

**KING COUNTY WATER DISTRICT 123**

**RIGHT-OF-WAY FRANCHISE  
FOR  
WATER FACILITIES**

**Franchise No. 19220**

**King County, Washington**

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## **RECITALS**

- A. WHEREAS, Pursuant to Article 11, Sec. 4 of the Washington Constitution, RCW 36.55.010, 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
- B. WHEREAS, King County grants franchises to public and private Utility companies to authorize the Utility companies to use King County Road Rights-of-Way to provide utility service throughout King County. Franchises grant a valuable property right to Utility companies to use the King County Road Rights-of-Way, and thereby allow the Utility companies to profit and benefit from the use of the King County Road Rights-of-Way in a manner not generally available to the public; and
- C. WHEREAS, in, 1998, KING COUNTY WATER DISTRICT 123 was granted King County Franchise No. 13288, a twenty-five (25) year franchise for the right to use King County Road Rights-of-Way for the Construction, Operation, and Maintenance of water system facilities, the term of which will expire on September 28, 2023; and
- D. WHEREAS, on February 13, 2020, KING COUNTY WATER DISTRICT 123 applied to renew Franchise No. 13288, to include an expansion of the franchise area as delineated in Exhibits A and B; and
- E. WHEREAS, the King County Utilities Technical Review Committee reviewed and approved KING COUNTY WATER DISTRICT 123's Utility franchise application prior to its submission to the King County Council for approval, and
- F. WHEREAS, legal notice of the franchise application and of the hearing has been given as required by law and
- G. WHEREAS, the County Council held a public hearing on December 15, 2020, to solicit comments from the public and to consider whether to grant the requested franchise to KING COUNTY WATER DISTRICT 123.

## **GRANT OF FRANCHISE**

By Ordinance No. 19220, the King County Council authorized the King County Executive to grant this non-exclusive Utility franchise for water distribution system facilities to KING COUNTY WATER DISTRICT 123, subject to the terms and conditions contained in this franchise agreement.

This franchise grants KING COUNTY WATER DISTRICT 123 the right, privilege, and authority to use certain King County Road Rights-of-Way to construct, operate, and maintain its water distribution system facilities in, upon, over, along, across, through and under the King County Road Rights-of-Way located within the franchise area described in Exhibits A and B.

This franchise is a valuable property right, but 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 KING COUNTY WATER DISTRICT 123. 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 office that succeeds to any or all of the responsibilities of the named office or official. In addition, 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. References to “Laws” or “Applicable Laws” include federal, state, and local laws, regulations, and utility standards including, but not limited to, the County's comprehensive plan, Road Standards, King County regulations for accommodation of utilities on county road rights-of-way, zoning code, and other regulations that are applicable to any and all work or other activities performed by Franchisee pursuant to or under authority of this Franchise, Franchisee’s approved comprehensive plan under KCC 13.24.010, and state and local health and sanitation regulations. Unless otherwise stated herein, references to laws include laws now in effect as of the Effective Date of this Franchise as now codified or hereafter amended.

Authorized Hazardous Materials. Hazardous Materials that are reasonably necessary for Franchisee’s activities authorized by the Franchise and which are customarily used in Franchisee’s industry. The use of Authorized Hazardous Materials does not constitute a Release.

Construct or Construction. Activities performed by Franchisee, its agent, representatives, employees, and Contractors to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, modify, improve, or remove Franchisee Facilities, and related activities such as digging or excavating for the above purposes.

Contractor. All agents carrying out any activities on behalf of Franchisee, including subcontractors.

County. King County, a charter county and political subdivision of the State of Washington. Where discretionary acts by the County are authorized or required herein, unless otherwise stated such acts shall be performed by a Director.

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 and the King County Charter.

County Parties. The County, its elected and appointed officials, employees, and agents.

County Risk Manager. The manager of the Risk Management Division as specified in KCC 2.21.030 as now codified or hereafter amended.

County Road Engineer. The county road engineer as defined in KCC 14.01.100 and specified in RCW 36.75.010 and RCW 36.80.010 as now codified or hereafter amended.

County Road Right-of-Way. The term “County Road Right-of-Way” or “County Road Rights-of-Way,” either of which may be abbreviated as “County ROW” shall mean public land, property, or property interest, (e.g., an easement), usually in a strip, as well as bridges, trestles, or other structures, acquired by or dedicated to the County or otherwise devoted to transportation purposes. For purposes of this Franchise, “County ROW” does not include recreational or nature trails except where they intersect with or are located within County ROW. Any reference to use of or in the County ROW includes use in, upon, over, along, across, through or under the County ROW.

Default. A failure to perform, satisfy, or discharge, or to breach any term, condition, representation, warranty, or other obligation under this Franchise.

Director. The term “Director” refers to: 1) the Director of the Facilities Management Division (“Director of FMD”) or his or her designee, or 2) the Director of the Road Services Division (“Director of RSD”) or his or her designee, depending on the context.

Effective Date. The date this Franchise is fully executed by the Parties.

Emergency. Any situation that creates or presents an immediate risk of danger to life, property, safety, public health, or the environment.

Environmental Law. Any federal, state, or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction, proceeding, 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 70.105D (“MTCA”); the Washington Hazardous Waste Management Act, RCW 70.105; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq.; the Washington Water Pollution Control Act, RCW 90.48, and any laws concerning above ground or underground storage tanks.

Franchise. This agreement and any amendments or exhibits to this agreement.

Franchise Area. That portion of the County ROW wherein the County has authorized Franchisee to place Franchisee Facilities, as identified and described in Exhibits A and B.

Franchisee. KING COUNTY WATER DISTRICT 123, and its successors and those assignees approved pursuant to Section 22 (Transfer and Assignment).

Franchisee Facilities. The facilities owned, co-owned or operated by Franchisee, including its water system infrastructure including but not limited to mains, transmission lines, force mains, service lines, hydrants and other appurtenances and equipment within the Franchise Area that are necessary for the purposes of delivering water and providing fire suppression services.

Hazardous Material(s). Any waste, pollutant, contaminant, or other material that now or in the future becomes regulated or defined under any Environmental Law.

Maintenance or Maintain. Examining, testing, inspecting, repairing, and replacing Franchisee Facilities or any part thereof as necessary for safe Operations, repairs required by the County under KCC 6.27.060.C.3, and related activities, as performed by on or behalf of Franchisee.

Operate or Operations. The use of Franchisee Facilities for delivery of water service to Franchisee’s customers and providing fire suppression services.

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

Release. The release, leak, deposit, seepage, spill, or escape of any Hazardous Material caused or contributed to by Franchisee or a Contractor.

Road Standards. The King County Road Design and Construction Standards adopted pursuant to KCC 14.42.010 and as now or hereafter amended.

Roadside Management Program. The term “Roadside Management Program” or “RMP” shall mean a program developed by Franchisee and accepted by the County for Franchisee to remove or relocate at its cost its Franchisee Facilities that are not compliant with the Road Standards.

Roadside Management Program Work Plan. The term “Roadside Management Program Work Plan” or “RMP Work Plan” shall mean an annual roadside Franchisee Facility remediation plan, including a schedule of work for the coming year to accomplish the RMP.

Roadside Management Program Work Report. The term “Roadside Management Program Work Report” or “RMP Work Report” shall mean an annual year-end report of progress on the remediation work carried out during the prior year under the RMP and RMP Work Plan.

Utility. All persons or public or private organizations of any kind that are subject to the provisions of Chapters 6.27, 6.27A and 14.45 of the King County Code with regard to use of County ROW.

Section 2: Non-Exclusive Franchise

2.1 The Franchise is granted to Franchisee as 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. Additionally, this Franchise shall in no way prevent, inhibit, or prohibit the County from using any of the County ROW for any County purpose, nor shall this Franchise affect the County's jurisdiction, authority, or power over any County ROW, in whole or in part. The County expressly retains its power to make or perform any and all modifications or relocations reasonably necessary for the County to carry out any County purpose, including but not limited to, the construction, alteration, improvement, repair, operation or maintenance or removal of County facilities in the County ROW, as well as the power to vacate the County ROW.

2.2 Activities carried out by or on behalf of Franchisee on any Franchisee Facility shall be performed in a safe and workmanlike manner, in a manner that minimizes interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

2.3 Franchisee accepts the Franchise Area in an “as-is with all faults” basis with any and all patent and latent defects and is not relying upon 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 above-ground or underground structures or improvements, including tanks and transformers in, on, over or under the County ROW; the condition of title to the County ROW; and any leases, easements, franchises, orders, licensees, or other agreements, that might affect the County ROW, whether of record or not (collectively, the “Condition of the County ROW”).

King County hereby disclaims any representation or warranty, whether express or implied, as to the design or condition of the County ROW, its fitness for any particular purpose, the quality of the material or workmanship of County ROW, or the conformity of any part of the County ROW to its intended uses. King County is not responsible to Franchisee or any Contractor for any damages to any of them relating to the design, condition, quality, safety, or fitness for any particular purpose of any part of the County ROW, or the conformity of any such property to its intended uses. Franchisee shall notify its Contractors of King County’s disclaimer. Franchisee represents and warrants to King County that neither Franchisee nor any Contractor has relied and will not rely on, and King County is not liable for or bound by, any warranties, guaranties, statements, representations, or information pertaining to the Condition of the County ROW or relating thereto made or furnished by King County, or any agent representing or purporting to represent King County, to whomever made or given, directly or indirectly, orally or in writing.

### Section 3. Term

3.1 The initial term of this Franchise is for a period of ten (10) years (the "Initial Term") from the Effective Date, unless earlier terminated or revoked.

3.2 Franchisee may request an extension of the Initial Term, and the Director of FMD, on behalf of the County, may extend the Initial Term of this Franchise for an additional period of up to fifteen (15) years, under the following circumstances:

- A. Franchisee’s request to extend the Initial Term must be in writing and submitted to the County not more than one (1) year nor less than two hundred forty (240) days prior to the expiration of the Initial Term, and
- B. Franchisee has maintained substantial compliance with the terms and conditions of this Franchise throughout the Initial Term. The Director of FMD shall have final authority to determine Franchisee’s substantial compliance with the terms and conditions of this Franchise.

3.3. The Initial Term will not be extended under this Section 3 unless Franchisee receives approval of an extension and the length of the extension in writing from the County within ninety (90) days of the County's receipt of Franchisee's request to extend.

3.4 If the Initial Term is not extended, and Franchisee wishes to continue to operate in the Franchise Area, Franchisee shall promptly file an application with the County for 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 renewal.

A. If the Parties are unable to reach agreement to renew this Franchise prior to expiration of the Initial Term, then this Franchise will expire at the end of the Initial Term and Franchisee will be considered an unfranchised Utility under KCC 14.44. If Franchisee continues to use the Franchise Area for Franchisee Facilities after the expiration of the Franchise, Franchisee's continued use shall be subject to the terms and conditions of the expired Franchise and at the will of the County ("Holdover Period"). Said use will not constitute a renewal or extension of the Franchise and will be subject to termination by the County in its sole and absolute discretion upon sixty (60) days written notice to Franchisee.

#### Section 4. Right-of-Way Construction Permit Required

4.1 Franchisee shall not commence or direct the commencement of any Construction or Maintenance until the County, pursuant to KCC 14.44, has issued a ROW construction permit authorizing such activities.

4.2 Any and all activities performed by or on behalf of Franchisee 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 King County Comprehensive Plan; the standards of good practice in the King County Regulations for Accommodation of Public Utilities on County ROW, the Road Standards, the County approved plans and specifications for the work, and the terms and conditions of any ROW construction permit and other permits or approvals required under the King County Code. All Franchisee Facilities and all Construction or Maintenance shall be the responsibility of Franchisee and the County hereby disclaims any duty or obligation regarding the same. All permits for Construction or Maintenance shall be applied for and issued in the name of Franchisee, and Franchisee will be responsible for all work done under the permit, regardless of who performs the work.

4.3 Franchisee and Contractors shall comply with any and all conditions contained in applicable permits or approvals.

#### Section 5. Emergency Work

5.1. If Franchisee Facilities become damaged or nonoperational such that an Emergency is presented, or if Franchisee or Contractors carries out Construction or Maintenance in a manner that creates an Emergency, then Franchisee shall immediately take such measures as are reasonably necessary to repair the Franchisee Facilities at issue or to remedy the Emergency. In the event of an Emergency as described above, Franchisee may take corrective action immediately, without first applying for or obtaining a ROW construction permit. However, the need to take

immediate corrective action shall not relieve Franchisee from its obligation to notify the County and to obtain a ROW construction permit or any other permits necessary for the corrective actions. In the event of any Emergency, whether described in this Section or otherwise, Franchisee shall, upon discovery of the Emergency, immediately notify the County of the Emergency via email to the Road Services Division and the Real Estate Services Section. Emergency contact should be directed to [KCUIU@kingcounty.gov](mailto:KCUIU@kingcounty.gov) and [Res.permits@kingcounty.gov](mailto:Res.permits@kingcounty.gov). ROW construction permit applications must be submitted as soon as reasonably feasible, yet no later than five (5) working days after Franchisee discovers the emergency. In the event of a dispute, Franchisee shall bear the burden to prove (i) that the County received such notice and (ii) when the County received such notice.

5.2 If the County discovers an Emergency situation involving Franchisee Facilities that poses an immediate danger to property, life, health or safety, the County will first make a good faith effort, taking into account the exigency of the circumstances, to contact Franchisee to allow 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, and Franchisee shall reimburse the County for any and all documented direct costs and expenses incurred by the County. Such costs and expenses shall include, but not be limited to Franchisee's proportionate share of the costs of County personnel assigned to review emergency corrective action plans or to oversee or engage in any corrective action as a result of the Emergency.

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

6.1 Franchisee shall comply with all Applicable Laws.

6.2 Construction or Maintenance shall not unreasonably impede: (A) public use of the County ROW for vehicular and pedestrian transportation; (B) construction or maintenance activities by other authorized users of the Franchise Area, or access to or use of their facilities; (C) the maintenance, or improvement by the County of any County ROW, or other public property impacted by the Construction or Maintenance; or (D) the use of the Franchise Area for other governmental purposes. Construction or Maintenance shall comply with all permit conditions or other requirements.

6.3 At all times during Construction or Maintenance, Franchisee shall 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 commencing or directing the commencement of any work that may disturb any existing monuments or markers relating to subdivisions, plats, roads, or surveys, Franchisee shall: (A) reference all such monuments and markers consistent with RCW 58.09.130; and (B) obtain a permit (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 Contractor shall be the responsibility of Franchisee.

6.5 If Franchisee plans to excavate in the Franchise Area, Franchisee shall, upon receipt of a written request to do so, provide an opportunity for the County or any other authorized users of the Franchise Area (or all of them) to participate in such excavation, and shall coordinate such

participation with the County or such other authorized entities; provided, that Franchisee need not permit the County or any other party to participate in an excavation if any of the following are true, in the reasonable judgment of the County Road Engineer, in consultation with Franchisee:

- A. such joint excavation would unreasonably delay Construction or Maintenance; or
- B. despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint excavation; or
- C. valid safety reasons exist for denying a request for such joint excavation or the proposed facilities of the third party are in conflict with the best practices employed by Franchisee; or
- D. the excavation is for the purpose of an Emergency response consistent with Section 5 (Emergency Work) of this Franchise.

6.6 Franchisee shall maintain all Franchisee Facilities in a good state of repair. Franchisee shall, at no expense to the County, promptly repair Franchisee Facilities, including all appurtenant facilities and service lines connecting Franchisee's system to users, if the repair is required by the County for any reasonable purpose.

6.7 Franchisee shall maintain a reasonably clear area around all Franchisee Facilities permitted and installed above ground so they will be clearly visible for purposes of County operations and maintenance. If Franchisee intends to use chemical sprays to control or kill weeds and brush in scenic areas, then Franchisee must obtain prior written approval from the County Road Engineer on an annual or more frequent basis. 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 ROW maintenance and the King County Code related to sensitive areas.

6.8 Franchisee shall provide, install, and maintain fire suppression water facilities and services as required by Applicable Law. Fire suppression water facilities, equipment and services shall be considered part of Franchisee Facilities and shall be provided, installed, and maintained at no cost to the County.

#### Section 7. Restoration of County ROW

7.1 Upon completion of Construction or Maintenance, Franchisee shall, at no expense to the County, restore the Franchise Area and any adjacent areas directly affected by Construction or Maintenance to as good or better condition as it was prior to the commencement of the Construction or Maintenance. The County Road Engineer shall have final authority to determine the adequacy of the restoration performed in accordance with the requirements set forth in permit conditions.

#### Section 8. Maps and Records

8.1 Franchisee shall maintain accurate records to document activities performed pursuant to this Franchise for six (6) years following the expiration, revocation, or termination of this Franchise, or any Holdover Period, whichever is later. Required records include the following:

A. records of Construction, Maintenance, Operation, and regulatory compliance for all Franchisee Facilities subject to this Franchise; and,

B. as-built plans or, when as-built plans are not available, 100% design drawings as modified following construction, maps, GPS charts, and any other records depicting the final locations and conditions of Franchisee Facilities (“As-Built Plans”).

8.2 The County shall have the right to review such records or to request copies of such records, which Franchisee shall provide at no cost to the County. If a discrepancy is discovered in its As-Built Plans, Franchisee shall update its records to correct the discrepancy. With respect to any excavations within the Franchise Area undertaken by or on behalf of Franchisee or the County, nothing herein is intended (nor shall be construed) to relieve either Party of its obligations under RCW 19.122 with respect to determining the location of utility facilities.

8.3 If Franchisee considers any portion of its records provided to the County to be protected from disclosure under law, Franchisee shall clearly identify any specific information that it claims to be confidential or proprietary and the basis for such claim. 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 release of the information is required by the Act or is otherwise appropriate, the County's sole obligations shall be to notify Franchisee in writing (A) of the request and (B) of the date that such information will be released to the requestor unless Franchisee obtains a court order to enjoin disclosure under 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 or make any exemption from disclosure under the Act. The County shall not be liable to Franchisee for releasing records not clearly identified by Franchisee as confidential or proprietary. The County shall not be liable to Franchisee for any records that the County releases in compliance with this section 8.3 or in compliance with an order of a court of competent jurisdiction.

#### Section 9. Relocation of Franchisee Facilities

9.1 Franchisee shall be responsible, at no expense to the County, to repair, adjust, or relocate all Franchisee Facilities if such, repair, adjustment or relocation is required by the County for any purpose.

9.2 If an Emergency requires the relocation of Franchisee Facilities, the County shall give Franchisee notice of the Emergency as soon as reasonably practicable. Upon receipt of such notice from the County, Franchisee shall respond as soon as reasonably practicable to relocate the affected Franchisee Facilities.

9.3 Upon request by the County and in order to facilitate the design and construction of any County improvements in the Franchise Area, Franchisee shall locate and, if the County deems it

reasonably necessary, excavate and expose, at its sole cost and expense, Franchisee Facilities for inspection by the County; provided, that Franchisee shall not be required to excavate and expose Franchisee Facilities for inspection unless the County Road Engineer reasonably determines that Franchisee's record plans and record drawings are 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 in his or her sole and absolute discretion upon review of the location and construction of Franchisee Facilities.

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 Franchisee Facilities, then Franchisee shall adjust, modify, relocate or remove such Franchisee 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 other 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 capital improvement necessitates relocation of Franchisee Facilities in the County ROW, then:

A. The Parties shall comply with the provisions of KCC 6.27.060.C.5.

B. Unless the Parties agree otherwise, Franchisee shall complete relocation of Franchisee Facilities at least ten (10) days prior to commencement of the construction phase of the County capital improvement project, at no charge, cost or expense to the County.

C. Unless the Parties agree otherwise, if Franchisee fails to complete relocation of Franchisee Facilities within the time prescribed and to the County's satisfaction, the County may cause such work to be done and bill the cost of the work to Franchisee. Franchisee shall remit payment to the County within thirty (30) days of receipt of an itemized list of associated costs of the work.

9.6 When the County or its contractor provides notice to Franchisee, in accordance with RCW 19.122, of its intent to excavate in the Franchise Area, Franchisee shall, at no expense to the County, provide the County or its contractor the best information available from Franchisee's records or, where reasonable, from the use of locating equipment as to the location of Franchisee Facilities, as well as to the location of facilities connected to its system that are in the Franchise Area and that Franchisee does not own, including appurtenant facilities and service lines connecting its system to users. Franchisee shall mark the surface where surface marking would reasonably be of use in the excavation. If Franchisee fails to make good faith efforts to provide the information required in this Section 9.6 within the deadlines provided by RCW 19.122, Franchisee shall defend, indemnify and hold the County harmless for all claims and reasonable costs that result from damage to Franchisee Facilities or other connected facilities if the damage occurs as a result of Franchisee's failure to provide the information. Nothing in this Section 9.6 is intended or shall be construed to create any rights in any third party or to form the basis for any obligation or liability on the part of the County or Franchisee toward any third party, nor is

anything in this Section intended or to be construed to alter the rights and responsibilities of the Parties under RCW 19.122, as amended.

9.7 Nothing in this Franchise shall prevent Franchisee from imposing reasonable terms when responding to a request for relocation of any Franchisee Facility by any person or entity other than the County, where the facilities to be constructed by said person or entity are not or will not become County-owned, operated or maintained facilities and the relocation is not subject to the provisions of Section 9.3.

#### Section 10. Roadside Management Program

10.1 Within ninety (90) days following the Effective Date, Franchisee shall submit a Roadside Management Assessment (“RMA”) to the County which includes an assessment of whether its Franchisee Facilities are all located underground, or, if some or all of its facilities are located above-ground, and whether the Franchisee Facilities comply with the Road Standards, including but not limited to Section 5.10, Roadside Obstacles. If, after preparing the RMA, Franchisee concludes that all Franchisee Facilities are located underground (or, if it has Franchisee Facilities located above-ground, Franchisee concludes that those facilities comply with the Road Standards), then Franchisee shall certify this finding in a RMA report to the County Road Engineer.

10.2 If after completing a RMA, Franchisee concludes that it has above-ground Franchisee Facilities that are not in compliance with the Road Standards, then Franchisee shall carry out a program acceptable to the County for Franchisee, at its sole cost and expense, to remove or relocate its non-compliant Franchisee Facilities to bring them into compliance with the Road Standards. Franchisee shall submit a Roadside Management Program to the County within one hundred twenty (120) days following the Effective Date. Once Franchisee’s RMP is approved by the County, then Franchisee shall schedule and carry out the RMP in cooperation with the County. Franchisee shall submit an annual Roadside Management Program Work Plan identifying specific remediation projects to be accomplished during that year and an annual Roadside Management Program Work Report, showing the progress of remediation projects accomplished during the preceding year. The RMP Work Plan and the RMP Work Report shall both be due to the County by January 31st of every year of this Franchise, until such time that all Franchisee Facilities identified in the plan have been remediated and brought into compliance with the Standards.

10.3 If Franchisee installs or acquires above-ground facilities at any time after Franchisee has previously certified that all its Franchisee Facilities were located underground, then Franchisee consistent with Section 10.1 must immediately carry out an assessment as to whether the above-ground Franchisee Facilities comply with the Road Standards. If Franchisee determines that they do, then Franchisee shall so certify to the County as required under Section 10.1. If Franchisee determines that they do not, then Franchisee shall carry out a remediation program consistent with Section 10.2.

#### Section 11. Repair of Third Party Facilities

11.1 Franchisee shall and hereby does assume the obligations set forth in KCC 6.27.060.C.6 with respect to facilities connected to its system that are within County ROW and that Franchisee does not own.

11.2 Franchisee shall comply with the terms and conditions of this Franchise when performing work on facilities connected to its system that are within the County ROW and that it does not own.

## Section 12. Hazardous Materials

12.1 Franchisee may use Authorized Hazardous Materials in the Franchise Area; provided that Franchisee's use of Authorized Hazardous Materials in the Franchise Area shall at all times be undertaken in strict compliance with all Environmental Laws. Franchisee and Contractors shall not cause or contribute to a Release, in any manner, through act or omission.

12.2 Should Franchisee or a Contractor cause or contribute to a Release or discover Hazardous Material(s), Franchisee shall immediately or as soon thereafter as reasonably possible (but in no event later than the next business day) provide written notice of the Release or Hazardous Material(s) 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.

12.3 Franchisee shall be responsible, at no cost to the County, for promptly remediating any Releases within County ROW, during any time period in which Franchisee had Franchisee Facilities within the County ROW. Franchisee is also responsible for remediating any Releases that migrated from the County ROW to property outside the County ROW. Releases shall be remediated to the applicable cleanup standards under Environmental Laws that will allow for unrestricted use of the County ROW or adjacent property with no environmental covenant or other deed restriction required to be recorded. Franchisee shall notify the County 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. Franchisee shall, at its sole cost and expense, timely prepare and submit any reports or communications relating to any remediation actions as required by Environmental Laws. Franchisee shall provide the County with copies of all reports, sampling data, and communications to and from government entities concerning Franchisee's remediation actions taken under this Subsection 12.3.

Notwithstanding Franchisee's obligation to completely remediate the Franchise Area, in the event of any Release, 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 investigate, contain or otherwise remediate the Release at issue. The County shall be entitled to reimbursement from Franchisee of any and all costs and expenses incurred by the County under this subsection. Franchisee's reimbursement shall be due upon receipt of the County's invoice for such costs and expenses.

12.4 Franchisee shall address all 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 for any damages, costs, losses, expenses, penalties or liabilities arising out of or connected with the presence of Hazardous Materials and Franchisee hereby releases the County from any such claims. Franchisee shall conduct actions in the Franchisee Area in a manner that does not cause migration or other exacerbation of the Hazardous Materials. Before carrying out activities that might disturb Hazardous Materials, Franchisee shall contact the County regarding the proposed activity. The County reserves the right to propose alternatives to Franchisee that would not require Franchisee to disturb the Hazardous Materials. Franchisee is not required to remove or otherwise remediate any Hazardous Materials except to the extent necessary to conduct actions authorized under this Franchise or to the extent necessary to remediate any migration or other exacerbation of Hazardous Materials caused by Franchisee. Franchisee shall at no cost to the County, timely prepare and submit any reports or communications required by Environmental Laws concerning any actions under this Subsection 12.4, and Franchisee shall provide the County with copies of such reports or communications. Franchisee shall also provide the County documentation or other information concerning Franchisee's actions concerning 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 for excavation, stockpiling, transportation and disposal of Hazardous Materials from parties other than the County, its elected and appointed officials and employees.

12.5 Franchisee hereby releases the County and each County Party from, and shall indemnify, defend (at the County's option and using counsel acceptable to the County), and hold the County and each County Party harmless from and against, any and all claims, liabilities, lawsuits, actions, judgments, awards, penalties, administrative proceedings, fines, costs (including but not limited to removal, remedial action, or other costs recoverable under CERCLA or MTCA), any and all other requirements, charges, interest, fees, or oversight costs, and all other damages (including, but not limited to, reasonable attorneys' fees and costs) (collectively, "Claims") incurred or suffered by the County or any County Party and arising out of or related to: (A) any Release within County ROW, including Releases that may migrate from County ROW to property outside County ROW; and (B) the acts or omissions of Franchisee or Contractors under this Franchise.

12.6 If the County incurs attorneys' fees, legal expenses, or other costs to enforce the provisions of this Section 12 against Franchisee, then all such fees, expenses, and costs shall be recoverable from Franchisee to the extent the County prevails in such action.

12.7 The Parties specifically and expressly agree that, solely to the extent required to enforce the release, indemnification, defense, and hold harmless obligations contained in this Section, Franchisee waives its immunity under RCW Title 51 as to the County and the County Parties; 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.

12.8 All Claims involving Hazardous Material shall be subject to this Section 12 and not the indemnity and liability provisions of Section 16 (Hold Harmless and Indemnification). This Section 12 provides the Parties' exclusive contractual remedies as to Hazardous Materials but does not limit and shall not be deemed to affect the County's statutory rights of recovery or its common law causes of action.

Section 13. Dangerous Conditions; Authority for County to Abate

13.1 Whenever Construction, Operation, or Maintenance of Franchisee Facilities 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 to the satisfaction of the County Road Engineer, within a specified period of time and at no expense 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, 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.

13.3 This Section 13 does not affect the Parties' rights and obligations regarding Emergencies under Section 5.

Section 14. Decommissioning of Franchisee Facilities

14.1 If Franchisee wishes to decommission in place any portion of Franchisee Facilities, Franchisee shall provide a written decommissioning request ("Request") to the County a minimum of ninety (90) days prior to the date Franchisee intends to decommission Franchisee Facilities. Such Request may be delivered to the County as part of an application for a County ROW construction permit. Franchisee's Request shall specify which Franchisee Facilities it wishes to decommission in place along with an acknowledgment that Franchisee will maintain ownership and responsibility of decommissioned Franchisee Facilities in perpetuity.

14.2 The County will review the Request to determine whether decommissioning in place will pose a hazard to the public use of County ROW. If the County determines that the Request will pose a hazard to the public use of County ROW, the County may deny the Request or alternatively may approve the Request with terms and conditions that Franchisee must meet to ensure that the decommissioned Franchisee Facilities will not pose a hazard to the public use of County ROW.

14.3 If the County approves Franchisee's decommissioning request, Franchisee shall continue to own and be responsible for all decommissioned Franchisee Facilities.

14.4 If the County denies Franchisee's Request in whole or in part, or if Franchisee refuses to accept terms and conditions imposed to ensure that the decommissioned Franchisee Facilities will not pose a hazard to the public use of County ROW, then Franchisee may not decommission the subject Franchisee Facilities in place.

14.5 If Franchisee decommissions Franchisee Facilities after the County has denied its Request, or if Franchisee fails to satisfy any terms and conditions imposed to ensure that the decommissioned Franchisee Facilities will not pose a hazard to the public use of the road right-of-way, then Franchisee shall be deemed to have decommissioned Franchisee Facilities without authorization. In the event of any unauthorized decommissioning of any portion of Franchisee

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 or at law or in equity, remove all or any portion of the decommissioned Franchisee Facilities on behalf of Franchisee and restore the Franchise Area following such removal. If the County chooses to remove Franchisee Facilities and restore the Franchise Area on Franchisee's behalf, then the County may dispose of the removed Franchisee Facilities in any manner it deems fit, and Franchisee shall reimburse the County for all costs and expenses incurred by the County in performing such removal and restoration activities.

#### 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 31; 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 23.2.

15.3 Separate from the Consideration that is the subject of Section 15.1, 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 Separate from the Consideration that is the subject of Section 15.1, Franchisee shall pay all applicable fees and costs as specified in the King County Code to cover the County's costs in reviewing, processing and administering this Franchise and all work related thereto.

#### Section 16. Hold Harmless and Indemnification

16.1 Franchisee agrees to release, indemnify, defend (at the County’s option and using counsel reasonably acceptable to the County), and hold harmless the County and each County Party from and against any and all claims, demands, liability, suits, and judgments, including costs of defense thereof, for injury to persons, or property damage (collectively, “Claims”) arising out of or related to the acts or omissions of Franchisee or a Contractor in connection with Franchisee’s exercise of rights and obligations under this Franchise. This covenant of release and indemnification shall include, but not be limited to: any and all Claims arising out of the placement of Franchisee Facilities; any failure by Franchisee or a Contractor to complete all related Construction or Maintenance in accordance with this Franchise; and fire suppression activities during fire events. Provided further, that if a Claim arises out of or relates to the concurrent negligence of the Parties,

then Franchisee's duties under this Section 16.1 shall apply only to the extent of the negligence of Franchisee and each Contractor. This Section 16.1 shall not apply to any Claim or other matters arising out of or related to any Release of Hazardous Materials, which Releases are addressed under Section 12 of this Franchise.

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

16.3 The Parties specifically and expressly understand that, solely to the extent required for the County to enforce the release, indemnification, defense, and hold harmless obligations contained in this Section 16, Franchisee waives its immunity under RCW Title 51 as to the County and the County Parties; 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 The County shall give Franchisee timely written notice of any Claim covered by Franchisee's obligations under 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 require the County's prior approval.

16.5 The County's permitting, approval, inspection, lack of inspection, or acceptance or rejection of any Construction or Maintenance, whether pursuant to this Franchise or pursuant to any other permit or approval issued by the County in connection with Franchisee's exercise of its rights under this Franchise, shall not be grounds for Franchisee to avoid any of Franchisee's obligations under this Section 16.

#### Section 17. Franchise Administration

The County's administration of this Franchise shall not be construed to create the basis for any liability on the part of the County Parties.

#### Section 18. Insurance Requirements

18.1 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 Construction, Maintenance, or Operations. Upon request of the County, Franchisee shall furnish separate certificates of insurance and policy endorsements from each Contractor as evidence of compliance with the insurance requirements of this Franchise.

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

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

18.4 Nothing contained within these insurance requirements shall be deemed to limit the scope, application, and/or limits of the coverage afforded by said policies, which coverage will apply to each insured to the full extent provided by the terms and conditions of the policy(ies). Nothing contained in this provision shall affect and/or alter the application of any other provision contained within this Franchise. Any provision in Franchisee's insurance policy(ies) that restricts available limits of liability to those specified in a written agreement or contract shall not apply.

18.5 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 or a Contractor under this Franchise, nor shall such minimum limits be construed to limit the limits available under any insurance coverage obtained by Franchisee or a Contractor. Franchisee and each Contractor shall assess its own risks and, if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage.

18.6 Minimum Scope and Limits of Insurance

Coverage shall be at least as broad as and with limits not less than the following:

(A) General Liability

Insurance Services Office form number (CG 00 01) covering COMMERCIAL GENERAL LIABILITY for bodily injury, personal injury and property damage, including XCU coverage with minimum limits of:

\$1,000,000 limit per occurrence by bodily injury, personal injury and property damage; and for those policies with aggregate limits, a \$2,000,000 aggregate limit. Such insurance shall include coverage for products/completed operations.

(B) 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, including coverage for bodily injury and property damage.

(C) 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.

(D) Stop Gap/Employers Liability

Coverage, with minimum limits of \$1,000,000 and 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.

18.7 **Minimum Limits of Insurance - Construction Period:** Prior to commencement of Construction and until Construction is complete and approved by the Parties, Franchisee shall cause each Contractor to procure and maintain insurance against claims for injuries to persons or damages to property which may arise from, or in connection with the activities related to this Franchise. Franchisee and the County shall be named as additional insured, for full policy limits, on liability policies except Workers Compensation and Professional Liability. Any provision in any Contractor's insurance policy that restricts available limits of liability to those specified in a written agreement or contract shall not apply.

County Parties are not responsible for payment of the cost of such insurance. Franchisee shall maintain limits no less than the following:

(A) **Commercial General Liability:** \$2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage and \$4,000,000 in the aggregate for bodily injury, personal injury and property damage. Such insurance shall include coverage for XCU and products/completed operations.

(B) **Automobile Liability:** \$1,000,000 combined single limit per accident including coverage for bodily injury and property damage.

(C) **Professional Liability, Errors & Omissions:** In the event that services delivered pursuant to this Agreement either directly or indirectly involve or require professional services, Professional Liability, Errors & Omissions coverage shall be provided with minimum limits of \$1,000,000, Per Claim and in the aggregate.

(D) **Contractor's Pollution Liability Coverage:** \$2,000,000 per occurrence and in the aggregate to cover sudden and non-sudden bodily injury and/or property damage, to include the destruction of tangible property, loss of use, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed. If Asbestos, Lead or PCB's are a potential exposure, such insurance shall not exclude pollution arising out of Asbestos, Lead and/or PCB operations.

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

(F) **Stop Gap or Employers Liability Coverage:** \$1,000,000.

18.8 **Deductibles and Self-Insured Retentions:** Any 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.

18.9 **Other Insurance Provisions:** The insurance policies required in this Franchise shall contain, or be endorsed to contain, the following provisions:

(A) **All Liability Policies except Professional and Workers Compensation.**

1. The County, its officers, officials, employees and agents shall be named as additional insured, for full policy limits, with respect to all liability arising out of activities performed by or on behalf of Franchisee in connection with this Franchise. Such coverage shall include Products-Completed Operations.

2. To the extent of Franchisee or a Contractor's negligence, Franchisee's insurance coverage shall be primary insurance with respect to all County Parties. Any insurance and/or self-insurance maintained by County Parties shall not:

- a. contribute with Franchisee or a Contractor's insurance, or
- b. benefit Franchisee or Contractor in any way.

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

(B) All Policies.

Coverage shall not be suspended, voided, canceled or materially changed until after forty –five (45) 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.

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

If, at any time, the foregoing policies shall fail to meet the above requirements, 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.

18.11 Verification of Coverage: Prior to the execution of this Franchise, Franchisee shall furnish the County with certificates of insurance and endorsements required by this Franchise. The certificates and endorsements for each insurance policy shall 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 industry standard forms and approved by the County prior to the commencement of activities associated with the Franchise. Upon request of the County, and within five (5) business days, Franchisee must provide copies of any renewal certificates of insurance and endorsements. In the event of a claim, Franchisee must provide complete copies of all required insurance policies, which may be redacted of confidential or proprietary information.

18.12 Subcontractors: Franchisee shall include all subcontractors as insured under its policies or, alternatively, Franchisee must require each of its subcontractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the

subcontractor's liabilities given the scope of work and the services being provided herein. All liability insurance policies (except Professional Liability and Workers' Compensation) provided by the subcontractor(s) must name King County, its officers, officials, agents, and employees as additional insured, for full policy limits. Franchisee is obligated to require and verify that all subcontractors maintain insurance and ensure that the County is covered as additional insured. Upon request by the County, and within five (5) business days, Franchisee must provide evidence of subcontractor(s) Insurance coverage (including endorsements).

18.13 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 reasonably adjusted with each amendment and within ninety (90) days of the end of the first five (5) year period of the term of this Franchise and the end of each successive five (5) year period thereafter. Any adjustments made as determined by the County Risk Manager, shall be in accordance with reasonably prudent risk management practices and insurance industry standards and shall be effective on the first day of each successive five (5) year period.

Adjustment, if any, in insurance premium(s) shall be the responsibility of 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.

18.14 Franchisee shall furnish the County with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsements, evidencing the insurance requirements of Franchisee before commencement of any Construction or Maintenance work in the Franchise Area.

18.15 In satisfaction of the insurance requirements set forth in this Section, Franchisee may maintain a full funded 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 forty-five (45) days prior written notice of any material change in Franchisee's self-funded insurance program and will provide 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 in this agreement have been satisfied.

#### Section 19. Performance Bond

If the County finds that Franchisee is not in substantial compliance with the terms and conditions of this Franchise, the County may require Franchisee to furnish a performance bond up to \$250,000 to ensure performance of Franchisee's obligations under this Franchise. The bond must be executed by Franchisee with a corporate surety authorized to conduct surety business in the State of Washington, with an A.M. Best's rating of an A: XII. The bond shall stipulate that Franchisee shall comply with all of Franchisee's obligations under this Franchise. Franchisee shall pay all premiums or costs associated with maintaining the performance bond, and shall keep the same in full force and effect at all times during the term of this Franchise and any extension thereof. If Franchisee fails to provide or maintain the bond, then the County may require Franchisee to substitute an equivalent cash deposit in lieu of the bond. With written notice, the County, in its sole discretion, may allow Franchisee to cancel this performance bond.

## Section 20. Incorporation and Annexation

If County ROW is annexed into the corporate limits of a city or town or is incorporated then the affected ROW shall be removed from the Franchise Area. The County shall not be liable to Franchisee for any damages, loss, costs, or other impacts that may arise out of or relate to such annexation or incorporation.

## Section 21. Vacation

If County ROW is vacated as provided by law then the vacated ROW shall be removed from the Franchise Area unless the County retains an easement for Franchisee Facilities in the vacated ROW. The County shall not be liable to Franchisee for any damages, loss, costs, or other impacts that may arise out of or relate to such vacation.

## Section 22. Transfer and Assignment

22.1 This Franchise may not be transferred to another entity without the prior written approval of the County Council. If a transfer of the Franchise is approved by the County Council, the transferee must agree to be bound by each and every provision, condition, regulation and requirement contained in this Franchise and Franchisee shall not be relieved of any duty or obligation under this Franchise until a complete and sufficient Transfer instrument is approved and executed by the County.

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

## Section 23. Default, Revocation, and Termination

23.1 If Franchisee Defaults on any term or condition of this Franchise, the County may terminate the Franchise as provided in this Section 23, or pursue any remedy in equity or under Applicable Laws. Upon termination, all rights of the Franchisee, granted by this Franchise shall cease, and the County may suspend or withdraw approval of any active ROW construction permits.

23.2 A Party asserting a Default shall give the other Party written notice of such Default, stating with specificity the events or circumstances and nature of the alleged Default. The Party receiving such notice shall have sixty (60) days following receipt to: (1) cure the violation or breach; or (2) demonstrate to the other Party's satisfaction that a violation or breach does not or no longer exists; or (3) submit a plan satisfactory to the other Party to correct the violation or breach within a reasonable time. If, at the end of the sixty (60) day cure period, the non-defaulting Party reasonably believes that the violation or breach is continuing and the Party allegedly in violation or breach is not taking satisfactory corrective action to cure or correct the violation or breach, then the other Party may invoke any of the remedies available under this Franchise, in equity, or under Applicable Laws.

23.3 The County may, in its discretion, provide additional opportunity for Franchisee to remedy the Default and come into compliance with this Franchise so to avoid termination.

23.4 During any period in which Franchisee is in Default the County may suspend, withdraw, or decline to issue any Right-of-Way Construction Permits to Franchisee.

23.5 If the County, in its sole discretion, reasonably determines that circumstances require immediate action to prevent or mitigate substantial and imminent risk to public health, welfare, or safety or imminent and substantial damage to the County ROW or adjacent properties, then the County may pursue any remedies under this Franchise, in equity, or under Applicable Law without prior notice of Default to Franchisee and without waiting for the Default cure period to expire.

23.6 If this Franchise is terminated for any reason, the County may satisfy any remaining financial obligations of Franchisee by utilizing any funds available under the performance bond required in Section 19 (Performance Bond).

#### Section 24. Disputes; Remedies to Enforce Compliance; No Waiver

24.1 If a dispute under this Franchise other than a Default arising under Section 23 (Default, Revocation, and Termination) arises between the County and Franchisee, it 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 officers or 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' representatives are unable to resolve the dispute during their initial meeting, and unless further negotiations are agreed upon by the Parties, the dispute shall be referred to mediation. The Parties shall mutually select a mediator to assist them in resolving their differences. If the Parties cannot mutually select a mediator then the County shall provide Franchisee a list of three mediators and Franchisee shall select one from the list. Any reasonable expenses incidental to mediation shall be borne equally by the Parties, provided that each Party shall bear its own legal expenses unless the mediation results in a different allocation.

If mediation fails to resolve the dispute within thirty (30) days after the matter is eligible for submission to mediation, then either Party may then pursue any remedy under this Franchise, in equity, or under Applicable Law, provided that if the Party seeking judicial redress does not substantially prevail in the judicial action, then it shall pay the other Party's reasonable legal fees and costs incurred in the judicial action.

24.2 Failure of the County or Franchisee 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 County or Franchisee from pursuing such right or remedy at any future time.

24.3 If the County reasonably determines that circumstances require immediate action to prevent or mitigate imminent and substantial damage or injury, then it may immediately pursue any remedy available at law or in equity without having to follow the dispute resolution procedures in this Section 24. In addition to judicial enforcement and any remedies under this Franchise, in equity, and Applicable Law, the Manager of the Real Estate Services Section and the Director of the Road Services Division are authorized to enforce this Franchise in accordance with the enforcement and penalty provisions of K.C.C. Title 23.

Section 25. County Ordinances and Regulations - Reservation of Police Power

Nothing in this Franchise shall be deemed a waiver of the County's right to exercise its police power to protect the health, safety and welfare of the public, and the County reserves all such powers.

Section 26. Eminent Domain

Franchisee Facilities are subject to the power of eminent domain. In any proceeding under eminent domain, the Franchise itself shall have no value.

Section 27. Survival

27.1 Until such time as all of Franchisee Facilities have been removed or have been decommissioned in place in accordance with Section 14 (Decommissioning of Franchisee Facilities), all of the provisions, conditions, and requirements contained in the following Sections of this Franchise shall survive the expiration, revocation or termination of the Franchise: (A) Section 4 (Right of Way Construction Permit Required); (B) Section 5 (Emergency Work); (C) Section 6 (Compliance with Applicable Laws; Performance Standards); (D) Section 7 (Restoration of County ROW); (E) Section 8 (Maps and Records); (F) Section 9 (Relocation of Franchisee Facilities); (G) Section 12 (Hazardous Materials); (H) Section 13 (Dangerous Conditions; Authority for County to Abate); (I) Section 14 (Decommissioning of Franchisee Facilities); (J) Section 15 (Consideration and Reservation of Rights); (K) Section 16 (Hold Harmless and Indemnification); (L) Section 17 (Franchise Administration); (M) Section 18 (Insurance Requirements); (N) Section 19 (Performance Bond); (O) Section 23 (Default, Revocation, and Termination); (P) Section 24 (Disputes; Remedies to Enforce Compliance; No Waiver); and (Q) Section 28 (Governing Law, Stipulation of Venue, and Non-Discrimination).

27.2 After such time as all Franchisee Facilities have been removed or decommissioned in place to the County's satisfaction, only the following provisions shall survive the expiration or revocation, or termination of the Franchise including any Holdover Period: (A) Section 8 (Maps and Records); (B) Section 12 (Hazardous Materials); (C) Section 16 (Hold Harmless and Indemnification); and (D) Section 17 (Franchise Administration).

27.3 The following provisions shall survive as to any County ROW removed from the Franchise Area: (A) Section 8 (Maps and Records); (B) Section 12 (Hazardous Materials); (C) Section 16 (Hold Harmless and Indemnification); and (D) Section 17 (Franchise Administration).

Section 28. Governing Law, Stipulation of Venue, and Non-Discrimination

28.1 This Franchise and all use of the Franchise Area granted herein shall be governed by the laws of the State of Washington without reference to its choice of law rules or conflicts of law provisions, 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, in the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

28.2 Nondiscrimination: Franchisee 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. Franchisee shall comply fully with all applicable federal, state, and local Laws, ordinances, executive orders, and regulations that prohibit such discrimination. These Laws include, but are not limited to RCW 49.60 and Titles VI and VII of the Civil Rights Act of 1964.

Section 29. 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 30. Notice and Emergency Contact

30.1 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 Facilities Management Division  
500 Fourth Avenue, Room 800  
Seattle, WA 98104  
Attn: Real Estate Services: Franchise  
Email: [Franchise.FMD@KingCounty.gov](mailto:Franchise.FMD@KingCounty.gov)  
Phone: (206) 477-9350

KING COUNTY WATER DISTRICT 123  
PO BOX 963  
Preston, WA 98050  
Attn: District Commissioner  
Phone: (425) 830-5848  
Email: [kcwd123commissioner@gmail.com](mailto:kcwd123commissioner@gmail.com)

30.2 Except for email notification of Emergency Work (Section 5) and email notification of a Release – Hazardous Materials (Section 12), all other notices or communication given or required to be given under this Agreement shall be in writing, and may be given by personal service, or by registered or certified mail to the contact persons identified in this Section 30. If given by registered or certified mail, the notice or communication shall be deemed to have been given and received when deposited in the United States Mail, properly addressed, with postage prepaid. If given otherwise than by registered or certified mail, it shall be deemed to have been given when delivered to and received by the Party to whom it is addressed. The Party giving notice by means other than registered or certified U.S. Mail is responsible to confirm delivery of such notice.

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

Section 31. Amendment

Amendment of the Franchise Area, extension of this Franchise under Section 3.2 (Term), agreements under Section 15 (Consideration and Reservation of Rights), adjustments under Section 18.13 (Insurance Requirements), and minor technical corrections or updates may be approved in writing by the Director of the County’s Facilities Management Division in his or her reasonable discretion. All other amendments to this Franchise shall be subject to County Council approval.

Section 32. Acceptance

Franchisee shall have ninety (90) days to accept this Franchise, beginning from the date that the County Council adopts an ordinance authorizing this Franchise. If Franchisee wishes to accept this Franchise then Franchisee shall execute it and the fully executed Franchise shall be filed with the Clerk of the County Council. Filing the executed Franchise with the Clerk of the County Council shall be deemed Franchisee’s unconditional written acceptance of this Franchise. Full and timely acceptance of this Franchise is a condition precedent to its taking effect. If this Franchise is not executed and filed with the Clerk of the County Council within the time specified in this Section 32, then this Franchise will be voidable in the County’s sole and absolute discretion and if the County voids it then this Franchise will have no force or effect.

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

**KING COUNTY WATER DISTRICT 123**

**KING COUNTY,**  
a political subdivision of the State of Washington

DocuSigned by:  
Steve Carlson 3/15/2021  
Signature Date  
Steve Carlson, Water Commissioner

DocuSigned by:  
Anthony Wright 3/14/2021  
Signature Date  
Anthony O. Wright  
Director, Facilities Management Division

**Approved as to form:**  
DocuSigned by:  
Samuel Lee 3/12/2021  
Signature Date  
Senior Deputy Prosecuting Attorney

## EXHIBIT A

### FRANCHISE AREA LEGAL DESCRIPTION

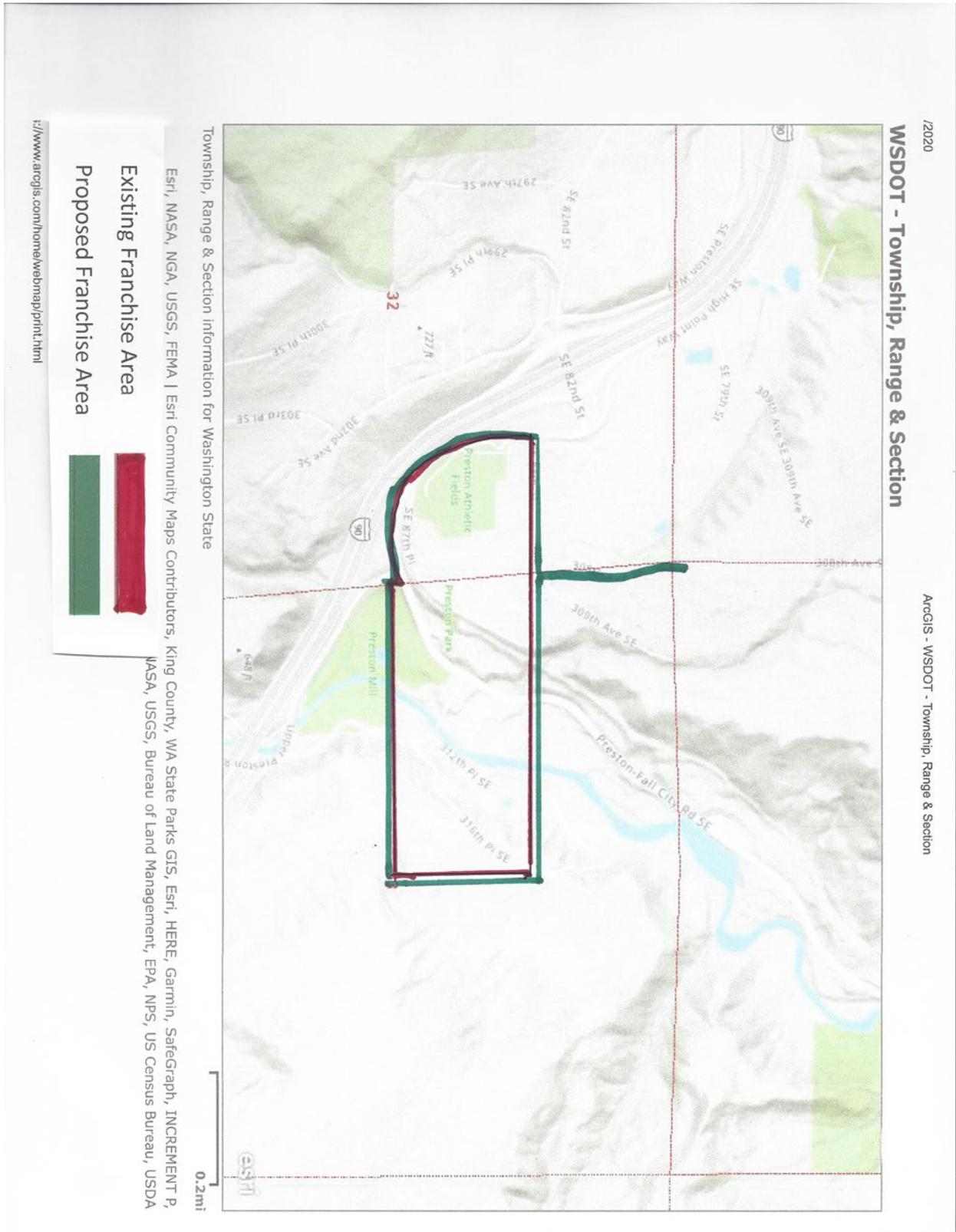
Those portions of Sections 32 and 33, Township 24 North, Range 7 East, W.M. described as follows:

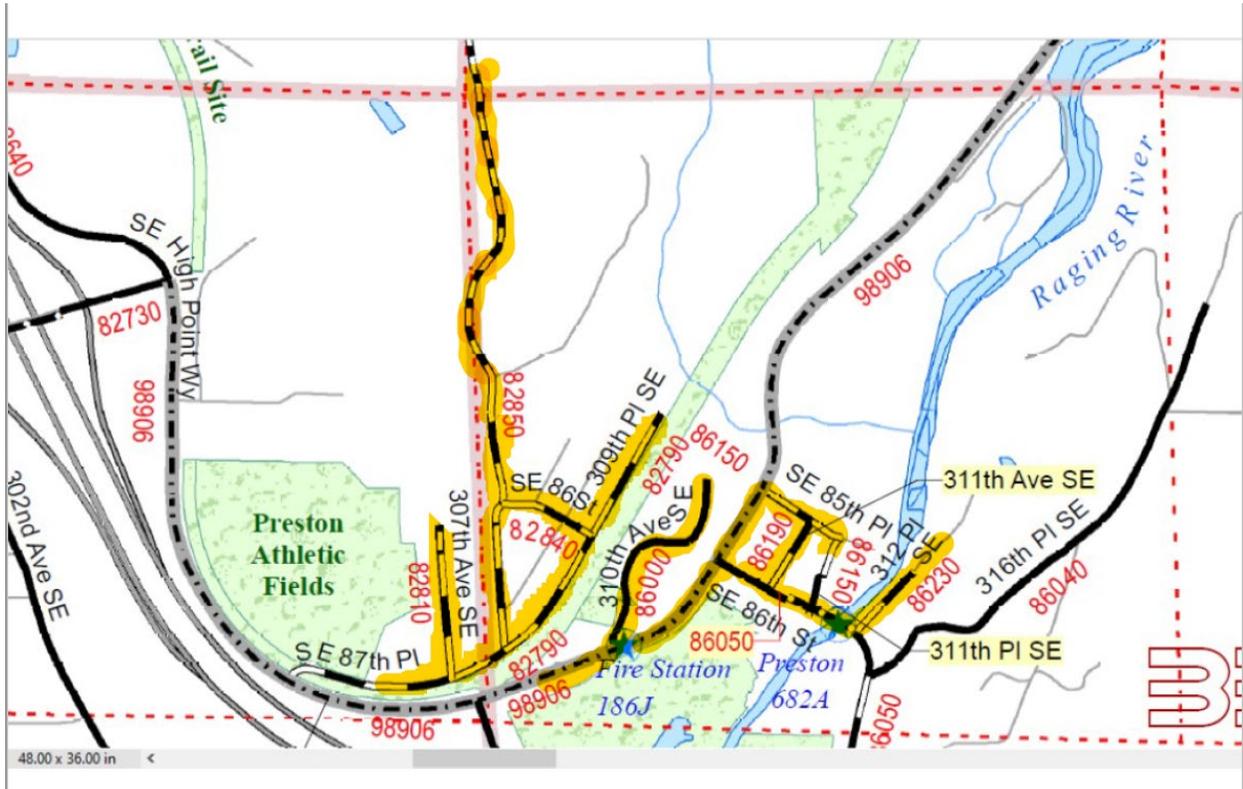
Beginning at the northwest corner of the SW  $\frac{1}{4}$  of the NW  $\frac{1}{4}$  of Section 33, Township 24 North, Range 7 East, W.M.; Thence east on the north line of the South  $\frac{1}{2}$  of the NW  $\frac{1}{4}$  to the northeast corner of the SE  $\frac{1}{4}$  of the NW  $\frac{1}{4}$ ; Thence south on the east line to the south line of the NW  $\frac{1}{4}$ , being the south line of the District's boundary; Thence west along said south line to the west  $\frac{1}{4}$  corner of Section 33; Thence westerly, northwesterly and northerly on the boundary of the Washington State Department of Highway right-of-way to a point on the north line of the South  $\frac{1}{2}$  of the NE  $\frac{1}{4}$  of Section 32, Township 24 North, Range 7 East, W.M.; Thence east on the north line to the northeast corner and point of beginning; All in King County, Washington.

Description of added franchise area:

Then North within the King County right-of-way for 308th Avenue SE approximately 1,700 feet to the SW corner of King County Parcel 2824079056 located in the SW  $\frac{1}{4}$  section of Section 28, Township 24 North, Range 7 East, W.M. All in King County, Washington.

## EXHIBIT B FRANCHISE AREA MAPS





Facility location highlighted in Yellow.

## Certificate Of Completion

Envelope Id: 000B27F7CC4B46F887F6724230F2C4E8	Status: Completed	
Subject: Please DocuSign: Ordinance 19220 Attachment A - WD 123 Franchise for docusign.pdf (REVISION)		
Source Envelope:		
Document Pages: 30	Signatures: 3	Envelope Originator:
Certificate Pages: 5	Initials: 0	Nancy Kodani-Lee
AutoNav: Enabled		401 5th Ave
Envelopeld Stamping: Enabled		Suite 100
Time Zone: (UTC-08:00) Pacific Time (US & Canada)		Seattle, WA 98104
		Nancy.Kodani-Lee@kingcounty.gov
		IP Address: 198.49.222.20

## Record Tracking

Status: Original 3/12/2021 11:55:21 AM	Holder: Nancy Kodani-Lee Nancy.Kodani-Lee@kingcounty.gov	Location: DocuSign
Security Appliance Status: Connected	Pool: FedRamp	
Storage Appliance Status: Connected	Pool: King County General (ITD)	Location: DocuSign

## Signer Events

Samuel Lee  
Sam.Lee@kingcounty.gov  
Security Level: Email, Account Authentication (None)

## Signature

DocuSigned by:  
  
7DE7644B3F6B4B4...  
Signature Adoption: Pre-selected Style  
Using IP Address: 198.49.222.20

## Timestamp

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Viewed: 3/12/2021 1:05:15 PM  
Signed: 3/12/2021 1:05:37 PM

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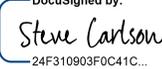
Anthony Wright  
anthony.wright@kingcounty.gov  
Director, FMD  
King County  
Security Level: Email, Account Authentication (None)

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Using IP Address: 174.21.84.9

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Signed: 3/14/2021 6:32:16 PM

**Electronic Record and Signature Disclosure:**  
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ID: 195431e7-6013-45d2-9df0-2baa73913354

Steve Carlson  
kcwd123commissioner@gmail.com  
commissioner  
Security Level: Email, Account Authentication (None)

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Signature Adoption: Pre-selected Style  
Using IP Address: 73.109.64.109

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Signed: 3/15/2021 4:10:33 PM

**Electronic Record and Signature Disclosure:**  
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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp

Intermediary Delivery Events	Status	Timestamp
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Certified Delivery Events	Status	Timestamp
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Carbon Copy Events	Status	Timestamp
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Terri Hansen Terri.Hansen@kingcounty.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	<div style="border: 2px solid blue; padding: 5px; display: inline-block;"><b>COPIED</b></div>	Sent: 3/15/2021 4:10:36 PM
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Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Certified Delivered	Security Checked	3/15/2021 4:10:04 PM
Signing Complete	Security Checked	3/15/2021 4:10:33 PM
Completed	Security Checked	3/15/2021 4:10:36 PM

Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Carahsoft OBO King County ITD (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign, Inc. (DocuSign) electronic signing system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to these terms and conditions, please confirm your agreement by clicking the 'I agree' button at the bottom of this document.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after signing session and, if you elect to create a DocuSign signer account, you may access them for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. To indicate to us that you are changing your mind, you must withdraw your consent using the DocuSign 'Withdraw Consent' form on the signing page of a DocuSign envelope instead of signing it. This will indicate to us that you have withdrawn your consent to receive required notices and disclosures electronically from us and you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

**How to contact Carahsoft OBO King County ITD:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: bob.johnson@kingcounty.gov

**To advise Carahsoft OBO King County ITD of your new e-mail address**

To let us know of a change in your e-mail address where we should send notices and disclosures electronically to you, you must send an email message to us at bob.johnson@kingcounty.gov and in the body of such request you must state: your previous e-mail address, your new e-mail address. We do not require any other information from you to change your email address..

In addition, you must notify DocuSign, Inc. to arrange for your new email address to be reflected in your DocuSign account by following the process for changing e-mail in the DocuSign system.

**To request paper copies from Carahsoft OBO King County ITD**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an e-mail to bob.johnson@kingcounty.gov and in the body of such request you must state your e-mail address, full name, US Postal address, and telephone number. We will bill you for any fees at that time, if any.

**To withdraw your consent with Carahsoft OBO King County ITD**

To inform us that you no longer want to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your DocuSign session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an e-mail to bob.johnson@kingcounty.gov and in the body of such request you must state your e-mail, full name, US Postal Address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

**Required hardware and software**

Operating Systems:	Windows® 2000, Windows® XP, Windows Vista®; Mac OS® X
Browsers:	Final release versions of Internet Explorer® 6.0 or above (Windows only); Mozilla Firefox 2.0 or above (Windows and Mac); Safari™ 3.0 or above (Mac only)
PDF Reader:	Acrobat® or similar software may be required to view and print PDF files
Screen Resolution:	800 x 600 minimum

Enabled Security Settings:	Allow per session cookies
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\*\* These minimum requirements are subject to change. If these requirements change, you will be asked to re-accept the disclosure. Pre-release (e.g. beta) versions of operating systems and browsers are not supported.

**Acknowledging your access and consent to receive materials electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please verify that you were able to read this electronic disclosure and that you also were able to print on paper or electronically save this page for your future reference and access or that you were able to e-mail this disclosure and consent to an address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format on the terms and conditions described above, please let us know by clicking the 'I agree' button below.

By checking the 'I agree' box, I confirm that:

- I can access and read this Electronic CONSENT TO ELECTRONIC RECEIPT OF ELECTRONIC RECORD AND SIGNATURE DISCLOSURES document; and
- I can print on paper the disclosure or save or send the disclosure to a place where I can print it, for future reference and access; and
- Until or unless I notify Carahsoft OBO King County ITD as described above, I consent to receive from exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to me by Carahsoft OBO King County ITD during the course of my relationship with you.