

ORDINANCE NO. 1949 (2005)

AN ORDINANCE OF THE CITY OF BOTHELL GRANTING NORTSHORE UTILITY DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF ITS WATER & SEWER UTILITY BUSINESS.

WHEREAS, after extensive negotiation, the parties hereto have reached agreement on a franchise for the provision of water and sewer service within the City of Bothell; NOW THEREFORE,

THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Definitions. Where used in this franchise (the "Franchise") these terms have the following meanings:

- (a) "NUD" means Northshore Utility District, a Washington Municipal Corporation, and its respective successors and assigns.
- (b) "City" means the City of Bothell, a municipal corporation of the State of Washington, and its respective successors and assigns.
- (c) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways, rights-of-way and unrestricted utility easements of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys, highways and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as such limits may be hereafter extended.

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- (d) "Facilities" means tanks, meters, pipes, mains, services, valves, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.
- (e) "Ordinance" means this Ordinance No. 1949 (2005), which sets forth the terms and conditions of this Franchise.
- (f) "Revenues" means the value proceeding or accruing from the performance of NUD's water and sewer business, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, delivery costs, taxes, or any other expense paid or accrued and without any deduction on account of losses; provided that it shall not include late fees, impact or mitigation fees, or connection charges.

Section 2. Franchise.

The City does hereby grant to NUD the right, privilege, authority and franchise to construct, support, attach, and connect Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water and sewer utility business as defined in RCW 82.04.065, subject to existing applicable right-of-way and other permits and the conditions herein, on the effective date of this franchise.

Nothing contained in this Ordinance is to be construed as granting permission to NUD to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

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Section 3. Compliance with Laws and Regulations

A. At all times during the term of this Franchise, NUD shall fully comply with all applicable federal, state, and local laws and regulations, but not including the payment of utility taxes as imposed by Chapter 5.08 BMC. Failure to comply with any City rule or regulation shall be construed as a breach of contract. Any location, relocation, erection or excavation by NUD shall be performed by NUD in accordance with applicable federal, state and city rules and regulations, including City design and construction standards, the City Public Works Policies and Pre-approved Plans, and any required permits, licenses or fees, and applicable safety standards then in effect or any Memorandum of Understanding with NUD.

B. Upon written inquiry, NUD shall provide a specific reference to either the federal, state or local law or the Washington Utilities and Transportation Commission ("WUTC") order or action establishing a basis for NUD's actions related to a specific franchise issue.

C. In the event that any territory served by NUD is annexed to the City after the effective date of this Franchise, such territory shall be governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 4. Maps and Records. Subsequent to construction, NUD shall provide the City with accurate copies of as-built plans and maps in a form and content consistent with the City of Bothell Design and Construction Standards and Specifications. These plans and maps shall be provided at no cost to the City and shall include hard copies and AutoCAD (Release 2000) compatible digital copies, or files compatible with applicable software used by the City at the time of submission.

NUD shall also provide the City with digitized yearly updates of its as-built drawings by January 31 of each calendar year. The as-built drawings shall be accompanied with a report on the current capacity and condition of the physical plant that serves the Franchise Area. The "physical plant" shall include all capital facilities that serve the Franchise Area, including water transmission and distribution lines, pumps, reservoirs and treatment facilities. These capital facilities may or may not be located in the Franchise Area.

Upon written request of the City, NUD shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

As-built drawings submitted on mylar shall show the precise location of any facilities placed by NUD in any street, alley, avenue, highway, easement, etc., shall be made available to the City within ten (10) working days of request.

Section 5. Location of Facilities and Equipment. All Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed.

Section 6. Excavations. During any period of relocation, construction, or maintenance, all work performed by NUD or its contractors shall be accomplished in a

safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private, NUD shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Nothing herein shall preclude NUD from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided NUD receives prior City approval, which shall not be unreasonably withheld.

Whenever NUD shall excavate in any public rights-of-way for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least five (5) working days prior notice of its intent to commence work in the public rights-of-way. In no case shall any work commence within any public rights-of-way without a permit, except as otherwise provided in this Franchise. NUD and the City shall each comply with all applicable provisions of Chapter 19.122 RCW and any other applicable state law.

Section 7. Shared Use of Excavations. NUD and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other party and other utilities within the Franchise Areas informed of its intent to undertake such construction work. NUD and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or

other utilities within the Franchise Area.

If at any time, or from time to time, either NUD, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, 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 both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or street improvement project. NUD shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.

The City reserves the right to require NUD to joint trench with other facilities if both parties are anticipating trenching within the same portion of the Franchise Area and provided the terms of (a) and (b) above are met.

Section 8. Restoration after Construction. NUD shall, after abandonment approved by the terms of this Agreement, or installation, construction, relocation, maintenance or repair of its facilities within the Franchise Area, restore the surface of the rights-of-way to at least the same condition or better the property was in

immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. NUD agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Franchise Area or other affected area at its sole cost and expense. Restoration shall include but not be limited to pavement overlay, re-establishment of concrete encased monuments, sidewalk reconstruction and other structures in the Franchise Area to meet existing standards or equivalency in accordance to City's standards and specifications of general applicability; provided, however, if the surface of the affected Franchise Area has an Overall Condition Index (based upon standard pavement condition rating methodologies as recognized by the Washington State Department of Transportation and the Northwest Pavement Managers Association) of 40 or less prior to NUD's excavation, then the area shall be restored consistent with an approved plan agreed upon between the parties prior to commencement of construction. The provisions of this Section shall survive the expiration, revocation or termination by other means of this Franchise.

Section 9. Emergency Work. In the event of any emergency in which any of NUD's facilities located in or under any street fails, becomes damaged, or if NUD's construction area is otherwise in such a condition as to immediately endanger the property (public or private), life, health or safety of any individual, NUD shall immediately, to the extent permitted by City regulations, take the proper emergency measures 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 this Franchise.

Section 10. Dangerous Conditions, Authority for City to Abate.

Whenever the construction, installation or excavation of facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or City property, the Public Works Director may direct NUD, at NUD's own expense, to take actions to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time.

In the event that NUD fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist requiring immediate action, before the City can timely contact NUD to request NUD to undertake immediate report, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions that are necessary safety precautions, and NUD shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation or termination of this Franchise.

Section 11. Recovery of Costs. NUD shall reimburse the City's administrative, legal, and other costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized hereby until such time as the City has received full reimbursement. NUD 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 City. Where the City 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 is not established, NUD shall pay such costs and expenses directly to the City. In addition to the above, NUD shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving NUD's Facilities.

Section 12. Relocation.

A. NUD agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that NUD shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of waterline required to be temporarily disconnected or removed.

B. Any condition or requirement imposed by the City upon any other 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) that reasonably necessitates the relocation of NUD's facilities within the Franchise Area shall be a required relocation for purposes of subsection 12(A) above; provided, however, that NUD may require that those costs and expenses incurred by NUD in integrating and connecting such relocated Facilities with NUD's other

Facilities be paid to NUD by such other person or entity.

C. If the City determines that a non-emergency City funded and managed project necessitates the relocation of NUD's then existing facilities, the City shall:

1. At least ninety (90) days prior to the commencement of such improvement project, provide NUD with written notice requiring such relocation; and

2. Provide NUD with copies of pertinent, reasonable portions of the plans and specifications for such improvement project. The City shall work with NUD to determine a mutually acceptable location, within the Franchise area, in which to relocate NUD Facilities; and

3. After receipt of such notice and such plans and specifications, NUD shall complete relocation of its facilities prior to the scheduled commencement of the project necessitating relocation, as stated in the City's notice to NUD, at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the project necessitating relocation.

D. NUD may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall, within a reasonable period of time, evaluate such alternatives and advise NUD in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the facilities. If so requested by the City, NUD shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by NUD full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, NUD shall relocate its facilities as otherwise provided in this Section. The City shall cooperate with NUD to designate a substitute location for its Facilities. The City will establish a date by

which Facilities shall be relocated, which date will be not less than sixty (60) days after written notice to NUD as to the Facility to be relocated. The provisions of this Section shall survive the expiration or termination of this Franchise.

E. Notwithstanding any other provision of this Franchise, the cost of relocating Facilities now existing within the present limits of the City shall be funded as follows:

- 1.) Should the relocation be required within six (6) years after NUD initially constructed such Facility, then the relocation shall be at the City's sole cost;
- 2.) Should the relocation be required beyond six (6) years after NUD initially constructed such Facility, then the relocation shall be at NUD's sole cost.
- 3.) For the purpose of planning, NUD and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan and Six Year Transportation Improvement Plan annually and upon request by the other party.
- 4.) Any cost or expense in connection with the location or relocation of any Facilities existing under benefit of private easement or other rights not arising under this Franchise, excluding rights arising under any prior King County franchise, shall be borne fifty percent (50%) by NUD and fifty percent (50%) by the City. Costs for location or relocation of any Facilities existing under any prior King County franchise shall be borne solely by NUD.

F. The provisions of this Section shall in no manner preclude or restrict NUD 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 City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project and provided that NUD acquires all required approvals from the City, including right of way permits.

Section 13. Indemnification. NUD shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns 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 them on account of injury, sickness, death or damage to persons or property that is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of NUD or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted NUD in this Franchise; provided, however, such indemnification shall not extend to injury or damage caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

In the event any such claim or demand be presented to or filed with the City, the City shall promptly notify NUD thereof, and NUD shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand, provided further, that in the event any suit or action be begun against the City based upon any such claim or demand, the City shall likewise promptly notify NUD thereof, and NUD shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. NUD shall have no right, by virtue of this paragraph, to settle any claims against the City for which NUD is not required to reimburse, nor shall NUD have any control or authority over any claims or portions of claims against the City for which NUD is not required to reimburse.

Section 14. Default. If NUD shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon NUD a written order to so comply within thirty (30) days from the date such order is received by NUD. If NUD is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to NUD. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which NUD will have an opportunity to be heard) on the impending ordinance is given to NUD, declare an immediate forfeiture of this Franchise. Provided, however, if any material failure to comply with this Franchise by NUD cannot be corrected with due diligence within said thirty (30) day period (NUD's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which NUD may so comply shall be extended for such time as may be reasonably necessary and so long as NUD commences promptly and diligently to effect such compliance), then the City may exercise its remedies in compliance with Section 25.

Section 15. Non-exclusive Franchise. This Franchise is granted upon the express condition that it shall not in any manner prevent the city from granting other or further franchises in, along, over, through, below or across any of said Franchise Area. Such Franchise shall in no way prevent or prohibit the City from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations,

repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-ways, thoroughfares and other public properties of every type and description.

Section 16. Franchise Term. Subject to the Provisions of Section 17, this Franchise is and shall remain in full force and effect for a period of three years from and after January 1, 2006. The franchise shall automatically be extended on subsequent three year anniversaries of that date for another three years unless the City notifies NUD of its intent to assume that portion of NUD within its City limits. Said notification must occur 3 months prior to the expiration of the current franchise. Any assumption will not be effective for a period of five years subsequent to the end of the current franchise term (unless a shorter time period is negotiated as part of an assumption agreement). During this five year or less assumption period the provisions of this franchise will remain in effect.

Should NUD fail to provide a written request for renewal or the City elect not to approve the extension through a written notice of renewal, this Franchise shall terminate upon the expiration of the current term. Notwithstanding the franchise terms specified herein, but subject to the provisions of Section 17 below, this Franchise shall automatically expire for any NUD service area for which the City has assumed jurisdiction pursuant to its powers of assumption, upon the effective date of the assumption, as authorized in Chapter 35.13A, as now or hereafter amended.

Section 17. Non-Assumption. In consideration for the franchise fee and acceptance of the other terms and conditions of this Franchise, the City agrees that it will

not exercise its statutory authority (RCW Chapter 35.13A as currently written, or as may hereafter be amended) to assume jurisdiction over NUD or any NUD responsibilities, property, facilities or equipment within the City's corporate limits, including future annexed areas, for the term of this Franchise.

Section 18. Franchise Fee. In consideration for the rights granted NUD under this Franchise for existing sewer and water lines in the Franchise Area, NUD agrees to pay to the City a franchise fee equal to five percent (5%) of Utility Service Revenues collected from NUD's customers with billing addresses that are within the corporate boundaries of the City. The District will not pay franchise fees on sales of miscellaneous revenue like the sales of scraps, plans and specs and rain barrels. Fees for each calendar quarter shall be due thirty (30) days following the end of the calendar quarter. Should NUD be prevented by judicial or legislative action from collecting a franchise fee on all or a part of the Revenues, NUD shall be excused from the collection and distribution of that portion of the franchise fee. Should a court of competent jurisdiction declare, or a change in law make the franchise fee to be collected on behalf of the City invalid, in whole or in part, or should a court of competent jurisdiction hold that the collection of the franchise fee by NUD is in violation of a pre-existing contractual obligation of NUD, then NUD's obligation to collect and distribute a franchise fee to the City under this Section shall be terminated in accordance with and to the degree required to comply with such court action. NUD agrees the franchise fee established by this Section is appropriate and that NUD will not be a party to or otherwise support legal or legislative action intended to result in judicial determinations or legislative action referred to above. City shall defend, indemnify and hold NUD harmless from and against any and all claims, suits, actions or liabilities

(including costs and attorneys' fees) incurred or asserted against NUD directly or indirectly arising out of NUD's collection of the franchise fee as provided in this Franchise.

The records and documents with respect to all matters covered by this Franchise shall be subject to inspection, review, or audit by the City, during the term of this Franchise and three (3) years after termination.

Upon the City's thirty (30) day written request, NUD shall make available to the City, at City expense and to the extent allowed by law, its books and records to examine, audit, review, and/or obtain copies of the papers, books, accounts, documents, maps, plans, and other records of NUD pertaining to all revenue derived by NUD by virtue of this Franchise, in order to verify the accuracy of payments. NUD shall fully cooperate in making available its records, in the form that the records exist, and otherwise assisting in these activities. The City shall extend the time for the provision of such information upon a reasonable showing by NUD that such extension is justified.

The City shall maintain confidentiality of information provided by NUD to the extent permitted by law when NUD has notified the City of the confidential nature of the information.

Section 19. Insurance. NUD shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property that may arise from or in connection with the exercise of the rights, privileges and authority granted hereunto to NUD, its agents, representatives or employees. NUD shall provide a copy of a Certificate of Insurance to the City for its inspection prior to the adoption of this Franchise, and such insurance certificate shall evidence a policy of

insurance that includes:

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, explosion, collapse and underground (XCU); and employer's liability.

In satisfying the insurance requirements set forth in this Section, NUD may self-insure against such risks in such amounts as are consistent with good utility practice subject to approval by the City Attorney, such approval will not be unreasonably withheld. Any deductibles or self-insured retentions must be declared to the City. Payment of deductible or self-insured retention shall be the sole responsibility of NUD.

The insurance policies obtained by NUD shall name the City (its officers, officials, employees, agents and volunteers), as an additional insured with regard to activities performed by or on behalf of NUD. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees 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. NUD's insurance shall be primary insurance as respects the City, its officers, officials, employees, agents, and volunteers. Any insurance maintained by the City, its officers, officials, employees, agents, or volunteers shall be excess of NUD'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 has been give to the City.

Section 20. Abandonment. No NUD facilities may be abandoned within the Franchise Area without written notice to the City. The Public Works Director must first approve any plan for abandonment or removal of NUD's Facilities, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this Franchise.

Section 21. Assignment. This Franchise may not be assigned or transferred without the prior, express, written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed, provided that NUD shall have the right to mortgage its rights, benefits and privileges in and under this Franchise to secure any indebtedness without notice or approval. Any attempted assignment or transfer in violation of this section shall be void. Any assumption of NUD and its assets pursuant to Chapter 57.32 or 57.36, RCW, shall be deemed an assignment, but shall not require the City's approval. The City's review of a proposed assignment or transfer requiring consent shall be based on the following criteria: (i) the transferee shall have technical expertise, capabilities and financial expertise, capabilities and financial strength to meet the obligations of the Franchise and being at least equal to or greater than that of NUD during the twelve (12) months prior to the transfer; and (ii) the proposed transferee's record of performance under similar agreements. Further, the transferee shall assume

all of the obligations of NUD hereunder, and, except in the case of an assumption of NUD and its assets pursuant to Chapter 57.32 or 57.36, RCW, NUD shall not be released from the obligations of this Franchise by virtue of such transfer until the City consents to such transfer or assignment. NUD shall give to the City thirty (30) days written notice of any proposed assignment or transfer requiring the City's approval and shall provide all necessary information to the City including financial data, in order to enable the City to evaluate whether the proposed transferee satisfied the foregoing criteria. The City shall take action on the proposed assignment or transfer no later than ninety (90) days of receipt of all necessary information. In the case of any proposed transfer for which the City's approval is required hereunder, NUD agrees that the City's reasonable expenses incurred in reviewing such transfer or assignment proposal are franchise administration expenses, which shall be reimbursed pursuant to Section 11. To the extent allowed by law or a court of competent jurisdiction, the City shall treat documents and financial data provided by NUD for City evaluation under this Section as confidential and exempt from public disclosure. Within thirty (30) days of the date of any approved assignment or transfer, NUD and assignee or transferee shall file written notice of the assignment or transfer with the City.

Section 22. Notice. Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any party (collectively, "notices") shall be in writing and shall be validly given or made to another party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent

by facsimile transmission with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by facsimile transmission, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the party to whom such notice is to be given as follows:

To City: City Clerk
City of Bothell
18305 - 101st Avenue NE
Bothell, WA 98011-3403
Fax: (425) 487-1204

To NUD: Fanny Yee, General Manager
Northshore Utility District
PO Box 82489
Kenmore, WA 98028-0489
Fax:(425) 398-4435

With copy to: Andrew Maron
Short Cressman & Burgess PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104-4088
Fax: (206) 340-8856

Any party hereto may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other party hereto.

Section 23. Miscellaneous. 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 that 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.

City has the right, but not the obligation, to take over control and ownership of NUD's Facilities in the Franchise Area, specifically including the water and sewer plant network, without compensation, if such Facilities are abandoned. Furthermore, the City is specifically interested in retaining abandoned water and sewer lines for use as conduit for communication purposes and NUD shall notify the City at least 180 days prior to abandonment of any water or sewer line.

Section 24. Modification. The City and NUD hereby reserve 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. 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 the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 5 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by NUD of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

- (a) references this Franchise; and
- (b) states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

This Franchise is subject to the provisions of any applicable tariff now or hereafter on file with the WUTC or its successor. In the event of any conflict or inconsistency between the provisions of this Franchise and such tariff, the provisions of such tariff shall control.

Section 25. Remedies to Enforce Compliance. Should a dispute arise from or related to this Franchise or the breach thereof and if the dispute cannot be resolved through direct discussions, the parties agree to endeavor first to settle the dispute in an amicable manner by mediation administered by a mediator before resorting to other remedies. The mediator may be selected by agreement of the parties or through the American Arbitration Association. All fees and expenses for mediation shall be borne by the parties equally. Each party, however, shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence in any mediation. Either party may elect, in lieu of, or in addition to any other remedies specified in this Franchise, to obtain an order from the superior court having jurisdiction compelling the defaulting party to comply with the provisions of this Franchise and to recover damages and costs incurred by reason of such failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force NUD and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the

City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein, as provided in Section 14. Provided, further, that by entering into this Franchise, it is not the intention of the City or NUD to waive any other rights, remedies, or obligations as otherwise provided by law, equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver.

Section 26. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City'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 its police powers in the interest of public safety and for the welfare of the public. In the event of a conflict between the provisions of this Franchise, and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 27. Cost of Publication. The cost of the publication of this ordinance shall be borne by NUD.

Section 28. Acceptance. This Franchise may be accepted by NUD by its filing with the City Clerk an unconditional written acceptance thereof within thirty (30) days. Failure of NUD to so accept this Franchise shall be deemed a rejection thereof by NUD and the rights and privileges herein granted shall absolutely cease and determine.

Section 29. Survival. All of the provisions, conditions and requirements of Sections 6, Excavation; 8, Restoration after Construction; 10, Dangerous Conditions; 12, Relocation; 13, Indemnification; and 20, Abandonment of NUD's Facilities,

of this Franchise shall be in addition to any and all other obligations and liabilities NUD may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to NUD for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of NUD and all privileges, as well as all obligations and liabilities of NUD shall insure to its heirs, successors and assigns equally as if they were specifically mentioned wherever NUD is named herein.

Section 30. Severability. If any section, sentence, clause or phrase of this Franchise 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 unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 31. Effective date. This Ordinance, being in compliance with RCW 35A.47.040, shall be in force and effect five (5) days from and after its passage by the Bothell City Council and publication pursuant the Bothell Municipal Code in the summary form attached to the original of this ordinance and by this reference approved by the City Council.

Section 32. Corrections. The City Clerk and the codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited

SUMMARY OF ORDINANCE NO. 1949 (2005)

City of Bothell, Washington

On the 21st day of November, 2005, the City Council of the City of Bothell passed Ordinance No. 1949 (2005). A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY OF BOTHELL GRANTING NORTHSORE UTILITY DISTRICT, A WASHINGTON MUNICIPAL CORPORATION, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF ITS WATER & SEWER UTILITY BUSINESS.

The full text of this Ordinance will be mailed upon request.


JOANNE TRUDEL
CITY CLERK

FILED WITH THE CITY CLERK: November 10, 2005
PASSED BY THE CITY COUNCIL: November 21, 2005
PUBLISHED: December 2, 2005
EFFECTIVE DATE: December 7, 2005
ORDINANCE NO.: 1949 (2005)