

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

REGULAR AGENDA REQUEST

TO: Board of County Commissioners
Josh Peters, County Administrator

FROM: Monte Reinders, P.E., Public Works Director 

DATE: October 13 2025

SUBJECT: Swalwell & Kogut, Olele Point Road Water Line Franchise Public Hearing

STATEMENT OF ISSUE:

Jarred Swalwell & Megan Kogut have assumed an in-progress application for renewal of a non-exclusive franchise to construct, maintain, and operate components of a public water transmission and distribution system in County rights-of-way in eastern Jefferson County. Public Works has submitted a Resolution to the Board granting a franchise to Jarred Swalwell & Megan Kogut. The Board has scheduled a public hearing. Public Works has complied with the public notice requirements of RCW 36.55 and posted the Franchise Resolution and public hearing notice on the County's Internet home page.



ANALYSIS:

Jarred Swalwell & Megan Kogut (franchisee) currently own and operate components of a water transmission and distribution system within Jefferson County right of way. This Franchise agreement formalizes approval and details rights and responsibilities of the franchisee.

Significant Franchise terms and conditions:

- Sections 2-4 Purpose/Definitions/Franchise: describes the Franchise terms and conditions. The Franchise constitutes a binding contract between Jefferson County and

franchisee. The franchise would be for 20 years.

- Section 5 Performance of Work: establishes the requirements for franchisee to install and operate facilities in County rights-of-way.
- Section 6 Relocation & Modification of Facilities: describes the process and requirements for franchisee to relocate its facilities in County rights-of-way in order to accommodate County projects.
- Section 7 Removal of Facilities: Details requirements related to removal of facilities.
- Section 10 Hazardous Substances: Details franchisee responsibilities regarding notification, liability and reimbursement requirements for hazardous substance release.
- Section 13 Compensation: Details reservation of right for Board of County Commissioners to fix fair and reasonable compensation for the use of the public property (right of way).
- Section 14 Indemnification and Hold Harmless: indemnifies the County against third party claims related to franchisee's negligence.
- Section 15 Insurance: establishes franchisee's insurance requirements.
- Section 17 Dispute Resolution: Details the steps/process to be used for dispute resolution between the County and franchisee.
- Section 18 Termination of Franchise: Details the process to terminate franchise due to breach.

FISCAL IMPACT:

None - The Franchise requires franchisee to reimburse Public Works for its staff time expense in preparing the Franchise and for the expense of publishing and posting the public hearing notice and filing the Franchise with the County Auditor.

RECOMMENDATION:

During the public hearing, Public Works will detail the franchise application and approval process and answer questions regarding the Jarred Swalwell & Megan Kogut, Water Line Franchise Resolution.

After the close of the hearing, the Board could:

Consider the comments received and decide whether to grant the Franchise, or

Direct Public Works to compile the comments and prepare responses for review by the Board at a later date.

If the Board decides to grant the Franchise, the Commissioners should sign all three copies of the Franchise Resolution and return them to Public Works to send to franchisee for final acceptance. One fully executed version will be returned to the Board following recording.

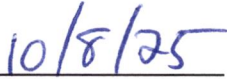
Department Contact:

Josh Thornton, Real Property Specialist, 360-385-9162.

REVIEWED BY:



Josh Peters, County Administrator



Date

CONTRACT REVIEW FORM

(INSTRUCTIONS ARE ON THE NEXT PAGE)

Clear Form

CONTRACT WITH: Jarred Swalwell & Megan Kogut

Contract No: WATER LINE FRAN

Contract For: Water Line Franchise

Term: 20 Years

COUNTY DEPARTMENT: PUBLIC WORKS

Contact Person: JOSHUA THORNTON

Contact Phone: 360-385-9162

Contact email: JTHORNTON@CO.JEFFERSON.WA.US

AMOUNT: NO FISCAL IMPACT TO THE COUNTY

Revenue: _____

Expenditure: _____

Matching Funds Required: _____

Sources(s) of Matching Funds: _____

Fund # _____

Munis Org/Obj _____

PROCESS:

- ☐ Exempt from Bid Process
- ☐ Cooperative Purchase
- ☐ Competitive Sealed Bid
- ☐ Small Works Roster
- ☐ Vendor List Bid
- ☐ RFP or RFQ
- ☒ Other: _____

APPROVAL STEPS:

STEP 1: DEPARTMENT CERTIFIES COMPLIANCE WITH JCC 3.55.080 AND CHAPTER 42.23 RCW.

CERTIFIED: ☐ N/A: ☒

Joshua E Thornton

Signature

9/23/2025

Date

STEP 2: DEPARTMENT CERTIFIES THE PERSON PROPOSED FOR CONTRACTING WITH THE COUNTY (CONTRACTOR) HAS NOT BEEN DEBARRED BY ANY FEDERAL, STATE, OR LOCAL AGENCY.

CERTIFIED: ☐ N/A: ☒

Joshua E Thornton

Signature

9/23/2025

Date

STEP 3: RISK MANAGEMENT REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved by Risk Management on 9/29/2025.

STEP 4: PROSECUTING ATTORNEY REVIEW (will be added electronically through Laserfiche):

✓ Electronically approved as to form by PAO on 9/29/2025.
Franchise agreement prepared with the assistance of the PAO.

STEP 5: DEPARTMENT MAKES REVISIONS & RESUBMITS TO RISK MANAGEMENT AND PROSECUTING ATTORNEY(IF REQUIRED).

STEP 6: CONTRACTOR SIGNS

STEP 7: SUBMIT TO BOCC FOR APPROVAL

Please publish 2 times: October 1, 2025 and October 8, 2025

Contact Person: Josh Thornton, Real Property Specialist
Bill to: Jefferson County Public Works
623 Sheridan St., Port Townsend, WA 98368

NOTICE OF PUBLIC HEARING

Jarred Swalwell & Megan Kogut, Water Line Franchise located at Olele Point Road

NOTICE IS HEREBY GIVEN that a public hearing is scheduled by the Jefferson County Board of Commissioners for **Monday, October 13th, 2025 at 10:00 a.m.** in the Commissioners' Chambers, County Courthouse, 1820 Jefferson Street, Port Townsend, WA 98368 (HYBRID). Notice of said hearing is to be published in the official newspaper of Jefferson County.

During the hearing, testimony will be taken concerning a resolution to grant Jarred Swalwell & Megan Kogut a nonexclusive franchise to construct, maintain, and operate components of a water transmission and distribution system and facilities in County rights-of-way in eastern Jefferson County, the franchise area would include all County Road rights-of-way located within the South West Quarter of Section 28 Township 29 North, Range 1 East, W.M.

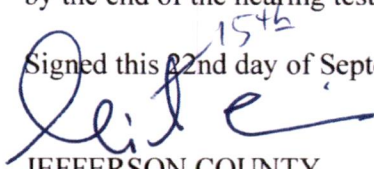
The information is available for viewing on the County website by visiting: www.co.jefferson.wa.us and follow this pathway – Services – Laserfiche Web Portal (username and password is: public) - Board of Commissioners – BOCC Agenda Packets – 2025 Weekly Agenda Items – 10 October 2025 – 101325 – HEARING re Olele Point Water System.

You are welcome to participate in this hearing. You will need to join the meeting by 10:00 a.m. using the following methods: **VIRTUALLY:** Via the following Zoom, link: <https://zoom.us/j/93777841705>, **PHONE:** Dial 1-253-215-8782 and enter access code: 937-7784-1705# and press *9 to “raise your hand” to be called upon. Access for the hearing impaired can be accommodated using Washington Relay Service at 1-800-833-6384, or **IN-PERSON:** In the BOCC Chambers. If you experience difficulties joining the meeting or viewing documents, please call 360-385-9100 to report any issues.

In addition, written testimony is also invited beginning on September 22, 2025 and ending on October 13, 2025 at the end of the Public Hearing, unless extended by the Board of County Commissioners. Written public testimony may be submitted by **Email to:** jeffbocc@co.jefferson.wa.us. You may view testimony received by visiting: www.co.jefferson.wa.us and following this pathway – Services – Laserfiche Web Portal (username and password is: public) – Board of Commissioners – BOCC Agenda Packets – 2025 Weekly Agenda Items – 10 October 2025 – 101325 – HEARING re Olele Point Water System.

You can also **Mail** your testimony to: Jefferson County Commissioners' Office; P.O. Box 1220, Port Townsend, WA 98368. Written testimony must be received by the Board of County Commissioners by the end of the hearing testimony period.

Signed this ^{15th} 2nd day of September, 2025.


JEFFERSON COUNTY
BOARD OF COMMISSIONERS
/S/Heidi Eisenhour, Chair

**STATE OF WASHINGTON
COUNTY OF JEFFERSON**

**In The Matter of the Application by Jarred
Swalwell & Megan Kogut For a
Nonexclusive Grant of Franchise to
Construct, Maintain, and Operate a Single
Family Water line Within a Portion of
Unincorporated Jefferson County**

**RESOLUTION NO. _____
Granting A Nonexclusive Franchise**

WHEREAS, adoption by the Jefferson Board of County Commissioners (Board) of a resolution granting a nonexclusive franchise to Jarred Swalwell & Megan Kogut (Grantee) to install, construct, repair, replace, maintain, relocate, extend, remove, operate, and use Facilities consisting of consisting of pipes, valves, hydrants, and other appurtenances in, upon, over, under, along, through and across the Franchise Area in unincorporated Jefferson County (the County) for the purpose of providing potable domestic water service; setting forth terms and conditions accompanying the grant of the nonexclusive franchise; and providing for the County administration and regulation of the nonexclusive franchise would memorialize the relationship between Grantee and the County; and

WHEREAS, chapter [13.56](#) of the Jefferson County Code (JCC) requires utility providers who occupy County rights-of-way to obtain a franchise from the County and pay all fees provided therein; and

WHEREAS, Grantee has applied to the Board and paid the applicable application fee for a nonexclusive franchise; and

WHEREAS, the Board finds that granting this Franchise is consistent with the requirements of JCC [13.56.080](#) in that:

- a) Grantee has the financial and technical ability to fulfill its obligations under a franchise granted by the County;
- b) Grantee has legal standing to be granted a franchise;
- c) The County rights-of-way within the Franchise Area have the capacity to accommodate Grantee's Facilities, if this Franchise is granted;
- d) County rights-of-way within the Franchise Area have the capacity to accommodate additional utility, telecommunications and cable television facilities, if this Franchise is granted;
- e) Grantee is willing and able to mitigate or repair any damage or disruption to public or private facilities, improvements, services, travel or landscaping, if this Franchise is granted;

- f) It is in the public interest in minimizing the cost and disruption resulting from the presence of Grantee's Facilities in County rights-of-way can be protected;
- g) Access to potable water is an important and much needed service for the County's citizens;
- h) In the County's sole opinion, there should be no anticipated adverse impact to public health, safety and welfare, if this Franchise is granted;
- i) The lack of availability of alternate routes or locations for Grantee's Facilities is limited;
- j) Grant of franchise is consistent with applicable Federal, State, and County laws, regulations, rules, and policies; and

WHEREAS, pursuant to RCW [36.55.040](#), notice was posted in three (3) public places in the County seat at least fifteen (15) days before the hearing date and notice was published once a week for two (2) consecutive weeks in the official County newspaper of record, the last publication being not less than five (5) days before the date fixed for the hearing; and

WHEREAS, pursuant to chapter [36.55](#) RCW, a hearing on the application was held on the 13th day of October, 2025; and

WHEREAS, the Board finds that it is in the public interest to grant this Franchise to Grantee;

NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS OF JEFFERSON COUNTY, WASHINGTON, HEREBY RESOLVE AS FOLLOWS:

SECTION 1 – WHEREAS CLAUSES ARE FINDINGS OF FACT.

The Jefferson County Board of Commissioners hereby adopts the above “Whereas” clauses as Findings of Fact.

SECTION 2 – PURPOSE.

The purpose of this resolution is that a nonexclusive franchise is hereby granted to Grantee, to install, construct, repair, replace, maintain, relocate, modify, extend, remove, operate, and use Facilities in, upon, over, under, along, through across and along the County Rights-of-Way located in the areas identified in [Section 3.5](#) below, for the purpose of providing water service to a single family home under the following express terms and conditions.

SECTION 3 – DEFINITIONS.

The terms defined below, as used in this Franchise, shall have the meanings defined. Other terms as defined in JCC [13.56.030](#) shall have the meanings given in that code section, if not otherwise defined in this Franchise. When not inconsistent with the text, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender

shall be applicable to all genders. The words “shall” and “will” are mandatory, and the word “may” is permissive. The words “and” means “or” and “or” means “and,” so as to make the term inclusive rather than exclusive. Words not otherwise defined shall be given their common and ordinary meaning in the context used and as defined in the Dictionary by Merriam-Webster <https://www.merriam-webster.com/>). Whenever the following terms are used in this Franchise, the meanings in this Section 3 apply.

- 3.1 “Emergency” has the same meaning as in JCC [13.56.030\(16\)](#).
- 3.2 “Engineer” has the same meaning as in JCC [13.56.030\(18\)](#).
- 3.3 “Facilities” means, collectively, all: (a) components of a water transmission and distribution system, including but not limited to, pipes, valves, and hydrants; and, (b) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located above ground or underground.
- 3.4 “Franchise” means all the terms of this Resolution, including but not limited to Section 4.
- 3.5 “Franchise Area” means the rights-of-way for County roads located within the **South West Quarter Section 28, Township 29 North, Range 1 East, W.M.**, (as shown in Appendix A) and not within an incorporated city or town, as now or as may hereafter be laid out, platted, dedicated, or improved within the present limits of the County and as such limits may be hereafter extended. The Franchise Area does not include (a) any other County owned or leased properties or easements (i.e., County owned or leased properties or easements unrelated to the County Roads described above), including, but not limited to, parks, trails, facilities, or pits, located inside or outside of the boundaries of the County, or (b) Grantee owned or leased properties or easements located inside or outside of the boundaries of the County.
- 3.6 “Hazardous Substance” means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant that is identified as such under applicable regulations adopted pursuant to the federal hazardous materials transportation act, the toxic substances control act, the resource recovery and conservation act, the comprehensive environmental response compensation and liability act, the federal insecticide, fungicide, and rodenticide act, the occupational safety and health act hazardous communications standards, and the Washington State hazardous waste act, the Washington Model Toxic Controls Act, all as exist now or as amended or superseded, or any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect.

- 3.7 “JCC” means the Jefferson County Code, as it now exists or as it is later amended or superseded.
- 3.8 “Parties” or “Party” means collectively the County and Grantee, and individually either the County or Grantee.
- 3.9 “Public Improvement Project” means any County capital improvement undertaken by the County, including projects listed in the County’s Six-Year Transportation Improvement Program or Annual Construction Program, or the construction, relocation, modification, expansion, repair, maintenance, or removal of any County-owned facility located on, in, over, or under the Franchise Area that is undertaken by the County for parks; roads or streets; curbs or sidewalks; pedestrian, bicycle, or other non-motorized transportation facilities; water systems; sanitary sewer systems; bridges, culverts, and storm drainage facilities; and County-owned fiber optic cable, conduit, or network facilities. For the avoidance of doubt, a Public Improvement Project will not include any development or other activity requiring the relocation or modification of Grantee’s Facilities for the sole benefit of a Third-Party. Any such relocation or modification shall be subject to the rights provided to Grantee in Section 4.
- 3.10 “RCW” means the Revised Code of Washington, as it now exists or as it is later amended or superseded
- 3.11 “Section” means a section in this Franchise, unless otherwise clear from the context.
- 3.12 “Third-Party” means any Person other than the County and Grantee.
- 3.13 “Traffic Control” has the same meaning as in JCC [13.56.030\(52\)](#).
- 3.14 “WAC” means the Washington Administrative Code, as it now exists or as it is later amended or superseded.

SECTION 4 – FRANCHISE.

4.1 Grant of Franchise.

- 4.1.1 Pursuant to the laws of the State of Washington, including, but not limited to, chapter [36.55](#) RCW, the County hereby grants to Grantee, subject to and in accordance with the terms and conditions set forth in this Franchise, a nonexclusive franchise that grants the right, authority and franchise to install, construct, repair, replace, maintain, relocate, extend, remove, operate, and use the Facilities in, upon, over, under, along, through and across the Franchise Area.

- 4.1.2 This Franchise shall not convey to Grantee any title or ownership interest in the Franchise Area, but shall be deemed a franchise only to use and occupy the Franchise Area for the limited purposes and term stated herein.
- 4.1.3 This Franchise shall not authorize, excuse, preclude or prohibit Grantee from securing such further easements, leases, permits, or other approvals as may be required or desired to lawfully occupy and use the Franchise Area.
- 4.1.4 The Parties acknowledge and agree that this Franchise shall not govern, cover, or apply to any Facilities located on Grantee owned or leased properties or easements (whether inside or outside of County rights-of-way, whether granted by a private or public entity, and whether now existing or hereafter acquired) and that such Facilities owned by Grantee are not, and will not be deemed to be, located pursuant to rights derived from this Franchise.
- 4.1.5 This Franchise granted shall not be construed as any warranty of title.
- 4.1.6 No act, event or occurrence shall give Grantee any rights to occupy or use the Franchise Area permanently nor shall operate as an estoppel against the County.
- 4.1.7 Grantee specifically agrees to exercise its rights within the Franchise Area in accordance with all applicable Federal and State of Washington laws and applicable rules and regulations, as now exist or as later amended or superseded; and all applicable County codes, including, but not limited to, JCC Title [13](#) Utilities, Division II (Accommodation of Utilities upon Jefferson County Rights-of-Way, chapter [13.56](#) JCC), resolutions, and ordinances, as now exist or as later amended or superseded; provided, however, in the event of a conflict or inconsistency between any such provisions and this Franchise, the express terms and conditions of this Franchise will govern; provided, further, nothing herein shall be deemed to waive, prejudice, or otherwise limit any right of appeal afforded Grantee by such County codes, resolutions or ordinances.
- 4.1.8 The express terms and conditions of this Franchise constitute a valid and enforceable contract between the Parties.
- 4.1.9 Pursuant to chapter [19.122](#) RCW Grantee shall participate in the One Call utilities-locating system by subscribing to a utilities underground location service. Grantee shall provide evidence of subscribing to the Engineer.
- 4.1.10 Prior to using the Franchise Area to provide additional types of utility services not expressly authorized by this Franchise, Grantee shall submit an application to the County for a franchise to use the Franchise Area to

provide those additional services. Grantee shall not use the Franchise Area to provide any such additional utility services until such time as a new franchise has been granted by the County.

- 4.2 Noninterference. All installation, construction, repair, replacement, maintenance, relocation, extension, removal, operation, and use of Grantee's Facilities performed within the Franchise Area shall be done in such a manner as not to interfere with the free passage of pedestrian or vehicle traffic therein; the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities; the use, maintenance, and repair of existing County-owned or non-County-owned utilities, drainage facilities, or other improvements located within the Franchise Area. Grantee's Facilities shall have the same preference as is given to non-County improvements that are proposed to be installed in the Franchise Area subsequent in time to Grantee's Facilities. Nothing in this Section 4.2 is intended to or will affect or modify the rights and obligations of the Parties with respect to the relocation or modification of Grantee's Facilities under Section 6. All relocations or modifications of Grantee's Facilities will be undertaken only subject to and in accordance with the terms, conditions, and requirements set forth in Section 6.
- 4.3 Drawings. Grantee shall provide the County, within sixty (60) days of installation of the Facilities, drawings showing the location of Grantee's Facilities within the Franchise Area, and such information in an electronic format suitable for import as a layer into the County GIS system. Except for as-built drawings required under JCC 13.56.340, as to any such drawings provided under this Section 4.3, Grantee does not warrant the accuracy thereof and to the extent the location of the Facilities is shown such Facilities are shown in approximate location. Upon the County's request, in connection with the design of any Public Improvement Project within the Franchise Area, Grantee shall verify the location of its underground Facilities within the Franchise Area by excavating, including potholing, at no expense to the County. With respect to any excavations by or on behalf of Grantee or the County within the Franchise Area, nothing herein is intended nor shall be construed to relieve either Party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.
- 4.4 Term of Franchise.
- 4.4.1 Term of Franchise. This Franchise is granted for a period of twenty (20) years from the date of adoption of this Franchise by the Board.
- 4.4.2 Franchise Acceptance. As an express condition of this Franchise, within sixty (60) days after the adoption of this Franchise by the Board, Grantee shall file with the Clerk of the Board its written acceptance of this Franchise substantially in the form provided in Exhibit A attached hereto and by this reference made a part hereof. At the time of filing its written acceptance,

Grantee shall reimburse the County for the expenses required to be paid by Grantee under Section 13.1 and deliver to the County the required evidence of insurance set out in Section 15. In the event Grantee fails to accept this Franchise in the manner specified above within the said sixty (60) days, this Franchise shall be null and void.

4.4.3 Franchise Renewal. This Franchise may be renewed, at the sole discretion of the Board, in accordance and compliance with JCC 13.56.160 through 13.56.180. The terms of this Franchise shall continue during the period between expiration of the original term and approval of a new Franchise as long as the renewal application procedures and conditions are met.

4.5 Nonexclusive Franchise. This Franchise shall be nonexclusive. The County specifically reserves the right to grant at any time such rights, permits, licenses, or franchises to Persons to use the Franchise Area for similar or different purposes allowed hereunder as the County deems appropriate, so long as the same does not interfere with Grantee's rights under this Franchise. Subject to this Franchise, Grantee shall not prevent or prohibit the County from constructing, altering, maintaining, or using any portion of the Franchise Area or affect its jurisdiction over any part thereof, the County having full power and authority to make all necessary changes, relocations, modifications, repairs, or maintenance of the Franchise Area as the County deems appropriate. Grantee acknowledges that it cannot exclude the County from any portion of the Franchise Area where it uses or occupies that portion of the Franchise Area unless the County expressly agrees to such exclusion in writing.

SECTION 5 – PERFORMANCE OF WORK.

5.1 Permit Required; Standard of Work.

5.1.1 Prior to commencing any Work within the Franchise Area, Grantee shall apply for and receive a utility permit from the County in accordance with the requirements of chapter 13.56 JCC.

5.1.2 Work by Grantee within the Franchise Area shall conform to the requirements of the applicable codes, ordinances, and standards, including JCC Title 13 Utilities, Division II (Accommodation of Utilities upon the County Rights-of-Way, chapter 13.56 JCC), provided, however, in the event of a conflict or inconsistency between any such requirements and this Franchise, the express terms and conditions of this Franchise will govern and control.

5.1.3 Work by Grantee within the Franchise Area shall be performed in a thorough, professional, and workmanlike manner, shall comply with approved permits and plans; provided, however, in the event of a conflict or

inconsistency between any such requirements and this Franchise, the express terms and conditions of this Franchise will govern and control.

5.1.4 The Director may order removal, at Grantee's expense, of work that does not comply with the permit, plans, codes or standards. If Grantee shall fail to make a required correction within a reasonable time established by the Engineer, the County may perform (with County forces or contractors) any and all work necessary to correct the noncomplying work and restore the Franchise Area and shall bill Grantee for reimbursement of such work. Grantee shall reimburse the County for all reasonable expenses related to such work within thirty (30) days of receiving an invoice.

5.1.5 Grantee is solely responsible for the performance and completion of work authorized by a utility permit that is issued to Grantee.

5.2 Emergency Response and Repairs.

5.2.1 In the event of an Emergency or the need for unexpected repair, Grantee may commence such Emergency response or repair as required by the circumstances, in accordance with, and subject to JCC [13.56.430](#). In the event that Grantee conducts Emergency response or repairs under this [Section 5.2](#), Grantee shall make application for a utility permit as soon as practicable, but in no event (unless waived by the County) later than thirty (30) days from the Emergency event.

5.2.2 In the event any of Grantee's Facilities within the Franchise Area are in a condition such that, in the reasonable opinion of the Engineer, an Emergency is created, Grantee upon request of the Engineer shall expeditiously and at its own expense repair the Facilities and correct the Emergency condition. If Grantee shall fail to repair the Facilities and correct the Emergency condition within a reasonable time established by the Engineer, the County may perform (with County forces or contractors) any and all work necessary to correct the Emergency condition and restore the Franchise Area and shall bill Grantee for reimbursement of such work. Grantee shall reimburse the County for all reasonable expenses related to such work within thirty (30) days of receiving an invoice.

5.3 Restoration. After installation, construction, relocation, maintenance, removal, repair, or replacement of any of Grantee's Facilities within the Franchise Area, Grantee at its expense shall expeditiously restore the Franchise Area and any County property within the Franchise Area that may have been disturbed or damaged by such work to at least the same condition as they were in immediately prior to any such work. The County shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of applicable County codes, ordinances, regulations, standards, and procedures as now exist or as later

amended or superseded.

- 5.4 Refuse and Debris. Grantee shall promptly remove and properly dispose of refuse and debris resulting from any of Grantee's work within the Franchise Area. Grantee shall remove refuse and debris on a regular basis during the work day to keep all travel ways clear. Should Grantee's work last for more than one day in a particular part of the Franchise Area, all refuse and debris shall be removed prior to leaving the site at the end of the work day, to the extent feasible in light of the work being undertaken by Grantee.
- 5.5 Financial Security. Pursuant to JCC [13.56.200](#), the County may require Grantee to post financial security, as determined by the County, to ensure satisfactory completion of construction, including, but not limited to, restoration of the Rights-of-Way and other property affected by Grantee's work. At the County's discretion, Grantee may provide and maintain a single on-going financial security covering multiple permits in lieu of individual surety.
- 5.6 Survey Monuments. All survey monuments that are disturbed, displaced, or destroyed by Grantee in its performance of any work under this Franchise shall be referenced and restored by Grantee, in accordance with chapter [332-120](#) WAC, as from time to time amended, and all pertinent Federal, State and County standards and specifications.
- 5.7 Traffic Control. Grantee's activities within the Franchise Area and activities within the Franchise Area conducted by Grantee's agents or by Third-Parties under a permit issued by the County to Grantee shall conform to the latest edition of the Manual on Uniform Traffic Control Devices, the requirements of JCC [13.56.460](#) Traffic Control, and approved traffic control plans provided, however, in the event of a conflict or inconsistency between any such manual, requirements, or plans and this Franchise, the express terms and conditions of this Franchise will govern and control. It shall be the responsibility of Grantee to ensure compliance. Grantee shall be liable for any damages resulting from Grantee's failure to provide adequate Traffic Control.

SECTION 6 – RELOCATION OR MODIFICATION OF FACILITIES.

- 6.1 Grantee at its own expense shall relocate or modify its Facilities existing within the Franchise Area as necessary to accommodate Public Improvement Projects, in accordance with and subject to the terms and conditions set forth in this [Section 4](#). The County acknowledges that Grantee's ability to relocate or modify its Facilities within the Franchise Area to accommodate Public Improvement Projects may be constrained due to the need to acquire property rights or long lead time items or to other conditions beyond Grantee's control. In order to reasonably accommodate Grantee's constraints, while recognizing the County's authority to manage the Franchise Area and responsibility to construct Public Improvement Projects within

the County's funding and scheduling constraints, the Parties will at all times work cooperatively and in good faith with the goal of ensuring that relocations or modifications of Grantee's Facilities within the Franchise Area that are required to accommodate Public Improvement Projects are planned, scheduled, and completed promptly and with due regard to the interests and constraints of both Parties.

- 6.2 In order to assist Grantee in planning for Public Improvement Projects that may require relocation or modification of Grantee's Facilities within the Franchise Area, the County shall provide Grantee with written notice and thirty percent (30%) complete plans for Public Improvement Projects that may require relocation or modification of Grantee's Facilities within thirty (30) days of their preparation.
- 6.3 Whenever the County undertakes a Public Improvement Project that requires relocation or modification of Grantee's Facilities within the Franchise Area, the County shall, within a reasonable time prior to the commencement of the Public Improvement Project and in any event not less than one hundred twenty (120) days prior to the commencement of the Public Improvement Project, provide Grantee written notice of the required relocation or modification and reasonable plans, specifications, and schedule for the Public Improvement Project. Within thirty (30) days of receipt of the notice, plans, specifications, and schedule, and subject to the exercise by Grantee of its rights under Section 6.4 or Section 6.5, Grantee shall provide the County with a proposed schedule to relocate or modify its Facilities within the Franchise Area that will accommodate the County's schedule for the Public Improvement Project.
- 6.4 If Grantee foresees that it may be unable to relocate or modify its Facilities to accommodate the County's schedule for the Public Improvement Project, Grantee shall notify the County as soon as reasonably practicable and request that the County revise its schedule for the Public Improvement Project to accommodate Grantee's constraints. The request shall include a description of the factors that constrain Grantee's ability to relocate or modify its Facilities to accommodate the County's schedule for the Public Improvement Project and a proposed alternative schedule. The County shall give Grantee's request and proposed alternative schedule full and fair consideration with due regard to Grantee's constraints and all other facts and circumstances which bear upon the request and shall provide a written response to Grantee.
 - 6.4.1 In the event that the County approves Grantee's request, thereafter and subject to this Section 6 the County and Grantee shall work cooperatively to establish a revised schedule for the Public Improvement Project and the relocation or modification of Grantee's Facilities and Grantee shall relocate or modify its Facilities within the Franchise Area so as to accommodate the revised schedule for the Public Improvement Project that is established pursuant to this Section 6.4.

- 6.4.2 In the event that the County denies Grantee's request, thereafter and subject to this Section 6 Grantee shall relocate or modify its Facilities within the Franchise Area so as to accommodate the County's schedule for the Public Improvement Project.
- 6.5 After receipt of written notice of the required relocation or modification and reasonable plans, specifications, and schedule for the Public Improvement Project under Section 6.3, Grantee may submit a request to the County to perform the relocation or modification concurrently with the Public Improvement Project. Grantee shall submit said request with a proposed schedule for concurrent relocation or modification not more than thirty (30) days after receiving the County's notice of the required relocation or modification under Section 6.3. The County shall give Grantee's request full and fair consideration with due regard to Grantee's interests and all other facts and circumstances which bear upon the request and shall provide a written response to Grantee.
- 6.5.1 In the event the County approves Grantee's request to relocate or modify its Facilities concurrently with the Public Improvement Project, the County and Grantee shall thereafter work cooperatively to establish a schedule for the concurrent relocation or modification of Grantee's Facilities and Grantee shall relocate or modify its Facilities within the Franchise Area so as to accommodate said schedule for concurrent relocation or modification that is established pursuant to this Section 6.5.
- 6.5.2 In the event the County denies Grantee's request that the relocation or modification be performed concurrently with the Public Improvement Project, Grantee shall relocate or modify its Facilities within the Franchise Area so as to accommodate the County's schedule for the Public Improvement Project.
- 6.6 Grantee shall reimburse the County for any and all costs, expenses, or damages that are legally required to be paid by the County to its Third-Party contractor(s) as a direct result of any delay in meeting the established schedule for a Public Improvement Project. Grantee's obligation to pay delay damages arises only if, as, and to the extent the delay is directly caused by Grantee's breach of its obligations under this Section 6 with respect to the relocation or modification of Grantee's Facilities within the Franchise Area in accordance with the applicable schedule for the Public Improvement Project; provided the County shall first provide Grantee written notice of any such claim by the Third-Party contractor(s) and provide Grantee the opportunity to work with the Third-Party contractor(s) to resolve the claim for a period of not less than sixty (60) days prior to payment of the claim. Nothing in this Section 6.6 will require Grantee to bear or be responsible for any cost, expense or damage that results from any delay in meeting the applicable schedule for a Public Improvement Project if, as, and to the extent the schedule was

established by the County in violation of the provisions for schedule adjustments under Section 6.4 or Section 6.5 or the delay is caused by the County, any Third-Party, or a Force Majeure Event under Section 18.4.

- 6.7 If the County requires the subsequent relocation or modification of any Facilities within five (5) years from the date of relocation or modification of such Facilities pursuant to this Section 6, the County shall bear the entire cost of such subsequent relocation or modification, except if the relocation or modification is required by an Emergency under Section 6.8.
- 6.8 If an emergency arises that immediately endangers the property or life of any individual or poses a threat to public safety or welfare that requires the relocation of Grantee's Facilities within the Franchise Area, the County shall give Grantee notice of the Emergency as soon as reasonably practicable. Upon receipt of such notice from the County, Grantee shall relocate the affected Facilities as soon as reasonably practicable at Grantee's expense.
- 6.9 Whenever either: (a) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation or modification of Grantee's Facilities within the Franchise Area to accommodate such development; or, (b) the County requires the relocation or modification of Grantee's Facilities within the Franchise Area for the benefit of any Third-Party, including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction, or development, then in such event, Grantee shall have the right as a condition of such relocation or modification to require such development proponent or Third-Party to reimburse Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation or modification of Grantee's Facilities.

SECTION 7 – REMOVAL OF FACILITIES.

- 7.1 In the event Grantee permanently ceases use of any of its Facilities within the Franchise Area, Grantee shall, within one hundred eighty (180) days after such permanent cessation of use or such additional time as is agreed to between the Parties, remove such Facilities at its sole cost and expense, except as set forth in Section 7.2.
- 7.2 Upon the express written consent of the Engineer, Grantee may leave such Facilities in place as long as Grantee has provided County with drawings showing the locations of such Facilities, the same information in an electronic form suitable for input into the County's GIS system, and subject to any other conditions required by the Engineer. The Engineer's consent shall not relieve Grantee of the obligation or costs to subsequently remove or alter the Facilities at the County's request, in which case Grantee shall perform such work at no cost to the County in accordance

with this Section 7.

- 7.3 The obligations contained in this Section 7 shall survive the expiration, revocation or termination of this Franchise.

SECTION 8 – RIGHTS NOT DERIVED FROM THIS FRANCHISE.

Nothing in Sections 6 or 7 shall require Grantee to bear any cost or expense in connection with the relocation, modification, or removal of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise, regardless of whether the easement is on public or private property and regardless of whether this Franchise co-exists with such easement.

SECTION 9 – COORDINATED AND SHARED EXCAVATIONS.

- 9.1 Grantee and the County shall each exercise their respective best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, compliance with JCC 13.56.270 and other reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area informed of its intent to undertake such construction work. Grantee and the County shall further exercise reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area. Grantee shall meet with the County annually or more frequently, as reasonably determined by the County, to coordinate construction activities.
- 9.2 If either Grantee or the County shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (a) such joint use shall not unreasonably delay the work of the Party causing the excavation to be made; and, (b) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

SECTION 10 – HAZARDOUS SUBSTANCES.

- 10.1 In the exercise of its rights under this Franchise, Grantee agrees that it will not allow or cause the release of any Hazardous Substance into or upon the Franchise Area contrary to any local, state or federal law, rules, regulations, ordinances or standards with respect thereto.
- 10.2 Within twenty-four (24) hours of any such release of Hazardous Substances that is discovered by Grantee, Grantee shall notify the Engineer and the Washington Department of Ecology in writing of such release.

- 10.3 To the fullest extent required by applicable Federal or State law, Grantee shall be completely liable for any and all consequences of any actual or alleged claim, demand, request, action, duty, right, obligation (including contractual, common law or statutory), liability, action, order, suit, lawsuit or proceeding of every kind and nature, wherever and whenever occurring, whether at law or in equity, and whether sounding in tort, contract, equity, nuisance, trespass, negligence, strict liability or any statutory or common law cause of action, duty or obligation of any sort, whether pursued by any person, insurer, corporation, association, governmental entity, or any other public or private entity, arising out of any actual or threatened release of Hazardous Substances allowed or caused by Grantee in the Franchise Area based on, arising out of or relating to Grantee's alleged or actual acts, omissions or responsibility for the Hazardous Substances into or upon the Franchise Area.
- 10.4 To the fullest extent authorized by applicable Federal or State law, the County shall be entitled to full reimbursement for any response to any actual, alleged or threatened loss, cost or expense arising out of or in connection with the testing for, monitoring, cleanup, removal, containment, treatment, detoxification, neutralization, investigation, study, prevention, mitigation, restitution or remediation of Hazardous Substances caused or allowed by Grantee, , whether voluntary or involuntary or pursuant to any Environmental Law, governmental order (consensual or otherwise), decree, judgment or other compulsion, whether undertaken by the County or by some other person or entity at the expense of the County and any damages incurred by it as the result of any release of Hazardous Substances caused or allowed by Grantee into or upon the Franchise Area.
- 10.5 To the fullest extent authorized by applicable Federal or State law, the County shall be entitled to full reimbursement for any alleged, actual, threatened, or potential loss of natural resources; or alleged, actual, threatened, or potential damage to, destruction of, diminution in value or loss of use of any property, whether owned by the County or some other person, wherever, whenever, and how ever arising out of the release of Hazardous Substances allowed or caused by Grantee into or upon the Franchise Area.
- 10.6 The obligations contained in this Section 10 shall survive the expiration, revocation or termination of this Franchise

SECTION 11 – GRADING OR EXCAVATING BY COUNTY.

This Franchise shall not preclude the County, its agents, employees, or contractors from grading, excavating, or doing other work contiguous to Grantee's Facilities. However, with respect to such grading, excavating, and other work, the County shall use its best efforts to coordinate such work with Grantee so as to protect Grantee's Facilities from harm, damage, or disturbance.

SECTION 12 – VACATION OF RIGHT-OF-WAY.

In the event the County vacates any portion of the Franchise Area, the Board may, at its discretion and as authorized in chapter [12.10 JCC](#) and RCW [36.87.140](#), retain an easement within the vacated right-of-way for the construction, repair and maintenance of Grantee's Facilities which at the time of the vacation are specifically authorized under this Franchise or physically located on a portion of the land being vacated. Pursuant to JCC [13.56.070\(6\)](#), the Board may also, at its discretion and by giving ninety (90) days written notice to Grantee, terminate this Franchise with reference to such portion of the Franchise Area so vacated. The County shall not be liable for any damages or loss to Grantee by reason of such termination.

SECTION 13 – COMPENSATION.

- 13.1 County Expenses. Grantee shall reimburse the County for any administrative expenses incurred by the County are related to: (a) developing and approving this Franchise, (b) processing any permit applications, reviewing plans, and inspecting construction; and, (c) preparing a detailed statement pursuant to chapter [43.21C RCW](#), if applicable. The expenses related to (a) above shall include staff wage and benefit and indirect expenses as determined by the County, the expense to publish and post legal notices of the public hearing required for this Franchise by RCW [36.55.040](#), and the expense to record this Franchise with the Jefferson County Auditor as required by RCW [36.55.080](#).
- 13.2 Fees for Use of County Rights-of-Way. The Board specifically reserves the right, to the extent permitted by county, state and federal laws as now exist or as later amended or superseded, to fix a fair and reasonable compensation for the use of its property. If the County elects to exercise such authority, Grantee will receive written notice ("Compensation Notice") not less than 60 days prior to its effective date and provide an opportunity to comment. Acceptance of the County's definition, terms, and or formula identified in the Compensation Notice will occur if Grantee accepts in writing within sixty days of receipt of the Compensation Notice, in which case the applicable ordinance that the Board passes will be determinative. Rejection by Grantee shall be deemed grounds for termination of this Franchise. Any such enacted compensation terms will be applied on a competitively neutral and non-discriminatory basis and in compliance with all applicable then-existing laws.

SECTION 14 – INDEMNIFICATION AND HOLD HARMLESS.

- 14.1 Grantee shall defend, indemnify, and hold harmless the County and its officers, officials, employees, agents and volunteers, and their marital communities (collectively the Indemnitees) from any claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Franchise, except for injuries

and damages caused by the sole negligence of the County.

- 14.2 In the event any such claim or demand is presented to or filed with the County that causes the County to choose to invoke its rights under this Section 14, the County shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the Indemnitees. In the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the Indemnitees.
- 14.3 In any and all claims against the Indemnitees by any officer, employee, representative, or agent of Grantee, its contractors, subcontractors, or lessees, or anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section 14 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Grantee, its contractors, subcontractors, or lessees under worker's compensation acts, disability benefit acts, or other employee benefit acts. It is further specifically understood that, solely to the extent required to enforce the indemnification provided herein, Grantee waives its immunity under Title 51 RCW Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought directly against Grantee by any of its employees. This waiver has been mutually negotiated by the Parties and is authorized by RCW 4.24.115. Grantee acknowledges that the County would not enter into this Franchise without this waiver thereof.
- 14.4 Inspection or acceptance by the County of any work performed by Grantee shall not be grounds for avoidance by Grantee of any of its obligations under this Section 14.
- 14.5 Said indemnification and hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.
- 14.6 In the event of liability for damages arising out of bodily injury to persons or damages to property or business caused by or resulting from the concurrent negligence of Grantee and the County, Grantee's liability hereunder shall apply only to the extent of negligence attributable to Grantee, its agents, employees, representatives, lessees, contractors, and subcontractors.
- 14.7 The provisions of this Section 14 shall survive the expiration or termination of this

Franchise. Further, all provisions of this Section 14 shall apply to the successors, assigns, and lessees of Grantee.

SECTION 15 – INSURANCE.

15.1 Grantee Insurance. Grantee shall procure and maintain for the duration of this Franchise the following insurance:

15.1.1 Commercial General Liability insurance and, if necessary, Umbrella Liability insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from Grantee's activities within the Franchise Area. The limit of liability shall not be less than two million dollars (\$2,000,000) per person, two million dollars (\$2,000,000) property damage and \$2,000,000 for all other types of liability. The County, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insureds with respect to activities occurring within the Franchise Area. Coverage shall be comprehensive with respect to Grantee's activities within the Franchise Area and shall include completed operations, collapse, explosions, and underground hazards.

15.1.2 Commercial Automobile Liability insurance for owned, non-owned, hired and leased vehicles with limits of not less than one million dollars (\$1,000,000) per person and three million dollars (\$3,000,000) per occurrence.

15.1.3 Workers' Compensation insurance as required by Title 51 RCW.

15.1.4 Grantee's commercial general liability policy shall include employers' liability coverage with policy limits of not less than one million dollars (\$1,000,000) per occurrence.

15.1.5 The insurance policies required by this Section 15 shall be maintained at all times by Grantee. Grantee shall notify the County at least forty-five (45) days before it cancels a policy. Grantee shall be obligated to replace or renew a canceled or expiring policy and show proof in the form of a certificate of insurance at least twenty (20) days before the expiration or cancellation of the existing policy(s).

15.1.6 Grantee shall furnish the County with properly executed certificates of insurance or a signed policy endorsement, which shall clearly evidence all insurance required in this Section 15.1. The certificates will, at a minimum, list the limits of liability and coverage.

15.1.7 Grantee or its agent will provide a copy of any and all insurance policies

specified in this Franchise upon request of the County.

15.1.8 The insurance limits mandated for any insurance coverage required by this Franchise are not intended to be an indication of limits of exposure nor are they limitations on liability or indemnification.

15.1.9 Excepting Workers Compensation Insurance, the County shall be named on all policies as an additional insured. Grantee's insurance shall be in all circumstances primary to the insurance available to the County.

15.2 Self-Insurance. In lieu of the insurance requirements set forth in Section 15.1, Grantee may self-insure against such risks in such amounts, subject to good utility practice. Grantee shall provide the County with reasonable written evidence that Grantee maintains such self-insurance.

15.3 The obligations contained in this Section 15 shall survive the expiration, revocation or termination of this Franchise for a period of one (1) year or for as long as Grantee's Facilities remain within the Franchise Area, whichever is longer. Further, all provisions of this Section 15 shall apply to the successors, assigns, and lessees of Grantee.

SECTION 16 – LIMITATION OF LIABILITY.

16.1 The County's administration of this Franchise shall not be construed to create the basis for any liability on the part of the County, its elected and appointed officers, officials, agents, employees, and representatives for any injury or damage from the failure of Grantee to comply with the provisions of this Franchise; for any injury or damage arising from the failure of Grantee to comply with or follow a directive, order, or instruction of the Federal Communications Commission, any hearing officer or administrative law judge, or a court of competent jurisdiction; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the County; or for the accuracy of plans submitted to the County.

16.2 The County shall not be liable for any damage to or loss of any of Grantee's Facilities within the Franchise Area as a result of or in connection with any Emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling, mowing, or work of any kind in the Franchise Area by or on behalf of the County or any entity under contract with the County, except for damage or loss caused by the negligence or willful misconduct of the County or anyone acting for or on behalf of the County. The foregoing, however, is not intended to, and will not in any way, limit the County's liability for any breach by the County of this Franchise.

SECTION 17 – DISPUTE RESOLUTION.

- 17.1 The Parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions.
- 17.2 Resolving Disputes through Negotiation. The Parties agree to use their best efforts and good faith negotiations to resolve disputes arising out of or related to this Franchise. To that end the Parties shall engage in the following dispute resolution process should any such disputes arise:
 - 17.2.1 Level One: The Engineer or designee shall meet with Grantee's Manager or designee to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fifteen (15) business days after the referral of that dispute to Level One, either Party may refer the dispute to Level Two as described herein.
 - 17.2.2 Level Two: The County Administrator or designee shall meet with Grantee's designated representative to discuss and attempt to resolve the dispute in a timely manner.
- 17.3 In the event a dispute is referred to Level Two but is not resolved at Level Two within fifteen (15) business days after that referral, then either Party may invoke the rights provided to them by Section 18 or institute a legal proceeding in any court or with governmental agency having jurisdiction over the dispute.
- 17.4 No provision of this Franchise shall be deemed to bar the right of either Party to seek or obtain judicial relief from a violation of any provision of this Franchise; nor to bar or otherwise limit the right of either Party to recover monetary damages for such violations by the other Party or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

SECTION 18 – TERMINATION OF FRANCHISE.

- 18.1 Default by Grantee. If Grantee materially breaches any term or condition of this Franchise, the County may terminate this Franchise in accordance with Section 18.2. Upon termination of this Franchise, all rights of Grantee hereunder shall cease.
- 18.2 Procedure. The County may terminate this Franchise if Grantee materially breaches any term or condition of this Franchise and fails to cure such breach in all material respects within sixty (60) days after Grantee's receipt of written demand by the County to so comply. Prior to terminating this Franchise, the County shall give Grantee at least ten (10) days written notice of a regularly scheduled meeting of the Board of County Commissioners at which meeting the Board intends to

formally revoke or terminate this Franchise. At such meeting, the Board shall consider a report from the Engineer regarding the breach of this Franchise and hear any Person desiring to be heard on the termination of this Franchise. If the Board determines that Grantee's breach justifies revocation or termination of this Franchise, the Board may pass a resolution declaring that this Franchise is revoked or terminated.

- 18.3 Extension of Cure Period. If any breach of this Franchise by Grantee cannot be corrected with due diligence within the sixty (60) day period specified in Section 18.2 due to events beyond Grantee's control, then the County may extend the time within which Grantee may so comply for an additional period or periods not to exceed thirty (30) days so long as Grantee commences promptly and diligently to effect such compliance.
- 18.4 Force Majeure. A Party shall not be deemed in breach or default of any provisions of this Franchise when earthquake, flood, storm or other natural disaster, civil emergency, any failure or delay in the performance by the other Party or a Third-Party who is not an employee, agent or contractor of the affected Party, or other such circumstances beyond such Party's control (a "Force Majeure Event") prevent performance or compliance. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by the Force Majeure Event.
- 18.5 Dispute Resolution. Neither Party may invoke or rely upon the terms and obligations of this Section 18 (except for the Force Majeure rights in Section 18.4) until such time as the Dispute Resolution procedure listed in Section 17 has been utilized by the aggrieved Party.

SECTION 19 – AMENDMENT OF FRANCHISE.

- 19.1 This Franchise may be amended only by mutual written agreement of the Parties (which specifically states that it is an amendment to this Franchise).
- 19.2 During the term of this Franchise, either Party may propose amendments to this Franchise to address opportunities or conflicts created as a result of changes to federal, state or local franchise law.

SECTION 20 – ASSIGNMENT OF FRANCHISE.

Grantee may not assign or otherwise transfer its rights, privileges or authority under this Franchise without the prior written authorization and approval of the County. Any assignment or transfer of any interest in this Franchise shall not be approved by the County or be effective until the assignee or transferee becomes a signatory to this Franchise,

assuming all rights and obligations hereunder and agreeing to perform the terms and conditions under this Franchise.

SECTION 21 – BINDING ON SUCCESSORS AND ASSIGNS.

All provisions, conditions, regulations, and requirements herein contained shall be binding upon the successors and assigns of Grantee and all privileges as well as all obligations and liabilities of Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Grantee is mentioned.

SECTION 22 – NO THIRD-PARTY BENEFICIARIES

The Parties do not intend, and nothing in this Franchise shall be construed to mean, that any provision in this Franchise is to benefit any person or entity who is not a Party.

SECTION 23 – INCORPORATION/ANNEXATION

If any portion of the Franchise Area covered by this Franchise is incorporated into the limits of any city or town, or into a new or existing County pursuant to Article XI of the Washington State Constitution, this Franchise shall terminate as to any such portion within the corporate limits of such city or town and the County shall be released of its obligations under this Franchise as to the portion incorporated. This Franchise shall continue as to all of the Franchise Area not incorporated into such city or town or new or existing County.

SECTION 24 – NON-WAIVER OF RIGHTS

The excuse or forgiveness of performance or waiver of any provision(s) of this Franchise shall not constitute a waiver of such provision(s) or future performance or prejudice the right of the waiving Party to enforce any of the provisions of this Franchise at a subsequent time.

SECTION 25 – GOVERNING LAW AND VENUE

- 25.1 Governing Law. This Franchise has been and shall be construed as having been made and executed within the State of Washington. The Parties stipulate that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance. No Party shall argue or assert that any state law other than Washington law applies to the governance or construction of this Agreement.
- 25.2 Venue. Any action at law, suit in equity, or judicial proceeding arising out of this Franchise shall be instituted and maintained only in the appropriate state court in Jefferson County, Washington, subject to the venue provisions for actions against counties in RCW [36.01.050](#).

- 25.3 Attorney's Fees and Costs. Should either Party bring any legal action, each Party in such action shall pay for its own attorney's fees and court costs.

SECTION 26 – NOTICES

- 26.1 Notices. Any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the Party to receive same.

Notice to the County shall be sent to:

Public Works Director
Jefferson County Public Works Department
623 Sheridan Street
Port Townsend, WA 98368

Notice and billings to Grantee shall be sent to:

Jarred Swalwell & Megan Kogut
811 Olele Point Rd
Port Ludlow, WA 98365

- 26.2 The Parties shall promptly notify each other of any change in the notice or billing addresses.

SECTION 27 – SEVERABILITY AND SURVIVABILITY

- 27.1 If a court of competent jurisdiction holds any part, term, or provision of this Franchise to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected and the Parties' rights and obligations shall be construed and enforced as if this Franchise did not contain the particular provision held to be invalid. The invalidity of any portion of this Franchise shall not abate, reduce or otherwise affect any consideration or other obligation required of either Party or any grant of right to either Party.
- 27.2 The terms and conditions contained in this Franchise that by their sense and context are intended to survive the expiration or termination of this Franchise shall so survive. Without limiting the generality of the preceding sentence, and for the avoidance of doubt, the provisions that survive the term of this agreement include: (a) controlling law; (b) insurance; and, (c) indemnification.

SECTION 28 – ENTIRE AGREEMENT

- 28.1 This Franchise is the complete expression of the terms and conditions hereunder and cannot be changed orally, but only by an instrument in writing executed by the Parties.

- 28.2 This Franchise supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, within the scope of this Franchise. Any oral or written representations or understandings not incorporated herein are specifically excluded.
- 28.3 No representation or promise not contained in this Franchise has been made.
- 28.4 The Parties are not entering into this Franchise based on any inducement, promise or representation, expressed or implied, which is not contained in this Franchise.

SECTION 29 – LEGAL AND REGULATORY COMPLIANCE

While performing under this Franchise, Grantee, its contractors and their employees must comply with all applicable local, state and federal laws, codes, ordinances, and regulations, including but not limited to:

- a) Applicable regulations of the Washington Department of Labor and Industries, including WA-DOSH Safety Regulations; and,
- b) State and Federal Anti-Discrimination Laws.

SECTION 30 – ARMS-LENGTH NEGOTIATIONS

The Parties agree this Franchise has been negotiated at arms-length, with the assistance and advice of competent, independent legal counsel.

SECTION 31 – SIGNATURE IN COUNTERPARTS

This Franchise may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Franchise at different times and places by the Parties shall not affect the validity of this Franchise, so long as all the Parties execute a counterpart of this Franchise.

SECTION 32 – FACSIMILE AND ELECTRONIC SIGNATURES

The Parties agree that facsimile and electronic signatures shall have the same force and effect as original signatures.

SECTION 33 – ATTACHMENTS OR EXHIBITS

Any document in this Franchise identified as an attachment or exhibit is part of this Franchise and is incorporated by reference into this Franchise.

SECTION 34 – REFERENCE TO SECTIONS IN THIS FRANCHISE

Any reference to a section in this Franchise is a reference to a section of this Franchise, unless clearly stated to the contrary.

SECTION 35 – REPRESENTATIONS AND WARRANTIES

The Parties represent and warrant that:

- 35.1 Each person signing this Franchise is fully authorized to enter into this Franchise on behalf of the Party for whom signature is being made;
- 35.2 Each Party that is a corporate entity is duly organized and validly existing in good standing under the laws of one of the states of the United States of America;
- 35.3 The making and performance of this Franchise will violate no provision of law or of any Party's articles of incorporation, charter, or by-laws;
- 35.4 Each corporate Party has taken all necessary corporate and internal legal actions to duly approve the making and performance of this Franchise and that no further corporate or other internal approval is necessary; and,
- 33.5 Each Party has read this Franchise in its entirety and know the contents of this Franchise, that the terms are contractual and not merely recitals, and that they have signed this Franchise, having obtained the advice of legal counsel.

SECTION 36 – SEPA CATEGORICAL EXEMPTION

This resolution is categorically exempt from the State Environmental Policy Act under WAC [197-11-800](#)(19).

SECTION 37 – EFFECTIVE DATE

This resolution shall take effect and be in full force immediately upon approval and adoption by the Board of County Commissioners.

[SIGNATURES ON FOLLOWING PAGE]

APPROVED AND ADOPTED this _____ day of _____, 2025.

**JEFFERSON COUNTY
BOARD OF COMMISSIONERS**

Heather Dudley-Nollette, District 1

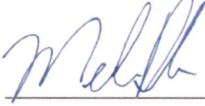
Heidi Eisenhour, District 2

Greg Brotherton, District 3

ATTEST:

Carolyn Gallaway, CMC Date
Clerk of the Board

APPROVED AS TO FORM:

 for 09/29/2025

Philip C. Hunsucker Date
Chief Civil Deputy Prosecuting Attorney

EXHIBIT A

ACCEPTANCE OF RESOLUTION NO. _____

Jarred Swalwell & Megan Kogut

The undersigned, Jarred Swalwell & Megan Kogut (Grantee), hereby wholly accepts Jefferson County Resolution No. _____ Granting A Nonexclusive Franchise which was adopted by the Jefferson County Board of Commissioners on the _____ day of _____, 2025 ("the Franchise," attached).

This Acceptance of the Franchise is unconditionally made without reservation and is expressly part of the Franchise, which is hereby incorporated by reference. Grantee hereby accepts all of the rights and privileges of the Franchise subject to all of the terms, conditions, duties, and obligations provided therein.

IN TESTIMONY WHEREOF said Grantee has caused this written Acceptance to be executed in its name by its undersigned authorized signer, thereunto duly authorized on the _____ day of _____, 2025.

Jarred Swalwell & Megan Kogut

Jarred Swalwell: _____

Megan Kogut: _____

State of Washington
County of Jefferson

This record was acknowledged before me on _____, 2025 by Jarred Swalwell & Megan Kogut.

Notary Public in and for the State of Washington
My Commission Expires _____

APPENDIX A

Franchise Location Map





***Franchise Agreement
Public Hearing
Olele Point Water System
Jarred Swalwell / Megan Kogut***

October 13, 2025

Josh Thornton
Real Property Specialist
Jefferson County Public Works

Agenda



Franchise Agreements



Olele Point Water System



Public Process



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Franchise Agreements

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Franchise Agreements – What are they & why do we have them?



- **RCW 36.55.010** authorizes BOCC to grant franchises:
“Any board of county commissioners may grant franchises to persons or private or municipal corporations to use the right-of-way of county roads in their respective counties for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric light lines, sewers and any other such facilities.”
- **JCC 13.56.070** (1) To the extent permitted by law, **a franchise shall be required of any utility provider who currently occupies or desires in the future to occupy rights-of-way and to provide utility services to any person or area in the county.** Utility provider shall pay all the fees and/or taxes as provided herein and in the franchise agreement.

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A franchise is a formal, legally binding agreement between the county, and utility or service provider. The agreement grants the franchisee (the provider) the non-exclusive right to install, maintain, and operate its infrastructure, such as pipelines, cables, conduits, and poles, within the public land designated for roads, streets, and highways—known as the public right-of-way. It acts as a long-term contractual permission, outlining specific terms, conditions, and responsibilities for the company's use of public space to deliver services.

Counties have right-of-way franchises primarily to manage and control the use of their public infrastructure for the benefit of their residents. These agreements allow essential services like electricity, natural gas, water, internet, and cable television to be delivered throughout the county by providing a legal framework for utility companies to access and utilize public land. Without such franchises, counties would lack the necessary authority to regulate the placement and maintenance of critical infrastructure, potentially leading to haphazard development, safety hazards, and disputes over public space.

Furthermore, right-of-way franchises enable counties to ensure public safety, protect their assets, and recover costs associated with managing the rights-of-way. They often include provisions for proper construction standards, restoration of disturbed areas, and the ability to require relocation of facilities if road improvements are necessary. For certain services like cable television, federal and state laws also permit counties to collect franchise fees, providing a revenue stream that can help offset the administrative and oversight costs of managing these essential public corridors.

Franchise Agreements – Exemptions



JCC [13.56.070\(1\)\(a\)](#) Franchises will not be required for the construction and maintenance of utility facilities serving one single-family residence where such facilities will cross the rights-of-way perpendicular to the rights-of-way line, plus or minus 10 degrees. Persons who fall under this franchise exemption shall enter into an indemnification agreement before a utility permit will be issued.



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This Jefferson County Code provision is a good thing for small single-user providers whose improvements in the public right of way are minimal and it streamlines the process for connecting individual residences to utilities. By exempting them from the lengthy and complex franchise application process, it saves both them and the county significant time, money, and administrative burden. The indemnification agreement still transfers risk from the county to the provider for losses or damages. This exemption makes it much simpler and quicker to get single-family service connected across a right-of-way.

Types of Franchise Agreements



Types of Franchise Agreements

- **Telecommunications**
 - Cable TV
 - Basic Telephone Service
 - Small Cell Wireless Facilities / Traditional Wireless Communication Facilities
 - Other Telecommunications (Internet or enhanced services operating on telephone or cable)
- **Utility**
 - Water Provider – irrigation or potable water
 - Sewer / Septic / Effluent Transport
 - Electric Power
 - Natural Gas
 - Drainage
- Learn More: [MRSC - Franchising - An Essential Tool for Right-of-Way Management](#)

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Federal and Washington State laws treat cable TV, telephone, and traditional utility providers differently. Cable TV franchising requirements and fees are regulated under the federal Cable Act. Some legacy telephone companies (for example successor to Pac Bell), are exempt from needing a county granted franchise due to a statewide "grant" stemming from RCW 80.36.040. Other utility providers such as power, water, sewer & gas as well as enhanced telecommunications services offered by telephone & fiber companies have the least amount of state and federal restrictions when it comes to county negotiated franchise agreements.

Franchise Fee Legal Background



Prior to the 2019 WA State Supreme Court decision in *King County vs. King County Water Districts*, 194 Wn.2d 830, 453 P.3d 681 (2019), non-cable TV provider franchise fees were limited to only the administrative costs for developing, negotiating & finalizing franchises. This was because the legal interpretation at the time often viewed attempts to charge more than administrative costs as an unauthorized tax or an overreach of county authority.

In *King County vs. King County Water Districts*, the Supreme Court ruled franchise fees are not a tax but rather a bargained-for amount allowing a utility to make use of right-of-way ("a valuable property right") for the operation of the utility.

JCC 13.56.150, JCC 13.72.100, and JCC 13.88.050 specifies the BoCC may establish fair and reasonable compensation to be paid for use of public right of way by a franchised utility provider. Newly negotiated franchise agreements incorporate a provision allowing the exercise of this right.

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Olele Point Water System

Jarred Swalwell / Megan Kogut

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Franchise Agreement Procedural Process Requirements



RCW [36.55.040](#)

Application—Notice of hearing.

On application being made to the county legislative authority for franchise, it shall fix a time and place for hearing the same, and shall cause the county auditor to give public notice thereof at the expense of the applicant, **by posting notices in three public places in the county seat of the county at least fifteen days before the day fixed for the hearing.** The county legislative authority shall **also publish a like notice two times in the official newspaper of the county, the last publication to be not less than five days before the day fixed for the hearing.** The notice shall state the name or names of the applicant or applicants, a description of the county roads by reference to section, township and range in which the county roads or portions thereof are physically located, to be included in the franchise for which the application is made, and the time and place fixed for the hearing.

[[1985 c 469 s 49](#); [1963 c 4 s 36.55.040](#). Prior: [1961 c 55 s 3](#); prior: 1937 c 187 s 38, part; RRS s 6450-38, part.]

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State Law RCW 36.55.040 requires a public hearing take place and details that notices must be posted in three public places at least 15 days before the hearing date. Another requirement is that the public hearing notice be published two times in the county's official newspaper. The last publication must be no less than five days before the hearing.

Franchise Agreement Procedural Process Requirements



RCW [36.55.050](#)

Hearing—Order.

The hearing may be adjourned from time to time by the order of the board of county commissioners. If, after the hearing, the **board deems it to be for the public interest** to grant the franchise in whole or in part, it may make and **enter a resolution** to that effect and may require the applicant to place his or her utility and its appurtenances in such location on or along the county road as the board finds will cause the least interference with other uses of the road.

[[2009 c 549 s 4094](#); [1963 c 4 s 36.55.050](#). Prior: [1961 c 55 s 4](#); prior: 1937 c 187 s 38, part; RRS s 6450-38, part.]

Franchise Agreement Public Process Timeline



- **Public Hearing Notice – Consent Agenda (September 15, 2025)**
 - Publication in *The Port Townsend & Jefferson County Leader* on October 1, 2025 and October 8, 2025
- **Hearing Notice Posted on Jefferson County's Website (September 15, 2025)**
- **Hearing Notice Posted in 3 Public Locations (September 23, 2025)**
 - ✓ Courthouse
 - ✓ Public Library
 - ✓ Port Townsend Post Office
- **Public Hearing (October 13, 2025)**

NOTICE OF PUBLIC HEARING:
Jarred Swalwell & Megan Kogut,
Water Line Franchise located at
Olele Point

NOTICE IS HEREBY GIVEN that a public hearing is scheduled for Monday, October 13th, 2025 at 10:00 a.m. in the Commissioners' Chambers, County Courthouse, 1820 Jefferson Street, Port Townsend, WA 98368 (HYBRID).

Read on... >

[Jefferson County, WA | Official Website](#)

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Franchise Agreement Public Process



- **After closing the public hearing, the Board may:**
 - **grant** the franchise without revision;
 - **request** Public Works compile and respond to comments from hearing & develop recommended revisions to submit to BoCC & Applicant for consideration; or,
 - **deny** franchise for cause (for example, no or insufficient public benefit, safety concerns, failure to meet application requirements, applicants inability to perform or environmental impact).
- **If Board approves the agreement,** Public Works will forward to Jarred Swalwell and Megan Kogut for acceptance within 60 days along with a bill for any costs exceeding application fee if applicable.
- **Agreement will be recorded** with signed copies distributed to BoCC, Public Works & Applicant.

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