Sponsored by: Councilmember Dick Muri
Requested by: County Executive/Public Works & Utilities Department

ORDINANCE NO. 2010-93

An Ordinance of the Pierce County Council Granting a Nonexclusive Franchise to Tanner Electric Cooperative, of North Bend, Washington, for Location of Electric Lines on Certain Rights-of-Way; and Authorizing the County Executive to Execute Said Franchise.

Whereas, Tanner Electric Cooperative of Pierce County, Washington, has applied for a nonexclusive Franchise to construct, operate, and maintain an electric line system in, across, over, upon, along, and under Pierce County roads, highways, and other County property(ies) in Pierce County, Washington, as hereinafter set forth; and

Whereas, said application came on regularly for hearing before the Pierce County Council on the date set forth below under the provisions of Chapter 80.32, Revised Code of Washington; and

Whereas, it appears to the Council that notice of said hearing has been duly given to the public and those interested in providing the same service applied for by the applicant as required by law and that it is in the public interest to grant the Franchise; and; Now Therefore,

BE IT ORDAINED by the Council of Pierce County:

Section 1. A nonexclusive Franchise, a copy of which is attached hereto and identified as Exhibit A, is hereby given and granted to Tanner Electric Cooperative doing business in Pierce County, Washington, hereinafter referred to as the Grantee, for a period of 15 years, from and after the date of filing of the Franchise to be granted with the Clerk of the Pierce County Council.
Section 2. The Executive of Pierce County is hereby authorized to execute said Franchise.

PASSED this 30th day of November, 2010.

ATTEST:

Denise D. Johnson
Clerk of the Council

PIERCE COUNTY COUNCIL
Pierce County, Washington

Roger Bush
Council Chair

Pat McCarthy
Pierce County Executive
Approved ______ Vetoed ________, this ______ day of ________, 2010.

Date of Publication of Notice of Public Hearing: December 3-10, 2010

Effective Date of Ordinance: December 14, 2010
In the Matter of the Application of  
Tanner Electric Cooperative,  
to construct, erect, alter,  
 improve, renew, replace, repair,  
operate, and maintain electric  
transmission and distribution lines  
with all convenient appurtenances  
thereto upon, under, over, across,  
and along certain County roads and  
areas in Pierce County, Washington  


NONEXCLUSIVE  
FRANCHISE

Tanner Electric Cooperative, of North Bend, Washington, having applied for a  
15-year Franchise to construct, erect, alter, improve, renew, replace, repair, operate,  
and maintain electric transmission and distribution lines upon, under, over, across, and  
along certain County roads and areas in Pierce County, Washington, as hereinafter set  
forth, having come on regularly for hearing before the County Council of Pierce County,  
Washington, under the provisions of Chapter 36.55, Revised Code of Washington  
(RCW), and it appearing to the Council that notice of said hearing has been duly given  
as required by law, and that it is in the public interest to grant the Franchise herein  
requested; NOW, THEREFORE,

IT IS HEREBY ORDERED that the right, privilege, authority, and nonexclusive  
Franchise be, and the same are hereby given and granted to Tanner Electric  
Cooperative, its successors and assigns, hereinafter referred to as Grantee, for a period  
of 15 years from and after the date of filing of this Franchise with the Clerk of the Pierce  
County Council, to construct, erect, alter, improve, renew, replace, repair, operate, and  
maintain electric transmission and distribution lines, including, but not limited to  
underground cables and vaults, with all convenient appurtenances to such lines,  
including, but not limited to equipment and facilities for the support of such lines, poles  
(with or without cross arms), towers, all necessary guy poles and anchors,  
meter-reading devices, fixtures, and communications systems (excluding CATV and  
broadband services) and all other appurtenances attached thereto, and attach and  
extend wires from any such poles, wires, or cables to the premises of patrons and  
customers, and to transmit and distribute thereover electric current and energy for  
power, light, heat, and all other purposes for which such electric energy may be used,  
upon, under, over, across, and along all the County highways, roads, streets, avenues,  
alleys, bridges, and other County-owned property(ies) within the boundaries of Pierce  
County as now laid out, platted or dedicated, and all County highways, roads, streets,  
avenues, alleys, bridges, and public ways that may be hereafter laid out, platted, or  
dedicated within the boundaries of Pierce County, lying outside of any incorporated
town or city, and being situated in whole or in part in the sections, townships, and ranges as follows:

This Franchise is granted upon the following express terms and conditions to wit:

Sections 1 and 12, Township 19 North, Range 1 West, W.M.
All County roads in the said sections.

Sections 3 through 10, 16 through 18, 20, Township 19 North, Range 1 East.
All County roads in the said sections.

Sections 29, 31 through 33, Township 20 North, Range 1 East, W.M.
All County roads in the said sections.

I

That said Grantee, its successors, and assigns shall have the right and authority to enter upon the above-mentioned County roads, right-of-way, and other County property(ies) as designed hereinbefore, for the purpose of constructing and erecting its transmission and distribution lines and all convenient appurtenances thereto as described hereinbefore and for altering, improving, renewing, replacing, and repairing all such lines and facilities, and for operating and maintaining all such lines and facilities.

II

All construction and installation work along, under, or over County roads or rights-of-way or other County property shall be subject to the approval and pass the inspection of the Pierce County Engineer, and shall conform to all applicable County, State, and Federal minimum standards, codes, or regulations.

Before any work is performed under this Franchise that may affect any existing monuments or markers of any nature relating to section subdivisions, plats, roads, and all other surveys, Grantee shall reference all such monuments and markers in accordance with RCW 58.09.130. The reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the County Engineer.

The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by Grantee.

A complete set of reference notes for monument and other ties shall be filed with Pierce County Public Works and Utilities.
III

Prior to commencement of construction of any new transmission and distribution lines or facilities, Grantee shall first file with the County Engineer its application for a permit to do such work, together with plans and specifications showing the position and location of all such lines and facilities sought to be constructed, laid, installed, or erected at that time showing their relative position to existing County roads, rights-of-way or other County property upon plans drawn to scale.

The lines and appurtenant facilities shall be laid in exact conformity with said plans and specifications of definite location except in instances in which deviation may be allowed thereafter in writing by the County Engineer pursuant to application by Grantee. The plans and specifications shall specify the class and type of material and equipment to be used, construction installation, erection of temporary structures, and erection of permanent structures. No such construction shall commence without Grantee first securing a written permit from the County Engineer.

All wires and guy wires shall, when crossing above the roadway, provide a minimum clearance in accordance with the standards set forth in the National Electric Safety Code.

All underground installations shall be laid down as directed by the County Engineer at a depth of not less than 36 inches below the surface of the ground along the County roads and highways, unless mutually agreed to a lesser depth, and in such a manner as not to interfere unnecessarily with the construction of sewers, drains, and other underground utilities, nor with the grading of the public highways.

The County Engineer may require a bond in a sum sufficient to guarantee to Pierce County that such highways, roads, rights-of-way, or other County property shall be restored to the same condition as it was prior to the work under such permit being performed.

IV

Any and all damage or injury done or caused said highways or any portion thereof in the construction, operation, maintenance, or repair of said transmission and distribution lines shall be immediately repaired and reconstructed under the supervision and to the satisfaction of the County Engineer; and in the event Grantee shall fail, neglect, or refuse to immediately repair and reconstruct said damage or injury to said highways, roads, or rights-of-way, the same may be done by the County and the expense and cost thereof shall be immediately repaid by Grantee to the County.

V

Grantee agrees to defend, indemnify, and save harmless Pierce County, its appointed and elective officers and employees, from and against all loss or expense, including but not limited to, judgments, settlements, attorney fees and costs by reason of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury, including death at anytime.
resulting therefrom, sustained by any person or persons and on account of damage to
property including loss of use thereof, whether such injury to persons or damage to
property is due to the negligence of the Contractor or his subcontractors.

If the claim, suit, or action for injuries, death, or damages as provided for in the
preceding paragraphs of this Franchise is caused by or results from the concurrent
negligence of (a) the indemnitee or the indemnitee's agents or employees and (b) the
indemnitor or the indemnitee's agents or employees, the indemnity provisions provided
for in the preceding paragraphs of this Franchise shall be valid and enforceable only to
the extent of the indemnitor's negligence or the negligence of indemnitee's agents or
employees.

Grantee specifically and expressly waives any immunity under Industrial
Insurance Title 51, RCW, and acknowledges that this waiver was mutually agreed by
the parties herein.

Grantee shall constantly maintain in full force and effect Two Million Dollars
($2,000,000.00) comprehensive liability insurance for bodily injury and property
damage; provided Grantee may self-insure for bodily injury and property damage in
such amounts as are consistent with good utility practice. A Certificate of Insurance
with Pierce County named as an additional insured must be delivered immediately to
the County Engineer. There shall be an endorsement to the policy to the effect that
Pierce County has no obligation to report losses or to pay premiums, and the insurer
must agree to give Pierce County 20 days' written notice of termination prior to
terminating the policy.

In lieu of the insurance requirements set forth herein, Grantee may self-insure
against such risks in such amounts as are consistent with good utility practice and
concurrence of the Pierce County Risk Manager. Grantee shall provide the County with
reasonable written evidence that Grantee is maintaining such self-insurance.

In the event of nonrenewal, cancellation, or material change in the coverage
provided, 30 days' written notice will be furnished to the County prior to the date of
nonrenewal, cancellation, or change. Such notice shall be sent to the County Engineer,
Public Works and Utilities, 4301 South Pine Street, Suite 446, Tacoma, Washington
98409.

VI

All work done under this Franchise shall be done in a thorough and workmanlike
manner. In the construction of transmission lines and the construction of other facilities
and the opening of trenches, the tunneling under County roads, rights-of-way, or other
County property(ies), Grantee shall construct and maintain such trenches, ditches, and
tunnels in such a way as to interfere as little as possible with public travel and shall take
all due and necessary precautions to guard the same, so that damage or injury shall not
occur or arise by reason of such work.
VII

Pierce County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to County roads, right-of-way, or other County property(ies) and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the County roads, rights-of-way, and other County property(ies) covered by this Franchise.

VIII

If at any time Pierce County shall construct, improve, or change the line, grade, or cross-section of any County road, right-of-way, or other County property(ies) subject to this Franchise, together with construction of storm and sanitary sewers, surfacing, paving, and any other County-funded work, Grantee upon written notice from the County Engineer shall, at its sole expense and with due diligence, adjust its transmission and distribution lines and other facilities so that the same shall not interfere with such County work and so that such lines and facilities shall conform to such new lines, grades, and cross-sections as may be established.

Grantee, at its cost and expense, except as hereinafter provided, upon written notice from the County Engineer, shall, with due diligence, cut, raise, or lower any wire or cable maintained by Grantee and move any conduit or pole to permit any County-funded local improvement, the removal of any County-funded building or buildings, or the laying down of any sidewalk, sewer, drainage, or water pipes, and upon Grantee's failure to comply with such notice, Pierce County may cause the same to be done and Grantee, upon demand, shall pay to the County the cost and expense thereof; and whenever any of Grantee's wires or conduits are cut, raised, or lowered by the County or Grantee for any of the purposes set forth in this section, Grantee shall replace said wires or conduits at its sole cost and expense; provided, however, that whenever any of said wires or conduits have to be cut, raised, or relocated because of some public improvement matter by the County, or under its authority and direction (or for the removal of any buildings), the County shall not be liable in any manner whatsoever for any damage, loss, or detriment caused thereby to Grantee or to any person, firm, or corporation to whom Grantee may at the time be furnishing electrical service; provided further, that the County shall, in case of the removal of buildings as hereinbefore provided, fix the time when and the time within which such buildings shall cross any line of Grantee and in case of a longer interruption of said line than the time so fixed, the person so moving such building and the owner thereof shall pay the damages resulting from such continued time of interruption.

When relocation of Grantee's facilities is required by such County Projects, the following procedures shall be followed:

1. Pierce County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably practicable.
2. Pierce County shall provide to Grantee two sets of preliminary plans for individual projects as soon as such plans are developed to a state of reasonable certainty, and shall advise Grantee of the anticipated date of start of work on such projects.

3. Grantee shall, when requested by Pierce County in writing, locate their facilities in the field, show those locations on one set of the preliminary plans provided, and return that set to Pierce County Public Works and Utilities within four weeks of receiving the written request.

4. Pierce County shall provide to Grantee final plans for such projects as soon as such plans are available, and shall confirm or correct the anticipated date of start of work on such projects.

5. Pierce County shall assist Grantee in determining how its facilities shall be relocated. Such assistance by Pierce County shall include, at a minimum, copies of plans (as required above) and specifications for such County Projects, and information known to Pierce County as to existing survey control available for location of such County Projects. Such assistance shall not subject Pierce County to any liability for the costs of relocating the subject facilities a second time if Grantee incorrectly relocated its facilities the first time.

6. At the request of Grantee, Pierce County and Grantee shall meet to discuss how County Projects and utility relocations can be accomplished with the least impact to Grantee. Pierce County agrees to cooperate with Grantee in good faith and act reasonably and shall make its best efforts to minimize the impact upon Grantee of any County Projects or utility relocations.

7. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

   Relocation of Grantee's facilities shall normally be accomplished in advance of County Projects. In the event relocation of Grantee's facilities is done concurrently with such Projects, Pierce County shall be so notified and shall agree to a written schedule for relocation. Compliance with such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with County Projects.

8. If Grantee does not relocate its facilities in a timely manner as required above, Pierce County may relocate, or cause to be relocated, such facilities of Grantee as Pierce County deems necessary, and in the manner Pierce County deems necessary, at its sole discretion. Grantee hereby indemnifies and holds Pierce County, its employees, officers,
9. Grantee hereby indemnifies and holds harmless Pierce County, its officers, officials, and employees, from damages which may arise from Grantee's failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above, or any other act or omission by Grantee, its contractor(s), agents, officers, or employees related to the provisions of this Franchise.

10. It shall be conclusively presumed that Pierce County will have suffered damages as a result of exercising its rights as set forth in Item 8 above, and compensation for such damages will be difficult to ascertain, and, therefore, Grantee shall compensate Pierce County for the actual cost of such relocation of Grantee's facilities by Pierce County.

11. The exercise of its rights, as set forth in Item 8, above, by Pierce County in no way relieves Grantee from completing and/or finalizing the relocation of its facilities at no expense to Pierce County if the relocation work done by Pierce County is incomplete.

12. In the event a lawsuit is brought by Pierce County against Grantee to collect damages presumed under Item 10, above, for the exercise by Pierce County of its rights under Item 8, above, Grantee hereby agrees the only issue will be the actual cost to Pierce County for relocating Grantee's facilities. The party prevailing in such an action shall be allowed its legal fees and costs.

IX

The laying, construction, operation, and maintenance of Grantee's transmission lines and facilities authorized by this Franchise shall not preclude Pierce County, its agents or its contractors from blasting, grading, excavating, or doing other necessary work contiguous to the said lines and facilities of Grantee provided that Grantee shall be given 48 hours notice of said blasting or other work so Grantee may protect its lines and facilities.

X

If, at anytime, Pierce County shall vacate any County road, right-of-way, or other County property(ies) that is/are subject to the rights granted by this Franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, right-of-way, or other County property(ies) for the use of Pierce County, in either its proprietary or governmental capacity, then the County may at its option and by giving 30 days written notice to Grantee terminate this Franchise with reference to such
County road, right-of-way, or other County property so vacated, and Pierce County shall not be liable for any damages or loss to Grantee by reason of such termination.

Pursuant to Revised Code of Washington (RCW) 36.87.140, Pierce County shall reserve and retain a perpetual easement under, on, or over such vacated land for the construction, repair, and maintenance of Grantee’s facilities that at the time of such vacation are authorized or physically located on the land or a portion of the land being vacated.

XI

This Franchise is granted upon the further express condition that it shall not be an exclusive Franchise and shall not, in any manner, prohibit Pierce County from granting any other franchises under and along the Franchise Area of any kind and character or territories that may be deemed proper by the Pierce County Council, and this Franchise shall not in any way prevent Pierce County from using the Franchise Area, or affect the jurisdiction over it, and every part of it by Pierce County with full power to make the necessary repairs, changes, and alterations in the same and like manner as though this Franchise had never been granted.

The Franchise Area may include areas occupied by overhead transmission and distribution utility facilities that are owned and operated by a utility other than Grantee. If such occupancy preexisted Grantee’s intent to construct Facilities in that portion of the Franchise Area, and if such preexisting occupancy is authorized by a franchise granted to such utility by Pierce County that contains a common user clause (such clause being substantially in the form set forth below), then as to such portion of the Franchise Area, Grantee’s construction of any Facilities therein shall be subject to such common user clauses; provided, however, nothing herein shall require Grantee to (1) construct, operate, maintain, or use any Facilities in a manner that is not consistent with prudent utility practices; or (2) occupy, use, or employ any one or more of the labor, materials, facilities, equipment, tools, goods, services, designs, or properties of a third party, unless such occupancy, use, or employment is arranged and accomplished on reasonable terms and conditions.

This Franchise is subject to the following "common user clause." If Pierce County shall hereinafter grant a franchise to a utility (other than Grantee), and such subsequent franchise authorizes such utility to construct overhead transmission and distribution utility facilities within a portion of the Franchise Area where Grantee maintains Facilities pursuant to this Franchise, then in such event, Grantee shall permit such other utility to jointly use and occupy Grantee’s Facilities within such portion of the Franchise Area; provided, however, nothing herein shall require Grantee to (1) construct, operate, maintain, or use any Facilities in a manner that is not consistent with prudent utility practices; or (2) permit such joint use and occupancy unless the same can be arranged and accomplished on reasonable terms and conditions.
XII
All the provisions, conditions, regulations, and requirements herein contained shall be binding upon the successors and assigns of Grantee, and all privileges, as well as all obligations and liabilities of Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Grantee is mentioned.

XIII
Whenever any of the County roads, rights-of-way, or other County property(ies) as designated in this Franchise, by reason of transfer to another governmental agency or the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all County roads, rights-of-way, or other County property(ies) not so included in the transfer of city or town limits.

XIV
Grantee shall not sell, transfer, or assign this Franchise without first notifying the Pierce County Council. The terms and conditions set forth herein shall be binding on Grantee's successors and assigns unless amended by the Pierce County Council.

XV
Grantee acknowledges that Pierce County Charter Section 9.20, Franchises, provides in part: "All Franchises shall be subject to the right of the Council or the people acting for them through referendum, to appeal for cause, amend, or modify the Franchise in the interest of the public." Pierce County and Grantee agree that this Franchise may be terminated at any time upon 90 days written notice to Grantee to terminate this Franchise if Grantee fails to comply with its material terms and conditions. This Franchise is subject to amendment, modification, or amplification to conform to any State Statute, County regulation, ordinance, or right-of-way regulation, as may hereafter be enacted, adopted, or promulgated. Any change, amendment, modification, or amplification of this Franchise shall be in writing and shall be mutually agreed to by both parties.

XVI
If any term, provision, condition, or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise that shall continue in full force and effect.

XVII
Venue and jurisdiction for any controversy arising from the Franchise shall be in Pierce County, Washington. In the event either party initiates an action to enforce the terms of this Franchise, the substantially prevailing party in such action shall be entitled to recover its reasonable attorney's fees and costs.


XVIII

Grantee shall provide full acceptance of this Franchise and all its terms and conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County Council within 60 days from December 16, 2010. This requirement shall be a condition precedent to the Franchise taking effect. If Grantee does not provide assigned copy of the Franchise as set forth in this Section, this Franchise shall be null and void.

DATED at Tacoma, Washington, this 6 day of December, 2010.

[Signature]
Pat McCarthy
Pierce County Executive

Tanner Electric Cooperative accepts and agrees to comply with all terms and conditions of this Franchise.

[Signature]
Name

[Signature]
General Manager
Title

Tanner Electric Cooperative
Company, Corporate Name, or Individual

2-7-2011
Date