

Return to:  
Benton County Public Works  
P. O. Box 1001  
Prosser, WA 99350

2010-024270 MULTI  
08/26/2010 04:21:46 PM Pages: 13 Fee: \$136.00  
Benton County Public Works Dept  
Benton County Auditor's Office

Grantee: Washington State University  
Grantor: Benton County

**COPY** WSU Contract 18881

BEFORE THE BOARD OF COUNTY COMMISSIONERS

BENTON COUNTY, STATE OF WASHINGTON

IN THE MATTER OF THE APPLICATION OF )  
WASHINGTON STATE UNIVERSITY FOR A )  
NONEXCLUSIVE FRANCHISE TO LOCATE, )  
CONSTRUCT, MAINTAIN, OPERATE, USE, AND IF )  
NECESSARY, REMOVE AN IRRIGATION SYSTEM )  
AND FACILITIES WITHIN THE COUNTY OF )  
BENTON, STATE OF WASHINGTON, UPON, OVER, )  
UNDER, ALONG, AND ACROSS CERTAIN COUNTY )  
ROADS AND PUBLIC HIGHWAYS, OR PARTS )  
THEREOF, NOT WITHIN THE LIMITS OF ANY )  
INCORPORATED CITY OR TOWN. )

No. 10 479

ORDER AND AGREEMENT FOR  
NONEXCLUSIVE FRANCHISE

FINDINGS

NOW, on this 110<sup>th</sup> day of August, 2010 the petition and application of  
WASHINGTON STATE UNIVERSITY, for the authority and nonexclusive Franchise, for a  
term of ten (10) years, to install, locate, construct, maintain, operate, use, and, if necessary,  
remove an irrigation system and facilities under, upon, over, along and across the County roads,  
highways, streets, alleys, and bridges described in said application by reference to the sections,  
townships, and ranges in which said roads, highways, streets, alleys, and bridges are physically  
located within the County of Benton, State of Washington, and not within the corporate limits of  
any incorporated city or town therein, coming on to be heard before this, the Board of County

Commissioners of and from said Benton County, Washington, and this Board having heretofore fixed this time and place for the hearing of said petition, and it appearing that the County Engineer has given notice of the time and place of said hearing by posting in three locations in the Benton County Courthouse, written or printed notices of the time and place of this hearing in accordance with the laws of the State of Washington, and by publishing a like notice two (2) times in the Tri-City Herald, a daily newspaper of general circulation published in Benton County, Washington, and it appearing that the notices so posted and published stated the name of the applicant and a description by reference to sections, townships and ranges in which the County roads, highways, streets, alleys, and bridges to be included in the Franchise for which application is made are physically located, and also state the time and place fixed for said hearing, and after hearing all persons interested in the matter of said petition, and at which hearing the qualifications of the Grantee were heard, the Board deeming it for the public interest to grant the Franchise and authority so applied for.

#### ORDER

IT IS HEREBY ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

There is hereby granted to WASHINGTON STATE UNIVERSITY, hereafter called the Grantee, subject to all provisions, conditions, covenants and requirements of this order and agreement, the right, privilege and nonexclusive Franchise, to install, locate, construct, maintain, operate, use, and, if necessary, remove an irrigation system and facilities, and all necessary appurtenances thereto, hereinafter called the distribution system, under, upon, over, along, or across those portions of any and all County roads, highways, streets, alleys, bridges, rights-of-way, and other County property which lie within those legal subdivisions within the County of Benton, State of Washington, set forth and described in "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, from such subdivisions any portion thereof which is within the corporate limits of any incorporated city or town, but including all portions of said subdivisions which are within any unincorporated town or community. Benton County Resolution No. 72-220, regarding Policy on Accommodation of Utilities on County Road Rights-of-Way, shall apply in all respects to this Franchise and the distribution system.

## AGREEMENT

### I. APPROVAL BY COUNTY ENGINEER

All locations, construction, installation, maintenance, relocation or removal of the distribution system or any portion thereof within Benton County road rights-of-way or other County property outside the corporate limits of any incorporated town shall be subject to the approval and pass inspection of the County Engineer.

### II. PERMIT REQUIRED – MAP AND SPECIFICATIONS TO BE FILED

#### APPROVAL BY COUNTY ENGINEER – PERFORMANCE BOND

Prior to commencement of any work on or construction of any portion of the distribution system, Grantee shall file with the County Engineer its application for permit to do such work or construction together with plans and specifications in form and number as approved by the County Engineer showing the position, depth, or height, and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing County roads, rights-of-way, or other County property, upon plans drawn to scale indicating exact distance hereinafter collectively referred to as the “map of definite location”. Grantee is hereby authorized to extend its facilities throughout the area authorized hereunder.

The distribution system shall be constructed in exact conformity with said map of definite location, except in instances in which deviation may be allowed by the prior written consent of the County Engineer pursuant to application by Grantee. The plans and specifications shall specify, as applicable, the class and type of materials and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, and road obstructions, and manner and means by which they affect County roads, rights-of-way or property will be restored to a condition as good as that which existed prior to such work or construction. No such work or construction shall be commenced until the Grantee has first secured a written permit from the County Engineer, which shall include approval by the County Engineer endorsed on one set of plans and specifications to be returned to the Grantee. All such work or construction shall require the inspection and approval of the County Engineer. The Grantee shall pay all reasonable costs and expenses incurred in the examination, inspection, and approval of such work or construction by the County Engineer as herein provided.

The County Engineer may require a performance bond in a sum sufficient to guarantee to Benton County that any County roads or rights-of-way, including the surfaces thereof, affected by any work or construction by the Grantee, shall be restored to a condition as good as that which existed prior to such work or construction, the amount of said bond to be fixed by the County Engineer. The County Engineer, upon notice to the Grantee, may at any time order any and all work that he considers necessary to restore to a safe condition any portion of the County road or right-of-way the condition of which has been rendered dangerous to the safety of persons or property by reason of any work, construction, of facilities of Grantee, and Grantee, upon demand, shall pay to the County all costs of such work, done by order of the County Engineer.

### III. COUNTY ROADS TO BE RESTORED

In any work which requires breaking of surface of the County roads or rights-of-way subject to this Franchise for the purpose of locating, constructing, installing, relocating, removing, maintaining and/or repairing the distribution system, and/or making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and strictly conform to the instructions set forth in the permit issued by the County Engineer for such work; and the Grantee, at its own expense and with all reasonable speed, shall complete the work for which the road or right-of-way surface has been broken and repair and restore the affected County road or right-of-way and the surface thereof to a condition as good as that which existing before the work was commenced. Noxious weed control will be required at the Grantees's expense, and shall meet all requirements of the Benton County Weed Board.

Except in cases of emergency as hereinafter provided, no breaking of surface of any county road or right-of-way shall be done until Grantee has first obtained a permit therefor issued by the County Engineer as specified in Section II of this Agreement.

PROVIDED, however, that in cases of emergency which occur out of office hours when immediate work may be necessary for the protection or safety of persons or property, the emergency shall be immediately reported to the Benton County Sheriff and the necessary work may be immediately undertaken upon the express condition that an application for a permit for such work, as hereinabove provided, shall be submitted to the County Engineer on or before noon of the business day next following the commencement of the emergency work.

#### IV. INTERFERENCE WITH EXISTING FACILITIES

No location, construction, installation, maintenance, repair, removal or relocation of the distribution system or any portion thereof, performed along or under any county road or right-of-way or other county property shall in any way interfere with the grading or improvement of such county road or right-of-way or with the construction and maintenance of any existing utility, public or private, drain, drainage ditch or structure, or irrigation ditch or structure, located along or under such county roads, right-of-way or property. In the event that it is necessary to relocate any such county road or right-of-way or alter the grade of any such county road or right-of-way, requiring relocation of any utilities, including rights-of-way, preferences as to positioning of such utilities, shall be given in the order of the original location and installation of such utilities, the utility first having been located and installed being given first preference as to positioning and relocation.

#### V. MINIMUM INTERFERENCE WITH PUBLIC TRAVEL – GRANTEE LIABLE FOR DAMAGE

All work done under this Franchise shall be done in a thorough and workmanlike manner. All construction, installation, maintenance, repair, relocation, or removal of the distribution system, or any portion thereof, shall be conducted in a manner that will interfere as little as possible with public use of and travel upon county roads and rights-of-way shall include all due and necessary measures and precautions to prevent danger to persons or property. Specifically, where such construction, installation, maintenance, repair, relocation or removal involves open trenches, ditches, or tunnels which are left open at night, the Grantee shall place sufficient warning lights and barricades about such trenches, ditches or tunnels to give adequate warning of such work. The Grantee shall assume sole liability for any injury to persons or property which occurs by reason of any trenches, ditches, or tunnels dug or maintained by the Grantee.

## VI. ALL COUNTY ROAD RIGHTS RESERVED

Benton County expressly reserves any and all rights which it now has or may hereafter acquire with respect to County roads, rights-of-ways, or other County property, and this Franchise shall not be construed to in any way limit or restrict any authority, power, rights, or privileges which Benton County now has or may hereafter acquire to control and regulate the use of County roads, rights-of-way, and other County property covered by this Franchise.

## VII. COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY

If Benton County shall at any time improve or change any County road or right-of-way subject to this Franchise by grading, regrading, surfacing, or paving the same, or by changing, altering, repairing, or relocating the grade thereof or by construction of drainage facilities, the Grantee shall, upon written notice from the County Engineer, at Grantee's sole expense, with all reasonable speed, change the location or readjust the elevation of its distribution system and other facilities so that the same shall not interfere with such county work and so such lines and facilities shall conform to such new grades as may be established. Benton County shall in no respect be held liable for any damages, costs, or expenses to said Grantee that may occur by reason of any of the County's improvements, changes or work above enumerated, except insofar as such damages, costs or expenses shall be caused by negligence of the County's employees or agents.

All work performed by the Grantee under this section shall be under the direction, approval, and shall pass the inspection of the County Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

## VIII. REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operation under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

#### IX. VACATION OF COUNTY ROADS – ALTERNATE ROUTE

If at any time Benton County shall vacate any County road, right-of-way or other County property which is subject to rights granted by this Franchise the Board of County Commissioners for Benton County may, after granting an alternate route with the consultation of Grantee, by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to such County road, right-of-way, or other County property so vacated and said Benton County shall in no respect be liable for any damages, costs, or expenses to the Grantee that may occur by reason of such termination.

#### X. GRANTEE TO INDEMNIFY COUNTY – LIABILITY INSURANCE

The Grantee covenants, agrees and promises that it shall fully indemnify Benton County from any and all liability, loss, injury, damage, costs, charges or expenses of any nature whatever, occurring to any person, association, corporation or property of any kind by reason of any acts, actions, omissions, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system.

The Grantee further covenants, agrees and promises that, in the event that any claim, suit, or cause of action shall be brought against Benton County by reason of any act, action, omission, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system, it shall, at its own cost and expense, defend any such claim, suit, or cause of action, and shall pay any and all costs, charges, attorneys' fees, and other expenses therein, and any and all judgments that may be incurred by or obtained against Benton County in any such claim, suit, or cause of action.

The Grantee further covenants, agrees and promises that, in order to secure to the County full and complete performance of the covenants and conditions of this Section "X", it shall, at its own cost and expense, obtain and maintain in effect continually during the term of this Franchise, liability insurance in a company or companies to be approved by the County, such insurance to name the Grantee and Benton County as the insured and to have minimum limits of

not less than \$500,000.00. Written evidence of such insurance in effect shall be furnished to the County Engineer no later than the date that any work or construction under the terms of this Franchise commences. Such additional written evidence of such insurance shall be furnished to the County Engineer from time to time as the County Engineer shall require; in any event, such additional written evidence shall be provided to the County Engineer at least annually during the term of this Franchise. The Grantee's compliance with the provisions of this paragraph relating to liability insurance shall in no way alter, affect, modify or limit any of the other covenants, conditions, and provisions of this paragraph. Acceptance or approval by the County of any work performed by the Grantee shall not constitute a waiver by the County of any of the provisions of this Section "X", and shall not excuse the Grantee from any of the covenants, provisions, or requirements set forth herein.

#### XI. FRANCHISE NOT EXCLUSIVE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit Benton County from granting other Franchises of a like nature or Franchises for public or private utilities under, along, across, over, and upon any of the County roads, rights-of-way, or other property subject to this Franchise and shall in no way restrict, prevent, or prohibit Benton County from constructing, altering, maintaining, or using any of said roads or rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary construction, alterations, changes, relocations, repairs, or maintenance, which the County may deem necessary.

#### XII. PROVISIONS HEREOF BIND SUCCESSOR

All provisions, conditions, covenants, and requirements herein contained shall be binding upon any and all successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned herein wherever the Grantee is mentioned, provided, however, that neither this Franchise nor any rights, privileges, or obligations granted in this order and agreement shall be assigned without the prior written approval of the County Engineer, unless such assignments is to a wholly-owned subsidiary of the Grantee or to a parent company owning



more than 50% of the Grantee, and unless Benton County is provided with prior written notice of such assignment giving the name and address of the subsidiary or parent company assignee.

### XIII. REVOCATION FOR NON-COMPLIANCE

In the event that the Grantee substantially violates or fails to comply with any of the material provisions of this Franchise, the Grantee shall forfeit all rights conferred hereunder and this Franchise shall be revocable by the Board of Benton County Commissioners at their discretion, provided, however, the Board of County Commissioners shall provide the Grantee with written notice of its intention to revoke the Franchise, specifying the nature of such violation, failure, or neglect, and giving the Grantee thirty (30) days in which to cure such violation, failure, or neglect. The Grantee shall be entitled to a hearing, within such thirty-day period, before the Board of County Commissioners.

In the event such hearing is held, the Grantee shall be given prior written notice of the time and place for such hearing. Subject to applicable federal and state law, in the event the Board of County Commissioners, after such hearing, determines that Grantee is in default of any provision of the Franchise, the Board of County Commissioners may:

- a. Foreclose on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- b. Commence an action at law for monetary damage or seek other equitable relief;
- c. In the case of substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

### XIV. CONFORMITY WITH STATE AND COUNTY

Benton County expressly reserves the right at any time, upon ninety (90) days written notice to the Grantee, to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any state statute, rule or regulation, or county ordinance, rule or regulation, relating to the regulation of highways or the public welfare, health, safety, as may

hereafter be enacted, adopted or promulgated, and the County further expressly reserves the right to terminate this Franchise at any time, in accordance with the procedures stated in Section "XIII" above, in the event that the Grantee's distribution system is not operated or maintained in accordance with such statute, ordinance, rule, or regulation.

#### XV. FEDERAL REGULATION

Any lawful modification required by amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

#### XVI. ACTS OF GOD

The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts that are solely the result of an Act of God or similar circumstance, power outages, or other events reasonably beyond its ability to control.

#### XVII. SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

#### XVIII. COMPLAINT PROCEDURES

The Grantee agrees to maintain a local business office which subscribers may telephone during regular business hours without incurring added message or toll charges so that service shall be promptly available. The Grantee agrees to notify each subscriber, at the time of initial subscription to the Grantee's service, of the procedures for reporting and resolving such complaints.

XIX. ACCEPTANCE BY GRANTEE

Written acceptance by the Grantee of the Franchise granted herein and all provisions, conditions, covenants, and requirements contained in this order and agreement shall be indicated by endorsement by the Grantee where indicated herein below, and a copy of this order and agreement so endorsed by the Grantee shall be filed with the Clerk of the Board of County Commissioners of Benton County within thirty (30) days from the date of acceptance by the Board. Such filing of the endorsed order and agreement within the period above specified shall be a condition precedent to this Franchise taking effect, and unless this order and agreement is accepted and filed within such time, it shall be null and void.

XX. TERM

This nonexclusive Franchise agreement shall be in full force and effect upon execution and shall expire July 31, 2020.

XXI. GRANTEE'S ADDRESS

Information for the Grantee is:

Richard A. Heath  
Sr. Associate Vice President  
Washington State University  
24106 Bunn Road  
Prosser, WA 99350

Phone: 509-786-2226  
FAX: 509-786-9370

Any notification required to be given to the Grantee may be given to the address above stated, provided that the Grantee may from time to time notify Benton County in writing of address to which notifications are to be sent.

FOR GRANTEE:

Richard A. Heath

Richard A. Heath  
Sr. Associate Vice President  
Washington State University

Date 8/11/10

Recommended By: Richard W. Jenkins 6/17/10

APPROVED AS TO FORM:

Heidley  
Benton County Prosecuting Attorney

Date Aug. 26, 2010

FOR BENTON COUNTY,  
WASHINGTON.

James P. Beaver

Chairman

Joe M. Bowman

Chairman Pro-Tem

Max E. Benitz

Member

Constituting the Board of County  
Commissioners, Benton County,  
Washington.

ATTEST:

Carrie M. [Signature]  
Clerk of the Board

Date 8-16-2010

EXHIBIT A

All unincorporated areas of Benton County

Steven W. Becken  
Public Works Manager

Malcolm Bowie, P.E.  
County Engineer

Area Code 509  
Prosser 786-5611  
Tri-Cities 736-3084  
Ext. 5664  
Fax 786-5627

# *Benton County*

## Department of Public Works

Post Office Box 1001 - Courthouse  
Prosser, Washington 99350-0954

May 25, 2010

Richard A. Heath  
Sr. Associate Vice President  
Washington State University  
24106 Bunn Road  
Prosser, WA 99350

RE: . . . WSU Irrigation Franchise

Dear Mr. Heath:

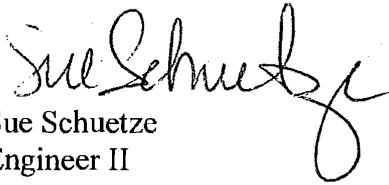
We received your letter dated June 16, 2010.

Clause II: You will not need a performance bond.

Clause X: Submitting your certificate of liability will be sufficient.

If you have any questions, please contact this office.

Sincerely,



Sue Schuetze  
Engineer II

Steven W. Becken  
Public Works Manager

Malcolm Bowie, P.E.  
County Engineer

Area Code 509  
Prosser 786-5611  
Tri-Cities 736-3084  
Ext. 5664  
Fax 786-5627

# *Benton County*

## Department of Public Works

Post Office Box 1001 - Courthouse  
Prosser, Washington 99350-0954

August 30, 2010

Richard A. Heath  
Sr. Associate Vice President  
Washington State University  
24106 Bunn Road  
Prosser, WA 99350

RE: WSU Irrigation Franchise

Enclosed please find a copy of your recorded franchise. It will expire in 10 years. You will receive a notification at that time as a reminder to renew your franchise.

If you have any questions, please contact this office.

Sincerely,

Sue Schuetze  
Engineer II

ED

SEP - 7 2010

51  
GRS

August 12, 2010

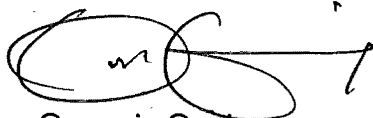
Sue Schuetze  
Benton County Department of Public Works  
PO Box 1001 – Courthouse  
Prosser, WA 99350-0954

RE: WSU Irrigation Franchise  
WSU C#18881

Ms. Schuetze,

Enclosed are two (2) originals of the above referenced agreement for signature.  
Once the agreement has been signed, please return one (1) original to our office  
and maintain one (1) original for your files.

Sincerely,



Genesis Gavino  
Confidential Secretary

gg  
Enclosure



Return to:  
Benton County Public Works  
P. O. Box 1001  
Prosser, WA 99350

WSU Contract No. 18881

Grantee: Washington State University  
Grantor: Benton County

BEFORE THE BOARD OF COUNTY COMMISSIONERS

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No. \_\_\_\_\_

ORDER AND AGREEMENT FOR  
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FINDINGS

NOW, on this \_\_\_\_\_ day of \_\_\_\_\_ the petition and application of WASHINGTON STATE UNIVERSITY, for the authority and nonexclusive Franchise, for a term of ten (10) years, to install, locate, construct, maintain, operate, use, and, if necessary, remove an irrigation system and facilities under, upon, over, along and across the County roads, highways, streets, alleys, and bridges described in said application by reference to the sections, townships, and ranges in which said roads, highways, streets, alleys, and bridges are physically located within the County of Benton, State of Washington, and not within the corporate limits of any incorporated city or town therein, coming on to be heard before this, the Board of County

Commissioners of and from said Benton County, Washington, and this Board having heretofore fixed this time and place for the hearing of said petition, and it appearing that the County Engineer has given notice of the time and place of said hearing by posting in three locations in the Benton County Courthouse, written or printed notices of the time and place of this hearing in accordance with the laws of the State of Washington, and by publishing a like notice two (2) times in the Tri-City Herald, a daily newspaper of general circulation published in Benton County, Washington, and it appearing that the notices so posted and published stated the name of the applicant and a description by reference to sections, townships and ranges in which the County roads, highways, streets, alleys, and bridges to be included in the Franchise for which application is made are physically located, and also state the time and place fixed for said hearing, and after hearing all persons interested in the matter of said petition, and at which hearing the qualifications of the Grantee were heard, the Board deeming it for the public interest to grant the Franchise and authority so applied for.

#### ORDER

IT IS HEREBY ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

There is hereby granted to WASHINGTON STATE UNIVERSITY, hereafter called the Grantee, subject to all provisions, conditions, covenants and requirements of this order and agreement, the right, privilege and nonexclusive Franchise, to install, locate, construct, maintain, operate, use, and, if necessary, remove an irrigation system and facilities, and all necessary appurtenances thereto, hereinafter called the distribution system, under, upon, over, along, or across those portions of any and all County roads, highways, streets, alleys, bridges, rights-of-way, and other County property which lie within those legal subdivisions within the County of Benton, State of Washington, set forth and described in "Exhibit A" attached hereto and by this reference made a part hereof, excluding, however, from such subdivisions any portion thereof which is within the corporate limits of any incorporated city or town, but including all portions of said subdivisions which are within any unincorporated town or community. Benton County Resolution No. 72-220, regarding Policy on Accommodation of Utilities on County Road Rights-of-Way, shall apply in all respects to this Franchise and the distribution system.

AGREEMENT

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II. PERMIT REQUIRED – MAP AND SPECIFICATIONS TO BE FILED  
APPROVAL BY COUNTY ENGINEER – PERFORMANCE BOND

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The distribution system shall be constructed in exact conformity with said map of definite location, except in instances in which deviation may be allowed by the prior written consent of the County Engineer pursuant to application by Grantee. The plans and specifications shall specify, as applicable, the class and type of materials and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts, and road obstructions, and manner and means by which they affect County roads, rights-of-way or property will be restored to a condition as good as that which existed prior to such work or construction. No such work or construction shall be commenced until the Grantee has first secured a written permit from the County Engineer, which shall include approval by the County Engineer endorsed on one set of plans and specifications to be returned to the Grantee. All such work or construction shall require the inspection and approval of the County Engineer. The Grantee shall pay all reasonable costs and expenses incurred in the examination, inspection, and approval of such work or construction by the County Engineer as herein provided.

The County Engineer may require a performance bond in a sum sufficient to guarantee to Benton County that any County roads or rights-of-way, including the surfaces thereof, affected by any work or construction by the Grantee, shall be restored to a condition as good as that which existed prior to such work or construction, the amount of said bond to be fixed by the County Engineer. The County Engineer, upon notice to the Grantee, may at any time order any and all work that he considers necessary to restore to a safe condition any portion of the County road or right-of-way the condition of which has been rendered dangerous to the safety of persons or property by reason of any work, construction, of facilities of Grantee, and Grantee, upon demand, shall pay to the County all costs of such work, done by order of the County Engineer.

### III. COUNTY ROADS TO BE RESTORED

In any work which requires breaking of surface of the County roads or rights-of-way subject to this Franchise for the purpose of locating, constructing, installing, relocating, removing, maintaining and/or repairing the distribution system, and/or making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be governed by and strictly conform to the instructions set forth in the permit issued by the County Engineer for such work; and the Grantee, at its own expense and with all reasonable speed, shall complete the work for which the road or right-of-way surface has been broken and repair and restore the affected County road or right-of-way and the surface thereof to a condition as good as that which existing before the work was commenced. Noxious weed control will be required at the Grantees's expense, and shall meet all requirements of the Benton County Weed Board.

Except in cases of emergency as hereinafter provided, no breaking of surface of any county road or right-of-way shall be done until Grantee has first obtained a permit therefor issued by the County Engineer as specified in Section II of this Agreement.

PROVIDED, however, that in cases of emergency which occur out of office hours when immediate work may be necessary for the protection or safety of persons or property, the emergency shall be immediately reported to the Benton County Sheriff and the necessary work may be immediately undertaken upon the express condition that an application for a permit for such work, as hereinabove provided, shall be submitted to the County Engineer on or before noon of the business day next following the commencement of the emergency work.

#### IV. INTERFERENCE WITH EXISTING FACILITIES

No location, construction, installation, maintenance, repair, removal or relocation of the distribution system or any portion thereof, performed along or under any county road or right-of-way or other county property shall in any way interfere with the grading or improvement of such county road or right-of-way or with the construction and maintenance of any existing utility, public or private, drain, drainage ditch or structure, or irrigation ditch or structure, located along or under such county roads, right-of-way or property. In the event that it is necessary to relocate any such county road or right-of-way or alter the grade of any such county road or right-of-way, requiring relocation of any utilities, including rights-of-way, preferences as to positioning of such utilities, shall be given in the order of the original location and installation of such utilities, the utility first having been located and installed being given first preference as to positioning and relocation.

#### V. MINIMUM INTERFERENCE WITH PUBLIC TRAVEL – GRANTEE LIABLE FOR DAMAGE

All work done under this Franchise shall be done in a thorough and workmanlike manner. All construction, installation, maintenance, repair, relocation, or removal of the distribution system, or any portion thereof, shall be conducted in a manner that will interfere as little as possible with public use of and travel upon county roads and rights-of-way shall include all due and necessary measures and precautions to prevent danger to persons or property. Specifically, where such construction, installation, maintenance, repair, relocation or removal involves open trenches, ditches, or tunnels which are left open at night, the Grantee shall place sufficient warning lights and barricades about such trenches, ditches or tunnels to give adequate warning of such work. The Grantee shall assume sole liability for any injury to persons or property which occurs by reason of any trenches, ditches, or tunnels dug or maintained by the Grantee.

## VI. ALL COUNTY ROAD RIGHTS RESERVED

Benton County expressly reserves any and all rights which it now has or may hereafter acquire with respect to County roads, rights-of-ways, or other County property, and this Franchise shall not be construed to in any way limit or restrict any authority, power, rights, or privileges which Benton County now has or may hereafter acquire to control and regulate the use of County roads, rights-of-way, and other County property covered by this Franchise.

## VII. COUNTY MAY CHANGE AND IMPROVE ROADS WITHOUT LIABILITY

If Benton County shall at any time improve or change any County road or right-of-way subject to this Franchise by grading, regrading, surfacing , or paving the same, or by changing, altering, repairing, or relocating the grade thereof or by construction of drainage facilities, the Grantee shall, upon written notice from the County Engineer, at Grantee's sole expense, with all reasonable speed, change the location or readjust the elevation of its distribution system and other facilities so that the same shall not interfere with such county work and so such lines and facilities shall conform to such new grades as may be established. Benton County shall in no respect be held liable for any damages, costs, or expenses to said Grantee that may occur by reason of any of the County's improvements, changes or work above enumerated, except insofar as such damages, costs or expenses shall be caused by negligence of the County's employees or agents.

All work performed by the Grantee under this section shall be under the direction, approval, and shall pass the inspection of the County Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

## VIII. REFERENCE MONUMENTS AND MARKERS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operation under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee.

#### IX. VACATION OF COUNTY ROADS – ALTERNATE ROUTE

If at any time Benton County shall vacate any County road, right-of-way or other County property which is subject to rights granted by this Franchise the Board of County Commissioners for Benton County may, after granting an alternate route with the consultation of Grantee, by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to such County road, right-of-way, or other County property so vacated and said Benton County shall in no respect be liable for any damages, costs, or expenses to the Grantee that may occur by reason of such termination.

#### X. GRANTEE TO INDEMNIFY COUNTY – LIABILITY INSURANCE

The Grantee covenants, agrees and promises that it shall fully indemnify Benton County from any and all liability, loss, injury, damage, costs, charges or expenses of any nature whatever, occurring to any person, association, corporation or property of any kind by reason of any acts, actions, omissions, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system.

The Grantee further covenants, agrees and promises that, in the event that any claim, suit, or cause of action shall be brought against Benton County by reason of any act, action, omission, defaults, or neglect of the Grantee in the construction, operation, or maintenance of the distribution system, it shall, at its own cost and expense, defend any such claim, suit, or cause of action, and shall pay any and all costs, charges, attorneys' fees, and other expenses therein, and any and all judgments that may be incurred by or obtained against Benton County in any such claim, suit, or cause of action.

The Grantee further covenants, agrees and promises that, in order to secure to the County full and complete performance of the covenants and conditions of this Section "X", it shall, at its own cost and expense, obtain and maintain in effect continually during the term of this Franchise, liability insurance in a company or companies to be approved by the County, such insurance to name the Grantee and Benton County as the insured and to have minimum limits of

not less than \$500,000.00. Written evidence of such insurance in effect shall be furnished to the County Engineer no later than the date that any work or construction under the terms of this Franchise commences. Such additional written evidence of such insurance shall be furnished to the County Engineer from time to time as the County Engineer shall require; in any event, such additional written evidence shall be provided to the County Engineer at least annually during the term of this Franchise. The Grantee's compliance with the provisions of this paragraph relating to liability insurance shall in no way alter, affect, modify or limit any of the other covenants, conditions, and provisions of this paragraph. Acceptance or approval by the County of any work performed by the Grantee shall not constitute a waiver by the County of any of the provisions of this Section "X", and shall not excuse the Grantee from any of the covenants, provisions, or requirements set forth herein.

#### XI. FRANCHISE NOT EXCLUSIVE

This Franchise shall not be deemed to be an exclusive Franchise. It shall in no manner prohibit Benton County from granting other Franchises of a like nature or Franchises for public or private utilities under, along, across, over, and upon any of the County roads, rights-of-way, or other property subject to this Franchise and shall in no way restrict, prevent, or prohibit Benton County from constructing, altering, maintaining, or using any of said roads or rights-of-way, drainage structures or facilities, irrigation structures or facilities, or any other County property or affect its jurisdiction over them or any part of them with full power to make all necessary construction, alterations, changes, relocations, repairs, or maintenance, which the County may deem necessary.

#### XII. PROVISIONS HEREOF BIND SUCCESSOR

All provisions, conditions, covenants, and requirements herein contained shall be binding upon any and all successors and assigns of the Grantee, and all privileges, as well as all obligations and liabilities of the Grantee, shall inure to its successors and assigns equally as if they were specifically mentioned herein wherever the Grantee is mentioned, provided, however, that neither this Franchise nor any rights, privileges, or obligations granted in this order and agreement shall be assigned without the prior written approval of the County Engineer, unless such assignments is to a wholly-owned subsidiary of the Grantee or to a parent company owning



more than 50% of the Grantee, and unless Benton County is provided with prior written notice of such assignment giving the name and address of the subsidiary or parent company assignee.

### XIII. REVOCATION FOR NON-COMPLIANCE

In the event that the Grantee substantially violates or fails to comply with any of the material provisions of this Franchise, the Grantee shall forfeit all rights conferred hereunder and this Franchise shall be revocable by the Board of Benton County Commissioners at their discretion, provided, however, the Board of County Commissioners shall provide the Grantee with written notice of its intention to revoke the Franchise, specifying the nature of such violation, failure, or neglect, and giving the Grantee thirty (30) days in which to cure such violation, failure, or neglect. The Grantee shall be entitled to a hearing, within such thirty-day period, before the Board of County Commissioners.

In the event such hearing is held, the Grantee shall be given prior written notice of the time and place for such hearing. Subject to applicable federal and state law, in the event the Board of County Commissioners, after such hearing, determines that Grantee is in default of any provision of the Franchise, the Board of County Commissioners may:

- a. Foreclose on all or any part of any security provided under this Franchise, if any, including, without limitation, any bonds or other surety; provided, however, the foreclosure shall only be in such a manner and in such amount as the Franchising Authority reasonably determines is necessary to remedy the default;
- b. Commence an action at law for monetary damage or seek other equitable relief;
- c. In the case of substantial default of a material provision of the Franchise, declare the Franchise Agreement to be revoked; or
- d. Seek specific performance of any provision, which reasonably leads itself to such remedy, as an alternative to damages.

### XIV. CONFORMITY WITH STATE AND COUNTY

Benton County expressly reserves the right at any time, upon ninety (90) days written notice to the Grantee, to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any state statute, rule or regulation, or county ordinance, rule or regulation, relating to the regulation of highways or the public welfare, health, safety, as may

hereafter be enacted, adopted or promulgated, and the County further expressly reserves the right to terminate this Franchise at any time, in accordance with the procedures stated in Section "XIII" above, in the event that the Grantee's distribution system is not operated or maintained in accordance with such statute, ordinance, rule, or regulation.

#### XV. FEDERAL REGULATION

Any lawful modification required by amendment of Section 76.31 ("Franchise Standards") of the Rules and Regulations of the Federal Communications Commission shall be incorporated into this Franchise as of the date such modifications become obligatory under FCC regulations, or in the event no obligatory date is established, within one (1) year of adoption or at the time of Franchise renewal, whichever occurs first.

#### XVI. ACTS OF GOD

The Grantee shall not be held in default or non-compliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating thereto, where such non-compliance or alleged defaults are caused by strikes, acts that are solely the result of an Act of God or similar circumstance, power outages, or other events reasonably beyond its ability to control.

#### XVII. SEVERABILITY

If any section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term, or provision hereof, all of which will remain in full force and effect for the term of the Franchise or any renewal or renewals thereof.

#### XVIII. COMPLAINT PROCEDURES

The Grantee agrees to maintain a local business office which subscribers may telephone during regular business hours without incurring added message or toll charges so that service shall be promptly available. The Grantee agrees to notify each subscriber, at the time of initial subscription to the Grantee's service, of the procedures for reporting and resolving such complaints.

XIX. ACCEPTANCE BY GRANTEE

Written acceptance by the Grantee of the Franchise granted herein and all provisions, conditions, covenants, and requirements contained in this order and agreement shall be indicated by endorsement by the Grantee where indicated herein below, and a copy of this order and agreement so endorsed by the Grantee shall be filed with the Clerk of the Board of County Commissioners of Benton County within thirty (30) days from the date of acceptance by the Board. Such filing of the endorsed order and agreement within the period above specified shall be a condition precedent to this Franchise taking effect, and unless this order and agreement is accepted and filed within such time, it shall be null and void.

XX. TERM

This nonexclusive Franchise agreement shall be in full force and effect upon execution and shall expire July 31, 2020.

XXI. GRANTEE'S ADDRESS

Information for the Grantee is:

Richard A. Heath  
Sr. Associate Vice President  
Washington State University  
24106 Bunn Road  
Prosser, WA 99350

Phone: 509-786-2226  
FAX: 509-786-9370

Any notification required to be given to the Grantee may be given to the address above stated, provided that the Grantee may from time to time notify Benton County in writing of address to which notifications are to be sent.

FOR GRANTEE:

Richard A. Heath

Richard A. Heath  
Sr. Associate Vice President  
Washington State University

Date 8/16/10

Recommended By: D.W. Judy 6/17/10

APPROVED AS TO FORM:

\_\_\_\_\_  
Benton County Prosecuting Attorney

Date \_\_\_\_\_

FOR BENTON COUNTY,  
WASHINGTON.

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Chairman Pro-Tem

\_\_\_\_\_  
Member

Constituting the Board of County  
Commissioners, Benton County,  
Washington.

ATTEST:

\_\_\_\_\_  
Clerk of the Board

Date \_\_\_\_\_

EXHIBIT A

All unincorporated areas of Benton County