

## **ORDINANCE NO. 184**

AN ORDINANCE OF THE COUNTY OF CAMAS, IDAHO, ADOPTING REGULATIONS FOR THE USE OF THE RIGHT OF WAY BY PROVIDERS OF TELECOMMUNICATIONS SERVICES; ADDING CHAPTER 5 TO TITLE 1 OF THE CAMAS COUNTY CODE; PROVIDING FOR FEE PAYMENT REQUIREMENTS; PROVIDING FOR FEES AND PENALTIES FOR VIOLATIONS OF THE REGULATIONS; PROVIDING A DIG ONCE POLICY; PROVIDING FOR THE SEVERABILITY OF THIS ORDINANCE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF THE COUNTY OF CAMAS:

**SECTION 1.** That Chapter 5 be added to Title 1 of the Camas County Code, which Chapter shall read as follows:

### **CHAPTER 5**

#### **USE OF THE RIGHT-OF-WAY BY TELECOMMUNICATIONS PROVIDERS**

##### **5-11-1: PURPOSE AND INTENT:**

The purpose of this Chapter is for Camas County, Idaho (the "County") to regulate and control the use of public Right-of-Way, and the intent of this Chapter is, to the extent consistent with Federal and State laws, as they may be amended from time to time, to:

- (A) Establish a local policy concerning the use of public ways by telecommunications infrastructure providers and service providers;
- (B) Establish clear local guidelines, standards and time frames for the exercise of local authority with respect to the regulation of telecommunications providers;
- (C) Promote competition in telecommunications;
- (D) Encourage the provision of advanced and competitive telecommunications services on the widest possible basis to the businesses, institutions and residents of the County;
- (E) Permit and manage reasonable access to the public ways of the County for telecommunications purposes on a competitively neutral basis;
- (F) Assure that all telecommunications providers constructing, repairing or maintaining telecommunications facilities within the public ways comply with the ordinances, rules and regulations of the County; and
- (G) Assure that the County can continue to fairly and responsibly protect the public health, safety and welfare.

##### **5-11-2: DEFINITIONS:**

For the purpose of this Chapter, and the interpretation and enforcement thereof, the following words and phrases shall have the following meanings, unless the context of the sentence in which they are used shall indicate otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning:

- A. **APPLICANT:** Any Person or entity that applies for any permit pursuant to this Chapter.

B. COUNTY: The County of Camas, Idaho.

C. COUNTY PROPERTY: All real property owned in fee by the County or dedicated for a specific purpose, other than public ways and utility easements as those terms are defined herein. County property shall also include, for example, all County-owned poles, buildings and antenna support structures and infrastructure outside of the public ways, provided that additional Agreements, Pole Attachment Agreements or Leases with the County shall be required for their use.

D. PERMIT: The authorization in whatever form whereby the County may grant permission for construction to a provider to enter and use the specified public ways for the purpose of installing, maintaining, operating, repairing or removing facilities.

E. PERSON: Includes any natural person, sole proprietorship, joint venture, corporations, associations, partnerships, limited liability companies and any other form of entity. Person shall not include the County.

F. PROVIDER: Includes telecommunications service providers and telecommunications infrastructure providers.

G. PUBLIC WAYS or PUBLIC RIGHT-OF-WAY or RIGHT-OF-WAY: Any highway, street, alley, utility easement (unless its use is otherwise restricted), or other public Right-of-Way under the jurisdiction and control of the County which has been acquired, established, dedicated or devoted to or hereafter held by the County; provided that additional Agreements, Pole Attachment Agreements or Leases with the County shall be required for their use to the extent permitted by Federal and State law.

H. STATE: The State of Idaho.

I. TELECOMMUNICATIONS FACILITIES OR FACILITIES:  
All equipment, fiber and conduits, conductor pull boxes, cabinets, meter pedestal, other facilities, or appurtenances used in connection with the provision of Telecommunications Service.

J. TELECOMMUNICATIONS PROVIDER: A telecommunications service provider or a telecommunications infrastructure provider, or both, as applicable.

K. TELECOMMUNICATIONS SERVICE: As defined in 47 U.S.C. Section 153 (53).

L. UTILITY EASEMENT: Any easement owned by the County and acquired, established, dedicated or devoted for public utility purposes not inconsistent with telecommunications facilities.

**5-11-3: APPLICATION FEE AND COST REIMBURSEMENT:**

A. A person or entity seeking a telecommunications permit, franchise or Agreement for the use of County Right-of-Way or other property for telecommunications facilities shall:

1. Pay to the County a non-refundable application fee as determined by the Camas County Council or by an engineer of the County, to cover the cost of all direct and indirect administrative expenses and staff efforts devoted to developing, drafting, negotiating and finalizing a telecommunications permit, franchise or Agreement for the use of County Right-of-Way or other property for telecommunications facilities;

2. Reimburse the County for all out-of-pocket processing costs, including but not limited to the cost of publication of notices relating to the telecommunications permit, franchise or Agreement for the use of County Right-of-Way or other property for telecommunications facilities;

3. Reimburse the County for the County's reasonable outside attorneys' fees, consultants' fees and expenses incurred in developing, drafting, negotiating and finalizing the

telecommunications permit, franchise or other Agreement for use of County Right-of-Way or other property for telecommunications facilities and in connection with providing other legal or telecommunications services to the County; and

4. Pay all franchise fees, pole attachment fees, permit fees, inspection fees and other fees and taxes as permitted by Federal and State law.

B. The fees, taxes and costs paid shall not be offset against any franchise fees or other amounts payable to the County during the term of the franchise or other Agreement.

**5-11-4: PERMIT REQUIRED:**

Prior to the construction, excavation, installation, maintenance or operation of any telecommunications facilities within the public ways or on County property, the provider shall, at its cost, obtain a telecommunications permit and all other requisite permits from the County. The provisions and requirements of this Chapter 5 are in addition to all other provisions and requirements of the Camas County Code, including but not limited to the provisions and requirements of Chapter 6 of this Title. If the applicant is requesting a permit under this Chapter and an excavation permit under Chapter 6, the two permits may be processed simultaneously.

**5-11-5: APPLICATIONS:**

Applications for permits to install, maintain, operate, repair and remove telecommunications facilities shall be submitted to the County upon forms to be provided by the County and shall be accompanied by drawings, plans and specifications in sufficient detail to demonstrate:

A. That the installation, maintenance, operation, repair or removal of telecommunications facilities will be in accordance with all applicable codes, rules and regulations;

B. Preliminary engineering plans, specifications and a map showing where the telecommunications facilities are to be located within the County, all in sufficient detail to identify:

1. The precise location and route requested for the applicant's proposed telecommunications facilities.

2. The precise location of the applicant's overhead and underground telecommunications lines and equipment in the public ways along the proposed route.

3. The specific trees, structures, improvements, facilities, lines and equipment and obstructions, if any, that the applicant proposes to temporarily or permanently remove or relocate and a landscape plan for protecting, trimming, removing, replacing and restoring any trees or areas to be disturbed during construction.

4. All distances between any telecommunications facility and all existing utility facilities in the same cross-section of the right-of-way.

C. If the Applicant is proposing an underground installation with new ducts or conduits to be constructed within the public ways:

1. The precise location proposed for the new ducts or conduits;

2. Evidence that there is sufficient capacity within the public ways for the proposed telecommunications facilities;

3. All distances between any proposed ducts and conduits, and all existing utility facilities in the same cross-section of the right-of-way.

D. The construction methods to be employed for protection of existing structures, fixtures, lines and other facilities within or adjacent to the public ways.

E. The proposed construction schedule and work hours which may be limited by the County for public health, safety and welfare related issues.

**5-11-6: TRAFFIC CONTROL PLAN:**

All permit applications which involve work on, in, under, across, or along any public way shall be accompanied by a traffic control plan demonstrating the protective measures and devices that will be employed, consistent with the Manual on Uniform Traffic Control Devices, to prevent injury or damage to persons or property and to minimize disruptions to efficient pedestrian and vehicular traffic. The traffic control plan must be approved prior to approval of the permit.

**5-11-7: ROAD CLOSURES:**

The applicant must give the County Engineer forty-eight (48) hours' notice before any lane or road closures are permitted, with closure information and time frames for closures.

**5-11-8: TERMS AND CONDITIONS:**

A. All work being performed within County Right-of-Way is subject to County inspection or inspection by a representative of the County who works for a third party. The telecommunications provider's contractor shall notify adjacent residents and businesses of the proposed work and make accommodations to maintain access to the properties affected by construction activities.

B. Contractor shall ensure that any open trenches are protected to prevent accidental ingress by people or vehicles. Trenches may not be left open without active work in them for more than three (3) consecutive days.

C. Contractor will provide the County with detailed compaction reports for all backfill activities.

D. Unless stated otherwise in the permit, the permit is granted for ninety (90) calendar days, and all work must be completed in that time. The applicant or permittee may apply for an extension. Any work, repairs, or remediation not completed in time shall be subject to a weekly inspection fee until work has been completed to the satisfaction of the County. Failure to timely complete the permitted work may also be a cause for revoking a permit.

E. Failure to abide by the other terms and conditions of a permit or of any associated agreement is considered due cause for revoking a permit.

F. Permittee shall file, at least monthly, a statement of system construction and build-out to date, and as-built maps of underground and aerial build-out and per linear foot distances and locations in a GIS format acceptable to the County.

G. A telecommunications provider may have up to six (6) open permits in process at one time. Where the maximum number of County-approved permits are open, the County will not approve a new permit until complete restoration of the Right-of-Way, sidewalks, curbs and gutters occurs, and, to the extent applicable, work is done on affected private property.

H. The telecommunications provider will reimburse the County for the fees, costs and expenses incurred by the County for application reviews, plan reviews, review and administration of applicable permits, testing and inspection within County Rights-of-Way and project work on other County-owned property. This includes, by way of illustration and not limitation, correct plant mix; pavement placement; sidewalk replacement; landscaping repair including sod, irrigation lines, sprinklers, shrubs, and trees; traffic control set up; street restoration; graffiti removal; clean-up and public safety. A telecommunications provider shall reimburse such fees, costs and expenses within thirty (30) days after written demand from the County.

I. To the extent practicable and economically feasible, the construction and location of facilities shall be of minimal impact to private property including, but not limited to, yards and

fences. All construction and maintenance of any and all facilities on private property shall, regardless of who performs the construction, be and remain the responsibility of the telecommunications provider. Prior to beginning any construction, permittee shall provide private property owners with a door hanger or other appropriate written notice at least five (5) days before commencing work and a construction schedule for work on private property. The contractor shall not leave gates open, or hop fences, or leave yards in disarray.

J. When any opening is made in a yard on private property or fences are disturbed, such shall be promptly restored to as good or better condition than that existing before the work commenced. If the permittee fails to complete the work referred to herein within the time prescribed and to the County's satisfaction, the County may cause such work to be done and bill the cost of the work to the telecommunications provider. Payment shall be remitted to the County within ten (10) days of receipt of an itemized list of those costs. All of the work shall be done by a permittee in compliance with all laws, regulations and ordinances of the County and State of Idaho.

K. The transmission and distribution system, wires and appurtenances of the telecommunications provider shall be located, installed and maintained so as not to endanger or interfere with the lives of persons, or to unnecessarily hinder or obstruct the free use of private property, Rights-of-Way, or other public property.

L. Unless a written exception is granted in the permit, all telecommunications facilities shall be located at least three (3) horizontal and vertical feet from all existing or planned water and sewer facilities.

**5-11-9: FRANCHISE OR OTHER AGREEMENT REQUIRED:**

In addition to obtaining any and all requisite permits from the County, a telecommunications provider desiring to place its telecommunications facilities in public ways must first obtain a Franchise or other Agreement from the County, unless a specific exception is clearly provided by Federal or State law.

**5-11-10: LEASE OR OTHER AGREEMENT REQUIRED:**

In addition to obtaining any and all requisite permits from the County, a telecommunications provider desiring to place its telecommunications facilities on County property (other than public ways) must first obtain a Lease or other Agreement from the County.

**5-11-11: RELIEF:**

The County may seek legal or equitable relief to enjoin any acts or practices and abate any condition which constitutes or will constitute a violation of the applicable provisions of this Chapter. Violation of the terms of this Chapter may also result in the revocation of any permit or franchise or other Agreement granted hereunder. The rights and remedies provided by this Chapter are cumulative and the use of any one right or remedy shall not preclude or waive the County's right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the County may have by law, statute, ordinance or otherwise.

**5-11-12: TAXES:**

The franchise fees, pole attachment fees, permit fees, and other charges provided for in a Franchise or other Agreement, and any compensation charged and paid for the use of public ways provided for herein, whether monetary or in-kind (to the extent permitted by law), are separate from, and additional to, any and all federal, state, local, and County taxes as may be lawfully levied, imposed or be due from a telecommunications provider, its customers or subscribers or on account of the sale, delivery or transmission of telecommunications services.

**5-11-13: NONEXCLUSIVE GRANT:**

No permit issued hereunder shall confer any exclusive right or privilege to occupy or use the public ways for delivery of telecommunications services or any other purposes. The permit shall be non-exclusive shall not be deemed or held to be an exclusive one and shall not prohibit the Camas County Road & Bridge (“CCR&B”) from granting other permits or franchise rights of like or other nature to other public or private utilities nor shall it prevent the CCR&B from using any of its roads, streets, or public places, or affect right to full supervision and control overall or any part of them, none of which use, authority or control is hereby surrendered.

**5-11-14: POLICE POWER:**

In accepting any permits issued hereunder, the telecommunications provider acknowledges that its rights thereunder are subject to the legitimate rights of the police power of the County to adopt and enforce general ordinances necessary to protect the safety, health and welfare of the public, it being understood that such exercise must be done in accordance with applicable law and be related to use and management of the public ways. Permittee shall notify the CCR&B to schedule a time for road closure and opening. If the work will prevent emergency traffic from traveling through, the Camas County Sheriff’s Office must be notified.

**5-11-15: REGULATION BY THE COUNTY:**

In addition to the inherent powers of the County to regulate and control any permit it issues, and those powers expressly reserved by the County, or agreed to and provided for in any permit, the right and power is hereby reserved by the County to adopt such additional regulations as it may find necessary in the exercise of its lawful powers to manage the public ways.

**5-11-16: CODES:**

Construction of telecommunications facilities with respect to public ways shall be done in accordance with all applicable Federal, State and Local laws, codes, rules and regulations.

**5-11-17: COMPLIANCE WITH ONE-NUMBER LOCATOR SERVICE:**

All telecommunications providers shall, before commencing any construction in the public ways, comply with the Idaho DIGLINE (“Idaho 811”). Underground utilities must be located and marked prior to any trenching or boring work.

**5-11-18: MINIMIZE INTERFERENCE WITH THE PUBLIC WAYS:**

No Person may locate or maintain its telecommunications facilities so as to unreasonably interfere with the use of the public ways by the County, the general public or other Persons authorized to use or be present in or upon the public ways. All such telecommunications facilities shall be moved by the telecommunications provider or other Person at its own cost, temporarily or permanently, as determined by the County. All locations of telecommunications facilities and such changes, reconstruction or relocation by the permittee shall be done in such a manner as will cause the least interference with any of the Camas County Road & Bridge work.

**5-11-19: DAMAGE TO PROPERTY:**

No telecommunications provider or other Person shall take any action or allow any action to be done which may impair or damage any public ways, any County property or other property (whether public or private). The County may, without advance notice, perform construction and maintenance activities within the Right-of-Way.

**5-11-20: NOTICE OF WORK – EMERGENCIES:**

In the event of an unexpected repair or emergency, a telecommunications provider may commence such repair and emergency response work as required under the circumstances, provided the telecommunications provider shall notify the County as promptly as possible, before such repair or emergency work commences or as soon thereafter as possible if advance notice is not practicable. Further, the telecommunications provider shall apply for a permit and pay all associated fees as soon as the emergency is abated.

**5-11-21: MAINTENANCE OF TELECOMMUNICATIONS FACILITIES:**

Each telecommunications provider shall maintain its telecommunications facilities in good and safe condition and in a manner that complies with all applicable Federal, State and local requirements. To the extent the County owns telecommunications facilities, it shall also maintain its telecommunications facilities in good and safe condition and in a manner that complies with all applicable Federal, State and local requirements.

**5-11-22: RELOCATION OR REMOVAL OF TELECOMMUNICATIONS FACILITIES:**

A. A telecommunications provider shall temporarily or permanently remove, relocate, change, or alter the position of any telecommunications facilities within the public ways whenever the County has determined that such removal, relocation, change, or alteration is reasonably necessary for the construction, maintenance, alteration, repair or improvement of the public ways for purposes of public welfare, health or safety. Such action shall be performed at the cost and expense of the telecommunications provider.

B. When the County orders relocations under this section, the telecommunications provider shall be given reasonable advance notice thereof, which period of time shall be no less than sixty (60) days except for emergency situations.

C. In the event of an unforeseen emergency which creates a threat to the public health, safety, or welfare, the County may require a telecommunications provider to relocate its telecommunications facilities at the telecommunications provider's own expense.

D. If payment of the costs of relocation is in dispute, the telecommunications provider shall still commence and complete the relocation as provided herein on a timely basis for public works projects undertaken by the County. Telecommunications providers shall indemnify, hold harmless, and defend the County, its County Council, officers, officials, employees, agents and representatives from any and all any damages, claims, liabilities, actions, causes of action, suits, costs, expenses and attorneys' fees for delay or delays on public improvement projects caused by the telecommunications providers, or their contractors or subcontractors of any tier, to relocate the telecommunications facilities in a timely manner.

E. Any replacement of, addition to, or change in the telecommunications facilities granted by a permit shall require a new permit prior to initiation of such work.

**5-11-23: MOVING A BUILDING:**

To the extent applicable and while the occurrence is unlikely, whenever any Person shall have obtained permission from the County to use any public ways for the purpose of moving any building, a telecommunications provider upon seven (7) days' written notice from the County shall raise or remove, at the expense of the Person desiring to move the building, any of the telecommunications provider's telecommunications facilities which may obstruct the removal of such building; provided, that the Person desiring to move the building shall comply with all requirements of the County for the movement of buildings and remit the applicable cost of raising or removing the telecommunications provider's telecommunications facilities prior to the telecommunications provider's commencement of such work.

**5-11-24: REMOVAL OF UNAUTHORIZED TELECOMMUNICATIONS FACILITIES:**

Within thirty (30) days following written notice from the County, any telecommunications provider or other Person who owns, controls, or maintains any unauthorized telecommunications facilities or related appurtenances within the public ways shall, at its own expense, provide written confirmation acknowledging the County's notice. Within thirty (30) days of receipt of notice, the telecommunications provider or other Person must provide a corrective action plan to either remove such telecommunications facilities or bring such telecommunications facilities into compliance. Telecommunications facilities are unauthorized and subject to removal in the following circumstances:

A. Upon abandonment of the telecommunications facilities within the public ways of the County, or if a telecommunications provider does not respond within thirty (30) days after notice from the County, such property shall also then be deemed abandoned.

B. If the telecommunications facilities were constructed or installed without a valid permit.

C. If the telecommunications facilities were constructed or installed at a location not allowed by a permit.

**5-11-25: EMERGENCY REMOVAL OF TELECOMMUNICATIONS FACILITIES:**

The County retains the right and privilege to remove or relocate any telecommunications facilities located within the public ways, as the County may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The County shall not be liable to any telecommunications provider, or any other Person for any direct, indirect, or any other such damages suffered by any Person or entity of any type as a direct or indirect result of the County's actions under this subsection. The County shall attempt to contact the telecommunications provider and provide an opportunity for the telecommunications provider to perform the necessary cutting or moving unless the emergency necessitates County action prior to such contact.

**5-11-26: DAMAGE TO TELECOMMUNICATIONS FACILITIES:**

Unless directly and proximately caused by the sole negligence or willful misconduct of the County, the County shall not be liable for any damage to any telecommunications facilities within the public ways as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind within the public ways by or on behalf of the County.

**5-11-27: RESTORATION OF PUBLIC WAYS:**

A. When a telecommunications provider or other Person does any work in or affecting any public ways, it shall, at its own expense, promptly remove any obstructions therefrom and restore such public ways to the condition as existed before the work was undertaken.

B. If weather or other conditions do not permit the complete restoration required by this subsection, the telecommunications provider shall temporarily restore the affected public ways. Such temporary restoration shall be at the telecommunications provider's sole expense and the telecommunications provider shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A telecommunications provider or other person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and to prevent injury or damage to any Person, vehicle, or property by reason of such work in or affecting such public ways.



D. The County Engineer shall be responsible for inspection and final approval of the condition of the public ways following any construction and restoration activities.

E. Whenever a telecommunications provider intends to discontinue using any facility within the Right-of-Way, it shall submit for the County's approval a complete description of the facility and the date on which it intends to discontinue using the facility. The telecommunications provider may remove the facility or request that the County permit it to remain in place. Notwithstanding a request that any such facility remain in place, the County may require removal of the facility from the Right-of-Way or modify the facility to protect the public health, welfare, safety and convenience, or otherwise serve the public interest at no cost to the County. The County may require a combination of modification and removal of the facility. The telecommunications provider shall complete such removal or modification in accordance with a schedule set by the County. Until such time as removal or modification of the facility occurs as directed by the County, or until the rights to and responsibility for the facility are accepted by another person having authority to construct and maintain such facility, the telecommunications provider shall be responsible for all necessary repairs and relocations of the facility, as well as maintenance of the Right-of-Way, in the same manner and degree as if the facility were in active use, and shall retain all liability for such facility. If the telecommunications provider abandons its facilities, the County may choose to use such facilities for any purpose whatsoever.

F. If, after giving ten (10) days prior written notice by the County, the telecommunications provider fails to complete any required work to the satisfaction of the County, the County may cause the work to be done, and the telecommunications provider shall reimburse the County for the reasonable costs and expenses incurred within thirty (30) days after receipt of an itemized list of the County's expenses and costs, or the County may recover its expenses and costs from the bonds or pursue any other judicial remedies for the collection thereof. Any expenses incurred in the collection by the County of such obligation shall be included in the monies due the County including reasonable attorneys' fees, court costs and expenses for work conducted by the County's staff or its agents and outside counsel.

**5-11-28: DUTY TO PROVIDE INFORMATION:**

Within ten (10) days of a written request from the County, each telecommunications provider shall furnish the County with information sufficient to demonstrate:

A. That the telecommunications provider has complied with all of the requirements of this Chapter; and

B. All books, records, maps and other documents maintained by the telecommunications provider with respect to the location of its telecommunications facilities within the public ways shall be made available for inspection by the County at reasonable times and intervals.

C. No work shall be started until an authorized representative of the CCR&B has given notice to the permittee to proceed. Permittee shall notify the CCR&B to schedule a time for road closures and openings.

**5-11-29: FIBER CAPACITY:**

A telecommunications provider shall have the right, without prior County approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with such permit; provided, however, that the telecommunications provider shall remain responsible for compliance with this Chapter and such permit, and provided that the other carrier or reseller must obtain any necessary Franchise or other Agreement required by the County to the extent permitted by Federal or State law.

**5-11-30: INSURANCE:**

A. Each telecommunications provider shall secure and maintain the following insurance policies insuring both the telecommunications provider and the County against claims for death or injuries to Persons, or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the telecommunications provider:

1. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
  - a. \$3,000,000 for bodily injury or death to each Person; and
  - b. \$3,000,000 for property damage resulting from any one accident.
2. Automobile liability insurance for owned, non-owned and hired vehicles with a combined single limit of \$3,000,000 for each accident;
3. Worker's compensation within statutory limits and Employer's liability insurance with limits of not less than \$1,000,000;
4. Excess umbrella liability with limits of no less than \$5,000,000 per occurrence and in the aggregate.

B. Insurance shall be placed with insurers licensed to do business in the State with an A.M. Best's rating of A-VII or better. The liability insurance policies required by this subsection shall be maintained by the telecommunications provider throughout the term of the permit, and such other period of time during which the telecommunications provider has telecommunications facilities in the public ways or is engaged in the removal of its telecommunications facilities. Failure to maintain such insurance shall be grounds for cancellation of the permit, Franchise or Agreement. The telecommunications provider shall furnish acceptable certificates of insurance, together with an endorsement naming the County, its elected and appointed officers, officials, agents, employees, representatives, consultants, and volunteers as additional insureds, to the County prior to the commencement of any work or installation of any telecommunications facilities pursuant to said permit(s).

C. The telecommunications provider's insurance shall be primary and noncontributory insurance as respects the County. Any insurance maintained by the County shall be in excess of the telecommunications provider's insurance and shall not contribute with it. Maintenance of insurance shall not be construed to limit the liability of the telecommunications provider to the coverage provided by such insurance or otherwise limit the County's recourse to any remedy available at law or in equity.

D. In addition to the coverage requirements set forth in this subsection, the telecommunications provider must notify the County of any cancellation or reduction in said coverage at least forty-five (45) days in advance in writing. At least fifteen (15) days prior to said cancellation or reduction in coverage, the telecommunications provider shall obtain and furnish to the County replacement insurance and certificates of insurance meeting the requirements of this subsection.

E. All insurance coverage shall be kept in force while the telecommunications provider has any facilities in the County and for one (1) year thereafter.

F. All insurance policies shall contain a waiver of subrogation against the County for any claims arising out of the telecommunications provider's work or service. The telecommunications provider shall be responsible for all deductibles under the policies.

#### **5-11-31: INDEMNIFICATION:**

A. A telecommunications provider shall indemnify, protect, defend and hold harmless the County, its County Council, boards, officers, officials, employees, agents and representatives from any and all actions, causes of action, suits, claims, costs, damages, expenses, attorneys' fees, judgments, settlements, awards or liability to any Person arising from injury, sickness, or death of any Person or damage to property arising out of the acts or omissions of the telecommunications provider, its contractors of any tier, agents, servants, officers or employees with regard to a permit, Franchise or Agreement, and its operations thereunder.

B. Inspection or acceptance by the County of any work performed by the telecommunications provider at the time of completion of construction shall not be grounds for avoidance of any of

these covenants of indemnification. Provided, that the telecommunications provider must be given written notice by the County of any such claim, and said indemnification obligations shall also extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the initiation of any litigation. The County has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

C. In the event that the telecommunications provider refuses the tender of defense in any suit or claim, said tender having been made pursuant to this subsection, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties agree to decide the matter), to have been a wrongful refusal on the part of the telecommunications provider, then the telecommunications provider shall pay all of the County's costs for defense of the action, including all expert witness fees, attorneys' fees, and expenses.

D. The obligations of the telecommunications provider under the indemnification provisions of this subsection shall apply regardless of whether liability for damages arising out of bodily injury or death to Persons or damages to property were caused or contributed to by the negligence of the County, its officers, agents, employees or contractors. The court shall apportion liability accordingly.

#### **5-11-32: LIMITATION ON DAMAGES:**

In no event shall the County be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with the County's performance or failure to perform. The telecommunications provider releases and waives any and all such claims against the County, its County Council, boards, officers, officials, agents, employees and representatives.

#### **5-11-33: SECURITY FUND:**

A. Prior to issuance of a permit pursuant to this Chapter, each telecommunications provider shall establish a security fund with the County by depositing the amount of \$500,000, or such other amount as deemed necessary by the County Administrator or Board of County Commissioners commensurate with the cost of the work to be performed, with the County in the form of a performance bond or an irrevocable letter of credit, based upon operating history in the public ways and the cost of removal of the telecommunications provider's facilities; which fund shall be maintained at the sole expense of the telecommunications provider so long as any of the telecommunications provider's telecommunications facilities are located within the public ways. The performance bond shall be issued by a corporate surety authorized to do surety business in the State.

B. Telecommunications providers shall replenish the security fund within fourteen (14) days after written notice from the County that there has been a draw against the security fund and that there is a deficiency in the amount of the fund.

#### **5-11-34: CONSTRUCTION BOND:**

Telecommunications providers performing work in the public ways must also provide a construction bond written by a corporate surety acceptable to the County equal to at least 150% of the estimated cost of each phase of construction and restoring the public ways to their pre-construction condition and for the cost of removal of telecommunications facilities to the extent a Telecommunications provider is no longer providing telecommunications service in the County.

#### **5-11-35: COORDINATION OF CONSTRUCTION ACTIVITIES:**

All telecommunications providers are required to cooperate with the County and with each other in coordination of construction activities. The County Engineer shall coordinate all construction

locations, activities, and schedules to minimize public inconvenience, disruption, or damage to the public ways.

Camas County Road & Bridge must be notified in writing five (5) business days before installation and by telephone at (208) 764-2271.

**5-11-36: UNDERGROUND CONSTRUCTION AND BORING TECHNIQUES:**

1. All underground construction and boring techniques are subject to the written pre-approval of the County Engineer, which must be obtained by the excavator or permittee prior to such construction or boring. In the event of non-compliance by a telecommunications provider, the County Engineer shall give written notice and the provider shall have ten (10) days to cure the deficiency. If the deficiency is not cured to the satisfaction of the County Engineer, a written stop work order will be sent to the provider and no new permits will be issued until the deficiency or default is cured to the satisfaction of the County. Unless a written exception is granted in the permit, all boring shall be performed using bentonite or boring gel and in compliance with the latest version of ISPWC standards.

2. All utilities must be installed under culverts and the culvert pipe, and at least 48” below the bottom of the borrow pit.

**5-11-37: ASSIGNMENT OR TRANSFER:**

A change in ownership or control of a permit, Franchise or Agreement may not occur, directly or indirectly, or be transferred, assigned or disposed of by sale, merger, consolidation or other act of a telecommunications provider, without the prior written consent of the County, which consent shall not be unreasonably withheld.

**5-11-38: SAFETY REQUIREMENTS:**

A telecommunications provider in accordance with applicable Federal, State, and local safety requirements shall, at all times, employ reasonable and ordinary care. All structures and lines, equipment and connections in, over, under, and upon the public ways permitted by a permit shall at all times be kept and maintained in a safe, suitable condition, and in good order and repair.

**5-11-39: DIG ONCE POLICY, ADDITIONAL DUCTS OR CONDUITS:**

**A. General**

It is the policy of the County to minimize the need for, and cost of, underground construction while maximizing placement of necessary telecommunications, communications, and other infrastructure in County Rights-of-Way and other County-owned property. In order to effectively implement this policy, the following are “Dig Once” policy guidelines that are intended to reduce cost, expand infrastructure and accelerate deployment of broadband and other critical services.

**B. Conduit**

**General**

In order to reduce the number of street and road cuts and increase the availability of conduit, the following guidelines shall apply to underground construction in streets and roads for the provision of utilities or telecommunications, cable television and other communication services.

### **Street and Road Construction and Reconstruction**

Wherever the County constructs or reconstructs streets, roads or highways within its jurisdiction, where such is economically and technically feasible, the County may install, up to three (3) conduits - one (1) for itself and two (2) additional for broadband and other communications provider use. The conduits will be a minimum of four (4) inches each, allowing space for multiple pull-throughs of innerduct, unless otherwise approved by the County.

A minimum of six (6) months in advance of street, road or highway construction or reconstruction projects, all current and potential telecommunications, broadband and communications providers, as well as utility providers, shall be notified of the ability to share a joint trench where enough space is available and drop in their own conduit at a proportional cost to each provider. The proportional cost shall be the total common trench construction cost (for example, without limitation, excavation, backfill, compaction or restoration) divided by the number of participating parties, taking into account the proposed pro rata portion of the trench to be used by each party, including the incremental cost of adding each party's facilities.

Placement of the conduit, handholes and manholes, at appropriate intervals necessary for fiber access and related installation and maintenance activities, shall all be performed in consultation with County infrastructure personnel and participating private provider personnel. Conduit should also include jet lines, pull tape and other infrastructure necessary to facilitate ease of installation of fiber optic and other cabling in the future. The direct cost of these shall be borne by the entity whose conduit is being placed.

For five (5) years after the street, road or highway construction or reconstruction project is substantially completed, any additional entity desiring to access that portion of the street, road or highway that has been constructed or reconstructed for underground telecommunications infrastructure may be required to utilize, at competitive lease rates, or equivalent in-kind compensation, if then permitted by law, one (1) of the available conduits already installed in that street, roadway or highway, to the extent such capacity exists and it is technically and economically feasible to utilize that conduit. As another alternative, the County may sell a conduit to an interested provider subject to agreement on terms and conditions, including the requirement that the provider must use the conduit and provide services within a time prescribed within the purchase and sale agreement.

### **Joint Trench**

For non-street or non-road construction projects within a County, where such is economically and technically feasible, where County departments are installing facilities that are compatible with the provision of utility, broadband, telecommunications or other communication service provider infrastructure, the department shall expand the opening in the County-owned property such that three (3) additional four (4) inch conduits may be placed, one (1) for the County and two (2) additional for utilization by utility, broadband, telecommunications or other communication service providers.

### **Public Utility and Private Providers**

Where such is economically and technically feasible for underground construction and installation of public utility or private provider infrastructure, the permittee may be required to work with the County and the County will endeavor for up to one (1) month after the permit application is received to notify other entities of the opportunity for joint trench construction, where enough space is available for two (2) or more entities to place their infrastructure at the same time with each party paying its proportional share of costs in doing so. The proportional cost shall be the total common trench construction cost (for example, without limitation, excavation, backfill, compaction or restoration) divided by the number of participating parties, taking into account the proposed pro rata portion of the trench to be used by each party, including the incremental cost of adding each party's facilities.

Within three (3) months of permit application, regardless of if other entities elect to participate, the County will proceed in processing the permit application in a timely manner consistent with standard practices. If the permit applicant and the County agree, this time limit may be extended. Additionally, any entity participating in a solo construction project, if no other entity wants to share the trench, or if interested, multiple entities that may be sharing the same trench, shall at the discretion of the County each place excess conduits, a minimum of four (4) inches each or as otherwise approved by the County if the County agrees to pay its proportional share of costs

associated with total common trench construction and purchase the conduit(s) at its/their full incremental material and labor cost from the public utility or private provider. If the County and the public utility or private provider agree to the purchase and sale of the conduit(s), then such shall be transferred over to the County by mutually acceptable conveyance documents. Such conveyance of each excess conduit may be factored into the fees charged providers for use of the Rights-of-Way.

The County may make all or a portion of its conduit available at the time the trench is open for additional entrants at that location without additional trench construction. The constructing entity may elect to do the same or use its conduit solely for future expansion of its facilities. In addition to the County conduit, the constructing entity will work with the County to ensure placement of handholes, manholes, jet lines, pull tape and other infrastructure to facilitate ease of use of the conduit in the future.

Maintenance of conduit and any other facilities conveyed over to the County shall be the responsibility of the County once transferred over.

Once the construction and all necessary restoration activities are completed and the project is finished, any broadband, telecommunications or other communication service provider entrant after that point may be required to utilize available County conduit at that location at competitive lease rates or equivalent in-kind compensation if then allowed by law, to the extent such capacity exists and it is technically and economically feasible to utilize the conduit.

As another alternative, the County may sell a conduit to an interested provider based upon mutually agreeable terms and conditions, including the requirement that the provider must use the conduit and provide services within twelve (12) months of the date of purchase unless otherwise agreed by the County.

Additionally, the County may require that a telecommunications provider that is constructing, relocating, or placing ducts or conduits in the public ways provide the County with additional ducts or conduits and related structures necessary to access the same to the extent permitted by Federal and State law. The terms and conditions under which such additional ducts and conduits shall be provided shall be subject to the mutual written agreement of the telecommunications provider and the County.

#### **5-11-40: NON-COMPLYING WORK:**

Whenever the County determines that any condition of any public way is in violation of, or public ways are being used contrary to, any provision of this Chapter or permit, the County Engineer may order the correction and/or discontinuance of such condition or any activity causing such condition. Failure to comply will result in work stoppage or revocation of the permit(s).

#### **5-11-41: RESTORATION:**

Upon completion of any construction, installation, maintenance, repair or replacement work, the permittee shall promptly repair and restore any and all public ways and private property including improvements, fixtures, structures, and other facilities in the public ways damaged during the course of construction, installation, maintenance, repair or replacement, restoring the same as nearly as practicable to their condition before the start of construction, installation, maintenance, repair or replacement. If the work done under a permit interferes in any way with the drainage of a highway, the permittee shall wholly and at its own expense make such provision as the Camas County Road & Bridge may direct to take care of said drainage in the timeframe so required by Camas County Road & Bridge.

The County Engineer shall have final approval of the completeness of all restoration and repair work and all telecommunications providers shall warrant said restoration and repair work and the condition of the public ways for a period of at least two (2) years.

**5-11-42: TREES AND LANDSCAPING:**

A. All trees, landscaping and grounds removed, damaged or disturbed as a result of the construction, installation, maintenance, operation, repair, or replacement of telecommunications facilities, shall be replaced or restored as nearly as may be practicable, to the condition existing prior to performance of the work.

B. All landscape restoration work within the public ways shall be done in accordance with landscape plans approved by the County Engineer.

**5-11-43: ABOVE-GROUND TELECOMMUNICATIONS FACILITIES:**

Installation in the public ways of above-ground telecommunications wires and facilities by telecommunications providers may create safety hazards and adverse visual impacts. Consequently, the County is authorized to impose reasonable conditions in order to mitigate those potential adverse impacts.

**5-11-44: FINES and PENALTIES:**

In addition to the other remedies provided for in this Chapter, in the event of non-compliance by a telecommunications provider, after the giving of written notice by the County and a ten (10) day opportunity to cure, the County may impose fines and penalties in accordance with a published schedule adopted by the County Council. The County may also seek all remedies, both civil and criminal, available at law, in addition to those provided in this Chapter or in this Code. In addition to all other remedies, fines and penalties, any person found to have violated any of the provisions of this Chapter shall be guilty of an infraction for each day that the person is in violation after having been given or sent, by United States mail, ten (10) days written notice of said violation.

**5-11-45: SEVERABILITY:**

If any section, subsection, clause, or phrase of this Chapter, or its application to any Person or circumstance, is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions of this Chapter or of this County Code.

**5-11-46: CONFLICT:**

In the event of a conflict between the regulations in this Chapter and any other provision of the County Code, the regulations in this Chapter shall prevail.

**SECTION 2.** This ordinance shall be effective upon passage by the Board of County Commissioners and publication of the ordinance or a summary thereof.

**CAMAS COUNTY BOARD OF COMMISSIONERS**

Instrument # 2024092543 # Pages: 15  
CAMAS COUNTY, Idaho  
Aug 08, 2024 9:44:46 am Fee: \$  
For: CAMAS BOARD OF COMMISSIONERS  
BRIANNA WALTER, Recorder  
JSTOREY, Deputy

  
\_\_\_\_\_

Travis Kramer, Chairman


  
\_\_\_\_\_

Marshall Ralph, Commissioner

  
\_\_\_\_\_

Galen Colter, Commissioner

ATTEST:

  
\_\_\_\_\_  
Brianna Walter, County Clerk