APPENDIX 3-7

Franchise Agreement with Skagit County
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BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SKAGIT COUNTY, WASHINGTON.

IN THE MATTER OF THE APPLICATION OF THE CITY OF ANACORTES FOR A FRANCHISE OVER CERTAIN ROADS IN SKAGIT COUNTY, WASHINGTON.

ORDER GRANTING APPLICATION FOR FRANCHISE NO.: SKAGIT COUNTY Contract # C20100470

WHEREAS, the City of Anacortes, a Washington municipal corporation ("City"), has applied for a franchise to install, construct, operate, repair, relocate, maintain, and remove Facilities for purposes of a water utility system comprised of a Skagit River water intake system and Treatment Plant on the Skagit River with transmission lines to Fidalgo Island and distribution lines on Fidalgo Island, and other necessary appurtenances thereto (the "water utility system"), in, upon, under, along, and across the defined Franchise Area within Skagit County, Washington; and

WHEREAS, the City’s franchise application having come on regularly to be heard on October 5, 2010, 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.

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 the City, and its successors to install, construct, operate, repair, relocate, maintain, and remove water utility system Facilities 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, the water utility system (described above), which are more particularly described as including transmission pipes, distribution mains, manholes, pumping stations, any and all disused or abandoned water line(s) and/or components of the water utility system, 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 "City" means the City of Anacortes, a Washington municipal corporation and its respective successors.

1.8 "Operate" or "Operations" shall mean the operation, use, and maintenance of the City’s Facilities, pursuant to the terms of this Franchise.

1.9 "Party" or "Parties" means collectively the County and the City, and individually either the County or the City.

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 improvement, maintenance, and/or repair undertaken by the County which requires the relocation of the City’s 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 the City.

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 the City, subject to the terms and conditions as set forth herein, a Franchise for a period of twenty-five (25) years commencing upon the effective date of this Agreement and subsequent acceptance of such Agreement and Franchise by the City. 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, the City shall file with the clerk of the County a written acceptance of the same. If the City 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 The City 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. The City 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 The City 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 with all State laws.

Section 3. Non-Franchise Area County Property

3.1 This Franchise shall not convey any right to the City 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 the City’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 the City 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 City's 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.

5.3 The City 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 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 the City in the performance of this Agreement. The City 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 the City in its performance of any work under this Franchise shall be referenced and restored by the City, as per WAC 332-120, as from time to time amended, and all pertinent federal, state, and local standards and specifications.

5.6 In the event that the City permanently ceases use of any of its Facilities within the Franchise Area, the City shall within one hundred and eighty (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 the City; provided that with the express written consent of the County, the City 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 the City 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 the City 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 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 of the City's Facilities from their existing location within the Franchise Area, such relocation shall be accomplished by the City at no cost, expense, or liability to the County, and within timeframes specified by the County. Provided, however, the County shall give the City a minimum of ninety (90) days written notice of the requirement to relocate its Facilities in the Franchise Area. As necessary, an alternate location for relocation of the City's Facilities shall be determined and mutually approved by the County and the City. If necessary, an alternative location for relocation shall be obtained and provided by the City, at no cost to the County. To the maximum extent provided by law, the City is responsible and liable for the timely performance and relocation of its Facilities located within the Franchise Area (to facilitate any Public Works Project), and to this extent the City 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 the City's failure to timely relocate 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 of the City's Facilities within the Franchise Area, the County shall give the City notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the County, the City shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities.

6.3 Whenever any Third Party requires and requests the relocation of the City's Facilities to accommodate work of such Third Party within the Franchise Area, the City shall have the right as a condition of any such relocation to require payment by the Third Party to the City, at a time and upon reasonable terms acceptable to the City, for any and all actual costs and expenses incurred by the City in the relocation of the City's Facilities.

6.4 Any condition or requirement imposed by the County upon any Third Party (including, but not limited to, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of the City's Facilities within the Franchise Area shall be a condition or requirement causing relocation of the City's Facilities to occur subject to the provisions of Section 6.3 above; provided, however in the event the County reasonably determines and notifies the City that the primary purpose of imposing such condition or requirement upon such Third Party is to cause or facilitate the construction of a Public Works Project to be undertaken within a
segment of the Franchise Area on the County's behalf, then the City shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with this Agreement, and such relocation shall be accomplished by the City at no cost or expense to the County.

6.5 As to any relocation of the City's Facilities whereby the cost and expense thereof is to be borne by the City in accordance with this Section 6, the City may, after receipt of written notice requesting such relocation, submit in writing to the County alternatives to relocation of its Facilities. Upon the County's receipt from the City of such written alternatives, the County shall evaluate such alternatives and shall advise the City 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 of the City's Facilities. In the event the County reasonably determines that such alternatives are not appropriate, the City shall relocate its Facilities as otherwise provided in this Agreement.

6.6 Nothing in this Section 6 shall require the City to bear any cost or expense in connection with the relocation of any of the City's Facilities under benefit of easement (other than County owned utility easements described in Section 1.5) or other rights not arising under this Franchise, nor shall anything in this Section 6 require the County to bear any such cost or expense.

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 the City, terminate this Franchise with reference to such County road and/or rights-of-way so vacated.

7.2 Prior to vacation of any County road and/or rights-of-way, the County will make best efforts to (but shall not be required to) grant to the City an easement sufficient in size for the existing Facilities contained in the vacated County road and/or right-of-way.

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.

8.2 Prior to incorporation of any of the County roads and/or rights-of-way by any city or town, the County may (but shall not be required to) grant to the City an
easement sufficient in size for the existing Facilities contained in the incorporated road and/or right-of-way (subject to the potential negotiation of additional and/or different terms pursuant to an annexation agreement with the City).

Section 9. Records of Installation and Planning

9.1 Upon the County's request, the City shall provide to the County copies of any plans prepared by the City 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 the City 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, the City shall provide to the County copies of available drawings in use by the City showing the location of its Facilities at specific locations within the Franchise Area. As to any such drawings so provided, the City does not warrant the accuracy thereof and, to the extent the locations of Facilities are shown, such Facilities are shown in their approximate location.

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, the City shall verify the location of its underground Facilities within the Franchise Area by reasonable methods determined by the City, at no expense to the County, and within reasonable timeframes specified by the County. In the event that the City 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 The City expressly acknowledges and agrees that all and/or parts of any and all drawings, data, mapping and other information received by the County from the City 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. The City expressly waives any and all claims against the County for any harm, liability, costs, and/or damages (direct and/or consequential) incurred by the City arising from and/or directly or indirectly related to the release of any and all drawings and/or information provided by the City.

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. The City
shall identify, mark, and otherwise locate any and all underground Facilities located within the Franchise Area in accordance with and subject to Chapter 19.122 RCW (commonly known as the “call before you dig” law), and/or any other such subsequent and/or successor legislation. The City 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 the City’s failure to locate its underground Facilities within the Franchise Area within the timeframes specified by Chapter 19.122 RCW (and/or any other subsequent and/or successor legislation), and/or otherwise pursuant to the terms of this Section 9.

Section 10. Coordination, Shared Excavations

10.1 The City and the County 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 City and the County 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 the City or the County 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 unreasonably 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 the City in writing, stating with reasonable specificity the nature of the dispute or alleged default. Within ten (10) days of its receipt of such notice, the City shall provide written response to the County that shall acknowledge receipt of such notice and state the City’s intentions with respect to how the City shall respond to such notice. The City 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 the City 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, the City 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 the City 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 the County and the City to discuss the dispute or any alleged default. The County shall notify the City of the meeting in writing and such meeting shall take place not less than ten (10) days after the City'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. Any dispute (including any dispute concerning the existence of or any corrective action to be taken to cure any alleged default) that is not resolved within ten (10) days following the conclusion of the meeting shall be referred by the Parties' representatives in writing to the senior management of the Parties for resolution. In the event senior management is unable to resolve the dispute within twenty (20) days of such referral (or such other period as the Parties may agree upon), each Party may pursue resolution of the dispute or any alleged default through other legal means consistent with this Franchise. All negotiations pursuant to these procedures for the resolution of disputes shall 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 County and the City 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 or the City (as the City may have authority to do so) 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 Unless otherwise agreed by the County and the City in writing, the County and the City 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 the City'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 the City'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 the City 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 the City 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 The City 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 the City or its agents, servants, employees, contractors, or subcontractors in the exercise of the rights granted to the City by this Franchise.

13.2 The City 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. Provided, however, such indemnity and defense shall extend only to that portion of any claims, demands liability, loss, cost, damage or expense of any nature whatsoever including all costs and attorney’s fees caused by the negligence or fault of the City, its appointed and elected officials, agents, officers, employees, and volunteers.

13.3 The City’s indemnification obligations include assuming potential liability for actions brought by the City’s own employees and the employees of the City’s agents, representatives, contractors, and subcontractors even though the City 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 the City’s exercise of the rights set forth in this Agreement. The obligations of the City under this section have been mutually negotiated by the Parties, and the City acknowledges that the County would not enter into this Agreement without the City’s waiver. To the extent required to provide this indemnification and this indemnification only, the City waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

13.4 In the event any matter (for which the County intends to assert its rights under this Section 13) is presented to or filed with the County, the County shall promptly notify the City thereof within a reasonable period of time, and the City shall have the exclusive right, at its election and at its sole costs and expense, to settle and compromise such matter as it pertains to the City’s responsibility to indemnify, defend and hold harmless the County, its agents, elected officials, officers or employees. In the event any suit or action is started against the County based upon any such matter, the County shall likewise promptly notify the City thereof within a reasonable period of time, and the City shall have the exclusive right, at its election and at its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, as it pertains to the City’s responsibility to indemnify, defend and hold harmless the County, its agents, officers or employees.

13.5 Acceptance by the County of any work performed by the City under this Agreement shall not be grounds for avoidance of this Section 13.

13.6 The City shall at the City’s own cost, expense, and liability, comply with all applicable laws, statutes, rules, and regulations concerning release(s) of Hazardous Substances by the City directly arising from or directly relating to the
City’s Facilities. “Hazardous Substances” 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. The City shall be solely and separately liable and responsible for the containment, remediation and/or clean-up of any release(s) of Hazardous Substances caused by the City directly arising from or directly relating to the City’s Facilities. The City shall indemnify, defend and hold the County harmless from any fines, suits, procedures, claims, costs, damages, expenses, and actions of any kind arising out of or in any way connected with any release(s) of Hazardous Substances caused by the City directly arising from or directly relating to the City’s 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 the County’s costs of responding to Hazardous Substances; and (d) liability for any costs of investigation, abatement, mitigation, correction, remediation, cleanup, fines, penalties, or other damages arising under any environmental laws.


14.1 The City 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 of Franchise

15.1 The City, nor its successors in interest, may not assign or otherwise transfer its rights, privileges, authority, and Franchise conferred by this Agreement without the prior written authorization and approval 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 the City. No action may be commenced or prosecuted against any Party by any Third Party claiming as a 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 The City accepts any privileges granted by the County to the Franchise Area in an "as is" condition. The City agrees that the County has never made any representations, implied or express warranties, or guarantees as to the suitability, security or safety of the City's location of facilities or the facilities themselves, or possible hazards or dangers arising from other uses of the Franchise Area or other public property by the County or the general public. The City 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. The City'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 the City 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 The City 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 the City, its agents, representatives or employees. The City shall provide evidence of self-insurance and/or an insurance certificate that names the County, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insured’s, to the County prior to the commencement of any work or installation of any Facilities pursuant to this Franchise. Such self-insurance and/or insurance certificate 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 the City.

A. Comprehensive general/excess liability insurance including coverage for premises - operations, explosions and collapse hazard, underground hazard and products completed hazard, with limits not less than:

   (1) $5,000,000 (five million dollars) per occurrence and in the aggregate for bodily injury or death to each person;

   (2) $5,000,000 (five million dollars) for property damage resulting from any one accident, and

   (3) $5,000,000 (five million dollars) for general liability

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $2,000,000 (two million dollars) for each person and $2,000,000 (two million dollars) for each accident;

C. Worker’s compensation within statutory limits and employer’s liability insurance with limits of not less than $2,000,000 (two million dollars);

If coverage is purchased on a “claims made” basis, then the City 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 the City. 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 The City’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 the City’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 sixty (60) days written notice to the certificate holder."

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

19.5 The aforementioned insurance requirements in Section 19, may be considered to be fulfilled by the County by the City’s membership and coverage in the Washington Cities Insurance Authority (a self-insured municipal pool); provided that the City’s membership in the Washington Cities Insurance Authority actually provides and complies with the above-described minimum coverage requirements.

Section 20. Compliance with Laws and Standards.

20.1 In carrying out any authorized activities under the privileges granted herein, the City 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) with jurisdiction over the City, the Facilities and its operation. This shall include all applicable laws, rules and regulations existing at the Effective Date of this Franchise or that may be subsequently enacted.


21.1 The City 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 the City 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, and any other future laws or regulations that are applicable to the City, the Facilities, and the City’s operations.
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 expeditious 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 October 5, 2010, having first been submitted to the Office of the Prosecuting Attorney, having been introduced to the Board of County Commissioners not less than five days before its passage; 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 at least once in a newspaper of general circulation in the County, 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 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 the City: City of Anacortes
Attn: Public Works Director
P.O. Box 547
City Hall, 904 6th Street
Anacortes, WA 98221

24.6 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) between the parties pertaining to the City’s Facilities are hereby superseded.

24.7 The City shall, within thirty (30) days after (or prior to) the County’s passage of this Franchise Agreement, file with the County, its unconditional written acceptance of all the terms and conditions of this Franchise Agreement. If the City shall fail to so file and provide its written acceptance within such period, then the rights and privileges granted hereunder shall be deemed forfeited.
DATED this 5th day of October, 2010.

BOARD OF COUNTY COMMISSIONERS
SKAGIT COUNTY, WASHINGTON

Sharon D. Dillon, Chair

Ron Wesen, Commissioner

Kenneth A. Dahlstedt, Commissioner

Approved:

By: [Signature]
Public Works Director

By: [Signature]
Billie Kadmus
Risk Manager

By: [Signature]
Trisha Logue, CPA
Budget/Finance Administrator

Approved as to Form:

By: [Signature]

ATTEST:

Linda Hammond, Clerk of the Board
Skagit County Board of Commissioners
EXHIBIT “A”
Legal Description of Franchise Area.

Section 34, 35, 36, Township 35 North, Range 1 East W.M. Section 21, 28, 29, 31, 32, 33, & 34, Township 35 North, Range 2 East W.M. Section 1, 2, 10, 11, 12, 13, 14, 15, 22, 23, 24, 25, & 26, Township 34 North, Range 1 East W.M. Section 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 34, 35, & 36, Township 34 North, Range 2 East W.M. Section 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, & 18, Township 34 North, Range 3 East W.M. Section 2 & 3, Township 33 North, Range 2 East W.M.

Situate in Skagit County, State of Washington.