

**CITY OF SEATTLE**

**ORDINANCE** 126744

**COUNCIL BILL** 120481

AN ORDINANCE relating to the City Light Department; approving a ten-year franchise to construct, operate, maintain, replace, and repair an electrical light and power system in, across, over, along, under, through, and below certain designated public rights-of-way in unincorporated King County; and ratifying and confirming certain prior acts.

WHEREAS, the King County Council adopted King County Ordinance 18403 in November 2016, which directs King County to derive reasonable compensation for the use of its rights-of-way; and

WHEREAS, representatives of the City Light Department and King County began meeting in 2017 to negotiate a new long-term franchise agreement consistent with King County Ordinance 18403, to construct, operate, maintain, replace, and repair the City Light Department's electrical light and power system in, across, over, along, under, through, and below certain designated public rights-of-way in unincorporated King County; and

WHEREAS, comprehensive terms of this franchise have been agreed upon that are acceptable to both The City of Seattle and King County; and

WHEREAS, the King County Council adopted King County Ordinance 19551, which approves and authorizes execution of this new franchise agreement for City Light Department operations in rights-of-way of unincorporated King County; NOW, THEREFORE,

**BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:**

Section 1. The City of Seattle hereby approves a franchise agreement for the operation of an electric light and power system by the City Light Department in certain designated rights-of-way in unincorporated King County, a copy of which is attached to this ordinance as Attachment

1 A. The General Manager and Chief Executive Officer of the City Light Department is authorized  
2 to accept and execute the franchise agreement on The City of Seattle's behalf.

3 Section 2. Any action taken after passage of this ordinance but prior to its effective date,  
4 that is consistent with the authority of this ordinance, is ratified, approved, and confirmed.

1 Section 3. This ordinance shall take effect and be in force 30 days after its approval by  
2 the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it  
3 shall take effect as provided by Seattle Municipal Code Section 1.04.020.

4 Passed by the City Council the 3rd day of January, 2023,  
5 and signed by me in open session in authentication of its passage this 3rd day of  
6 January, 2023.

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President \_\_\_\_\_ of the City Council

9  Approved /  returned unsigned /  vetoed this 9th day of January, 2023.

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Bruce A. Harrell, Mayor

12 Filed by me this 9th day of January, 2023.

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Elizabeth M. Adkisson, Interim City Clerk

15 (Seal)

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Attachments:  
Attachment A - City of Seattle Department of City Light Right-of-Way Franchise

ATTACHMENT A:

**FRANCHISE AGREEMENT**

**City of Seattle  
Department of City Light**

**RIGHT-OF-WAY FRANCHISE**

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

**King County, Washington**

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## **RECITALS**

WHEREAS, Pursuant to, Article 11, Sec. 4 of the Washington Constitution, RCW 36.55.010 and Chapter 6.27 of the King County Code ("KCC" or "County Code"), King County, a charter county and political subdivision of the State of Washington (the "County"), is authorized to grant franchises for use of County Road Rights-of-Way ("County ROW"); and

WHEREAS, King County grants franchises to public and private utility companies and municipal Utilities ("Utilities) that authorize such entities to use County ROW to provide utility services to the public throughout King County, and franchises grant a valuable property right to the Utilities to use the County ROW, which allows the Utilities to profit or benefit from the use of the County ROW in a manner not generally available to the public; and

WHEREAS, in 1982, the City of Seattle by and through Seattle City Light Department ("SCL") was granted King County Franchise No. 5505, a twenty-five year franchise by King County for the right to place, maintain, and operate SCL's electric transmission and distribution lines, facilities and appurtenances within the County ROW, the term of which expired on July 26, 2007; and

WHEREAS, in 1998 SCL was granted King County Franchise No. 12965, a ten-year franchise by King County for the right to place, maintain, and operate SCL's electrical distribution and service lines, facilities and appurtenances within the County ROW, the term of which expired on January 5, 2008; and

WHEREAS, in 2009, 2014 and 2017 SCL applied for a consolidated, nonexclusive franchise that grants SCL the right to place, maintain, and operate transmission and distribution facilities in the County ROW for public electric utility service within the franchise areas delineated by Franchise Nos. #5505 and #12965; and

WHEREAS, the King County Council held a public hearing as required by law on \_\_\_\_\_, 2022, to solicit comments from the public and to consider whether to grant the requested franchise renewal to SCL; and

WHEREAS, this Franchise is subject to approval and acceptance by ordinance of the Seattle City Council.

## **APPLICATION AND HEARING**

The application of the City of Seattle, a Washington municipal corporation, through its Seattle City Light department ("Franchisee") for a franchise to set, erect, lay, place, locate, relocate, construct, reconstruct, install, reinstall, extend, support, adjust, affix, attach, connect, align, realign, alter, modify, improve, operate, maintain, repair, remove, replace, and use its facilities, for electric power transmission, distribution, and service lines, protective relay systems, fiber optic communications, and appurtenances in, upon, over, along, across, through and under the County ROW located within the Franchise Area described in the attached Exhibit "A"



("Franchise Area Legal Description") and mapped in the attached Exhibit "B" ("Franchise Area Maps") was heard on the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

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

## **GRANT OF FRANCHISE**

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

This Franchise grants Franchisee the right, privilege, and authority to use certain County ROW to set, erect, lay, place, locate, relocate, construct, reconstruct, install, reinstall, extend, support, adjust, affix, attach, connect, align, realign, alter, modify, improve, operate, maintain, repair, remove, replace, and use its electrical facilities to provide electric utility service, including its electric power transmission, distribution, and service lines, protective relay systems, fiber optic communications and appurtenances in, upon, over, along, across, through and under the County ROW 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 County ROW or portions thereof in or to the Franchisee. This Franchise shall not terminate, abridge, or supersede valid real property interests and rights of the Franchisee within the County ROW that existed prior to the creation of the County ROW, if any. This Franchise is granted subject to all of the terms and conditions contained herein.

## **TERMS AND CONDITIONS**

### **Section 1. Definitions**

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

Applicable Laws. The term "Law" and "Applicable Law" and their plurals shall mean federal,

state and local laws applicable to any and all work activities performed by Franchisee or Franchisee Parties within County ROW under authority of this Franchise, and rules and regulations adopted pursuant to such laws. Unless otherwise stated herein, references to laws include laws now in effect as of the Effective Date of this Franchise and as amended.

Colocation or Colocator or Colocate. The term “Colocation” or “Colocate” means the placement and arrangement of multiple Utility providers’ lines, facilities, and equipment on Franchisee’s poles and other Facilities to enable those providers to deliver service. The term “Colocator” shall mean any user that is attached to or occupies Franchisee Facilities.

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

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

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

County Risk Manager. The term “County Risk Manager” shall mean the director of the County’s Office of Risk Management Services.

County ROW. The term “County ROW” includes any maintained or unmaintained County road, street, avenue, or alley located within unincorporated King County. It does not include recreational or nature trails, except where the trails intersect with or are within roads, streets, avenues, or alleys. Any reference to use of or in the County ROW includes use in, upon, over, along, across, through or under the ROW, as applicable.

Default. The term “Default” shall mean a failure to perform, satisfy, or discharge, or to breach any term, condition, representation, warranty, or other obligation under the Franchise.

Director. The term “Director” refers to: 1) the Director of the King County Department of Local Services or his or her designee, or 2) the Director of the Department of Executive Services or his or her designee, or 3) the Director of the Facilities Management Division or his or her designee, depending on the context.

Effective Date. The term “Effective Date” shall mean the date this Franchise is fully executed by the Parties, upon which the rights, duties, and obligations shall come into effect.

Environmental Law. The term “Environmental Law” shall mean any federal, state, or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or instruction pertaining in any way to the protection of human health, safety, or the environment, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et. seq. (“CERCLA”); the Resource, Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, et. seq. (“RCRA”); the Washington State Model Toxics Control Act, RCW ch. 70A.305 (“MTCA”); the Washington Hazardous Waste Management Act, RCW ch. 70A.300; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, et. seq.; the Washington Water Pollution Control Act, RCW ch. 90.48, and any laws concerning above ground or underground storage tanks.

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

Franchise. The term “Franchise” shall mean this franchise agreement and any written amendments executed by the Parties.

Franchise Area. The term “Franchise Area” shall mean that portion of the County ROW in which the Franchisee has or may locate Franchisee’s Facilities, all as identified and described in Exhibits A and B, subject to valid real property interests and rights of Franchisee within County ROW that existed prior to the creation of the County ROW, if any.

Franchisee. The term “Franchisee” refers to the Franchisee, the City of Seattle, through Seattle City Light, and its successors and those assignees approved pursuant to Section 21.

Franchisee Facilities. The term “Franchisee Facilities” shall mean electric power transmission, distribution, and service lines, protective relay systems, and appurtenances including, but not limited to, all wires, lines, cables, conduits, equipment, poles, and supporting structures located in, upon, over, along, across, through or under the County ROW, utilized, owned or co-owned by Franchisee, and associated with activities authorized by this Franchise. The term shall also include fiber optic cables, but only those that are necessary and used for the Operation and Maintenance of the Franchisee’s electrical Utility system, or are authorized to Colocate on Franchisee’s Facilities for telecommunications or other Utility purposes pursuant to Section 21.

Franchisee Parties. The term “Franchisee Parties” shall mean the Franchisee, its directors, officers, agents, employees, contractors, and subcontractors.

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

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

Operate or Operations. The term “Operate or Operations” shall mean the use of Franchisee's Facilities to provide electric utility service to Franchisee’s customers.

Party or Parties. The terms “Party” or “Parties” shall mean the Franchisor and the Franchisee individually or collectively as the context in this Franchise provides.

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

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

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

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

Utility. The term “Utility” shall include all persons or public or private organizations of any kind that are subject to the provisions of 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 This Franchise is granted to the Franchisee upon the express condition and understanding that it shall be a non-exclusive franchise which shall not in any manner prevent or hinder the County from granting to other parties, at other times and under such terms and conditions as the County, in its sole discretion, may deem appropriate, other franchises or similar use rights in any County ROW; provided such other grants, terms and conditions shall not be in conflict with the rights, duties and obligations under this Franchise. 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 of the ROW, in whole or in part, however this Franchise shall not terminate, abridge, or supersede valid real property interests and rights of the Franchisee within the County ROW that existed prior to the creation of the County ROW, if any. 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, or improvement, repair, maintenance or removal of County facilities in the County ROW, as well as the power to vacate the County ROW.

2.2 Any work related to any of the Franchisee Facilities occurring in any County ROW covered by this Franchise shall be performed in a safe and workmanlike manner, in such a way as to minimize interference with the free flow of traffic and the use of adjacent property, whether such property is public or private.

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, licenses, or other agreements, that might affect the County ROW (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 Franchisee Parties 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 Franchisee Parties of King County’s disclaimer.

### **Section 3. Term; Early Termination**

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

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

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 90 days of the County's receipt of Franchisee's request to extend.

3.4 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 ch. 14.44. If Franchisee continues to use the Franchise Area for Franchisee Facilities after the expiration of the Franchise, Franchisee continued use shall be subject to the terms and conditions of the expired Franchise, including Consideration, 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 The Franchisee shall not commence any Construction or Maintenance work within a County ROW until a ROW Construction Permit authorizing such work has been issued by the County pursuant to KCC ch. 14.44. Applications for County ROW Construction permits shall be presented to the King County Real Estate Services Section (RES) along with such detailed design and Construction plans and documents, studies and reports as are required by RES.

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

#### **Section 5. Emergency Work**

5.1. Should any of the Franchisee Facilities break or become damaged or become nonoperational such that an immediate danger to property, life, health, or safety is presented, or should any site upon which the Franchisee is engaged in Construction or Maintenance activities pursuant to this Franchise for any reason be in such a condition that an immediate danger to property, life, health, or safety is presented, Franchisee shall immediately take such measures as are reasonably necessary to repair the Franchisee Facilities at issue or to remedy the dangerous conditions on the site at issue so as to protect property, life, health, or safety ("Emergency Work"). In the event of an emergency described above, Franchisee may take corrective action immediately, without first applying for or obtaining a County ROW construction permit. However, the emergency provisions contained in this Section 5 shall not relieve Franchisee from its obligation to notify the County and

to obtain a County ROW construction permit or any other permits necessary for the corrective actions. In the event of any Emergency Work, Franchisee shall immediately notify the County via email or phone call to both Real Estate Services Section and the Road Services Division. Emergency contact should be directed to [Res.permits@kingcounty.gov](mailto:Res.permits@kingcounty.gov) (or 206-477-9350) and [KCUIU@kingcounty.gov](mailto:KCUIU@kingcounty.gov) (or 206-477-2611). County ROW Permit applications must be submitted as soon as reasonably feasible, but not later than five (5) working days after the Franchisee discovers the need for Emergency Work.

5.2 If the County discovers a situation that constitutes an emergency involving Franchisee Facilities within the County ROW 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 the Franchisee to remedy the emergency. If the County is unable to contact the Franchisee or the Franchisee is unable to remedy the emergency in a timely manner, the County may take action to mitigate immediate danger to property, life, health or safety, provided the County shall not work on or cause work to be done on Franchisee Facilities. In such event, Franchisee shall reimburse the County for any and all documented direct costs and expenses incurred by the County. Such costs and expenses shall include, but not be limited to, the Franchisee's proportionate share of the costs of County personnel assigned to review construction plans or to oversee or engage in any work in the County ROW as a result of the Emergency Work.

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

6.1 Franchisee Parties shall at all times comply with all Applicable Laws and utility standards and codes that are applicable to any and all work activities performed by Franchisee Parties pursuant to or under authority of this Franchise.

6.2 Except as may be explicitly permitted pursuant to a County issued ROW construction permit, during any period of Construction or Maintenance work related to any of the Franchisee Facilities occurring in County ROW covered by this Franchise, Franchisee shall ensure that such work does not unreasonably impede: (i) public use of the county road and/or County ROW for vehicular and pedestrian transportation; (ii) the construction or maintenance on the site of other authorized facilities, equipment, and improvements, whether public or private; (iii) the operation, maintenance, or improvement by the County of the site or any County ROW, or other public property impacted by Franchisee's work; or (iv) the use of the site at issue for other governmental purposes.

6.3 During any periods of Construction or Maintenance, Franchisee Parties shall at all times post and maintain proper barricades and comply with all applicable safety regulations as required by 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 any Franchisee Party commences any Construction or Maintenance which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys, Franchisee shall reference all such monuments and markers using a method or

methods approved by the County Road Engineer and any County-provided information and data related to such monuments or markers, and a complete set of reference notes for monument and other markers shall be filed with the County prior to the commencement of work. Reference points shall be so located that they will not be disturbed during Construction or Maintenance. The cost and replacement of all such monuments or markers disturbed by a Construction or Maintenance shall be the responsibility of Franchisee in accordance with RCW 58.09.130.

6.5 If Franchisee plans to make excavations in the Franchise Area, Franchisee shall, upon receipt of a written request to do so, provide an opportunity for the County and/or any other Franchisees or authorized users of said County ROW to participate in such excavation, and shall coordinate the location and installation of its Franchisee Facilities with the County or such other Franchisees or authorized entities, PROVIDED THAT, Franchisee need not permit the County or any other 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 the Franchisee:

- (i) Such joint excavation would unreasonably delay the performance of Franchisee's work; or
- (ii) Despite good-faith efforts, the parties involved are unable to agree upon reasonable terms and conditions for accomplishing such joint excavation; or
- (iii) Valid safety reasons exist for denying a request for such joint excavation, or the third party's proposed facilities are in conflict with the best practices employed by the Franchisee; or
- (iv) The excavation is for the purpose of an emergency action to protect property, life, health or safety consistent with Section 5 of this Franchise.

6.6 The Franchisee shall maintain all Franchisee Facilities in accordance with accepted standards of practice and in a good state of repair.

6.7 The Franchisee shall maintain a reasonably clear area around all Franchisee Facilities permitted and installed above ground within County ROW so as to provide clear visibility for County operations and maintenance. A minimum of five (5) feet of clearance will be maintained around Franchisee Facilities that are less than five (5) feet high. If the Utility intends to use chemical sprays to control or kill weeds and brush in scenic areas, prior written approval must be obtained from the County Road Engineer at least annually. The County may limit or restrict the types, amounts, and timing of application if a significant negative impact on the aesthetics or environment of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility ROW maintenance and the King County Code related to sensitive areas.

## **Section 7. Restoration of County ROW**

Promptly after completing any Construction or Maintenance within the ROW, Franchisee shall, at no expense to the County, promptly restore the Franchise Area and any adjacent areas directly affected by a Franchisee Party's Construction or Maintenance to as good or better condition as the property was in immediately prior to the commencement of the Construction or Maintenance and



in accordance with any conditions contained in applicable permits or approvals. The County Road Engineer shall have final authority to determine the adequacy of the restoration performed in accordance with the requirements set forth herein.

## **Section 8. Maps and Records**

8.1 The Franchisee shall maintain adequate records to document activities performed under this Franchise. The County shall have the right to reasonable review of the Franchisee's records regarding the subject matter of this Franchise for six (6) years from the expiration or earlier termination of this Franchise. In addition to the maps and records of the Franchisee Facility locations under Section 8.2, the Franchisee shall provide the County, upon the County's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all Franchisee Facilities subject to this Franchise.

8.2 The Franchisee agrees that it shall, promptly upon substantial completion of any Construction or Maintenance project involving the County ROW that in any way altered the location of Franchisee's Facilities, complete and maintain available for inspection, a copy of all as-built plans, maps, GPS charts and records depicting the final locations and conditions of the Franchisee Facilities ("As-Built Plans"). Additionally, the County may, at any time, deliver a written request to the Franchisee for copies of all As-Built Plans. In such event, the Franchisee shall provide the County with copies of the requested As-Built Plans within a reasonable time after receiving the County's request for same, at no cost to the County. If a discrepancy is discovered in its As-Built Plans, Franchisee shall update Franchisee's records to show any and all corrections made to Franchisee Facilities not shown or shown inaccurately. With respect to any excavations within the County ROW undertaken by or on behalf of Franchisee or the County, nothing herein is intended (nor shall be construed) to relieve either party of its respective obligations arising under Chapter 19.122 RCW with respect to determining the location of Utility facilities.

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

8.4 If the Franchisee considers any portion of its records provided to the County to be protected from disclosure under law, the 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 ch. 42.56, to inspect or copy the information so identified by the Franchisee and the County determines that release of the information is required by the Act or otherwise appropriate and is not subject to a Nondisclosure or Confidentiality

Agreement between the Parties under Section 8.3, the County's sole obligations shall be to notify the Franchisee in writing (a) of the request and (b) of the date that such information will be released to the requester unless the Franchisee obtains a court order to enjoin that disclosure pursuant to RCW 42.56.540. The County shall provide Franchisee with such notice at least ten (10) days prior to the date that such information will be released. If the Franchisee fails to timely obtain a court order enjoining disclosure, the County will release the requested information on the date specified. The County has, and by this section assumes, no obligation on behalf of the Franchisee to claim any exemption from disclosure under the Act. The County shall not be liable to the Franchisee for releasing records not clearly identified by the Franchisee as confidential or proprietary or is not subject to a Non-Disclosure or Confidentiality Agreement between the Parties under Section 8.3. The County shall not be liable to the Franchisee for any records that the County releases in compliance with this section or in compliance with an order of a court of competent jurisdiction.

## **Section 9. Relocation of Franchisee Facilities**

9.1 Franchisee shall be responsible, at no cost to the County, for adjusting, modifying, relocating, or removing Franchisee Facilities when such adjustment, modification, relocation or removal is required by the County for County construction, alteration or improvement of the County ROW.

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

9.3 Franchisee shall, upon reasonable advance written request of any person or entity holding a permit issued by the County to move any structure, temporarily move Franchisee's Facilities to allow the moving of such structure; PROVIDED, (a) Franchisee is granted a permit by the County for such work if a permit is needed; and (b) Franchisee is given not less than sixty (60) business days' notice to arrange for such temporary relocation. Franchisee may require the permit holder to pay all costs to move Franchisee's Facilities and Franchisee may require such payment in advance.

9.4 In the event a condition or requirement imposed by the County upon any person or entity (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 the relocation of Franchisee Facilities, Franchisee shall adjust, modify, relocate or remove such Franchisee Facilities to accommodate the condition or requirement, at no cost to the County; PROVIDED, however, that nothing in this Franchise is intended or shall be construed to prohibit the Franchisee from assessing on such person or entity, other than the County,

the costs of relocation as a condition of such relocation pursuant to this Section 9., including Section 9.3.

9.5 If the County determines that a County improvement necessitates relocation of Franchisee Facilities in County ROW, then:

(i) The County shall give Franchisee written notice of the requirement as soon as practicable, at the beginning of the predesign stage for projects that are part of the County's capital improvement program, including the available information as is reasonably necessary for Franchisee to plan for such adjustment, removal, or relocation; PROVIDED, that under the following circumstances the County need only provide the Franchisee with written notice as soon as may be reasonably practicable: (a) in the event of an emergency posing a threat to public safety, health, or welfare;(b) in the event of an emergency beyond the control of the County and which will result in adverse financial consequences to the County; or (c) where the need to relocate the Franchisee Facilities could not reasonably have been anticipated by the County.

(ii) The County shall provide the Franchisee with copies of pertinent portions of the plans and specifications for the County project as well as any proposed new location for the Franchisee Facilities at least one hundred eighty (180) days before construction is scheduled to begin. Franchisee shall respond to this notice and any later notices of revised designs based upon permit conditions within thirty (30) days by providing the County with information regarding the location of Franchisee Facilities, including any Franchisee Facilities that it has decommissioned in place. Franchisee may also provide written alternatives to relocation of Franchisee Facilities for the County's consideration. The County shall provide Franchisee the final construction schedule for the County improvement project.

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

(iv) If Franchisee determines that relocation cannot reasonably be completed within the time period provided by the County, Franchisee shall propose a revised schedule to the County for completion of such relocation work. If the County and the Franchisee agree upon a schedule to relocate Franchisee Facilities, Franchisee shall complete the relocation of Franchisee Facilities in accordance with the agreed upon schedule. If the County and Franchisee are unable to agree upon a relocation schedule, Franchisee shall relocate Franchisee Facilities according to a schedule reasonably established by the County. In the event Franchisee performs in good faith but is unable to complete Relocation according to

the schedule established by the County or agreed to by the Parties due to delays attributable to County Parties or attributable to other circumstances beyond Franchisee's control, then Franchisee shall not be liable for its inability to complete such relocation pursuant to this Section 9.

(v) The Parties recognize that project-specific agreements between the County and Franchisee may be necessary for County capital improvement projects that involve adjustment, removal or relocation of Franchisee Facilities. Nothing herein shall preclude the Parties from entering into such project-specific agreements.

9.6 Franchisee shall also be responsible for ensuring that all Colocator facilities are relocated contemporaneously with Franchisee's Facilities. If relocation of Franchisee's Facilities, including Colocator facilities are not completed in a timely fashion, Franchisee shall bear any and all delay costs incurred by the County, except to the extent caused by the County.

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

9.8 If the County requires the subsequent relocation of Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section, then the County shall bear the entire cost of such subsequent relocation.

## **Section 10. Roadside Management Plan**

Section 10.1 Franchisee acknowledges that as of the Effective Date some Franchisee Facilities may not be in compliance with the Road Standards and that such Facilities could potentially pose an obstacle to the travelling public. Within one hundred eighty (180) days following the Effective Date, Franchisee shall submit for review by the County, an Assessment of the Franchisee's Facilities subject to the Roadside Management Program (RMP) that are located within the clear zone (as described in the Road Standards). This Assessment will include the location of all Franchisee Facilities, property lines, clear zone edge, and other non-Franchisee facilities and obstructions in the clear zone, to the best of Franchisee's knowledge including information and data provided by the County. Based on the County's review of the Assessment and notification to the Franchisee, the Franchisee will proceed to develop a Roadside Management Plan to remediate Facilities located within the clear zone, within a reasonable time frame based on the evaluation of existing conditions, prioritization by parties, Franchisee capital funding ability, and other factors identified in the Assessment. The Roadside Management Plan would be due to the County within 90 days of the County's completion of the review of the Assessment and notification to the Franchisee, unless the Parties agree to a longer period. The Parties agree to negotiate in good faith to reach agreement on a final RMP within ninety (90) days following Franchisee's submission thereof. If the Parties cannot reach agreement within said ninety (90) day period, the matter shall be elevated to the Directors of the King County

Departments of Executive Services and Local Services and equivalent executive level management of Franchisee for agreement of a final RMP. If the Directors and Franchisee cannot reach agreement within ninety (90) days of Franchisee's submission, the unresolved matter(s) shall be submitted to mediation. The Parties shall mutually agree on a mediator. Each Party shall bear its own costs of mediation. The costs of the mediator shall be borne equally by the Parties. If mediation does not result in agreement by the Parties within thirty (30) days after the matter is eligible for submission to mediation, then the King County Executive shall, giving due consideration to the relative positions of the Parties, make a final decision on the unresolved contents of the RMP, which shall constitute County acceptance of the final RMP. Franchisee shall thereafter provide a clean copy of the final RMP as agreed with the County or decided by the County Executive within fifteen (15) days following the County's acceptance of the final RMP. Franchisee shall, thereafter, promptly commence implementation of the remediation projects identified in the RMP.

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

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

## **Section 11. Hazardous Materials**

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

11.2 The Franchisee agrees that no Franchisee Party will cause or contribute to, in any manner through act or omission, the release, leak, deposit, seepage, spill, or escape (collectively or individually a "Release") of any Hazardous Material in any County ROW or in, on, under or through other property, whether public or private. Any release, leak, deposit, seepage, spill, or escape of any Hazardous Material caused or permitted by a Franchisee Party, in any manner, through act or omission, during the term of Franchise Nos. 5505 and 12965 or during the time period in which the Franchisee operated in the County ROW after expiration of the term of Franchise Nos. 5505 and 12965 shall also be a "Release" under Section 11. Releases that occurred during that time period shall be subject to Subsection 11.3 upon discovery. Nothing in this Section 11.2 is intended to create a basis for reopening a claim that was closed by law or agreement between the Parties prior to the execution of this Franchise.

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

#### 11.4 Releases Caused by or Contributed to by Franchisee Parties

A. Franchisee shall be responsible, at no cost to the County, for promptly remediating any Releases caused or contributed to by any Franchisee Party within County ROW, including Releases that may migrate from the County ROW to property outside the County ROW. Releases in the County ROW caused or contributed to by any Franchisee Party shall be addressed in compliance with and as required by any applicable Environmental Laws, and any remediation shall be conducted in a manner that will allow for unrestricted use of the County ROW or other County property with no environmental covenant or other deed restriction required to be recorded. If Franchisee believes it is not practicable to remove all Releases above those levels due to location of existing facilities or similar factors, Franchisee may request that it be allowed to leave Hazardous Materials in the County ROW and shall provide the County with the information it is relying on for its request. The County will determine, in its sole discretion, whether it will grant such request. Any remediation that would require the recording of an environmental covenant or other deed restriction shall be determined by the County Council. The County does not guarantee or warrant its authority to record a covenant or deed restriction in County ROW. Any County approval of Franchisee's request shall be contingent on the Parties reaching a separate agreement in which Franchisee is responsible for all costs, expenses, and liabilities incurred by the County as a result of the continued presence of the Hazardous Materials in County ROW.

B. Franchisee shall obtain County's approval of its remediation plan prior to conducting remediation; provided, however, that Franchisee shall be entitled to respond immediately to an emergency without prior approval from County, including but not limited to taking actions necessary to prevent the Release from spreading and taking actions necessary to respond to any immediate obligations imposed on Franchisee by Environmental Laws. Notwithstanding Franchisee's obligation to completely remediate same, in the event of any Release by a Franchisee Party, if the County determines that Franchisee is not promptly remediating the Release, the County may, in the interest of protecting the health, safety, welfare, and property of the public, immediately take whatever actions it deems necessary or advisable, in its sole discretion, to contain, investigate, or otherwise remediate the Release at issue. The County shall provide Franchisee with prior written notice of its intent to take action under this section. If Franchisee conducts emergency actions without prior County approval, Franchisee shall provide the County, upon request, copies of all reports, sampling data, and communications with government entities or other documentation concerning the remedial actions taken. Franchisee shall, at its sole cost and expense, timely prepare and submit any reports or

communications required by Environmental Laws. Franchisee shall provide the County with copies of the reports and all other written communications to or from government entities concerning Franchisee's remediation work under this Subsection 11.4. Except for costs incurred by Franchisee due to a Release caused or contributed to by the County, the County shall be entitled to repayment from Franchisee of any and all costs and expenses incurred by the County under this subsection.

#### 11.5 Found Hazardous Materials

A. If a Franchisee Party discovers Found Hazardous Materials in conducting actions authorized under this Franchise, Franchisee shall as soon as is reasonably possible under the circumstances provide written notice to the County by email to the Real Estate Services Section ([RES.permits@kingcounty.gov](mailto:RES.permits@kingcounty.gov)), the Road Services Division ([KCUIU@kingcounty.gov](mailto:KCUIU@kingcounty.gov)) and, if requested by the County, to other government entities as required by Environmental Laws.

B. In conducting actions authorized under this Franchise, Franchisee shall handle all Found Hazardous Materials encountered in compliance with Environmental Laws, including but not limited to investigation, excavation, stockpiling, transportation, disposal of those materials at no cost to the County, except for costs incurred by Franchisee due to a Release caused or contributed to by the County. The County shall not be liable to Franchisee Parties for delay damages, or any other damages, costs, losses, expenses, penalties, or liabilities arising out of or connected with the presence of Found Hazardous Materials, unless caused or contributed to by the County. Franchisee Parties shall conduct their actions in and around Found Hazardous Materials in a manner that does not cause migration or other exacerbation of the Found Hazardous Materials. Franchisee Parties shall not be required to remove or otherwise remediate any Found Hazardous Materials except to the extent necessary to conduct actions authorized under this Franchise, in Franchisee's sole discretion, or to the extent necessary to remediate any migration or other exacerbation of Found Hazardous Materials caused by a Franchisee Party. Franchisee shall at no cost to the County, timely prepare and submit any reports or communications required by Environmental Laws concerning any Franchisee Party's actions under this Section 11.5, and Franchisee shall provide the County with copies of such reports and communications. Franchisee shall also provide the County, upon request, documentation or other information related to Franchisee's actions concerning Found Hazardous Materials that is not submitted to other government entities. Nothing in this Franchise shall be construed as limiting Franchisee's ability to pursue the recovery of remedial action costs incurred by a Franchisee Party for excavation, stockpiling, transportation, treatment, and disposal of Found Hazardous Materials from any responsible party.

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

12.1 Whenever the Franchisee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of Franchisee Facilities authorized by this Franchise has caused or contributed to a condition that 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 the Franchisee to remedy the condition or danger to the reasonable satisfaction of the County Road Engineer, within a specified period of time and at the Franchisee's sole cost and expense.

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

### **Section 13. Abandonment of Franchisee Facilities**

13.1 In no event may all or any portion of any Franchisee Facility be abandoned in place by the Franchisee without the express written consent of the County, which may be granted or withheld in its sole discretion, unless otherwise provided by Applicable Laws. Should the Franchisee desire to abandon in place all or any portion of the Franchisee Facilities, the Franchisee shall request the County's permission to do so by delivering a written request to the County a minimum of thirty (30) days prior to the date Franchisee intends to abandon Franchisee Facilities. The Franchisee's request shall specify which Franchisee Facilities the Franchisee desires to abandon in place. If the County denies the Franchisee's request with respect to all or any portion of the Franchisee Facilities, then the Franchisee must promptly remove those Franchisee Facilities for which the Franchisee's request for abandonment has been denied. If the County approves the Franchisee's request for abandonment, either in whole or in part, the County may impose conditions on such approval. In the event of any approved abandonment or temporary abandonment, the provisions of Section 13.2 below shall apply.

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

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



County may dispose of the removed Franchisee Facilities in any manner it deems fit, and the Franchisee shall be liable to the County for all reasonable costs and expenses incurred by the County in performing such removal and restoration activities.

13.4 Within 180 days before the end of the term of this Franchise, including any extension, renewal or termination thereof, Franchisee shall provide a written request to the County pursuant to Section 13.1 if Franchisee wishes to abandon in place any of its Facilities. If such request is not provided within (180) days, Franchisee shall be deemed to have abandoned its Facilities in place without authorization, and the County shall have the remedies available to it under Section 13.3 in addition to any other remedies or enforcement options available under the Franchise, at law or in equity.

13.5 Franchisee shall also be responsible to the extent allowed by law for ensuring that any Colocator facilities are removed contemporaneously with Franchisee Facilities.

#### **Section 14. Consideration**

14.1 In exchange for the right to use and occupy the County ROW to place its Franchisee Facilities, Franchisee shall pay the County annual franchise compensation (“Consideration”) in the nature of rent as provided in KCC 6.27.080 in the following amounts and schedule:

2023 - 2027	8% of the total amount of Revenue billed to Franchisee’s customers in unincorporated King County per calendar year
Beginning 2028	6% of the total amount of Revenue billed to Franchisee’s customers in unincorporated King County per calendar year

14.2 For purposes of this Section, “Revenue” is defined as charges for the sale of electric power billed by Franchisee to retail customers within unincorporated King County. The base rate applied to customers in unincorporated King County shall be subject to the rate review process by the Seattle City Council and subject to approval solely by City Council Ordinance. The rate review process by the Seattle City Council is expected to result in an additional eight percent (8%) rate differential to the base rates established for the Franchisee’s customers within unincorporated King County compared to the base rates charged to Franchisee’s customers in the City of Seattle.

14.3 Consideration for the 2023 calendar year shall be paid to the County no later than the last business day in April 2024. Consideration for each subsequent calendar year shall be paid to the County no later than the last business day in April of the following year. If Consideration is not received by the County by the due date, interest shall be charged from that date until such time that payment is received at the maximum rate permitted under Washington State law, compounded daily.

14.4 Each payment of Consideration shall be accompanied by a report of Franchisee’s Revenue and the computation of the Consideration amount. The County may conduct an audit of

Franchisee's records related to all Consideration payments. Franchisee shall maintain and upon request, make available within a reasonable period its records and data requested by the County to complete its audit.

14.5 The County's acceptance of any payment shall not be construed as an accord by the County that the amount paid is in fact the correct amount, nor shall any acceptance of payments be construed as a release of any claim the County may have for further or additional sums payable or for the performance of any other obligation of Franchisee.

14.6 King County reserves the right to impose a utility tax on Franchisee, if such taxing authority is granted by the State of Washington.

### **Section 15. Hold Harmless and Indemnification**

15.1 Franchisee agrees to release, indemnify, defend (using counsel reasonably acceptable to the County), and hold harmless the County Parties from and against claims, demands, liability, suits, and judgments, including costs of defense thereof, awards, penalties, fines, costs (including but not limited to removal, remedial action or other costs recoverable under CERCLA or MTCA), government orders or other requirements ("Claims"): (a) Claims for injury to persons, death or property damage caused by, arising out of, or incidental to a Franchisee Party's exercise of rights and obligations under this Franchise; (b) Claims caused by, arising out of or incidental to acts or omissions of a Franchisee Party under Section 11 (Hazardous Materials) of this Franchise; (c) Claims caused by, arising out of or incidental to a Default under this Franchise; and (d) Claims caused by or arising out of the County's issuance to Franchisee of a variance to the Road Standards, to the extent such Claim is attributable to the location of the Facility that is subject to the variance. To the extent a Claim falls within the terms of (a) and (d) above, (d) shall govern. Franchisee shall have no obligation to release, indemnify, defend, and hold harmless any County Party to the extent a Claim for injury to persons, death, or property damage is caused by the negligence or willful misconduct of County Parties. In the event any such liability arises from the concurrent negligence of the Parties, the obligation of this Section shall apply only to the extent of the negligence of the Franchisee Parties. This limitation on Franchisee's obligation shall not apply to Claims under (d) above. Except and only as otherwise specifically provided in (c) above, nothing herein is intended, nor shall be construed, to require the Franchisee to release, indemnify, defend and hold harmless County Parties for any Release caused or contributed to by any County Party.

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

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

15.4 The Franchisee's covenants and indemnifications provided in this section shall extend to the period of time during which the Franchisee operated in the County ROW after expiration of the term of Franchise Nos. 5505 and 12965. Nothing in this Section 15.4 is intended to create a basis for reopening a Claim that was closed by law or agreement between the Parties prior to the execution of this Franchise.

15.5 The County shall give Franchisee timely written notice of any Claim covered by the indemnification, defense, and hold harmless obligations contained in this Section 15. In the event any such Claim arises, the County or any other indemnified party shall tender the defense thereof to Franchisee and Franchisee shall have the right and duty to defend, settle, or compromise any Claim, and the County shall cooperate fully with Franchisee, provided: (a) any settlement or compromise is consistent with the terms of this Franchise; and (b) any terms or conditions of a settlement other than the payment of money damages that in any way obligate or affect the County shall require the County's prior approval.

15.6 The County's permitting approval, inspection, lack of inspection, or acceptance of any work performed by the Franchisee Parties in connection with work authorized on Franchisee Facilities, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise, shall not be grounds for avoidance of any of the indemnification, defense and hold harmless obligations contained in this Section 15 or in Section 11 (Hazardous Materials).

## **Section 16. 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 17. Insurance Requirements**

17.1 Franchisee shall procure and maintain for the duration of this Franchise (the Initial Term and any extensions of the Initial Term) and any Holdover Period thereafter, insurance against claims for injuries to persons or damage to property which may arise from, or in connection with any Work contemplated by Franchisee or Contractor. 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.

17.2 Franchisee is responsible for ensuring compliance with all 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.

17.3 Each insurance policy shall be written on an "occurrence" basis/form; excepting insurance for professional liability (errors and omissions) and/or pollution liability. Professional liability (errors and omissions) or pollution liability required by this Franchise is acceptable on a "claims made" basis/form. If any insurance required under this Franchise is purchased on a "claims made"

basis/form, the coverage provided under that insurance shall be maintained through: (i) consecutive policy renewals for not less than three (3) years from the date of completion of the Construction, Maintenance, Operations, and any work or other activities associated with this Franchise or, if such renewals are unavailable, (ii) the purchase of a tail/extended reporting period for not less than three (3) years from the date of completion of the Construction, Maintenance, Operations, and any work or other activities associated with this Franchise. All insurance written on a "claims made" basis/form must have its policy inception or retroactive date be no later than the Effective Date of the Franchise, unless otherwise approved in writing by the County's Risk Management Office.

17.4 Nothing contained within these insurance requirements shall be deemed to limit the scope, application, and/or limits of the coverage afforded, 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.

17.5 Risk Assessment by Franchisee: By requiring such minimum insurance, the County does not and shall not be deemed or construed to have assessed the risks that may be applicable to Franchisee or a Contractor under this Franchise, or in any way limit County's potential recovery to insurance limits required hereunder. To the contrary, this Franchise's insurance requirements may not in any way be construed as limiting any potential liability to the County or the County's potential recovery from Franchisee or a Contractor. Franchisee and its Contractor(s) shall assess their own risks and if they deem appropriate and/or prudent, maintain greater limits and/or broader coverage.

#### 17.6 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:

\$5,000,000 per occurrence and \$5,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to, premises liability, products- completed operations, ongoing operations, and contractual liability. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for the County. Explosion & Collapse, Underground Damage (XCU) shall apply for the same limits as the General Liability coverage.

(B) Automobile Liability:

\$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO form number CA 00 01 covering business auto coverage, symbol 1 "any auto"; or the appropriate coverage provided by symbols 2, 7, 8, or 9. Limits may be satisfied by a single primary limit or by

a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy.

(C) Pollution Liability:

Coverage in an amount no less than \$5,000,000 per occurrence/claim 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.

(D) 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.

(E) Employers Liability or "Stop Gap":

Coverage with minimum limits of \$1,000,000 each occurrence 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.

17.7 Minimum Limits of Insurance - Construction Period: Prior to commencement of Construction and until Construction is complete and approved by the Parties, Franchisee shall cause its Contractor(s) 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 coverage and policy limits, on liability policies except Workers' Compensation and Professional Liability. County Parties are not responsible for payment of the cost of such insurance. Franchisee's Contractor(s) shall maintain coverage and limits no less than the following, or alternatively, at the discretion of the County Risk Manager, the following limits may be reviewed and reasonably adjusted for each of Franchisee's Construction Contractor(s) as mutually agreed by both Parties:

(A) Commercial General Liability: \$5,000,000 per occurrence and \$5,000,000 in the aggregate for bodily injury, personal and advertising injury, and property damage. Coverage shall be at least as broad as that afforded under ISO form number CG 00 01. Such insurance shall include coverage for, but not limited to, premises liability, Products-Completed Operations, ongoing operations, and contractual liability. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy and satisfy all other requirements applicable to liability insurance including but not limited to additional insured status for County. Explosion & Collapse, Underground Damage (XCU) shall apply for the same limits as the General Liability coverage.

(B) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage. Coverage shall be at least as broad as that afforded under ISO 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. Limits may be satisfied by a single primary limit or by a combination of separate primary and umbrella or excess liability policies, provided that coverage under the latter shall be at least as broad as that afforded under the primary policy.

(C) Professional Liability (Errors & Omissions): In the event that services delivered pursuant to this Franchise 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: Coverage in an amount no less than \$5,000,000 per occurrence/claim 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: 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.

(F) Employers Liability or "Stop Gap": Coverage with minimum limits of \$1,000,000 each occurrence and shall be at least as broad as the indemnification 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.

17.8 Deductibles and Self-Insured Retentions: Any deductible and/or self-insured retention of the policy(s) shall not in any way limit County's right to coverage under the required insurance, or to Franchisee's or any Contractor's liability to the County, and shall in all instances be the sole responsibility of Franchisee and its Contractor(s), even if no claim has actually been made or asserted against Franchisee or Contractor(s).

17.9 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 Liability (Errors and Omissions) and Workers Compensation.

1. The County and County Parties shall be covered as additional insured, for full coverage and policy limits, as respects liability arising out of ongoing and completed work, or other activities performed by or on behalf of Franchisee or its agents, representatives, employees or Contractor(s) in connection with this

Franchise. Additional insured status shall include Products-Completed Operations.

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

1. Coverage shall be primary insurance as respects the County, its officials, officers, employees and agents. Any insurance and/or self-insurance maintained by the County, its officials, officers, employees or agents shall not contribute with the Franchisee's or any Contractor's insurance or benefit the Franchisee or Contractor, or their respective insurers in any way.
2. Insurance shall expressly state that it applies separately to each insured and additional insured against whom a claim is made and/or lawsuit is brought, except with respect to the limits of the insurer's liability.

(C) All Policies: Coverage shall not be suspended, voided, canceled or materially changed until after thirty (30) days prior written notice has been given to the County. In the event of said cancellation or intent not to renew, Franchisee shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section by the cancellation date. Failure to provide proof of insurance could result in revocation or termination of the Franchise.

17.10 Acceptability of Insurers: Unless otherwise approved by the County, insurance is to be placed with insurers with an A.M. Best rating of no less than A:VII, or, if not rated with A.M. Best, with minimum surpluses the equivalent of A.M. Best surplus size VIII. Professional Liability, Errors, and Omissions insurance may be placed with insurers with an A.M. Best rating of B+:VII. Any exception must be approved by the County's Office of Risk Management Services. If, at any time, the foregoing policies shall fail to meet the above requirements, Franchisee shall promptly obtain a new policy, and shall submit the same, with appropriate certificates and endorsements, to the County.

17.11 Verification of Coverage: Prior to the execution of this Franchise, Franchisee shall furnish the County with certificates of insurance and endorsements certifying the issuance of all insurance required by this Franchise. All evidence of insurance shall be signed by a properly authorized officer, agent, general agent or qualified representative of the insurer(s), shall set forth the name of the insured(s), the type and amount of insurance, the location and operations to which the insurance applies, the inception and expiration dates, and shall specify the form number of any endorsements issued to satisfy this Franchise's insurance requirements.

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.

The County's receipt or acceptance of Franchisee's or its Contractor's evidence of insurance at any time without comment or objection, or the County's failure to request certified copies of such insurance, does not waive, alter, modify, or invalidate any of the insurance requirements set forth in this Section or, consequently, constitute County's acceptance of the

adequacy of Franchisee's or any Contractor's insurance or preclude or prevent any action by County against Franchisee for breach of the requirements of this Section.

17.12 Contractors: Franchisee shall include all Contractors as insured under its policies or, alternatively, Franchisee must require each of its Contractors to procure and maintain appropriate and reasonable insurance coverage and insurance limits to cover each of the Contractor'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 Contractor(s) must name the County and County Parties as additional insured, for full coverage and policy limits. Franchisee is obligated to require and verify that all Contractors 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 Contractor(s) Insurance coverage (including endorsements).

17.13 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.

17.14 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 or its Contractor(s) before commencement of any Construction, Maintenance, Operations, or any work or any other activities associated with this Franchise.

17.15 In satisfaction of the insurance requirements set forth in this Section, Franchisee may maintain a fully-funded self-insurance program for its liability exposures in this Franchise, which is consistent with good utility practice. Franchisee agrees to provide the County with at least thirty (30) days prior written notice of any material change in Franchisee's self-funded insurance program and 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 Franchise have been satisfied.

## **Section 18. Incorporation and Annexation**

If any road or County ROW covered by this Franchise is incorporated or annexed into the limits of any city or town, the Franchise granted herein shall terminate as to any road or County ROW



within the corporate limits of such city or town; but the Franchise shall continue as to County roads and County ROW not incorporated into a city or town.

## **Section 19. Vacation**

19.1 If any portion of a County ROW which is subject to this Franchise is vacated, this Franchise shall automatically terminate with respect to the vacated portion of such County ROW. The County shall not be liable for any damages or loss to the Franchisee by reason of such vacation and termination.

19.2 Whenever a County ROW or any portion thereof is vacated, the County may retain an easement for the Construction and Maintenance of public utilities and services which at the time of the vacation are specifically authorized or are physically located upon, over, under, across, or through a portion of the County ROW being vacated, in accordance with the provisions of RCW 36.87.140 as now existing or hereafter amended. In the event a right-of-way vacation is initiated under KCC 14.40.010, the County Road Engineer shall notify Franchisee in writing of the proposed vacation as soon as practicable prior to finalizing a report that complies with the requirements in RCW 36.87.040. Should the Franchisee desire the County to retain a utility easement in the vacated County ROW, the Franchisee may request that the County retain such an easement on, through and over the property at issue on behalf of the Franchisee as a part of any proposed action taken by the County Council on the particular vacation. Should the Franchisee make such a request, the County may retain said easement in the manner and to the extent provided for and allowed by law.

## **Section 20. Assignment and Colocation**

20.1 This Franchise may not be leased, sold, partitioned, transferred, assigned, disposed of, or otherwise subject to a change in the identity of the Franchisee (each such activity, a "Transfer"), in whole or in part, in any manner, without legislative approval by the County Council. If such transfer is approved, the transferee must agree to be bound by each and every one of the provisions, conditions, regulations, and requirements contained in this Franchise.

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

20.3 When entering into new agreements with Colocators for use of Franchisee's Facilities ("Colocation Agreements") and when updating and renewing existing Colocation Agreements, Franchisee shall include in such new, updated and renewed Colocation Agreements language affirming that Colocators shall install attachments on Franchisee's Facilities and obtain and comply with, all easements, rights-of-way, franchises, permits, licenses, and other property rights

and interests necessary or required to use or occupy the County ROW. Nothing in this Franchise is intended or shall be construed as agreement by the County with the terms and conditions of any Colocation Agreement or as a waiver of the requirements in King County Code for County permits, franchises or other authorizations prior to use or occupancy of County ROW.

20.4 In the event Franchisee desires to transfer ownership of Facilities to a Colocator, such transfer shall be arranged and accomplished consistent with a written agreement between the County and the Colocator, binding the Colocator to compliance with all terms and conditions applicable to the Colocator's use and occupancy of the County ROW. Franchisee Facilities that are out of compliance with the Road Standards may not be transferred unless and until they are brought into compliance.

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

## **Section 21. Default, Revocation, and Termination**

21.1 If the Franchisee Defaults as defined in Section 1 on any term or condition of this Franchise, the County may terminate the Franchise as provided in KCC ch. 6.27, this Section 21, or pursue any remedy in equity or at law. Upon termination by the County, 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. Franchisee may terminate this Agreement in the event of a Default by the County or pursue any remedy in equity or law.

21.2 A Party shall assert a Default by giving the other Party written notice of such asserted Default, stating with specificity the events or circumstances and nature of the asserted Default. The Party receiving such notice shall have sixty (60) days following receipt to cure the asserted Default, demonstrate to the other Party's satisfaction that a Default does not or no longer exists, or submit a plan satisfactory to the other Party to correct the asserted Default within a reasonable time. If, at the end of the sixty (60) day cure period, the non-Defaulting party reasonably believes that the asserted Default is continuing and the Party allegedly in Default is not taking satisfactory corrective action to cure or correct the Default, the other Party may invoke any of the remedies available under this Franchise, in equity, or at law.

21.3 The Party asserting the Default may, in its discretion, provide additional opportunity for the other Party to remedy the Default and come into compliance with this Franchise so to avoid termination.

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

21.5 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, the County

may pursue its remedies under this Franchise, in equity, or at law without waiting for the cure period to expire. To the extent practicable under the circumstances, the County will provide reasonable notice to Franchisee.

## **Section 22. Remedies to Enforce Compliance; No Waiver**

22.1. If a dispute under this Franchise other than a dispute arising under Section 21 (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 are unable to resolve the dispute during the initial meeting of the Parties' representatives, and unless further negotiations are agreed upon by the Parties, the Parties hereby agree that the matter shall be referred to mediation. The Parties shall mutually agree upon a mediator to assist them in resolving their differences. Any reasonable expenses incidental to mediation shall be borne equally by the Parties.

If the Parties fail to achieve a resolution of the dispute through mediation within thirty (30) days after the matter is eligible for submission to mediation, either Party may then pursue any remedy under this Franchise, in equity, or at law, provided that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other Party's reasonable legal fees and costs incurred in the judicial action. If Franchisee or the County reasonably determines that circumstances require immediate action to prevent or mitigate imminent and substantial damage or injury, then such Party may immediately pursue any remedy available at law or in equity without having to follow the dispute resolution procedures in this Section.

22.2 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.

22.3 In addition to judicial enforcement and any remedies under this Franchise, in equity, and at law, the Manager of the Real Estate Services Section and the Director of the Road Services Division have the authority under the King County Code to enforce this Franchise in accordance with the enforcement and penalty provisions of K.C.C. Title 23.

## **Section 23. County Ordinances and Regulations - Reservation of Police Power**

Nothing in this Franchise shall be deemed to restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of the Franchise granted by this Franchise, including, but not limited to, any valid ordinance made in the exercise of the County's police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and

maintenance of any Franchisee Facilities located within any County ROW or affecting any County ROW, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this Franchise and any other ordinance(s) enacted under the County's police power authority, such other ordinance(s) shall take precedence over the regulatory provisions set forth herein.

#### **Section 24. Eminent Domain**

This Franchise is subject to the power of eminent domain, to extent permitted by law. In any proceeding under eminent domain, the Franchise itself shall have no value.

#### **Section 25. Survival**

25.1 Until such time as all of the Franchisee Facilities have been removed or have been abandoned in place in accordance with Section 13, all of the provisions, conditions, and requirements contained in the following Sections of this Franchise shall survive the expiration, revocation, forfeiture, or early termination of the Franchise: (A) Section 4 (Right of Way Construction permit Required; Critical Areas 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 of Franchisee Facility Locations); (F) Section 9 (Relocation of Franchisee Facilities); (G) Section 11 (Hazardous Materials); (H) Section 12 (Dangerous Conditions, Authority for County to Abate); (I) Section 13 (Abandonment of Franchisee Facilities); (J) Section 14 (Consideration); (K) Section 15 (Hold Harmless and Indemnification); (L) Section 16 (Franchise Administration); (M) Section 17 (Insurance Requirements); ; (N) Section 21 (Default, Revocation, and Termination); (O) Section 23 (Remedies to Enforce Compliance; No Waiver); and (P) Section 26 (Governing Law, Stipulation of Venue, and Non-Discrimination).

25.2 After such time as all Franchisee Facilities have been either removed or abandoned in place to the County's satisfaction pursuant to Section 13, only the following provisions shall survive the expiration, revocation, forfeiture, or early termination of the Franchise: (A) Section 8 (Maps and Records of Franchisee Facility Locations); (B) Section 11 (Hazardous Materials); (C) Section 15 (Hold Harmless and Indemnification).and (D) Section 16 (Franchise Administration).

25.3 The following provisions shall survive as to any area removed from the coverage of the Franchise as a result of a full or partial termination of the Franchise: (A) Section 18 (Incorporation and Annexation); (B) amendment of the Franchise Area under Section 30 (Amendment); (C) Section 8 (Maps and Records of Franchisee Facility Locations); (D) Section 11 (Hazardous Materials); and (E) Section 15 (Hold Harmless and Indemnification); and (F) Section 16 (Franchise Administration).

## **Section 26. Governing Law, Stipulation of Venue, and Non-Discrimination**

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

26.2 Nondiscrimination: The County and Franchisee, their successors, and assigns, shall not discriminate on the basis of sex, race, color, marital status, national origin, religious affiliation, disability, sexual orientation, gender identity, military status or status as a veteran who was honorably discharged, or age except by minimum age and retirement provisions, unless based upon a bona fide occupational qualification, in the employment or application for employment or in the administration or delivery of services or any other benefits under King County Code 12.16.125. 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, chapter 49.60 RCW, and Titles VI and VII of the Civil Rights Act of 1964. Any violation of this provision shall be considered a default of this Franchise and shall be grounds for revocation, termination, or suspension of the Franchise.

## **Section 27. 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 28. Notice and Emergency Contact**

Any notice or information required or permitted to be given to the Parties under this Franchise may be sent to the following addresses unless otherwise specified. The Parties may also provide notice by email. If a Party disputes the delivery or receipt of notice by email then that Party shall bear the evidentiary burden to prove, by a preponderance of the evidence, that such notice was not delivered or received or both.

KING COUNTY  
King County Facilities Management Division  
500 Fourth Avenue,  
Seattle, WA 98104  
Attn: Franchise Unit  
Email: [Franchise.FMD@KingCounty.gov](mailto:Franchise.FMD@KingCounty.gov)

CITY OF SEATTLE  
City Light Department

700 - 5th Avenue, Suite 3200  
Seattle, WA 98124-4023  
Attn: Sandra Ball, Manager, Energy Delivery Technical Services  
Phone: 206-233-2645  
Email: Sandra.Ball@seattle.gov

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

### **Section 29. Acceptance**

Within one hundred eighty (180) days from the approval date by the County Council, this Franchise shall be accepted by the Franchisee by first obtaining approval of such acceptance by ordinance of the Seattle City Council, and then by executing this Franchise and filing the executed Franchise with the Clerk of the County Council, which act shall be deemed an unconditional written acceptance thereof. Full acceptance of this Franchise is a condition precedent to its taking effect, and unless this Franchise is accepted within the time specified, this grant will be voidable and will have no force or effect.

### **Section 30. Amendment**

This Franchise may be modified at any time as proposed by mutual written agreement of the Parties, provided that such amendment that modifies a material term of this Franchise shall not become effective unless and until it is approved by County ordinance and accepted by ordinance of the Seattle City Council; provided, however, the Director of Facilities Management Division is authorized to execute the following amendments on behalf of the County without prior County Council approval: changes to the Franchise Area, extension of this Franchise under Section 3.2 (Term), adjustments under Section 17 (Insurance Requirements), and minor technical corrections or updates.

### **Section 31. Incorporation of Recitals**

The recitals set forth above are hereby incorporated into and made part of the terms and conditions of this Franchise.

[SIGNATURES TO FOLLOW ON NEXT PAGE]



**CITY OF SEATTLE**

STATE OF WASHINGTON )  
 ): ss.  
COUNTY OF King County )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared Debra Smith, and under oath stated that as General Manager/CEO of Seattle City Light, she was authorized to execute the foregoing instrument, which she signed as a free and voluntary act on behalf of and with the knowledge and authority of the City of Seattle.

Given under my hand and official seal hereto affixed the day and year last above written.

Notary Seal

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print or type name)  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**KING COUNTY**

STATE OF WASHINGTON )  
 ): ss.  
COUNTY OF KING )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared Anthony O. Wright, known to me as the Director, Facilities Management Division, for King County, and under oath stated that he was authorized to execute the foregoing instrument, which he signed as a free and voluntary act on behalf of and with the knowledge and authority of King County.

Given under my hand and official seal hereto affixed the day and year last above written.

Notary Seal

\_\_\_\_\_  
(Signature)  
\_\_\_\_\_  
(Print or type name)  
Notary Public in and for the State of Washington  
residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_



## **EXHIBIT A**

### **FRANCHISE AREA LEGAL DESCRIPTION**

#### Franchise Area 1 (formerly #12965)

All those portions lying outside incorporated cities and towns within Sections 1 and 12, Township 23 North, Range 3 East, W.M., Sections 4, 5, 6, 7, 8 and 9, Township 23 North, Range 4 East, described as follows:

Beginning at the intersection of the east margin of Seola Beach Drive SW with the westerly extension of the north right of way margin of SW 116th Street;

Thence easterly along the north right-of-way margin of SW 116th Street extended Westerly and along the centerline of dedicated SW 116th Street to the east right-of-way margin of 12th Avenue SW;

Thence southerly along the east right-of-way margin of 12th Avenue SW and Ambaum Boulevard SW to the north right of-way margin of SW 128th Street;

Thence easterly along the north right-of-way margin of SW 128th Street, South 128th Street and the easterly extension thereof, to the westerly boundary of the City of Tukwila;

Thence northerly along westerly boundary of the City of Tukwila to its intersection with the southerly boundary of the City of Seattle;

Thence southerly, southeasterly, westerly, and southwesterly along the southerly boundary of the City of Seattle to the point of beginning.

Also, together with those portions of Sections 1, 11, 12, 13, 14, Township 23 North, Range 4 East, W.M., and Sections 6, 7, and 18, Township 23 North, Range 5 East, W.M., described as follows:

Beginning at the intersection of the southerly boundary of the City of Seattle with the southwesterly boundary of Lake Washington;

Thence southeasterly along the southwesterly boundary of Lake Washington to the intersection of the westerly boundary of the City of Renton;

Thence southerly, southwesterly, southeasterly, and westerly along the westerly boundary of the City of Renton to its intersection with the easterly boundary of the City of Tukwila;

Thence northwesterly and northerly along the easterly boundary of the City of Tukwila to the centerline of South Juniper Street in the southerly boundary of the City of Seattle;

Thence running along with southerly boundary of the City of Seattle as follows:

Easterly along the centerline of South Juniper Street to the centerline of 59th Avenue South;

Thence northerly along the center line of 59th Avenue South to the centerline of South Leo Street;

Thence easterly along the centerline of South Leo Street and its extension easterly to the easterly line of Renton Avenue South;

Thence southeasterly along the easterly line of Renton Avenue South to the south line extended westerly Block 8 Lake Ridge Division No. 4 as recorded in Volume 40 of Plats, Pages 22 and 23, records of King County Washington;

Thence easterly along the extended south line of Block 8, the south line of said Block 8, and the south line of Block 8 Lake Ridge Division No. 3 as recorded in Volume 40 of Plats, Page 10, records of King County, Washington, southeast corner of said Plat of Lake Ridge division No. 3;

Thence northerly along the east line of said Plat to the north line of Section 12, Township 23 North, Range 4 East, W.M.;

Thence westerly along the north line of said Section 12, to the northwest corner thereof;

Thence northerly along the west line of Section 1, Township 23 North, Range 4 East, W.M., to the northwest corner of the Plat of Lakeridge Park Estates, as recorded in Volume 134 of Plats, Pages 90 and 91, records of King County, Washington;

Thence easterly along the north line of said Plat to the west boundary of Lakeridge Park;

Thence southerly along the west boundary of Lakeridge Park to the southwest corner thereof;

Thence easterly along the south boundary of Lakeridge Park to the southeast corner thereof;

Thence northerly along the easterly boundary of Lakeridge Park to the northeast corner thereof;

Thence easterly along the westerly extension of the center line of South Ryan Street and the centerline of dedicated South Ryan Street to the point of beginning;

Except any portion lying within incorporated cities and towns.

#### Franchise Area 2 (formerly #5505)

The centerline of City of Seattle's – Seattle City Light Department, Bothell to Renton 230 kV Transmission Line Right of Way as described as follows:

Beginning up at north quarter corner of Section 4, Township 26 North, Range 5 East, W.M., and King County, Washington;

Thence southerly along the north-south centerline of said Section 4, and Sections 9, 16, 21, and 28, Township 26 North, Range 5 East, W.M., to the north line of said south half of the south half of said Section 28;

Thence South 14°53'42" East to the south line of said Section 28;

Thence southerly through the west half of the east half of Section 33, Township 26 North, Range 5 East, W.M., and Section 4, Township 25 North, Range 5 East, W.M., to the intersection of south line and centerline of said Section 4;

Thence southerly along the center lines of Section 9, 16, 21, 28, and 33, Township 25 North, Range 5 East, W.M., and Section 4, Township 24 North, Range 5 East, W.M., to the south line of said Section 4

Thence southerly through the east half of the west half of Section 9, Township 24 North, Range 5 East, W.M., to the south quarter corner of said Section 9;

Thence southerly along the north-south centerline of Sections 16, 21, 28, and 33, Township 24 North, Range 5 East, W.M., to a line approximately 1,655 feet south of and parallel with the north line of said Section 33;

Thence South 09°47'00" East approximately 10,715 feet through the west half of the east half of Section 33, Township 24 North, Range 5 East, W.M., and the east half of Sections 4 and 9, Township 23 North, Range 5 East, W.M., to appoint in the southeast quarter of the northeast quarter of said Section 9;

Thence south 05°49'00" West approximately 7,423 feet through the east half of Sections 9 and 16, Township 23 North, Range 5 East, W.M., to a point in the southwest quarter of the southeast quarter of said Section 16;

Thence South 52° 02'00" West to the south line of said Section 16 and the terminus of said centerline;

Except any portion lying within incorporated cities and towns.

Segments of County ROW

	Road Segment	Limits	Jurisdiction
1.	N 145th St.	From Lake City Way NE to 40th Ave NE (Lake Washington shoreline)	South 1/2 of road is in Seattle. (North 1/2 of road is County ROW).
2.	N 145th St.	From Greenwood Ave N to Aurora Ave N	South 1/2 of road is in Seattle. (North 1/2 of road is County ROW).
3.	SW Roxbury St - (North Highline Area Y PAA)	From 30th Ave SW to 21st Ave SW	North 1/2 of road is in Seattle. (South 1/2 of road is County ROW).

4.	SW Roxbury St- (North Highline Area Y PAA)	From 2nd Ave SW to 19th Ave SW	North 1/2 of road is in Seattle. (South 1/2 of road is County ROW).
5.	21st Ave SW - (North Highline Area Y PAA)	From SW Roxbury St to SW 98th St	East 1/2 of road is in Seattle. (West 1/2 of road is County ROW).
6.	SW 98th St – (North Highline Area Y PAA)	From 21st Ave SW to 19th Ave SW	North 1/2 of road is in Seattle. (South 1/2 of road is County ROW).
7.	51st Ave S	From S Ryan St to S Avon St.	East 1/2 of road is in Seattle with Tukwila abutting the west margin of the road. (West 1/2 of road is County ROW).
8.	S 120th St (Juniper St)	From 59th Ave S to SR-900 (Martin Luther King JR Way S)	North 1/2 of road is in Seattle. (South 1/2 of road is County ROW).
9.	59th Ave S	From S 120th St (Juniper St) to S Avon St	West 1/2 of road is in Seattle. (East 1/2 of road is County ROW).
10.	S 104th St (Ryan St)	From Cornell Ave S to 76th Ave S	North 1/2 of road is in Seattle. (South 1/2 of road is County ROW).
11.	Dallas Ave S - (Sliver by the River PAA)	From 12th Ave S to 16th Ave S	South 1/2 of road is in Seattle. (North 1/2 of road is County ROW).
12.	12th Ave S - (Sliver by the River PAA)	From Dallas Ave S to alley; From S Rose St to S Southern St	West 1/2 of road is in Seattle. (North 1/2 of road is County ROW).

**EXHIBIT B**  
**FRANCHISE AREA MAPS**  
(attached)