streets, avenues, alleys, roads, highways, rights-of-way and public places so eliminated, but otherwise the franchises shall continue in full force and effect in respect to all streets, avenues, alleys, roads, highways, rights-of-way and public places not so eliminated by such reduction or disincorporation.

(2) If at any time the County of Wahkiakum shall vacate any county street, avenue, alley, road, highway, right-of-way or other county property which is subject to rights granted by said franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way or other county property for the use of Wahkiakum County, in either its proprietary or governmental capacity, then the Board of County Commissioners for Wahkiakum County may at its option, by giving ninety (90) days' written notice to the grantee and after granting an alternate route, terminate the franchise with reference to such county road, right-of-way or other county property so vacated, and the County of Wahkiakum shall not be liable for any damages or losses to the grantee by reason of such termination. Wherever possible, the county agrees to protect the grantee's interest by retaining easement rights pursuant to RCW 36.87.140.

Section 4. County right to acquire property of grantee.

The granting of such franchise shall not preclude Wahkiakum County from acquiring by purchase or condemnation any or all of the mains, laterals, pipes, poles, cables or other improvements installed by the grantee within the county streets, avenues, alleys, roads, highways, rights-of-way or public places within Wahkiakum County. The County's power of eminent domain with respect to municipal corporations is subject to the provisions of Chapter 8.08 RCW as construed by the appellate courts of the State of Washington.

Section 5. Grantee--Rights described.

The franchise grantee shall have the right and authority, to the extent expressed in the resolution of the Board of County Commissioners granting such franchise, or in any supplemental document, to enter upon the streets, avenues, alleys, roads, highways, rights-of-way and public places designated by such franchise for the purpose of construction work, extension of existing systems, connection of such systems with consumers' pipelines, cables, lines or equipment, repairing of equipment, and in all fashions maintaining and operating the improvements installed within such county property. This Ordinance does not

preclude the franchise grantee from exercising the right to make rules and regulations governing said improvements in conformity with state and federal statutes and regulations now in force or hereafter enacted and adopted by state and/or federal agencies governing such utilities.

Section 6. Grantee--Installation standards--Inspection required when.

The franchise grantee shall install the pipes, poles, lines, cables or other authorized improvements in the designated streets, avenues, alleys, roads, highways, rights-of-way or other public places pursuant to plans and specifications approved by the county Public Works Director. Whenever the grantee's inspection services are determined by the County to be inadequate, installation shall be subject to inspection by an inspector provided by the County at the expense of such grantee. The Public Works Director shall give the franchise grantee five (5) days prior written notice of the County's intent to provide inspection services. The County's right to inspect does not include the right to direct the crews or contractors of the grantee. PROVIDED, HOWEVER, a county inspector may issue a temporary stop work order in the event that the work is being conducted contrary to the terms of a franchise or construction permit.

Section 7. Specific Requirements Relating to Underground Utilities.

(1) All underground utilities located within the county right-of-way shall be located and aligned according to the following standards:

(a) For all crossings, the angle of crossing should be as near a right angle to the road centerline as practicable. However, lesser angles may be permitted based upon economic considerations of practical alternatives.

(b) Where practicable, crossings should avoid deep cuts, footings of bridges and retaining walls, or locations where highway drainage would be affected.

(c) Longitudinal installations should run parallel to the roadway and lie as near to the right-of-way line as practicable. Installations which cannot be so installed shall be allowed within the right of way, provided that:

(1) The installation will not adversely affect the design, construction, stability, structural integrity, traffic safety, or operation of the road facility; and

(2) Failure to allow such installation will create an undue hardship or financial burden upon the utility.

(d) Where irregularly shaped portions of the right of way extend beyond the normal right of way limits, a uniform alignment of facilities shall be allowed.

(2) The grade of and resulting cover for an underground utility shall be in compliance with applicable federal, state and county requirements unless otherwise specified in the permit issued by the County of Wahkiakum pursuant to Section 12 of this Ordinance.

(3) All underground utilities located within the county right-of-way shall comply with the following standards relating to encasement:

(a) Casings shall be installed for roadway crossings where required by appropriate industry code.

(b) Casings may be required for the following conditions:

(1) As an expediency in the insertion, removal, replacement, or maintenance of a carrier line crossing or other locations where it is necessary in order to avoid open trench construction.

(2) As protection for carrier lines from external loads or shock either during or after construction of a road.

(3) For jacketed or bored installations or coated carrier lines unless assurance is provided to the county that there will be no damage to the protective coating.

(c) Where practicable, within the road right of way casing pipes shall extend beyond the toe of fill slopes, the back of roadway ditches, or the outside of curbs.

(d) Other than for necessary vents and/or drains, casing pipes shall be sealed at both ends.

(e) Casing pipes shall be designed to support the load of the road and superimposed loads thereon and, as a minimum, shall equal the structural requirements for road drainage facilities. Casings shall be composed of materials of sufficient durability to withstand conditions to which they may normally be exposed.

(4) All underground utilities located within the County right-of-way which do not require encasement under the provisions of this Ordinance shall comply with the following standards:

(a) The carrier pipe shall conform to the material and design requirements of the appropriate utility industry and to governmental codes and specifications.

(b) The carrier pipe shall be designed to support the load of the road, plus superimposed loads thereon, when the pipe is operated under all ranges of pressure from minimum internal to zero pressure.

(5) All underground utilities located within the county right-of-way shall comply with the following standards relating to appurtenances and marking:

(a) Vents shall be required for casings, tunnels and galleries enclosing carriers of fuel where required by federal safety standards. Vent standpipes should be located and constructed so as neither to interfere with maintenance of the road nor to be concealed by vegetation. Preferably, standpipes should stand by a fence or on the right-of-way line.

(b) Drains shall be required for casings, tunnels or galleries enclosing carriers of liquid, liquefied gas, or heavy gas. Drains for carriers of hazardous materials shall be directed to natural or artificial holding areas to prevent the potential for surface or ground water contamination. Drains from which only water or other non-hazardous liquids can discharge may be directed into the roadway ditch or natural water course at locations approved by the county. The drain outfall shall not be used as a wasteway for routine purging of the carrier unless authorized by the county.

(c) Location markers and emergency information should be used when required by applicable state and federal standards.

(d) Manholes should be designed and located in a manner that will cause the least interference to other utilities or future road expansion. Where practicable, installations in the pavement or shoulders should be avoided.

(6) All underground utilities located within the county right-of-way shall be installed in accordance with the following standards:

(a) The following provisions relate to trenched construction and backfill:

(1) Where the pavement must be removed, it first shall be cut in vertical (or undercut) continuous straight lines.

(2) Trenches shall be cut to have vertical faces, where soil and depth conditions permit, with a maximum width of outside diameter of pipe plus two (2) feet. Shoring shall comply with the Washington State Department of Labor and Industries Safety Code.

(3) The pipe or carrier shall be installed and the trench backfilled so as to assure no deformation of the pipe likely to cause leakage, and so as to assure restoration of the structural integrity of the roadway structure. Specific trench backfill requirements regarding materials and methods shall be provided by the County.

(4) When trenching is approved on paved roads, the pavement shall be restored as required by the County.

(b) When directed by the County entrenched construction may be required for pipelines crossing roads paved with asphalt concrete or cement concrete, and for roads paved with bituminous surface treatment.

(1) If sufficient right-of-way exists, the length of entrenched construction shall extend a minimum of four (4) feet from edge of pavement, except that a lesser standard may be permitted by the County Public Works Director where conditions warrant.

(2) Overbreaks, unused holes, or abandoned casing shall be backfilled as directed by the County Public Works Director.

(3) Water boring under roadways shall not be permitted.

(4) Existing carriers and conduit installed under a roadway shall be physically located prior to pipeline installation.

(c) Plowing of communication and electrical lines on or adjacent to existing roads by means of a vibratory plow may be allowed by the county, provided that the structural integrity of the roadway is not impaired.

Section 8. Specific Requirements Relating to Overhead Utilities. The installation of overhead power and communication lines shall be in accordance with the following standards:

(1) Single-pole construction and joint use of the pole is desirable and should be used whenever feasible.

(2) The minimum vertical clearance for overhead power and communication lines above the road and the minimum lateral and vertical clearance from bridges shall be in compliance with the National Electrical Safety Code and Washington State Department of Labor and Industries "Electrical Construction Code."

(3) Where irregularly shaped portions of the right-of-way extend beyond the normal right-of-way limits, a uniform alignment of facilities shall be allowed.

Section 9. Specific Requirements Relating to Aesthetic and Scenic Considerations. All work within the county right-of-way shall be in accordance with the following standards relating to aesthetic and scenic considerations:

(1) Utility installations shall be designed and constructed to minimize the adverse affect on existing roadside manmade or natural amenities. Special efforts shall be taken to minimize any potential negative impact on areas of scenic beauty (i.e., scenic strips, viewpoints, rest areas, recreation areas, public parks or historic sites, etc.).

(2) Overhead utility installations shall be permitted in areas of scenic beauty when other utility locations are not available, are not technically feasible, are unreasonably costly, or are less desirable from the standpoint of visual quality.

(3) If the utility intends to use chemical sprays to control or kill weeds and brush in scenic areas, prior approval must be granted by the county at least annually. The county may limit or restrict the types, amounts, and timing of applications if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

(4) Refuse and debris resulting from the installation or maintenance of the utility facilities shall be promptly removed once work is completed.

Section 10. Specific Requirements Relating to Installations On Roadway Bridges And Structures. Attachment of utility lines to a roadway structure (including bridges) may be allowed where such attachment conforms to sound engineering considerations for preserving the roadway structure and its safe operation, maintenance and appearance. The attachment shall be in accordance with the following standards:

(1) Attachment of a utility shall not be considered unless the structure in question is of a design that is adequate to support the additional load and can accommodate the utility facility without compromise of highway features, including reasonable ease of maintenance.

(2) Manholes and other utility access panels should be avoided within the roadway portion of the structure.

(3) Attachment on a structure of a pipeline carrying a hazardous transmittant shall be avoided where practicable.

(4) The utility attachment shall not reduce the clearance of a structure where such clearance is critical. Attachment to the outside of a structure should be avoided where there are reasonable alternatives.

(5) Utility mountings shall be of a type which shall not create noise resulting from vibration.

(6) The hole created in a structure abutment shall be sleeved, shall be of the minimum size necessary to accommodate the utility line, and shall be sealed to prevent any leakage of water or backfill material.

(7) The utility line back of the abutment shall curve or angle out to align outside the roadbed area in as short a distance as is operationally practicable.

(8) Communication and electrical power line attachments shall be suitably insulated, grounded, and preferably carried in protective conduit or pipe from point of exit from the ground to re-entry. Carrier pipe and casing pipe shall be properly isolated from electric power line attachments.

Section 11. Specific Requirements Relating to Miscellaneous Provisions.

(1) Preservation, restoration and cleanup.

(a) The size of disturbed area necessary to install a utility shall be kept to a minimum.

(b) Restoration methods shall be in accordance with the specifications of the county and/or special provisions of the franchise, permit, or agreement. County specifications shall be made available upon request of the franchise grantee.

(c) Unsatisfactory restoration work shall be promptly corrected by the franchise grantee. If necessary, unsatisfactory restoration work may be corrected by the county and billed to the utility, provided, however, county shall give the franchise grantee ten (10) days advance notice of its intent to perform such restoration work, except in emergency situations where county may take immediate action.

(2) Traffic control and public safety.

(a) Traffic controls, including detours for all utility work, shall conform with the currently applicable Manual on Uniform Traffic Control Devices for Streets and Highways by U.S. Dept. Of Transportation, Federal Highway Administration, including current Washington State Modifications published by Washington State Department of Transportation.

(b) All construction and maintenance operations shall be planned to keep interference with traffic to a minimum. On heavily traveled roads, construction operations interfering with traffic should not be scheduled during periods of peak traffic flow. Work shall be planned so that closure of intersecting streets, road approaches, or other access points is held to a minimum.

(c) Adequate provision shall be made to safeguard any open excavation, and shall include barricades, lights, flaggers, or other protective devices as may be necessary.

(d) The storage of materials on through roadways shall not be allowed, and parking of vehicles on through roadways shall be kept to a minimum.

(3) Emergency repairs.

(a) All utility facilities shall be kept in a good state of repair. Emergency repairs shall be undertaken in a timely manner.

(b) If emergency repairs disturb the right of way, such repair may be immediately undertaken and the right of way restored to allow safe passage. Approval as to the manner of final restoration of the right of way shall be secured from the county in a timely fashion.

Section 12. Permit--Requirements generally.

Before any work is done by the grantee under such franchise, grantee shall first file with the County Public Works Director an application for permit to do such work accompanied by such supporting documents and/or field information as the County Public Works Director may require. The grantee shall specify the class and type of material to be used and provide sufficiently detailed plans so as to adequately show the type and extent of work to be performed upon the rights-of-way. All material and equipment shall conform to or exceed the standards of the industry. When requested by the County Public Works Director, the manner of excavation, construction, installation, backfill and the type and size of temporary structures, including traffic turnouts, road obstructions, etc., shall be submitted for approval. The grantee shall pay to the County the actual cost and expenses incurred in the examination and necessary inspection of such work granted by the permit and done by the grantee or by an independent contractor under the franchise of the grantee. PROVIDED, HOWEVER, in the case of an emergency situation where utility service has been interrupted or is in danger of interruption, the franchise grantee may proceed to make repairs without a permit. The franchise grantee shall notify the county of any major emergency repairs as soon as reasonably possible

Section 13. Grantee--Work commencement and completion time.

The franchise grantee, or its successors or assigns, shall commence construction under such permit granted by the County Public Works Director within the time period stated in such permit and shall have completed and have in operation such portion of the system of improvements as may be specified in such permit; otherwise, the rights therein conferred upon the grantee shall cease and terminate insofar as unoccupied streets, roads, etc., are concerned.

Section 14. Workmanship and Public Safety.

(1) No construction shall be performed in such a manner as to create a hazard or interfere with free and lawful uses of the roads, streets, avenues, highways, alleys, rights-of-way or other county properties. The franchise grantee shall take all reasonable precautions to protect persons and vehicles using the roads, rights-of-way or other county properties from injury or damage caused by activities of the grantee.

(2) The grantee shall leave all streets, avenues, alleys, roads, highways, rights-of-way and other county properties, after laying and installing mains and doing construction work, making repairs to equipment, etc., in as good and safe condition in all respects as they were before the commencement of such work by the grantee, its agents or contractors, and all recorded monuments which have been disturbed or displaced by the work shall be reset to the specifications and approval of the County Public Works Director.

(3) In case of any damage by the grantee to said streets, avenues, alleys, roads, highways, rights-of-way or other county properties, or to paved or surfaced roadways, turn-outs, gutters, ditches, side walks, drainpipes, hand or embankment rails, bridges, trestles, wharves, landings or monuments, the said grantee agrees to immediately repair said damage at its own sole cost and expense.

(4) When the County Public Works Director determines that an emergency situation exists, he or she may order and have done any and all work considered necessary to restore to a safe condition any such street, avenue, alley, road, highway, right-of-way or other county property left by the grantee, or agents, in a condition dangerous to life or property. He or she may cause to be replaced or reset recorded monuments if a grantee fails to replace or reset the same within a reasonable time after completion of construction. The grantee, upon demand, shall pay to the county all costs of such construction or repair and of doing such work. The county shall make reasonable efforts to notify the franchise grantee prior to taking action under this subsection if such notice can be given without jeopardizing public safety.

Section 15. Grantee to indemnify County.

(1) The franchise grantee and its successors or assigns, shall protect, defend, indemnify, and hold harmless Wahkiakum County from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person or persons, corporation or property by reason of any faulty construction, defective material or equipment operation or by the improper occupation of said rights-of-way or other County properties by the said grantee or by reason of the negligent, improper or faulty manner of safeguarding any excavation, temporary turnouts or inefficient operation by the grantee of its lines over or under said streets, avenues, alleys, roads, highways, rights-of-way or other County properties as hereinbefore designated, or for any other acts or omissions to which Company's negligence in any way contributes, or which arises out of the franchise grantee's failure to comply with the provisions of any federal, state, or local statute, ordinance or regulation applicable to the franchise grantee in its business hereunder, and in case that suit or action is brought against the said County for damage arising out of or by reason of any of the above mentioned causes, the franchise grantee, its successors or assigns, will, upon notice to it of the commencement of said action, defend the same at its sole cost and expense and in the case that judgment shall be rendered against Wahkiakum County in such suit or action, will fully satisfy said judgment within ninety (90) days after the said suit or action shall have been finally determined, if determined adversely to Wahkiakum County. Provided, that the grantee herein and its successors or assigns shall have the right to employ its own counsel in any cause or action and be given the management of the defense thereof.

(2) Grantee shall carry public liability insurance to the extent of \$1,000,000.00 combined single limit liability or other

such amount as deemed necessary by the Board. Grantee is to include on said insurance policy, as additional named insureds, the following: County of Wahkiakum, a municipal corporation of the State of Washington, and its Board of Commissioners and employees and those persons who were, now are, or shall be duly elected or appointed officials or their designees, or members or employees thereof. Grantee shall provide proof of said insurance prior to the effective date of granting a franchise and thirty (30) days prior to each anniversary of the said effective date. Said insurance policy shall contain a clause stipulating that the insurance will not be canceled without providing thirty (30) days' written notice to the Board of Commissioners of Wahkiakum County. The Company shall immediately advise the board of any litigation that may develop that would affect this insurance.

(3) Acceptance by the county of any work performed by the grantee at the time of completion shall not be ground for avoidance of this covenant.

(4) Neither the provisions of this section nor any damages recovered by the County thereunder, shall be construed to limit the liability of the Company under any franchise issued hereunder or to otherwise limit any damages recoverable by the County from the Company.

Section 16. Grantee--Liability.

In consideration of the granting of such franchise by the County to the grantee, the grantee, for itself and its assigns, shall contract and agree to release and hold Wahkiakum County harmless from liability of any nature arising out of any damage and/or destruction done or suffered to be done to grantee's mains, valves, pipes, poles, cables, lines or other fittings or appurtenances of any nature placed upon, across, over and/or under the county road right-of-way or other county property. This Section shall be construed to mean that the grantee accepts such franchise and any rights conferred thereunder for the use and occupation of any portion of the right-of-way, at its own risk, and agrees to assume responsibility for any damage occasioned to grantee or third parties by County in the maintenance and/or construction work performed by County upon the roadways described herein and which would not have occurred but for the presence on said roadways of the grantee's pipes, poles, lines, cables, fittings or other appurtenances mentioned above, except to the extent any such damage or loss is caused by the sole negligence of the County.

Section 17. County work contiguous to grantee improvements permitted when.

The laying, construction, maintenance and operation of the system of improvements granted under any franchise shall not preclude Wahkiakum County, its accredited agents or its contractors, from blasting, grading or doing other necessary road work in a reasonable, careful and prudent manner contiguous to the said grantee's improvements, provided that the grantee shall be given a minimum of ten business days' prior notice (for large

projects with an estimated construction cost exceeding \$100,000.00, the minimum prior notice shall be sixty (60) business days), in writing, signed by the County Public Works Director, of said blasting or excavating in order that said grantee may protect its lines and property.

Section 18. Readjustment and relocation of facilities.

Wahkiakum County reserves the right to specify the location or relocation of all facilities installed in or along county roads, streets, avenues, alleys, highways, rights-of-way or other county property. If at any time Wahkiakum County deems it advisable to improve any of its streets, avenues, alleys, roads, highways, rights-of-way or other county properties as hereinbefore designated, by grading, regrading, surfacing or paving the same, or altering, changing, repairing or improving the same, the grantee, upon written notice by the county, shall at grantee's own expense, as soon as reasonably practicable to do so, raise, lower or move its lines or improvements to conform to such new grades as may be established, or place said property in such locations or positions as shall cause the least interference with any such improvements or work thereon as contemplated by the county and the county shall in no way be held liable for any damage to said grantee that may occur by reason of the county improvements, repairs or maintenance performed in a reasonably careful and prudent manner, or by the exercise of any rights so reserved in this section or grant. If the county shall improve such streets, avenues, alleys, roads, highways, rights-of-way or other county properties, the grantee shall on written notice by county officials, at grantee's own expense, replace such pipes, lines or system as may be in or through the improved subgrade of such improvement, with such materials as shall conform to or exceed the applicable standards of the industry for use in such streets, avenues, alleys, roads, highways, rights-of-way or other county properties; PROVIDED, HOWEVER, that if a readjustment or relocation is necessitated for a reason other than the above enumerated county purposes, the person, firm or private corporation or entity requesting such readjustment or relocation shall pay the grantee the actual costs thereof; PROVIDED, FURTHER, that in the event County should require such readjustment or relocation in connection with any improvement or project funded wholly or in part by state or federal funds, the County shall pay grantee such proportion of the actual cost of readjustment or relocation to the extent provided for by such state or federal funds received by County in connection with such improvement or project. If, in the course of a single county project, a utility must be relocated a second time because of a reasonably foreseeable design change initiated by the county, then in that event the county shall reimburse the franchise grantee its actual cost associated with such second or subsequent relocation.

Section 19. Removal or relocation of facilities.

If at any time Wahkiakum County shall install a line of pipes for sewage and/or drainage upon any of the streets, avenues, alleys, roads, highways, rights-of-way or other county properties herein described, wherein a grantee's facilities unreasonably interfere with the construction project, the grantee, upon written

notice by the County Public Works Director, shall temporarily remove or relocate its line of pipes or improvements at grantee's own expense during said installation and replace the same at grantee's own sole cost and expense.

Section 20. County use of Grantee's facilities.

The County shall have the right, during the life of a franchise, to install and maintain free of charge upon the poles of the Grantee any wire and pole fixtures that do not unreasonably interfere with the operations of the Grantee, provided, such installations conform to all applicable provisions of state and federal laws and regulations and duly promulgated standards of the affected utility. PROVIDED, HOWEVER, the County shall not be entitled to allow third parties to use such wires or fixtures.

Section 21. Franchise not exclusive--Work performance conditions generally.

(1) The granting of any franchise shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Wahkiakum County from granting other franchises of a like nature or franchises for other public or private utilities over, along, across, under and upon any of the streets, avenues, alleys, roads, highways, rights-of-way or other county properties as herein enumerated, and shall in no way prevent or prohibit the county from using any of said streets, avenues, alleys, roads, highways, rights-of-way or other county properties or affect its jurisdiction over them or any part of them.

(2) All construction or installation of mains, valves, pipes, poles, cables, lines, fittings and facilities, service, repair or relocation of the same, performed along, over and/or under the county roads, rights-of-way or other county properties subject to any franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures located therein, nor with the grading or improvement of such county roads, rights-of-way or other county properties.

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

Section 22. Provisions binding upon successors and assigns--Transfer of Franchises.

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns and independent contractors of the grantee, and all rights and privileges of the grantee shall inure to its successors, assigns

and such contractors equally as if they were specifically mentioned herein wherever the grantee is mentioned.

The grantee shall not sell, transfer, sublet, or assign a franchise governed by this Ordinance without having first obtained written permission from the County. The County's permission to sell, transfer, sublet, or assign, shall not be unreasonably withheld. The County's review of a request to sell, transfer, sublet, or assign, a franchise shall be limited to a consideration of the ability of the proposed purchaser, transferee, lessee, or assignee to comply with the provisions of this Ordinance and with the conditions of the particular franchise involved.

Any grantee intending to sell, transfer, sublet, or assign said franchise shall give notice of its intention to do so, not less than sixty (60) days in advance of the date of the proposed sale, transfer, subletting, or assignment to the Clerk of the Board of County Commissioners of Wahkiakum County.

Section 23. Grantee--Rights forfeited when.

(1) If the franchise grantee, its successors or assigns, shall through wilful or unreasonable neglect, fail to perform promptly and completely each and every term, condition or obligation imposed under or pursuant to this ordinance or to heed or comply with any notice given the grantee under the provisions of such grant, then the said grantee, its successors or assigns, shall forfeit all rights conferred thereunder and the affected portion of such franchise may be revoked or annulled by the Board of County Commissioners of Wahkiakum County.

(2) The Board shall hear and consider the issue and shall hear any person interested therein, and shall determine in its discretion whether or not any violation by the Grantee has occurred. The franchise grantee shall be given at least ten (10) days advance written notice of any such hearing.

(3) If the Board shall determine the violation by the Grantee was the fault of Grantee and within its control, the Board may, by resolution, declare that the franchise of the Grantee shall be forfeited and terminated unless there is compliance within such period as the Board may fix, such period not to be less than sixty (60) days, provided no opportunity for compliance need be granted for fraud or misrepresentation.

(4) The issue of forfeiture and termination shall automatically be placed upon the Board agenda at the expiration of the time set by it for compliance. The Board may then terminate the franchise forthwith upon finding that Grantee has failed to achieve compliance or may further extend the period, in its discretion. The franchise grantee shall be given at least seven (7) days advance written notice of any such compliance review hearings.

Section 24. Notices.

Throughout the term of the franchise, Grantee shall maintain with the County an address for service of notices by mail. Grantee shall also maintain with the County the address of a local office in the franchise area, and a telephone number for the conduct of matters related to a franchise during normal business hours.

Section 25. Provisions--Changes or amendments authorized when.

(1) The County reserves for itself the right at any time, upon five (5) business days prior written notice to the grantee, 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, amended, adopted, changed, etc., and such franchise may be terminated upon thirty (30) days' written notice to grantee if the same is not operated or maintained in accordance with the provisions of such amendments. The franchise grantee shall be afforded notice and hearing as prescribed in Section 23 of this Ordinance prior to any termination pursuant to this subsection. The franchise grantee shall be given reasonable time to come into compliance with such amended conditions. The notice of change or amendment shall include a schedule of compliance deadlines.

(2) The grantee, notwithstanding any other terms of such franchise appearing to the contrary, shall be subject to the police power of the county to adopt and enforce general ordinances necessary to protect the safety and welfare of the general public in relation to the rights granted in such franchise.

Section 26. New facilities to be underground--Line extensions.

The grantee, as far as practicable, shall construct all new utility facilities underground. Extension of overhead facilities within any county right-of-way shall be undertaken only with the approval of the County Public Works Director; provided, however, that said approval shall not be unreasonably withheld. Grantees shall recognize the desirability of underground facilities rather than overhead facilities and shall convert existing overhead facilities to underground facilities as and when equipment replacement is undertaken, or when other existing overhead utilities are placed underground, unless such replacement is unsafe, impractical or economically unreasonable. Line extension policies and procedures established by the grantee, and uniformly applied through its service area, shall be the standard in determining what is "practical, impractical or economically unreasonable" under this Section; provided that no new overhead utility facilities shall be constructed or established within any county right-of-way in any area set aside for public park, school, playground or athletic field purposes unless the franchise grantee can demonstrate that underground utility facilities in such areas will adversely affect the reliability of service.

Section 27. Cooperation with Building Movers. The Grantee shall, on the request of any person holding a moving permit issued by the County, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary removal, raising or lowering of wires shall be paid by the person requesting the same, and the Grantee shall have the authority to require such payment in advance. The Grantee shall be given not less than seven (7) days' advance notice to arrange for such temporary wire changes.

Section 28. Grantee--Bond requirements.

Before undertaking any of the work or improvements authorized by the franchise, the grantee, if other than a municipal corporation, shall furnish to the county a bond, executed by grantee and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be recommended by the County Public Works Director and set and approved by the Board of County Commissioners as sufficient to insure performance of the grantee's obligations under such franchise, and conditioned that the grantee shall well and truly keep and observe all of the covenants, terms and conditions and faithfully perform all of grantee's obligations under said franchise, and to reset or replace any defective work performed or materials installed by or under the direction of the grantee, its employees or contractors, discovered in the replacement of the county's roads, rights-of-way or other county properties within a period of two (2) years from the date of the replacement and acceptance of such repaired roads, rights-of-way or other county properties by the county. Said bond requirement may be met by surety bonds of a continuing nature now in effect or that may hereafter come into effect.

Section 29. Grantee--Scope of obligations.

The obligations imposed upon the grantee by the express terms of the resolution granting such franchise or implied by the terms of this Ordinance or any other ordinance affecting the same, shall be deemed to include every employee, nominee or independent contractor of the grantee performing work in the county streets, avenues, alleys, roads, highways, rights-of-way or other county properties under contract, direction, request or authority of the grantee under this franchise, and the grantee, its agent, employee or independent contractor, severally, shall be responsible to the county for any injury or damage to county property or the expense incurred or suffered by the county in correcting defects in work in replacing county roads or other improvements damaged by the acts or neglect of such servants, agents, or independent contractors of grantee.

Section 30. Application Process.

(1) Any person, corporation, or municipal corporation seeking a franchise from Wahkiakum County shall submit an application in writing on a form provided by the County's Department of Public Works. The Director of the Department of Public Works is hereby authorized to develop such application form.

(2) The County Public Works Director shall make a recommendation to the Board of County Commissioners as to the granting or denial of any franchise within sixty (60) days of the County's receipt of a completed application.

(3) Upon application being made, the Board of County Commissioners shall fix a time and place for hearing such application and shall cause the County Auditor to give public notice of such hearing in the manner prescribed by Section 36.55.040 of the Revised Code of Washington, as now or hereafter amended. Similar written notice shall also be mailed to the last known address of the franchise applicant.

(4) If, after the hearing prescribed by subsection (3) of this Section, the Board of County Commissioners deems it to be for the public interest to grant the franchise in whole or in part, the Board may make and enter a Resolution granting such franchise subject to the terms and conditions set forth in this Ordinance.

Section 31. Term of Franchise.

(1) The rights and privileges granted by a franchise shall be in effect for a period not to exceed fifty (50) years from the date of signing of the resolution by the Board.

(2) Five (5) years from the date of granting a franchise, the rights conferred hereby to the grantee may, at the election of the Board and pursuant to notice, be terminated with respect to those County roads, rights-of-way and other County property or portions thereof upon which the grantee has not laid, constructed and placed in operation its facilities.

(3) A franchise may be renewed by the Board upon application of the grantee pursuant to the procedure established in subsection (4) of this section, and in accordance with the then applicable law.

(4) The following procedures shall be followed to renew a franchise:

(a) At least thirteen (13) months prior to the expiration of the franchise, franchise grantee shall inform the Board in writing of its intent to seek renewal of the franchise.

(b) The Board shall then prepare and approve within two (2) months any amendments to the franchise that it believes necessary.

(c) If the Board finds after public hearing that the grantee has complied with the terms and conditions of its franchise, a new franchise may be granted pursuant to this ordinance for a period not to exceed fifty (50) years.

(d) In the event the grantee is determined by the Board to not be in compliance with the terms and conditions of its franchise, the Board may refuse to grant a franchise renewal.

Section 32. Grantee--Franchise signature and acceptance time limit.

If within sixty (60) days of the adoption of the Resolution granting such franchise the grantee shall have failed to sign its written acceptance of the same, then the granted rights and privileges therein shall be deemed forfeited and declared null and void.

Section 33. Severability.

If any provision of this ordinance shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that this ordinance would have been enacted without the provision so held unconstitutional or invalid and the remainder of this ordinance shall not be affected as a result of said part being held unconstitutional or invalid.

Section 34. Effective date.

This Ordinance shall be in full force and effect from and after June 1, 1997.

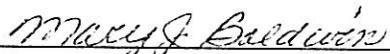
Section 35. Codification.

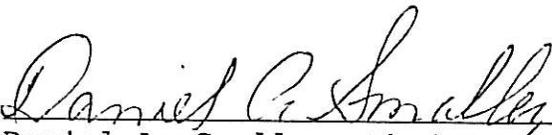
This ordinance shall be codified in the Revised Code of Wahkiakum County as Chapter 36.75.

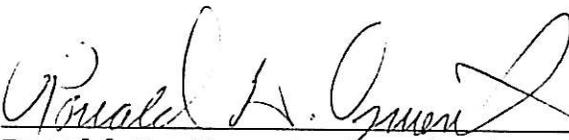
DULY PASSED AND ADOPTED in Regular Session following a public hearing thereon, this 6th day of May, 1997.

BOARD OF COUNTY COMMISSIONERS
OF WAHKIAKUM COUNTY, WASHINGTON

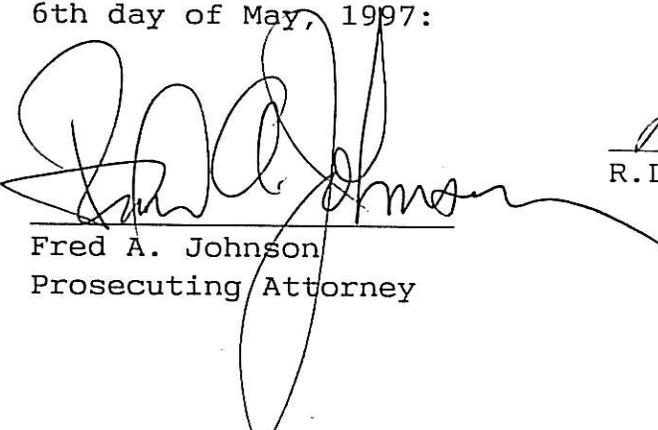
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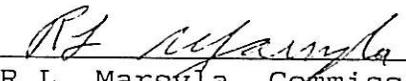

Mary J. Baldwin
Clerk of the Board


Daniel A. Smalley, Chairman


Ronald D. Ozment, Commissioner

APPROVED AS TO FORM this
6th day of May, 1997:


Fred A. Johnson
Prosecuting Attorney


R.L. Marsyla, Commissioner