

AFTER RECORDING RETURN TO:
Lewis County Public Works Dept.
2025 NE Kresky Ave
Chehalis, WA. 98532

Tax Parcel Number: N/A Road Right of Way

NONEXCLUSIVE FRANCHISE AGREEMENT CLAQUATO CEMETERY ASSOCIATION

Section 1. Franchise

1.1 Definitions. Terms as used throughout this Franchise shall have the same meanings given in Section 12.25.020 LCC ("Lewis County Code") and Section 12.20.020 LCC. In addition to the meaning set forth in 12.25.020 LCC, "Ordinance", as used herein, shall be inclusive of Chapters 12.20 through 12.50 of the LCC. Words not otherwise defined shall be given their common and ordinary meaning.

1.2 Grant of Franchise. Lewis County, a Washington municipal corporation and subdivision of the State (hereinafter "County") hereby grants Claquato Cemetery Association (hereinafter "Grantee"), a nonexclusive Franchise for the installation, construction, operation, and maintenance of water facilities within the rights of way of unincorporated Lewis County. The following conditions shall apply to the Franchise granted herein:

- A. The Franchise granted shall not convey any right, title or interest in the rights of way but shall be deemed a Franchise only to use and occupy the rights of way for the limited purposes and term stated herein. The Franchise shall not convey any right, title, or interest in rights of way in which the County has an interest.
- B. The Franchise granted shall not authorize or excuse Grantee from securing such further easements, leases, permits, or other approvals as may be required to lawfully occupy and use the rights of way.
- C. The Franchise granted shall not be construed as any warranty of title or interest in any right of way; it does not provide the Grantee with any interest in any particular location within the right of way; and it does not confer rights other than as expressly provided in the grant hereof.
- D. No act, event, occurrence, or thing shall give Grantee any rights to occupy or use the rights of way permanently nor shall operate as an estoppel against the County.
- E. **This Franchise is granted subject to the terms and conditions contained in Chapter 12.20 LCC, Installation of Utilities on Lewis County rights of way, as they are now written or as later amended, which shall apply in addition to the provisions of**

Administrator. Failure to comply with the terms of an approved plan shall be grounds for non-renewal or immediate revocation of this Franchise.

1.8 Franchise Territory. The Franchise territory shall be that territory described herein. The Franchise granted herein does not give or grant to Grantee the right, privilege, or authority to install water facilities at any other location in the County. Grantee agrees not to install water facilities at any other County location without written County approval.

1.9 Amendment of Franchise for Territory Changes. Should Grantee not be able to install a water facility within the Franchise territory, Grantee shall request from the County, in writing, a deviation from the territory set out herein. If Grantee desires to extend or locate its utilities in rights of way which are not included in this Franchise, Grantee shall apply in writing for an amendment to the Franchise. If the County orders Grantee to locate or relocate its water facilities in rights of way not included in this Franchise, the County shall grant a Franchise amendment for the territory change without further application.

1.10 Right to Require Removal of Property. At the expiration of this Franchise, and if Grantee has not obtained a new franchise from the County, the County shall have the right to require Grantee to remove all or any part of Grantee's water facilities under this Franchise from the rights of way and restore the affected area, all at Grantee's expense. Removal and restoration shall be to the satisfaction of the County Engineer. If Grantee fails to do so, the County may perform the work or cause it to be done and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all property of Grantee effective upon filing of the lien with the Lewis County Auditor.

Section 2. Operation in Rights of way

2.1 Construction or Alteration.

A. Facilities shall be constructed, operated, and maintained in accordance with this Franchise and all applicable Federal, State, and County codes, rules, and regulations; including, but not limited to, Chapter 12.20 LCC. Grantee shall comply with all lawful County resolutions and ordinances regarding the acquisition of permits and/or such other items as may be required in order to construct, operate, and maintain its facilities. Grantee shall pay to the County all reasonable costs of granting or enforcing the provisions of this Franchise including, but not limited to, County fees related to the issuance of utility permits.

B. Grantee shall not construct, maintain, repair, relocate, or remove its facilities within the rights of way without obtaining a utility permit. Applications for utility permits to construct Grantee's facilities shall be in compliance with the provisions of Chapter 12.20 LCC. As part of the permitting process, the County may impose such conditions and regulations as are necessary for the purpose of protecting any structures in such rights of way, proper restoration of such rights of way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic. Such conditions may also include the provision of a construction schedule and maps showing

2.9 Rights of way and Other Public Property. Grantee shall warrant any restoration work performed by or for Grantee in the right of way or on other public property for one (1) year. If restoration is not satisfactorily performed by the Grantee within a reasonable time, the County may, after 48 hours prior notice to the Grantee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the cost of those repairs from the Grantee. The Grantee shall pay the County within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment.

2.10 Facilities Maps. Grantee shall provide the County with facilities maps in accordance with Section 12.20 LCC.

2.11 As-Built Drawings. If an Engineer's Certification is required under Chapter 12.20 LCC, then, in addition to the requirements of Section 2.10 of this Franchise regarding facilities maps, Grantee shall provide as-built drawings in accordance with Chapter 12.20 LCC.

2.12 Aesthetic and Scenic Considerations. Grantee shall comply with Chapter 12.20 LCC.

2.13 Damage to Grantee's Facilities. To the extent permitted by Washington law, the County shall not be liable for any damage to or loss of any of Grantee's facilities or any interruption in water services within the rights of way as a result of or in connection with any emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling, or work of any kind in the rights of way by or on behalf of the County or any Person under contract with the County, except for damage caused by the sole negligence of the County.

2.14 Location of Facilities. All water facilities shall be constructed, installed, and located in accordance with Chapter 12.20 LCC. Consistent with any general County undergrounding policy or program now or hereafter developed, the County may require Grantee's participation in County-imposed undergrounding or related requirements at Grantee's expense. Grantee agrees to coordinate its underground installation and planning activities with the County's underground plan.

2.15 Hazardous Substances.

- A. Grantee shall comply with any and all applicable laws, statutes, regulations, and orders concerning hazardous substances relating to Grantee's facilities in the rights of way.
- B. Grantee agrees to indemnify the County against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the County, arising out of Grantee's release of hazardous substances caused by or related to the construction, operation or maintenance of Grantee's facilities.

2.16 Notice to Private Property Owners. Grantee shall give notice to private property owners of work on or adjacent to private property.

2.17 County Use of Trenching. The Grantee and the County recognize that situations may occur in the future where the County may desire to place its own cable or conduit in trenches or bores

2. Be given to the Person doing the work, or posted on the work site.
3. Be sent to Grantee by overnight delivery at the address given herein.
4. Indicate the nature of the alleged violation or unsafe condition.
5. Establish conditions under which work may be resumed.

Section 3. Financial Provisions

3.1 Financial Security. Pursuant to LCC 12.20 the County may require financial security to ensure completion of construction before any construction work is started by Grantee. Depending on the nature of the project planned by Grantee a Permit issued by the Public Works Department before construction starts may require a bond.

3.2 Release, Indemnity and Hold Harmless. Grantee shall indemnify, defend, and hold the County, its appointed and elected officials, agents, officers, and employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorney's fees, made against the County, its agents, officers, or employees on account of injury, harm, death, or damage to persons or property arising out of or in connection with Grantee's construction, operation, use, or maintenance of Grantee's Facilities, except that such indemnification shall not extend to nor include any liability due to the sole negligence of the County, its elected and appointed officials, agents, officers, and employees acting within the scope of their employment.

Grantee shall indemnify, defend, and hold the County, its appointed and elected officials, agents, officers, and employees harmless from and against any and all claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including all costs and attorney's fees, made against the County on account of violation of any environmental laws applicable to the Facilities, or from any release of petroleum products or Hazardous Substances on or from the Facilities, except for any such claims, demands, liability, loss, cost, damage, or expense of any nature whatsoever including costs and attorney's fees caused by the sole negligence of the County, its elected and appointed officials, agents, officers or employees acting within the scope of their employment. This indemnity includes, but is not limited to: (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; and (d) liability for any costs of investigation, abatement, correction, or cleanup; or fines, penalties, or other damages arising under any environmental laws.

Grantee's indemnification obligations include assuming potential liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and sub-contractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of potential liability for actions brought by the aforementioned employees is limited solely to claims against the County arising by virtue of Grantee's exercise of the rights set forth in this Agreement. The obligations of Grantee under this section have been mutually negotiated by the Parties, and Grantee acknowledges that the County would not enter into this Agreement without Grantee's waiver. To the extent

(\$1,000,000).

D. The insurance policies required by Section 3.3 shall be maintained at all times by Grantee. The insurer or Grantee shall notify the County at least thirty (30) days before the policy can be canceled by either party to be mailed to the Lewis County Public Works, Real Estate Services Division (2025 NE Kresky Ave., Chehalis, WA 98532) as well as the named insured. Grantee will be obligated to replace or renew the canceled or expiring policy and show proof in the form of a certificate of insurance, at least fifteen (15) days before the expiration or cancellation of the existing policy(ies).

E. Grantee shall furnish the Real Estate Services Division with properly executed certificates of insurance naming Lewis County as primary, non-contributory additionally insured, or a signed policy endorsement which shall clearly evidence all insurance required in Section 3.3.

F. Grantee or its agent will provide a copy of any and all insurance policies specified in this Franchise upon request of the Real Estate Services Manager.

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.

H. By acceptance of this Franchise, Grantee agrees that failure to procure or maintain the required insurance shall constitute a material breach of this Franchise and that the County may immediately terminate this Franchise or, at the County's discretion, procure or renew such insurance to protect the County's interests and be reimbursed by Grantee for all premiums paid in connection therewith.

3.4 Compensation. The Franchise granted hereunder is subject to the County's right, which is expressly reserved, to annually fix a fair and reasonable compensation for the authorization granted hereunder, and to reimburse the County's costs in connection with administration and oversight of this Franchise, and in connection with reviewing, inspecting, monitoring, and supervising the use and occupancy of the rights of way. Nothing herein shall prohibit the County and Grantee from agreeing upon the compensation to be paid.

This Franchise shall not be interpreted to prevent the County from imposing additional lawful conditions, including additional compensation conditions for use of the rights of way, should Grantee provide services other than water facilities.

3.5 Reimbursement. Except as provided in Subsection 3.4, Grantee shall reimburse the County within thirty (30) calendar days after receipt of written demand for all reasonable amounts paid and costs incurred by the County in relation to this Franchise or the enforcement thereof.

Section 4. Additional Franchise Provisions

4.1 Publication Costs. Grantee shall assume the costs of publication associated with this Franchise as such publication is required by law.

remedy for breach of contract, damages, non-payment or otherwise which the County has under this Franchise or under law.

4.5 Modification. The County and Grantee reserve the right to modify the terms and conditions of this Franchise upon written agreement of both parties to such modification or in the exercise of the County's police power authority or other authority pursuant to applicable laws.

4.6 Franchise Subject to Future County Ordinances and Regulations. Nothing herein 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 any valid ordinance made in the exercise of the County's 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 the location, elevation, manner of construction, operation and maintenance of any water facilities by Grantee. Grantee agrees to promptly conform to all such regulations as if they were in effect at the time this Franchise was executed by the County, unless compliance would cause Grantee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any ordinance(s) enacted or action taken under the County's police power authority, such ordinance(s) or other exercise of police power shall take precedence over the provisions set forth herein.

4.7 Assignments or Transfers. Grantee shall comply with LCC 12.20 regarding assignments, lease, sharing, transfers, and transactions affecting direct or indirect interest or control. In no event shall a sale, lease, sharing, transfer, assignment, or disposal of ownership, interest, or control be approved without the transferee acknowledging the obligations under LCC 12.20, becoming a signatory to this Franchise, and assuming all rights and obligations hereunder; and assuming all other rights and obligations of the transferor to the County.

4.8 Receivership and Foreclosure.

- A. At the option of the County, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of Grantee whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless:
 - 1. The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or
 - 2. The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision, and limitation of this Franchise.
- B. If there is a foreclosure or other involuntary sale of the whole or any part of the property and equipment of Grantee, the County may serve notice of revocation on Grantee and the purchaser at the sale, and the rights and privileges under this Franchise shall be

representative, shall have access to, and the right to inspect, any books and records of Grantee, its parent corporations and affiliates which are reasonably related to the administration or enforcement of the terms of this Franchise. The County may, in writing, request copies of any such records or books and Grantee shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the County, at the sole expense of Grantee.

4.12 Severability. The parties understand and agree that if a court 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 invalid provision. Should the County determine that the severed portions substantially alter the Franchise so that the original intent and purpose of this Franchise no longer exists, the County may, at its sole discretion, terminate this Franchise without cost or penalty.

4.13 Remedies. All remedies and penalties under this Franchise, including termination of this Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Franchise, including termination of this Franchise, are not exclusive, and the County reserves the right to enforce the provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity.

4.14 Nonwaiver of Rights. 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.

4.15 Choice of Law. This Franchise has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

4.16 Jurisdiction. 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 Lewis County, Washington.

4.17 Context. When consistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

4.18 Entire Agreement. The parties agree that this Franchise is the complete expression of the terms and conditions hereunder, and supersedes all prior agreements or proposals except as specifically set forth herein. Any oral or written representations or understandings not incorporated herein are specifically excluded. This Franchise is executed in duplicate originals and executed by the persons signing below who warrant that they have the authority to execute this Franchise.

ACCEPTED by Grantee this _____ day of _____, 2021

ACCEPTANCE:

BOARD OF COMMISSIONERS
for Lewis County, Washington

Claguate Cemetery
Grantee

By: William C. Lee
(Authorized Signatory & Representative)

Its: Board Sec.

ATTEST:

Gary Stamper, Chair

Lindsey R. Pollock, DVM, Vice Chair

Sean Swope, Commissioner

Rieva Lester, Clerk of the Lewis County
Board of County Commissioners

APPROVED AS TO FORM:
Jonathan L. Meyer, Prosecuting Attorney

By: _____
Civil Deputy

EXHIBIT B

