

**ATTACHMENT A:**

**FRANCHISE AGREEMENT**

**Puget Sound Energy, Inc.**

**RIGHT-OF-WAY FRANCHISE**

**Franchise No. \_\_\_\_\_**

**King County, Washington**

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## **RECITALS**

WHEREAS, Pursuant to Article 11, Sec. 4 of the Washington Constitution, RCW 36.55.010, RCW 80.32.010 and Chapter 6.27 of the King County Code, King County, a charter county and political subdivision of the State of Washington, is authorized to grant franchises for use of King County road rights-of-way; and

WHEREAS, King County grants franchises to public and private utility companies that authorize the utility companies to use King County road rights-of-way to provide utility service throughout King County; and

WHEREAS, in 1980, the Puget Sound Power & Light Company was granted King County Franchise No. 5052, a twenty-four year franchise for the right to place its electric transmission and distribution lines, facilities and appurtenances within the King County road rights-of-way, the term of which expired on October 13, 2004; and

WHEREAS, in 1997, Puget Sound Power & Light Company merged with Washington Natural Gas Company to form Puget Sound Energy, Inc., providing electric and gas utility service in King County; and

WHEREAS, on November 13, 2007, Puget Sound Energy, Inc. applied for a nonexclusive right-of-way franchise for the right to place its electric transmission and distribution facilities in all unincorporated King County road rights-of-way; and

WHEREAS, the King County Council held a public hearing as required by law on \_\_\_\_\_, 2019, to solicit comments from the public and to consider whether to grant the requested franchise to Puget Sound Energy, Inc.

## **APPLICATION AND HEARING**

The application of Puget Sound Energy, Inc. for a franchise to set, erect, lay, construct, extend, support, attach, connect, operate, maintain, repair, relocate, remove, replace, and use its facilities, including its electric power transmission, distribution, and service lines, protective relay systems and appurtenances in, upon, over, along, across, through and under King County road rights-of-way, as depicted in the attached Exhibit A was heard on the \_\_\_\_ day of \_\_\_\_\_, 2019.

Legal notice of the franchise application and of the hearing has been given as is required by law.

## **GRANT OF FRANCHISE**

Pursuant to Article 11, Sec. 4 of the Washington Constitution, RCW 36.55.010, RCW 80.32.010 and Chapter 6.27 of the King County Code (hereafter “KCC”), King County, a charter county and political subdivision of the State of Washington, has considered the application, the interests proposed and advanced, and the public comment. The King County Council has found that it is in the public interest to grant this franchise, and has ordered that a non-exclusive electrical transmission and distribution system franchise be granted to Puget Sound Energy, Inc., its successors, and assigns (“Franchisee”), subject to the terms and conditions contained in this franchise agreement (the "Franchise").

This Franchise grants Franchisee the right, privilege, and authority to use King County road rights-of-way to set, erect, lay, construct, extend, support, attach, connect, operate, maintain, repair, relocate, remove, replace and use its electrical facilities, including its electric power transmission, distribution, and service lines, protective relay systems, and appurtenances in, upon, over, along, across, through and under King County road rights-of-way as depicted in Exhibit A.

This Franchise does not transfer, convey, or vest an easement or title in or to any King County road rights-of-way or portions thereof in or to Franchisee. This Franchise is granted subject to all of the terms and conditions contained herein.

## **TERMS AND CONDITIONS**

### Section 1. Definitions

References to any County official or office also refer to any official or office that succeeds any or all of the responsibilities of the named official or office. The following definitions shall apply for the purposes of this Franchise and all exhibits attached hereto. Defined words shall have their meaning as defined in this section when capitalized in the text. Words not defined, and defined words when not capitalized in the text shall be given their common and ordinary meaning.

Applicable Laws. The term “Law” and “Applicable Law” and their plurals shall mean federal, state and local laws applicable to any and all work activities performed by Franchisee or Franchisee Parties within County ROW under authority of this Franchise, and rules and regulations adopted pursuant to such laws. Unless otherwise stated herein, references to laws include laws now in effect as of the Effective Date of this Franchise and as the same may be amended from time to time during the term of this Franchise.

Colocation. The term “Colocation” shall mean the placement and arrangement of other users’ lines, facilities, and equipment in or on Franchisee’s Facilities.

Colocator. The term “Colocator” shall mean any user that is attached to or occupies Franchisee’s Facilities.

Construct or Construction. The term “Construct” or “Construction” shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, modify, improve, remove, support, maintain, or repair Franchisee's Facilities and may include, but is not limited to, digging or excavating for the above purposes.

County. The term “County” shall mean King County, a charter county and political subdivision of the State of Washington.

County Council. The term “County Council” or “King County Council” shall mean the metropolitan county council of King County, a home rule charter county, in accordance with the Constitution of the State of Washington.

County Parties. The term “County Parties” shall mean the County, its elected and appointed officials, employees, agents and contractors.

County Road Engineer. The term “County Road Engineer” shall mean the County road engineer as defined in KCC 14.01.100 and specified in RCW 36.75.010 and RCW 36.80.010.

County Risk Manager. The term “County Risk Manager” shall mean the manager of the Risk Management Division as specified in KCC 2.21.030.

County Right of Way or County ROW. The term “County Right of Way” or “County ROW” shall mean any and all maintained or unmaintained County roads, streets, avenues, or alleys located within unincorporated King County. These terms do not include recreational or nature trails, except where such trails intersect with or are within roads, streets, avenues, or alleys. Any reference to use of or in the County ROW includes use in, upon, over, along, across, through or under the County ROW, as applicable.

Default. The term “Default” shall mean a failure, whether intentional or unintentional, to perform, satisfy, or discharge, or to breach, any term or condition of this Franchise.

Director. The term “Director” refers to: 1) the Director of the King County Department of Local Services or his or her designee, or 2) the Director of the Department of Executive Services or his or her designee, or 3) the Director of the Facilities Management Division or his or her designee, depending on the context. Where discretionary acts by the County are authorized or required herein, unless otherwise stated such acts shall be performed by a Director.

Effective Date. The term “Effective Date” shall mean the date this Franchise is fully executed by the Parties.

Environmental Law. The term “Environmental Law” shall mean any federal, state, or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or instruction pertaining in

any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9602, et. seq. (“CERCLA”); the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et. seq. (“RCRA”); the Washington State Model Toxics Control Act, RCW ch. 70.105D (“MTCA”); the Washington Hazardous Waste Management Act, RCW ch. 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq.; the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws concerning above ground or underground storage tanks.

Facilities. The term “Facilities” or “Franchisee’s Facilities” shall mean facilities owned by Franchisee, including its electric power transmission, distribution, and service lines, protective relay systems, and appurtenances including, but not limited to, all wires, lines, cables, conduits, equipment, poles, and support structures located in, upon, over, along, across, through or under the County ROW, associated with activities authorized by this Franchise. The term shall include fiber optic cables, but only those that are necessary and used for the Operation and Maintenance of Franchisee’s electrical Utility system.

Found Hazardous Material(s). The term “Found Hazardous Material(s)” shall mean Hazardous Material that exists within the County ROW or other property, whether public or private, the presence of which was not, in whole or part, caused by the act or omission of Franchisee Parties during or prior to the term of this Franchise.

Franchise. The term “Franchise” shall mean this franchise agreement and any mutually agreed amendments or exhibits to this franchise agreement.

Franchise Area. The term “Franchise Area” shall mean all County ROW as depicted in Exhibit A, provided the Franchise Area may be modified by written mutual agreement of the Parties and any such mutually agreed modification may be approved by the Director of the Facilities Management Division on behalf of the County.

Franchisee. The term “Franchisee” refers to Puget Sound Energy, Inc. and any successors or assignees approved pursuant to Section 22.

Franchisee Parties. The term “Franchisee Parties” shall mean Franchisee, its officials, employees and agents and all contractors and sub-contractors acting on behalf of Franchisee.

Hazardous Material. The term “Hazardous Material(s)” shall mean any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any Environmental Law.

Maintain or Maintenance. The term “Maintain” or “Maintenance” shall mean examining, testing, inspecting, repairing, maintaining, and replacing Facilities or any part thereof as required and necessary for effective, efficient and safe Operations and related activities, as performed by or on behalf of Franchisee, unless otherwise provided herein.

Operate or Operations. The term “Operate” or “Operations” shall mean the use of Franchisee's

Facilities for delivery of electrical service to Franchisee's customers.

Party or Parties. The terms "Party" or "Parties" shall mean the County and Franchisee individually or collectively as the context in this Franchise provides.

Road Standards. The term "Road Standards" shall mean the King County Road Design and Construction Standards adopted pursuant to KCC 14.42.

Roadside Management Program or RMP. The term "Roadside Management Program" or "RMP" shall mean a program developed by Franchisee and accepted by the County to identify Franchisee Facilities not in compliance with County Road Standards and to remediate same to bring such Facilities into compliance therewith.

Roadside Management Work Plan or RMP Work Plan. The term "Roadside Management Work Plan" or "RMP Work Plan" shall mean an annual remediation plan, including a schedule of work for the coming year to accomplish the RMP.

Roadside Management Work Report or RMP Work Report. The term "Roadside Management Work Report" and "RMP Work Report" shall mean an annual report of progress on the remediation work carried out during the previous year under the RMP and the annual RMP Work Plan.

Utility. The term "Utility" shall include all persons or public or private organizations of any kind that are subject to the provisions of KCC 6.27, KCC 6.27A and KCC 14.45 with regard to use of County ROW.

## Section 2: Non-Exclusive Franchise

2.1 The Franchise is granted to 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 any County ROW; provided such other grants, terms and conditions shall not be in conflict with the rights, duties and obligations under this Franchise. This Franchise shall in no way prevent, inhibit, or prohibit the County from using or modifying any of the County ROW for any County purpose. The County expressly retains its power to make or perform any and all modifications of the County ROW or relocations of the County ROW reasonably necessary for the County to carry out any County purpose, including but not limited to, the construction, alteration, improvement, repair, maintenance or removal of County facilities in the County ROW, as well as the power to vacate the County ROW.

2.2 Any work related to any of Franchisee's Facilities occurring in any County ROW covered by this Franchise shall be performed by Franchisee Parties in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the access to adjacent property.

2.3 Franchisee accepts the County ROW in an “as is with all faults” basis with any and all patent and latent defects and is not relying on any representation or warranties, express or implied, of any kind whatsoever from King County as to any matters concerning the County ROW, including, but not limited to the physical condition of the County ROW; zoning status; presence and location of existing facilities; operating history; compliance of the County ROW with Environmental Laws or other Laws and other requirements applicable to the County ROW; the presence of any Hazardous Materials or wetlands, asbestos, or other environmental conditions in, on, under, over or in proximity to the County ROW; the condition or existence of any of the above ground or underground structures or improvements in, on, over or under the County ROW; the condition of title to the County ROW, and the leases, easements, franchises, orders, licenses, or other agreements, affecting the County ROW (collectively, the “Condition of the County ROW”).

King County hereby disclaims any representation or warranty, whether expressed or implied, as to the design or Condition of the County ROW, its merchantability or fitness for any particular purpose, the quality of the material or the workmanship of County ROW, or the conformity of any part of the County ROW to its intended uses. King County shall not be responsible to any Franchisee Party for any damages to any of them relating to the design, condition, quality, safety, merchantability or fitness for any particular purpose of any part of the County ROW, or the conformity of any such property to its intended uses, as of the Effective Date of this Franchise.

### Section 3. Term

3.1 The initial term of this Franchise, and all privileges, obligations and restrictions pertaining thereto, shall be for a period of ten (10) years (the "Initial Term"), from the Effective Date, unless earlier terminated, revoked or amended pursuant to the provisions of this Franchise.

3.2 The Director of the Facilities Management Division on behalf of the County may extend the Initial Term of this Franchise for an additional period of up to fifteen (15) years, if so requested by Franchisee in accordance with this Section 3, conditioned upon Franchisee having maintained substantial compliance with the terms and conditions of this Franchise. The authority to grant such an extension does not include the authority to otherwise amend the terms and conditions of the Franchise. The request by Franchisee must be in writing and made to the County, not more than two (2) years (except as otherwise agreed to by the Parties in the RMP) nor less than one hundred eighty (180) days prior to the expiration of the Initial Term. Unless Franchisee receives written notice from the County prior to expiration of the Initial Term indicating the County has chosen to extend the term of this Franchise (and the length of the extension), then the Initial Term shall not be extended under this Section.

3.3 If Franchisee does not receive notice from the County that the Initial Term of this Franchise will be extended pursuant to Section 3.2 above, and Franchisee wishes to continue to operate within the County ROW, Franchisee shall promptly file an application with the County for amendment or renewal of this Franchise in accordance with KCC 6.27.054. Upon receipt of such application, the County and Franchisee shall commence good faith negotiations on the terms and conditions of a franchise amendment or renewal.

3.4 If the Parties are unable to reach agreement to amend or renew this Franchise prior to expiration of the Initial Term, then the rights, privileges and authority to use County ROW granted by this Franchise shall terminate at the end of the Initial Term and Franchisee shall thereafter be considered an unfranchised utility for the purposes of KCC 14.44 until such time that a new franchise is granted to and accepted by Franchisee. If Franchisee continues to use County ROW after the expiration or termination of this Franchise (“Holdover Period”), such continued use shall be subject to the terms and conditions of this Franchise and at the will of the County. Said use shall not constitute a renewal or extension of this Franchise and shall be subject to termination.

#### Section 4. County ROW Construction Permit Required

4.1 Franchisee Parties shall not commence any Construction or Maintenance work within a County ROW until a County ROW construction permit authorizing such work has been issued pursuant to KCC 14.44, except as provided for in Section 5 of this Franchise. Applications for County ROW construction permits shall be presented to the King County Real Estate Services Section (“RES”) along with such detailed design and Construction plans and documents, studies, and reports as are required by RES.

4.2 Any and all work performed by Franchisee Parties pursuant to this Franchise shall be performed in accordance with all County standards applicable at the time of such work, including but not limited to the standards of good practice in the King County Regulations for Accommodation of Public Utilities on County ROW, the County Road Standards, County approved plans and specifications for the work, and the terms and conditions of any County ROW construction permit and/or other permits and/or approvals required under King County Code. All Franchisee's Facilities and all Construction or Maintenance work shall be the responsibility of Franchisee. All permits for Construction or Maintenance in the County ROW shall be applied for and issued in the name of Franchisee, who will be responsible for all work performed under such permits, regardless of who performs the work.

4.3 County ROW construction permit applications for Franchisee’s pole replacement projects shall include a timeline for removal of all retired poles.

#### Section 5. Emergency Work

5.1. Should any of Franchisee’s Facilities fail or become damaged or become nonoperational such that an immediate danger to property, life, health, or safety (an “Emergency”) is presented, or should any site upon which a Franchisee Party is engaged in Construction or Maintenance be in such a condition that an Emergency is presented, Franchisee shall, upon becoming or being made aware thereof, immediately take such measures as are reasonably necessary to repair the Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect property, life, health, or safety. In the event of an Emergency, Franchisee may take corrective action immediately, without first applying for or obtaining a County ROW construction permit. However, the Emergency provisions contained in this Section 5 shall not relieve Franchisee from its obligation to notify the County and to obtain a County ROW construction permit or any other permits necessary for the corrective actions. In the event of any Emergency, Franchisee shall,

upon becoming or being made aware thereof, immediately notify the County of the emergency via email or phone call to both the Road Services Division and the Real Estate Services Section. Emergency contact should be directed to KCUIU@kingcounty.gov (or 206-477-2611) and to Res.permits@kingcounty.gov (or 206-477-9350). County ROW construction permit applications must be submitted as soon as reasonably feasible, but not later than the next working day following completion of Franchisee's Emergency action.

5.2 If the County discovers a situation that constitutes an Emergency, the County will first make a good faith effort, taking into account the exigency of the circumstances, to contact Franchisee to remedy the Emergency. If the County is unable to contact Franchisee or Franchisee is unable to remedy the Emergency in a timely manner, the County may take corrective action to stabilize and make the discovered situation safe; provided the County shall not work on or cause work to be done on Franchisee Facilities. In such event, Franchisee shall reimburse the County for any and all documented direct costs and expenses incurred by the County to take such corrective action. Such costs and expenses shall include, but not be limited to, 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 County ROW as a result of the Emergency.

#### Section 6. Compliance with Applicable Laws; Performance Standards

6.1 Franchisee Parties shall at all times comply with all Applicable Laws and utility standards including, but not limited to, the County's Comprehensive Plan, zoning code, and any development regulations that are applicable to any and all work or other activities performed by Franchisee Parties pursuant to or under authority of this Franchise.

6.2 During any period of Construction or Maintenance work occurring in County ROW, Franchisee Parties shall ensure that such work does not unreasonably impede (i) public use of the County ROW for vehicular and pedestrian transportation; (ii) construction or maintenance activities by other authorized users in the ROW or access to or use of their facilities; or (iii) operation, maintenance, or improvement by the County of the County ROW.

6.3 During any periods of Construction or Maintenance, Franchisee Parties shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by King County Code 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 a Franchisee Party commences any work under this Franchise which may disturb any existing monuments or markers relating to subdivisions, plats, roads, or surveys, the Franchisee Party shall reference all such monuments and markers consistent with RCW 58.09.130 and a permit shall be obtained (if required) from the Washington State Department of Natural Resources prior to the commencement of work pursuant to WAC 332-120. The cost and replacement of all such monuments or markers disturbed by a Franchisee Party shall be the responsibility of Franchisee.

6.5 If a Franchisee Party plans to make excavations in any County ROW, Franchisee shall, upon receipt of a written request to do so, provide an opportunity for the County and/or other authorized users of County ROW to participate in such excavation, and shall coordinate such participation with the County or other authorized entities; provided that, Franchisee need not permit the County or other party to participate in an excavation if any of the following are true:

- (i) such joint excavation would unreasonably delay the performance of Franchisee's work; or
- (ii) despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint excavation; or
- (iii) valid safety reasons exist for denying a request for such joint excavation or installation of proposed facilities of another party would be in conflict with the best practices employed by Franchisee; or
- (iv) the excavation is for the purpose of an Emergency consistent with Section 5 of this Franchise.

6.6 Franchisee shall maintain all Franchisee Facilities in a good state of repair.

6.7 Franchisee shall take necessary steps to maintain a reasonably clear area around all Facilities installed above ground so as to provide clear visibility for County operations and maintenance. If Franchisee intends to use chemical sprays to control or kill weeds and brush in scenic areas, prior written approval must be obtained from the County Road Engineer at least annually. The County may limit or restrict the types, amounts, and timing of application if a significant negative impact on the aesthetics or environment of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance and the King County Code related to sensitive areas.

#### Section 7. Restoration of County ROW

Promptly after completing any work within any County ROW, including, but not limited to any Construction, Franchisee shall, at no cost to the County, restore the surface of the County ROW and any adjacent areas directly affected by a Franchisee Party's work to as good or better condition as the property was in immediately prior to the commencement of the work, consistent with KCC 14.44.060 and any restoration conditions contained in applicable permits or approvals. The County Road Engineer shall have final authority to determine the adequacy of the restoration performed in accordance with the requirements set forth herein.

#### Section 8. Maps and Records

8.1 Franchisee shall maintain adequate records to document activities performed under this Franchise. The County shall have the right to review Franchisee's records regarding activities performed under this Franchise for six (6) years from the expiration or earlier termination of this Franchise. In addition to the records of Facility locations under Section 8.2, Franchisee shall

provide the County, upon the County's request with reasonable advance notice, copies of records of Construction at specific locations and reasonable opportunity to review records maintained by Franchisee in the normal course of its business of Maintenance, Operation, or regulatory compliance of Facilities as may be deemed useful by the County.

8.2 Franchisee shall maintain records to document the location of its Facilities, including as-built plans and maps. Franchisee does not warrant the accuracy of such plans and maps, and, to the extent the location of Facilities are shown, Franchisee represents that such Facilities are shown in their approximate location. Franchisee shall, upon the County's request with reasonable advance notice, provide the County with opportunity to review such records maintained by Franchisee in the normal course of its business. If a discrepancy is discovered in its records, Franchisee shall update such records to correct the discrepancy. With respect to any excavations within the County ROW undertaken by or on behalf of Franchisee or the County, nothing herein is intended (nor shall be construed) to relieve either Party of its respective obligations arising under RCW 19.122 with respect to determining the location of Utility facilities.

8.3 To the extent required by law, Franchisee reserves the right to withhold records or require the County to sign a nondisclosure agreement for the release of records which are deemed Critical Electric//Energy Infrastructure Information (CEII) by the Federal Energy Regulatory Commission (FERC). CEII means information that relates to the production, generation, transportation, transmission, or distribution of energy in which the release may cause incapacity or destruction that would negatively affect security, economic security, public health, or safety, or any combination thereto. Any such withholding or nondisclosure agreement must be consistent with FERC regulations 18 CFR 388.113 (g) (5) and the Washington State Public Records Act, RCW 42.56.

8.4 If Franchisee asserts any portion of its records provided to the County are protected from disclosure under law, Franchisee shall clearly identify any specific information contained in such portion of its records that it asserts is protected and the basis for such assertion. If the County receives a request under the Public Records Act, RCW 42.56, to inspect or copy the information so identified by Franchisee and the County determines that it is going to release the information pursuant to RCW 42.56, then the County's sole obligations shall be to notify Franchisee in writing (a) of the request under KCC 2.12.250.D, and (b) of the date that such information will be released to the requester unless Franchisee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. The County shall provide Franchisee with such notice at least ten (10) days prior to the date that such information will be released. If 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 Franchisee to claim any exemption from disclosure under RCW 42.56. The County shall not be liable to Franchisee for releasing records not clearly identified by Franchisee as protected from disclosure, nor liable to 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

9.1 Consistent with KCC 14.44.060, Franchisee shall be responsible, at no cost to the County, to adjust, modify, relocate or remove its existing Facilities when such adjustment, modification, relocation or removal is required by the County for County construction, alteration or improvement of the County ROW.

9.2 Upon the request of the County, Franchisee shall promptly locate and, if reasonably deemed necessary by the County, excavate and expose, at its sole cost and expense, portions of its Facilities for inspection so that the location of the Facilities may be taken into account in the design of County improvements; provided, that Franchisee shall not be required to excavate and expose Franchisee's Facilities for inspection unless Franchisee's record plans and record drawings are reasonably determined by the County Road Engineer to be inadequate for the County's planning purposes. The decision to require relocation of any Franchisee Facilities in order to accommodate County improvements shall be made by the County Road Engineer upon review of the location and construction of Franchisee's Facilities.

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 adjust or move its Facilities to allow the moving of such structure; provided, (i) Franchisee is granted a permit by the County for such work if a permit is needed; and (ii) Franchisee is given not less than fifteen (15) business days' notice to arrange for such temporary adjustment or movement. Franchisee may require the permit holder to pay all costs to adjust or move Franchisee's Facilities and Franchisee may require such payment in advance.

9.4 In the event a condition or requirement imposed by the County upon any person or entity other than County Parties (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) reasonably necessitates adjustment, modification, relocation or removal of any Facilities, then Franchisee shall adjust, modify, relocate or remove such Facilities to accommodate such condition or requirement imposed by the County at no cost to the County; provided that nothing in this Franchise is intended or shall be construed to prohibit Franchisee from assessing on such person or entity the costs of adjustment, modification, relocation or removal as a condition of such action pursuant to this Section.

9.5 If the County determines that a County improvement project necessitates adjustment, modification, relocation or removal of Franchisee's Facilities (hereafter "Relocation" or "Relocate" in this Subsection 9.5):

- (i) The County shall provide Franchisee reasonable written notice consistent with Section 9.5(ii) of this Franchise prior to the commencement of the construction phase of a County improvement project; provided, that under the following circumstances the County need only provide 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 Facilities could not reasonably have been anticipated by the County.

(ii) The County shall provide Franchisee with copies of available plans and specifications for the County improvement project including vertical and horizontal profile of the roadway including any drainage facilities within it (both existing and proposed) as well as the proposed construction schedule for the County improvement project at least one hundred eighty (180) days before construction is scheduled to begin. Franchisee shall respond to this notice and any later notices of revised designs based on permit conditions, within thirty (30) days by providing the County with information regarding the location of its Facilities, including any Facilities that it has decommissioned in place. The County shall provide Franchisee the final construction schedule for the County improvement project.

(iii) After receipt of such notice, plans, specifications and final construction schedule, Franchisee shall complete Relocation of its Facilities within the timeline prescribed by the County for the County improvement project; provided that such Relocation of Facilities reasonably requiring prior preparation of the County ROW by the County may be Relocated by Franchisee during and in coordination with construction of the County improvement project as may be mutually agreed by Franchisee and the County. In the event of an emergency, Franchisee shall make it best efforts to Relocate the Facilities at issue within a time period reasonably specified by the County Road Engineer.

(iv) If Franchisee determines that Relocation cannot reasonably be completed within the time period provided by the County, Franchisee shall propose a revised schedule to the County for completion of such Relocation. If the County and Franchisee agree upon a schedule for such Relocation, Franchisee shall complete the Relocation in accordance with the agreed schedule. If the County and Franchisee are unable to agree upon a Relocation schedule, Franchisee shall Relocate its Facilities according to the schedule reasonably established by the County. In the event Franchisee performs in good faith but is unable to complete Relocation according to the schedule established by the County or agreed to by the Parties due to delays attributable to County Parties or attributable to other circumstances beyond Franchisee's control, then Franchisee shall not be liable for its inability to complete such Relocation pursuant to Section 16.1.

9.6 Nothing in this Section 9 shall require Franchisee to bear any cost or expense in connection with the relocation of any Facilities existing pursuant to easement or other lawful rights not derived from this Franchise and granted prior to the Effective Date of this Franchise or prior to the creation of the County ROW in which the Facilities are located.

#### Section 10. County Use of Facilities

10.1 The County may install and maintain equipment, fiber or wires in or on Franchisee's Facilities, subject to Franchisee's consent, which shall not unreasonably be withheld. The

County's use of such equipment, fiber or wires shall be for non-commercial communications purposes and shall be subject to a joint use agreement between the Parties.

10.2 Installation and maintenance of County equipment, fiber or wires shall be done by the County in accordance with all applicable laws, utility standards and reasonable requirements typically imposed on Colocators.

10.3 Franchisee shall have no obligation to indemnify the County from any damages resulting from County Parties' construction, operation or maintenance of County equipment, fiber or wires in or on Franchisee's Facilities, except to the extent caused by the acts or omissions of Franchisee Parties.

10.4 Franchisee shall not charge the County for use of its Facilities as described in Section 10.1, provided however, that nothing herein shall require Franchisee to bear any cost or expense in connection with any such installation and/or maintenance by the County.

#### Section 11. Roadside Management Program; Reports

11.1 Franchisee acknowledges that as of the Effective Date some Franchisee Facilities are not in compliance with the Road Standards and that such Facilities could potentially pose an obstacle to the travelling public. Within one hundred twenty (120) days following the Effective Date, Franchisee shall submit for review and acceptance by the County, a Roadside Management Program (RMP) to remediate Franchisee Facilities that are located within the clear zone (as described in the Road Standards), within a reasonable time frame based on the evaluation of existing conditions, prioritization by parties, Franchisee capital funding ability, and other factors identified in the RMP. The Parties agree to negotiate in good faith to reach agreement on a final RMP within sixty (60) days following Franchisee's submission thereof. If the Parties cannot reach agreement within said sixty (60) day period, the matter shall be elevated to the Directors of the King County Departments of Executive Services and Local Services and equivalent executive level management of Franchisee for agreement of a final RMP. If the Directors and Franchisee cannot reach agreement within ninety (90) days of Franchisee's submission, the unresolved matter(s) shall be submitted to mediation. The Parties shall mutually agree on a mediator. Each Party shall bear its own costs of mediation. The costs of the mediator shall be borne equally by the Parties. If mediation does not result in agreement by the Parties within thirty (30) days after the matter is eligible for submission to mediation, then the King County Executive shall, giving due consideration to the relative positions of the Parties, make a final decision on the unresolved contents of the RMP, which shall constitute County acceptance of the final RMP. Franchisee shall thereafter provide a clean copy of the final RMP as agreed with the County or decided by the County Executive within fifteen (15) days following the County's acceptance of the final RMP. Franchisee shall thereafter, promptly commence implementation of the remediation projects identified in the RMP.

11.2 The Parties may periodically review and amend the RMP as needed, subject to mutual agreement.

11.3 Franchisee shall submit an annual RMP Work Plan, identifying specific remediation projects to be accomplished in the following calendar year and an annual RMP Work Report, showing the status of the remediation projects that were planned to be accomplished during the preceding year. Both the RMP Work Plan and the RMP Work Report shall be due to the County by January 31<sup>st</sup> of each year of this Franchise, until such time that all Facilities identified in the RMP have been remediated in accordance with the Road Standards.

## Section 12. Hazardous Materials

12.1 The County understands and agrees that the activities authorized by this Franchise may involve the use by Franchisee Parties of certain Hazardous Materials. Franchisee Parties may use such Hazardous Materials within the County ROW as are reasonably necessary for the activities authorized by this Franchise and which are customary for the industry in which Franchisee is engaged; provided, however, that the use of any such Hazardous Materials within the County ROW shall at all times be undertaken in strict compliance with all Environmental Laws.

12.2 Franchisee agrees that no Franchisee Party shall cause or contribute to, in any manner through act or omission, the release, leak, deposit, seepage, spill, or escape of any Hazardous Material (collectively or individually a "Release") in any County ROW. A Release in any County ROW caused or contributed to by a Franchisee Party through act or omission, during the term of Franchise No. 5052 or during the time period in which Franchisee operated in the County ROW after expiration of Franchise No. 5052 shall also be a Release for purposes of this Section 12; however, Releases that occurred during these time periods shall be subject to the notice provisions of Subsection 12.3 upon discovery.

12.3 Should a Franchisee Party cause or contribute to a Release, Franchisee shall, upon becoming aware of the Release, immediately or as soon thereafter as reasonably possible (but in no event later than the next business day) provide written notice of the Release to the County by email to the Real Estate Services Section (RES.permits@kingcounty.gov), and the Road Services Division (KCUIU@kingcounty.gov), and provide notice to any affected property owner, and if required by Environmental Laws, to the Washington State Department of Ecology and other government entities.

12.4 Franchisee shall be responsible, at no cost to the County, for promptly remediating any Releases caused or contributed to by any Franchisee Party within County ROW, including Releases that may migrate from the County ROW to property outside the County ROW. Releases in the County ROW caused or contributed to by any Franchisee Party shall be remediated to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the County ROW or other County property with no environmental covenant or other deed restriction required to be recorded. If Franchisee believes it is not practicable to remove all Releases above those levels due to location of existing utilities or similar factors, Franchisee may request that it be allowed to leave Hazardous Materials in the County ROW and shall provide the County with the information it is relying on for its request. The County will determine, in its sole discretion, whether it will grant such request. Any request that would require the recording of an environmental covenant or other deed restriction shall be determined by County Council. The

County does not guarantee or warrant its authority to record a covenant or deed restriction in County ROW. Any County approval of Franchisee's request shall be contingent on the Parties reaching a separate agreement in which Franchisee is responsible for all costs, expenses and liabilities incurred by the County as a result of the continued presence of the Hazardous Substances in County ROW. Franchisee shall obtain County's approval of its remediation plan prior to conducting remediation; provided, however, that Franchisee shall be entitled to respond immediately to an emergency without prior approval from County, including but not limited to taking actions necessary to prevent the Release from spreading and taking actions necessary to respond to any immediate obligations imposed on Franchisee by Environmental Laws. Notwithstanding Franchisee's obligation to completely remediate same, in the event of any Release by a Franchisee Party, if the County determines that Franchisee is not promptly remediating the Release, the County may, 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, investigate, or otherwise remediate the Release at issue. The County shall provide Franchisee with prior written notice of its intent to take action under this section. If Franchisee conducts emergency actions without prior County approval, Franchisee shall provide the County, upon request, copies of all reports, sampling data, and communications with government entities or other documentation concerning the remedial actions taken. Franchisee shall, at its sole cost and expense, timely prepare and submit any reports or communications required by Environmental Laws. Franchisee shall provide the County with copies of the reports and all other written communications to or from government entities concerning Franchisee's remediation work under this Subsection 12.4. The County shall be entitled to repayment from Franchisee of any and all costs and expenses incurred by the County under this subsection.

12.5 If a Franchisee Party discovers Found Hazardous Materials in conducting actions authorized under this Franchise, Franchisee shall immediately or as soon thereafter as reasonably possible (but in no event later than the next business day) provide notice to the County by email to the Real Estate Services Section (RES.permits@kingcounty.gov), the Road Services Division (KCUIU@kingcounty.gov) and, if requested by the County, notice to other government entities as required by Environmental Laws.

12.6 Franchisee Parties shall handle all Found Hazardous Materials encountered in conducting actions authorized under this Franchise in full compliance with Environmental Laws, including but not limited to the excavation, stockpiling, transportation and disposal of those materials, at no cost to the County. The County shall not be liable to Franchisee Parties for any damages, costs, losses, expenses, penalties or liabilities arising out of or connected with the presence of Found Hazardous Materials and Franchisee hereby releases the County from any such claims. Franchisee Parties shall conduct their actions in and around Found Hazardous Materials in a manner that does not cause migration or other exacerbation of the Found Hazardous Materials. Franchisee Parties shall not be required to remove or otherwise remediate any Found Hazardous Materials except to the extent necessary to conduct actions authorized under this Franchise, in Franchisee's sole discretion, or to the extent necessary to remediate any migration or other exacerbation of Found Hazardous Materials caused by a Franchisee Party. Franchisee shall at no cost to the County, timely prepare and submit any reports or communications required by Environmental Laws

concerning any Franchisee Party's actions under this Subsection 12.6, and Franchisee shall provide the County with copies of such reports or communications. Franchisee shall also provide the County, upon request, documentation or other information concerning Franchisee's actions concerning Found Hazardous Materials that is not submitted to government entities. Nothing in this Franchise shall be construed as limiting Franchisee's ability to pursue the recovery of remedial action costs incurred by a Franchisee Party for excavation, stockpiling, transportation and disposal of Found Hazardous Materials from parties other than the County, its elected and appointed officials and employees.

### Section 13. Dangerous Conditions, Authority for County to Abate

13.1 Whenever Franchisee's Construction or Maintenance of Facilities authorized by this Franchise has caused or contributed to a condition that, in the reasonable opinion of the County Road 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 Road Engineer may direct Franchisee to remedy the condition or danger caused or contributed to by Franchisee's actions to the satisfaction of the County Road Engineer, within a specified period of time and at no cost to the County.

13.2 In the event that Franchisee fails or refuses to promptly take the actions directed by the County Road Engineer or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the County may take actions that are reasonably necessary to protect the public, the adjacent roads, road facilities or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and Franchisee shall be liable to the County for the costs thereof, but only to the extent that Franchisee has caused or contributed to the condition; provided the County shall not work on or cause work to be done on Franchisee's Facilities.

### Section 14. Decommissioning of Franchisee Facilities

14.1 In no event may any portion of any Franchisee Facilities be decommissioned in place by Franchisee without the express written consent of the County, which may be granted or withheld in its sole discretion, unless otherwise provided by Applicable Laws. If Franchisee desires to decommission in place any portion of its Facilities, Franchisee shall request the County's permission to do so by delivering a written request to the County a minimum of thirty (30) days prior to the date Franchisee desires to decommission the Facilities, and such request may be delivered to the County as part of an application for a County ROW permit. Franchisee's request shall identify the specific Facilities Franchisee desires to decommission in place. If the County denies Franchisee's request with respect to any portion of the Facilities, then Franchisee must promptly remove those Facilities for which Franchisee's request for decommissioning has been denied or provide notice to the County that Franchisee will not decommission the Facilities and will continue to use, Operate and Maintain the Facilities. If the County approves Franchisee's request, then the County may impose conditions on such approval, including the future removal of the decommissioned Facilities. Franchisee shall continue to be responsible for all decommissioned Facilities located in the County ROW. No above ground Facilities located in the clear zone shall be decommissioned in place.

14.2 In the event the County authorizes Franchisee to decommission in place any portion of its Facilities, Franchisee shall, at its sole cost and expense, as directed by the County, remove from the Facilities any product, Hazardous Material, and/or other substance, and take other actions as necessary so as to render such Facilities safe in accordance with Applicable Laws or such other standards as may be deemed appropriate by the County.

14.3 Should Franchisee fail to comply with the requirements of Section 14.1 within a reasonable time after the County's denial of Franchisee's request to decommission in place any portion of its Facilities, Franchisee shall be deemed to have decommissioned the Facilities without authorization. In the event of any unauthorized decommissioning of any Facilities by Franchisee, the County may, at its election, and in addition to any other remedies or enforcement options available to the County under this Franchise, at law or in equity, remove all or any portion of the unauthorized decommissioned Facilities and restore the County ROW following such removal; provided that prior to such removal action by the County, the County shall confirm with Franchisee in writing that the Facilities in question are in fact deenergized and disconnected from any and all energized Facilities. Should the County choose to perform any such removal and restoration activities involving unauthorized decommissioned Facilities, the County may dispose of the removed Facilities in any manner it deems fit, and Franchisee shall be liable to the County for all costs and expenses incurred by the County in performing such removal and restoration activities.

14.4 Within ninety (90) days of the end of the term of this Franchise, including any Holdover Period, extension, revocation or termination thereof, Franchisee shall provide a written request to the County pursuant to Section 14.1 if Franchisee wishes to decommission in place any of its Facilities. The request and the Parties' associated obligations and rights shall be subject to the provisions of this Section 14. If Franchisee fails to provide such request within the prescribed ninety (90) days, Franchisee shall be deemed to have decommissioned Facilities in place without authorization, and the County shall have the remedies available to it under Section 14.3 in addition to any other remedies or enforcement options available under the Franchise, at law or in equity.

14.5 If Franchisee does not intend to continue use of any Facilities which are occupied by a Collocator, and Franchisee desires to transfer ownership of such Facilities to said Collocator rather than decommissioning them in place, Franchisee shall notify the County of its intentions as prescribed in Section 23, and any transfer shall be subject to the terms of Section 23. No above ground Facilities located in the clear zone shall be transferred to another party.

#### Section 15. Consideration and Reservation of Rights

15.1 The County reserves the right to exercise any authority it may have or may acquire in the future to receive compensation or other consideration ("Consideration"), which Consideration will be in exchange for the Franchisee's right to use and occupy the County ROW. The County may exercise this right by providing Franchisee with written notice to commence negotiations to amend this Franchise, which notice will describe the proposed Consideration. Within thirty (30) days from the receipt of notice from the County, the Parties shall engage in good faith negotiations for a period of sixty (60) days thereafter in an effort to reach agreement on the

amount, type, and terms of the Consideration. The sixty (60) day period for negotiations may be extended by mutual agreement of the Parties.

15.2 If the Parties agree on the amount, type and terms of the Consideration, then they shall amend this Franchise accordingly in accordance with Section 34; provided, however, any such amendment may be approved by the Director of the Facilities Management Division on behalf of the County. If the Parties are unable to agree on the amount, type and terms of the Consideration during the sixty (60) day negotiation period (as may be extended by mutual agreement), the County may declare such failure to agree to be an event of Default to be resolved in accordance with Section 25.4.

15.3 Separate from the Consideration which is the subject of Section 15.1 above, the County reserves for itself the right to impose a utility tax on Franchisee, if such taxing authority is granted by the State of Washington.

15.4 Franchisee shall pay all applicable fees as specified in King County Code to cover the County's costs in drafting, processing and administering this Franchise and all work related thereto.

#### Section 16. Hold Harmless and Indemnification

16.1 Franchisee agrees to release, indemnify, defend (using counsel reasonably acceptable to the County), and hold harmless the County Parties from and against the following claims, demands, liability, suits, and judgments, including costs of defense thereof, awards, penalties, fines, costs (including but not limited to removal, remedial action or other costs recoverable under CERCLA or MTCA), government orders or other requirements ("Claims"): (a) Claims for injury to persons, death or property damage caused by, arising out of, or incidental to a Franchisee Party's exercise of rights and obligations under this Franchise; (b) Claims caused by, arising out of or incidental to acts or omissions of a Franchisee Party under Section 12 of this Franchise; (c) Claims caused by, arising out of or incidental to a Default under this Franchise; and (d) Claims caused by or arising out of the County's issuance to Franchisee of a variance to the Road Standards, to the extent such Claim is attributable to the location of the Facility that is subject to the variance. To the extent a Claim falls within the terms of (a) and (d) above, (d) shall govern. Franchisee shall have no obligation to indemnify, defend, and hold harmless any County Party to the extent a Claim for injury to persons, death, or property damage is caused by the negligence or willful misconduct of County Parties. In the event any such liability arises from the concurrent negligence of the Parties, the indemnity obligation of this Section shall apply only to the extent of the negligence of the respective Parties. This limitation on Franchisee's obligation shall not apply to Claims under (b) or (d) above. Except and only as otherwise specifically provided in (b) and (c) above, nothing herein is intended, nor shall be construed, to require the Franchisee to indemnify, defend and hold harmless County Parties for any Release caused or contributed to by any County Party.

16.2 In the event the County incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 16 against Franchisee, all such reasonable fees, expenses, and costs shall be recoverable from Franchisee to the extent the County prevails in such enforcement action.

16.3 It is specifically and expressly understood that, solely to the extent required to enforce the release, indemnification, defense, and hold harmless obligations contained in this Section 16, 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.

16.4 Franchisee's covenants and indemnifications provided in this Section 16 shall extend to the period of time during which Franchisee occupied the County ROW after expiration of the term of Franchise No. 5052.

16.5 The County shall give Franchisee timely written notice of any Claim covered by the indemnification, defense, and hold harmless obligations contained in this Section 16. 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 Claim, and the County shall cooperate fully with Franchisee, provided: (a) any settlement or compromise is consistent with the terms of this Franchise; and (b) any terms or conditions of a settlement other than the payment of money damages that in any way obligate or affect the County shall require the County's prior approval.

16.6 Subject only to the limitations set forth in Subsection 16.1, the County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by Franchisee or 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 release, indemnification, defense and hold harmless obligations contained in this Section 16.

#### Section 17. Limitation of County Liability

The County's administration of this Franchise shall not be construed to create a basis for any liability on the part of the County Parties, except for and only to the extent of the County Parties' negligence or willful misconduct as provided in Subsection 16.1.

#### Section 18. Insurance Requirements

##### 18.1 Insurance Requirements

##### A. Insurance Required

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 Franchisee, its agents, representatives, employees and contractors/subcontractors. Franchisee shall pay the costs of such insurance. Franchisee shall furnish evidence of insurance as proof of compliance with insurance requirements contained herein.

Franchisee is responsible for ensuring compliance with all of the insurance requirements stated herein. Failure by Franchisee to comply with the insurance requirements stated herein shall constitute a material breach of this Franchise.

If coverage is purchased on a "claims made" basis, Franchisee shall continue 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 expiration, termination, revocation, 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 named 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 Franchisee under this Franchise, nor shall such minimum limits be construed to limit any insurance coverage obtained by Franchisee. 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 0 1 ) 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, or the 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. Deductibles and Self-Insured Retentions

The deductible and/or self-insured retention of the policies shall not apply to Franchisee's liability to the County and shall be the sole responsibility of Franchisee.

E. Other Insurance Provisions

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

(i) With respect to all liability policies except Workers Compensation:

a. County Parties shall be covered as additional insured with respect to liability arising out of activities performed by or on behalf of Franchisee in connection with this Franchise. Such coverage shall include Products-Completed Operations.

b. To the extent of Franchisee Parties' negligence, Franchisee's insurance coverage shall be primary insurance with respect to County Parties. Any insurance and/or self-insurance maintained by County Parties shall not contribute to Franchisee's insurance or benefit Franchisee in any way.

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

(ii) With respect to all policies:

Coverage shall not be suspended, voided, canceled, materially reduced in coverage or in limits, except by the reduction of the applicable aggregate limit by claims paid, until after thirty (30) days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, 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.

F. Acceptability of Insurers

Unless otherwise approved by the County, insurance is to be placed with insurers with an AM Best rating of no less than A-VII, or, if not rated with AM Best, with minimum surpluses the equivalent of AM Best surplus size VIII. Professional Liability, Errors, and Omissions insurance may be placed with insurers with an AM Best 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, 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.

#### G. Verification of Coverage

Franchisee shall furnish the County with certificates of insurance and endorsements, as applicable, or confirmation of self-insurance and 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, upon reasonable request.

#### H. Contractors/Subcontractors

Franchisee shall include all contractors/subcontractors as insured under its policies or shall require separate certificates of insurance and policy endorsements from each contractor/subcontractor.

#### I. 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 of this Franchise 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 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.

18.3 Upon expiration or termination of this Franchise, the County reserves the right to satisfy the amount of any Consideration, to the extent such amount is due the County and remains unpaid pursuant to Section 15, by utilizing any funds available under the performance bond required in Section 19. This obligation to secure the payment of such Consideration by such bond is an insurance requirement for purposes of this Section 18.

18.4 In satisfaction of the insurance requirements set forth in this Section 18, Franchisee may maintain a self-insurance program for its liability exposures in this agreement, which are consistent with good utility practice. Franchisee agrees to provide the County with at least thirty (30) days prior written notice of any material change in Franchisee's self-funded insurance program and a letter of self-insurance as adequate proof of coverage. If Franchisee decides to no longer maintain a self-insurance program for its liabilities, Franchisee must promptly notify the County and provide Certificates of Insurance and corresponding endorsements evidencing the insurance requirements required in Subsection 18.2 have been satisfied.

#### Section 19. Surety

19.1 Performance Bond. Within thirty (30) days of the Effective Date of this Franchise, Franchisee shall furnish a bond executed by Franchisee and a corporate surety authorized to do surety business in the State of Washington, with an A.M. Best's rating of an A: XII in the sum of \$1,000,000 to ensure the faithful performance of Franchisee's obligations under this Franchise. Franchisee shall pay all premiums or costs associated with maintaining the performance bond, and shall keep the bond in full force and effect at all times during the term of this Franchise and any extension thereof. The Parties agree that Franchisee's maintenance of the bond required herein shall not be construed to excuse Franchisee's failure to perform or limit the liability of Franchisee to the amount of the bond or otherwise limit the County's recourse to any other remedy available at law or equity.

#### Section 20. Incorporation, Annexation

If any County ROW covered by this Franchise is incorporated into the limits of any city or town by operation of municipal incorporation or annexation, the Franchise granted herein shall terminate as to any County ROW incorporated or annexed into the corporate limits of such city or town; but the Franchise shall continue as to any County ROW not incorporated into a city or town.

#### Section 21. Vacation

21.1 Subject to Section 21.2, if all or any portion of a County ROW which is subject to this Franchise is vacated by the County, then this Franchise shall terminate with respect to the vacated portion of such County ROW. The County shall not be liable for any damages or loss to Franchisee by reason of such vacation and termination.

21.2 Whenever a County ROW or any portion thereof is vacated, the County may retain an easement in the vacated portion 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 County ROW 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 Franchisee at least sixty (60) days prior to taking final action. Should Franchisee desire the County to retain a utility easement in the vacated County ROW, 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 Franchisee make such a request, the County may retain said easement in the manner and to the extent allowed by law.

## Section 22. Transfer and Assignment

22.1 This Franchise may not be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of Franchisee (each such activity, a "Transfer"), in whole or in part, in any manner, without the prior written consent of the County Council, which consent may not be unreasonably withheld or delayed. If such Transfer is approved by the County Council, the transferee must agree to be bound by all of the terms and conditions of this Franchise.

22.2 Notwithstanding the foregoing Section 22.1, Franchisee shall have the right, without notice to nor acceptance by the County, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders, provided that such mortgage does not impair Franchisee's responsibilities and capabilities to meet all of its obligations under this Franchise and does not result in a transfer of this Franchise or Franchisee's Facilities.

22.3 Transfer of this Franchise or use of Franchisee Facilities in violation of Sections 22 or 23 shall constitute a material breach of the Franchise.

## Section 23. Use of Franchisee's Facilities by Colocators

23.1 To assist the County in managing use of the County ROW, Franchisee shall provide a list of all existing Colocators to the County within ninety (90) days of the Effective Date of this Franchise. Thereafter, Franchisee shall update this list on an annual basis, which shall be due to the County by January 31st of each year during the term of this Franchise and any extension thereof. In addition, Franchisee will provide the County on a quarterly basis, a list of any requests for Colocation (including the name and contact information of the Colocator) if the Colocator was not previously identified on the annual list of Colocators operating in County ROW.

23.2 When entering into new agreements with Colocators for use of Franchisee's Facilities ("Colocation Agreements") and when updating and renewing existing Colocation Agreements, Franchisee shall include in such new, updated and renewed Colocation Agreements language affirming that Colocators shall install attachments on Franchisee's Facilities in accordance with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, and other requirements of governmental authorities, including obtaining from the County, the right and authorization to use or occupy the County ROW. Nothing in this Franchise is intended or shall be construed as agreement by the County with the terms and conditions of any Colocation Agreement or as a waiver of the requirements in King County Code for County permits, franchises or other authorizations prior to use or occupancy of County ROW.

23.3 In the event Franchisee desires to transfer ownership of Facilities to a Colocator, such transfer shall be arranged and accomplished consistent with a written agreement between the County and the Colocator, binding the Colocator to compliance with all terms and conditions applicable to the Colocator's use and occupancy of the County ROW. Facilities that are out of

compliance with the Road Standards may not be transferred unless and until they are brought into compliance.

#### Section 24. Revocation, Termination and Forfeiture

24.1 If Franchisee Defaults on any term or condition of this Franchise, the County may revoke this Franchise as provided in KCC 6.27, or terminate this Franchise, subject to the notice and cure rights in Section 25.4 of this Franchise.

24.2 If Franchisee willfully violates or willfully fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the County under the provisions of this Franchise, then the County may declare forfeiture of all rights conferred to Franchisee hereunder and this Franchise may be revoked or terminated by the County upon reasonable written notice of not less than thirty (30) days to Franchisee.

24.3 Upon revocation or termination of this Franchise, all rights of the Franchise granted hereunder shall cease. Revocation or termination of this Franchise may serve as cause for the County, in its sole discretion, to suspend or withdraw approval of any active County ROW construction permits and any Facilities Construction then ongoing within County ROW.

#### Section 25. Remedies to Enforce Compliance, Default, Dispute

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

25.2 During any period in which Franchisee is in Default, the County may decline to issue any County ROW construction permits to Franchisee until such Default is cured; provided, however, if the County gives Franchisee notice of Default in connection with negotiation of Consideration (Section 15.1), the County shall issue ROW construction permits under the following circumstances:

- A. When the Seattle-King County department of public health has certified in writing to the Facilities Management Division that the proposed work is necessary to address a specifically identified public health hazard;
- B. When the road services division of the department of local services has certified in writing to the Facilities Management Division that the proposed work is necessary to address specifically identified actual or imminent damage to County ROW or to address specifically identified hazards to users of County ROW; or
- C. When Franchisee has certified in writing to the Facilities Management Division that the proposed work is necessary to comply with Franchisee's public service obligations arising under Title 80 RCW "Public Utilities."

Nothing herein is intended, nor shall be construed, to limit the availability of any other right or remedy available to the Parties arising under this Franchise.

25.3 If a dispute arises between the Parties by reason of this Franchise, the dispute shall first be referred to the representatives that have been designated by the County and Franchisee to have oversight over the administration of this Franchise. The representatives shall meet within a reasonable time, not longer than thirty (30) calendar days of either Party's request for a meeting, whichever request is first, and the Parties shall make a good faith effort to achieve resolution of the dispute. If the Parties are unable to resolve the dispute during the initial meeting of the Parties' representatives, and unless further negotiations are agreed upon by the Parties, the Parties hereby agree that the matter shall then be referred to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. Any expenses incidental to mediation shall be borne equally by the Parties. If the Parties fail to achieve a resolution of the dispute through mediation within thirty (30) days after the matter is eligible for submission to mediation, then (a) in the case of an event of Default, either Party may give the other Party a written notice of Default pursuant to Section 25.4, or, (b) if the dispute is of a nature that does not constitute an event of Default, then either Party may pursue any remedies as may be available under Applicable Laws. If either Party reasonably determines that circumstances require immediate action to prevent or mitigate significant damage, then such Party may (i) immediately give the other Party a written notice of Default pursuant to Section 25.4, or, (ii) if the dispute is of a nature that does not constitute an event of Default, then either Party may immediately pursue any remedy available to such Party at law or in equity.

25.4 A Party may assert a Default by giving the other Party written notice of such Default, stating with reasonable specificity the events or circumstances and nature of the alleged Default. The Party receiving notice shall have thirty (30) days or such lesser or greater time as reasonably specified in the notice to cure the Default. If the Party receiving notice fails to cure the Default or to promptly commence and diligently pursue a cure to the reasonable satisfaction of the Party giving notice, then the Party giving notice and asserting such Default may invoke any of the remedies available under this Franchise (including, but not limited to the right of termination), subject to such defenses and other rights and remedies available to the Parties at law or in equity.

If the County, in its sole and absolute discretion, determines that circumstances involving or resulting from the actions or inactions of Franchisee or Franchisee Parties require immediate action to prevent or mitigate significant risk to public health, welfare, or safety or damage to the County ROW or adjacent properties, the County may pursue remedies without prior notice to Franchisee or without waiting for the expiration of the cure period and may require Franchisee to take immediate action to prevent or mitigate such risk.

In the event of any litigation regarding the interpretation or enforcement of this Franchise, or for a Default hereunder, or that in any other manner relates to this Franchise, the Party prevailing in such action shall be entitled to recover from the other Party all of its reasonable costs and expenses incurred in connection with such action, including reasonable attorneys' fees.

Section 26. County Ordinances and Regulations - Reservation of Police Power

This Franchise and all rights and privileges granted herein are subject to the County's exercise of its police powers. The provisions of this Franchise constitute a valid and enforceable contract between the Parties. If, subsequent to the Effective Date, the County exercises its police powers in a manner that conflicts with the provisions of this Franchise, then in such event the Parties shall work to find a mutually agreeable solution to the issue including, but not limited to, amendment of this Franchise as provided in Section 34. Nothing in this Section 26 is intended, nor shall be construed to be, a waiver of a Party's right to reject any amendment of this Franchise that may be proposed by the other Party. In the event the Parties cannot resolve the issue within a period not to exceed one hundred twenty (120) days, which may be extended by mutual agreement of the Parties, then either Party may declare such failure to agree to be an event of Default to be resolved in accordance with Section 25.4.

Section 27. Eminent Domain

This Franchise is subject to the power of eminent domain in accordance with and subject to applicable laws. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 28. Survival

28.1 Until such time as all of Franchisee Facilities have been removed from the County ROW, all of the provisions, conditions, and requirements contained in the following Sections of this Franchise shall survive the expiration, revocation, forfeiture, or termination of the Franchise and any Holdover Period: (i) Section 4 (Right of Way Construction 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 County ROW); (v) Section 8 (Maps and Records of Franchisee Facility Locations); (vi) Section 9 (Relocation of Franchisee Facilities); (vii) Section 12 (Hazardous Materials); (viii) Section 13 (Dangerous Conditions, Authority for County to Abate); (ix) Section 14 (Decommissioning of Franchisee Facilities); ; (x) Section 16 (Hold Harmless and Indemnification); (xi) Section 17 (Limitation of County Liability); (xii) Section 18 (Insurance Requirements); (xiii) Section 19 (Surety); (xiv) Section 25 (Remedies to Enforce Compliance; No Waiver); (xv) Section 29 (Governing Law, Venue and Non-Discrimination); and (xvi) Section 32 (Tariffs; Notices of Change).

28.2 After such time as all Franchisee Facilities have been removed to the County's satisfaction pursuant to Section 14, only the following provisions shall survive the expiration, revocation, forfeiture, or termination of the Franchise and any Holdover Period: (i) Section 8 (Maps and Records of Franchisee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of County Liability).

28.3 Upon either the annexation or incorporation of the Franchise Area under Section 20 or the reduction of the Franchise Area under Section 21, the following provisions of this Franchise shall survive as to any area removed from the coverage of the Franchise: (i) Section 8 (Maps and Records of Franchisee Facility Locations); (ii) Section 12 (Hazardous Materials); (iii) Section 16 (Hold Harmless and Indemnification); and (iv) Section 17 (Limitation of County Liability).

Section 29. Governing Law, Stipulation of Venue, and Non-Discrimination

29.1 This Franchise and all use of County Road 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 shall be brought in King County Superior Court, King County, Washington, 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.

29.2 Nondiscrimination: Franchisee, its successors, and assigns, shall not discriminate on the basis of race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity or expression or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code. Franchisee shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations that prohibit such discrimination in the performance of this Franchise. These laws include, but are not limited to, RCW 49.60, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a Default of this Franchise and shall be grounds for revocation, termination, or suspension, in whole or in part, of the Franchise and may result in ineligibility for further agreements with the County.

Section 30. Severability

If any section, sentence, clause, phrase, or provision of this Franchise 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 nor the application of the provision at issue to any other person or entity.

Section 31. Notice and Emergency Contact

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

KING COUNTY  
King County Administration Building  
500 Fourth Avenue, Room 830  
Seattle, WA 98104  
Attn: Real Estate Services Section  
Phone: (206) 477-9350  
Email:

PUGET SOUND ENERGY, INC.  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Attn: Municipal Relations  
Phone: 425-462-3852  
Email:

With copy to (for legal notices):  
Corporate Counsel  
P.O. Box 97034 -  
Bellevue, WA 98009-9734  
Email:

The Parties shall also provide the other Party an emergency contact name (or title) and phone number available twenty four (24) hours a day, seven (7) days a week. The Parties shall promptly notify the other Party of any change in their respective notice address or respective emergency contact information.

### Section 32. Tariffs, Notice of Changes

32.1 Franchisee is subject to regulation by the Washington Utilities and Transportation Commission (“WUTC”) including provisions of any tariff on file and in effect with the WUTC. The County has authority to control use of County ROW and to grant franchises. In the event Franchisee files a new tariff or a change to an existing tariff, and such new tariff or change to an existing tariff would conflict with or be inconsistent with the terms and conditions of this Franchise, then Franchisee shall concurrently notify the County thereof in writing and provide the County with a copy of the tariff filed with the WUTC.

32.2 Franchisee represents that, as of the Effective Date, there are no provisions of any existing tariff on file and in effect with the WUTC that conflict with or are inconsistent with the terms and conditions of this Franchise.

32.3 If, subsequent to the Effective Date, a new tariff or a change to an existing tariff shall take effect with the WUTC, and such new tariff or a change to an existing tariff conflicts with or is inconsistent with terms and conditions of this Franchise, then in such event the County may notify Franchisee of such conflict along with a proposed solution and the Parties shall work to find a mutually agreeable solution to the issue, including but not limited to amendment of this Franchise as provided in Section 34. Nothing in this Section 32 is intended nor shall be construed to be a waiver of a Party’s right to reject any amendment of this Franchise that may be proposed by the other Party. In the event the Parties cannot resolve the issue within one hundred twenty (120) days, which may be extended by mutual agreement of the Parties, then either Party may declare such failure to agree to be an event of Default to be resolved in accordance with Section 25.4.

### Section 33. Acceptance

Within sixty (60) days from the approval date by the County Council, the Franchise granted by this Franchise may be accepted by Franchisee by executing this Franchise and filing the executed Franchise with the Clerk of the County Council, which act shall be deemed an unconditional written acceptance thereof. Unless this Franchise is accepted within the time specified, this grant will be voidable and will have no force or effect.

Section 34. Amendment

This Franchise may be amended only by written agreement of the Parties, provided that, except as otherwise provided in this Franchise, such amendment shall be subject to approval by the County Council.

Section 35. Acknowledgement

The Parties acknowledge that they have consulted with their respective attorneys and have had the opportunity to review this Franchise. Therefore, the Parties expressly agree that the rule of construction that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Franchise.

IN WITNESS WHEREOF, the Parties hereto have executed this Franchise as of the date and year set forth below.

**FRANCHISEE:**

Puget Sound Energy, Inc.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

**COUNTY:**

KING COUNTY, a political subdivision of the State of Washington

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date \_\_\_\_\_

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Senior Deputy Prosecuting Attorney



## **EXHIBIT A**

### DESCRIPTION OF FRANCHISE AREA

All unincorporated King County