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ISLAND COUNTY AUDITOR

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**FRANCHISE
ISLAND COUNTY WASHINGTON**

After Recording Return To:
Island County Engineer

Franchise #74R
Plat of Deception Park View, Divisions 1 & 2
Sec. 35, Twp. 34N, Rge. 1E

In the Matter of the Application of

Deception Park View Community Association, a Washington non-profit corporation, for a franchise to construct, operate and maintain an existing water distribution system in, along, under and/or across all County roads located within the Plat of Deception Park View, Divisions 1 and 2, located in the South West Quarter (SW¹/₄) of Section 35, Township 34 North, Range 1 East, W.M., Island County, Washington.

The application of Deception Park View Community Association, its successors and assigns, for a franchise to construct, operate, and maintain an existing water distribution system in, along, under and/or across all County roads located within the Plat of Deception Park View, Divisions 1 and 2, located in the South West Quarter (SW¹/₄) of Section 35, Township 34 North, Range 1 East, W.M., Island County, Washington having come on regularly for hearing on the 13th day of January, 2003 before the County Commissioners of Island County, Washington under the provisions of Chapter 36.55 RCW Franchises on Roads and Bridges as now in effect or as hereafter amended, and it appearing to the County Commissioners that notice of said hearing, as required by law, has been duly given and that it is for the public interest to grant the franchise herein granted; it is

ORDERED that a franchise be and the same hereby is given and granted to Deception Park View Community Association, its successors and assigns (hereinafter referred to as "the Holder") to construct, operate and maintain an existing water distribution system, together with the necessary laterals and service connections in, along, under and/or across all County roads located within the Plat of Deception Park View, Divisions 1 and 2, located within the South West Quarter (SW¹/₄) of Section 35, Township 34 North, Range 1 East, W.M., Island County, Washington for a period of time to expire on the 13th day of January, 2028 subject to the terms and conditions hereinafter enumerated.



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1. Said water distribution system shall at all times be constructed and maintained so as not to interfere with the use of the county road for travel or maintenance.
2. Whenever necessary for the construction, repair, improvement, alteration or relocation of all or any portion of said county road as determined by the Island County Engineer, any or all of said water distribution system shall be immediately removed from said county road, re-laid or relocated thereon as required by the Island County Engineer.
3. The work of constructing, removing and relocating any and all of said existing and/or future water distribution lines in said water distribution system shall be done at the expense of the holder, and with the least possible interference with travel upon the said county road, and to the entire satisfaction and under the supervision of the Island County Engineer and none of such work shall be undertaken or carried on without ten days written notice having been first given to the Island County Engineer.
4. Any and all damage or injury done or caused to said county road or any portion thereof in the construction, operation, maintenance or repair of said water distribution system shall be immediately repaired and reconstructed under the supervision and to the satisfaction of the Island County Engineer; and in the event the Holder shall fail, neglect or refuse to immediately repair and reconstruct said damage, or injury to said county road, the same may be done by the County of Island (hereinafter referred to as the "County") and the expense and cost thereof shall immediately be repaid by the Holder to the County. In performing any such repairs, neither the County nor any of its employees, agents or subcontractors shall be deemed to be an employee, agent, or subcontractor of the Holder.
5. The Holder shall indemnify and save harmless and defend the County, its appointed and elected officers and employees from and against any and all claims, liability, losses, costs (including attorney's fees), and/or causes of action, which may arise from any act or omission of the Holder, its agents, subcontractors, servants or employees in the performance of services under this franchise. The Holder further agrees to indemnify, save harmless and defend the County, its agents, servants, and employees from and against any claim, demand or cause of action, in connection with or incident to the work performed under this franchise, of whatsoever kind or nature arising out of any conduct or misconduct of the Holder, its agents, subcontractors, servants or employees for which the County, its appointed officers, or elected officers, or employees are alleged to be liable. Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the Holder, its agents, subcontractors, servants or employees and (b) the County, its appointed or elected officers or employees, this indemnity provision, with respect to claims or suits based upon such negligence, shall be valid and enforceable only to the extent of the Holder's negligence or the negligence of the contractor's agents, subcontractors, servants or employees. This requirement of the Holder to indemnify and defend the County, its appointed and elected officers and employees shall not apply when the damages are caused by or result from the sole negligence of the County, its appointed or elected officers or employees. In the event of litigation between the parties to enforce the rights



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under this paragraph, reasonable attorney's fees shall be allowed to the prevailing party.

Neither the application by the Holder for any permit or authorization pertaining to the use or occupancy by the Holder of any County road or other County right-of-way or pertaining to the performance on any County road or other County right-of-way of any work by the Holder or by any of its agents, subcontractors, servants or employees, nor the acceptance by the Holder of any such permit or authorization, nor the performance of any activity by the Holder or any of its agents, subcontractors, servants or employees pursuant to any such permit or authorization, nor the acceptance or enjoyment by the Holder of any benefit or privilege arising under any such permit or authorization shall be effective to enlarge or diminish the Holder's obligation or liability to indemnify or hold harmless the County or any of its appointed or elected officers and employees.

6. Upon failure, neglect or refusal of the Holder to immediately do and perform any change, removal, relaying or relocating said water distribution system, or any repairs or reconstruction of said county road herein required of the Holder, the County may undertake and perform such requirement and the cost and expense thereof shall be immediately repaid to the County by the Holder.
7. Any breach of any of the conditions and requirements herein made, or failure on the part of the Holder of this franchise to proceed with due diligence and in good faith after its acceptance, with construction work hereunder, shall subject this franchise to cancellation after a hearing before the County Commissioners, of which said hearing the Holder shall be given at least ten days written notice, if at that time the Holder is a resident and doing business in the State of Washington. Said written notice shall be by certified mail, return receipt requested, if at the time the Holder is a resident or a corporation and doing business in the State of Washington. Otherwise said notice shall be by publishing a notice of said hearing once a week for two consecutive weeks in a newspaper of general circulation in Island County, Washington, the last publication to be at least ten days before the date fixed for said hearing.
8. This franchise is non-exclusive and the County reserves the right to grant franchises to other persons or companies to use the County roads or any part thereof covered by this franchise for the same purposes authorized by law.
9. The granting of this franchise shall place no obligation upon the Island County Engineer and/or the County Commissioners to warrant or defend the rights hereby granted.
10. In constructing, operating, maintaining and repairing said water distribution system the Holder shall conform to applicable ordinances and to policies or requirements made by the Island County Engineer, or any County department or officers authorized to supervise and regulate such work and utility for the protection and safety of the public.
11. The construction that is authorized through the granting of this franchise shall be commenced within one year from the date hereof; otherwise the franchise shall be



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null and void and terminated upon notice as provided by law. Time is the essence of this provision.

12. This franchise is granted under the provisions and subject to the conditions and requirements of Chapter 36.55 RCW Franchises on Roads and Bridges as now in effect or as hereinafter amended.
 - a. Whenever any of the streets, avenues, alleys, roads, highways, rights-of-way or public places designated in such franchise shall be eliminated from the County jurisdiction by reason of the incorporation or annexation to a city, then all the rights, privileges and franchises so granted shall terminate in respect to the streets, avenues, alleys, roads, highways, rights-of-way, and public places so eliminated.
 - b. If at any time the County vacates any County street, avenue, alley, road, highway, right-of-way, or other County property which is subject to rights granted by the franchise and the vacation is for the purpose of acquiring the fee or other property interest in the road, right-of-way, or other property interest in the road, right-of-way, or other County property for the use of the County, in either its proprietary or governmental capacity, then the Board of County Commissioners may, at its option, by giving ninety days' written notice to the grantee and after granting an alternate route, terminate this franchise with reference to such County road, right-of-way, or other County property so vacated, and the County shall not be liable for any damages or losses to the grantee by reason of such termination and the grantee shall move its franchise at its own cost.
13. No assignment or transfer of this franchise in any manner whatsoever shall be valid nor vest any rights hereby granted until the Island County Engineer shall have been furnished with written evidence of such transfer or certified copies thereof, together with written acceptance of the terms of the franchise by the Assignee, and unless and until the County Commissioners shall have granted their consent in writing to such assignment or transfer. Failure to comply with this provision shall be cause for cancellation as herein provided.
14. The Holder shall, within twenty (20) days from receipt of a copy of this order, file with the Island County Engineer at Coupeville its written acceptance of the terms and conditions of this franchise.
15. The Holder of this franchise should remove any asbestos pipe from the County right-of-way. However, it may be abandoned in place subject to the responsibility to remove and dispose of said asbestos pipe at some future date as may be required by the County should future road maintenance constructions or improvement so dictate.
16. The Holder of this franchise, when contemplating work upon, along, over, under or across county right-of-way, shall first file with the Island County Engineer its application for permits to do such work. Such applications shall be accompanied by drawings and information as required by the Island County Engineer. Plans, drawings, and specifications for all utility lines lying within the County right-of-



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way shall be prepared and approved by a licensed engineer at the expense of the Holder. One copy of plans for constructed work, including as-built construction changes and notations, shall be on file with the office of the County Engineer. No application for work shall be approved without this requirement being met.

- 17. The Holder is responsible for properly marking all structures in the County right-of-way owned by the holder. In compliance with the County's continuing road maintenance activity. Structures shall be cleared, by the Holder, of tall grass, brush and/or other obstacles (a minimum 5-foot radius required) at all times so County employees in maintenance equipment may easily see said structures. Damage to County equipment due to undisclosed fixtures, non-cleared pedestals, or facilities will be charged to the Holder. Failure by the Holder to comply with the clearing requirements of this paragraph on any occasion with respect to any structure owned by the Holder in the County road right-of-way will eliminate the fiscal responsibility of the County to replace such undisclosed, non-cleared structure damaged due to maintenance on that occasion.
- 18. The Holder will be subject to any future charge as may be authorized by the Board of County Commissioners through a public process for ordinance adoption that may be required of the franchise holders for their use of County right-of-way.
- 19. The Holder must comply with the Recommended Standards for Water Works (1997 Edition, Great Lakes - Upper Mississippi River Board of State Sanitary Engineers), the Criteria for Sewage Works Design (State of Washington, Department of Ecology, December 1998) and/or other requirements of the Island County Health Department.

DATED at Coupeville, Washington this 13 day of JANUARY, 2003.



W. McEwell
CHAIRMAN, Board of County Commissioners

ATTEST: Elaine Marlow
ELAINE MARLOW
Clerk of the Board