BEFORE THE BOARD OF COMMISSIONERS FOR LEWIS COUNTY, WASHINGTON

IN THE MATTER OF: a nonexclusive Franchise to **Mashell Telecom, Inc., dba Rainier Connect,** to construct, operate and maintain Telecommunication Facilities in Lewis County Rights-of-Way; and setting forth conditions accompanying a grant of a nonexclusive Franchise; and providing for County administration and regulation of the nonexclusive Franchise.	)	RESOLUTION NO. 15-_____ Nonexclusive Telecommunications Franchise

WHEREAS, **Mashell Telecom, Inc., dba Rainier Connect,** has applied to the Board of County Commissioners of Lewis County, pursuant to Chapter 36.55 RCW and Chapters 12.25 through 12.50 LCC, for a nonexclusive Franchise to construct, operate and maintain Telecommunications Facilities within County Rights-of-Way; and

WHEREAS, the County under Titles 5 & 12 LCC provides for the regulation of use of County Rights-of-Way for Telecommunications located in or using County Rights-of-Way; and

WHEREAS, pursuant to RCW 36.55.040, notice was posted in three public places in the County seat at least fifteen (15) days before the hearing date, and notice was published twice in the official County newspaper, the last publication being not less than five (5) days before the date fixed for the hearing; and

WHEREAS, pursuant to RCW 36.55.040, a hearing on the application for Franchise was held on the _____ day of _____, **201**_; and

WHEREAS, the Board finds that it is in the public interest and has made a determination under Chapters 12.25 through 12.50 LCC to grant **Mashell Telecom, Inc., dba Rainier Connect**'s application for a nonexclusive Franchise to construct, operate and maintain Telecommunications Facilities within County Rights-of-Way; NOW, THEREFORE

BE IT RESOLVED, by the Board of County Commissioners for Lewis County, Washington, that a nonexclusive Franchise is hereby granted to **Mashell Telecom, Inc., dba Rainier Connect** to construct, operate, and maintain Telecommunication Facilities in Lewis County Rights-of-Way, as described in Exhibit A, under the following express terms and conditions:

Section 1. Franchise

1.1 Definitions. Terms as used throughout this Franchise shall have the same meanings given in Section 12.25.020 LCC and Section 12.20.020 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 **Mashell Telecom, Inc., dba Rainier Connect** (organized under the laws of the State of Washington)(hereinafter "Grantee"), a nonexclusive Franchise for the installation, construction, operation, and maintenance of Telecommunications 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 that the County has an interest in only through agreement and does not possess an easement in the right-of-way.

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, and the Lewis County Telecommunications Ordinance 1171, hereinafter the "Ordinance," as they are now written or as later amended, which shall apply in addition to the provisions of this Franchise. Provisions of Chapter 12.20 LCC and the Ordinance shall control over inconsistent terms contained in this Franchise; provided, however, that Section 3.2 of this Franchise, Release, Indemnity and Hold Harmless, shall control for this Franchise over inconsistent provisions of Chapter 12.20 LCC and the Ordinance as they are currently adopted.

F. The matters contained in Grantee's Franchise application and all subsequent applications or proposals for extensions or renewals of this Franchise, except as inconsistent with law, regulations or local ordinance, are hereby incorporated by reference.

1.3 Term of Franchise. The term of this Nonexclusive Franchise shall be for a term of [**_five_** (**_5_**)] years from the date of this Franchise.

1.4 Nonexclusive Franchise. The Franchise granted herein shall be nonexclusive. The County specifically reserves the right to grant, at any time, such rights, permits, licenses and/or franchises to other Persons to use the Rights-of-Way for similar or different purposes allowed hereunder as the County deems appropriate. Subject to this Franchise, Grantee shall not prevent or

prohibit the County from constructing, altering, maintaining or using any of said Rights-of-Way, or affect its jurisdiction over them or any part of them, the County having full power and authority to make all necessary changes, relocation, repairs, or maintenance of said Rights-of-Way as the County deems appropriate.

1.5 Renewal Applications. If Grantee desires to renew this Franchise, Grantee shall comply with Section 12.37.120 LCC.

1.6 Renewal Determinations. Within 120 business days after receiving a complete application for renewal, the Board shall make a determination on behalf of the County granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The criteria in Section 12.37.130 LCC shall apply when determining whether to grant or deny the application, and the Board may also consider Grantee's compliance with the requirements of Chapter 12.20 LCC, the Ordinance and this Franchise.

1.7 Obligation to Cure as a Condition of Renewal. This Franchise shall not be renewed until any ongoing violations or defaults in Grantee's performance of this Franchise, of the requirements of the Ordinance, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by Grantee has been approved by the 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 set out in Exhibit A attached hereto and made a part hereof. The Franchise granted herein does not give or grant to Grantee the right, privilege or authority to install Telecommunication Facilities at any other location in the County. Grantee agrees not to install Telecommunication 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 Telecommunications Facilities along the Franchise territory, Grantee shall request from the County, in writing, a deviation from the territory set out in Exhibit A. If Grantee desires to extend or locate its Telecommunications Facilities 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 Telecommunications 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 Telecommunications 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. Telecommunications 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 and the Ordinance. 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 Telecommunication 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 Telecommunications Facilities within the Rights-of-Way without obtaining a utility permit. Applications for utility permits to construct Grantee's Telecommunications 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 the location of the facilities to be installed in the Right-of-Way. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be permanent in nature, durable and installed in accordance with good engineering practices.

C. Within limits reasonably related to the County's role in protecting public health, safety and welfare, the County may require that Telecommunication facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if Grantee is not willing to comply with County's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the County, and may require Grantee to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

2.2 Non-Interference. In installing, constructing, operating, repairing, and maintaining its Telecommunications Facilities, Grantee shall not interfere with the use of the Rights-of-Way by the County, by the general public or other Persons authorized to use or be present in or upon the Rights-of-Way. Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. Grantee's Telecommunication Facilities shall be constructed and maintained in such manner as not to interfere with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the County's authority. In the event of such interference, the County may require the removal or relocation of Grantee's Telecommunication Facilities from the property in question at Grantee's expense.

2.3 Construction Schedule and Notice of Work. Unless otherwise provided herein, Grantee or any Person acting on Grantee's behalf, shall comply with the notice provisions set out in Chapter 12.20 LCC.

2.4 Traffic Control. Grantee shall comply with the traffic control provisions set out in Chapter 12.20 LCC.

2.5 Relocation or Removal of Telecommunications Facilities. In the relocation or removal of Grantee's Telecommunications Facilities, Grantee shall comply with Chapter 12.20 LCC and the Ordinance.

2.6 Consistency with Designated Use. Notwithstanding this Franchise to use County Rights-of-Way, no Right-of-Way shall be used by Grantee if the County determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Way was created or dedicated, or presently used under State and local laws.

2.7 Restoration of Rights-of-Way. Grantee shall comply with the restoration of Rights-of-Way conditions set out in Chapter 12.20 LCC.

2.8 Restoration of Improvements. Upon completion of any construction work, Grantee shall make restoration in accordance with Chapter 12.20 LCC.

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. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Grantee shall pay the County.

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

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 2.9 of this Franchise, Telecommunications 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 Telecommunications 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 Telecommunications Facilities or any interruption in Telecommunications 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 negligence of the County, including, but not limited to, damages, losses, or liability arising from the issuance or approval by the County of a permit, license or franchise to any third party.

2.14 Location of Telecommunications Facilities. All Telecommunications Facilities shall be constructed, installed, and located in accordance with Chapter 12.20 LCC and the Ordinance. 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 and policies.

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 Telecommunications 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 a release of hazardous substances caused by Grantee's Telecommunications 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 opened by the Grantee. The Grantee agrees to cooperate with the County in any construction by the Grantee that involves trenching or boring, provided that the County has first notified the Grantee in some manner that it is interested in sharing the trenches or bores in the area where the Grantee's construction is occurring. The Grantee shall allow the County to lay its cable or conduit in the Grantee's trenches and bores, provided the County shares in the cost of the trenching and boring on the same terms and conditions as the Grantee at that time shares the total cost of trenches and bores. The County shall be responsible for maintaining its respective cable or conduit buried in the Grantee's trenches and bores under this paragraph.

2.18 Movement of Telecommunications System Facilities for Other Franchise Holders. If any removal, replacement, modification or disconnection of the Telecommunications System is required to accommodate the construction, operation or repair of the facilities or equipment of another County franchise holder, Grantee shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. Grantee may require that the costs associated with the removal or relocation be paid by the benefited party.

2.19 Work of Contractors and Subcontractors. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with state law. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Grantee. Grantee shall be responsible for all work performed by its contractors and

subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable law, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Grantee's responsibility to ensure that contractors, subcontractors or other persons performing work on Grantee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

2.20 Inspection of Construction and Facilities. The County may inspect any of Grantee's facilities, equipment or construction at any time upon at least twenty-four (24) hours notice, or, in case of emergency, upon demand without prior notice. The County shall have the right to charge generally applicable inspection fees therefor. If an unsafe condition is found to exist, the County, in addition to taking any other action permitted under applicable law, may order Grantee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the County establishes. The County has the right to correct, inspect, administer and repair the unsafe condition if Grantee fails to do so, and to charge Grantee therefor.

2.21 Stop Work.

(A) On notice from the County that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the County, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the County.

(B) The stop work order shall:

(1) Be in writing;

(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; and

(5) Establish conditions under which work may be resumed.

Section 3. Financial Provisions

3.1 Financial Security. LCC 12.20 states that the County may require financial security to insure completion of construction before any construction work is started by Grantee. After consideration of the type of project planned by Grantee, and that the Permit issued by the Public Works Department before construction starts may require a bond, financial security is not being required as part of this franchise.

3.2 Release, Indemnity and Hold Harmless.

A. In addition to and distinct from the insurance requirements of this Franchise, Grantee releases and shall defend, indemnify and hold harmless County, its elected and appointed officers, officials, employees, agents, and representatives in their official capacities (collectively referred to as the "Indemnitees") from any and all claims, losses, costs, liabilities, damages and expenses, including, but not limited to, those of Grantee's lessees, (except those damages caused solely by the negligence of the Indemnitees), and also including, but not limited to, reasonable attorneys' fees: 1) arising out of or alleged to arise out of any claim for damages for Grantee's

violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person; 2) arising out of or in connection with Grantee's acts or omissions during the installation of any Telecommunications Facilities, the performance of any work, the operation of any Telecommunications Facilities or Grantee's system; and 3) arising out of or in connection with the acts or omissions of Grantee or any of its suppliers or contractors of any tier, or anyone acting on Grantee's behalf in connection with said installation of Telecommunications Facilities, performance of work, or operation of Telecommunications Facilities or Grantee's system.

B. Such indemnity, protection and hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of Persons, including officers, agents, and employees of any Person including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to directly or indirectly by the erection, maintenance, presence, operation, use or removal of Grantee's Telecommunications Facilities or installations of Telecommunications Facilities including any claims or demands of customers of Grantee with respect thereto.

C. Indemnitees shall not be liable to Grantee or to Grantee's customers, and Grantee hereby indemnifies, protects and saves harmless the Indemnitees against any and all such claims or demands, suit or judgment for loss, liability, damages and expense by Grantee's customers, or for any interruption to the service of Grantee, or for interference with the operation of the Telecommunications Facilities.

D. To the fullest extent permitted by applicable law, the foregoing release, indemnity and hold harmless provisions shall apply to and be for the benefit of the Indemnitees.

E. Inspection or acceptance by the County of any work performed by Grantee shall not be grounds for avoidance by Grantee of any of its obligations under this Section. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

F. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee and the County, Grantee's liability hereunder shall be only to the extent of Grantee's negligence. It is further specifically understood that the indemnification provision provided herein constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

G. The provisions of Section 3.2 shall survive the expiration or termination of this Franchise. Further, all provisions of Section 3.2 shall apply to the successors and assigns of Grantee.

H. Procedures and Defense. If a claim or action arises, the County or any other indemnified party shall tender the defense of the claim or action to the Grantee, which defense shall be at the Grantee's expense. The County may participate in the defense of a claim and, in any event, the Grantee may not agree to any settlement of claims financially affecting the County without the County's written approval, which shall not be unreasonably withheld.

I. Duty of Defense. The fact that the Grantee carries out any activities under this Franchise though independent contractors shall not constitute an avoidance of or defense to the Grantee's duty of defense and indemnification under this Section.

3.3 Insurance. As a condition of this Franchise, Grantee shall secure and maintain the following liability insurance policies.

A. Commercial General Liability insurance, and if necessary, Umbrella Liability insurance, which will cover bodily injury, property damage, and any other exposure which can be reasonably identified as potentially arising from Grantee's activities within the Rights-of-Way. The limit of liability shall not be less than one million dollars ($1,000,000) each occurrence with a $2,000,000 aggregate. The County, its elected and appointed officers, officials, employees, agents, and representatives shall be named as additional insureds with respect to activities occurring within its Rights-of-Way. Coverage shall be comprehensive with respect to Grantee's activities within the Rights-of Way and shall include completed operations, explosions, collapse, and underground hazards. Any insurance or self-insurance maintained by the County, its officers, officials, boards, commissions, employees and agents shall be in excess of the Grantee's insurance and shall not contribute to it.

B. Business Automobile Liability insurance for owned, non-owned and hired vehicles with limits of not less than one million dollars ($1,000,000) per person, one million dollars ($1,000,000) per accident.

C. Workers' Compensation insurance as required by Title 51 RCW and Employer's Liability Coverage with a limit of not less than one million dollars ($1,000,000).

D. The insurance policies required by Section 3.3 shall be maintained at all times by Grantee. Each liability policy shall be endorsed to require the insurer to notify the County at least forty-five (45) days before the policy can be canceled by either party, and to require notice of cancellation due to non-payment of premium to be mailed to the Administrator 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 twenty (20) days before the expiration or cancellation of the existing policy(ies).

E. Grantee shall furnish the Public Works Real Estate Services Manager 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 Administrator.

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.

I. **Mashell Telecom, Inc., dba Rainier Connect**, as Grantee, shall be deemed to be in compliance with insurance and bonding provisions of this agreement if it maintains a program of, or membership in a program of, self-insurance providing for a retention of up to $2,000,000.

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 service other than Telecommunication Service.

3.5 Reimbursement. Except as provided in Subsection 3.4 C., 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.

4.2 Vacation.

A. If the County vacates all or portion of any County Rights-of-Way which is subject to rights granted by this Franchise, and said vacation is for the purpose of acquiring the fee or other property interest in said Rights-of-Way for the use of the County in either its proprietary or governmental capacity, the Board may, at its option and by giving forty-five (45) days written notice to Grantee, terminate this Franchise with reference to any County Rights-of-Way so vacated, and the County shall not be liable for any damages or loss to Grantee by reason of such termination.

B. Whenever a County 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 in respect to the vacated land for the installation, construction, repair and maintenance of public utilities and services which at the time of the vacation are specifically authorized under this Franchise or physically located on a portion of the land being vacated, but only in accordance with the provisions of RCW 36.87.140. The County shall not be liable for any damages or loss to Grantee by reason of any such vacation.

4.3 Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the Board or the people acting for themselves through the initiative or referendum process to repeal, amend, or modify this Franchise. In any proceeding under eminent domain, this Franchise itself shall have no value.

4.4 Revocation or Termination.

A. This Franchise may be revoked as provided in the Ordinance after notice, an opportunity to cure, and a hearing as provided in the Ordinance.

B. In addition to Section 4.4 A. of this Franchise, upon failure of Grantee, after written notice, to perform properly and completely each term, condition, or obligation imposed upon it

pursuant to this Franchise, the County may terminate this Franchise.

C. At the expiration of the term of this Franchise or upon its revocation or termination, the County shall have the right to require Grantee to remove its Telecommunications Facilities within ninety (90) days from the County Rights-of-Way. Grantee shall be liable for any costs incurred in removing any Telecommunications Facilities of Grantee and restoring any County Rights-of-Way. In removing its plant, structures and equipment, Grantee shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to Grantee's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and Grantee shall not be entitled to, and agrees not to request, compensation of any sort therefor.

D. If Grantee fails to remove its Telecommunications Facilities to the County's satisfaction in the time frame required by the County, the County may perform the work and collect the cost thereof from Grantee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Grantee effective upon filing of the lien with the County Auditor.

E. A revocation or termination of this Franchise shall not prejudice any other 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 installation, construction and maintenance of any Telecommunications Facilities by Grantee. Grantee agrees to promptly conform with 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 the Ordinance 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 the Ordinance, 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 to the purchaser at the sale, and the rights and privileges of Grantee under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

(1) The County has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and

(2) The purchaser has covenanted and agreed with the County to assume and be bound by all of the terms and conditions of this Franchise.

4.9 Incorporation and Annexation.

A. If any Rights-of-Way covered by this Franchise is incorporated into the limits of any County or town, this Franchise shall terminate as to any Rights-of-Way within the corporate limits of such County or town; but this Franchise shall continue as to County Rights-of-Way not incorporated into a city or town.

B. If, pursuant to Article XI § 3 of the Washington Constitution, territory is stricken or taken from the County and a new county is established from the territory taken from the County, this Franchise shall terminate as to any Rights-of-Way within the territory so taken to establish the new county; but this Franchise shall continue as to County Rights-of-Way not taken from the County.

4.10 Service of Notice. Except as provided herein, any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the party to receive same.

Notice to the County shall be sent to:

Lewis County Public Works Department
Real Estate Services, Property Management
2025 NE Kresky Ave.
Chehalis, WA 98532

Notice to Grantee shall be sent to:

Mashell Telecom, Inc., dba Rainier Connect
c/o Law Office of Richard A. Finnigan
2122 Black Lake Boulevard SW
Olympia, WA 98512

Grantee shall promptly notify the County of any change in notice address.

4.11 Open Records. The County, including the County's Auditor or his/her authorized 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, in 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.

4.19 Familiarity with Franchise. The Grantee acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein.

4.20 Acceptance. The Grantee has indicated acceptance of this Franchise by executing this Franchise prior to execution by the Board. Within 30 days from execution by the Board, Grantee shall pay publication costs set out in Sec. 4.1, and submit the required evidence of insurance as provided in Sec. 3.3, the Financial Security as provided in Sec. 3.1, and Compensation as provided in Sec. 3.4 of this Franchise. In the event Grantee fails to comply with all conditions of acceptance as set forth herein within thirty (30) days after adoption by the Board, this Franchise shall be null and void.

DONE IN OPEN SESSION this __ day of _____, 2015

ACCEPTANCE:

Mashell Telecom, Inc. d/b/a Rainier Connect
Grantee

By: _____
(Authorized Signatory & Representative)

Its: Attorney

ATTEST:

_____
Clerk of the Board

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

By: _____
Civil Deputy

BOARD OF COMMISSIONERS
for Lewis County, Washington

_____
Edna J. Fund, Chair

_____
P. W. Schulte, Vice Chair

_____
Gary Stamper, Commissioner

Exhibit A

Lewis County roads in all of Townships:

12 North, Range 1 West, W.M.
12 North, Range 2 West, W.M.
13 North, Range 1 West, W.M.
13 North, Range 2 West, W.M.
13 North, Range 3 West, W.M.
14 North, Range 2 West, W.M.
14 North, Range 3 West, W.M.
15 North, Range 2 West, W.M.

And

Sections 25 thru 36, Township 15 North, Range 3 West, W.M.