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**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF  
SKAGIT COUNTY, WASHINGTON.**

**IN THE MATTER OF THE APPLICATION OF**

**THOMAS JAMES DODD**

**FOR A FRANCHISE OVER CERTAIN ROADS IN**

**SKAGIT COUNTY, WASHINGTON**

**ORDER GRANTING  
APPLICATION FOR  
FRANCHISE**

**NO.:** SKAGIT COUNTY  
Contract # C20130396  
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**WHEREAS**, Thomas James Dodd, a single man (referred to herein as "Dodd"), has applied for a franchise to install, construct, operate, repair, relocate, maintain, and remove Facilities for purposes of providing limited vehicular parking and standard residential utilities for a single residence, including, but not limited to, power line(s), water line(s), and a residential septic drain-field, and other necessary appurtenances thereto, in, upon, under, along, and across the defined Franchise Area within Skagit County, Washington; and

**WHEREAS**, Dodd's franchise application having come on regularly to be heard on September 10, 2013, at 9:00 a.m. or soon thereafter, and the public having been given notice of this hearing in accordance with RCW 36.55.040, and it appearing to the Skagit County Board of Commissioners that notice of said application and hearing thereon has been given as required by law, and that it is in the public interest to grant the franchise, and the Board having considered said application and being advised in the premises; and

**WHEREAS**, the parties have executed a Release & Settlement Agreement (herein the "Settlement Agreement"), dated June 10, 2013 (Skagit County Contract # C20130234) regarding Skagit County Superior Court Cause Number: 10-2-01101-6, and relating to this Franchise Agreement, and the parties recognize and agree that but for the terms of the Settlement Agreement, the parties would not have entered into this Franchise Agreement.

**NOW, THEREFORE, IT IS HEREBY ORDERED**, that pursuant to Chapter 36.55 RCW and other applicable law, the right, privilege, authority, and non-exclusive franchise are hereby given and granted to Dodd, and his successors to install, construct, operate, repair, relocate, maintain, and remove Facilities (defined below) in, upon, under, along, and across certain roads in Skagit County defined below as the Franchise Area.

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

**Section 1. Definitions. Where used in this Franchise Agreement (the "Franchise") the following terms shall mean:**

- 1.1 "Agreement" means this franchise agreement herein, which sets forth the terms and conditions of this Franchise.
- 1.2 "County" means Skagit County, a municipal corporation of the State of Washington, and its respective successors and assigns.
- 1.3 "Facilities" means, collectively, a limited vehicular parking area and standard residential utilities for a single residence, including, but not limited to, power line(s), water line(s), and a residential septic drain-field, and other necessary appurtenances thereto.
- 1.4 "Franchise" or "Franchise Agreement" means the grant of rights, privileges, and authority embodied in this Agreement.
- 1.5 "Franchise Area" means the below listed rights-of-way for public roads, streets, avenues, alleys, and highways of the County as now laid out, platted, dedicated, acquired or improved:
- Please see, Exhibit "A", attached hereto and hereby incorporated by reference.
- 1.6 "Hazardous Substance" shall mean any material or substance which does cause or may cause environmental pollution or contamination (and associated liability and clean-up costs related thereto) as defined under applicable state and federal laws, rules, and regulations.
- 1.7 "Dodd" shall mean Thomas James Dodd, a single man, as owner of that certain real property adjacent to the Franchise Area commonly described as 12366 Seabird Lane, Mount Vernon, WA 98273 (Skagit County Assessor Tax Parcel No.: P35022) as his separate property, and his heirs, successors, and/or assigns.
- 1.8 "Operate" or "Operations" shall mean the operation, use, and maintenance of the Facilities, pursuant to the terms of this Franchise.
- 1.9 "Party" or "Parties" means collectively the County and Dodd, and individually either the County or Dodd.
- 1.10 "Public Works Project" means any capital improvement, maintenance, and/or repair within the Franchise Area that is undertaken by the County (and/or by the County's contractors), regardless of the source of the County's funds for said capital improvement, maintenance, and/or repair within the Franchise Area (including, but not limited to, parks, roads and/or streets, sidewalks, curbs, pedestrian and/or vehicle traffic, and storm water facilities). For the avoidance of doubt, the term "Public Works Project" shall include any such capital



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improvement, maintenance, and/or repair undertaken by the County which requires the relocation of the Facilities within the Franchise Area, even if such capital improvement, maintenance, and/or repair entails, in part, related work performed by and/or for a Third Party municipality (including special purpose districts) under a valid interlocal agreement (or other valid contractual agreement or obligation) between the County and such municipality (including special purpose districts). The term "Public Works Project" shall not include any improvements or repairs independently made or undertaken by a private Third Party.

1.11 "Third Party" means any person, party, or entity other than the County and Dodd.

## **Section 2. Grant of Franchises**

- 2.1 Pursuant to the laws of the State of Washington including, but not limited to, Chapter 36.55 RCW, the County hereby grants to Dodd, subject to the terms and conditions as set forth herein, a Franchise for a period of fifty (50) years commencing upon the effective date of this Agreement and subsequent acceptance of such Agreement and Franchise by Dodd. This Franchise is granted upon the express condition that prior to or within thirty (30) days after the adoption of this Agreement by the Skagit County Board of County Commissioners, Dodd shall file with the County a written acceptance of the same. If Dodd fails to do so within the time frame above, this Agreement and Franchise shall be null and void.
- 2.2 This Agreement is intended to convey only a limited, non-exclusive, right and interest and is not a warranty of title or interest in the County roads or rights-of-way.
- 2.3 Dodd shall, in carrying out activities under the rights, privileges, and authority granted by this Agreement comply with the provisions of all applicable County codes, ordinances, regulations, standards, procedures, permits, or policies currently in effect, except as said such laws, codes, ordinances, regulations, standards, procedures, permits, or policies may be superseded by applicable State law. Dodd shall also comply with any applicable County laws, codes, ordinances, regulations, permits, policies and standards that may later be amended and/or enacted by the County.
- 2.4 Dodd shall, in carrying out activities under the rights, privileges, and authority granted by this Agreement, comply with all applicable State and federal laws and regulations currently in effect or subsequently amended or enacted and with all State laws.



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### **Section 3. Non-Franchise Area County Property**

- 3.1 This Franchise shall not convey any right to Dodd to install Facilities on or to otherwise use County-owned or leased properties or easements outside the Franchise Area.

### **Section 4. Nonexclusive Franchise**

- 4.1 This Franchise is not, and shall not be deemed to be, an exclusive Franchise. This Franchise shall not in any manner prohibit the County from granting other and further franchises upon, under, and across the Franchise Area that do not interfere with Dodd's rights under this Franchise. This Franchise shall not prohibit or prevent the County from using the Franchise Area for any lawful purpose or affect the jurisdiction of the County over the same or any part thereof.

### **Section 5. Installation/Noninterference of Facilities/Restoration**

- 5.1 All work performed by Dodd under this Agreement shall be performed in accordance with the permit(s) issued by the County, in compliance with the County Utility Policy and County Road Standards, together with all applicable federal laws and regulations, and the laws and regulations of the State of Washington, the provisions of any applicable County codes, ordinances, regulations, standards and procedures as now exist or as may be hereafter amended or superseded.
- 5.2 The Facilities shall be located and maintained within the Franchise Area so as not to interfere with the free passage of pedestrian and/or vehicle traffic therein, or with the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities. Notwithstanding the foregoing, Dodd may be allowed to park one or more vehicles in the Franchise Area; provided, that Dodd shall be required to immediately move and/or remove any such vehicle(s) from the Franchise Area at the request of the County in the event that the County determines (at the County's sole discretion) that any such vehicle(s) pose an actual or potential risk to pedestrian or vehicular traffic, and/or with the reasonable ingress or egress to the properties abutting the Franchise Area and/or if any such vehicle(s) may impede or interfere with any work to be performed at or in the vicinity of the Franchise Area. Dodd shall also be required to apply for and obtain a driveway access permit from the County (which may be approved, denied, and/or revoked at the sole discretion of the County) prior to using the Franchise Area for the parking of any vehicle(s). No garage, carport, shed, and/or other such structures (or portions thereof) shall be placed or constructed within the Franchise Area.
- 5.3 Dodd shall restore the surface of the Franchise Area that is disturbed or damaged by the performance of this Agreement to at least the same condition as existed immediately prior to any such work. The County shall have final approval of the condition of the Franchise Area after restoration pursuant to the provisions of



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applicable County codes, ordinances, regulations, standards, policies, and procedures as now exist or as may be hereafter amended or superseded.

- 5.4 The County may at any time perform or have performed any and all work that it considers necessary to restore to a safe condition any area within the Franchise Area disturbed by Dodd in the performance of this Agreement. Dodd shall pay all costs of such work upon demand of the County. The County shall have a lien upon the Facilities which may be enforced for the payment of such costs.
- 5.5 All survey monuments which are disturbed or displaced by Dodd in his performance of any work under this Franchise shall be referenced and restored by Dodd, as per WAC 332-120, as from time to time amended, and all pertinent federal, state, and local standards and specifications.
- 5.6 Upon termination or expiration of this Franchise Agreement, or in the event that Dodd permanently ceases use of any of the Facilities within the Franchise Area, Dodd shall within one hundred and eight (180) days or within such additional time as is agreed to between the Parties after such permanent cessation of use, remove such Facilities at the sole cost and expense of Dodd; provided that with the express written consent of the County, Dodd may leave such Facilities in place subject to the conditions set forth in this section. Any such Facilities to be left in place shall be made inert by purging, disconnecting, and/or sealing such Facilities, all in compliance with applicable laws, regulations and industry standards. The County's consent shall not relieve Dodd of the obligation and/or costs to subsequently remove or alter such Facilities in the event the County reasonably determines that such removal or alteration is necessary or advisable for the health and safety of the public, in which case Dodd shall perform such work at no cost to the County. The obligations contained in this Section shall survive the expiration, revocation, or termination of this Franchise.

## **Section 6. Relocation or Removal of Facilities**

- 6.1 Whenever the County causes the construction of any Public Works Project within the Franchise Area and such construction necessitates the relocation or removal of the Facilities from their existing location within the Franchise Area, such relocation (and/or removal) shall be accomplished by Dodd at no cost, expense, or liability to the County, and within timeframes specified by the County. Provided, however, the County shall give Dodd a minimum of ninety (90) days written notice of the requirement to relocate (or remove) the Facilities in the Franchise Area. The County shall not be responsible for obtaining or providing an alternate location for Dodd's Facilities. To the maximum extent provided by law, Dodd is responsible and liable for the timely performance and relocation (or removal) of the Facilities located within the Franchise Area (to facilitate any Public Works Project), and to this extent Dodd further agrees (to the maximum extent permitted by law), to be liable and responsible for costs, expenses, and/or damages suffered by the County arising from and/or related to a delay caused by Dodd's failure to



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timely relocate or remove the Facilities within the Franchise Area, pursuant to the terms of this Section 6.

- 6.2 In the event an emergency posing a threat to public safety or welfare requires the relocation or removal of Dodd's Facilities within the Franchise Area, the County shall give Dodd notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the County, Dodd shall endeavor to respond as soon as reasonably practicable to relocate or remove the affected Facilities.
- 6.3 As to any relocation or removal of the Facilities whereby the cost and expense thereof is to be borne by Dodd in accordance with this Section 6, Dodd may, after receipt of written notice requesting such relocation, submit in writing to the County alternatives to relocation or removal of the Facilities. Upon the County's receipt from Dodd of such written alternatives, the County shall evaluate such alternatives and shall advise Dodd in writing (at the County's sole option and discretion) if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation or removal of the Facilities. In the event the County reasonably determines that such alternatives are not appropriate, Dodd shall remove and/or relocate the Facilities as otherwise provided in this Agreement.

#### **Section 7. Vacation of County Roads**

- 7.1 If, at any time, the County shall vacate any County road and/or rights-of-way which 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 and/or rights-of-way for the use of the County, in either its proprietary or governmental capacity, then the Board of County Commissioners may at its option and by giving ninety (90) days written notice to Dodd, terminate this Franchise with reference to such County road and/or rights-of-way so vacated, and the County shall not be liable for any damages or loss to Dodd by reason of such termination. In the event of the vacation of any County road and/or rights-of-way which are subject to the rights granted by this Franchise, the County shall reserve an easement for the Facilities within the Franchise Area for the benefit of Dodd.

#### **Section 8. Roads Transferred to Cities**

- 8.1 Whenever any of the County roads and/or rights-of-way as designated in this Franchise by reason of 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 and/or rights-of-way not so included in city or town limits.

#### **Section 9. Records of Installation and Planning**

- 9.1 Upon the County's request, Dodd shall provide to the County copies of any plans prepared by Dodd for initial installation, improvements, relocations and



conversions to its Facilities within the Franchise Area; provided, however, any such plans so submitted shall be for informational purposes only and shall not obligate Dodd to undertake any specific improvements within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

- 9.2 Upon the County's request, Dodd shall provide to the County copies of available drawings in use by Dodd showing the location of its Facilities at specific locations within the Franchise Area.
- 9.3 Upon the County's ninety (90) day written notice required in Section 6.1, and in connection with the design of any Public Works Project, Dodd shall verify the location of its underground Facilities within the Franchise Area by reasonable methods determined by the County, at no expense to the County, and within reasonable timeframes specified by the County. In the event that Dodd performs excavation, the County shall not require any restoration of the disturbed area in excess of restoration to the same condition as existed immediately prior to the excavation.
- 9.4 Dodd expressly acknowledges and agrees that all and/or parts of any and all drawings, data, mapping and other information received by the County from Dodd may be subject to public disclosure, pursuant to Washington State law (including, RCW 42.56). While the County may take reasonable steps to attempt to prevent the disclosure of drawings, information, and/or materials that the County believes to be confidential, the County cannot and does not represent and/or guarantee that any specific drawings and/or information will not be released, even if the release of such drawings and/or information may be (or may arguably be) exempt or otherwise preventable by law. Dodd expressly waives any and all claims against the County for any harm, liability, costs, and/or damages (direct and/or consequential) incurred by Dodd arising from and/or directly or indirectly related to the release of any and all drawings and/or information provided by Dodd.
- 9.5 Notwithstanding the foregoing, nothing in this Section 9 is intended (nor shall be construed) to relieve either party of their respective obligations arising under applicable law with respect to determining the location of the Facilities. Dodd agrees (to the maximum extent permitted by law), to be liable and responsible for any and all costs, expenses, and/or damages suffered by the County arising from and/or directly related to any delay caused by Dodd's failure to locate its underground Facilities within the Franchise Area within the timeframes specified by the terms of this Section 9.

## **Section 10. Coordination, Shared Excavations**

- 10.1 The Parties shall each exercise all best reasonable efforts to coordinate any construction work that either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as



a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Area informed of its intent to undertake such construction work. The Parties shall further exercise best reasonable efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

- 10.2 If, at any time or from time to time, either Party shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (1) such joint use shall not unreasonable delay the work of the Party causing the excavation to be made; and (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties.

## **Section 11. Default; Remedies, and Dispute Resolution**

- 11.1 If there is any dispute or alleged default with respect to performance under this Franchise, the County shall notify Dodd in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) days of its receipt of such notice, Dodd shall provide written response to the County that shall acknowledge receipt of such notice and state Dodd's intentions with respect to how Dodd shall respond to such notice. Dodd shall further have thirty (30) days (the "cure period") from its receipt of such notice to:

- A. Respond to the County, contesting the County's assertion(s) as to the dispute or any alleged default and requesting a meeting, or;
- B. Resolve the dispute or cure the default, or;
- C. Notify the County that Dodd cannot resolve the dispute or cure the default within thirty (30) days, due to the nature of the dispute or alleged default. Notwithstanding such notice, Dodd shall promptly take all reasonable steps to begin to resolve the dispute or cure the default and notify the County in writing and in detail as to the actions that will be taken by Dodd and the projected completion date. In such case, the County may set a meeting in accordance with Section 11.2.

- 11.2 If any dispute is not resolved or any alleged default is not cured or a meeting is not requested or set in accordance with Section 11.1, then the County shall promptly schedule a meeting between Dodd and the County to discuss the dispute or any alleged default. The County shall notify Dodd of the meeting in writing and such meeting shall take place not less than ten (10) days after Dodd's receipt of notice of the meeting. Each Party shall appoint a representative who shall attend the meeting and be responsible for representing the Party's interests. The representatives shall exercise good faith efforts to resolve the dispute or reach agreement on any alleged default and/or any corrective action to be taken. All negotiations pursuant to these procedures for the resolution of disputes may be





confidential (to the extent allowed by applicable law), and shall be treated as compromise and settlement negotiations for purposes of the state and federal rules of evidence.

- 11.3 If, at the conclusion of the steps provided for in Section 11.1 and 11.2 above, the Parties are unable to settle the dispute or agree upon the existence of a default or the corrective action to be taken to cure any alleged default, the County may:
- A. Take any enforcement or corrective action provided for in County code, as from time to time amended; provided such action is not otherwise in conflict with the provisions of this Franchise, and State and/or Federal law, and/or;
  - B. Declare an immediate forfeiture of this Franchise for a breach of any material obligations under this Franchise and/or;
  - C. Take such other action to which it is entitled under this Franchise or any applicable law.
  - D. Pursue any Alternative Remedies as provided in Section 12.
- 11.4 In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action or litigation shall be in the Superior court of the State of Washington in and for the County of Skagit. This Agreement shall be governed by the laws of the State of Washington.
- 11.5 The Parties shall, as may be reasonably practicable, continue to perform their respective obligations under this Franchise during the pendency of any dispute.
- 11.6 This Section 11 (or any other provision of this Franchise) shall not be deemed to bar the right of the County to seek or obtain judicial relief from a violation of any term or provision of this Franchise (as further provided in Section 12). The dispute resolution timeframes specified within this Section 11 shall not alter or impair Dodd's duty to relocate Facilities within the Franchise Area pursuant to the terms of Section 6 of this Franchise, and shall not alter or impair Dodd's duty to locate underground Facilities within the Franchise Area pursuant to the terms of Section 9 of this Franchise.

## **Section 12. Alternative Remedies**

- 12.1 No provision of this Franchise shall be deemed to bar the right of the County or Dodd to seek or obtain judicial relief from a violation of any provision of the Franchise or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the County or Dodd to recover monetary damages for such violations by the other



party, or to seek and obtain judicial enforcement of the other Party's obligations by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity.

### **Section 13. Indemnification**

- 13.1 Dodd shall indemnify, defend and hold the County, its appointed and elected officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the County, its agents, officers or employees on account of injury, harm, death or damage to persons or property which is caused by, in whole, or in part, and then only to the extent of the negligent or willful acts or omissions of Dodd or Dodd's agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to Dodd by this Franchise.
- 13.2 Dodd shall indemnify, defend and hold the County, its appointed and elected officials, agents, officers, employees, and volunteers harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney's fees, made against the County on account of violation of any environmental laws applicable to the Facilities, or from any release of Hazardous Substances on or from the Facilities. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for Hazardous Substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to Hazardous Substances; and (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws.
- 13.3 If applicable, Dodd's indemnification obligations include assuming potential liability for actions brought by Dodd's own employees and the employees of Dodd's agents, representatives, contractors, and subcontractors even though Dodd might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the County arising by virtue of Dodd's exercise of the rights set forth in this Agreement. The obligations of Dodd under this section have been mutually negotiated by the Parties, and Dodd acknowledges that the County would not enter into this Agreement without Dodd's waiver. To the extent applicable and required to provide this indemnification and this indemnification only, Dodd waives Dodd's immunity under Title 51 RCW as provided in RCW 4.24.115.
- 13.5 Acceptance by the County of any work performed by Dodd under this Agreement shall not be grounds for avoidance of this Section 13.



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#### **Section 14. Emergency Management, Leaks, Ruptures, and Emergency Response.**

- 14.1 Dodd shall be solely responsible for all necessary costs incurred in responding to any leak, rupture or other release from the Facilities, including, but not limited to, detection and removal of any Hazardous Substances from air, earth, or water, and any and all remediation costs.

#### **Section 15. Assignment or Transfer of Franchise**

- 15.1 Dodd may not assign or otherwise transfer Dodd's rights, privileges, authority, and Franchise conferred by this Agreement to any Third Party without the prior written authorization and approval of the County; provided, that any subsequent purchaser or owner of that certain real property adjacent to the Franchise Area commonly described as 12366 Seabird Lane, Mount Vernon, WA 98273 (Skagit County Assessor Tax Parcel No.: P35022), shall otherwise automatically take and own said property subject to and together with the rights and obligations of this Franchise Agreement (without prior written authorization of the County).

#### **Section 16. Severability and Survival**

- 16.1 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 which shall continue in full force and effect. The headings of the sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.
- 16.2 All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the termination or expiration of the Franchise. Subject to Section 15 above, the Parties' respective rights and interests under this franchise shall inure to the benefit of their respective successors and assigns.

#### **Section 17. Amendments to Franchise**

- 17.1 This Franchise may be amended only by subsequent mutual agreement thereto, set forth in writing in the form of an amendment to this Agreement, duly executed by both Parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.

#### **Section 18. Relationship of the Parties**

- 18.1 Nothing in this Franchise shall be construed to create or confer any right or remedy upon any person(s) other than the County and Dodd. No action may be commenced or prosecuted against any Party by any Third Party claiming as a



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Third Party beneficiary of this Franchise. This Franchise shall not release or discharge any obligation or liability of any Third Party to either Party.

- 18.2 Nothing contained in this Franchise shall be construed to create an association, trust, partnership, agency relationship, or joint venture or to impose a trust, partnership, or agency duty, obligation or liability on or with regard to any Party. Each Party shall be individually and severally liable for its own duties, obligations, and liabilities under this Franchise.
- 18.3 Dodd accepts any privileges granted by the County to the Franchise Area in an "as is" condition. Dodd agrees that the County has never made any representations, implied or express warranties, or guarantees as to the suitability, security or safety of Dodd's location of the Facilities, or possible hazards or dangers arising from other uses of the Franchise Area. Dodd shall remain solely and separately liable for the use, function, testing, maintenance, replacement and/or repair of the Facilities within the Franchise Area, or for other activities permitted under the terms of this Franchise.
- 18.4 Except as specifically provided herein, this Franchise shall not create any duty of the County or any of its officers, elected officials, employees, or agents and no liability shall arise from any action or failure to act by the County or any of its officers, elected officials, employees, or agents in the exercise of powers reserved to the County. Further, this Franchise is not intended to acknowledge, create, imply or expand any duty or liability of the County with respect to any function in the exercise of its police power or for any other purpose. Dodd's rights hereunder are subject to the lawful police powers of the County to adopt and enforce laws, ordinances, resolutions and regulations necessary to the safety, health and welfare of the public, and Dodd agrees to comply with all laws, ordinances, resolutions and regulations lawfully enacted. Any duty that may be deemed to be created in the County shall be deemed a duty to the general public and not to any specific party, group or entity.

## **Section 19. Insurance**

- 19.1 Dodd shall procure and maintain for the duration of the Franchise, insurance, or provide self-insurance, against all claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Dodd, its agents, representatives or employees. Dodd shall provide evidence of such insurance to the County prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such insurance shall evidence the following minimum coverages. All required insurance shall be obtained from companies rated "A-" or better in "A.M. Best's Insurance Guide," or an equivalent rating by similar rating agencies, and shall be from insurers authorized to transact business in the State of Washington. In no event shall the limits of any insurance policies be construed as limiting the liability of Dodd.



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A. A homeowner's policy of insurance including coverage, with limits not less than:

- (1) \$1,000,000 (one million dollars) per occurrence and in the aggregate for bodily injury or death to each person;
- (2) \$1,000,000 (one million dollars) for property damage resulting from any one accident; and
- (3) \$1,000,000 (one million dollars) for general liability

B. Automobile liability for owned, non-owned, and leased vehicles with a limit of \$250,000 (two hundred and fifty thousand dollars) for each person and \$250,000 (two hundred and fifty thousand dollars) for each accident;

If coverage is purchased on a "claims made" basis, then Dodd shall warrant continuation of coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three years from the date termination of this Franchise, and/or conversion from a "claims made" form to an "occurrence" coverage form. The required liability limits may be met under a primary or an excess policy, or any combination thereof.

19.2 Any deductibles or self-insured retentions must be declared to the County, if requested by the County. Payment of deductibles and self-insured retentions shall be the sole responsibility of Dodd. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

19.3 Dodd's insurance shall be primary insurance with respect to the County, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the County, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of Dodd's insurance and shall not contribute with it.

19.4 In addition to the coverage requirements set forth in this Section, the certificate of insurance shall provide that:

"The above described policies will not be canceled before the expiration date thereof, without the issuing company giving thirty (30) days written notice to the certificate holder."

In the event of said cancellation or intent not to renew, Dodd shall obtain and furnish to the County evidence of replacement insurance policies meeting the requirements of this Section 19 by the cancellation date.



## **Section 20. Compliance with Laws and Standards.**

- 20.1 In carrying out any authorized activities under the privileges granted herein, Dodd shall meet accepted industry standards and comply with all applicable Federal, State, and local laws, rules, and regulations, of any governmental entity or agency (Federal, State, and/or local). This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted.

## **Section 21. Operations, Maintenance, Inspection, and Testing.**

- 21.1 Dodd shall be solely responsible for all costs, expenses, and liability for the use of, operation, maintenance, and testing of all Facilities within the Franchise Area, and Dodd shall operate, maintain, inspect, and test the Facilities in full compliance with all applicable federal, state, and local laws, rules, regulations, and industry standards, as now enacted or hereinafter amended.

## **Section 22. Force Majeure**

- 22.1 In the event that either Party is prevented or delayed in the performance of any of its obligations under this Franchise by reason beyond its reasonable control (a "Force Majeure Event"), then that Party's performance shall be excused during the Force Majeure Event. Force Majeure Events shall include, without limitation, war; civil disturbance; flood, earthquake or other Act of God, or sabotage. Upon removal or termination of the Force Majeure Event, the Party claiming a Force Majeure Event shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise. The Parties shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a force Majeure Event. The occurrence of a Force Majeure Event shall not alter or impair any of the provisions concerning liability and/or insurance as provided in this Franchise Agreement.

## **Section 23. Effective Date**

- 23.1 This Agreement shall be effective upon September 10, 2013, having first been submitted to the Office of the Prosecuting Attorney, having been introduced to the Board of County Commissioners and having been passed at a regular meeting of the Board of County Commissioners by an approving vote of at least a majority thereof; and having been published in a newspaper of general circulation in the County and posted in accordance with RCW 36.55.

## **Section 24. Miscellaneous.**

- 24.1 In the event that a Court or agency of competent jurisdiction declares a material provision of this Franchise Agreement to be invalid, illegal or unenforceable, the parties shall negotiate in good faith and agree, to the maximum extent practicable in light of such determination, to such amendments or modifications as are



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appropriate actions so as to give effect to the intentions of the parties as reflected herein. If severance from this Franchise Agreement of the particular provision(s) determined to be invalid, illegal or unenforceable will fundamentally impair the value of this Franchise Agreement, either party may apply to a Court of competent jurisdiction to reform or reconstitute the Franchise Agreement so as to recapture the original intent of said particular provision(s). All other provisions of the Franchise shall remain in effect at all times during which negotiations or a judicial action remains pending.

- 24.2 Whenever this Franchise sets forth a time for any act to be performed, such time shall be deemed to be of the essence, and any failure to perform within the allotted time may be considered a material violation of this Franchise.
- 24.3 The Section headings in this Franchise are for convenience only, and do not purport to and shall not be deemed to define, limit, or extend the scope or intent of the Section to which they pertain.
- 24.4 The Parties each represent and warrant that they have full authority to enter into and to perform this Franchise, that they are not in default or violation of any permit, license, or similar requirement necessary to carry out the terms hereof, and that no further approval, permit, license, certification, or action by a governmental authority is required to execute and perform this Franchise, except such as may be routinely required and obtained in the ordinary course of business.
- 24.5 Whenever this Franchise calls for notice to or notification by any party, the same (unless otherwise specifically provided) shall be in writing and directed to the recipient at the address set forth in this Section, unless written notice of change of address is provided to the other party. If the date for making any payment or performing any act is a legal holiday, payment may be made or the act performed on the next succeeding business day which is not a legal holiday.

Notices shall be provided to the Parties as follows:

To the County: Skagit County Public Works Department  
Attn: Public Works Director  
1800 Continental Place  
Mount Vernon, WA 98273

To Dodd: Thomas James Dodd  
29427 S.E. 15<sup>th</sup> Pl.  
Fall City, WA 98024

- 24.6 Except as provided to the contrary herein, this Franchise Agreement and the attachments hereto represent the entire understanding and agreement between the parties with respect to the subject matter and it supersedes all prior oral negotiations between the Parties. All previous Franchise Agreement(s), if any, between the parties pertaining to Dodd's Facilities are hereby superseded. The

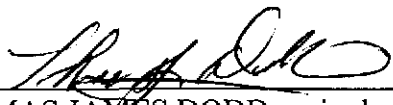


parties recognize and agree that in the event that the Settlement Agreement (defined herein above) by and between the parties is terminated, null, or void for any reason that this Franchise Agreement shall also immediately and automatically be null and void by its own terms, with no duty or obligation to either party from the other party whatsoever.

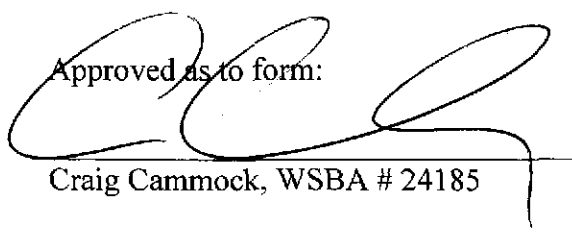
24.7 Dodd shall, within thirty (30) days after (or prior to) the County's passage of this Franchise Agreement, file with the County, Dodd's unconditional written acceptance of all the terms and conditions of this Franchise Agreement. If Dodd shall fail to so file and provide Dodd's written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.

Accepted and approved this 17 day of Sept, 2013.

DODD:

  
THOMAS JAMES DODD, a single man, and his  
heirs, successors, and/or assigns

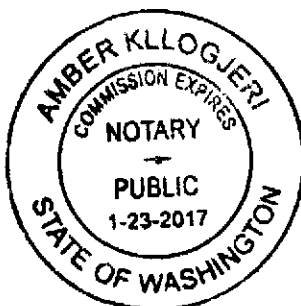
Approved as to form:

  
Craig Cammock, WSBA # 24185

STATE OF WASHINGTON }  
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that Thomas James Dodd, a single man, is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was duly authorized execute the instrument, and acknowledged it to be his free and voluntary act for the uses and purposes herein mentioned.

Given under my official hand and seal this 17 day of September, 2013.



Notary Public: Amber Klogjeri  
Print name: Amber Klogjeri  
Residing at Mount Vernon WA  
My commission expires 1-23-2017





DATED this 17 day of September, 2013.

**BOARD OF COUNTY COMMISSIONERS  
SKAGIT COUNTY, WASHINGTON**

Sharon D. Dillon  
Sharon D. Dillon, Chair

Ron Wesen  
Ron Wesen, Commissioner

Kenneth A. Dahlstedt  
Kenneth A. Dahlstedt, Commissioner

Attest:

Amber K. May Jr.  
Clerk of the Board

For contracts under \$5,000:  
Authorization per Resolution R20030146

Recommended:

Henry Hoff  
Department Head

\_\_\_\_\_  
County Administrator

Approved as to form:

[Signature] 9/26/13  
Civil Deputy Prosecuting Attorney

Approved as to indemnification:

Jessie Nell Hop  
Risk Manager

Approved as to budget:

Linda Logne  
Budget & Finance Director



Skagit County Auditor

\$49.00

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**EXHIBIT "A"**  
**Legal Description of Franchise Area.**

That portion of Government Lot Two (2) of Section 30, Township 35North, Range 3E W.M., described as follows:

- 1 Beginning at the North Quarter Corner of said Section 30;
- 2 Thence South 1312.52 feet;
- 3 Thence West to the westerly edge of the existing pavement of Edison-Bayview Road, which is the TRUE POINT OF BEGINNING;
- 4 Thence West to the westerly margin of the County Road Right of Way (known as Edison-Bayview Road) as shown on the face of the Record of Survey filed under Auditor File No. 200406220137 as "1946 ROW to Skagit County derived from County Road Project No. L-11 Built Date 1957-1958";  
  
Thence West to the westerly margin of the original establishment of Bayview-Edison Road LXIV as shown on the face of the Record of Survey filed under Auditor File No. 200406220137 as "Westerly Margin Establishment" Right of Way;
- 5 Thence South along said westerly margin of the "Westerly Margin Establishment" Right of Way to the South line of Record of Survey for Tom Dodd filed under Auditor File No. 9901040075;
- 6 Thence East along the easterly extension of the South Line of Record of Survey for Tom Dodd filed under Auditor File No. 9901040075 to the westerly edge of the existing pavement of Edison-Bayview Road;
- 7 Thence North along the westerly edge of the existing pavement of Edison-Bayview Road to the TRUE POINT OF BEGINNING and the end of this description.

Situate in Skagit County, State of Washington.



Skagit County Auditor

\$49.00

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