

KITTITAS COUNTY PUBLIC WORKS
STATE OF WASHINGTON

NON-EXCLUSIVE FRANCHISE
TO USE COUNTY ROADS, RIGHTS-OF-WAY AND OTHER
COUNTY PROPERTY WITHIN KITTITAS COUNTY

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KITTITAS COUNTY
DEPT. OF PUBLIC WORKS

Application of the City of Cle Elum, Washington ("FRANCHISEE"), for a franchise to extend underground utilities over, along and under county rights-of-way in Kittitas County, Washington ("COUNTY"), as hereinafter set forth, having come on regularly for hearing before the County Commissioners on July 3rd, 2007, at 4:00 pm, under the provisions of RCW Chapter 36.55, and it appearing to the Board that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the franchise herein granted; NOW, THEREFORE;

IT IS ORDERED that a franchise be, and the same is hereby, given and granted to the City of Cle Elum, Washington, for a period commencing on the date hereof and expiring fifty (50) years from the date hereof, to construct, operate and maintain their underground water and sewer utilities in, under, along and over county rights-of-way located in Kittitas County, Washington.

This franchise is granted upon the following express terms and conditions, to-wit:

1. The non-exclusive franchise is granted for the sole purpose of constructing, operating and maintaining underground utilities and appurtenances.
2. The City of Cle Elum shall make all reasonable efforts to cause as little disruption as possible to the county's roads and trail when installing its utilities.
3. Applicant understands and agrees that Kittitas County Code Chapter 12.56 incorporates provisions necessary to protect the public interest and investment with regard to utilization of County rights-of-way and further, that the provisions of Chapter 12.56 are in full force and effect as if herein included or attached to or made a part of this franchise.
4. Such franchise shall not be deemed to be exclusive to "FRANCHISEE", and shall in no way prohibit or limit the COUNTY's ability to grant other franchises,

permits, or rights along, over, or under the areas to which this franchise has been granted to “FRANCHISEE”; provided, that such other franchises do not unreasonably interfere with “FRANCHISEE's” exercise of franchise rights granted herein as determined by the COUNTY. This franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent, the COUNTY from using the franchise area or affect the COUNTY's jurisdiction over such area in any way.

5. The Director of Public Works or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise and may develop such rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

6. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this franchise and may result in some or all of the penalties specified in Section 7. See KCC 12.56

A. Permit Required – No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the franchise area without first obtaining a permit to Perform Work in the County Right-Of-Way from the COUNTY of Kittitas, Department of Public Works.

B. Coordination – All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with COUNTY infrastructure, future COUNTY of Kittitas Capital Improvement Projects, all developer improvements, and pertinent codes and franchises.

C. Construction Standards – Any construction, installation, maintenance, and restoration activities performed by or for “FRANCHISEE” within the franchise area shall be conducted and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All construction, installation, maintenance, traffic control and restoration activities shall be conducted such that they conform to the most current COUNTY of Kittitas standards in effect at the time that such activities take place, and as detailed in the Manual on Accommodating Utilities.

D. Removal or Abandonment – Upon the removal from service of any underground water or sewer utilities or other associated structures, facilities and amenities, “FRANCHISEE” shall comply with all applicable standards and requirements prescribed by the COUNTY of Kittitas Public Works Department for the removal or abandonment of said structures and facilities.

E. "One-Call" Location & Liability – Kittitas County will not locate private infrastructure. The “One-Call” locate will be the responsibility of the “FRANCHISEE”.

F. As-Built Plans Required – “FRANCHISEE” shall present as-built plans to be inspected and approved by the Kittitas County Public Works Director.

G. Protect Public Interest – Applicant understands and agrees that Kittitas County Code Chapter 12.56 Incorporates provisions necessary to protect the public interest and investment with regard to utilization of County road right-of-way and further, that the provisions of Chapter 12.56 are in full force and effect as if herein included or attached to or made a part of this franchise. Detailed restoration requirements are provided in the Manual on Accommodating Utilities.

H. Relocation – Pursuant to RCW 36.55.060, whenever the COUNTY determines that it is reasonably necessary for any of “FRANCHISEE” facilities or other system components to be moved or relocated to accommodate the construction, or enhancement of any COUNTY-owned public amenity in the franchise area, the COUNTY shall notify “FRANCHISEE” in writing of such determination, and “FRANCHISEE” shall promptly submit plans for such relocation. Within ninety (90) days of the approval by the COUNTY of the plans for relocation, or as otherwise agreed by the parties, “FRANCHISEE” shall relocate those facilities or structures designated by the COUNTY. The costs of moving or relocating “FRANCHISEE's” facilities or structures, including but not limited to costs for design, engineering and construction is the responsibility of the “FRANCHISEE”.

7. A. Franchise Violations – The failure by “FRANCHISEE” to comply fully with any of the provisions of this Franchise Agreement may result in a written notice from the COUNTY which describes the violations of the franchise and requests remedial action within thirty (30) days of receipt of such notice. If “FRANCHISEE” has not attained full compliance at the end of the thirty (30) day period following receipt of the violation notification, the COUNTY may declare an immediate termination of all franchise rights and privileges; provided that full compliance was reasonably possible within that thirty (30) day period. The demonstration of due diligence on the part of “FRANCHISEE” may be grounds for the grant of an extension in the period during which compliance is to be attained; provided that “FRANCHISEE” continues to pursue correction of any violations of the Franchise Agreement noted by the COUNTY.

B. Emergency Actions – If any of “FRANCHISEE's” actions, or any failure by “FRANCHISEE” to act to correct a situation caused by “FRANCHISEE”, are deemed by the COUNTY to create a threat to life or property, the COUNTY may

order “FRANCHISEE”, to immediately correct said threat or, at the COUNTY's discretion, the COUNTY may undertake measures to correct said threat itself; provided that, when possible, the COUNTY shall notify “FRANCHISEE”, of said threat and give “FRANCHISEE” an opportunity to correct said threat before undertaking such measures itself. “FRANCHISEE” shall be liable for all costs, expenses, and damages attributable to the correction of such an emergency situation as undertaken by the COUNTY to the extent that such situation was caused by “FRANCHISEE” and shall further be liable for all costs, expenses, and damages resulting to the COUNTY from such situation and any reimbursement of such costs to the COUNTY shall be made within thirty (30) days of written notice of the completion of such action or determination of damages by the COUNTY. The failure by “FRANCHISEE” to take appropriate action to correct a situation caused by “FRANCHISEE” and identified by the COUNTY as a threat to public or private safety or property shall be considered a violation of franchise terms and each day that such a situation continues to exist and “FRANCHISEE” fails to take appropriate action to abate said situation shall be regarded as a separate violation.

C. Other Remedies – Nothing contained in this Franchise Agreement shall limit the COUNTY's available remedies in the event of “FRANCHISEE's” (OR ITS SUCCESSORS), failure to comply with the provisions of this Franchise Agreement, including but not limited to, the COUNTY's right to sue for specific performance and/or damages.

D. Removal of System – In the event that this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, “FRANCHISEE” shall at his sole expense, promptly remove all irrigation water system components and facilities, provided that, the COUNTY, at its sole option, may allow “FRANCHISEE” to abandon its facilities in place.

8. “FRANCHISEE” is self-insured..
9. Nothing in this agreement shall relieve “FRANCHISEE” from any obligation to obtain approvals or necessary permits from applicable federal, state, and COUNTY authorities for all activities in the franchise area.
10. The rights, privileges, benefits, title, or interest provided by this franchise shall be transferred to the new owner if any of these parcels change ownership.
11. The franchise rights granted herein shall remain in full force and effect for a period of fifty (50) years from the effective date of this franchise and will be renegotiable at the end of that time. Renewal shall not be unreasonably denied.
12. Any notices to be served upon the COUNTY or “FRANCHISEE”, shall be delivered to the following addresses respectively:

COUNTY of Kittitas
Department of Public Works
411 N. Ruby St. Suite #1
Ellensburg, WA 98926

Ellensburg, WA 98926

13. In the construction, installation, repair, operation, and maintenance of its structures and facilities, "FRANCHISEE" shall use reasonable and appropriate precautions to avoid damage to persons or property. "FRANCHISEE" shall indemnify and save harmless the COUNTY from all claims, actions or damages of every kind or description, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any negligent act, or omission, or willful misconduct of "FRANCHISEE" its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to "FRANCHISEE" by this franchise. In the event any claim or demand is presented to or filed with the COUNTY which gives rise to "FRANCHISEE's" obligation pursuant to this section, the COUNTY shall within a reasonable time notify "FRANCHISEE" thereof and "FRANCHISEE" shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the COUNTY is named a party, and which suit or action is based on a claim or demand which gives rise to "FRANCHISEE's" obligation pursuant to this section, the COUNTY shall promptly notify "FRANCHISEE", thereof, and "FRANCHISEE" shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, "FRANCHISEE" may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require "FRANCHISEE" to: (i) protect and save the COUNTY harmless from any claims, actions, or damages; (ii) settle or compromise any claim, demand, suit, or action; (iii) appear in or defend any suit or action; or, (iv) pay any judgment or reimburse the COUNTY's costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the sole negligence of the COUNTY. To the extent of any concurrent negligence between "FRANCHISEE" and the COUNTY, "FRANCHISEE's" obligations under this paragraph shall only extend to its share of negligence or fault. The COUNTY shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege, and authority granted by or exercised pursuant to this franchise when the COUNTY determines that such participation is required to protect the interests of the COUNTY or the public. Such participation by the COUNTY shall be at the COUNTY's sole cost and expense.

14. If any section, sentence, clause or phrase of this Franchise is held to be invalid or unconstitutional by a court of competent jurisdiction, the COUNTY may, at its sole option, deem the entire franchise to be affected and thereby nullified. However, in the event that a determination is made that a section, sentence, clause, or phrase in this Franchise is invalid or unconstitutional, the COUNTY may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this Franchise; provided that, if the COUNTY elects to enforce the remaining provisions of the Franchise, "FRANCHISEE" shall have the option to terminate the franchise.

15. "FRANCHISEE", its successors and assigns, agrees and covenants to indemnify and hold harmless the County of Kittitas from and against any and all liability, loss, cost, damages, whether to persons or property, or expense of any type or nature, including reasonable attorney's fees and expert witness fees, to the extent it arises from any negligent act or omission or willful misconduct of "FRANCHISEE" its successors and assigns arising from or connected to "FRANCHISEE" work under this franchise, provided however, that in case any suit or action is instituted against the County by reason of any such damage or injury, County shall: (i) cause written notice thereof to be given unto "FRANCHISEE"; and (ii) provide all reasonably requested assistance in defense or settlement of such claim at "FRANCHISEE" expense; and (iii) retain the right to control the defense of settlement or such claims.

16. This Franchise shall take effect and be in full force and effect five (5) days after approval by the Kittitas County Board of Commissioners which is hereby approved.

This franchise is not valid until accepted and signed by the City of Cle Elum, Washington.

DATED this 3rd day of July, 2007, at Ellensburg, Washington.



Jan A Kravitsnik
Clerk of the Board

BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY WASHINGTON

Alan Crankovich
Alan Crankovich, Chair

David B. Bowen
David Bowen, Vice-Chair

Mark McClain
Mark McClain, Commissioner

ACCEPTED:

CITY OF CLE ELUM, WASHINGTON

Charles D. Glendon
Mayor

Attested:
Tom Seelich
Clerk of the Board

Dated: July 12, 2007