

ASOTIN COUNTY

**DRAFT
RIGHT-OF-WAY
MANAGEMENT POLICY**

MARCH 2010

ASOTIN COUNTY

RIGHT-OF-WAY MANAGEMENT POLICY

Table of Contents

SECTION 1 - GENERAL 1

- 1.1. Findings, Purpose, and Intent 1**
- 1.2. Authority 1**
 - 1.2.1. Election to Manage the Public Right-of-Way 1**
 - 1.2.2. Administration 2**
 - 1.2.3. Reservation of Regulatory and Police Powers 2**
 - 1.2.4. Severability 2**
 - 1.2.5. Use of Licensed and Bonded Contractors 2**
- 1.3. Definitions 3**
- 1.4. Right-of-Way Vacation 6**
- 1.5. Penalty for Violation 6**

SECTION 2 - PERMITS 7

- 2.1. Right-of-Way Work, Approach and/or Use/Encroachment Permit Required 7**
 - 2.1.1. Permit Required 7**
 - 2.1.2. Permit Extension 7**
 - 2.1.3. Delay Penalty Invoking Sureties 7**
 - 2.1.4. Permit Display 7**
- 2.2. Right-of-Way Work Permit Application Information 7**
 - 2.2.1. Information Required 7**
 - 2.2.2. Notice of Changes 8**
- 2.3. Permit Applications 8**
- 2.4. Issuance of Permit; Conditions 9**
- 2.5. Permit Fees 9**
 - 2.5.1. Right-of-Way Work Permit Fee 9**
 - 2.5.2. Right-of-Way Use/Encroachment Permit Fee 9**
 - 2.5.3. Approach Permit Fee 9**
 - 2.5.4. Payment of Permit Fees 9**
 - 2.5.5. Non refundable 10**
 - 2.5.6. Application to Franchises 10**
- 2.6. Mapping and As-Built Data 10**
 - 2.6.1. Information Required 10**
 - 2.6.2. Changes and corrections 10**
 - 2.6.3. Additional construction information 10**
 - 2.6.4. Manner of conveying permit data 11**
 - 2.6.5. Data on existing facilities 11**
- 2.7. Supplementary Applications 11**
 - 2.7.1. Limitation on Area 11**
 - 2.7.2. Limitation on dates 11**
- 2.8. Denial of Permit 11**
- 2.9. Appeal 11**
- 2.10. Supplementary Notification 12**
- 2.11. Revocation of Permits 12**
 - 2.11.1. Substantial Breach 12**
 - 2.11.2. Written Notice of Breach 12**

- 2.11.3. Response to Notice of Breach..... 13
- 2.11.4. Cause for Probation..... 13
- 2.11.5. Automatic Revocation..... 13
- 2.11.6. Reimbursement of County Costs..... 13
- 2.11.7. Revoked Permit..... 13
- SECTION 3 – WORK IN THE PUBLIC RIGHT-OF-WAY 14**
- 3.1. Pre-excavation Facilities Location..... 14
- 3.2. Right-of-Way Patching and Restoration..... 14
 - 3.2.1. Timing..... 14
 - 3.2.2. Standards..... 14
 - 3.2.3. Construction Warranty and Warranty Surety 14
 - 3.2.4. Duty to Correct Defects..... 15
 - 3.2.5. Failure to Restore..... 15
- 3.3. Other Obligations..... 15
 - 3.3.1. Compliance With Other Laws 15
 - 3.3.2. Prohibited Work 16
 - 3.3.3. Interference with Right-of-Way..... 16
- 3.4. Installation Requirements..... 16
- 3.5. Inspection..... 16
 - 3.5.1. Notice of Completion 16
 - 3.5.2. Site Inspection 16
 - 3.5.3. Authority of County..... 16
- 3.6. Work Done Without a Permit..... 17
 - 3.6.1. Emergency Situation..... 17
 - 3.6.2. Non-Emergency Situations..... 17
- 3.7. Location and Relocation of Facilities 17
 - 3.7.1. Placement, Location, and Relocation..... 17
 - 3.7.2. Corridors 17
 - 3.7.3. Limitation of Space..... 17
 - 3.7.4. Relocation of Facilities..... 18
- 3.8. Damage to Other Facilities..... 18
- 3.9. Abandoned or Unusable Facilities..... 19
 - 3.9.1. Discontinued Operations..... 19
 - 3.9.2. Removal 19
- SECTION 4 – PERMANENT OR TEMPORARY USE AND/OR ENCROACHMENT OF
THE RIGHT-OF-WAY 20**
- 4.1. Structures or other uses in Developed or Undeveloped Right-of-Way 20
- 4.2. Parking..... 20
- 4.3. Signs 21
- 4.4. Vegetation, Plantings, and Sidewalk Maintenance 21
 - 4.4.1. Vegetation and Plantings..... 22
 - 4.4.2. Sidewalk Maintenance and snow removal..... 22
 - 4.4.3. Notification of Non-Compliance 22

ASOTIN COUNTY RIGHT-OF-WAY MANAGEMENT POLICY

A public right-of-way is land used for public roads, sidewalks, alleys, trails and utility easements. Dedication of public right-of-way is acquired through platting, donations, acquisition for fee title or for easement by public use through condemnation or prescription.

Public right-of-way should be managed and protected by the government that acquired it on behalf of the public. Federal, State and local tax dollars are used to pay for building and maintaining roads under county jurisdiction. The county uses their road right-of-way to provide access to companies that install lines for utilities such as telephone, electric and cable television, under, in or above the roads. Typically, businesses do not pay for the privilege of using the right-of-way or the associated county management costs. County residents have the ultimate responsibility, through their elected officials, to defend the public right-of-way and keep it in a safe and usable condition.

SECTION 1 - GENERAL

1.1. Findings, Purpose, and Intent

To provide for health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the right-of-ways, the County strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances.

Accordingly, Asotin County hereby enacts this policy relating to right-of-way permits and administration. This policy imposes regulation on the placement and maintenance of facilities, infrastructure, and equipment currently within its right-of-way or to be placed therein at some future time. It also regulates other uses of the public right-of-way such as parking, storage of equipment and vegetation management. It is intended to complement the regulatory roles of state and federal agencies. Under this policy, persons performing such work within and obstructing the right-of-way will bear financial responsibility for their work. Appropriate fees will be established herein for permitting right-of-way work and activities. Finally, this policy provides for recovery of out-of-pocket and projected costs from persons using the public Right-of-Way.

This policy shall not be interpreted to limit the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

1.2. Authority

1.2.1. Election to Manage the Public Right-of-Way

Pursuant to the authority granted to the County under state and federal statutory, administrative and common law, the County hereby elects pursuant to RCW 36.34.005, to establish comprehensive procedures to manage right-of-way under its jurisdiction.

“Manage the Right-of-Way” means the authority of the County to do any or all of the following:

1. require construction performance, sureties, warranties, and insurance coverage;
2. establish installation and construction standards;
3. establish and define location and relocation requirements for equipment and facilities;
4. establish coordination and timing requirements for right-of-way work;
5. require right-of-way users to submit henceforth required by the County project data reasonably necessary to allow the County to develop a right-of-way mapping system including Geographic Information System;
6. require right-of-way users to submit, upon request of the County, existing data on the location of user’s facilities occupying the public right-of-way within the County. The data may be submitted in the form maintained by the user in a time specified by the County after receipt of the request;
7. establish right-of-way permitting requirements for all right-of-way work and obstruction;
8. establish removal requirements for abandoned equipment or facilities, if required in conjunction with other right-of-way repair, excavation or construction;
9. impose penalties for delays in construction,
10. establish right-of-way permitting requirements for encroachments on to the right-of-way;
11. Establish standards for vehicle parking and regulation of other personal items in the right-of-way such as trailers, boats, RV’s, etc.; and
12. Establish maintenance protocols for vegetation management in and/or affecting the right-of-way.
13. Establish maintenance protocols for general maintenance of Right-of-Way frontage.

1.2.2. Administration

The Director, as referred to in this policy, is the County Engineer and/or Public Works Director who is the principal County official responsible for the administration of the Rights-of-Way, Right-of-Way Permits, and the ordinances related thereto. The Director may delegate any or all of the duties hereunder.

1.2.3. Reservation of Regulatory and Police Powers

An Applicant’s rights are subject to the regulatory and police powers of the County to adopt and enforce general ordinances necessary to protect the health, safety, and welfare of the public.

1.2.4. Severability

If any portion of this policy is for any reason held invalid by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. Nothing in this policy precludes the County from requiring a franchise agreement with the applicant, as allowed by law, in addition to requirements set forth herein.

1.2.5. Use of Licensed and Bonded Contractors

The use of a licensed and bonded contract is required for larger projects unless specifically waived by the Director through the application process. See also sections 2.2. and 2.3.

1.3. Definitions

The following definitions apply in this policy. References hereafter to “sections” are, unless otherwise specified, references to sections in this policy. Defined terms remain defined terms whether or not capitalized.

“Abandoned Facility” means a facility no longer in service or physically disconnected from a portion of the operating facility, or from any other facility, that is un use or still carries service. A facility is not abandoned unless declared so by the right-of-way user.

“Applicant” means any Person requesting permission to perform work in or Obstruct a Right-of-Way, or otherwise use or encroach the right-of-way.

“Approach” means any area construction or facility between the roadway of a road and private property, to provide access for vehicles from the roadway of a road to lots, tracts or parcels.

“Approach Permit” means the permit which, pursuant to this policy, must be obtained before a Person may construct any new Approach to a county roadway. An approach permit allows the holder to create an approach consistent with the Asotin County Road Standards at a location specified by the Director.

“Applicant Representative” means a local Person or Persons, or designee of such Person or Persons, authorized by an Applicant to accept legal notice or service and to accept communications and to make decisions for that Applicant regarding all matters within the scope of this policy.

“Clear Zone” means the unobstructed area provided beyond the edge of the traveled way for the recovery of errant vehicles.

“Commission” means the Asotin County Board of Commissioners.

“Construction Performance Surety” means any of the following forms of performance security provided at Permittee’s option:

- A. Cash deposit;
- B. An assignment of a savings account;
- C. Letter of Credit, in form acceptable to the County;
- D. Self-insurance in form acceptable to the County;

“County” means the County of Asotin, WA. For purposes of section 2.5 Indemnification and Liability, County means its elected and appointed officials, officers, employees and agents.

“Degradation” means a decrease in the useful life of the Right-of-Way caused by excavation in or disturbance of the Right-of-Way, resulting in the need to reconstruct such Right-of-Way earlier than would be required if the excavation did not occur.

“Department” means the Asotin County Department of Public Works.

“Department Inspector” means any Person authorized by the Director to carry out inspections related to the provisions of this policy.

“Director” means the County Engineer and/or Public Works Director of the County, or her or his designee.

“Emergency” means a condition that (1) poses danger to life or health, or of a significant loss of property; or (2) requires immediate repair or replacement of Facilities in order to restore Service to a customer.

“Equipment” means any tangible asset used to perform work in any Right-of-Way.

“Excavate” means any operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve inches in depth for agricultural purposes, or road and ditch maintenance that does not change the original road grade or ditch flowline.

“Facility or Facilities” means any tangible asset in the Right-of-Way required to provide Utility Service.

“Management Costs” means the actual costs the County incurs in managing its public Rights-of-Way, including such costs, if incurred, as those associated with registering Applicants; issuing, processing, and verifying Right-of-Way Permit applications; inspecting job sites and restoration projects; maintaining, supporting, protecting, or moving user Equipment and Facilities during public Right-of-Way work; determining the adequacy of Right-of-Way restoration; restoring work inadequately performed after providing notice and the opportunity to correct the work; and revoking Right-of-Way Permits. Management costs do not include payments by Users as established by franchise agreement, or the County fees and costs related to appeals taken pursuant to Section 2.9 of this policy.

“Obstruct” means to place any tangible object in a public Right-of-Way so as to hinder free and open passage over that or any part of the Right-of-Way.

“Parking” shall mean the storage of material or the placement of a vehicle that is not in use for more than a brief time, whether occupied or not, except for the temporary purpose of and while actually engaged in loading or unloading property or passengers.

“Patch or Patching” means a method of pavement replacement that is temporary in nature. A Patch consists of (1) the compaction of the subbase and aggregate base, and (2) the replacement, in kind, of the existing pavement for a minimum of two feet beyond the edges of the excavation in all directions. A Patch is considered full Restoration only when pavement is included in County’s six year Transportation Improvement Program.

“Pavement” means any type of improved surface that is within the public right-of-way and that is paved or otherwise constructed with bituminous, concrete, aggregate, or gravel.

“Permit” has the meaning given “right-of-way work permit”, “approach permit” or right-of way use/encroachment permit”.

“Permittee” means any Person to whom a Right-of-Way Work Permit, approach permit or use/encroachment permit has been granted by the County under this policy.

“Permit Fee” means money paid to the County by an Applicant to cover the costs as provided in Section 2.5.

“Person” means an individual or entity subject to the laws and rules of this state, however organized, whether public or private, whether domestic or foreign, whether for profit or nonprofit, and whether natural, corporate, or political.

“Probation” means the status of a person that has not complied with the conditions of this policy.

“Probationary Period” means one year from the date that a Person has been notified in writing that they have been put on Probation.

“Public Right-of-Way” means the area on, below, or above a public roadway highway, street, cartway, bicycle land and public sidewalk in which the County has an interest, including other dedicated rights-of-way for travel purposes and utility easements of the County, improved or unimproved. Right-of-way includes (1) lands described by an easement, deed, dedication, title law or (2) occupation, use, or maintenance of a road, highway, or street consistent with RCW 36.75.070 & 080 and agreed by the county and adjacent property owners or as determined through a judicial process. A public Right-of-Way does not include the airwaves above the Right-of-Way with regard to cellular or other nonwire telecommunications or broadcast service. The presumptive width of a “Public Right-of-Way” shall be consistent with RCW 36.86.010 and Asotin County Resolution 03-38.

“Restore or Restoration” means the process by which an affected public Right-of-Way and surrounding area including pavement foundation is returned to the same condition (and life expectancy) that existed before right-of-way work was performed.

“Right-of-Way Use/Encroachment Permit” means the permit which, pursuant to this policy, must be obtained before a Person may Use or Encroach upon the Right-of-Way described in such permit.

“Right-of-Way Work Permit” means the permit which, pursuant to this policy, must be obtained before a Person may perform work in a Right-of-Way. A Right-of-Way Permit allows the holder to perform work in that part of the Right-of-Way described in such permit.

“Sight Distance” shall mean the distance a driver can see before the line of sight is blocked by a hill crest, vegetation, or an obstacle on the inside of a horizontal curve or intersection.

“Sight Triangle” An area formed by the intersection of two lines drawn along each property line away from where streets come together at a stop sign or traffic signal.

“Six Year Transportation Improvement Program (TIP)” shows projects adopted by the County for possible construction with the next six years.

“Stop Work Order” means an order the director is authorized to issue to a permittee under conditions set forth in section 3.5.3. A stop work order may result in revocation of the permit and placement of the applicant on probation.

“Supplementary Application” means an application made to perform additional work in the Right-of-Way than allowed in, or to extend, a permit that had already been issued.

“Surveyor or Surveying” shall mean the practice of establishment of land ownership and boundaries which must be performed by a licensed surveyor per Washington State law.

“Temporary Surface” means the compaction of subbase and aggregate base and replacement, in kind, of existing pavement only to the edges of the excavation. It is temporary in nature except when the replacement is of pavement included in the first two years of the County’s six-year TIP, in which case it is considered full restoration.

“Traffic Control Plan” means a method used to show the handling of vehicle, bicycle and pedestrian traffic. Traffic Control Plans shall be prepared in accordance with the Manual on Uniform Traffic Control Devices, except as modified by WSDOT and the current version of the Standard Specifications for Street, Bridge and Municipal Construction.

“Vegetation” shall mean any flora, plant, shrubs, weed, groundcover or tree species whether natural or placed by a property owner.

“Vehicle” means any car, truck or other automobile licensed to travel the public way or otherwise, or any trailer that could be connected to or pulled by any other vehicle.

“Warranty” shall mean a financial guarantee by the applicant that infrastructure proposed for a project, as well as any applicable roadway repairs or patching, will be constructed and certified according to the plans, specifications and all applicable standards.

1.4. Right-of-Way Vacation

If the County vacates a right-of-way that contains the facilities or easements of a utility, the utility owner’s rights in the vacated right-of-way are governed by RCW 36.87 and other applicable laws.

1.5. Penalty for Violation

Penalty for violation of this policy is \$500 per occurrence per site per day as long as may be applicable unless a penalty or fine is otherwise specifically designated in this ordinance.

SECTION 2 - PERMITS

2.1. Right-of-Way Work, Approach and/or Use/Encroachment Permit Required

2.1.1. Permit Required

Except as otherwise provided in this policy, no Person may perform work in or use the public Right-of-Way without first having obtained the appropriate Right-of-Way Work, Use or Approach Permit from the County to do so.

2.1.2. Permit Extension

No Person may Excavate or Obstruct the Right-of-Way beyond the date or dates specified in the permit unless such Person (i) makes a Supplementary Application for another Right-of-Way Permit before the expiration of the initial permit, and (ii) a new permit or permit extension is granted.

2.1.3. Delay Penalty Invoking Sureties

Notwithstanding subsection 2 of this Section, the County shall establish and impose a Delay Penalty for delays in Right-of-Way excavation, Obstruction, Patching, or Restoration. This includes administrative charges and re-work charges. The County may choose to conduct the Work as defined in the Work Permit. The County will either invoice the Permittee or collect from surety for all costs for related work plus a \$500 administrative fee.

2.1.4. Permit Display

Permits issued under this policy shall be readily available for inspection by the County.

2.2 Right-of-Way Work Permit Application Information

2.2.1. Information Required

The information provided to the Director at the time of application for a Right-of-Way Work Permit shall be included with the form approved by the County or this policy. Several of the items requested below, especially items b – e, are intended for work that would apply to modification or construction in the traveled way and have the potential of impacting the traveling public. However, the Director has the discretion for requiring these items for other types of work as deemed necessary. The following information is requested, but not be limited to the following, except when waived by the Director based on consideration of public safety and other liability: :

(a) Applicant and Applicant's Representative name, address, and e-mail address, Washington State Contractors license if applicable and telephone and facsimile numbers. Current information regarding how to contact the Representative in an Emergency shall be provided at the time of application.

(b) A certificate of insurance or self-insurance may be required for Right-of-Way Work Permits, to include the following, the County may require a copy of the actual insurance policies:

- (1) Verifying that an insurance policy has been issued to the Applicant by an insurance company licensed to do business in the State of Washington, or a form of self insurance acceptable to the Director;
- (2) Verifying that the Registrant is insured against claims for Personal injury, including death, as well as claims for property damage arising out of the (i) use and occupancy of the Right-of-Way by the Applicant, its officers, agents, employees and Permittees, and (ii) placement and use of Facilities in the Right-of-Way by the Registrant, its officers, agents, employees and Permittees, including, but not limited to, protection against liability arising from completed operations, damage of underground Facilities and collapse of property;
- (3) Naming the County as an additional insured as to whom the coverage required herein are in force and applicable and for whom defense will be provided as to all such coverage;
- (4) Requiring that the Director be notified thirty (30) days in advance of cancellation of the policy or material modification of a coverage term;
- (5) Indicating comprehensive liability coverage, automobile liability coverage, works compensation and umbrella coverage established by the Director in amounts sufficient to protect the County and the public and to carry out the purposes of this policy.

- (c) Traffic Control Plan.
- (d) Engineers estimate of total value of work to be performed.
- (e) Surety for 125% of value estimate.
- (f) All other details/items as required on the permit form including description of work, restoration plans, schedule, etc/
- (g) Description of contacts, media information, etc., necessary to perform work.
- (h) Stormwater Control Plan/measures as required by County Ordinance.
- (i) Any other items deemed necessary by the Director or designee.

2.2.2 Notice of Changes

The Applicant shall keep all of the information listed above current at all times by providing to the Director information as to changes within fifteen (15) days following the date on which the Applicant has knowledge of any change.

2.3. Permit Applications

Application for a permit is made to the Director or designee. Right-of-Way Permit applications shall contain, and will be considered complete only upon compliance with the requirements of the following provisions:

- (a) Submission of a completed permit application form, including all required attachments, and scaled drawings showing the location, area and key elements of the proposed project.

(b) Payment of money due the County for:

- (1) permit fees
- (2) prior fees
- (3) any undisputed loss, damage, or expense suffered by the County because of Applicant's prior actions or work in the right-of-way or an Emergency actions taken by the County;
- (4) franchise fees or other charges, if applicable,
- (5) Sureties and Warranties as required by this policy.

(c) Payment of disputed amounts due to the County by posting security or depositing in an escrow account an amount equal to at least 110% of the amount owing.

A check returned for insufficient funds renders an application incomplete.

2.4. Issuance of Permit; Conditions

No Work Permit shall be granted that involves cutting pavement placed less than 5 years without specific permission from the Director. If the Applicant has satisfied the requirements of this policy, the County shall issue a permit. The Director may impose conditions upon the issuance of the permit and the performance of the Applicant thereunder to protect the health, safety, and welfare or, when necessary, to protect the Right-of-Way and its current and future use.

2.5. Permit Fees

2.5.1. Right-of-Way Work Permit Fee

The County shall establish a Right-of-Way Work permit fee in an amount sufficient to recover the County Management Costs and for permitting, Right-of-Way work and Right-of-Way usage. Permit fees shall be established by the County Board and may be amended in accordance with Washington Code.

2.5.2. Right-of-Way Use/Encroachment Permit Fee

The County shall establish the Right-of-Way Use/Encroachment fee and shall be in an amount sufficient to recover the County Management Costs.

2.5.3. Approach Permit Fee

The County shall establish a Right-of-Way approach permit fee in an amount sufficient to cover the County Management Costs.

2.5.4. Payment of Permit Fees

No Permits shall be issued without payment of Fees unless the County allows Applicants to pay such fees within thirty (30) days of billing.

2.5.5. Non refundable

Permit fees that were paid for a permit that the Director has revoked for a breach as stated in Section 2.12 are not refundable. A check returned for insufficient funds renders an application incomplete.

2.5.6. Application to Franchises

Unless otherwise agreed to in a franchise, management costs may be charged separately from and in addition to the franchise fees imposed on a right-of-way user in the franchise.

2.6. Mapping and As-Built Data**2.6.1. Information Required**

The purpose of a mapping system is to:

- A. allow flexibility in its use by the local government as an effective management tool;
- B. enhance public safety and user facility safety;
- C. provide for long-term cost savings;
- D. improve public right-of-way design quality; and allow for better information collection and cooperative usage among local government units, telecommunications companies, and other users of the public right-of-way.

Each Permittee shall provide, upon request by the Director, design and as-built digital Mapping information with consistent accuracy and tolerances required by the County per the Asotin County Road Standards, including, but not limited to, all the following information:

- A. location and approximate depth of applicant's mains, cables, conduits, switches, and related equipment and facilities, with the location based on:
 - (1) offsets from property lines, distances from the centerline of the public right-of-way, and curb lines as determined by the local government unit;
 - (2) coordinates derived from the coordinate system being used by the local government unit; or
 - (3) any other system agreed upon by the right-of-way user and local government unit;
- B. the type and size of the utility facility;
- C. a description showing aboveground appurtenances;
- D. a legend explaining symbols, characters, abbreviations, scale, and other data shown on the map, and
- E. any facilities to be abandoned.

2.6.2. Changes and corrections

The application must provide that the applicant agrees to submit "as-built" drawings, reflecting any changes and variations from the information provided under subsection 1, items A to E. Changes or revisions must have been previously approved by the Director.

2.6.3. Additional construction information

In addition, the right-of-way user shall submit at the time the project is completed a completion certificate.

2.6.4. Manner of conveying permit data

A right-of-way user is not required to provide or convey mapping information or data in a format or manner that is different from what is currently utilized and maintained by that user. A permit application fee may include the cost to convert the data furnished by the right-of-way user to a format currently in use by the local unit of government. These data conversion costs, unlike other costs that make up permit fees, may be included in the permit fee after the permit application process.

2.6.5. Data on existing facilities

At the request of the Director, a right-of-way user shall provide existing data on its existing facilities within the public right-of-way in the form maintained by the user at the time the request was made, if available.

2.7. Supplementary Applications.

2.7.1. Limitation on Area

A Right-of-Way Permit is valid only for the area of the Right-of-Way specified in the permit. No Permittee may do any work outside the area specified in the permit, except as provided herein. Any Permittee which determines that an area greater than that specified in the permit must be Obstructed or Excavated must before working in that greater area (i) make application for a permit extension and pay any additional fees required thereby, and (ii) be granted a new permit or permit extension.

2.7.2. Limitation on dates

A Right-of-Way Permit is valid only for the dates specified in the permit. No Permittee may begin its work before the permit start date or, except as provided herein, continue working after the end date. If a Permittee does not finish the work by the permit end date, it must apply for a new permit for the additional time it needs, and receive the new permit or an extension of the old permit before working after the end date of the previous permit. This Supplementary Application must be done before the permit end date.

2.8. Denial of Permit

The County may deny a permit for failure to meet the requirements and conditions of this policy or if the County determines that the denial is necessary to protect the health, safety, and welfare or when necessary to protect the Right-of-Way and its current and future use. The county may deny a permit if the Applicant has failed to comply with previous permit conditions. The county may withhold issuance of a permit until conditions of the previous permit are complied with in full.

2.9. Appeal

A Right-of-Way user that: (1) has been denied a permit; (2) has had permit revoked; or (3) believes that the fees imposed are invalid, may have the denial revocation, or fee imposition

reviewed, upon written request, by the County Board. The County Board shall act on a timely written request at its next regularly scheduled meeting. A decision by the County Board affirming the denial, revocation, or fee imposition will be in writing and supported by written findings establishing the reasonableness of the decision.

2.10. Supplementary Notification

If the Work to be performed within the Right-of-Way begins later or ends sooner than the date given on the permit, Permittee shall notify the County of the accurate information as soon as this information is known.

2.11. Revocation of Permits

2.11.1. Substantial Breach

The County reserves its right, as provided herein, to revoke any Right-of-Way Permit, without a fee refund, if there is a substantial breach of the terms and conditions of any statute, ordinance, rule or regulation, or any material condition of the permit including a threat to the safety of workers, or the right-of-way user or the utility users. A substantial breach by Permittee shall include, but shall not be limited to, the following:

- (a) The violation of any material provision of the Right-of-Way Permit;
- (b) An evasion or attempt to evade any material provision of the Right-of-Way Permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the County or its citizens;
- (c) Any material misrepresentation of fact in the application for a Right-of-Way Permit;
- (d) The failure to complete the work in a timely manner; unless a permit extension is obtained, or unless the failure to complete work is due to reasons beyond the Permittee's control, or failure to relocate existing facilities as specified in Section 3.7; or
- (e) The failure to correct, work that does not conform to a condition indicated on an Order issued pursuant to Section 3.5.
- (f) Failure of the utility to pay any required costs, fees, or charges billed by the county.

2.11.2. Written Notice of Breach

If the County determines that the Permittee has committed a substantial breach of a term or condition of any statute, ordinance, rule, regulation or any condition of the permit the County shall make a written demand upon the Permittee to remedy such violation. The demand shall state that continued violations may be cause for revocation of the permit. A substantial breach, as stated above, will allow the County, at its discretion, to place additional or revised conditions on the permit to mitigate and remedy the breach, including dead lines for implementation of conditions to mitigate and remedy the breach. If safety is an issue then immediate action will be necessary.

2.11.3. Response to Notice of Breach

Within twenty-four (24) hours of receiving notification of the breach, Permittee shall provide the County with a plan, acceptable to the County, that will cure the breach. Permittee's failure to so contact the County, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to implement the approved plan, shall be cause for immediate revocation of the permit. Further, Permittee's failure to so contact the County, or the Permittee's failure to submit an acceptable plan, or Permittee's failure to implement the approved plan, shall automatically revoke the permit and may include placing the Permittee on Probation for one (1) full year.

2.11.4. Cause for Probation

From time to time, the County may establish a list of conditions of the permit, which if breached will automatically place the Permittee on Probation for one (1) full year, such as, but not limited to, working out of the allotted time period or working on Right-of-Way grossly outside of the permit authorization.

2.11.5 Automatic Revocation

If a Permittee, while on Probation, commits a breach as outlined above, Permittee's permit will automatically be revoked and Permittee will not be allowed further permits for one (1) full year, except for Emergency repairs.

2.11.6 Reimbursement of County Costs

If a permit is revoked, the Permittee shall also reimburse the County for the County's reasonable costs, including Restoration Costs, management and administrative costs, and the costs of collection and reasonable attorney's fees incurred in connection with such revocation.

2.11.7. Revoked Permit

If the county revokes a permit for breach of this policy, the applicant will not be allowed to obstruct or excavate within the County Right-of-Way until the breach situation is corrected to the satisfaction of the Director and the permit is reissued.

SECTION 3 – WORK IN THE PUBLIC RIGHT-OF-WAY

3.1. Pre-excavation Facilities Location

Consistent with the requirements of RCW 19.122, before commencing any excavation, excluding agriculture tilling less than twelve inches in depth, the excavator shall provide notice of the scheduled commencement of excavation to all owners of underground facilities through a one-number locator service, 800-424-5555 not less than two and not more than 10 days prior to commencement of excavation activities. If, while performing work under the Right-of-Way Permit, the excavator discovers underground facilities which are not identified, the excavator shall cease excavating in the vicinity of the facility and immediately notify the owner or operator of such facilities, or the one-number locator service. Emergency excavations are exempt from the time requirements for notification provided in this section.

3.2. Right-of-Way Patching and Restoration

3.2.1. Timing

No permit shall be granted to cut pavement that has been placed less than 5 years without specific permission of the Director. The work to be done under the Right-of-Way Work Permit, and the Patching and Restoration of the Right-of-Way as required herein, must be completed within the dates specified in the permit, increased by as many days as work could not be done because of circumstances beyond the control of the Permittee or when work was prohibited as unseasonable under Section 3.3.2.

3.2.2 Standards

The Permittee shall perform Surfacing, Patching and Restoration including backfill, compaction, and landscaping according to the Asotin County Road Standards and with the materials specified by the Director. Any work which involves a cut and patch greater than 30% of the travelled asphalt street surface width shall be patched with a full width street overlay. The Director shall have the authority to prescribe the manner and extent of the Restoration, and may do so in written procedures of general application or on a case-by-case basis and require conformance to WSDOT standard specifications and local government specifications drawing and shall further be guided by the following considerations:

- (a) The number, size, depth and duration of the excavations, disruptions or damage to the Right-of-Way;
- (b) The roadway functional classification or traffic volume carried by the Right-of-Way; the character of the neighborhood surrounding the Right-of-Way;
- (c) The pre-excavation condition of the Right-of-Way; the remaining life-expectancy of the Right-of-Way affected by the excavation.

3.2.3. Construction Warranty and Warranty Surety

At the time of application for a Right-of-Way Work Permit the Permittee shall post a Construction Warranty and Surety Warranty in an amount equal to 125% of the applicants engineer construction cost estimate to perform the work detailed in the Work Permit, subject to the Directors review, or an amount as determined by the Director to be sufficient to cover the

cost of Restoration. The construction warranty may be invoked by the County for any of the following reasons:

- A. Project schedule is not met.
- B. Substandard maintenance of temporary travelled way.
- C. Traffic control inconsistent with the traffic control plan.
- D. Substandard final work review by county staff.
- E. Warranty period service issues.

The warranties will be released up to 50% with 50% of work completed and up to 90% upon completion of work, with 10% of the value of the work performed being retained upon certification of completion by the County for no more than two (2) years. If, within twenty-four (24) months after completion of the Restoration of the Right-of-Way, the Director determines that the Right-of-Way has been properly Restored, the remaining surety on the Construction Performance Warranty shall be released.

3.2.4. Duty to Correct Defects

The Permittee shall correct defects in patching, or restoration performed by Permittee or its agents. Permittee upon notification from the County, shall correct all restoration work to the extent necessary, using the method required by the County. Said work shall be completed within five (5) calendar days of the receipt of the notice from the County, not including days during which work cannot be done because of circumstances constituting force majeure or days when work is prohibited as unseasonable under Section 3.3.2.

3.2.5. Failure to Restore

If the Permittee fails to Restore the Right-of-Way in the manner and to the condition required by the Director, or fails to satisfactorily and timely complete all Restoration required by the Director, the Director at its option may do such work. In that event the Permittee shall pay to the County, within thirty (30) days of billing, all costs related to restoring the Right-of-Way or associated with having to correct the defective work, which may include removal and replacement of any or all work done by the Permittee. These costs shall include administrative, overhead mobilization, material, labor, and equipment, oversight and materials testing. If Permittee fails to pay as required, the County may exercise its rights under the Warranty Surety.

3.3. Other Obligations

3.3.1. Compliance With Other Laws

The applicant must notify and obtain a permit from any city through which it passes if said city so requires. Obtaining a Right-of-Way Permit does not relieve Permittee of its duty to obtain all other necessary permits, licenses, and authority and to pay all fees required by the County or other applicable rule, law or regulation. Permittee shall comply with other local codes and with road load restrictions. A Permittee shall comply with all requirements of local, state and federal laws. A Permittee shall perform all work in conformance with all applicable codes and established rules and regulations, and is responsible for all work done in the Right-of-Way pursuant to its permit, regardless of who does the work.

3.3.2. Prohibited Work

Except in an Emergency, and with the approval of the County, no Right-of-Way work may be done when seasonally prohibited (e.g. asphalt plant closures due to cold temperatures) or when conditions are unreasonable for such work.

3.3.3. Interference with Right-of-Way

A Permittee shall not so Obstruct a Right-of-Way that the natural free and clear passage of water through the gutters, culverts, ditches tiles or other waterways shall be interfered. Private vehicles of those doing work in the Right-of-Way may not be parked within or next to a permit area. The loading or unloading of trucks must be done solely within the defined permit area unless specifically authorized by the permit.

Traffic control shall conform to the Manual on Uniform Traffic Control Devices and its field manual and any written directions of the county engineer.

3.4. Installation Requirements

The excavation, backfilling, Patching and Restoration, and all other work performed in the Right-of-Way shall be done in conformance with Washington State Department of Transportation Specifications and the Asotin County Road Standards.

3.5. Inspection

3.5.1. Notice of Completion

When work under any permit hereunder is completed, the Permittee shall furnish a Completion Certificate in accordance with section 9.12 of the Asotin County Road Standards if appropriate.

3.5.2. Site Inspection

Permittee shall make the work-site available to the County and to all others as authorized by law for inspection at all reasonable times during the execution of and upon completion of the work. Inspection of Work within the public Right-of-Way is subject to the requirements of the Asotin County Road Standards Chapter 9.8.

3.5.3. Authority of County

(a) At the time of inspection the Director may issue a Stop Work Order and the immediate cessation and correction of any work which poses a threat to the life, health, safety or well being of the public.

(b) The Director may issue a Stop Work Order to the Permittee for any work which does not conform to the terms of the permit or other applicable standards, rules, laws, conditions, or codes. The order shall state that failure to correct the violation will be cause for revocation of the permit and placement of the applicant on probation. The order may contain conditions or requirements that must be met to prevent revocation of permit or placement of applicant on probation. Within ten (10) days after issuance of the order, the Permittee shall present proof to

the Director that the violation has been corrected. If such proof has not been presented within the required time, the Director may revoke the permit pursuant to Section 2.12.

(c) The cost of any action required by the County shall be paid by the Permittee.

3.6. Work Done Without a Permit

3.6.1. Emergency Situation

Each Applicant shall immediately notify the Director of any event it considers to be an Emergency. The Applicant may proceed to take whatever actions are necessary to respond to the Emergency. Within two (2) business days after the occurrence of the Emergency the Applicant shall apply for the necessary permits, pay the fees associated therewith and fulfill the rest of the requirements necessary to bring itself into compliance with this policy for the actions it took in response to the Emergency.

If the County becomes aware of an Emergency regarding a Person's Facilities, the County will attempt to contact the Representative affected, or potentially affected, by the Emergency. In any event, the County make take whatever action it deems to the Emergency, the cost of which shall be borne by the Person whose Facilities occasioned the Emergency.

3.6.2. Non-Emergency Situations

Except in an Emergency, any Person who, without first having obtained the necessary permit, performs work in the Right-of-Way must subsequently obtain a permit, and as a penalty pay double the normal fee for said permit to cover costs of additional County administration.

3.7. Location and Relocation of Facilities

3.7.1. Placement, Location, and Relocation

Placement, location and relocation of facilities must comply with the RCW 19.122 to the extent the rules do not limit authority otherwise available to cities and counties. By submitting a request for a permit the person recognizes they must conform to the existing ordinances and codes of other units of government related to underground placement regardless of how the application is written or permit granted.

3.7.2. Corridors

The County may assign specific corridors within the Right-of-Way, or any particular segment thereof may be necessary, as a best management practice for each type of Facility that is, or, pursuant to current technology, the County expects will someday be, located within the Right-of-Way. All Right-of-Way Work permits issued by the County involving the installation or replacement of Facilities shall designate the proper corridor for the Facilities at issue. A typical cross section of the location for utilities may be on file at the Director's office.

3.7.3. Limitation of Space

To protect health, safety, and welfare or when necessary to protect the Right-of-Way and its current use, the County shall have the power to use best management practices to prohibit or limit the placement and location of new or additional Facilities within the Right-of-Way. In

making such decisions, the County shall strive to the extent possible to accommodate all existing and potential users of the Right-of-Way, but shall be guided primarily by considerations of the public interest, the public's need for the particular utility, the condition of the Right-of-Way, the time of year with respect to essential utilities, the protection of existing Facilities in the Right-of-Way, and future County plans for public improvements and development projects which have been determined to be in the public interest.

3.7.4. Relocation of Facilities

An Applicant must promptly and at its own expense, with due regard for seasonal working conditions, permanently remove and relocate its Facilities in the Right-of-Way whenever the Director for good cause requests such removal and relocation, and shall restore the Right-of-Way consistent with the Asotin County Road Standards, local regulations and WSDOT standard specifications. The Director may make such request to prevent interference by the Company's Equipment or Facilities with (i) a present or future County use of the Right-of-Way, (ii) a public improvement undertaken by the County, (iii) an economic development project in which the County has an interest or investment, (iv) when the public health, safety and welfare require it, or (v) when necessary to prevent interference with the safety and convenience of ordinary travel over the Right-of-Way.

Relocation Notification Procedure: The Director shall notify the utility owner at least six (6) months in advance of the need to relocate existing facilities so the owner can plan the relocation. The Director shall provide a second notification to the owner one (1) month before the owner needs to begin the relocation. The utility owner shall begin relocation of the facilities within one (1) week of the second notification. All utilities shall be relocated within one (1) month. The Director may allow a different schedule if it does not interfere with the County's project. The utility owner shall diligently work to relocate the facilities within the above schedule.

Delay to the County Project: The Director shall notify the utility owner if the owner's progress will not meet the relocation schedule. If the owner does not take action to insure the relocation will be completed in accordance with the above schedule and the Director feels this delay will have an adverse impact to a county project, then the Director may hire a competent contractor to perform the relocation. In that event, the county may charge the utility owner all costs incurred to relocate the facility.

The county may charge the utility owner for all costs incurred and requested by a contractor working for the county who is delayed because the relocation is not completed in the scheduled timeframe and for all costs incurred by the county due to the delay.

Notwithstanding the foregoing, a Person shall not be required to remove or relocate its Facilities from any Right-of-Way which has been vacated in favor of a non-governmental entity unless and until the reasonable costs thereof are first paid to the Person. However this does not exempt the utility company from paying for the value of any taking of said property by occupation without compensation.

3.8. Damage to Other Facilities

As required by RCW 19.122.59, an excavator who, in the course of excavation, contacts or damages an underground facility, shall notify the utility owning or operating such facility and the one-number locator service. If the damage causes an emergency condition, the excavator causing

the damage shall also alert the appropriate local public safety agencies and take all appropriate steps to ensure the public safety. No damaged underground facility may be buried until it is repaired or relocated. The owner of the underground facilities damaged shall arrange for repairs or relocation as soon as is practical or may permit the excavator to do necessary repairs or relocation at a mutually acceptable price.

When the County does work in the Right-of-Way and finds it necessary to maintain, support, or move a utility provider's Facilities to protect it, the Director shall notify the Representative as early as is reasonably possible. The costs associated therewith will be billed to that utility provider and must be paid within thirty (30) Days from the date of billing. Each utility provider shall be responsible for the cost of repairing any Facilities in the Right-of-Way that it or its Facilities damages. When the permittee does damage to county facilities in the Right-of-Way, such as, but not limited to culverts, road surfaces, curbs and gutters, or tile lines, they shall correct the damage immediately. If they do not, the county may make such repairs as necessary and charge all of the expenses of the repair to the permittee. The permittee shall pay for said repairs within 30 days of billing. Each utility provider shall be responsible for the cost of repairing any damage to the Facilities of another provider caused during the County's response to an Emergency occasioned by that providers Facilities.

3.9. Abandoned or Unusable Facilities

3.9.1. Discontinued Operations

A utility owner who has determined to discontinue all or a portion of its operations in the county must provide information satisfactory to the county that the obligations for its facilities in the right-of-way under this policy have been lawfully assumed by another Person.

3.9.2. Removal

Any utility owner who has abandoned or has unusable facilities in any right-of-way shall remove it from that right-of-way if required in conjunction with other right-of-way repair, excavation, or construction, unless the county waives this requirement.

SECTION 4 – PERMANENT OR TEMPORARY USE AND/OR ENCROACHMENT OF THE RIGHT-OF-WAY

4.1. Structures or other uses in Developed or Undeveloped Right-of-Way

Although private structures within the public Right-of-Way is typically discouraged, on occasion the county may consider proposals to use the Right-of-Way to benefit the health, safety and welfare of its citizens, or enhance the visual attractiveness of the County.

Private use of the Right-of-Way for structures may include, but are not limited to fencing, retaining walls or temporary fruit stands. Such uses will require a permit, consistent with Section 2, which will be subject to the following considerations by the Director:

- A. Under normal conditions, storage of construction materials is not allowed in the Right-of-Way.
- B. All uses, or storage of any material must be in conformance with the sight obstruction criteria of the Asotin County Zoning ordinance (ACZO) 17.05.020 - 030.
- C. Fencing must meet the requirements of the ACZO 17.05.080 – 90.
- D. Fencing is subject to the Right-of-Way agreement on rural roads for fencing.
- E. Retaining walls must meet the requirements of the Asotin County Road Standards, Chapter 5.3.10.
- F. Uses may not impede the passage of traffic on the roadway nor on any sidewalks.
- G. Other considerations specific to the proposed use as determined by the Director.

Permits issued for Right-of-Way Use may be revoked at any time if the Director deems there is a health or safety issue, or if the Right-of-Way is needed for official use by the County. All costs of removing structures or other items allowed by permit in the Right-of-Way shall be borne by the permittee.

4.2. Parking

Off-Street parking requirements (outside the public Right-of-Way) are governed by the ACZO 17.05.050. On-Street parking within the public Right-of-Way is discouraged and in some cases is prohibited. To provide for the health, safety and welfare of its citizens, and to ensure the integrity of its roads and streets and the appropriate use of the Right-of-Ways, the County strives to keep its right-of-way in a state of good repair and free from unnecessary encumbrances. As such, parking is allowed when it meets the following conditions:

- A. Parking of any vehicle, or storage of any vehicle or material may not encroach the areas protected by the sight obstruction criteria of the Asotin County Zoning Ordinance (ACZO) 17.05.020 - 030.
- B. Parking of vehicles may not impede the passage of traffic on the roadway nor on any sidewalks or accesses to public facilities. This includes no parking of any vehicle at the terminus of a cul-de-sac or dead end street.

- C. Ten feet on each side of the centerline of a roadway surface must remain clear for the passage of vehicular traffic on a county road. Ten feet of travelway shall be measured from the center of the roadway whether or not the centerline is marked.
- D. No commercial vehicles larger than 30', more than two axles or weighing more than 12,000 pounds may be parked in the right-of-way of a residentially zoned area unless there temporarily for official business.
- E. No recreational vehicles or trailers can be stored in the public right-of-way for more than 72 hours.
- F. The County will notify any property owner of an issue inconsistent with this policy. This will primarily be a complaint driven process. The property owner will have 24 hours to remedy the situation. If the situation is not remedied, the County has the right to impound any vehicle or remove material which obstructs the passage of traffic, creates a sight obstruction or safety problem. In such cases where the County must remedy an unsafe condition, the property owner will be responsible to pay all the costs, within 30 days of billing, including administrative, material, labor, and equipment as well as a \$50 penalty.

4.3. Signs

Signs outside of the right-of-way are governed by the Asotin County Zoning Ordinance (ACZO) 17.05.130. Only temporary signs within the roadway Right-of-Way may be allowed, without obtaining a permit, subject to the following conditions:

- A. Only signs such as: "City, State, Federal and Community sponsored events", "Development" or for sale signs, "Off-premises" signs, or "Political" signs as defined in ACZO Chapter 17.02, that are temporary in nature may be allowed within the roadway Right-of-Way, consistent with the provisions of the ACZO sections 17.05.130(4)(G), (H), (J) and (L).
- B. Signs within the Right-of-Way shall be 6 square feet or less in size.
- C. Signs shall not impede or obstruct sidewalks.
- D. All signs must be in conformance with the sight obstruction criteria of the ACZO 17.05.020 - 030.
- E. Signs must be removed, by those who placed the sign, within 72 hours of the event being advertized.

4.4. Vegetation, Plantings, and Sidewalk Maintenance

This section applies to the planting and maintenance of vegetation, temporary signs and sidewalks adjacent to the county roadway Right-of-Way and undeveloped County Right-of-Way. In order to enhance the visual attractiveness of the community, property owners are allowed and encouraged to place landscaping between their property and the street curb or roadway edge. Persons planting or maintaining boulevard plantings, landscaping or gardens shall not be deemed to use or occupy the Right-of-Way, and shall not be required to obtain any permits or satisfy any other requirements for planting or maintaining such boulevard plantings or gardens under this policy, except as provided below.

4.4.1 Vegetation and Plantings

Vegetation is permitted within the roadway Right-of-Way between the property boundary and the street curb or roadway edge, however it is subject to the following conditions (without a permit):

- A. Landscaping, including trees and weeds, may not encroach the areas protected by the sight obstruction criteria of the Asotin County Zoning Ordinance (ACZO) 17.05.020 - 030.
- B. Landscaping may not impede the passage of traffic on the roadway nor on any sidewalks.
- C. Consistent with the Asotin County Road Standards Chapter 10, the original area, volume, configuration and function of stormwater facilities must be maintained.
- D. The County will perform maintenance of roadside vegetation and tree trimming so as to protect the safety of the traveling public on collector and arterial roadways which carry higher traffic volumes. Property owners are responsible for the maintenance of these features on local roadways.

Property owners will be responsible for any damage caused to roadway features including sidewalks and curbs due to vegetative plantings as a result of roots, etc. Repairs to the sidewalk shall be completed at the request of the Director.

4.4.2. Sidewalk Maintenance and snow removal

It is in the best interest of Asotin County residents that roadway pavement and storm drainage facilities be maintained consistently throughout the county. Thus, consistent with the Asotin County Road Standards Chapter 10, the County will maintain the curb, gutter and pavement of all public roads and stormwater drainage structures located in the public Right-of-Way that serve public road runoff. The County will also perform maintenance of sidewalks and snow removal on collector and arterial roadways for several reasons, including:

- the county has an obligation to maintain these facilities for having received federal aid;
- the likelihood of the need for traffic control is higher;
- collector and arterial facilities have a greater need due to higher vehicular and pedestrian volumes;
- more homeowners are adjacent to collectors and arterials via their backyard and would need to traverse the neighborhood to reach the sidewalk on the back side of their fence.

However property owners along local roadways are responsible for the maintenance of the sidewalks and snow removal, even if the sidewalk is situated within the public Right-of-Way. Snow removal must occur within 36 hours of a snow event.

4.4.3 Notification of Non-Compliance

The County will notify any property owner of an issue inconsistent with this policy. This will primarily be a complaint driven process. The property owner will have 30 days to remedy the situation. If the situation is not remedied by the property owner, the County has the right to perform work or contract for work to be conducted to maintain the sidewalk, trim trees or otherwise remove the impedance or safety concern caused by vegetation. In such cases where the County must perform work, the property owner will be responsible to pay all the costs, within 30 days of billing, including administrative, material, labor, and equipment.