

**NORTH BEACH WATER DISTRICT  
PACIFIC COUNTY, WASHINGTON**

**RESOLUTION NO. 01-2014**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF  
NORTH BEACH WATER DISTRICT, PACIFIC COUNTY,  
WASHINGTON, ACCEPTING PACIFIC COUNTY FRANCHISE  
NO. 2013-3**

**WHEREAS**, North Beach Water District operates a public water system in the Pacific County; and

**WHEREAS**, a majority of the water lines and associated facilities owned by the District used to convey water to its ratepayers are located in public rights-of-ways owned by Pacific County; and

**WHEREAS**, chapter 36.55 RCW provides Pacific County the authority to grant non-exclusive franchises on its roads, right-of-ways, and other County property and stipulates requirements that must be met prior to granting a non-exclusive franchise, and

**WHEREAS**, North Beach Water District applied to Pacific County on October 28, 2013 requesting a reassignment of its existing franchise, and

**WHEREAS**, the Board of Commissioners of Pacific County, on December 10, 2013, did pass Resolution No. 2013-074 granting North Beach Water District a Non-Exclusive Franchise No.2013-3; now, therefore,

**BE IT RESOLVED** by the Board of Commissioners of North Beach Water District, Pacific County, to accept the terms and conditions imposed by Pacific County Franchise Ordinance No. 30A and Resolution No. 2013-074 both of which are attached hereto and incorporated herein as "Exhibit A", and

**BE IT FURTHER RESOLVED** by the Board of Commissioners of North Beach Water District, Pacific County, to authorize its general manager to execute the acceptance of franchise agreement without delay.

**ADOPTED** by the Board of Commissioners on North Beach Water District, Pacific County, Washington at its regular meeting held on the 21<sup>th</sup> day of January, 2014.

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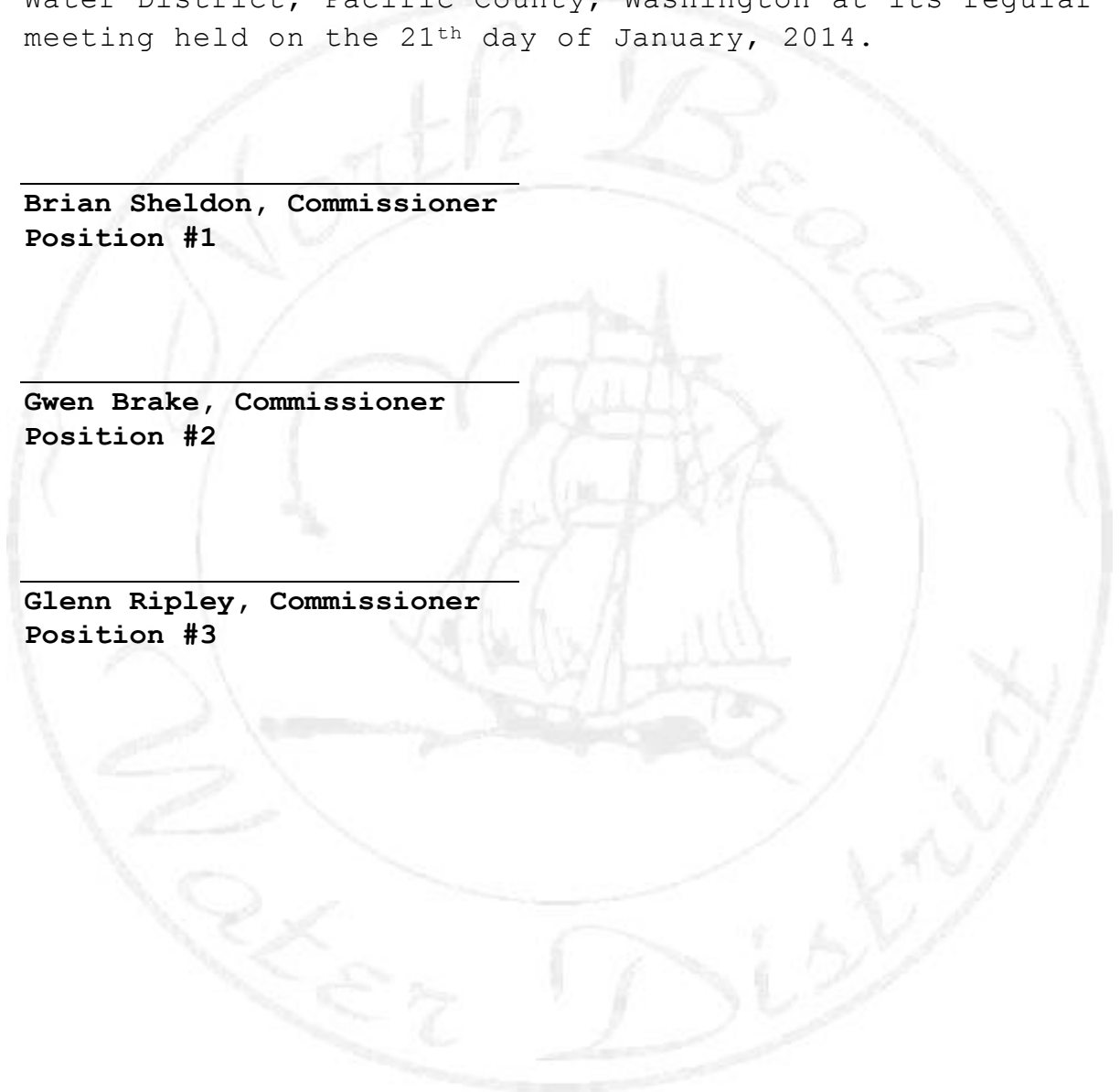
**Brian Sheldon, Commissioner**  
**Position #1**

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**Gwen Brake, Commissioner**  
**Position #2**

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**Glenn Ripley, Commissioner**  
**Position #3**



"Exhibit A"

BEFORE THE BOARD OF PACIFIC COUNTY COMMISSIONERS

RESOLUTION NO. 2013-074

FRANCHISE NO. 2013-3

COPY

A RESOLUTION GRANTING A NON-EXCLUSIVE FRANCHISE TO NORTH BEACH WATER DISTRICT TO USE COUNTY ROADS, RIGHTS-OF-WAY AND OTHER COUNTY PROPERTIES WITHIN PACIFIC COUNTY, WASHINGTON

In the granting of a non-exclusive franchise to use County roads, rights-of-way and other County properties within Pacific County, the Board of Pacific County Commissioners has reviewed State statute and County policy and procedure and finds the following facts:

1. A complete application was received on October 28, 2013, from the NORTH BEACH WATER District (GRANTEE) requesting a franchise to construct, maintain and operate a public water system and service line in Ocean Park.
2. RCW Chapter 36.55 provides that Pacific County has authority to grant a non-exclusive franchise on County roads, rights-of-way and other County property and stipulates requirements that must be met prior to granting a non-exclusive franchise.
4. Pacific County Ordinance No. 30A provides necessary rules for protecting the public interest and investment in facilities.
5. The Board of Pacific County Commissioners has conducted a public hearing to consider the merits of this application and to receive public comments regarding the advisability of granting a non-exclusive franchise to the applicant. The Board finds that granting the franchise is in the public interest.
6. The Board of Pacific County Commissioners has provided public notice and posting in accordance with State law.

IT IS HEREBY RESOLVED that a non-exclusive franchise is granted to the NORTH BEACH WATER District for a period of 10 years from the date of this Resolution, to construct, maintain and operate a public water system and service line in Ocean Park; further described below:

SECTION:	PORTIONS THEREOF:	TOWNSHIP:	RANGE
<u>3, 4, 5, 8, 9, 10</u>	<u>See Map</u>	<u>11 N</u>	<u>11 W</u>
<u>15, 16, 17, 20, 21, 22</u>	<u>See Map</u>	<u>11 N</u>	<u>11 W</u>
<u>27, 28, 29, 32, 33, 34</u>	<u>See Map</u>	<u>11 N</u>	<u>11 W</u>
<u>20, 21, 22</u>	<u>See Map</u>	<u>12 N</u>	<u>11 W</u>
<u>27, 28, 29</u>	<u>See Map</u>	<u>12 N</u>	<u>11 W</u>
<u>32, 33, 34</u>	<u>See Map</u>	<u>12 N</u>	<u>11 W</u>

This non-exclusive franchise is granted upon the following expressed Terms and Conditions:

- (1) The said GRANTEE, its successors and assigns, shall have the right to enter only upon the above described county rights of way for the purpose of constructing its facilities and for operating, maintaining, repairing and using those facilities.
- (2) The terms and conditions of Pacific County Ordinance No. 30A, an ordinance prescribing terms and conditions for franchise agreements granted by Pacific County, are incorporated herein by reference and made a part of this Resolution. The GRANTEE, for itself, its successors and/or assigns, expressly agrees that it will strictly comply with the requirements of this ordinance and any amendments thereto. The GRANTEE understands and acknowledges that the ordinance requires it to obtain a permit from the County Engineer before doing work under this non-exclusive franchise.
- (3) The GRANTEE shall submit a facility plan to the Pacific County Department of Public Works prior to beginning any work for review of all new proposed facilities exclusive of all service connections and appurtenances. Construction permits will be granted upon the determination that the facility plan complies with relevant land use requirements.

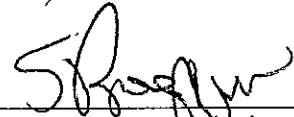
- (4) The GRANTEE shall commence construction work under this non-exclusive franchise only after the effective date hereof, and after first securing necessary approvals and permits from the Pacific County Department of Community Development, the Department of Public Works and any other environmental permits needed and securing a locate from other utilities in the area.
- (5) In accepting this Non-Exclusive Franchise Agreement, the NORTH BEACH WATER District, including its successors and assigns, does hereby covenant and agree to indemnify and protect and save harmless the COUNTY and its officers and employees from all claims, actions, or damages of every kind and description which may accrue to or be suffered by any person, partnership, corporation, or other entity of any kind that arise in whole or in part from intentional tort(s), or negligent act(s) or omission(s), or strict liability of the Western NORTH BEACH WATER District or its employees, agents, successors, or assigns. If the above sentence applies and any suit or action is brought against the COUNTY, its officers, its employees, or any combination thereof, the NORTH BEACH WATER District, including its successors or assigns, shall defend the suit or action at his or her or their sole cost and expense and shall fully satisfy any judgment that is rendered against the COUNTY, its officers, its employees, or any combination thereof. The NORTH BEACH WATER District shall maintain and provide proof of occurrence based general business professional liability insurance in the amount of a minimum of \$2,000,000 or greater per occurrence for the term of the FRANCHISE and in accordance with Franchise Ordinance No. 31A. NORTH BEACH WATER District agrees that its general business professional liability insurance shall be primary to the COUNTY's in the event that a claim or suit for damages is brought against both the NORTH BEACH WATER District and COUNTY. Due to the term of the lease and potential inflationary costs overtime, the COUNTY has the ability to review and require an updated amount for insurance coverage for both per occurrence and aggregate. NORTH BEACH WATER District shall be responsible at its own expense to provide any and all employment insurance coverage, including but not limited to, unemployment insurance, worker's compensation insurance, etc. for any and all of its employees as might apply.
- (6) The full acceptance of this non-exclusive franchise and all its terms and conditions is a condition precedent to its taking effect, and unless the non-exclusive franchise is fully accepted by the GRANTEE in writing and filed with the Clerk of the Board of County Commissioners of Pacific County within thirty (30) days of today's date, this grant shall be null and void.

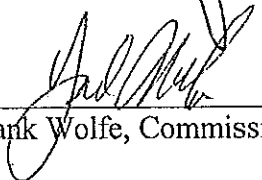
PASSED by the Board of Pacific County Commissioners meeting in regular session at South Bend, Washington, by the following vote, then signed by its membership and attested to by its Clerk in authorization of such passage this 10<sup>th</sup> day of December, 2013:

3 YEA; 0 NAY; 0 ABSTAIN; and 0 ABSENT.

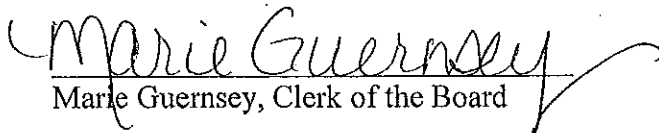
PACIFIC COUNTY, WASHINGTON  
BOARD OF COUNTY COMMISSIONERS

  
\_\_\_\_\_  
Lisa Ayers, Chair

  
\_\_\_\_\_  
Steve Rogers, Commissioner

  
\_\_\_\_\_  
Frank Wolfe, Commissioner

ATTEST:

  
\_\_\_\_\_  
Marie Guernsey, Clerk of the Board

ACCEPTANCE OF FRANCHISE

I HEREBY ACCEPT the terms and conditions imposed by Pacific County Franchise Ordinance No. 30A and Resolution No. 2013-074.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

NORTH BEACH WATER District

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Address

\_\_\_\_\_  
City & State

\_\_\_\_\_  
Zip

\_\_\_\_\_  
Phone #

\_\_\_\_\_  
Email Address

Date Acceptance received by Board of Pacific County Commissioners: \_\_\_\_\_

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

ORDINANCE NO. 30-A

AN ORDINANCE PRESCRIBING TERMS AND CONDITIONS APPLICABLE TO FRANCHISES GRANTED TO PUBLIC AND PRIVATE UTILITY CORPORATIONS AND INDIVIDUALS TO USE PUBLIC ROADS, RIGHTS-OF-WAY AND OTHER COUNTY PROPERTIES WITHIN THE COUNTY OF PACIFIC, STATE OF WASHINGTON.

THE BOARD OF COUNTY COMMISSIONERS OF PACIFIC COUNTY, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. GENERAL PROVISIONS AND INTENT. The following terms and conditions shall be subject to the constitution and laws of the State of Washington and shall apply and shall be deemed to be terms and conditions of any rights granted or franchise to use the public roads, streets, avenues, highways, alleys, rights-of-way or other county properties of Pacific County hereafter granted by the county to any individual or municipal or private corporation engaged in the public service or utility business, unless and except to the extent that such ordinance or resolution granting such franchise expressly provides terms or conditions contrary to those herein contained.

It is the intent of this ordinance to protect the public interest and investment of the citizens of Pacific County in roads, rights-of-way and other county property by assuring that all work performed shall be conducted in a thorough and workmanlike manner and that the expenses incurred in the administration of the franchises, issuance of permits, and inspection of the work performed, are borne by the franchise or permit holders. In the performance of such work and the construction of other facilities on public roads, rights-of-way or other county properties the grantee shall leave all affected areas in such a way as to create minimum interference or hazard with public travel or access and shall take all due and necessary precautions to assure that no damage or injury shall occur or arise by reason of such work. The grantee understands and agrees to be solely liable for any injury to any person or persons or damage to property sustained through carelessness or neglect, or through any failure or neglect to properly guard or give warning of any such work.

It is further the intent that grantee shall construct, operate and maintain facilities or systems in full compliance with all laws, rules, regulations, standards of performance and levels of service applicable to the industry.

Franchises shall be granted by resolution of the Board of County Commissioners of Pacific County in accordance with state statute as exists or is hereinafter amended.



Section 2. ANNEXATION, ABANDONMENT, VACATION, OR SALE OF COUNTY PROPERTY.

Whenever any of the roads, rights-of-way or other county property designated in such franchise shall be eliminated from county jurisdiction by reason of the incorporation, annexation, abandonment, vacation, or sale, then all the rights, privileges and franchises so granted shall terminate in respect to the county property so eliminated, but otherwise the franchise shall continue in full force and effect in respect to all county property not so eliminated.

If at any time Pacific County shall vacate, abandon or sell any road, right-of-way or other county property which is subject to rights granted by said franchise and said vacation, abandonment, or sale shall be for the purpose of acquiring the fee or other property interest for the use of Pacific County in either its proprietary or governmental capacity, then the Board of County Commissioners of Pacific County may at its option, by giving ninety (90) days written notice to the grantee and after granting an alternate route, terminate this franchise with reference to such county property so vacated, abandoned, or sold and Pacific County shall not be liable for any damages or losses to the grantee by reason of such termination. Wherever possible, Pacific County agrees to protect the grantee's interest by retaining easement rights.

Section 3. COUNTY RIGHTS OF ACQUISITION. The granting of such franchise shall not preclude Pacific County from acquiring by purchase or condemnation any or all of the mains, laterals, pipes, poles, cables, plant, system, property, equipment, facilities or other improvements installed by the grantee within the roads, rights-of-way or county property within Pacific County.

This franchise is subject to the power of eminent domain and Pacific County reserves for itself the right at any time upon thirty (30) days written notice to grantee to so change, amend, modify, repeal or amplify any of the provisions or conditions herein enumerated in the interest of the public and this franchise may be terminated at any time if the grantee's facilities are not operated or maintained in accordance with all applicable statutes, orders or regulations. In any proceeding under eminent domain, the franchise itself shall have no value.

Section 4. COUNTY IMPROVEMENTS AND PRIORITY RIGHTS. The construction, maintenance or operation of the system of improvements granted under said franchise shall not preclude Pacific County, its accredited agents or its contractors, from doing necessary work contiguous to the said grantee's improvements or facilities providing that the grantee shall, except in cases of emergency as determined by the County Engineer or designee, be given prior notice by the County Engineer or designee of said work in order that grantee may protect its/his lines, facilities, improvements and property. If at any time Pacific County deems it advisable or in the public interest to improve any of its roads, rights-of-way or other county properties by grading, regrading, surfacing or paving same, or altering, changing, repairing or improving same, or provide other public services or facilities, the grantee upon prior notice by the County Engineer or designee, shall, at its/his own expense,

so raise, lower, move, or replace its/his lines or improvements to conform to such new grades or improvements as may be established, or place said facilities in such locations or positions as shall cause interference with any such improvements or work thereon as contemplated and Pacific County shall in no wise be held liable for any damages to said grantee that may occur by reason of the improvements, repairs or maintenance performed or by the exercise of any rights so reserved.

If a readjustment or relocation is necessitated for a reason other than the above enumerated county purposes, the person, firm or private corporation or entity requesting such readjustment or relocation shall pay the grantee the actual costs thereof. In the event Pacific County should require such readjustment or relocation in connection with any improvement or project funded, wholly or in part by state or federal funds, Pacific County shall pay grantee such proportion of the actual cost of readjustment or relocation to the extent provided for by such state or federal funds received in connection with such improvements or project.

Pacific County reserves the right to specify the location or relocation of all facilities installed in or along county roads, rights-of-way or other county property and may, from time to time upon reasonable notice, require the removal and replacement thereof in the public interest. In general, the owners of all public facilities installed in or along such county roads, rights-of-way or other county properties prior in time to installation of the facilities of the grantee will have preference as to the positioning and location of such facilities. Such preferenced rights may be terminated by Pacific County in the event of the necessity of improving any of its roads, rights-of-way or other county properties by grading, regrading, surfacing or paving same, or altering, changing, repairing or improving same, or providing any new or improved public services.

If at any time Pacific County shall install facilities for sewage, water supply, drainage, or other public improvements of any type whatever upon any of the roads, rights-of-way or other county properties which is subject to rights granted by this franchise wherein grantee's facilities interfere with the county project, the grantee, upon twenty-four (24) hours prior notice by the County Engineer or designee, shall temporarily remove and/or relocate its/his lines, pipes, facilities or other improvements at its/his own expense during said installation and replace same at its/his own sole cost and expense.

Section 5. APPLICATION FEE. All applications for franchises or revisions or amendments to existing franchises shall be accompanied by an application fee in the amount of one-hundred (\$100.00) dollars or other such amount as shall be established by resolution of the Board of County Commissioners of Pacific County. Expenses related to posting and publishing public notices regarding the application and processing the application shall be paid from the application fee.

Section 6. FRANCHISE REVISIONS. The county reserves the right at any time upon a forty-eight (48) hour written notice to so change, amend, modify or amplify any of the provisions or conditions herein enumerated to conform to any state statute or county regulation relating to the public welfare, health, safety or highway regulation as may hereafter be enacted, amended, adopted or changed. Such franchise may be terminated upon thirty (30) days written notice if same is not operated or maintained in accordance with the revised franchise provisions.

The grantee, notwithstanding any other terms of such franchise appearing to the contrary, shall be subject to the police power of Pacific County to adopt and enforce general ordinances and resolutions necessary to protect the safety and welfare of the general public in relation to the rights granted in such franchise.

Section 7. FEE FOR FRANCHISE RIGHTS. For and in consideration of the rights and privileges herein set forth, the grantee agrees that Pacific County has the right during the term of this franchise, by ordinance or resolution, to impose fees for the rights and privileges granted. The Board of Commissioners of Pacific County agrees to provide thirty (30) days written notice prior to the imposition of this fee in order to negotiate the actual rate to be assessed and the payment schedule.

The assessment rate and payment schedule may be based on factors determined by the Board of Commissioners of Pacific County and may include gross revenues derived from monthly service charges paid by subscribers located within Pacific County and may include revenues received as installation charges and fees for reconnections, inspections, repairs or modifications of any installation in the areas served by this franchise.

Grantee agrees to and shall provide available financial information to the Board of County Commissioners of Pacific County in determining the basis for a fee schedule or the amount to be assessed. Grantee agrees to and shall during regular business hours and at its office located in Pacific County, Washington, allow agents of Pacific County access for inspection and reproduction of all of grantee's business records, gross revenue reports, or rules and regulations relevant to a determination of the gross revenues received by grantee from the areas served by the facilities permitted by this franchise if the fee schedule is to be based, or is based, on gross revenues.

Acceptance of any payment due under this section shall not be deemed to be a waiver of any breach of this franchise occurring thereto, nor shall the acceptance by Pacific County of any such payments preclude Pacific County from later establishing that a greater amount was actually due, or from collecting any balance due.

Compensation paid by the grantee to Pacific County may, as determined by the Board of Commissioners of Pacific County, be a credit against license, business, occupation, or excise taxes which Pacific County may now or hereafter impose upon the grantee. However, nothing contained in this franchise shall give the grantee any credit against any ad valorem

property tax now or hereafter levied against real or personal property within Pacific County, or against any local improvement assessments, or reimbursement or indemnity paid to Pacific County.

Section 8. FRANCHISE NOT EXCLUSIVE. Such granted rights or privileges shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Pacific County from granting other franchises of a like nature or franchises for other public or private utilities over, along, across, under and upon any of the roads, rights-of-way or other county properties and shall in no wise prevent or prohibit Pacific County from using any of said roads, rights-of-way or other county properties or affect its jurisdiction over them or any part of them.

All construction or installation of mains, valves, pipes, poles, cables, lines, fittings, facilities, or other improvements or the service, repair or relocation of the same, performed along, over and/or under the county roads, rights-of-way or other county properties subject to said franchise shall be done in such a manner as not to interfere with the construction and maintenance of other facilities, public or private, drains, drainage ditches and structures located therein, nor with the maintenance or improvement of such county roads, rights-of-way or other county properties.

Section 9. PLANS, SPECIFICATIONS AND PERMIT REQUIRED. Grantee shall install the pipes, poles, lines, cables, facilities or other authorized improvements in the designated roads, rights-of-way or other county property pursuant to plans and specifications approved by the County Engineer and under approval and inspection provided by Pacific County at the expense of the grantee, whenever the grantee's inspection services are determined by the County Engineer to be inadequate.

Grantee shall at all times keep available to Pacific County in its office located in Pacific County, Washington, full and complete plans, maps and records showing the exact location of all franchise equipment and facilities installed in the roads, rights-of-way or other county property. Grantee shall file with the County Engineer on or before the first Monday in February of each calendar year, a current or updated set of maps drawn to a scale acceptable to the County Engineer showing the location of all franchise equipment and facilities installed in the roads, rights-of-way or other county property within Pacific County during the previous calendar year. During the first year that this franchise shall take effect, such filing shall include all such equipment and facilities previously installed or operated, either prior to or after the effective date of the franchise.

Before any work is done by the grantee under franchise, grantee shall first obtain from the County Engineer a permit to do work accompanied by such supporting documents and/or field information as required by the County Engineer. The grantee shall specify the class and type of material to be used and provide sufficiently detailed plans so as to adequately show the location and type and extent of work to be performed. All

material and equipment shall conform to or exceed the standards of the industry. When requested by the County Engineer, the manner of excavation, construction installation, backfill and the type and size of temporary structures, including traffic turnouts, road obstructions, or other information, shall be submitted for approval. The grantee shall pay to the county the actual cost and expenses incurred in the examination, necessary inspection and supervision of such work granted by the permit and done by the grantee or by an independent contractor under the franchise of the grantee.

The grantee, its/his successors or assigns, shall commence construction under the permit granted by the County Engineer within the time period stated and shall have completed and have in operation that portion of the system of improvements as may be specified in such permit or the rights therein conferred shall cease and terminate.

Grantee understands and agrees to be solely responsible for obtaining all permits and for conducting all work on county roads, rights-of-way or other county property as may be required to connect or provide service or facility connections to users of the grantee's services.

Section 10. WORKMANSHIP AND PUBLIC SAFETY. No construction shall be performed in such a manner as to create a hazard or interfere with free and lawful uses of the road, right-of-way or other county properties. Grantee shall take all reasonable care and interfere as little as possible with public travel, and to take all reasonable precautions to protect persons and vehicles using the roads, rights-of-way or other county properties from injury or damage caused by activities of the grantee.

Grantee shall leave all roads, rights-of-way and other county properties in as good and safe condition in all respects as before the commencement of such work by the grantee, its/his agents or contractors. All recorded monuments which have been disturbed or displaced by the work shall be reset to the specifications and approval of the County Engineer or designee.

In case of any damage to roads, rights-of-way or other county properties or to drainage structures, ditches, walks, drain pipes, embankment rails, bridges, trestles, survey monuments or other property or facilities by the grantee, the grantee agrees to immediately repair all damage at its/his sole cost and expense.

When the County Engineer determines that an emergency exists, the County Engineer may order and have done any and all work necessary to restore to a safe condition any such road, right-of-way or other county property left by the grantee or its/his agents in an unacceptable condition. The County Engineer may cause to be replaced or reset survey monuments if grantee fails to replace or reset same within a reasonable time after completion of construction. The grantee, upon demand, shall pay to Pacific County all costs of such construction or repair and of doing such work.

Section 11. GRANTEE TO INDEMNIFY COUNTY. The grantee, its/his successors or assigns, shall protect, indemnify and save harmless Pacific County from all claims, actions or damages of every kind and description which may accrue to or be suffered by any person or persons, corporation or property by reason of any faulty construction, defective material or equipment operation or by the improper occupation of said roads, rights-of-way or other county properties by the said grantee or by reason of the negligent, improper or faulty manner of safeguarding any excavation, temporary turnout or inefficient operation by the grantee of its/his facility over or under said roads, rights-of-way or other county properties or for any other negligent acts or omissions on the part of grantee. In the event that suit or action is brought against Pacific County for damage arising out of or by reason of any of the above-mentioned causes, the grantee, its/his successors or assigns, will, upon notice of the commencement of said action, defend the same at its/his sole cost and expense and in case judgment shall be rendered against Pacific County in such suit or action, grantee will fully satisfy said judgment within ninety (90) days after the said suit or action shall have been finally determined, if determined adversely to Pacific County. Grantee its/his successors or assigns shall have the right to employ its/his own counsel in any cause or action and be given the management of the defense thereof.

Grantee shall carry public liability insurance to the extent of \$1,000,000.00 combined single limit liability or other such amount as deemed necessary by the Board of Commissioners of Pacific County. Grantee is to include on said insurance policy, as additional named insureds, the following: County of Pacific, a municipal corporation of the State of Washington, and its Board of Commissioners and employees and those persons who were, now, are, or shall be duly elected or appointed officials or their designees, or members or employees thereof. Grantee shall provide proof of said insurance prior to the effective date of granting a franchise and thirty (30) days prior to each anniversary of the said effective date. Said insurance policy shall contain a clause stipulating that the insurance will not be cancelled without providing thirty (30) days written notice to the Board of Commissioners of Pacific County.

Acceptance by Pacific County of any work performed by the grantee at the time of completion shall not be a ground for avoidance of this covenant.

Section 12. LIABILITY FOR DAMAGES. In consideration of the granting of such franchise the grantee, for itself/ himself and its/his assigns, shall contract and agree to save Pacific County harmless from any liability of whatever nature arising out of any damage and/or destruction done or suffered to be done to grantee's mains, valves, pipes, poles, cables, lines or other fittings or appurtenances or facilities of whatsoever nature placed upon, along, across, over and/or under the county road, right-of-way or other county property. This shall be construed to mean that the grantee accepts such franchise and any rights conferred thereunder for the use and occupation of any portion of the road, right-

of-way, or other county property at its/his own sole risk, and agrees to assume responsibility for any damage occasioned to grantee or third parties by Pacific County in the maintenance and/or construction work performed by Pacific County upon the road, right-of-way or other county property which is subject to rights granted by this franchise and which would not have occurred but for the presence on said road, right-of-way or other county property of the grantee's pipes, poles, lines, cables, fittings or other facilities or improvements.

Section 13. PROVISIONS BIND SUCCESSORS. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns and independent contractors of the grantee, and all rights and privileges of the grantee shall apply to its/his successors, assigns and such contractors equally as if they were specifically mentioned herein wherever the grantee is mentioned.

The grantee, its/his successors and assigns shall have the right to sell, transfer or assign said franchise upon giving written notice of intention to do so not less than sixty (60) days in advance of the date of any proposed transfer to the Board of County Commissioners of Pacific County.

The obligations imposed upon the grantee by the express terms of this franchise or implied by the terms of this or any other ordinance or resolution affecting the same, shall be deemed to include every employee, nominee or independent contractor of the grantee performing work in the county roads, rights-of-way or other county properties under contract, direction, request or authority of the grantee under this franchise. Grantee, its/his agent, employee or independent contractor, shall be responsible to Pacific County for any injury or damage to county property or the expense incurred or suffered by Pacific County in correcting defects in work or other improvements damaged by the acts or neglect of such servants, agents or independent contractors of grantee.

Section 14. FRANCHISE RIGHTS FORFEITED. If the grantee, its/his successors or assigns, shall through willful or unreasonable neglect, fail to perform promptly and completely each and every term, condition or obligation imposed under or pursuant to this ordinance or to heed or comply with any notice given the grantee under the provisions of such grant, then the grantee, its/his successors or assigns, shall forfeit all rights conferred thereunder and such franchise may be revoked or annulled by resolution of the Board of County Commissioners of Pacific County after thirty (30) days written notice to the grantee.

Section 15. EXPIRATION OR TERMINATION OF FRANCHISE. Upon expiration of franchise, the grantee shall be given consideration by the Board of County Commissioners of Pacific County for a new franchise providing the grantee has performed under the conditions or obligations imposed upon it under this ordinance.

Upon termination of franchise, or the grantee does not apply for or is not granted a new franchise, the grantee shall be given a first option to sell or transfer its plant, system, property, equipment and facilities to another.

If the grantee's option to sell or transfer its plant, system, property, equipment and facilities to another is not exercised, the Board of County Commissioners of Pacific County may, by written notice, require the grantee to renew this franchise for a period of one (1) year or until other arrangements have been made, whichever period is shorter. Such period shall commence from the date of expiration or termination of this franchise. However, the grantee may cease to render service when this franchise expires if the grantee gives the Board of County Commissioners of Pacific County written notice of such intention at least two (2) years prior to the expiration of this franchise. The written notice to continue service must be given by the Board of County Commissioners of Pacific County not more than thirty (30) days after the date the franchise expires or on or before the date this franchise is terminated, as the case may be. If the Board of County Commissioners of Pacific County requires the grantee to continue to render service after the date of the expiration or termination of this franchise, the Board may not require the grantee to extend its line, plant or system into, and render service to a locality not already served on the date this franchise is terminated or expires.

The Board of County Commissioners of Pacific County may require the grantee within one (1) year or such further time as may be allowed to remove from the roads, rights-of-way, and other county property all of its property, equipment, and facilities and to replace and restore the roads, rights-of-way and other county property to their former condition. If the grantee fails to remove all its property and equipment within the required time, or if the grantee fails to replace and restore the roads, rights-of-way and other county property the Board of County Commissioners of Pacific County may remove the property and equipment and/or replace and restore the roads, rights-of-way and other county property to their former condition, all at the sole cost and expense of the grantee.

Section 16. GRANTEE TO FILE ACCEPTANCE. If within thirty (30) days of the granting of this franchise, the grantee shall have failed to file written acceptance of same with the Board of County Commissioners of Pacific County, then the rights and privileges herein granted shall be deemed forfeited and declared null and void.

Section 17. BOND REQUIRED. Before undertaking any of the work or improvements authorized by the franchise or permits issued, the grantee, if other than a municipal corporation, shall furnish to the county a bond, executed by grantee and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be established by Pacific County as sufficient to insure performance of the grantee's obligations under such franchise. The bond shall stipulate that the



grantee shall well and truly keep and observe all of the covenants, terms and conditions and faithfully perform all of grantee's obligations under said franchise or permit, and to reset or replace any defective work performed or materials installed by or under the direction of the grantee, its/his employees or contractors. The bond shall be for a minimum period of two (2) years from the date of the replacement and acceptance by Pacific County of such repaired roads, rights-of-way or other county properties and may be met by surety bonds of a continuing nature now in effect or that may hereafter come into effect.

Section 18. UNDERGROUND UTILITIES DESIRED. The grantee, as far as practicable, shall construct all new utility facilities underground. Extension of overhead facilities following roads, rights-of-way or other county properties shall be undertaken only with the approval of the County Engineer. Grantee by acceptance recognizes the desirability of underground facilities rather than overhead facilities and shall, if applicable, convert existing overhead facilities to underground facilities as and when equipment replacement is undertaken, or when other existing overhead utilities are placed underground, unless such replacement is unsafe, impractical, or economically unreasonable. Service extension policies and procedures established by the grantee, and uniformly applied throughout its service area, shall be the standard in determining what is practical, impractical or economically unreasonable.

Grantee agrees to be solely responsible for placement of underground facilities and to initiate and maintain contact and coordinate with all other users of the affected road, right-of-way, or other county property and other franchise or permit holders to the maximum extent practical in order to assure proper utilization of available roads, rights-of-way, and other county property.

Section 19. COMPLIANCE WITH LAWS AND ORDINANCES. It is the sole responsibility of the grantee to obtain all other required permits and approvals and to comply with all other rules, regulations, or applicable laws. The permit process prescribed in this ordinance is subject to the Washington State Environmental Policy Act.

Section 20. APPEALS. Action of the County Engineer may be appealed by the grantee or by any aggrieved person to the Board of County Commissioners of Pacific County. Such appeal must be filed with the Board not more than thirty (30) days from the date of the County Engineer's action. The notice of appeal shall be accompanied by an appeal fee of one-hundred (\$100.00) dollars or other such amount as shall be established by the Board of County Commissioners of Pacific County.

In reviewing an appeal the Board of County Commissioners of Pacific County shall consider all matters submitted by the grantee or person appealing and the County Engineer, together with such other evidence as it deems relevant, and shall either affirm or reverse the County Engineer's decision, or remand the matter to the County Engineer or grantee or aggrieved person for further investigation.

Action of the Board of County Commissioners of Pacific County may be appealed by the grantee or by any aggrieved person to the Superior Court. Such appeal must be filed in the Superior Court of Pacific County not more than thirty (30) days from the date of the action by the Board of County Commissioners of Pacific County. All appeals to the Superior Court shall be filed in the manner provided for court actions pursuant to the Superior Court Rules then in effect.

Section 21. TERM OF FRANCHISE. The rights and privileges herein granted shall be in effect for a period of ten (10) years or other such term as established by the Board from the date of signing of the resolution by the Board of County Commissioners of Pacific County.

Five (5) years from the date of granting this franchise, the rights conferred hereby to the grantee may, at the election of the Pacific County Board of Commissioners and pursuant to notice, be terminated with respect to those county roads, rights-of-way and other county property or portions thereof upon which the grantee has not laid, constructed and placed in operation its/his facilities.

Section 22. PENALTY PROVISIONS. Any violation of the provisions of this ordinance or amendments thereto is hereby made a misdemeanor. Each day such violation continues may be considered a separate offense.

Notwithstanding the imposition of any penalties hereunder, Pacific County may institute any appropriate action or proceeding to require compliance with or to enjoin violation of the provisions of this ordinance or any administrative orders or determinations made pursuant to this ordinance.

Section 23. SUPERSESSION AND SEVERABILITY. This ordinance supersedes and repeals Ordinance No. 30 adopted by the Board of County Commissioners of Pacific County on 3 September, 1968.

If any portion of this ordinance is held invalid, such decision shall have no effect upon the validity of the remaining portions of this ordinance. The Board of County Commissioners of Pacific County hereby declares that it would have adopted this ordinance and each part or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

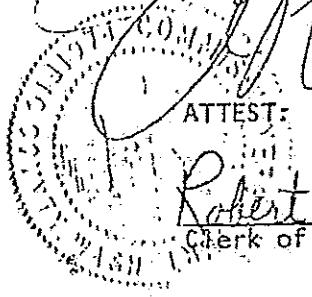
Section 24. DATE OF EFFECT. This ordinance shall be in full force and effect on the date of signature.

PASSED by the Board of County Commissioners of Pacific County on this 9<sup>th</sup> day of June 1981, and signed in authentication of its passage this 9<sup>th</sup> day of June 1981.

APPROVED AS TO FORM:

  
Prosecuting Attorney

ATTEST:

  
Robert M. Johnson (Clerk)  
Clerk of the Board

BOARD OF COUNTY COMMISSIONERS  
PACIFIC COUNTY, WASHINGTON

Bill Crossman  
Commissioner

Charles F. Johnson  
Commissioner

Hermon Bratton  
Commissioner