



After Recording Return to:  
Island County Engineer



**FRANCHISE**  
ISLAND COUNTY  
WASHINGTON



**Franchise No. 430**  
Pehling Addition  
Sec. 11, Twp. 30N, Rge. 2 E

In the Matter of the Application of

Baby Island Heights Water Association, a non-profit Washington Corporation, for a franchise to construct, operate and maintain a water distribution system (hereinafter referred to as FACILITY) in, along, under and/or across portions of the County roads known as Saratoga Road, Opal Lane, Island Street Salmonberry Road & Baby Island Road all being located within the Plat of Pehling Addition, located in the W ½ & E ½ of Section 11, Township 30 North, Range 2 East, W.M., Island County, Washington, (hereinafter known as FRANCHISE AREA).

The application of Baby Island Heights Water Association, its successors and assigns, for a franchise to construct, operate, and maintain the FACILITY in, along, under and/or across the FRANCHISE AREA having come on regularly for hearing on the 6th day of November, 2018 before the County Commissioners of Island County, Washington under the provisions of Chapter 36.55 RCW Franchises on Roads and Bridges as now in effect or as hereafter amended, and it appearing to the County Commissioners that notice of said hearing, as required by law, has been duly given and that it is for the public interest to grant the franchise herein granted; it is

ORDERED that a franchise be and the same hereby is given and granted to Baby Island Heights Water Association, their successors and assigns (hereinafter referred to as the "HOLDER") to construct, operate and maintain the FACILITY, together with the necessary laterals and service connections in, along, under and/or across the FRANCHISE AREA for a period of time to expire on the 6<sup>th</sup> day of November, 2043, . subject to the terms and conditions hereinafter enumerated.

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### Section One – Definitions

1. When used in this franchise, unless otherwise indicated:
  - a. "HOLDER" means Baby Island Heights Water Association, a non-profit Washington Corporation, its successors and assigns.
  - b. "COUNTY" means Island County, Washington
  - c. "FACILITIES" means all components of the water distribution system located within County road right-of-way.
  - d. "FRANCHISE AREA" means in, along, under and/or across portions of the County roads known as Saratoga Road, Opal Lane, Island Street Salmonberry

Road & Baby Island Road all being located within the Plat of Pehling Addition, located in the W ½ & E ½ of Section 11, Township 30 North, Range 2 East, W.M., Island County, Washington.

- c. FRANCHISE means the document in which this definition appears, that is executed between the COUNTY and the HOLDER, containing the specific provisions of the authorization granted and the contractual and regulatory agreement created hereby.

**Section Two – Facilities within Franchise Area**

1. Under the provisions of Chapter 36.55 RCW Franchises on Roads and Bridges and the Island County Code, the COUNTY hereby grants to the HOLDER subject to the terms and conditions set forth hereinafter, a FRANCHISE for twenty-five (25) years, commencing upon the effective date of this FRANCHISE.
2. In constructing, operating, maintaining and repairing said Facilities, the HOLDER shall conform to applicable ordinances and to policies or requirements made by the Island County Engineer, or any County department or officers authorized to supervise and regulate such work and utility for the protection and safety of the public.
3. Requirements as established by individual departments of Island County shall become part of this FRANCHISE.
4. The COUNTY does hereby grant to the HOLDER the right, privilege, and authority to construct, maintain, repair and replace Facilities in, upon, over, under, along, under, and/or across FRANCHISE AREA.

**Section Three – Non-Interference of Facilities**

1. Said Facilities shall at all times be constructed and maintained so as not to interfere with the use of the County road for travel or maintenance.
2. Any and all damage or injury done or caused to said County road right-of-way or any portion thereof in the construction, operation, maintenance or repair of said FACILITY shall be immediately repaired and reconstructed under the supervision and to the satisfaction of the Island County Engineer; and in the event the HOLDER shall fail, neglect or refuse to immediately repair and reconstruct said damage, or injury to said County road right-of-way, the same may be done by the COUNTY and the expense and cost thereof shall immediately be repaid by the

HOLDER to the COUNTY. In performing any such repairs, neither the COUNTY nor any of its employees, agents or subcontractors shall be deemed to be an employee, agent, or subcontractor of the HOLDER.

3. The HOLDER of this FRANCHISE, when contemplating work upon, along, over, under or across County right-of-way, shall first file with the Island County Engineer its application for permits to do such work. Such applications shall be accompanied by drawings and information as required by the Island County Engineer. Plans, drawings, and specifications for all utility lines lying within the County right-of-way shall be prepared and approved by a licensed engineer at the expense of the HOLDER. One copy of plans for constructed work, including as-built construction changes and notations, shall be on file with the office of the County Engineer. No application for work shall be approved without this requirement being met.
4. A copy of the permit and franchise must be on the job site, and protected from the elements, at all times during any of the construction authorized by said permit and franchise.
5. All slopes must be seeded and protected from erosion until the vegetation is reestablished.
6. All trenches, boring or jacking pits, etc. shall be backfilled as soon as possible and not left open during non-working hours unless covered with material of sufficient strength to withstand traffic loads or a method of protection approved by the Island County Engineer.
7. All slopes, slope treatment, topsoil, ditches, pipes, etc., disturbed by this operation shall be restored to their original cross-section and condition. All open trenches shall be marked by warning signs, barricades, lights, and if necessary, flagmen shall be employed for the purpose of protecting the traveling public. Roadside operations may be specified by the Island County Engineer's representative.
8. During the construction and/or maintenance of this FACILITY, the HOLDER shall comply with the *Manual on Uniform Traffic Control Devices for Streets and Highways (Federal Highway Administration)* and Washington modifications thereto. If determined necessary by the Island County Engineer, the HOLDER shall submit a signing and traffic control plan to the Island County Engineer's representative for approval prior to construction or maintenance operations. No lane closures shall be allowed except as approved by the Island County Engineer's representative. Approvals may cause revision of special provisions, including hours of operation.

9. Whenever deemed necessary by the Washington State Department of Labor and Industries and/or the Island County Public Works Department for the safety of the workers and the protection of the highway pavement, the sides of the trench (or excavation) shall be adequately supported to reduce the hazard to workers and prevent any damage by cracks, settlement, etc., to the pavement. No other work in the trench or excavation area will be allowed until this requirement is met.
10. The HOLDER shall provide emergency call out response 24 hours a day, seven days a week. The response time shall be one hour. If the HOLDER does not respond in one hour, the Island County Engineer will bill the HOLDER for costs of additional flagging or traffic control, if deemed necessary, caused by the delay in response beyond one hour.
11. In the event any right-of-way marker, fence or guardrail is located within the limits of this project and will be disturbed during construction, these items will be carefully removed prior to construction and reset or replaced at the conclusion of construction to the satisfaction of the Island County Engineer or his representative. All signs and traffic control devices must be maintained in operation during construction.

**Section Four – Relocation of Facilities**

1. Whenever necessary for the construction, repair, improvement, alteration or relocation of all or any portion of said County road right-of-way as determined by the Island County Engineer, any or all of said Facilities shall be removed and relocated within sixty (60) days of notification by the Island County Engineer.
2. Upon failure, neglect or refusal of the HOLDER to perform any change, removal, relaying or relocating of said FACILITY or any repairs or reconstruction of said County road right-of-way within sixty (60) days of notification by the Island County Engineer, the COUNTY may undertake and perform such requirement and the cost and expense thereof shall be immediately repaid to the COUNTY by the HOLDER.
3. If the HOLDER fails to relocate water distribution lines within sixty (60) day notification period, the HOLDER shall be responsible for any project delay claims resulting from their failure to relocate.
4. The work of constructing, removing and relocating any and all of said existing and/or future Facilities shall be done at the expense of the HOLDER, and with the least possible interference with travel upon the said County road, and to the entire

satisfaction and under the supervision of the Island County Engineer and none of such work shall be undertaken or carried on without ten days written notice having been first given to the Island County Engineer.

**Section Five – Maintenance and Construction of Facilities**

1. Prior to any construction and/or upgrade of the water line, plans and specifications and documentation from the appropriate public health authority confirming the approval of the water system, its proposed construction and/or upgrade must be presented to the Island County Public Works Department.
2. Prior to the beginning of construction, a pre-construction conference shall be held at which the Island County Engineer or his representative and the HOLDER and HOLDER'S engineer, contractor, and inspector shall be present.
3. The HOLDER is responsible for properly marking all structures in the County right-of-way owned by the HOLDER. In compliance with the COUNTY'S continuing road maintenance activity. Structures shall be cleared, by the HOLDER, of tall grass, brush and/or other obstacles within a five (5)-foot radius at all times so County employees in maintenance equipment may easily see said structures. Damage to County equipment due to undisclosed fixtures, non-cleared pedestals, or facilities will be charged to the HOLDER. Failure by the HOLDER to comply with the clearing requirements of this paragraph on any occasion with respect to any structure owned by the HOLDER in the County road right-of-way will eliminate the fiscal responsibility of the COUNTY to replace such undisclosed, non-cleared structure damaged due to maintenance on that occasion.
4. Work within the right-of-way shall be restricted to between the hours of 8:00 a.m. and 3:00 p.m., and no work shall be allowed on the right-of-way Saturday, Sunday, or holidays, unless authorized by the Island County Engineer or his representative. Any lane closures must be submitted for approval in advance of use. The hours of permitted closure may differ from the above noted hours.
5. The construction that is authorized through the granting of this FRANCHISE shall be commenced within one year from the date hereof; otherwise the FRANCHISE shall be null and void and terminated upon notice as provided by law. Time is the essence of this provision.
6. Upon completion of any new construction and/or upgrade to the FACILITY, a stamped as-built plan and a letter of certification verifying the project was

constructed according to plans and specifications must be completed by the responsible party and submitted to the Island County Public Works Department.

**Section Six - Indemnification**

1. The HOLDER shall indemnify and save harmless and defend the COUNTY agencies of Island County and its appointed and elected officers and employees from and against any and all claims, liability, losses, costs (including attorney's fees), and/or causes of action, which may arise from any act or omission of the HOLDER, its agents, subcontractors, servants or employees in the performance of services under this FRANCHISE. The HOLDER further agrees to indemnify, save harmless and defend the COUNTY, its agents, servants, and employees from and against any claim, demand or cause of action, in connection with or incident to the work performed under this FRANCHISE, of whatsoever kind or nature arising out of any conduct or misconduct of the HOLDER, its agents, subcontractors, servants or employees for which the COUNTY, its appointed officers, or elected officers, or employees are alleged to be liable. Provided further that if the claims or suits are caused by or result from the concurrent negligence of (a) the HOLDER, its agents, subcontractors, servants or employees and (b) the COUNTY, its appointed or elected officers or employees, this indemnity provision, with respect to claims or suits based upon such negligence, shall be valid and enforceable only to the extent of the HOLDER'S negligence or the negligence of the contractor's agents, subcontractors, servants or employees. This requirement of the HOLDER to indemnify and defend the COUNTY, its appointed and elected officers and employees shall not apply when the damages are caused by or result from the sole negligence of the COUNTY, its appointed or elected officers or employees. In the event of litigation between the parties to enforce the rights under this paragraph, reasonable attorney's fees shall be allowed to the prevailing party.
2. The HOLDER shall maintain liability insurance in the amount of \$1 million by a company authorized to do business under the laws of the State of Washington. All insurance required by this FRANCHISE to be maintained by the HOLDER shall specifically include the COUNTY as an additional insured and shall not be canceled or reduced below the amounts required by this FRANCHISE without sixty (60) days written prior notice to the COUNTY.
3. Neither the application by the HOLDER for any permit or authorization pertaining to the use or occupancy by the HOLDER of any County road or other County right-of-way or pertaining to the performance on any County road or other County

right-of-way of any work by the HOLDER or by any of its agents, subcontractors, servants or employees, nor the acceptance by the HOLDER of any such permit or authorization, nor the performance of any activity by the HOLDER or any of its agents, subcontractors, servants or employees pursuant to any such permit or authorization, nor the acceptance or enjoyment by the HOLDER of any benefit or privilege arising under any such permit or authorization shall be effective to enlarge or diminish the HOLDER'S obligation or liability to indemnify or hold harmless the COUNTY or any of its appointed or elected officers and employees.

**Section Seven – Compliance with Federal, State and Local Regulations**

1. The granting of this FRANCHISE shall place no obligation upon the Island County Engineer and/or the County Commissioners to warrant or defend the rights hereby granted.
2. The FRANCHISE HOLDER must comply with the “Accommodations of Utilities on County Road Right-of-Way for Island County” policy that was accepted and approved by the Board of County Commissioners May 15, 1996, which is by this reference incorporated herein and made a part hereof.
3. The HOLDER must comply with the Recommended Standards for Water Works (2007 Edition - Policies for the Review and Approval of Plans and Specifications for Public Water Supplies - A Report of the Water Supply Committee of the Great Lakes-Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers), the Criteria for Sewage Works Design, Water Quality Program (State of Washington Department of Ecology Publication #98-37 WQ, August 2008) and/or other requirements of the Island County Health Department.
4. The HOLDER, as an owner of an underground utility facility, is required to subscribe to the statewide toll-free telephone one-number locator service, a service through which a person can notify utilities and request field-marking of underground facilities prior to the commencement of excavation, in accordance with the provisions of chapter 19.122 RCW – Underground Utilities.
5. The HOLDER shall install detector tape or cable approximately twelve (12) inches above the underground facility. The tape shall conform to the standards of the *American Public Works Association Uniform Color Code*.
6. All material and workmanship shall conform to the Washington State Department of Transportation *Standard Specifications for Road, Bridge and Municipal*

*Construction*, current edition, and amendments thereto, and may be subject to inspection by the Island County Engineer or his representative.

7. The HOLDER of this FRANCHISE should remove any asbestos pipe from the County right-of-way. However, it may be abandoned in place subject to the responsibility to remove and dispose of said asbestos pipe at some future date as may be required by the COUNTY should future road maintenance constructions or improvement so dictate.

#### **Section Eight – Annexations and Vacations**

1. Whenever any of the streets, avenues, alleys, roads, highways, rights-of-way or public places designated in such franchise shall be eliminated from the COUNTY jurisdiction by reason of the incorporation or annexation to a city, then all the rights, privileges and franchises so granted shall terminate in respect to the streets, avenues, alleys, roads, highways, rights-of-way, and public places so eliminated.
2. If at any time the COUNTY vacates any County street, avenue, alley, road, highway, right-of-way, or other County property which is subject to rights granted by the FRANCHISE and the vacation is for the purpose of acquiring the fee or other property interest in the road, right-of-way, or other property interest in the road, right-of-way, or other County property for the use of the COUNTY, in either its proprietary or governmental capacity, then the Board of County Commissioners may, at its option, by giving ninety days' written notice to the grantee and after granting an alternate route, terminate this FRANCHISE with reference to such County road, right-of-way, or other County property so vacated, and the COUNTY shall not be liable for any damages or losses to the grantee by reason of such termination and the grantee shall move its franchise at its own cost.
3. In the event the COUNTY vacates any portion of the FRANCHISE AREA during the term of this FRANCHISE, and the COUNTY does not grant an alternate route under No. 2, above, the COUNTY shall, in its vacation procedure, reserve a public utility easement for the HOLDER'S Facilities, unless it is determined by the Board of County Commissioners not to do so for good and/or lawful cause.

#### **Section Nine – Default and Revocation**

Any breach of any of the conditions and requirements herein made, or failure on the part of the HOLDER of this FRANCHISE to proceed with due diligence and in good faith after its acceptance, with construction work hereunder, shall subject

this FRANCHISE to cancellation after a hearing before the County Commissioners, of which said hearing the HOLDER shall be given at least ten (10) days written notice, if at that time the HOLDER is a resident and doing business in the State of Washington. Said written notice shall be by certified mail, return receipt requested, if at the time the HOLDER is a resident or a corporation and doing business in the State of Washington. Otherwise said notice shall be by publishing a notice of said hearing once a week for two consecutive weeks in a newspaper of general circulation in Island County, Washington, the last publication to be at least ten days before the date fixed for said hearing.

**Section Ten – Non-exclusive Franchise**

This FRANCHISE is non-exclusive and the COUNTY reserves the right to grant franchises to other persons or companies to use the County road rights-of-way or any part thereof covered by this FRANCHISE for the same purposes authorized by law.

**Section Eleven – Franchise Term**

This FRANCHISE is and shall remain in full force and effect for a period of twenty-five (25) years and after the effective date of the executed FRANCHISE; provided, however, the HOLDER shall have no rights under this FRANCHISE nor shall the HOLDER be bound by the terms and conditions of the FRANCHISE unless the HOLDER shall, within twenty (20) days after the effective date of the FRANCHISE, file with the COUNTY its written acceptance of the FRANCHISE.

**Section Twelve - Assignment**

1. No assignment or transfer of this FRANCHISE in any manner whatsoever shall be valid nor vest any rights hereby granted until the Island County Engineer shall have been furnished with written evidence of such transfer or certified copies thereof, together with written acceptance of the terms of the FRANCHISE by the Assignee, and unless and until the County Commissioners shall have granted their consent in writing to such assignment or transfer. Failure to comply with this provision shall be cause for cancellation as herein provided.
2. The HOLDER shall, within twenty (20) days from receipt of a copy of this order, file with the Island County Engineer at Coupeville its written acceptance of the terms and conditions of this FRANCHISE.

**Section Thirteen - Subletting**

The HOLDER shall not sublet use of its Facilities within the FRANCHISE AREA without the prior written consent of the COUNTY. Such consent shall not be unreasonably withheld. Prior to the date of any sublet, the sublettee shall file written notice with the COUNTY of the proposed sublet and shall apply for all applicable permits and franchises together with its written acceptance of all terms and conditions of this FRANCHISE. The sublettee may not use the Facilities until all approvals, permits, and franchises are granted and in effect.

**Section Fourteen – Severability**

If any term, provision, condition or portion of this FRANCHISE shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this FRANCHISE, which shall continue in full force and effect. The headings of 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.

**Section Fifteen – Modification and Amendment**

1. This FRANCHISE may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this FRANCHISE and is approved and executed in accordance with the laws of Washington State.
2. If, during the term of this FRANCHISE, there becomes effective any change in federal or state law including changes approved by the Washington Utilities Transportation Commission which:
  - a. affords either party the opportunity to negotiate in good faith a term or condition of this FRANCHISE which term or condition would not have, prior to such change, been consistent with federal or state law; or
  - b. pre-empts or otherwise renders null and void any term or condition on this FRANCHISE which has theretofore been negotiated in good faith;

then, in such event, either party may, within one hundred and eighty (180) days of the effective date of such change, notify the other party in writing that such party

desires to commence negotiations to amend this FRANCHISE. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiations on any other term or condition of this FRANCHISE. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this FRANCHISE, adoption of such amendment by the Board of County Commissioners and accepted by the HOLDER, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, the FRANCHISE shall remain in full force and effect.

**Section Sixteen – Miscellaneous**

1. The HOLDER will be subject to any future charge as may be authorized by the Board of County Commissioners through a public process for ordinance adoption that may be required of franchise holders for their use of COUNTY right-of-way.
2. This FRANCHISE is granted under the provisions and subject to the conditions and requirements of Chapter 36.55 RCW Franchises on Roads and Bridges as now in effect or as hereinafter amended.

DATED at Coupeville, Washington this 6th day of November, 2018.

By:



HELEN PRICE JOHNSON, Chair  
Board of County Commissioners  
Island County, Washington



# ICGeoMap



1,660.2  
0 830.10 1,660.2 Feet  
WGS, 1984, Web, Mercator, Auxiliary, Sphere  
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1:9,961



### Legend

- Parcels
- Roads
  - == Highway
  - Collector and Arterial
  - ... Local
  - - - Private

Notes