

Jefferson County  
Board of Commissioners  
Agenda Request

**To:** Board of Commissioners  
Philip Morley, County Administrator

**From:** Frank Gifford, Public Works Director *FG*

**Agenda Date:** October 25, 2010

**Subject:** Washington State Parks, Brinnon Sewer Main Franchise  
Schedule Public Hearing

---

**Statement of Issue:**

Washington State Parks (WSP) has applied to Jefferson County for a non-exclusive franchise for a sanitary sewer force main within County Road rights-of-way located in Section 2, Township 25 North, Range 2 West and Sections 34 and 35, Township 26 North, Range 2 West. The force main would convey sewage effluent from the Dosewallips State Park through Brinnon to a treatment and disposal facility located on property owned by WSP adjacent to Church Road. WSP has received a conditional use permit from Jefferson County for the sewage system.

Attached for the Board's review and consideration in a public hearing is a Resolution granting WSP a franchise to locate the force main in the following County Road rights-of-way: Brinnon Lane, Church Road, Corey Lane, Dosewallips Road, Easy Street, and Schoolhouse Road.

Also attached is a public hearing notice for a Board of Commissioners public hearing on the franchise Resolution at 10:30 AM on November 15, 2010.

**Analysis/Strategic Goals/Pro's & Con's:**

**Significant franchise terms and conditions:**

- The express terms and conditions of the franchise constitute a binding contract between Jefferson County and WSP.
- Section 2 describes the terms and conditions of the franchise. Section 2.4.1 sets a 25 year franchise term. Section 2.4.4 provides an option to renew for 25 years.
- Section 3 Performance of Work establishes the requirements for WSP to install and operate the facility within County Road rights-of-way.

- Section 4 Relocation describes the process and requirements for WSP to relocate its facilities to accommodate County Public Improvement Projects.
- Section 8.1 requires WSP to reimburse the County for its expenses related to approving permits or the franchise and for plan reviews and inspections.
- Section 9 indemnifies the County against third party claims related to WSP's negligence.
- Section 10 establishes WSP's insurance requirements.
- Section 12 establishes a dispute resolution procedure.
- Section 13 establishes standards and procedures for terminating the franchise in the event of significant non-compliance.
- Section 14 establishes a procedure for WSP to transfer the franchise.
- Attachment A - Franchise Territory lists the sections, townships, and ranges and the County Roads where WSP would be authorized to install the facility.

**Fiscal Impact/Cost Benefit Analysis:**

The franchise requires WSP to reimburse the Department for its staff time expense in preparing the franchise and for the expense of publishing and posting the public hearing notice and filing the franchise with the County Auditor.

**Recommendation:**

The Department requests that the Board schedule a public hearing on the franchise Resolution at 10:30 AM on November 15, 2010 and direct the Chair of the Board to sign the attached public hearing notice. The notice will be published in the Leader on October 27 and November 3.

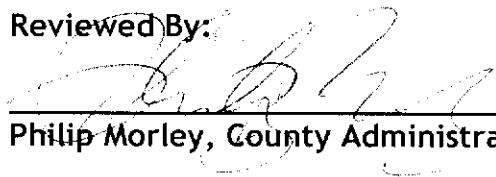
As per the requirements of RCW 36.55, public hearing notices will be posted at three locations in Port Townsend. Public hearing notices will also be posted at the Dosewallips State Park and other public locations in Brinnon.

Public Works will provide the franchise Resolution and public hearing notice to other County Departments and affected agencies for review and post it on the County's Internet Home Page.

Public Works will conduct a brief workshop and answer questions on the franchise Resolution immediately before the public hearing.

**Department Contact: Jim Pearson, 385-9162**

**Reviewed By:**

  
Philip Morley, County Administrator

  
Date

**NOTICE OF PUBLIC HEARING:  
WASHINGTON STATE PARKS FRANCHISE FOR A SEWER FORCE MAIN IN BRINNON**

Notice is hereby given that the Jefferson County Board of Commissioners will conduct a public hearing on Monday November 15, 2010 at 10:30 AM in the Commissioners' Chambers at the Jefferson County Courthouse, 1820 Jefferson Street, Port Townsend, Washington to take testimony concerning a proposed Resolution granting a nonexclusive franchise to Washington State Parks to construct, maintain, and operate a sanitary sewer force main within County Road rights-of-way located in Section 2, Township 25 North, Range 2 West and Sections 34 and 35, Township 26 North, Range 2 West. The force main would convey sewage effluent from the Dosewallips State Park through Brinnon to a treatment and disposal facility located on property owned by Washington State Parks in the Northwest Quarter of the Southwest Quarter of Section 35, Township 26 North, Range 2 West, identified as Assessor's Parcel Number 602353005. The franchise would authorize the force main to be located in the following County Road rights-of-way: Brinnon Lane, Church Road, Corey Lane, Dosewallips Road, Easy Street, and Schoolhouse Road.

Copies of the proposed Resolution are available at the Commissioners' Office at the County Courthouse, 1820 Jefferson Street, Port Townsend, Washington. Copies may also be requested by calling the Commissioners' Office at (360) 385-9100 or emailing [jeffbocc@co.jefferson.wa.us](mailto:jeffbocc@co.jefferson.wa.us). The proposed Resolution can also be viewed on the County website at [www.co.jefferson.wa.us](http://www.co.jefferson.wa.us).

Comments on the proposed Resolution can be made at the public hearing or by letter to the Jefferson County Board of Commissioners at PO Box 1220, Port Townsend, WA 98368 or by email to [jeffbocc@co.jefferson.wa.us](mailto:jeffbocc@co.jefferson.wa.us) until 4:00 PM Friday November 19, 2010.

The meeting site is ADA accessible. Accommodations for people with disabilities can be arranged with advance notice by calling 385-9100.

---

David W. Sullivan, Chair  
Jefferson County Board of Commissioners

**STATE OF WASHINGTON  
COUNTY OF JEFFERSON**

**Franchise No.** \_\_\_\_\_

In The Matter of the Application by )  
Washington State Parks and Recreation Commission )  
For a Nonexclusive Franchise )  
To Construct, Maintain, and Operate )  
A Sanitary Sewer Force Main ) Resolution \_\_\_\_\_  
Together With Other Appurtenances ) Granting A Nonexclusive Franchise  
Under, Upon, Along, and Across )  
County Road Rights-of-Way )  
Within Unincorporated Jefferson County )

WHEREAS, the Washington State Parks and Recreation Commission, hereinafter Grantee, proposes to construct a sanitary sewer system to serve the Dosewallips State Park consisting of facilities to collect sewage effluent at the Dosewallips State Park and convey it by a force main to an off-site treatment and disposal facility located on property owned by Grantee in the Northwest Quarter of the Southwest Quarter of Section 35, Township 26 North, Range 2 West, W.M.; and

WHEREAS, pursuant to the Revised Code of Washington (RCW) Chapter 36.55 and Jefferson County Code Chapter 13.56, utility providers who wish to occupy County Road rights-of-way are required to obtain a franchise from Jefferson County; and

WHEREAS, Grantee has applied to the Jefferson Board of County Commissioners, hereinafter the Board, for a nonexclusive franchise to install, construct, repair, replace, maintain, relocate, remove, operate, and use a sanitary sewer force main together with pumping stations and other appurtenances in, upon, under, along, through, and across public rights-of-way in unincorporated Jefferson County in the areas listed in Attachment A – Washington State Parks and Recreation Commission Franchise Area, hereinafter the Franchise Area in order to provide sanitary sewer service to the Dosewallips State Park; and

WHEREAS, Jefferson County Code Chapter 13.56 specifies standards and procedures for granting nonexclusive franchises for utility providers to occupy County rights-of-way; and

WHEREAS, the Board of County Commissioners finds that granting a franchise is consistent with the requirements of Jefferson County Code, Section 13.56.080 in that:

1. Grantee has the financial and technical ability to fulfill its obligations under a franchise granted by Jefferson County;
2. Grantee has legal standing to be granted a franchise;
3. County rights-of-way listed in Attachment A – Washington State Parks and Recreation Commission Franchise Area have the capacity to accommodate Grantee's facilities, provided that there is appropriate planning and provision for installation, maintenance, and repair of Grantee's facilities;

4. Granting the franchise would not significantly damage or disrupt public or private facilities, improvements, services, travel, or landscaping, provided that there is appropriate planning and provision for installation, maintenance, and repair of Grantee's facilities;
5. The public interest in minimizing the cost and disruption resulting from the presence of Grantee's facilities in County rights-of-way can be protected;
6. Granting a franchise will enable Grantee to continue to provide sanitary sewage facilities at the Dosewallips State Park;
7. Granting a franchise will protect the public's health, safety, and welfare;
8. Granting a franchise is consistent with applicable Federal, State, and County laws, regulations, rules, and policies, including Chapter 36.55 RCW and Jefferson County Code Chapter 13.56; and

WHEREAS, adoption of a Resolution by the Board granting a nonexclusive franchise to Grantee, setting forth terms and conditions of the franchise, and providing for County administration and regulation of the franchise would memorialize the relationship between Grantee and the County; and

WHEREAS, pursuant to Chapter 36.55 RCW, notice of the Board's public hearing on the Franchise was posted in three public places in the County seat at least fifteen (15) days before the hearing date and was published once a week for two consecutive weeks in the official County newspaper of record, the last publication being not less than five (5) days before the date fixed for the hearing; and

WHEREAS, pursuant to Chapter 36.55 RCW a hearing on the application was held on the \_\_\_\_\_ day of \_\_\_\_\_, 2010; and

WHEREAS, the Board of County Commissioners finds that it is in the public interest to grant the nonexclusive franchise;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF JEFFERSON COUNTY** that a nonexclusive franchise is hereby granted to Grantee to install, construct, repair, replace, maintain, relocate, remove, operate, and use Facilities in, upon, under, along, through, and across the Franchise Area as listed in Attachment A – Washington State Parks and Recreation Commission Franchise Area in order to provide sanitary sewer service to the Dosewallips State Park under the following express terms and conditions:

**SECTION 1 DEFINITIONS** The terms listed below, as used in this Franchise, shall have the meanings given herein. When not inconsistent with the text, words used in the present tense include the future tense, words in the plural number include the singular number, words in the singular number include the plural number, and the use of any gender shall be applicable to all genders. The words "shall" and "will" are mandatory, and the word "may" is permissive. Words not otherwise defined shall be given their common and ordinary meaning.

1.1 "Board" means Board of County Commissioners of Jefferson County.

1.2 "County" means Jefferson County, a municipal corporation and political subdivision of Washington State Parks and Recreation Commission

the State of Washington, represented by its designated employees, representatives, and agents, including, but not limited to the County Administrator, County Engineer, and their designees.

1.3 "Emergency" means any condition constituting a clear and present danger to life, health, safety, or property.

1.4 "Engineer" means the County Engineer or designee.

1.5 "Facilities" means collectively (i) a sanitary sewer force main and (ii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to the foregoing, whether located above or under ground.

1.6 "Franchise" means the grant of rights, privileges, and authority embodied in this Resolution.

1.7 "Franchise Area" means all rights-of-way for County roads, streets, avenues, alleys, and highways located within those areas of the County listed in Attachment A – Washington State Parks and Recreation Commission Franchise Area and not within an incorporated city or town, as now or as may hereafter be laid out, platted, dedicated, or improved within the present limits of the County and as such limits may be hereafter extended. The Franchise Area does not include (a) any other County-owned or leased properties or easements unrelated to the roads, streets, avenues, alleys and/or highways described above, including, but not limited to, parks, trails, facilities, or pits or (b) Grantee-owned or leased properties or easements located inside or outside of the boundaries of the County.

1.8 "JCC" means the Jefferson County Code, as it now exists or as it is later amended or superseded.

1.9 "Manual on Uniform Traffic Control Devices" means the manual published by the United States Department of Transportation, Federal Highway Administration that contains standards for traffic control signs, signals, and pavement markings in the United States, as it now exists or as later amended or superseded.

1.10 "Parties" or "Party" means collectively the County and Grantee, and individually either the County or Grantee.

1.11 "Person" means an individual, entity, corporation, partnership, firm, association, joint venture, or organization of any kind.

1.12 "Public Improvement Project" means any County capital improvement, including projects listed in the County's Six-Year Transportation Improvement Program or Annual Construction Program, or the construction, relocation, expansion, repair, maintenance, or removal of any County-owned facility located on, in, over, or under the Franchise Area for parks; roads and/or streets; curbs and/or sidewalks; pedestrian, bicycle, and/or other non-motorized transportation facilities; water systems; sanitary sewer systems; bridges, culverts, and storm drainage facilities; and County-owned fiber optic cable, conduit, or network facilities. For the avoidance of doubt, a Public

Improvement Project will not include any development or other activity requiring the relocation of Grantee's Facilities for the benefit of a Third Party. Any such relocation shall be subject to the rights provided to Grantee in Section 4.9.

1.13 "Third Party" means any Person other than the County and Grantee.

## **SECTION 2 FRANCHISE**

### **2.1 Grant of Franchise.**

2.1.1 Pursuant to the laws of the State of Washington, including, but not limited to, Chapter 36.55 RCW the County hereby grants to Grantee, subject to and in accordance with the terms and conditions set forth herein, a nonexclusive franchise to install, construct, repair, replace, maintain, relocate, remove, operate, and use Facilities in, upon, under, along, through, and across the Franchise Area.

2.1.2 The Franchise shall not convey to Grantee any title or ownership interest in the Franchise Area, but shall be deemed a Franchise only to use and occupy the Franchise Area for the limited purposes and term stated herein.

2.1.3 The Franchise shall not authorize, excuse, preclude, or prohibit Grantee from securing such further easements, leases, permits, or other approvals as may be required or desired to lawfully occupy and use the Franchise Area.

2.1.4 The Franchise shall not govern or apply to any Facilities located on Grantee-owned or leased properties or easements and such Facilities are not and will not be deemed to be located pursuant to rights derived from this Franchise.

2.1.5 The Franchise granted shall not be construed as any warranty of title.

2.1.6 No act, event or occurrence shall give Grantee any rights to occupy or use the Franchise Area permanently nor shall operate as an estoppel against the County.

2.1.7 Grantee specifically agrees to exercise its rights within the Franchise Area in accordance with all applicable federal and State of Washington laws and applicable rules and regulations, as now exist or as later amended or superseded; and all applicable County codes, including, but not limited to, JCC Chapter 13.56 Utilities, resolutions, and ordinances, as now exist or as later amended or superseded; provided, however, in the event of a conflict or inconsistency between any such provisions and this Franchise, the express terms and conditions of this Franchise will govern; provided, further, nothing herein shall be deemed to waive, prejudice, or otherwise limit any right of appeal afforded Grantee by such County codes, resolutions and ordinances. The express terms and conditions of this Franchise constitute a valid and enforceable contract between the Parties.

2.2 Noninterference. All construction, installation, service, repair, or maintenance of Grantee's Facilities performed upon, over, under, along, and/or across the Franchise Area shall be

done in such a manner as not to interfere with the free passage of pedestrian and/or vehicle traffic therein; the reasonable ingress or egress to the properties abutting the Franchise Area as they exist at the time of installation of the Facilities; the use, maintenance, and repair of existing County facilities and uses within the Franchise Area; or the use, maintenance, and repair of existing utilities, drainage facilities, or other improvements located within the Franchise Area. Grantee's Facilities shall have the same preference in regard to non-County facilities, including, but not limited to, utilities, drainage facilities, or other improvements that are proposed to be installed in the Franchise Area subsequent in time to Grantee's Facilities. Nothing in this Section 2.2 is intended to or will affect or modify the rights and obligations of the Parties with respect to the relocation of Grantee's Facilities under Section 4. All relocations of Grantee's Facilities will be undertaken subject to and in accordance with the terms, conditions, and requirements set forth in Section 4.

2.3 Drawings. Within ninety (90) days of completion of construction of Grantee's Facilities within the Franchise Area, Grantee shall provide the County with record drawings showing the location of Grantee's Facilities within the Franchise Area. Upon the County's request, in connection with the design of any County Public Improvement Project within the Franchise Area, Grantee shall verify the location of its Facilities within the Franchise Area by excavating, including pot holing, at no expense to the County. With respect to any excavations by or on behalf of Grantee or the County within the Franchise Area, nothing herein 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 utility facilities.

#### 2.4 Term of Franchise.

2.4.1 Term of Franchise. This Franchise is granted for a period of twenty-five (25) years from the date of adoption of the Franchise by the Board.

2.4.2 As express conditions of this Franchise, within thirty (30) days after the adoption of this Franchise by the Board, Grantee shall:

- a. File with the Clerk of the Board its written acceptance of the Franchise;
- b. Reimburse the County for the administrative expenses required to be paid by Grantee under Section 8.2;
- c. Provide to the County the evidence of insurance as required by Section 10; and
- d. Reimburse the County for the cost of posting and publishing the public hearing notice as required by 36.55.040 RCW and for the cost of filing this Franchise with the Jefferson County Auditor as required by Chapter 36.55.080 RCW.

2.4.3 In the event Grantee fails to accept this Franchise in the manner specified above within the said thirty (30) days, this Franchise shall be null and void.

2.4.4 Franchise Renewal. This Franchise may be renewed, at the sole discretion of the Board, for an additional twenty-five (25) year period upon the written request of Grantee, such



request to be submitted not more than two (2) years nor less than one hundred-eighty (180) days prior to the expiration of the initial twenty-five (25) year term.

2.5 Nonexclusive Franchise. The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant at any time such rights, permits, licenses, and/or franchises to Persons to use the Franchise Area for similar or different purposes allowed hereunder as the County deems appropriate, so long as the same does not interfere with Grantee's rights under this Franchise. Subject to this Franchise, Grantee shall not prevent or prohibit the County from constructing, altering, maintaining, or using any portion of the Franchise Area or affect its jurisdiction over any part thereof, the County having full power and authority to make all necessary changes, relocations, repairs, or maintenance of the Franchise Area as the County deems appropriate. Grantee acknowledges that it cannot exclude the County from any portion of the Franchise Area unless the County expressly agrees to such exclusion in writing.

### **SECTION 3 PERFORMANCE OF WORK**

#### **3.1 Permit Required.**

3.1.1 Work by Grantee within the Franchise Area shall conform to the requirements of the applicable codes, ordinances, and standards, including JCC Chapter 13.56 Utilities; provided, however, in the event of a conflict or inconsistency between any such requirements and this Franchise, the express terms and conditions of this Franchise will govern and control.

3.1.2 Prior to commencing any work within the Franchise Area, Grantee shall apply for and receive a utility permit from the County pursuant to the requirements of JCC 13.56 Utilities.

3.1.3 Work by Grantee shall comply with the utility permit and plans; provided, however, in the event of any conflict or inconsistency between such permit or plans and this Franchise, the express terms and conditions of this Franchise will govern and control. The County may order removal at Grantee's expense of work that does not comply with the permit or plans.

3.1.4 Grantee is solely responsible for the performance and completion of work authorized by a utility permit that is issued to Grantee.

#### **3.2 Emergency Response and Repairs.**

3.2.1 In the event of an emergency or the need for unexpected repair, Grantee may commence such emergency response or repair as required by the circumstances, provided that Grantee shall notify the County in writing before commencing the work or within twenty-four (24) hours, if advance notice is not practicable. In the event that Grantee conducts emergency repairs under this section, Grantee shall make application for an utility permit as soon as practicable, but in no event (unless waived by the County) later than thirty (30) days from the emergency event.

3.2.2 In the event any of Grantee's Facilities within the Franchise Area are in a condition such that, in the reasonable opinion of the Engineer, an Emergency is created, Grantee upon request of the Engineer shall expeditiously and at its own expense repair the Facilities and correct the

emergency condition.

3.3 Restoration. After installation, construction, relocation, maintenance, removal, repair, or replacement of any of Grantee's Facilities within the Franchise Area, Grantee at its expense shall expeditiously restore the Franchise Area and any County property within the Franchise Area that may have been disturbed or damaged by such work to at least the same condition as they were in immediately prior to any such work. The County shall have final approval of the condition of the Franchise Area and County property after restoration pursuant to the provisions of applicable County codes, ordinances, regulations, standards, and procedures as now exist or as later amended or superseded; provided, however, in the event of any conflict or inconsistency between such codes, ordinances, regulations, standards, or procedures and this Franchise, the express terms and conditions of this Franchise will govern and control; provided, further, nothing herein shall be deemed to waive, prejudice, or limit any right of appeal afforded by such codes, ordinances, regulations, standards, or procedures. Grantee or its agent shall contact the County for inspection upon completion of work.

3.4 Refuse and Debris. Grantee shall promptly remove and properly dispose of refuse and debris resulting from any of Grantee's work within the Franchise Area. Grantee shall remove refuse and debris on a regular basis during the work day to keep all travel ways clear. Should Grantee's work last for more than one day in a particular part of the Franchise Area, all refuse and debris shall be removed prior to leaving the site at the end of the work day, to the extent feasible in light of the work being undertaken by Grantee.

3.5 Monuments. All survey monuments that are disturbed, displaced, or destroyed by Grantee in its performance of any work under this Franchise shall be referenced and restored by Grantee, as per Chapter 332-120 WAC, as from time to time amended, and all pertinent federal, state and local standards and specifications.

3.6 Workmanlike Manner. All work performed by Grantee within the Franchise Area shall be done in accordance with adopted County codes, ordinances, regulations, standards, and procedures, together with the laws of the State of Washington, all as now exist or as later amended or superseded in a thorough, professional, and workmanlike manner; provided, however, in the event of any conflict or inconsistency between any County codes, ordinances, regulations, standards, or procedures and this Franchise, the express terms and conditions of this Franchise will govern and control.

3.7 Traffic Control. Grantee's activities within the Franchise Area and activities within the Franchise Area conducted by Grantee's agents or by Third Parties shall conform to the latest edition of the Manual on Uniform Traffic Control Devices, the requirements of JCC 13.56.460 Traffic Control, and approved traffic control plans; provided, however, in the event of a conflict or inconsistency between any such manual, requirements, or plans and this Franchise, the express terms and conditions of this Franchise will govern and control. It shall be the responsibility of Grantee to ensure compliance. Grantee shall be liable for any damages resulting from Grantee's failure to provide adequate traffic control.

## **SECTION 4 RELOCATION OF FACILITIES FOR PUBLIC IMPROVEMENT PROJECTS**

4.1 Grantee at its own expense shall relocate its Facilities existing within the Franchise Area as necessary to accommodate Public Improvement Projects, in accordance with and subject to the terms and conditions set forth in this Section 4. The County acknowledges that Grantee's ability to relocate its Facilities within the Franchise Area to accommodate Public Improvement Projects may be constrained due to the need to acquire property rights or long lead time items or to other conditions beyond Grantee's control. In order to reasonably accommodate Grantee's constraints, while recognizing the County's authority to manage the Franchise Area and responsibility to construct Public Improvement Projects within the County's funding and scheduling constraints, the Parties will at all times work cooperatively and in good faith with the goal of ensuring that relocations of Grantee's Facilities within the Franchise Area that are required to accommodate Public Improvement Projects are planned, scheduled, and completed promptly and with due regard to the interests and constraints of both Parties.

4.2 In order to assist Grantee in planning for Public Improvement Projects that may require relocation of Grantee's Facilities within the Franchise Area, the County shall:

- a. Notify Grantee if a Public Improvement Project within the Franchise Area is proposed in the Jefferson County Six Year Transportation Improvement Program within thirty (30) days of the Program's adoption by the Board;
- b. Notify Grantee if a Public Improvement Project within the Franchise Area is proposed in the Jefferson County Annual Construction Program within thirty (30) days of the Program's adoption by the Board;
- c. Meet with Grantee at Grantee's request during the first quarter of each year to discuss Public Improvement Projects in the Annual Construction Program that may require relocation of Grantee's Facilities; and
- d. Provide Grantee with written notice and thirty percent (30%) complete plans for Public Improvement Projects that may require relocation of Grantee's Facilities within thirty (30) days of their preparation.

4.3 Whenever the County undertakes a Public Improvement Project that requires relocation of Grantee's Facilities within the Franchise Area, the County shall, within a reasonable time prior to the commencement of the Public Improvement Project and in any event not less than one hundred twenty (120) days prior to the commencement of the Public Improvement Project, provide Grantee written notice of the required relocation and reasonable plans, specifications, and schedule for the Public Improvement Project. Within thirty (30) days of receipt of the notice, plans, specifications, and schedule, and subject to the exercise by Grantee of its rights under Section 4.4 or Section 4.5, Grantee shall provide the County with a proposed schedule to relocate its Facilities within the Franchise Area that will accommodate the County's schedule for the Public Improvement Project.

4.4 If Grantee foresees that it may be unable to relocate its Facilities to accommodate the

County's schedule for the Public Improvement Project, Grantee shall notify the County as soon as reasonably practicable and request that the County revise its schedule for the Public Improvement Project to accommodate Grantee's constraints. The request shall include a description of the factors that constrain Grantee's ability to relocate its Facilities to accommodate the County's schedule for the Public Improvement Project and a proposed alternative schedule. The County shall evaluate Grantee's request and proposed alternative schedule in good faith and under the review standard specified below in this Section 4.4 and provide a written response to Grantee. The County shall give Grantee's request full and fair consideration with due regard to Grantee's constraints and all other facts and circumstances which bear upon the request and shall not unreasonably withhold its approval of the request.

4.4.1 In the event that the County, under the review standard required above, approves Grantee's request, thereafter and subject to this Section 4 the County and Grantee shall work cooperatively to establish a revised schedule for the Public Improvement Project and the relocation of Grantee's Facilities and Grantee shall relocate its Facilities within the Franchise Area so as to accommodate the revised schedule for the Public Improvement Project that is established pursuant to this Section 4.4.

4.4.2 In the event that the County, under the review standard required above, reasonably and properly denies Grantee's request, thereafter and subject to this Section 4 Grantee shall relocate its Facilities within the Franchise Area so as to accommodate the County's schedule for the Public Improvement Project.

4.5 After receipt of written notice of the required relocation and reasonable plans, specifications, and schedule for the Public Improvement Project under Section 4.3, Grantee may submit a request to the County to perform the relocation concurrently with the Public Improvement Project. Grantee shall submit said request with a proposed schedule for concurrent relocation not more than thirty (30) days after receiving the County's notice of the required relocation under Section 4.3. The County shall evaluate Grantee's request and proposed schedule in good faith and under the review standard specified below in this Section 4.5 and provide a written response to Grantee. The County shall give Grantee's request full and fair consideration with due regard to Grantee's interests and all other facts and circumstances which bear upon the request and shall not unreasonably withhold its approval of the request.

4.5.1 In the event the County, under the review standard required above, approves Grantee's request to relocate its Facilities concurrently with the Public Improvement Project, the County and Grantee shall thereafter work cooperatively to establish a schedule for the concurrent relocation of Grantee's Facilities and Grantee shall relocate its Facilities within the Franchise Area so as to accommodate said schedule for concurrent relocation that is established pursuant to this Section 4.5.

4.5.2 In the event the County, under the review standard required above, reasonably and properly denies Grantee's request that the relocation be performed concurrently with the Public Improvement Project, Grantee shall relocate its Facilities within the Franchise Area so as to accommodate the County's schedule for the Public Improvement Project.

4.6 Subject to compliance by the County with the terms of this Section 4 and to the maximum extent provided by law, Grantee shall reimburse the County for any and all costs, expenses, and/or damages that are legally required to be paid by the County to its Third Party contractor(s) as a direct result of a delay in meeting the schedule for a Public Improvement Project that has been established under Section 4.3 when Grantee has not exercised its rights under Section 4.4 or Section 4.5 or that has been established pursuant to Section 4.4 or Section 4.5, but only if, as, and to the extent the delay is directly caused by Grantee's breach of its obligations under this Section 4 with respect to the relocation of Grantee's Facilities within the Franchise Area in accordance with such schedule for the Public Improvement Project; provided the County shall first provide Grantee written notice of any such claim by the Third Party contractor(s) and provide Grantee the opportunity to work with the Third Party contractor(s) to resolve the claim for a period of not less than sixty (60) days prior to payment of the claim. Nothing in this Section 4.6 will require Grantee to bear or be responsible for any cost, expense or damage that results from any delay in meeting the applicable schedule for a Public Improvement Project if, as, and to the extent the schedule was established by the County in violation of the provisions for schedule adjustments under Section 4.4 or Section 4.5 or the delay is caused by the County, any Third Party, or a Force Majeure Event under Section 13.4.

4.7 If the County requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 4, the County shall bear the entire cost of such subsequent relocation, except if the relocation is required by an emergency under Section 4.8.

4.8 If an emergency arises that endangers public health or safety, public property, or the property or life of any individual that requires the relocation of Grantee's Facilities within the Franchise Area, the County shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the County, Grantee shall relocate the affected Facilities as soon as reasonably practicable at Grantee's expense.

4.9 Whenever (a) any public or private development within the Franchise Area, other than a Public Improvement Project, requires the relocation of Grantee's Facilities within the Franchise Area to accommodate such development; or (b) the County requires the relocation of Grantee's Facilities within the Franchise Area for the benefit of any Third Party, then in such event, Grantee shall have the right as a condition of such relocation to require such development proponent or Third Party to reimburse Grantee, at a time and upon terms acceptable to Grantee, for any and all reasonable costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.

4.9.1 Any condition or requirement imposed by the County upon any Third Party that requires the relocation of Grantee's Facilities shall be a required relocation for the purposes of this Section 4.9, including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction, or development.

## **SECTION 5 RIGHTS NOT DERIVED FROM THIS FRANCHISE**

5.1 Nothing in this Franchise shall require Grantee to bear any cost or expense in connection

with the relocation, modification, or removal of any Facilities that have been constructed pursuant to an easement or such other rights not derived from this Franchise.

### **SECTION 6 GRADING OR EXCAVATING BY COUNTY**

6.1 Grading and Excavating. This Franchise shall not preclude the County, its agents, employees, or contractors from grading, excavating, or doing other work contiguous to Grantee's Facilities. However, with respect to such grading, excavating, and other work, the County shall use its best efforts to coordinate such work with Grantee so as to protect Grantee's Facilities from harm, damage, or disturbance.

### **SECTION 7 VACATION**

7.1 In the event the County vacates any portion of the Franchise Area, the Board may, at its discretion and as provided for in Chapter 36.87.140 RCW, retain an easement in respect to the vacated land for the construction, maintenance, repair, and replacement of Grantee's Facilities that at the time of the vacation are authorized under this Franchise. The Board may also, at its discretion and by giving forty-five (45) days written notice to Grantee, terminate this Franchise with reference to such portion of the Franchise Area so vacated. The County shall not be liable for any damages or loss to the Grantee by reason of such termination.

### **SECTION 8 RIGHTS AND POWERS RESERVED TO THE COUNTY**

8.1 County Expenses. The Grantee shall reimburse the County for the County's administrative expenses that are directly related to (a) receiving and approving a permit, license, or this Franchise, (b) inspecting plans and construction, and (c) preparing a detailed statement pursuant to Chapter 43.21C RCW. The reimbursable expenses of receiving and approving this Franchise shall include the expenses for County staff time preparing this Franchise, posting and publication of hearing notices, and filing this Franchise with the Jefferson County Auditor.

8.2 Damage to Grantee's Facilities. The County shall not be liable for any damage to or loss of any of Grantee's Facilities within the Franchise Area as a result of or in connection with any emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling, mowing, or work of any kind in the Franchise Area by or on behalf of the County or any entity under contract with the County, except for damage or loss caused by the negligence or willful misconduct of the County or anyone acting for or on behalf of the County. The foregoing, however, is not intended to, and will not in any way, limit the County's liability for any breach by the County of this Franchise or any other written agreement between the Parties or otherwise limit any right or remedy to which Grantee is entitled by contract or applicable law.

### **SECTION 9 INDEMNIFICATION AND HOLD HARMLESS**

9.1 To the extent permitted by law, Grantee shall indemnify, defend, and hold harmless the County, its elected and appointed officers, officials, employees, representatives, and agents (collectively the "Indemnitees") from any and all Third Party claims, demands, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including all costs

and attorneys fees, made against the Indemnitees on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of Grantee, its agents, representatives, or employees in exercising the rights granted to Grantee under this Franchise.

9.2 In the event any such claim or demand is presented to or filed with the County that causes the County to choose to invoke its rights under this Section 9, the County shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the Indemnitees. In the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election, as it pertains to Grantee's responsibility to indemnify, defend, and hold harmless the Indemnitees.

9.3 Grantee shall, with respect to design, installation, construction, maintenance, repair, or replacement of the Facilities, require its contractors, including, but not limited to, its prime or general contractor for installation, construction, maintenance, repair, or replacement of the Facilities to contractually agree to indemnify and hold harmless the County, its elected and appointed officers, officials, employees, representatives, and agents (collectively the "Indemnitees") from any and all Third Party claims, demands, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including all costs and attorneys fees, made against the Indemnitees on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of said contractor, its agents, representatives, employees, or subcontractors in the installation, construction, maintenance, repair, and replacement of the Facilities.

9.4 In any and all claims against the Indemnitees by any officer, employee, representative, or agent of the Grantee or its contractors, the indemnification obligation under this Section 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Grantee or its contractors under worker's compensation acts, disability benefit acts, or other employee benefit acts. It is further specifically understood that, solely to the extent required to enforce the indemnification provided herein, Grantee waives its immunity under Chapter 51 RCW Industrial Insurance; provided, however, the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought directly against Grantee by any of its employees. This waiver has been mutually negotiated by the Parties and is authorized by RCW 4.24.115. Grantee acknowledges that the County would not enter into this Franchise without this waiver thereof.

9.5 Inspection or acceptance by the County of any work performed by Grantee shall not be grounds for avoidance by Grantee of any of its obligations under this Section 9.

9.6 Said indemnification and hold harmless obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

9.7 In the event of liability for damages arising out of bodily injury to Persons or damages to property or business caused by or resulting from the concurrent negligence of Grantee and the County, Grantee's liability hereunder shall apply only to the extent of negligence attributable to the Grantee, its agents, representatives, or employees.

9.8 The provisions of this Section 9 shall survive the expiration or termination of this Franchise. Further, all provisions of this Section 9 shall apply to the successors, assigns, and lessees of Grantee.

## **SECTION 10 INSURANCE**

10.1 Grantee Insurance. Grantee shall procure and maintain for the duration of this Franchise the following insurance:

- a. Commercial General Liability insurance and, if necessary, Umbrella Liability insurance, which covers bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from Grantee's activities within the Franchise Area. The limit of liability shall not be less than five million dollars (\$5,000,000) each occurrence. The County, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insureds with respect to activities occurring within the Franchise Area. Coverage shall be comprehensive with respect to the Grantee's activities within the Franchise Area and shall include completed operations, collapse, explosions, and underground hazards.
- b. Business Automobile Liability insurance for owned, non-owned, and hired vehicles with limits of not less than five million dollars (\$5,000,000) per person, five million dollars (\$5,000,000) per occurrence.
- c. Workers' Compensation insurance as required by Chapter 51 RCW and Employers Liability Coverage with a limit of not less than five million dollars (\$5,000,000) per occurrence.
- d. The insurance policies required by this section shall be maintained at all times by Grantee. Each liability policy shall be endorsed to require the insurer to notify the County at least forty-five (45) days before the policy can be canceled by either Party, and to require notice of cancellation due to non-payment of premium to be mailed to the County as well as the named insured. Grantee shall be obligated to replace or renew the canceled or expiring policy and show proof in the form of a certificate of insurance, at least twenty (20) days before the expiration or cancellation of the existing policy(s).
- e. Grantee shall furnish the County with properly executed certificates of insurance or a signed policy endorsement, which shall clearly evidence all insurance required in this Section 10.1. The certificates will, at a minimum, list the limits of liability and coverage.
- f. Grantee will provide a copy of any and all insurance policies specified in this Franchise upon request of the County.
- g. The insurance limits mandated for any insurance coverage required by this Franchise are not intended to be an indication of limits of exposure nor are they limitations on liability or



indemnification.

10.2 Self-Insurance. In lieu of the insurance requirements set forth in Section 10.1, Grantee may self-insure against such risks in such amounts. Grantee shall provide the County with reasonable written evidence that the Grantee maintains such self-insurance.

10.3 The obligations contained in this Section 10 shall survive the expiration, revocation or termination of this Franchise. Further, all provisions of this Section 10 shall apply to the successors, assigns, and lessees of Grantee.

### **SECTION 11 LIMITATION OF LIABILITY**

11.1 The County's administration of this Franchise shall not be construed to create the basis for any liability on the part of the County, its elected and appointed officers, officials, agents, employees, and representatives for any injury or damage from the failure of Grantee to comply with the provisions of this Franchise; for any injury or damage arising from the failure of Grantee to comply with or follow a directive, order, or instruction of any hearing officer or administrative law judge, and/or a court of competent jurisdiction; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the County; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the County; or for the accuracy of plans submitted to the County.

### **SECTION 12 DISPUTE RESOLUTION**

12.1 The Parties agree to use their best efforts to prevent and resolve disputes before they escalate into claims or legal actions.

12.2 Resolving Disputes through Negotiation. The Parties agree to use their best efforts and good faith negotiations to resolve disputes arising out of or related to this Franchise. To that end the Parties shall engage in the following dispute resolution process should any such disputes arise:

- a. Level One: The Engineer or his designee shall meet with the Dosewallips State Park Manager or his designee to discuss and attempt to resolve the dispute in a timely manner. If they cannot resolve the dispute within fifteen (15) business days after the referral of that dispute to Level One, either Party may refer the dispute to Level Two as described herein.
- b. Level Two: The County Administrator or his designee shall meet with the Director of Parks and Recreation or his designee to discuss and attempt to resolve the dispute in a timely manner.

12.3 In the event a dispute is referred to Level Two but is not resolved at Level Two within fifteen (15) business days after that referral, then either Party may invoke the rights provided to them by Section 13 or institute a legal proceeding in any court and/or with governmental agency having jurisdiction over the dispute.

12.4 No provision of this Franchise shall be deemed to bar the right of either Party to seek or

obtain judicial relief from a violation of any provision of this Franchise; nor to bar or otherwise limit the right of either Party 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 TERMINATION OF FRANCHISE**

13.1 Default by Grantee. If Grantee materially breaches any term or condition of this Franchise, the County may terminate this Franchise in accordance with Section 13.2. Upon termination of the Franchise, all rights of Grantee hereunder shall cease.

13.2 Procedure. The County may terminate this Franchise if Grantee materially breaches any term or condition of this Franchise and fails to cure such breach in all material respects within sixty (60) days after Grantee's receipt of written demand by the County to so comply. Prior to terminating the Franchise, the County shall give the Grantee at least ten (10) days written notice of a regularly scheduled meeting of the Board of County Commissioners at which meeting the Board intends to formally revoke or terminate the Franchise. At such meeting, the Board shall consider a report from the Engineer regarding the Franchise breach and hear any Person desiring to be heard on the Franchise termination. If the Board determines that Grantee's breach justifies revocation or termination of the Franchise, the Board may pass a resolution declaring that the Franchise is revoked or terminated.

13.3 Extension of Cure Period. If any breach of this Franchise by Grantee cannot be corrected with due diligence within the sixty (60) day period specified in Section 13.2 due to events beyond Grantee's control, then the County may extend the time within which Grantee may so comply for an additional period or periods not to exceed thirty (30) days so long as Grantee commences promptly and diligently to effect such compliance.

13.4 Force Majeure. A Party shall not be deemed in breach or default of any provisions of this Franchise when earthquake, flood, storm or other natural disaster, civil emergency, any failure or delay in the performance by the other Party or a Third Party who is not an employee, agent or contractor of the affected Party, or other such circumstances beyond such Party's control (a "Force Majeure Event") prevent performance or compliance. 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 the Force Majeure Event.

13.5 Dispute Resolution. Neither Party may invoke or rely upon the terms and obligations of this Section 13 (except for the Force Majeure rights in Section 13.4) until such time as the Dispute Resolution procedure listed in Section 12 has been utilized by the aggrieved Party.

### **SECTION 14 ASSIGNMENT OF FRANCHISE**

14.1 Assignment. Grantee may not assign or otherwise transfer its rights, privileges or authority under this Franchise without the prior written authorization and approval of the County.

Any assignment or transfer of any interest in this Franchise shall not be approved by the County or be effective until the assignee or transferee becomes a signatory to this Franchise, assuming all rights and obligations hereunder and agreeing to perform the terms and conditions under this Franchise.

14.2 Binding on Successors. All provisions, conditions, regulations, and requirements herein contained shall be binding upon the successors and assigns of Grantee and all privileges as well as all obligations and liabilities of Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Grantee is mentioned.

#### **SECTION 15 INCORPORATION/ANNEXATION**

15.1 City or Town. If any portion of the Franchise Area covered by this Franchise is incorporated into the limits of any city or town, this Franchise shall terminate as to any such portion within the corporate limits of such city or town and the County shall be released of its obligations under this Franchise as to the portion incorporated. This Franchise shall continue as to all of the Franchise Area not incorporated into a city or town.

15.2 New County. If, pursuant to Article XI §3 of the State of Washington Constitution, territory is stricken or taken from the County and a new county is established from the territory taken from the County, this Franchise shall terminate as to any portion of the Franchise Area within the territory so taken to establish the new county and the County shall be released of its obligations under this Franchise as to the territory taken. This Franchise shall continue as to all of the Franchise Area not taken from the County.

#### **SECTION 16 NON-WAIVER OF RIGHTS**

16.1 The County and Grantee agree that the excuse or forgiveness of performance or waiver of any provision(s) of this Franchise does not constitute a waiver of such provision(s) or future performance or prejudice the right of the waiving Party to enforce any of the provisions of this Franchise at a subsequent time.

#### **SECTION 17 GOVERNING LAW AND VENUE**

17.1 Governing Law. This Franchise has been and shall be construed as having been made and executed within the State of Washington. The Parties stipulate that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

17.2 Venue. Any action at law, suit in equity, or judicial proceeding arising out of this Franchise shall be instituted and maintained only in any of the courts of competent jurisdiction in Jefferson County, Washington or as provided for in Chapter 36.01.050 RCW.

#### **SECTION 18 NOTICES**

18.1 Notices. Any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the Party to receive same.

Notice to the County shall be sent to:  
Jefferson County Public Works Department  
623 Sheridan Street  
Port Townsend, WA 98368

Notice and billings to Grantee shall be sent to:  
Washington State Parks and Recreation Commission  
PO Box 42650  
Olympia, WA 98504-2650

Grantee shall promptly notify the County of any change in the notice or billing addresses.

### **SECTION 19 SEVERABILITY AND SURVIVABILITY**

19.1 If a court of competent jurisdiction holds any part, term, or provision of this Franchise to be illegal or invalid in whole or in part, the validity of the remaining provisions shall not be affected and the Parties' rights and obligations shall be construed and enforced as if the Franchise did not contain the particular provision held to be invalid. The invalidity of any portion of this Franchise shall not abate, reduce or otherwise affect any consideration or other obligation required of either Party or any grant of right to either Party.

19.2 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.

19.3 The terms and conditions contained in this Franchise that by their sense and context are intended to survive the expiration or termination of this Franchise shall so survive.

### **SECTION 20 AMENDMENT TO FRANCHISE**

20.1 This Franchise may be amended by mutual written agreement of the Parties (which specifically states that it is an amendment to this Franchise) upon compliance with the requirements of Chapter 36.55 RCW.

### **SECTION 21 ENTIRE AGREEMENT**

21.1 Entire Agreement. The Parties agree that this Franchise is the complete expression of the terms and conditions hereunder and cannot be changed orally, but only by an instrument in writing executed by the Parties.

**APPROVED AND ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**JEFFERSON COUNTY  
BOARD OF COMMISSIONERS**

\_\_\_\_\_  
David W. Sullivan, Chair

\_\_\_\_\_  
John Austin, Member

\_\_\_\_\_  
Phil Johnson, Member

ATTEST:

\_\_\_\_\_  
Erin Lundgren  
Clerk of the Board

APPROVED AS TO FORM:

*David Alvarez* 10/13/10  
\_\_\_\_\_  
David Alvarez  
Deputy Prosecuting Attorney

**Attachment A – Washington State Parks and Recreation Commission Franchise Area**

| <u>Township</u> | <u>Range</u> | <u>Sections</u> |
|-----------------|--------------|-----------------|
| 25 North        | 2 West       | 2               |
| 26 North        | 2 West       | 34 – 35         |

**County Roads and Road Numbers**

Brinnon Lane, 245209  
Church Road, 251109  
Corey Lane, 247809  
Dosewallips Road, 250008  
Easy Street, 246509  
Schoolhouse Road, 249109

**JEFFERSON COUNTY, WASHINGTON**

**ACCEPTANCE OF RESOLUTION NO. \_\_\_\_\_**

The undersigned, Washington State Parks and Recreation Commission, hereby wholly accepts Jefferson County Resolution No. \_\_\_\_\_ Granting A Nonexclusive Franchise (the "Franchise Agreement"), which was adopted by the Jefferson County Board of Commissioners on the \_\_\_\_\_ day of \_\_\_\_\_, 2010 and provides that:

Jefferson County, Washington grants Washington State Parks and Recreation Commission the right, privilege, authority, and franchise to install, construct, repair, replace, maintain, relocate, extend, remove, operate, and use Facilities in, upon, under, along, through, and across the Franchise Area pursuant to the terms of the Franchise Agreement.

This Acceptance of the Franchise Agreement is unconditionally made without reservation and is expressly part of the Franchise Agreement, which is hereby incorporated by reference. Washington State Parks and Recreation Commission hereby accepts all of the rights and privileges of the Franchise Agreement subject to all of the terms, conditions, duties, and obligations provided therein.

IN TESTIMONY WHEREOF said Washington State Parks and Recreation Commission has caused this Acceptance to be executed in its name by its undersigned authorized signer, thereunto duly authorized on the \_\_\_\_\_ day of \_\_\_\_\_, 2010.

**WASHINGTON STATE PARKS AND RECREATION COMMISSION**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF WASHINGTON

ss.

COUNTY OF \_\_\_\_\_

I certify that I know or have satisfactory evidence that \_\_\_\_\_, known to be the \_\_\_\_\_ of Washington State Parks and Recreation Commission is the person who appeared before me, and said person acknowledged that he/she signed this instrument, on oath stated that he/she was duly authorized execute the instrument on behalf of the Commission and acknowledged it to be the free and voluntary act of such party for the uses and purposes herein mentioned. GIVEN under my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

Notary Public in and for the State of Washington residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_, \_\_\_\_\_.