MASON COUNTY
ORDINANCE NO. 115-06

AN ORDINANCE OF MASON COUNTY, WASHINGTON, REPEALING AND REENACTING CHAPTER 12.24 OF THE OFFICIAL CODE OF MASON COUNTY RELATING TO THE INSTALLATION OF ABOVE AND BELOW GROUND PUBLIC AND PRIVATE UTILITY FACILITIES; REGULATING THE OCCUPANCY AND USE OF THE ROAD RIGHT-OF-WAY; ESTABLISHING PERMITTING AND FRANCHISING REQUIREMENTS THEREFORE; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Board of Commissioners of Mason County (the "Board") is required, as a standard of good practice for the accommodation of utilities within the road right-of-way, to adopt generally applicable administrative, procedural, and technical guidance and requirements regarding the installation, replacement, adjustment, relocation, and maintenance of all utilities in, on, or above the County road right-of-way (the "Utility Accommodation Policy"); and

WHEREAS, the Utility Accommodation Policy is required to include general standards for the location, design, and construction of each utility, a written permit process for all non-exempt utility work, specifications for underground and above ground utilities, including aesthetics, installations on roadway bridges, site restoration, traffic control, and public safety; and

WHEREAS, the Board previously adopted a Utility Policy in the form of Ordinance 3-93 on January 5, 1993; and

WHEREAS, the Board finds that County road rights-of-way are critical to the travel of persons and the transport of goods and other tangibles; are used by the County to provide critical services to its citizens, including services to protect public safety; and that such rights-of-way are intended for public uses and must be managed and controlled consistent with that intent such that the installation, maintenance, and operation of public and private utilities does not interfere with or incommode such public uses; and

WHEREAS, the Board finds that the current Utility Accommodation Policy does not include adequate provisions that provide for regulation of the manner in which an operator will continue to use and occupy the road rights-of-way; and

WHEREAS, the Board further finds that the current Utility Accommodation Policy does not provide adequate flexibility to allow the County Engineer to implement standards, requirements, and guidelines and manage the public rights-of-way in a manner that best protects the public health, safety, and welfare and respond to the needs of the operators using the road rights-of-way for provisioning of services; and

WHEREAS, the Board further finds that the administrative fees adopted pursuant to the current Utility Policy do not reflect the increased costs to the County and that the fees should be reviewed and adjusted on a consistent basis; and

WHEREAS, based upon the foregoing, the Board has concluded that it would be in the best interests of the citizens of Mason County that the Board delegate to the County Engineer the authority to prepare, review, update, and publish a Manual on Accommodating Utilities in the Mason County Right-of-Way, which manual shall become the Utility Accommodation Policy of the Board; and

WHEREAS, the Board further concludes that it is necessary to clarify the rights, duties, and obligations applicable to those persons who use the public rights-of-way for operation of utility facilities;

NOW, THEREFORE, THE BOARD OF COMMISSIONERS OF MASON COUNTY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Repeal and Reenactment of Mason County Code Chapter 12.24. Chapter 12.24 of the Official Code of Mason County is hereby repealed in its entirety and reenacted to read as follow:

12.24.010 Purpose.

The purpose of this Chapter is to establish a County policy governing management of the road rights-of-way through requirements and standards for the construction, installation, repair, maintenance, removal, replacement, adjustment and relocation of all above and below ground utility facilities that are located within the County road right-of-way. The goal of this policy and the requirements and standards is to protect and advance the public health, safety, and welfare by:

A. Establishing clear and nondiscriminatory local guidelines, standards, and time frames for the exercise of local authority with respect to the use of public rights-of-way;

B. Minimizing unnecessary local regulation of operators and services;

C. Permitting and managing reasonable access to the road rights-of-way of the County on a competitively neutral basis;

D. Assuring that the County's current and ongoing costs of granting and regulating access to and use of the road rights-of-way are fully paid for by the persons seeking such access and causing such costs;

E. Assuring that all persons using the road rights-of-way comply with the ordinances, rules, regulations, policies, and procedures of the County;

F. Ensuring the ability of the County to obtain sufficient information from persons subject to its jurisdiction to enable effective decisions regarding their access to County road rights-of-way and effective management of activity in the rights-of-way;

G. Providing for the grant of a franchise to govern use of and activities within the public rights-of-way;

H. Providing for the issuance of a master road use permit to govern the activities of exempt operators within the public rights-of-way; and

I. Providing for the issuance of private line utility occupancy permits to govern activities of operators of private lines serving single-family residences.

This Chapter shall replace and supersede Ordinance 3-93 adopted by the Board of County Commissioners' action on January 5, 1993.

12.24.020 Applicability.

The requirements and policies set forth in this Chapter shall apply to all new franchises, master road use permits, private line utility occupancy permits, and utility permits issued by the County pursuant its police powers and its authority granted in RCW 80.32.010, RCW 80.36.040, and Ch. 36.55 RCW, and to all construction, installation, repair, maintenance, removal, replacement, adjustment, and relocation of utility facilities within the County road right-of-way by public and private operators, including but not limited to electric power, telephone, television, cable, telegraph, communication, information, water, gas, all petroleum products, steam, chemicals, sewage, drainage, irrigation, and similar pipes, lines, or cables.

This Chapter cannot address all situations and conditions that may be encountered. Specific provisions contained herein may not be appropriate for all locations and existing conditions. The requirements of this Chapter are intended to assist, but not be a substitute for, competent work by both road and utility design and installation professionals. This Chapter should not be construed to limit any innovative or creative effort which could result in better quality, better cost savings, or improved safety characteristics.

It shall be the responsibility of any operator installing or relocating any of its facilities to ascertain and abide by the requirements and conditions of this Chapter.

12.24.030 Definitions.

For the purposes of this Chapter, the following terms, phrases, words, and abbreviations shall have the meanings given herein, unless otherwise expressly stated. When not inconsistent with the context, 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 masculine gender includes the feminine gender. The words "shall" and "will" are mandatory, and "may" is permissive. Unless otherwise expressly stated, words not defined in this title shall be construed consistent with their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority.

If specific provisions of law referred to herein are renumbered, then the reference shall be read to refer to the renumbered provision. References to laws, ordinances, rules, or regulations shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances, and regulations, now in force or hereinafter enacted or amended or re-codified.

"Abandon" or "Abandonment" shall mean and refer to an intent by the owner or operator to cease or surrender use for the intended purpose.

"Administrative Regulations" means regulations adopted and amended from time to time by the County Engineer that implement, supplement, or interpret Chapter 12.04 of the Mason County Code.

"Appurtenance" means equipment and/or accessories which are a necessary part of an operating utility system or subsystem or private lines.

"Backfill" means replacement of excavated material with suitable material compacted as specified.

"Boring" means grade and alignment-controlled mechanical or other method of installing a pipe or casing under a road without disturbing the surrounding medium.

"Carrier" means pipe directly enclosing a transmitted fluid or gas.

"Casing" means a larger pipe enclosing a carrier for the purpose of providing structural or other protection to the carrier and/or to allow for carrier replacement without re-excavation, jacking, or boring.

"Coating" means protective material applied to the exterior of a pipe or conduit to prevent or reduce abrasion and/or corrosion damage.

"Conduit" means an enclosed tubular runway for protecting wires or cables.

"Cover" means depth to top of pipe, conduit, casing, or gallery below the grade of a road or ditch.

"Drain" means appurtenances to discharge accumulated liquids from casings or other enclosures.

"Encasement" means a structural element surrounding a pipe or conduit for the purpose of preventing future physical damage to the pipe or conduit.

"Exempt Operator" or "Exempt," or any derivations thereof, shall, unless the context clearly indicates otherwise, mean any operator that has a continuing and lawfully vested right to occupy the Mason County road rights-of-way to provide a particular service or services and may not lawfully be required to obtain consent from the County to occupy or continue to occupy the road rights-of-way to provide such service or services.

"Franchise" means the authorization granted by the County for non-exclusive use and occupancy of road rights-of-way in accordance with Chapters 36.55 and 80.32 RCW to provide a specific service within the franchise area. Such franchise shall not include or be a substitute for:

(a) Any permit, agreement, or authorization required in connection with operations on or in public streets or property, including by way of example and not limitation, utility permits; or

(b) Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically granted by the franchise.

"Franchise Area" means the area of the County that an operator is authorized to serve by the terms of its franchise or by operation of law.

"Gallery" means an underpass for two or more utility lines.

"Manhole" means an opening in an underground utility system or private lines into which workers or others may enter for the purpose of making installations, inspections, repairs, connections, cleaning, and testing.

"Master Road Use Permit" means the authorization granted by the County Engineer to an exempt operator of a utility system, giving the operator permission to enter upon and use specified road rights-of-way for the purpose of installing, maintaining, repairing, relocating, or removing identified utility facilities to provide service. Such master road use permit shall not include or be a substitute for:

(a) Any permit, agreement, or authorization required in connection with operations on or in specific parts of the public roads or property, including by way of example and not limitation, utility permits; or

(b) Any permits or agreements for occupying any property of the County other than road rights-of-way or property of private entities to which access is not specifically granted by the master road use permit including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures, or railroad easements, whether owned by the County or a private entity.

"Normal maintenance" shall mean maintenance that is required to be performed in the normal course of utility operations due to ordinary wear and tear; provided that, normal maintenance shall not include work requiring the disturbance of the soil or improvements in the road right-of-way, or work when a traffic control plan would be required pursuant to the Federal Highway Administration's Manual on Uniform Traffic Control as modified and adopted by the Washington State Department of Transportation.

"Operator" means and refers to a person (a) who provides service over a utility system or private line(s) and directly or through one or more affiliates owns a significant interest in such utility system or private lines; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a utility system or private line(s).

"Pavement" means the combination of sub-base, base course, and surfacing placed on a subgrade to support the traffic load and distribute it to the subgrade.

"Person" means and includes any individual, corporation, partnership, association, joint stock company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the County or any person under contract with the County.

"Pipe" means a structural tubular product designed, tested, and produced for the transmittance of specific liquids and gases under specific conditions.

"Plowing" means direct burial of utility lines by means of a "plow" type mechanism which breaks the ground, places the utility line at a predetermined depth, and closes the break in the ground.

"Pressure" means internal gage pressure in a pipe in pounds per square inch, gage (psig).

"Private lines" means privately owned, operated, and maintained utility facilities devoted exclusively to the use of the owner or operator.

"Relocation" means planned change of location of an existing utility facility to a more advantageous place without changing the character or general physical nature of the utility facility.

"Replacement" means installation of a like element of a utility system or subsystem or private line in the same or near-same physical location normally due to damage, wear, or obsolescence of the element.

"Restoration" means all work necessary to replace, repair, or otherwise restore the right-of-way and all features contained within to the same or equal condition as before any change or construction thereto.

"Right-of-way" is a general term denoting public land, property, or interest therein, usually in a strip, acquired for or devoted to transportation or secondary purposes.

"Road" or "roadway" is a general term denoting a street, road, or other public way, including shoulders, designated for the purpose of vehicular traffic and located within the geographical and jurisdictional limits of Mason County.

"Sleeve" means a short casing through a pier, wall, or abutment of a highway structure.

"Traffic control" means those activities necessary to safeguard the general public, as well as all workers, during the construction and maintenance of utility facilities within the right-of-way.

"Transfer" means any transaction in which all or a portion of the utility system or private lines are sold or assigned (except a sale or assignment that results in removal of a particular portion of the facility from the public rights-of-way); or the rights and/or obligations held by the operator under the franchise or master street use permit are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party. A transfer of control of an operator shall not constitute a transfer as long as the same person continues to hold the franchise or master street use permit both before and after the transfer of control.

"Trenched" means installation of a utility facility in an open excavation.

"Untrenched" means installation of a utility facility without breaking the ground or pavement surface such as by jacking or boring.

"Utility Facility" means any part or all of the facilities and appurtenances of an operator whether underground or overhead and located within the road right-of-way including but not limited to, conduit, case, pipe, line, fiber, equipment, equipment cabinets and shelters, generators, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, and foundations

"Utility Permit" means a document issued under the authority of the Mason County Engineer (or Public Works Director) that provides specific requirements and conditions for specific utility facility installation, repair, maintenance, or relocation work at specific locations within the right-of-way.

"Utility System" means utility facilities that together are used to provide service to the general public.

"Vent" means appurtenance to discharge gaseous contaminants from casings or other enclosures.

12.24.035 Franchise/Master Road Use Permit/Private Line Utility Occupancy Permit Required.

A. Franchise Required.

1. No person may occupy the road rights-of-way without first having obtained, in full force and effect, a valid franchise issued by the County Board of Commissioners, except as follows:

(a) Franchises will not be required for private lines that have a de minimis impact upon the road right-of-way; provided that, the operator has and maintains in full force and effect, a private line utility occupancy permit. The following are examples of privates lines which would ordinarily have a de minimis impact upon or use of the road right-of-way:

(i) Private line serving one single-family residence;

(ii) A private line utility system with a single road right-of-way crossing of 250 feet or less; and

(iii)A private line utility system with a single longitudinal use of the road right-of-way of 500 feet or less.

(b) Franchises will not be required for any work on road rights-of-way that is performed by or on behalf of the County or by any entity under contract with the County to perform such work.

(c) Franchises will not be required for exempt operator utility facilities as provided herein; provided that, the operator has and maintains in full force and effect a master road use permit.

2. No franchise granted hereunder shall confer any exclusive right, grant, privilege, or franchise to occupy or use the rights-of-way for delivery of services or any other purposes.

B. Master Road Use Permit.

1. In lieu of a franchise, an exempt operator shall obtain and have in full force and effect a valid master road use permit issued by the County Engineer. The authorization granted shall be conditioned upon the operator's compliance with the terms and conditions of Ch. 12.24 MCC and the master road use permit. Every master road use permit shall include, or be read to include, as if stated therein, a reservation of rights by the County to require the operator to obtain a franchise as to those utility facilities or uses for which the exemption is inapplicable or to which the exemption is otherwise determined by a court of law not to be applicable. Further, the County does not, by issuance of a master road use permit, waive its rights in the future to require the operator to obtain a franchise. No master road use permit shall become effective until approved by the County Engineer and accepted by the exempt operator.

2. A master road use permit does not convey title, equitable or legal, in the road rights-of-way nor is it an authorization to operate utility facilities located within the road rights-of-way. The master road use permit is intended to implement the right-of-way management policies of Ch. 12.24 MCC and to protect the road rights-of-way through regulations governing the construction, installation, repair, maintenance, removal, replacement, adjustment, and relocation of utility facilities.

C. Private Line Utility Occupancy Permit. In lieu of a franchise, an operator using the road right-of-way for a private line serving a single-family residence may apply for a private line utility occupancy permit. The private line utility occupancy permit is intended to implement the right-of-way management policies of Ch. 12.24 MCC and to protect the road rights-of-way through regulations governing the construction, installation, repair, maintenance, removal, replacement, adjustment, and relocation of private line utility facilities.

D. Application. Every application for a new franchise, master road use permit, or private line utility occupancy permit, or for an amendment to a franchise, master road use permit, or private line utility occupancy permit, or for a transfer of a franchise, master road use permit, or private line utility occupancy permit, or for a renewal of a franchise or master road use permit shall be on forms provided by the Mason County Engineer which application forms shall, at a minimum, contain and require the following:

1. ~~*Identity of Authorized Parties.*~~ The names and addresses of persons authorized to act on behalf of the operator with respect to the application and those person(s) who are authorized to receive all notices regarding action taken pursuant to an application.

2. *Non-refundable Application Fee.* An initial non-refundable application fee in the amount of:

$400 for a new franchise or new master road use permit;
$200 for a new private line utility occupancy permit;
$300 for a renewal of a franchise or master road use permit;
$250 for an amendment of a franchise or master road use permit;
$100 for amendment of a private line utility occupancy permit;
$100 for a transfer of a franchise or master road use permit; and
$100 for a transfer of a private line utility occupancy permit.

The purpose of the non-refundable application fee is to reimburse the County for the costs incurred to review and issue or deny a franchise, master road use permit, or private line utility occupancy permit, or issue an amendment thereto, or a renewal, or a transfer. In addition to the non-refundable application fee, the applicant shall, as a condition of action being taken, reimburse the County for the direct costs of third parties retained by the County when deemed by the County Engineer to be reasonable and necessary to assist the County in reviewing or responding to the application. The County shall, at the request of the applicant, provide an itemized accounting for the services provided that become a cost of the applicant as provided herein.

The County Engineer is hereby directed to review the application fees on a biennial basis and make a recommendation to the Board for adjustment of the application fees. The Board may adjust the application fees from time to time by a duly adopted resolution.

3. *Identity of Applicant.* Identity of the operator, the persons who exercise working control over the operator, and the persons who control those persons to the ultimate parent.

4. *Certificate Verifying Status as Exempt Operator.* If applicable, a certification of the authorized officer of the operator stating that the operator is exempt and the reasons therefore; provided that, if such utility facilities will be used to provide services other than those qualifying it as an exempt operator, the applicant shall state what other services will be provided and under what authority the applicant will be utilizing facilities located within the public rights-of-way to provide such services.

5. *Location/Description/Purpose of Facilities.* The location in the County in which the applicant proposes to install utility facilities in the road rights-of-way, including the approximate linear feet of overhead utility facilities, the approximate linear feet of underground utility facilities; the type of utility facilities to be installed; and, the proposed use of the utility facilities and type of services to be provided.

6. *Certification Verifying Truth/Accuracy.* A certificate of an authorized officer of the operator certifying the truth and accuracy of the information in the application.

D. Term. The term of the franchise and the master road use permit shall not exceed ten (10) years. The private line utility occupancy permit shall be revocable upon 30 days written notice to the operator with or without cause.

E. No Vested Rights. The franchise, master road use permit, and private line utility occupancy permit do not grant any vested right to have any utility facility installed or to remain at a specific location in the road right-of way.

F. Applicability to and Enforceability Against Operator. Even in the absence of a franchise, master road use permit, or private line utility occupancy permit, all requirements of this Chapter or any other applicable provision of the Mason County Code or ordinance which have been promulgated under the County's police or other regulatory powers shall apply and be enforceable against an operator, except to the extent, and only to that extent, the application and enforcement of any such requirement is expressly prohibited by applicable laws.

Any operator who currently occupies road rights-of-way without having in place a current and valid master road use permit, franchise, private line utility occupancy permit, or other similar agreement with the County shall submit a completed application for a franchise, master road use permit, or private line utility occupancy permit as provided by this section within one hundred twenty days of the effective date of this section. The 120 day time period may be extended by the County Engineer for good cause shown by an operator upon written application received by the County Engineer no less than 5 days prior to the expiration of the 120 time period. The decision of the County Engineer shall be final and non-appealable.

G. Effect on Existing Franchises or Other Agreements. Except as otherwise provided in this Chapter, this section shall have no effect on any existing franchise or other agreement until:

1. The expiration of such franchise or agreement; or

2. An amendment to an unexpired franchise or agreement, unless both parties agree to defer full compliance to a specific date not later than the present expiration date; or

6. Include specific requirements for all utilities, which shall include aesthetic/scenic considerations, installations on roadway bridges and structures, site restoration and cleanup, traffic control and public safety, and both normal and emergency repairs.

C. The standards, guidelines and requirements set forth in the current model utility accommodation policy as published by the County Road Administration Board is adopted as the "interim utility accommodation policy" of Mason County until such time as the manual is adopted pursuant to MCC 12.24.040(B). Upon adoption, the manual shall replaced and supersede the "interim utility accommodation policy." All work performed in the road rights-of-way for the construction, installation, replacement, relocation, adjustment, and maintenance of utility facilities shall conform to the "interim utility accommodation policy."

D. The County Engineer is further authorized and directed to prepare, adopt, publish, and amend from time to time, administrative regulations (hereinafter referred to as the "administrative regulations") that implement, supplement, and interpret MCC Chapter 12.24; provided that, such administrative regulations are consistent with Ch. 12.24 MCC, and applicable state and federal law.

E. In the event of a conflict between Ch. 12.04 MCC, the administrative regulations, or the manual and the standard specifications, the Mason County Code, the administrative regulations, and the manual shall take precedence. In the event of a conflict between the Mason County Code and the administrative regulations or manual, the Mason County Code shall take precedence. In the event of a conflict between the manual and the administrative regulations, the manual shall take precedence.

12.24.050 General Requirements.

The following general requirements shall be applicable to construction, installation, repair, maintenance, removal, replacement, adjustment, and relocation of utility facilities in the road rights-of-way:

A. Location.

1. Utility facility installations shall be located to minimize the need for later adjustment to accommodate future roadway improvements and to permit access to servicing such installations with minimum interference to roadway traffic. The County shall make available to operators a copy of its six-year transportation improvement program (or capital facilities and transportation plan where required), in order to minimize both utility customer and road user inconvenience should future road improvements (on existing or new alignment) require adjustment or relocating of the utility facilities. Said operators shall, within the limits of standard business practice, make available appropriate short and long range development plans to the County.

2. The operator shall have a duty to ensure that utility facilities within the road right-of-way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to County maintenance of and along the road right-of-way. In such event, or in the event that the County Engineer, in his or her sole discretion, determines that a utility facility within the road right-of-way has become or constitutes an unacceptable roadside obstacle or

3. Any transaction which results in a transfer.

12.24.040 Standards Adopted.

A. The current and any subsequent edition of the Standard Specifications for Road, Bridge and Municipal Construction issued by the Washington State Department of Transportation and the American Public Works Association Washington State Chapter, is hereby adopted as the Mason County standard specifications for road and bridge construction applicable to construction, installation, repair, maintenance, removal, replacement, adjustment, and relocation of utility facilities in the road rights-of-way which hereinafter shall be referred to as "Standard Specifications."

B. The County Engineer is hereby authorized and directed to prepare, review, update, and publish a Manual on Accommodating Utilities in the Mason County Right-of-Way (the "Manual"); provided that, the manual shall be consistent with Ch. 12.24 MCC, and applicable state and federal law, with the exception that, the manual may include any road design standards which the County Engineer shall deem necessary to provide adequate protection to the road, its safe operation, appearance, and maintenance, which standards supercede the standard specifications.

The County Engineer shall provide opportunity for public comment upon the manual prior to its adoption. Upon adoption by the County Engineer, the manual and all subsequent amendments to and editions of the manual, together with this Chapter 12.24 MCC, shall be and become the utility accommodation policy of the Board. All work performed in the road rights-of-way for the construction, installation, repair, maintenance, removal, replacement, adjustment, and relocation of utility facilities shall conform to the utility accommodation policy. The manual shall, at a minimum:

1. Address all public and private utilities and other transmission facilities which are constructed, installed, repaired, maintained, removed, replaced, adjusted, or relocated within the County road right-of-way pursuant to franchises, permits, and/or exemptions from the permit process including but not limited to electric power, telephone, television, telegraph, communication, water, gas, all petroleum products, steam, chemicals, sewage, drainage, and irrigation;
2. Include general standards and requirements for the location, design, and construction of each utility facility;
3. Incorporate a written permit process for all utility work not exempted by the provisions of the utility policy, and specify exemptions from such permit process, if any;
4. Include specific requirements for underground utilities which shall include location and alignment, depth of burial and cover, encasement, marking, appurtenances and related installation procedures;
5. Include specific requirements for above ground utilities which shall include location, alignment, and vertical clearances; and

4. Granting of a franchise, master road use permit, private line utility occupancy permit, or utility permit shall not imply or be construed to mean the County shall be responsible for the design, construction, installation, repair, maintenance, removal, replacement, adjustment, relocation, or operation of the utility facility or for public safety during the utility facility's construction, installation, repair, maintenance, removal, replacement, adjustment, relocation, or operation. The County's grant of a franchise, master road use permit, private line utility occupancy permit, or utility permit and approvals given therein are for the sole purpose of protecting the County's rights as the owner or manager of the road right-of-way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design, construction, installation, relocation, repair, maintenance, removal, replacement, adjustment, relocation, operation of the utility facilities, or suitability of the road right-of-way for construction, maintenance, or repair of the utility facilities. The County is under no obligation or duty to supervise the design, construction, installation, repair, maintenance, removal, replacement, adjustment, relocation, or operation of the utility facilities.

C. Standards and Codes. All utility facilities shall be designed in accordance with the standards, codes, and regulations applicable to the type of utility facility. The methods of construction, installation, repair, maintenance, removal, replacement, adjustment, relocation, and materials used shall conform to the codes and standards promulgated by the government and by the industry. This shall also include any road design standards adopted by the County.

D. Adjustment and Relocation of Existing Utility Facilities.

1. Existing underground utility facilities on County road right-of-way may be removed or relocated when road work funded by the County would disturb the existing underground utility facilities. All such removal or relocation shall be at the sole expense of the operator, and all work must be accomplished by the same permitting process as for new utility facility installations.

2. Notwithstanding reinforcement or protection otherwise provided, the operator and its contractors and subcontractors shall be responsible for the security of all utility facilities within a road construction zone. Where there are unusual utility hazards or where heavy construction equipment will be used, the operator and its contractors and subcontractors shall provide adequate temporary protection. In replacing the roadway, the design should give due consideration to the protection of previously existing utility facilities in the roadway section without sacrificing the geometrics of roadway design.

12.24.060 Permits.

A. General Requirements. For all work in the road right-of-way to construct, install, maintain, repair, removed, replace, adjust, or relocate utility facilities, a utility permit will be required for each specific project and location, except for (1) aerial drops, and (2) normal maintenance.

Utility permit applications shall be submitted in writing to the County Engineer on forms provided by that office. No work may be performed within the road right-of-way to construct, install, maintain, repair, replace, adjust, or relocate utility facilities until after receipt of the returned, approved utility permit, an

may interfere with or create a hazard to County maintenance of and along the road right-of-way, the operator shall at its expense, or the County may at operator's expense:

(a) Relocate the utility facility to another place within the right-of-way;
(b) Convert the utility facility to a break-away design;
(c) Crash-protect the utility facility;
(d) Relocate the utility facility to another location off the road right-of-way; or
(e) In the event that the utility facility is screened from view (i.e., not readily visible from all directions by persons standing at ground level), remove or trim vegetation in and around the utility facility.

3. Installations that are required for a road purpose, such as street lighting or traffic signals, are to be located and designed in accordance with this Chapter.

4. Where existing utility facilities are in place, new utility facilities shall be compatible with the existing installations and conform to this Chapter as nearly as practicable.

5. Every operator shall have a continuing duty to identify the location of existing utility facilities of the operator in the road right-of-way in a format acceptable to the County Engineer. In the event that information regarding the location of existing facilities in the road rights-of-way is not readily available, operator shall have a continuing duty to use due diligence to prepare and provide such information to the County Engineer in a form and time frame acceptable to the County Engineer.

B. Design - General.

1. The operator shall be responsible for the design of the utility facility being proposed. This responsibility shall include, in addition to the integrity of the proposed utility facility, provisions for public safety during the course of construction, as well as consideration of traffic safety and accident potential for the life of the installation.

2. For work requiring application to the County, the County may review and approve the operator's plans with respect to:

(a) Location;
(b) The manner in which the utility facility is to be installed;
(c) Measures to be taken to preserve safe and free flow of traffic;
(d) Structural integrity of the roadway, bridge, or other structure; and
(e) Ease of future road maintenance, and appearance of the roadway.

3. Provision shall be made for known or planned expansion of the utility facilities, particularly those located underground or attached to bridges or other structures within the right-of-way.

insurance certificate conforming to the requirements of this Chapter is obtained, a performance bond is obtained when required by the County Engineer, and notification is made to the County Engineer indicating when work will commence. In emergencies only, permission may be granted by the County Engineer for commencement of work prior to receipt by the operator of the approved permit; provided that, as soon as practical thereafter, the operator shall apply for and obtain a utility permit. The provisions of this Chapter shall apply only to utility facilities located above, on, or under the road right-of-way, properties owned or controlled by the County, and properties that will be dedicated to the County for road rights-of-way. No utility facility shall be used for other than the purpose stated in the utility permit, franchise, master road use permit, or private line utility occupancy permit, unless written approval is granted by the County.

B. Specific Requirements. When required, utility permit applications shall be submitted in a standard format as prescribed by the County. The utility permit application shall include the following information:

1. Agreement to all pertinent provisions of this Chapter and to such special conditions as the County may deem appropriate;

2. Agreement to indemnify, defend, release, and hold harmless the County, its elected and appointed officers, and its agents, and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the County or any third party arising out of the presence of the utility facilities in the road rights-of-way, or by reason of, or resulting from the acts, errors, or omissions of the operator or operator's agents, independent contractors, or employees related to or in any way arising out of the construction, installation, repair, maintenance, removal, replacement, adjustment, relocation, or operation of utility facilities within the County road right-of-way, or by reason of, or resulting from the acts, errors, or omissions of third parties when arising out of the installation, construction, adjustment, relocation, replacement, removal, maintenance, of such third party utility facilities within the road rights-of-way when such work is performed under authority of operator's utility permit or at the direction or under the control of the operator;

3. Description of the utility facilities to be installed; and

4. Adequate exhibits depicting existing or proposed location of the facility in relation to the road, including right-of-way or easement lines; relationship to currently planned road revisions, if applicable; and all locations and situations for which deviations in depth of cover (including the proposed method of protection) or other locational standards are anticipated.

C. Utility Permit Fees. In order to offset the costs of administering the policy for accommodation of utility facilities on County road rights-of-way, including the orderly recording and maintenance of records of utilities, the applicant shall pay the reasonable costs to the County for investigating, handling, and granting the utility permit, including a basic overhead charge of $125 for a utility permit application and $35 for a one-time renewal for one month with no change in

scope from the original utility permit, together with an additional charge for all costs and expenses, if any, actually incurred by the County in investigation of the application; provided that, no charge will be made for applications where the applicant is the United States or any of its agencies, or a utility anticipating relocation from its private easement acquired or to be acquired by the County for construction or reconstruction of a County road. The applicant shall pay an additional cost charge of twenty-five cents per foot for inspection and recording of utility facilities based on the lineal footage of utility to be installed.

The County Engineer is hereby directed to review the inspection and recording fees on a biennial basis and make a recommendation to the Board for adjustment of the application fees. The Board may adjust the inspection and recording fees from time to time by a duly adopted resolution.

An equitable portion of the added costs of design and construction of highway structures which may be required to accommodate utility facilities shall be charged to any operator for any necessary relocation of its utility facilities and/or to any operator making new installations.

D. Performance/Payment Bond. Before any work commences in the road right-of-way, the County Engineer may require the operator to provide a performance and payment bond for each separate project in an amount to be determined by the County Engineer, but not less than five hundred dollars, written by a surety company acceptable to the County Risk Manager and authorized to do business in the state of Washington. The purpose of the bond is to insure completion of construction, including the restoration of surfacing, slopes, slope treatment, top soil, landscape treatment, and drainage facilities, cleanup of rights-of-way, and payment of costs incurred by the County to enforce the requirements of this Chapter. The performance and payment bond shall be in place for a period ending not more than one year after the date of completion.

A project specific performance bond shall not be required for (1) an operator that has in place a blanket performance bond and, when required, a payment bond maintained by the operator pursuant to the requirements of the operator's franchise or master road use permit guaranteeing performance of the obligations of the operator as described therein, or (2) for an operator of private lines operating under a private line utility occupancy permit; provided that, the work in the road right-of-way is being performed by a licensed and bonded contractor.

A performance and payment bond for work in the road right-of-way will not be required of the United States Government or any of its agencies or of any municipal corporation or department of the state of Washington and its local subdivisions.

E. Joint Occupancy. In the event utility facilities of two or more operators are to occupy a common trench, a basic utility permit fee and inspection fee will be required for each such utility facility installation. All moneys shall be paid to the County road fund and no part shall be refundable.

F. Record Drawings. Upon completion of work in the road right-of-way for which a utility permit is required, the operator shall provide or cause to be provided record drawings to the County Engineer in a form acceptable to the County Engineer, depicting at a minimum the location, alignment, and depths of

the utility facilities installed or relocated. The County Engineer may accept Global Positioning Satellite (or equivalent) coordinates in lieu of record drawings and encourages providing record drawings in an electronic form and format acceptable to the County Engineer.

Commencing the 1st day of January, 2009, all record drawings shall be provided in an electronic form and format acceptable to the County Engineer for inclusion on the County's GIS database.

12.24.100 Protection of County and Residents.

A. Indemnification Required. Every franchise, master road use permit, and private utility line occupancy permit issued to an operator shall include an adequate agreement from the operator to indemnify, defend, release, and hold harmless the County, its elected and appointed officers, and its agents, and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the County or any third party arising out of the presence of the utility facilities in the road rights-of-way, or by reason of, or resulting from the acts, errors, or omissions of the operator or operator's agents, independent contractors, or employees related to or in any way arising out of the construction, installation, repair, maintenance, removal, replacement, adjustment, relocation, or operation of utility facilities within the County road right-of-way.

B. Insurance.

1. Except as provided at MCC 12.24.100(B)(2) for private line utility facilities, every operator shall have and maintain adequate insurance in a form and with coverages and limits sufficient, in the judgment of the Mason County Risk Manager, to protect the County.

The required insurance shall cover all liability of the operator arising out of, or related to, the operator and its officers', directors', employees', contractors', subcontractors', and agents' performance or nonperformance, under the franchise, master road use permit, or utility permit, or arising out of the presence of the operator's utility facilities in the road rights-of-way, or arising out of the installation, construction, adjustment, relocation, replacement, removal, maintenance, or operation of the operator's utility facilities in the road rights-of-way, or by reason of, or resulting from the acts, errors, or omissions of third parties when arising out of the, installation, construction, adjustment, relocation, replacement, removal, or maintenance of such third party utility facilities within the road rights-of-way when such work is performed under authority of the operator's utility permit or at the direction or under the control of the operator; all such liability includes, without limitation, any negligence of the operator and its officers, directors, employees, contractors, subcontractors, and agents.

Policies shall be issued by companies authorized to do business under the laws of the state of Washington and with financial ratings acceptable to the Mason County Risk Manager. The insurance shall include blanket contractual coverage, including coverage for written contracts and specific coverage for the

indemnity provisions set forth in the franchise, master road use permit, private line utility occupancy permit, and utility permit.

The County shall be named as an additional insured, without limitation, on the general liability policy.

2. An operator of private line utility facilities meeting the following requirements shall not be required to comply with the insurance requirements of MCC 12.24.100(B)(1):

(a) The utility facilities are permitted under a private utility line occupancy permit;

(b) The work in the road right-of-way is performed by a licensed and bonded contractor; and

(c) The contractor performing the work provides a certificate of insurance to the County in a form and with coverages and limits sufficient, in the judgment of the Mason County Risk Manager, to protect the County.

The insurance required from the contractor shall cover all liability of the contractor, its subcontractors, and their agents' arising out of work performed in the public rights-of-way, including, without limitation, any negligence of the contractor and its officers, directors, employees, contractors, subcontractors, and agents.

The County shall be named as an additional insured, without limitation, on the general liability policy.

3. If the operator or contractor does not have the insurance required pursuant to MCC 12.24.100(B)(1) and (2), the County may order the operator or contractor to stop any activity in the road rights-of-way until the insurance is obtained and approved.

C. Performance/Payment Bonds. Every operator shall be required to obtain performance bonds and, if necessary, payment bonds, to ensure the faithful performance of its responsibilities under any franchise or master road use permit.

The minimum amount of the performance/payment bond necessary to achieve the purpose of the bond requirement for a franchise or master road use permit shall be set by the County Engineer based upon such factors that relate to the risk to the County and nonperformance by the operator. The performance and/or payment bond shall be a minimum of $25,000. The amount of the performance and/or payment bond may, from time to time, be increased or decreased to reflect changes in risks to the County. The requirement for a performance and/or payment bond may be waived for public entities or operators determined by the County Engineer to be operators in good standing.

The performance and/or payment bond shall be in a form acceptable to the County Engineer; be with a surety company authorized to do business in the state of Washington with financial ratings acceptable to the Mason County Risk Manager; and, shall provide that it cannot be revoked during the term of the franchise or master road use permit and for two years thereafter.

12.24.110 Transfer/Change of Control.

A. No franchise or master road use permit may be transferred without:

1. Prior written notice to the County;

2. Execution of an agreement with the County unconditionally providing that the transferee will be bound by all the conditions of the applicable franchise or master road use permit and will assume all the obligations of its predecessor;

3. Resolving or preserving to the satisfaction of the County any outstanding compliance issues; and

4. Filing or establishing with the County the insurance certificates, security fund, and performance bond as required pursuant to this Chapter.

B. A transfer shall not in any respect relieve the operator, or any of its successors in interest, of any obligation or liability occurring prior to the transfer, or of responsibility for acts or omissions occurring prior to the transfer, known or unknown, or the consequences thereof, including the review of past performance for purposes of determining whether the franchise or master road use permit should be renewed.

12.24.120 Remedies/Violation/Penalties.

A. Revocation or Termination of Franchise/Master Road Use Permit. A franchise or master road use permit may be revoked upon notice and opportunity to cure for any one or more of the following reasons:

1. Construction or operation at an unauthorized location;

2. Unauthorized transfer of the operator's franchise or master road use permit;

3. Unauthorized sale, assignment, or transfer of the operator's franchise assets or an interest therein;

4. Misrepresentation by or on behalf of an operator in any application to the County;

5. Abandonment of utility facilities in the road rights-of-way. Abandonment of a utility facility shall be presumed when a utility facility has not been used for a continuous period of twelve (12) months or the appearance and condition of the utility facility together with the lack of maintenance or repair would lead a reasonable person to believe that the utility facility has been abandoned;

6. Failure to relocate, adjust, or remove facilities as required in this Chapter;

7. Failure to pay taxes, compensation, fees, or costs when and as due to the County;

8. Insolvency or bankruptcy of the operator;

9. Violation of a material provision of this Chapter; and/or

10. Violation of a material term of a franchise or master road use permit.

B. Revocation/Termination of Private Utility Line Occupancy Permit. The County Engineer may terminate or revoke a private line utility occupancy permit at any time upon 30 days written notice, with or without cause.

C. Penalties/Violation.

1. Misdemeanor. Any person violating any of the provisions of this Chapter shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than 90 days, or by both such fine and imprisonment. Each person, found guilty of a violation shall be deemed guilty of a separate offense for every day during any portion of which any violation of any provision of this Chapter is committed, continued or permitted by such person, firm, or corporation and shall be punishable therefor as provided for in this Chapter.

2. Civil Infractions. The violation of any provision of this Chapter is designated as a Class I civil infraction pursuant to Chapter 7.80 RCW.

3. Notwithstanding the existence or use of any other remedy, the County may seek legal or equitable relief to enjoin any acts or practices and abate any conditions which constitute or will constitute a violation of Ch. 12.24 MCC.

Section 2. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

ADOPTED BY THE BOARD OF COMMISSIONERS OF MASON COUNTY, WASHINGTON AT A REGULAR MEETING THEREOF ON THE 14th DAY OF November, 2006.

BOARD OF COUNTY COMMISSIONERS
MASON COUNTY, WASHINGTON

Lynda Ring Erickson

Lynda Ring Erickson, Chair

Jayni L. Kamin

Jayni L. Kamin, Commissioner

Tim Sheldon

Tim Sheldon, Commissioner

ATTEST:

Rebecca S. Rogers

Rebecca S. Rogers, Clerk of the Board

APPROVED AS TO FORM:

T.J. Martin, Deputy Prosecuting Attorney

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