

APPROVED: May 17, 2006  
EFFECTIVE: July 11, 2006

After Recording Return To:

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Snohomish County Council  
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Everett, WA 98201

<b>Grantor:</b>	Snohomish County
<b>Grantee:</b>	Warm Beach Christian Camp and Conference Center
<b>Tax Account No.:</b>	Not Applicable
<b>Legal Description:</b>	Sections, Townships, and Ranges covered listed in § 1.5, page 4.
<b>Ref. # of Docs. Affected:</b>	N/A
<b>Document Title:</b>	An Ordinance of Snohomish County Council Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington, to Warm Beach Health Care Center

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

AMENDED ORDINANCE NO. 06-023

AN ORDINANCE OF THE SNOHOMISH COUNTY COUNCIL GRANTING  
A NONEXCLUSIVE FRANCHISE AUTHORIZING LIMITED USE OF THE  
PUBLIC ROAD RIGHTS-OF-WAY IN SNOHOMISH COUNTY,  
WASHINGTON, TO WARM BEACH HEALTH CARE CENTER

WHEREAS, Warm Beach Health Care Center, a non-profit corporation, has applied to Snohomish County, Washington, for a nonexclusive franchise to construct, maintain, operate, replace and repair sewer and stormwater transmission facilities in, on, across, over, along, under, or through public rights-of-way within unincorporated Snohomish County; and

WHEREAS, the Washington State Constitution, by and through its general grant of police power, and Section 36.55.010 of the Revised Code of Washington (RCW) authorize counties to grant franchises for use of public rights-of-way; and

WHEREAS, Title 13 of the Snohomish County Code (SCC) specifies requirements for franchises in Snohomish County rights-of-way; and

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

WHEREAS, the 1934 Communications Act, as amended by the 1996 Telecommunications Act, 47 USC § 151, et seq., relating to telecommunications providers recognizes and provides state and local government authority to manage the public rights-of-way and to require fair and reasonable compensation on a competitively neutral and nondiscriminatory basis; and

WHEREAS, a franchise is a legislative authorization to use public rights-of-way and actual construction and activities in the rights-of-way will be subject to administratively approved Right-of-Way Use Permits after review of specific plans; and

WHEREAS, the Council considered the Engineer’s Report of the Department of Public Works, attached to and incorporated into this ordinance by reference, which report recommends that the subject franchise be granted, and further sets out guidelines and expectations for the right-of-way use permit process; and

WHEREAS, it has been found to be in the public interest for a franchise authorizing use of public rights-of-way for sewer and stormwater transmission lines to be issued to the Warm Beach Health Care Center by enactment of an ordinance;

NOW, THEREFORE, SNOHOMISH COUNTY DOES ORDAIN:

### **TABLE OF CONTENTS**

<b><u>Section 1.</u></b>	<b><u>Franchise Granted - Term and Scope.</u></b>
<b><u>Section 2.</u></b>	<b><u>Non-Exclusive Franchise Grant.</u></b>
<b><u>Section 3.</u></b>	<b><u>Right-of-Way Use Permit Required for All Work in Right-of-Way.</u></b>
<b><u>Section 4.</u></b>	<b><u>Emergency Work - Permit Waiver.</u></b>
<b><u>Section 5.</u></b>	<b><u>Compliance with Applicable Laws.</u></b>
<b><u>Section 6.</u></b>	<b><u>Restoration of Right-of-Way.</u></b>
<b><u>Section 7.</u></b>	<b><u>Maps and Records of Facility Location.</u></b>
<b><u>Section 8.</u></b>	<b><u>Relocation of Facilities.</u></b>
<b><u>Section 9.</u></b>	<b><u>Undergrounding of Facilities.</u></b>
<b><u>Section 10.</u></b>	<b><u>Maintenance of Facilities.</u></b>
<b><u>Section 11.</u></b>	<b><u>Dangerous Conditions, Authority for County to Abate.</u></b>
<b><u>Section 12.</u></b>	<b><u>Abandonment of the Franchisee’s Facilities.</u></b>
<b><u>Section 13.</u></b>	<b><u>Fees, Compensation for Use of Rights-of-Way, and Taxes.</u></b>
<b><u>Section 14.</u></b>	<b><u>Hold Harmless and Indemnification.</u></b>
<b><u>Section 15.</u></b>	<b><u>Limitation of County Liability.</u></b>
<b><u>Section 16.</u></b>	<b><u>Insurance.</u></b>
<b><u>Section 17.</u></b>	<b><u>Bond or Performance Security.</u></b>
<b><u>Section 18.</u></b>	<b><u>Modification.</u></b>

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

<b><u>Section 19.</u></b>	<b><u>Annexation.</u></b>
<b><u>Section 20.</u></b>	<b><u>Vacation.</u></b>
<b><u>Section 21.</u></b>	<b><u>Assignment.</u></b>
<b><u>Section 22.</u></b>	<b><u>Termination, Revocation and Forfeiture.</u></b>
<b><u>Section 23.</u></b>	<b><u>Remedies to Enforce Compliance.</u></b>
<b><u>Section 24.</u></b>	<b><u>Nonwaiver of Rights or Remedies.</u></b>
<b><u>Section 25.</u></b>	<b><u>Records.</u></b>
<b><u>Section 26.</u></b>	<b><u>County Ordinances and Regulations - Reservation of Police Power.</u></b>
<b><u>Section 27.</u></b>	<b><u>Eminent Domain, Powers of the People.</u></b>
<b><u>Section 28.</u></b>	<b><u>Survival.</u></b>
<b><u>Section 29.</u></b>	<b><u>Governing Law and Stipulation of Venue.</u></b>
<b><u>Section 30.</u></b>	<b><u>Severability.</u></b>
<b><u>Section 31.</u></b>	<b><u>Notice and Emergency Contact.</u></b>
<b><u>Section 32.</u></b>	<b><u>Acceptance.</u></b>
<b><u>Section 33.</u></b>	<b><u>Effective Date.</u></b>

**Section 1. Franchise Granted - Term and Scope.**

1.1 Pursuant to Section 36.55.010 of the Revised Code of Washington (RCW), Section 9.20 of the Snohomish County Charter, Chapter 13.80 of the Snohomish County Code (SCC), Snohomish County, a political subdivision of the State of Washington (hereinafter the “County”), hereby grants to Warm Beach Health Care Center, a non-profit corporation, its successors and assigns (hereinafter the “Franchisee”), a non-exclusive franchise subject to the terms and conditions in the County code, the Engineering Design & Development Standards (EDDS) and this franchise ordinance.

1.2 The term of this franchise shall be for a period of five (5) years, beginning on the effective date of this franchise, unless terminated, revoked or modified under the provisions of this franchise. This franchise shall be automatically renewed for additional five (5) year terms, up to a total of fifteen (15) years from the effective date of this franchise, UNLESS, not less than sixty (60) days prior to the termination of the current term or extension, the County gives notice of its intention to renegotiate the terms or conditions of the franchise, in which case, the franchise shall not renew unless and until the County and the Franchisee reach agreement on terms and conditions acceptable to both parties. If the County and the Franchisee are unable to reach agreement on new terms and conditions, the franchise shall terminate and the Franchisee shall remove its facilities from the County rights-of-way unless otherwise allowed under section 12.

1.3 At any time after the fifth (5th) anniversary date of this franchise, the County may direct the Franchisee to meet and discuss in good faith amendments to this franchise or enter into

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

separate agreements, provided that in the event that mutual agreement is not attained, the County may schedule before the County Council the consideration of such amendments and the County Council may take such action as it deems appropriate. The authority of the County to consider mutually agreed amendments and, after the initial five (5) year period, to consider and take unilateral action on amendments in the event the parties do not reach mutual agreement, shall be in addition to, and shall in no way limit, the ability of the County to make amendments and changes to the franchise conditions, negotiate renewals or extensions of the franchise term, or take action pursuant to any other sections of this franchise, including, but not limited to, sections 18, 26 and 27.

1.4 This franchise grants the Franchisee the right, privilege and authority to locate, construct, operate, maintain, replace and use its facilities, including all necessary equipment and facilities appurtenant thereto (referred to as “facilities”), for sewer and stormwater transmission lines in, on, across, over, along, under or through the public rights-of-way of the County, subject to all applicable provisions of chapter 36.55 RCW, Title 13 SCC (including EDDS), and the terms and conditions of County right-of-way use permits issued pursuant to Title 13 SCC and Section 3 of this franchise. “Public rights-of-way” as used herein means all public streets, roads, ways, or alleys of the County as now or hereafter laid out, platted, dedicated or improved. This franchise merely authorizes the Franchisee to occupy and use the public rights-of-way within the County and nothing contained herein shall be construed to grant or convey any right, title, or interest in or to such public rights-of-way to the Franchisee.

1.5 This franchise covers public rights-of-way in the unincorporated areas of Snohomish County located within Section 18, Township 31 North, Range 4 East, W.M. and Section 13, Township 31 North, Range 3 East, W.M.

## **Section 2. Non-Exclusive Franchise Grant.**

2.1 This franchise is granted upon the express condition that it shall not in any manner prevent the County from granting other or further franchises in, on, across, over, along, under or through any rights-of-way. Such franchise shall in no way prevent or prohibit the County from using any of said roads, right-of-way or other public properties or affect its jurisdiction over them or any part of them, and the County shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication, or vacation of the same as the County may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

2.2 All of the Franchisee’s facilities located and operated within the right-of-way and all work undertaken on any road right-of-way shall be done in such a manner so as to not interfere with the public use of the county road and right-of-way for transportation and other governmental purposes, the construction and maintenance of other authorized facilities or

improvements, public or private, nor the operation, maintenance or improvement of any county road, right-of-way, or other public properties. Owners, public or private, of any authorized facilities installed prior to construction and/or installation of Franchisee's facilities shall have preference as to positioning and location of their facilities, subject to the authority of the County Road Engineer to direct position and location of all facilities in the right-of-way.

**Section 3. Right-of-Way Use Permit Required for All Work in Right-of-Way.**

3.1 No work within county road right-of-way shall be commenced until a right-of-way use permit has been issued by the County pursuant to Title 13 SCC for a site-specific location or installation, including, but not limited to, relocations. In addition to the terms and conditions of this franchise, all work shall be performed in accordance with the current County standards, the approved plans and specifications, and the terms and conditions of the right-of-way use permit and other permits and approvals under Title 13 SCC necessary to accomplish the work or otherwise applicable (e.g., lane closure or road detour permits). The Franchisee shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of Franchisee's facilities.

3.2 In addition to any criteria set forth in Title 13 SCC, the EDDS, and the County's utility accommodation policies, the County Engineer shall apply the following criteria in reviewing proposed utility routes and in the issuance, conditioning, or denial of a right-of-way use permit:

- A. the capacity of the public rights-of-way to accommodate the Franchisee's proposed facilities;
- B. the capacity of the public rights-of-way to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- C. the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- D. the public interest in minimizing the cost and disruption of construction within the public rights-of-way, including, but not limited to, coordination with future utility installation or county improvement projects;
- E. recent construction and/or improvements to the right-of-way and/or proposed construction and/or improvements to the right-of-way which is proposed for location of facilities;
- F. the availability of alternate routes, locations, and/or methods of construction or installation for the proposed facilities, including, but not limited to, whether other routes are preferred; and
- G. whether the Franchisee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Franchisee.

3.3 During any period of relocation, construction or maintenance, all work performed by the Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. The Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by County code, the EDDS, or the laws of the State of Washington, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

3.4 Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed under this franchise, Franchisee shall reference all such monuments and markers. Reference points shall be so located that they will not be disturbed during Franchisee's operations under this franchise. The method of referencing monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer, to federal, state, and local standards. The cost of monuments or markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments shall be borne by Franchisee. A complete set of reference notes for monument and other ties shall be filed with the County.

3.5 If the Franchisee shall at any time plan to make excavations in any area covered by this franchise, the Franchisee shall, upon receipt of a written request to do so, provide an opportunity to share such excavation and coordinate utility locations or right-of-way improvements with the County or other franchised entities, PROVIDED THAT:

- A. such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
- B. such joint use shall be arranged and accomplished on terms and conditions satisfactory to the parties; and
- C. the parties may deny such request for safety reasons.

#### **Section 4. Emergency Work - Permit Waiver.**

In the event of any emergency in which any of the Franchisee's facilities located in, above or under any right-of-way breaks, becomes damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Franchisee shall immediately take such measures as are necessary to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by County code and this franchise. However, this shall not relieve the Franchisee from the requirement of obtaining any permits necessary for this purpose, and the Franchisee shall apply for all such permits not later than the next business day.

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

**Section 5. Compliance with Applicable Laws.**

5.1 Franchisee shall comply with all federal, state and local laws, rules and regulations applicable to any work, facility or operation of the Franchisee relating to County roads or rights-of-way during the period of this franchise.

5.2 All work performed by the Franchisee within the public right-of-way and all of Franchisee’s facilities located within the public right-of-way shall comply with the comprehensive plan, zoning code and development regulations of the County. Franchisee’s facilities may require additional project permits and approvals under County land use codes and development regulations.

5.3 All work shall be performed by the Franchisee in a manner to avoid or minimize impacts on critical areas contained within the County right-of-way. Prior to commencing any work in a critical area as defined by chapter 32.10 SCC, the Franchisee shall comply with all requirements of chapter 32.10 SCC and any other applicable title of the County code and shall obtain any and all necessary permits and approvals required. The granting of this franchise shall in no way relieve the Franchisee from its responsibility for avoiding “take” of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 USC § 1531, et seq., as amended, in the performance of any work authorized by this franchise and any right-of-way use permits.

**Section 6. Restoration of Right-of-Way.**

6.1 The Franchisee shall, after any excavation, installation, construction, relocation, maintenance, repair, abandonment approved under Section 12 herein, or removal of its facilities within the right-of-way, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such excavation, installation, construction, relocation, maintenance, repair, abandonment, or removal and comply with all restoration conditions of applicable permits or approvals.

6.2 The County Engineer shall have final approval to determine that the condition of such roads and public places after restoration meets the requirements. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the right-of-way or other affected areas at its sole cost and expense.

**Section 7. Maps and Records of Facility Location.**

After construction is complete, and as a condition of this franchise, the Franchisee shall provide to the County upon request and at no cost, a copy of all as-built plans, maps and records

revealing the final location and condition of its facilities within the public rights-of-way and public places.

### **Section 8. Relocation of Facilities.**

8.1 The Franchisee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any right-of-way any of its facilities when so required by the County by reason of traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, right-of-way vacations, freeway construction, change or establishment of road grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; PROVIDED that the Franchisee shall generally have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the County Engineer, any facilities required to be temporarily disconnected or removed. This section applies to all of Franchisee's facilities wheresoever situated within the public right-of-way, regardless of whether the Franchisee's facilities were previously located therein through an easement or other property interest prior to the property becoming public road right-of-way.

8.2 Upon the request of the County and in order to facilitate County right-of-way improvements, the Franchisee agrees to locate, at its sole cost and expense, and, if reasonably determined necessary by the County, at its sole cost and expense, to excavate and expose portions of its facilities for inspection so that the location of the facilities may be taken into account in the improvement design; PROVIDED, that Franchisee shall not be required to excavate and expose its facilities for inspection unless the Franchisee's as-built plans and maps of its facilities submitted pursuant to Section 7 of this franchise are reasonably determined by the County Engineer to be inadequate for purposes of evaluating improvements. The decision to relocate Franchisee's facilities in order to accommodate road improvements shall be made by the County Engineer upon review of the location and construction of the Franchisee's facilities. Where additional costs accrue to the County during maintenance, operation, or improvement of public facilities related to avoidance of damage or accommodation of the Franchisee's facilities, Franchisee agrees to pay the County the full amount of additional costs, if any, resulting from the Franchisee's facilities as identified by the County.

8.3 Any condition or requirement imposed by the County upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permits for zoning, land use, construction or development) which reasonably necessitates the relocation of the Franchisee's facilities within the franchise area shall be a required relocation for purposes of subsections 8.1 and 8.2 above.

8.4 If the County determines that a project necessitates the relocation of the Franchisee's then existing facilities, the County shall:

- A. At least ninety (90) days prior to the commencement of such improvement project, provide the Franchisee with written notice requiring such relocation; PROVIDED, that in the event of an emergency posing a threat to public safety, health or welfare, in the event of an emergency beyond the control of the County and which will result in adverse financial consequences to the County, or where the Franchisee's facilities could not reasonably have been located or anticipated to require relocation, the County shall give the Franchisee written notice as soon as practicable; and
- B. Provide the Franchisee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for the Franchisee's facilities so that the Franchisee may relocate its facilities in other County rights-of-way in order to accommodate such improvement project.
- C. After receipt of such notice and such plans and specifications, the Franchisee shall complete relocation of its facilities at least ten (10) days prior to commencement of the County's project at no charge or expense to the County. Relocation shall be accomplished in such a manner as to accommodate the County's project. In the event of an emergency, the Franchisee shall relocate its facilities within the time period specified by the County Engineer.

8.5 The Franchisee may, after receipt of written notice requesting a relocation of its facilities, submit to the County written alternatives to such relocation. The County shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the facilities. If so requested by the County, the Franchisee shall submit additional information to assist the County in making such evaluation. The County shall give each alternative proposed by the Franchisee full and fair consideration. In the event the County ultimately determines that there is no other reasonable or feasible alternative, the Franchisee shall relocate its facilities as otherwise provided in this Section.

8.6 The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the County, where the facilities to be constructed by said person or entity are not or will not become County-owned, operated or maintained facilities, provided that such arrangements do not unduly delay any County construction projects.

8.7 Franchisee shall be responsible for timely relocation of its facilities and coordination of relocation with the County or the Contractor for the project. The Franchisee shall be fully responsible for the costs of any delays to County projects resulting from relocations of the Franchisee's facilities. Franchisee shall hold harmless, indemnify and defend the County against

all claims, lawsuits, or damages caused in whole or in part by location or relocation of Franchisee's facilities, including, but not limited to, problems, accommodations and delays, and including negligent or intentional acts or omissions of the Franchisee, its agents, officers and employees, as more fully set forth in Section 14 of this franchise ordinance.

### **Section 9. Undergrounding of Facilities.**

9.1 In any area of the County in which there are no aerial facilities, or in any area in which telephone, electric power wires or other cables have been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the County. The Franchisee acknowledges and agrees that, even if the County does not require the undergrounding of its facilities at the time of right-of-way use permit application, the County may, at any time in the future, require the conversion of the Franchisee's aerial facilities to underground installation at the Franchisee's expense.

9.2 Whenever the County may require the undergrounding of the aerial facilities in any area of the County, the Franchisee shall underground its aerial facilities in the manner specified by the County, concurrently with and in the area of the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Franchisee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Franchisee's own facilities. "Common costs" shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of the Franchisee's facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

9.3 Aerial facilities shall be permitted in areas of scenic beauty when other utility locations are not available, are not technically feasible, result in adverse environmental consequences, are unreasonably costly, or are less desirable from the standpoint of visual quality.

### **Section 10. Maintenance of Facilities.**

10.1 The Franchisee shall maintain its facilities in accordance with accepted standards of practice.

10.2 The Franchisee shall take necessary steps to maintain a reasonably clear area around all objects permitted and installed within county road right-of-way. A minimum of five (5) feet of clearance will be maintained around each object so as to provide clear visibility for County operations and maintenance. If the Franchisee intends to use chemical sprays to control or kill weeds and brush, the County must grant prior approval at least annually. The County may limit

or restrict the types, amounts, and timing of applications if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

10.3 The Franchisee shall comply with Title 7.53 SCC, Water Pollution Control. In addition, Franchisee agrees that it will not cause nor permit in any manner, including negligent or intentional acts or omissions, release of any hazardous substance, waste, or pollutant or contaminant into or upon any county road or right-of-way contrary to any state or federal law or local regulation with respect thereto. Franchisee shall notify the Washington State Department of Ecology and Snohomish County in writing immediately upon any such release. Franchisee shall indemnify, hold harmless, defend and covenant not to sue the County, from and against any and all claims, actions or suits in equity or at law and any judgments, damages, awards, penalties or fines, including reasonable attorneys' fees and costs incurred in the defense thereof, arising out of the release or spill of any such hazardous materials, dangerous waste, or pollutant within the County right-of-way or on private property. Franchisee shall be responsible for completely cleaning up and remediating, as required by any government agency, any and all hazardous materials, dangerous waste or pollutants released or spilled within the County right-of-way or on private property. The County shall be entitled to indemnification by Franchisee for all costs incurred by it as the result of any release or spill of such materials by Franchisee, its agents, officials, officers and employees.

10.4 Upon any release or spill of any such substance mentioned herein, the County may give notice of intent to immediately terminate this franchise and, where it deems necessary to protect the public health, safety and welfare, the County may immediately take whatever steps it deems necessary and advisable to contain, clean up or remediate the release or spill. The County shall be entitled to repayment from the Franchisee of any costs or expenses incurred in responding to such a release or spill.

#### **Section 11. Dangerous Conditions, Authority for County to Abate.**

11.1 Whenever the Franchisee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of facilities authorized by this franchise has caused or contributed to a condition that substantially impairs, in the opinion of the County Engineer, the lateral support of the adjoining road or public place, or endangers the public, an adjoining public place, road facilities or County property, the County Engineer may direct the Franchisee, at the Franchisee's own expense, to take actions to protect the public, adjacent public places, County property or road facilities, and such action may include compliance within a prescribed time.

11.2 In the event that the Franchisee fails or refuses to promptly take the actions directed by the County, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the County may enter upon the property and take such actions

as are necessary to protect the public, the adjacent roads, or road facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Franchisee shall be liable to the County for the costs thereof.

**Section 12. Abandonment of the Franchisee’s Facilities.**

12.1 No facilities located in the right-of-way by the Franchisee may be abandoned in place by the Franchisee without the express agreement and written consent of the County. Any plan for abandonment or removal of the Franchisee’s facilities must be first approved by the County Engineer, and all necessary permits must be obtained prior to such work.

12.2 In the event Franchisee decides to discontinue using and abandons any of its facilities, or the County reasonably determines, after making good faith attempts to contact the Franchisee to ascertain the status of the facilities, that Franchisee has discontinued using and abandoned any facilities, or that the facilities should be abandoned, or both parties have negotiated in good faith but no franchise has been obtained therefor upon expiration of this franchise, or within one hundred eighty (180) days after any termination of this franchise, Franchisee shall, at its sole cost and as directed by the County, purge its facilities of any product and hazardous or other additive substances rendering them safe in accordance with applicable law or standards deemed appropriate by the County. Abandoning facilities in place shall not relieve the Franchisee of the obligation and/or costs to remove or alter such facilities in the event the County determines and requests Franchisee, in writing, to remove or alter such facilities as is necessary for the installation, operation or maintenance of any County road or related utilities or facilities, including, but not limited to, drainage facilities, or for the health and safety of the public, in which case the Franchisee shall perform such work in a timely manner at no cost to the County. In the event Franchisee does not perform such work within a reasonable time following written notice from the County, the County may do, order, have done, any and all work on such abandoned facilities, and the Franchisee, upon demand, shall pay to the County all costs of such work. Franchisee shall be responsible for any environmental review required for the abandonment of any facility and payment of any costs of such environmental review.

**Section 13. Fees, Compensation for Use of Rights-of-Way, and Taxes.**

13.1 The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the County. Where the County incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, the Franchisee shall pay the reasonable actual costs and expenses directly to the County.

13.2 The Franchisee warrants that the facilities proposed to be placed in the public rights-of-way under this franchise are not for the purposes of providing telecommunications services or

for a cable system or an open video system as those terms are defined by the federal Communications Act of 1934, as amended.

13.3 The County hereby reserves the right to impose a franchise fee or fee in lieu of a franchise fee on the Franchisee for purposes other than to recover its actual costs and administrative expenses, if the Franchisee's operations change so that the facilities placed or proposed to be placed in the public rights-of-way under this franchise are used for a cable system or an open video system as defined by federal law. The County also reserves its right to require that the Franchisee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law. Such separate franchise may include, but is not limited to, a franchise for a cable system as allowed under federal law.

13.4 The County hereby reserves the right to fix a fair, competitively neutral, non-discriminatory, and reasonable compensation to be paid for the use of public rights-of-way pursuant to this franchise. Any regulatory fees and/or compensation paid for use of the public right-of-way are separate from, and additional to, any federal, state and local taxes that may be levied, imposed, or due from any telecommunications carrier or provider, its customers or subscribers, or on account of the lease, sale, delivery, right-of-use, or transmission of telecommunications services, and shall not be considered a tax.

13.5 The County's reservation of the right to require franchise authorization and to obtain fair and reasonable compensation for use of public right-of-way from persons, utilities, telecommunications carriers (including telephone businesses), providers of cable services, open video systems, or other services utilizing facilities placed within public rights-of-way, applies regardless of whether those providers own, lease, license, or otherwise obtain access to facilities through arrangements or agreements, including, but not limited to, indefeasible right of use agreements.

13.6 The Franchisee shall pay applicable fees as specified in Chapter 13.110 SCC to cover the County's costs in drafting and processing this franchise and all work related thereto. The fee shall be paid at the time of acceptance of this franchise as set forth in Section 32 and this franchise shall not become effective until payment of the fee. The Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise or under the laws of the County. Where the County incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, the Franchisee shall reimburse the County directly for any and all costs at the County's standard rates.

13.7 In addition, the Franchisee shall reimburse the County for any and all documented costs the County reasonably incurs in response to an emergency involving the Franchisee's

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

facilities. The Franchisee shall promptly reimburse the County, upon submittal by the County of an itemized billing, for the Franchisee's proportionate share of all actual, identified costs and expenses incurred by the County in repairing any County facility, or altering such County facility if at the Franchisee's request, as the result of the presence of the Franchisee's facilities in the right-of-way. Such costs and expenses shall include, but not be limited to, the Franchisee's proportionate share of the costs of County personnel assigned to oversee or engage in any work in the right-of-way as a result of the presence of the Franchisee's facilities in the right-of-way. Such costs and expenses shall also include the Franchisee's proportionate share of County time spent reviewing construction plans in order to either accomplish the relocation of the Franchisee's facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's facilities. Any and all costs will be billed on an actual cost basis. The billing may be on an annual basis, but the County shall provide the Franchisee with the County's itemization of costs at the conclusion of each project for information purposes.

13.8 The Franchisee acknowledges that it may be subject to State and local taxes, including personal property tax. The Franchisee shall keep such tax accounts current as a special condition of this franchise agreement.

#### **Section 14. Hold Harmless and Indemnification.**

14.1 The Franchisee shall assume the risk of, be liable for, and pay all damage, loss, cost and expense of any party arising out of the Franchisee's use of the right-of-way, to the extent of their negligent actions, errors, omissions, or breach of any obligations. The Franchisee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the County, its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs, judgments, awards, or liability to any person, including claims by the Franchisee's own employees for which the Franchisee might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the Franchisee, its agents, servants, officers or employees in the performance of this franchise, and any rights granted hereunder.

14.2 The Franchisee shall hold harmless from and indemnify the County, its elected and appointed officials, officers, employees, and volunteers, against all claims, demands, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property or business and/or any death, injury or disability to or of any person or party of any nature arising out of or suffered, directly or indirectly, in whole or in part, from the actions, errors, omissions, or breach of any common law, statutory, regulatory or contractual obligations in connection with the activities of the Franchisee, its sub-contractors, assigns, agents, contractors, or employees, under this franchise, any permit under County code, or in connection with the use of the right-of-way; PROVIDED that nothing herein shall require the Franchisee to hold harmless from and indemnify the County, its elected and appointed officials, officers, employees, and volunteers, against claims, demands, or suits based solely

upon the negligence of the County, its elected and appointed officials, officers, employees, and volunteers; and PROVIDED FURTHER, that if the claims, demands, or suits are caused by or result from the concurrent negligence of (a) the County, its elected and appointed officials, officers, employees, and volunteers and (b) the Franchisee, its sub-contractors, assigns, agents, contractors, or employees, and involve those actions covered by RCW 4.24.115, this indemnity provision, with respect to liability for damages arising out of bodily injury to persons or damage to property based upon such concurrent negligence, shall be valid and enforceable only to the extent of the Franchisee's negligence or the negligence of their sub-contractors, assigns, agents, contractors, or employees, except as limited below. This indemnification provision constitutes the Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

14.3 The Franchisee further agrees to process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the actions, errors, omissions, or breach of any obligations of the Franchisee, its sub-contractors, assigns, agents, contractors, or employees, arising out of or in connection with any activities related to this franchise or the Franchisee's use of the right-of-way. The Franchisee's duty to assume the defense and to pay all expenses thereof shall apply to all claims or allegations of negligence where any duty to provide indemnification in whole or in part potentially applies, whether or not the injuries or damages are ultimately found to be due to the negligence of the Franchisee arising out of the franchise or any use of the right-of-way.

14.4 In the event that the Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the Franchisee, then the Franchisee shall pay all of the County's costs for defense of the action, including all expert witness fees, costs, and reasonable attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

14.5 Inspection or acceptance by the County of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance by the Franchisee of any of its obligations under this Section.

### **Section 15. Limitation of County Liability.**

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 officials, officers, employees, and agents for any injury or damage from the failure of the Franchisee to comply with the provisions of this franchise; 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 16. Insurance.**

16.1 The Franchisee has procured insurance against 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 by this franchise and right-of-way use permits to the Franchisee, its agents, representatives or employees. The Franchisee shall maintain coverage for the duration of the franchise. The Franchisee provided a certificate of insurance to the County for its inspection and it includes the following:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include, but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

16.2 The insurance policies obtained by the Franchisee shall name the County (its elected and appointed officers, officials, employees, agents, and volunteers) as an additional insured with regard to activities performed by or on behalf of the Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the County, its elected and appointed officers, officials, employees, agents, or volunteers. In addition, the insurance policy 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. The Franchisee's insurance shall be primary insurance as respects the County, its elected and appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the County, its elected and appointed officials, officers, employees, agents or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

16.3 The complete policy with all endorsements shall be provided to the County upon request. Any deductibles or self-insured retentions must be declared to and approved by the County. Payment of deductible or self-insured retention shall be the sole responsibility of the Franchisee. Proof of all insurance shall be in a form acceptable to the County Finance Director. Any insurance provider shall be authorized to do business in Washington. If the Franchisee is

self-insured, Franchisee shall provide such information as required by the County Finance Director sufficient to demonstrate its ability to meet the requirements of this Section. All insurance documentation shall be submitted and reviewed by the County Executive prior to final execution of the franchise.

16.4 Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the County, its elected and appointed officials, officers, employees, agents or volunteers.

### **Section 17. Bond or Performance Security.**

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise and the separate right-of-way use permit under Section 3 the Franchisee shall, upon the request of the County, furnish a bond executed by the Franchisee and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the County Engineer as sufficient to ensure performance of the Franchisee's obligations under this franchise generally and under any specific right-of-way use permits or approvals. The bond shall be conditioned so that the Franchisee shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise and any right-of-way use permits or approvals, and to correct or replace any defective work or materials discovered in the replacement of the County's roads or property within a period of two (2) years from the date of the replacement and acceptance of such repaired roads, facilities, or property by the County. The County may from time to time review the amount of surety and determine an appropriate level based upon Franchisee's facilities and the Franchisee's performance of the covenants, terms, conditions and obligations under this franchise and any right-of-way use permits or approvals.

### **Section 18. Modification.**

The County hereby reserves the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification. Nothing in this Section shall affect the right of the County to modify the terms and conditions of

this franchise in accordance with any other Section of this franchise, including, but not limited to, sections 1, 26, and 27.

### **Section 19. Annexation.**

If any road or right-of-way covered by this franchise is incorporated into the limits of any city or town, this franchise shall terminate as to any road or right-of-way within the corporate limits of such city or town; but this franchise shall continue as to County roads and rights-of-way not incorporated into a city or town.

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

**Section 20. Vacation.**

20.1 If the County vacates all or a portion of any County road or right-of-way which is subject to this franchise, the County Council may, at its option and by giving thirty (30) days' written notice to the Franchisee, terminate this franchise with reference to any County road or right-of-way so vacated, and the County shall not be liable for any damages or loss to the Franchisee by reason of such termination.

20.2 Whenever a county road or right-of-way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the County may retain an easement with respect to the vacated land for the construction, repair and maintenance of public utilities and services which at the time of the vacation are specifically authorized or are physically located on a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140 as now existing or hereafter amended. It shall be the responsibility of the Franchisee to request that the County Council specifically include a provision retaining an easement with respect to any proposed Council action on a particular vacation. The County shall not be liable for any damages or loss to the Franchisee by reason of any such vacation.

**Section 21. Assignment.**

This franchise authorizing use of public rights-of-way may not be leased, sold, transferred, assigned, disposed of, or subject to a change of control, in whole or in part, in any manner without the prior written consent of the County Council. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, consent shall not be required unless and until the secured party elects to realize upon the collateral. The Franchisee shall provide prompt, written notice to the County of any such assignment.

**Section 22. Termination, Revocation and Forfeiture.**

22.1 If the Franchisee defaults on any term or condition of this franchise, the County Council may terminate this franchise as provided in Title 13 SCC. Upon termination for any cause, all rights of the Franchisee granted hereunder or under any right-of-way use permit shall cease, and the Franchisee shall immediately commence to remove its facilities from the roads and rights-of-way.

22.2 If the Franchisee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with

any notice given the Franchisee by the County under the provisions of this franchise, then the Franchisee shall, at the election of the Snohomish County Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon notice to the Franchisee.

22.3 In the event that the use of all or any part of the Franchisee's facilities is discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of the facility, or the abandonment, termination, expiration, revocation, or forfeiture of this franchise, the Franchisee is solely responsible for the removal and proper disposal of all facilities. The Franchisee is not entitled to abandon any facilities in place without the County's prior written consent in accordance with Section 12 of this franchise. The Franchisee shall restore the county roads and rights-of-way from which any facilities have been removed in accordance with Section 6 of this franchise.

### **Section 23. Remedies to Enforce Compliance.**

The County may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Franchisee to comply with the provisions of this franchise and to recover damages and costs incurred by the County by reason of the Franchisee's failure to comply. In addition to any other remedy provided herein, the County reserves the right to pursue any remedy to compel or force the Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

### **Section 24. Nonwaiver of Rights or Remedies.**

Failure of the County to exercise any rights or remedies under this franchise shall not be a waiver of any obligation by the County and shall not prevent the County from pursuing that right at any future time.

### **Section 25. Records.**

The Franchisee shall maintain adequate records to document obligations performed under this franchise. The County shall have the right to review the Franchisee's records, at reasonable times, with regard to the subject matter of this franchise, upon reasonable notice. The right to review records shall last for six (6) years from the termination date of this franchise, including any extensions or renewals. In addition to the maps and records of facility location under Section 7, the Franchisee shall provide the County, upon the County's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all facilities subject to this franchise as deemed necessary by the County to manage the county

roads, rights-of-way, or other property, or to protect the public health, safety, and welfare. Nothing in this Section 25 shall be construed to require Franchisee to violate state or federal law concerning subscriber privacy, nor shall this Section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

**Section 26. County Ordinances and Regulations - Reservation of Police Power.**

Nothing in this franchise shall be deemed to restrict the County's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including, but not limited to, any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The County shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any facilities of the Franchisee within the right-of-way or affecting the right-of-way, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this franchise and any other ordinance(s) enacted under the County's police power authority, such other ordinance(s) shall take precedence over the regulatory provisions set forth herein.

**Section 27. Eminent Domain, Powers of the People.**

This franchise is subject to the power of eminent domain and the right of the County Council or the people acting for themselves through the initiative or referendum to repeal, amend or modify the franchise in the interest of the public. In any proceeding under eminent domain, the franchise itself shall have no value.

**Section 28. Survival.**

All of the provisions, conditions and requirements of Sections 3, Right-of-Way Use Permit Required for All Work in Right-of-Way; 6, Restoration of Right-of-Way; 8, Relocation of Facilities; 9, Undergrounding of Facilities; 11, Dangerous Conditions, Authority for County to Abate; 12, Abandonment of the Franchisee's Facilities 14, Hold Harmless and Indemnification; and 25, Records; 29, Governing Law and Stipulation of Venue, of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the County at common law, by statute, or by contract, and shall survive the expiration, revocation, termination, or forfeiture of the County's franchise to the Franchisee as defined in Section 1 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the successors and assigns of

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

the Franchisee and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

**Section 29. Governing Law and Stipulation of Venue.**

This franchise and use of public rights-of-way shall be governed by the laws of the State of Washington, unless preempted by federal law. The Franchisee agrees to be bound by the laws of the State of Washington and subjected to the jurisdiction of the Courts of the State of Washington. Any action relating to this franchise must be brought in the Superior Court of Washington for Snohomish County, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

**Section 30. Severability.**

If any section, sentence, clause or phrase of this franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise nor its application to any other person or entity.

**Section 31. Notice and Emergency Contact.**

Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

SNOHOMISH COUNTY  
Department of Public Works  
2930 Wetmore Ave.  
Everett, WA 98201  
Attn. Franchises & Right-of-Way Use Permits  
Phone: (425) 388-3488

Warm Beach Health Care Center  
  
20420 Marine Drive  
Stanwood, WA 98292  
Attn: Terry Schaberg  
Phone: (360) 652-2605

The Franchisee shall also provide the County a current emergency contact name (or title) and phone number available 24 hours a day, seven days a week. The Franchisee shall promptly notify the County of any change in the notice address or emergency contact name (or title) and phone number.

**Section 32. Acceptance.**

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

Within sixty (60) days after the passage and approval of this Ordinance, this franchise may be accepted by the Franchisee by its filing with the County Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights and privileges herein granted shall, after the expiration of the sixty (60) day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

**Section 33. Effective Date.**

This ordinance shall take effect only upon satisfaction of the following conditions, but not sooner than ten (10) days after signature by the County Executive (or ten days after the ordinance is otherwise enacted): (1) the Franchisee signs a copy of this franchise and returns it to the County Council within the time provided in Section 32; (2) the Franchisee presents to the County acceptable evidence of insurance and security as required in this franchise; and (3) the Franchisee pays all applicable fees set forth in Subsection 13.6 above.

PASSED this 17<sup>th</sup> day of May, 2006.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

/s/ Kirke Sievers  
Council Chairperson

ATTEST:

/s/ Barbara Sikorski  
Assistant Clerk of the Council

- (X) APPROVED
- ( ) VETOED
- ( ) EMERGENCY

/s/ Mark Soine, Deputy Executive  
for Snohomish County Executive

DATE: 5/19/06

ATTEST:

/s/ Cora E. Palmer

Approved as to Form Only:

\_\_\_\_\_

An ordinance, granting a nonexclusive franchise authorizing limited use of the public road rights-of-way in Snohomish County, Washington, to Warm Beach Health Care Center

**ACCEPTANCE:**

The Provisions of this franchise are agreed to and hereby accepted. By accepting this franchise, Warm Beach Health Care Center covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the Charter and Code of the County and this franchise.

Dated: May 23, 2006 Warm Beach Health Care Center

By: /s/ David R. Fairchild

Printed Name: David R. Fairchild

Title: Executive Director

**CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:**

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this franchise to the County Council within the time provided in Section 32; (2) the Franchisee has presented to the County acceptable evidence of insurance and security as required in Section 16 of this franchise; and (3) the Franchisee has paid all applicable processing costs and fees set forth in Subsection 13.6 of the franchise ordinance.

**THE EFFECTIVE DATE OF THIS FRANCHISE ORDINANCE IS:**

July 11, 2006

By: /s/ Barbara Sikorski

Name: Barbara Sikorski

Title: Asst. Clerk of the Council