ALDERWOOD WATER & WASTEWATER DISTRICT
SNOHOMISH COUNTY, WASHINGTON
RESOLUTION NO. 2665-2016

A RESOLUTION of the Board of Commissioners of the Alderwood Water & Wastewater District (the “District”), Snohomish County, Washington, accepting a franchise agreement with the City of Bothell (the “City”)

WHEREAS, the Alderwood Water & Wastewater District provides sewer and water service to that portion of the City of Bothell lying within Snohomish County; and

WHEREAS, the large majority of water and sewer lines and associated facilities owned by the District to serve said area are located in public rights-of-way owned by the City of Bothell; and

WHEREAS, recent State Supreme Court rulings have shifted the responsibility for providing hydrants and associated fire suppression facilities from water districts to local general purpose governments, but, along with RCW 70.315.040, have allowed for those responsibilities to be returned to such a district pursuant to an agreement with a general purpose government; and

WHEREAS, the Alderwood Water & Wastewater District and the City of Bothell have negotiated a franchise agreement which, among other things, shifts the responsibility for hydrants and fire suppression facilities back to the District, allows for certain payments to the City, promotes cooperation on planning road and utility improvements, and maintains the District’s position to operate within the City rights-of-way for ten years with provisions for extensions beyond that time; and

WHEREAS, the City Council of Bothell has approved Ordinance No. 2187 (2016), granting Alderwood Water & Wastewater District a franchise to construct, maintain and operate a water and sewer system within City rights-of-way; and

WHEREAS, the Alderwood Water & Wastewater District Board of Commissioners has determined that said franchise agreement is in the best interests of all of its customers throughout the District;
NOW, THEREFORE, BE IT RESOLVED BY the Board of Commissioners of the Alderwood Water & Wastewater District, Snohomish County, Washington, as follows:

1. The District accepts the franchise agreement as contained in the City of Bothell's Ordinance No. 2187 (2016), which is attached hereto.

2. The District's General Manager is hereby authorized and directed to execute and transmit to the City of Bothell the District's acceptance of the franchise agreement.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF THE ALDERWOOD WATER & WASTEWATER DISTRICT, Snohomish County, Washington, at a regular meeting thereof held this 7th day of March 2016.

Michael R. Dixon, President
Dean Lotz, Vice President
Larry D. Jones, Secretary
Donna J. Cross, Commissioner
Paul D. McIntyre, Commissioner

ATTEST:
Larry D. Jones, Secretary
ORDINANCE NO. 2187 (2016)

AN ORDINANCE OF THE CITY OF BOTHELL GRANTING ALDERWOOD WATER AND WASTEWATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER AND SEWER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, ALDERWOOD WATER AND WASTEWATER DISTRICT, a Washington special purpose municipal corporation ("District" or "Franchisee"), owns water and sewer facilities ("Facilities") located in the City of Bothell, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

WHEREAS, RCW 57.08.005(3) and (5) authorize the District to conduct water and sewage throughout the District and any city and town within the District, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water and sewer facilities; and

WHEREAS, the City of Bothell straddles the Snohomish-King County line, with significant parts of the incorporated city in each of the two counties; and

WHEREAS, the City and several utility districts provide water and sewer service to all portions of the city within King County, while the District provides such service to nearly all of the incorporated area of Bothell within Snohomish County; and

WHEREAS, the City and the District currently have a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; and

WHEREAS, the Parties acknowledge that in 2013 the Legislature passed SHB 1512 which recognizes that water utilities serve a dual function of providing safe drinking water and providing water for fire protection; and

WHEREAS, SHB 1512 further authorizes cities to contract with water utilities for the provision of fire suppression water facilities and services; and

WHEREAS, the District has historically provided fire suppression water services and facilities within its boundaries in the City under the terms of the existing Franchise Agreement between the District and the City; and
WHEREAS, the District is willing to continue providing fire suppression water services and facilities within the portion of the City lying within Snohomish County in consideration of the terms and conditions set forth in this Franchise;

NOW THEREFORE, City Council of the City of Bothell do ordain as follows:

Section 1. Definitions.

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

A. "City" means the City of Bothell, a Washington Municipal Corporation, and its respective successors and assigns.

B. "District" or "Franchisee" means the Alderwood Water & Wastewater District, a Washington municipal corporation, and its respective successors and assigns.

C. "Facilities" means tanks, meters, pipes, mains, services, valves, blow-offs, vaults, fire hydrants, risers, manholes, generators, electrical control panels, power meters, pressure reducing valves ("PRVs"), pump stations, meter stations, lift stations, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating water and wastewater utility systems, whether the same be located over or under ground.

D. "Fire Hydrants" or "Hydrants" means the provision and maintenance of fire hydrants and related water system facilities and equipment for the delivery of water for fire suppression purposes, and the over-sizing of such water system facilities and equipment for the delivery of water for fire suppression purposes.

E. "Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved in District's service area within the present corporate boundaries of the City, and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys, nor shall it include such roads and streets within the King County portion of the City.

F. "Minor Right-of-Way Permits" means Activities that may cause some disruption to the right-of-way and possibly to traffic patterns but not to the degree where significant involvement is required during the plan review and inspection process. Furthermore, Minor Permits do not involve projects that disrupt traffic flow on Arterial Streets, Collectors or State Highways.

G. "Ordinance" means this Ordinance No. 2187 (2016), which sets forth the terms and conditions of this franchise.
H. "Party" or "Parties" means the City or the District individually, or collectively as addressed in this franchise.

I. "Revenue" means gross income received by the District from direct retail water and/or wastewater customers, whose connections to the District's water or wastewater systems are located within the City, for the sale of metered water or for wastewater transport and disposal, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of material used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses. Revenue shall not include: late fees; shut-off and reconnect fees; impact or mitigation fees; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments.

Section 2. Franchise Granted.

A. Pursuant to RCW 35A.47.040, the City hereby grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this ordinance. Ordinance No. 1802 (2000) is hereby repealed and in its place, the following provisions are enacted. After the initial ten year period, the term shall automatically renew on the ten year anniversary date for a period of three years and thereafter upon each successive three year anniversary date for a period of three years unless one party gives the other party written notice of intent to terminate the franchise at least six (6) months in advance of any of the above mentioned anniversary dates.

B. This franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, acquire, sell, lease and use all necessary Facilities to operate a water and wastewater utility system, in, under, on, across, over, through, along or below the Franchise Area; provided that while exercising its right, privilege, authority and franchise, the Franchisee shall obtain all necessary permits, and at all times during the term of this franchise, Franchisee shall fully comply with all applicable federal, state, and local laws and regulations. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable permit requirements.

C. The authority granted herein is a limited authorization to occupy and use the Franchise Area. Nothing contained herein shall be construed to grant or convey any right, title, or interest in any portion of the Franchise Area to Franchisee other than for the purpose of providing water and wastewater utility services. If Franchisee elects to expand the services provided within the City beyond water and wastewater services, it shall provide written notification of the addition of such services at least thirty (30) days in advance of the date such provision of services are offered for sale or otherwise provided.

D. This franchise is not and shall not be deemed to be an exclusive franchise, and 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, under, below, or across any said rights-of-way. 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-way, thoroughfares and other public properties of every type and description.

E. Construction is not authorized without the appropriate permits, leases, easements or approvals; however, Franchisee shall not be required to amend this franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its services beyond those described in franchise. This franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across or to otherwise use City owned or leased properties of any kind other than within the Franchise Area. This franchise does not convey any right to Franchisee to install its Facilities on, under, over or across any facility or structure owned by a third-party without such written approval of the third-party. Except as otherwise provided in this franchise agreement, no substantive expansions, additions to or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the City.

Section 3. Non-interference of Facilities.

A. District’s Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with existing improvements, equipment’s, facilities and systems, and also the free and safe passage of pedestrian and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws and regulations of the State of Washington and the City. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval and permits, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures as reasonably necessary in the event of emergencies impacting public health, safety and welfare to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval and permits of such road closures as soon as reasonably possible.

B. Whenever it is necessary for District, in the exercise of its rights under this franchise, to make any excavation in the Franchise Area, District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards and at least to the same condition existing prior to any such excavation, installation, construction, relocation, maintenance or repair. Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. District agrees to promptly complete all restoration work
and to promptly repair any damage caused by such work at its sole expense.

C. If it is determined that the District has failed to restore the right-of-way in accordance with this Section, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City’s notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this Section. The rights granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

Section 4. Relocation of Facilities.

A. Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate or remove from the Franchise Area any of its Facilities when reasonably required by the City by reason of traffic conditions or public safety, dedications of new right-of-way and the establishment and improvement thereof, widening and improvement of existing right-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 or as otherwise necessary for the operations of the City or other governmental entity, provided that Franchisee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the City, sections of the Facilities to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section shall be borne by Franchisee.

B. Upon request of the City and in order to facilitate the design of City street and right-of-way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said Facilities need to be relocated in order to accommodate the City’s improvements shall be made by the City upon review of the location and construction of Franchisee’s Facilities. The City shall provide the Franchisee at least fourteen (14) days written notice prior to any excavation or exposure of Facilities.

C. If the City determines that the project necessitates the relocation of Franchisee’s then existing Facilities, the City shall:

(1) At least ninety (90) days prior to the issuance of the Notice to Proceed by the City to the City’s contractor, provide Franchisee with written notice requiring such relocation; provided, however, that in the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City, the City shall give Franchisee written notice as soon as practicable.
2) Provide Franchisee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City rights-of-way in order to accommodate such improvement project.

3) After receipt of such notice and such plans and specifications, Franchisee shall complete relocation of its Facilities at no charge or expense to the City within the period required by the City, which shall be reasonable and may be prior to commencement or during the construction of the City's project. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, Franchisee shall relocate its Facilities within the time period specified by the City, recognizing that certain emergencies may require a short timeframe.

D. Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must be submitted at least sixty (60) days prior to the issuance of the Notice to Proceed by the City to the City's contractor. The City shall evaluate such alternatives and advise Franchisee in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit at its sole cost and expense additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this section.

E. The provisions of this Section shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the 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.

F. Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City.

G. The provisions of this section shall survive the expiration or termination of this franchise during such time as Franchisee continues to utilize Facilities in the rights-of-way. Additionally, these provisions of this section are applicable only so long as the right-of-way is owned and/or controlled by the City.

Section 5. Maps and Records.
A. After any construction by Franchisee within the Franchise Area is complete, Franchisee shall provide the City with accurate copies of as-built plans and maps in a form and content reasonably prescribed by the Public Works Director or his/her designee. These plans and maps shall be provided at no cost to the City, and shall include hard copies and digital files in Autocad or other industry standard readable format, or other industry standard readable formats which are acceptable to the City and delivered electronically. Thereafter, Franchisee shall provide such maps within 10 days following a request from the City.

B. Within thirty (30) days of a written request from the City, Franchisee shall furnish the City with information sufficient to demonstrate: 1) that Franchisee has complied with all applicable requirements of this franchise; and 2) that all taxes, including but not limited to utility taxes, due the City in connection with Franchisee’s services and Facilities provided by the Franchisee have been properly paid by Franchisee.

C. All books, records, maps and other documents, maintained by Franchisee with respect to its Facilities within the Franchise Area shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by State or federal law, nothing in this section shall be construed as permission to withhold relevant customer data from the City which the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements, Franchisee has with third parties.

D. Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature. The City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this section prohibits the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records.
Section 6. Work in the Franchise Area.

A. During any period of relocation, construction or maintenance, all work performed by Franchisee 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. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public 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. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. The provisions of this section shall survive the expiration of this franchise during such time as Franchisee continues to utilize Facilities in the Franchise Area.

B. Except as otherwise provided in this franchise, whenever the Franchisee shall commence work in the Franchise Area for the purpose of excavation, installation, construction, repair, maintenance, or relocation of any of its Facilities, it shall apply to the City for a permit to do so and, in addition, shall give the City at least ten (10) working days prior notice of its intent to commence work in the Franchise Area. During the progress of the work, Franchisee shall not unnecessarily obstruct the passage or proper use of the Franchise Area, and all work by Franchisee in the area shall be performed in accordance with applicable City standards and specifications and warranted for a period of two (2) years. In no case shall any work commence within the Franchise Area without a permit, except as otherwise provided in this franchise.

C. District 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. District 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 District or the City shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

1) No statutes, laws, regulations or ordinances prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;
(2) Such joint use shall not pose a hazard to public health, safety or welfare, or unreasonably delay the work of the Party causing the excavation to be made;

(3) 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 improvement project. District 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.

D. Except for emergency situations, Franchisee shall give at least (7) days prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed; a door hanger is permissible. At least twenty-four (24) hours prior to entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed; a door hanger is permissible. Franchisee shall make a good faith effort to comply with the property owner/resident’s preferences, if any, on location or placement of underground installations, consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing or other improvements on private property caused by Franchisee’s work shall, at the sole expense of Franchisee, be promptly repaired and restored to the condition prior to construction.

E. Franchisee, in accordance with applicable federal, State and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. All structures, mains, pipes, equipment and connections in, over, under and upon the streets, sidewalks, alleys and public ways or places of a permit area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair. The City reserves the general right to see that the Facilities are constructed and maintained in a safe condition. If a violation of applicable regulation is found to exist by the City, the City will, after discussions with Franchisee, establish a reasonable time for Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a Franchisee.

F. Franchisee shall meet with the City and other franchise holders and users of the rights-of-way in the Franchise Area upon written notice as determined by the City, to schedule and coordinate construction therein. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.
G. Franchisee acknowledges that it, and not the City, shall be responsible for its Facilities’ compliance with all governmental agency requirements. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee’s failure to comply with such requirements. Should Franchisee or the City be cited because the Facilities is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this franchise under the terms of Section 12 of this franchise or proceed to cure the conditions of noncompliance at Franchisee’s expense.

H. Prior to doing any work in the Franchise Area, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to chapter 19.122 RCW.

I. Franchisee shall, after approved abandonment, or installation, construction, relocation, maintenance or repair of its Facilities within the Franchise Area, promptly remove any obstructions thereat and restore the surface of the rights-of-way to at least the same condition the rights-of-way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the rights-of-way not caused by Franchisee’s work. The Public Works Director or his/her designee shall have final approval of the condition of such rights-of-way after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to federal, state and local standards and specifications. Franchisee 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 costs and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee shall be performed in accordance with applicable City standards and warranted for a period of two (2) years. In the event Franchisee does not repair a right-of-way or an improvement therein or thereto within the time agreed to with the Public Works Director, or his/her designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee. The provisions of this section shall survive the expiration of this franchise to the extent Franchisee has failed to comply with the repair, removal, restoral or reimbursement requirements that arose prior to the termination, expiration or revocation of this franchise.

The Franchisee and the City will develop a mutually agreeable reporting system for minor right-of-way permits on residential (local access) streets. The report will include the information requested in the minor permit application developed by the City. The report will be generated using the Franchisee’s computerized maintenance management system bi-monthly or otherwise as the Parties agree. Work by the Franchisee under this reporting system will be reported to the City Public Works Director or designee by phone or electronic means within one business day of commencement of work. Minor permits may only be processed under this section once the City and the Franchisee have approved a
mutually agreeable reporting system. The City and Franchisee will review the reporting
system annually and make changes to the system if necessary as mutually agreed.

Section 7. Emergencies.

A. In the event of any emergency in which any of Franchisee’s Facilities
located in the Franchise Area endangers the property, life, health or safety of any
individual, or if Franchisee’s construction area is otherwise in such a condition as to
immediately endanger the property, life, health or safety of any individual, Franchisee shall
immediately 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. However,
this shall not relieve Franchisee from the requirement of obtaining any permits necessary
for this purpose, and Franchisee shall apply for all such permits not later than the next
succeeding day during which the Bothell City Hall is open for business, except as otherwise
provided in this franchise agreement. The City retains the right and privilege to take proper
emergency measures to repair or remove the Facilities located within Franchise Area, as
the City may determine to be necessary, appropriate or useful in response to any public
health or safety emergency. The City shall notify Franchisee by telephone promptly upon
learning of the emergency and shall exercise reasonable efforts to avoid an interruption of
Franchisee’s operations.

B. 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 endangers
the public, an adjoining public place, street utilities or City property, the Public Works
Director or his/her designee, may direct Franchisee, at Franchisee’s own expense, to take
reasonable action 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 Franchisee fails or refuses to promptly take the actions directed by the City, or fails to
fully comply with such directions, or if any emergency conditions exist which require
immediate action, before the City can timely contact Franchisee to request Franchisee
effect the immediate repair, the City may enter upon the property and take such reasonable
actions as are necessary to protect the public, the adjacent streets, or street utilities, or to
maintain the lateral support thereof, or reasonable actions regarded as necessary safety
precautions, and Franchisee shall be liable to the City for the costs thereof.

C. The City shall not be liable for any damage to or loss of Facilities within
the Franchise Area as a result of or in connection with any public works, public
improvements, construction, grading, excavation, filling, or work of any kind taken under
this Section in the Franchise Area by or on behalf of the City, unless directly and
proximately caused by the gross negligence, or willful, intentional, or malicious acts of the
City, its employees, contractors or agents. The City shall further not be liable to Franchisee
for any direct, indirect, or any other such damages suffered by any person or entity of any
type as a direct or indirect result of the City’s actions unless caused by the gross negligence,
or willful, intentional, or malicious acts of the City, its employees, contractors or agents.
Section 8. Administrative Fee and Recovery of Costs.

A. Franchisee shall pay an initial administrative fee in the amount of Five Thousand Dollars ($5,000.00) for the City's administrative, legal, and other costs incurred in drafting and processing this franchise and all work related thereto within thirty days of the effective date of this franchise. No construction permits shall be issued for the installation ofFacilities authorized hereby until such time as the City has received said payment. Franchisee shall also pay an annual administrative fee of One Thousand Dollars ($1,000.00). Said fee shall be paid by the Franchisee to the City by January 31 of each calendar year, provided the franchise fee shall be prorated in the first calendar year based on the effective date of the Franchise. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this franchise or under the laws of the City.

B. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the rights-of-way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the rights-of-way as the result of the presence of Franchisee's Facilities in the rights-of-way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

C. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis, but the City shall provide the Grantee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 9. Planning Coordination.

A. The Parties agree to participate in the development of, and updates to, the other Party's planning documents by:

(1) District staff participating in development of the City's Comprehensive Plan Utilities Element, and in updating it at reasonable intervals.

(2) City staff providing information relevant to the District's operations to assist the District develop or update the District's Comprehensive Water or Wastewater Comprehensive Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.
(3) District staff submitting information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(4) Providing each other at no charge with as-built plans, maps and records that show the vertical and horizontal location of its facilities within rights-of-way, measured from the center line of the rights-of-way. Maps shall be provided in the digital electronic format used by the City or the District unless the Parties agree on another format.

B. District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects. At a minimum, such coordination shall include annual meetings to schedule and coordinate construction activities, and providing each other with a copy of their respective current Capital Improvement Plan, as well as annual schedules of planned capital improvements which may affect rights-of-way.

C. All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages. The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary.

D. The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.
Section 10. City’s Preservation of Rights.

To the best of the City’s knowledge and belief, after reasonable diligent inquiry, there are no existing facts or circumstances that with or without the giving of notice or the passage of time, or both, would constitute a default by Franchisee under the original franchise, Ordinance 1802 (2000). Notwithstanding the previous sentence, the City does not waive or release any claim or issue of non-compliance it may have, known or unknown, now or in the future related to the original franchise, Ordinance 1802 (2000).

Section 11. Indemnification.

A. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, for injury or death of any person or damage to property caused by or arising out of the tortious, willful, malicious, criminal or negligent acts or omissions of Franchisee, its agents, servants, officers or employees in the performance of this franchise, and any rights granted hereunder.

B. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee 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, with Franchisee’s prior written consent, prior to the culmination of any litigation or the institution of any litigation.

C. The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. City’s failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee’s ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City’s reasonable costs for defense of the action, including all expert witness fees, costs, and attorney’s fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel for the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City’s fees and expenses shall include all out-of-pocket expenses, such as consultants
and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

D. The parties acknowledge that this Agreement is subject to RCW 4.24.115. Accordingly, 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 Franchisee and the City, its officers, officials, employees, and volunteers, the Franchisee’s liability hereunder shall be only to the extent of Franchisee’s negligence or wrong doing. It is further specifically and expressly understood that the indemnification provided herein constitutes Franchisee’s waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

E. For purposes of this Section 11.E. the term “City” includes the City’s officers, employees, volunteers and elected or appointed officials. Franchisee assumes the risk of damage to its facilities caused by the City except only to the extent such damage was caused by the City’s negligence or intentional acts. Franchisee releases and waives all claims against the City for damage to Franchisee’s facilities except to the extent such damage was caused by the City’s own negligence or intentional acts. Franchisee further agrees to indemnify, defend and hold the City harmless from any claims by third parties related to damage to Franchisee’s facilities, including but not limited to business interruption and lost profits, except only to the extent such damage was caused by the City’s negligence or intentional acts.

F. The provisions of this section shall survive the expiration, revocation, or termination of this franchise.

Section 12. Revocation and Non-Waiver.

A. If Franchisee willfully violates or fails to comply with any material provisions of this franchise, then at the election of the Bothell City Council after at least thirty (30) days’ notice to the Franchisee specifying the alleged violation or failure, the City may revoke all rights conferred hereunder and this franchise may be revoked by the Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public, and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within 30 days after the hearing, the Bothell City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Bothell City Council may in its sole discretion fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Bothell City Council does not grant any additional period, the Bothell City Council may by resolution declare the franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals
revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the franchise.

B. The failure of either party to insist upon strict performance of any of the covenants and agreements of this franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 13. Non-assumption.

In consideration of the District's acceptance of the burden to pay for hydrant costs as further provided in Section 15 herein, District's payment of such Franchise Payment to the City as provided in Section 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise; provided, this provision shall not be construed to prohibit or prevent the City from responding to requests for public records related to such attempts by other cities or towns or from performing other duties or obligations required by law.

Section 14. Franchise Payment.

A. In consideration of the rights granted District under this Franchise for Facilities in the Franchise Area and the City's agreement to not assume jurisdiction over the District or any District responsibilities during the term of this Franchise as set forth in Section 13, the District shall pay to the City a franchise payment consisting of a certain percentage of the District's wastewater collection and disposal Revenue received from customers within the City of Bothell (“Bothell Wastewater Revenue”), and shall pay to the City a certain percentage of the District's water distribution Revenue received from customers within the City of Bothell (“Bothell Water Revenue”). For purposes of this Section:

(1) The percentage of the Bothell Wastewater Revenue paid to the City shall equal the tax rate listed in Section 5.08.02 of the Bothell Municipal Code for a “Sewage Collection and Disposal Business.”
(2) The percentage of the Bothell Water Revenue paid to the City shall equal the tax rate listed in Section 5.08.02 of the Bothell Municipal Code for a “Water Distribution Business.”

(3) The City shall credit the District with 5.15% of the Bothell Water Revenue against the amount of the Franchise Payment that the District would be required to pay the City for the same period.

(4) Franchise Payments shall be paid to the City in quarterly installments. Franchise Payments for each calendar quarter or portion thereof shall be due thirty (30) days following the end of the calendar quarter (quarters ending at the end of March, June, September and December).

B. The City shall have the right to change the Franchise Payment rate; provided that the rate shall not exceed the utility business tax rate levied on the District under BMC 5.08.020; and provided further that the Franchise Payment shall be credited, as provided in BMC 5.08.025, against the utility business tax imposed on the District.

C. Franchise Payments shall be paid to the City in quarterly installments. Franchise Payments for each calendar quarter or portion thereof shall be due thirty (30) days following the end of the calendar quarter (quarters ending at the end of March, June, September and December).

Section 15. Fire Hydrant Costs.

A. As partial consideration for the rights granted to the District under this franchise, the District agrees to be responsible for the cost to provide and maintain Fire Hydrants within the Franchise Area, whether installed by the District or by third parties as part of the District’s water system. Additionally, as partial consideration for agreeing to be responsible for Fire Hydrants, the City shall credit the District 5.15% of the District’s Bothell Water Revenue against the amount of Franchise Payment that the District would be required to pay the City for the same period.

B. In the event a court of competent jurisdiction determines the City may not by contract transfer the City’s responsibility to pay for the provision of Fire Hydrants to the District, or legislative action prevents the District from accepting responsibility for the cost to provide and maintain Fire Hydrants, the District's obligation to pay for the provision and maintenance of Fire Hydrants under this section shall be terminated in accordance with and to the degree required to comply with such court or legislative action. In the event the District's obligation to pay for the provision and maintenance of Fire Hydrants is so terminated, both Parties shall have the right within ninety (90) days of any such court determination or legislative action to request Franchise amendments to take effect no sooner than the District's obligation to pay is terminated. In the event the Parties do not reach agreement on the amendment of the Franchise within one hundred eighty (180) days.
of a Party's request to amend the Franchise, this Franchise shall terminate without further action by the Parties.

C. The City shall be responsible to provide fire protection and fire suppression services to the public within the Franchise Area. The District shall not have any duty, obligation or responsibility to provide fire protection and fire suppression services to the public within the Franchise Area. Nothing in this section prevents the City from transferring fire protection and fire suppression services to a fire protection district, regional fire authority or other governmental provider of such services.

Section 16. Compliance with Codes, Regulations and Laws.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public.

B. In the event that any territory served by District is annexed to the City after the effective date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise Payment for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next calendar quarter and paid to the City at the same time as the fee for the Franchise Area is paid for that quarter.

C. 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. The City shall have the authority at all times to control by reasonable regulations the location, elevation, manner of construction and maintenance of water and sewer delivery facilities by the District in the public rights-of-way, and the District shall promptly conform with all such regulations, unless compliance would cause the District to violate other requirements of law. 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. The provisions of Chapter 17.24 of the Bothell Municipal Code shall apply except as inconsistent or in conflict with the provisions of this Franchise Ordinance.

D. Each party agrees to comply with all present and future federal, state and local laws, ordinances, rules and regulations. This franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the
right at any time to amend this franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation or ordinance necessitates this franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 17. Insurance.

A. Franchisee shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted hereunder to Franchisee, its agents, representatives or employees. Franchisee shall require that every subcontractor maintain insurance coverage and policy limits that are reasonable and customary to their operations. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a Certificate of Insurance and endorsement to the City for its inspection at the time of or prior to acceptance of this franchise, and such insurance certificate shall evidence a policy of insurance that includes:

1. Automobile Liability insurance with limits no less than $2,000,000 combined single limit per occurrence for bodily injury and property damage.
2. Commercial General Liability insurance, written on an occurrence basis with limits no less than $3,000,000 combined single limit per occurrence and $5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer’s liability.
3. Workers’ Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
4. Umbrella liability policy with limits not less than $10,000,000 per occurrence and in the aggregate.

B. Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee’s current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured
retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this section. Franchisee’s umbrella liability insurance policy provides “follow form” coverage over its primary liability insurance policies.

C. The insurance policies obtained by Franchisee shall name the City, its officers, officials, employees, agents, and volunteers (“Additional Insureds”), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer’s liability. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the additional insured endorsement for each insurance policy required in this section and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee’s obligations to fulfill the requirements. Franchisee’s insurance shall be primary insurance as respects the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be excess of Franchisee’s insurance and shall not contribute with it.

D. Franchisee is hereby obligated to notify the City of any cancellation or intent not to renew any insurance policy ninety (90) days prior to any such cancellation. Within thirty (30) days prior to said cancellation or intent not to renew, the Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this section shall be considered a material breach of the Franchise and subject to the City’s election of remedies described in franchise. Notwithstanding the cure period described in this franchise, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

E. Franchisee’s maintenance of insurance as required by this section shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City’s recourse to any remedy available at law or equity.

Section 18. Vacation of Franchise Area.

If the City determines to vacate any right-of-way which is part of the Franchise Area where District Facilities are located or maintained, any ordinance vacating such right-of-way shall provide and condition such vacation on District obtaining at no cost to District a permanent easement at least fifteen (15) feet wide in such vacated right-of-way for the construction, operation, maintenance, repair and replacement of its facilities located and to be located in such vacated right-of-way. The City shall not be liable for any damages or loss to District by reason of such vacation.
Section 19. Abandonment of Facilities.

The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee’s Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Provided, however, that the City may permit Franchisee’s improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee’s agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place and which are not removed within thirty (30) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this section shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place. The provisions of this section shall survive the expiration, revocation or termination of this franchise.

Section 20. Assignment.

All of the provisions, conditions, and requirements herein contained shall be binding upon District, and no right, privilege, license or authorization granted to District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City’s approval.

Section 21. Remedies to Enforce Compliance.

A. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy available at law or in equity to compel or require Franchisee 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 revocation for breach of the conditions herein. In addition to any other remedy provided herein, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms hereof. Provided, further, that by entering into this franchise, it is not the intention of the City or Franchisee 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. The parties acknowledge that, in the event of a violation of this franchise, the other party shall be entitled to preliminary and permanent injunctive relief without having to prove actual damages or immediate or irreparable harm or to post a bond.
B. If either party violates, or fail to comply with any of the provisions of this franchise, or should it fail to heed or comply with any notice given to such party under the provisions of this franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within (30) thirty days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’s submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not comply with the specified conditions, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in this section, or in the event the Franchisee has failed to timely cure the breach, the City, at its discretion, may elect to (1) revoke this Franchise pursuant to this section, or (2) claim damages of Two Hundred Fifty Dollars ($250.00) per day against Franchisee (and collect from the performance bond if necessary).

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
18415 101st Ave NE
Bothell, Washington 98011
Phone: (425) 806-6100
Fax: (425) 806-6127
Any Party 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.

Section 23. Cost of Publication.

The cost of publication of this franchise shall be borne by Franchisee.


This franchise may be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance, within thirty (30) days from the City’s execution of this franchise. Failure of Franchisee to so accept this franchise shall be deemed a rejection thereof by Franchisee and the rights and privileges herein granted shall absolutely cease. In addition, Franchisee shall file the certificates of insurance and additional insured endorsements as required under this franchise.

Section 25. Severability.

If any section, sentence, clause or phrase of this ordinance 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 ordinance 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 26. Attorneys’ Fees.

If a suit or other action is instituted in connection with any controversy arising out of this franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys’ fees, costs, expenses, and reasonable attorneys’ fees upon appeal of any judgment or ruling.

Section 27. Alternate Dispute Resolution.
If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Section 28. Governing Law/Venue.

This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Agreement shall only be filed in Snohomish County Superior Court, Snohomish County, Washington.

Section 29. Hazardous Substances.

Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys’ fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee’s use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee’s agents, contractors or other persons acting under Franchisee’s control, whether or not intentional.

Section 30. Entire Agreement.

This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

Section 31. Directions to City Clerk.

The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District as set forth in this ordinance. District shall have thirty (30) days from the receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District by this ordinance.

Section 32. Effective Date of Ordinance.

This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

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PASSED by the City Council and APPROVED by the Mayor this 16th day of February, 2016.

APPROVED:

[Signature]

MAYOR ANDREW J. RHEAUME

ATTEST/AUTHENTICATED:

[Signature]

CITY CLERK, LAURA HATHAWAY

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY:

[Signature]

JOSEPH N. BECK

FILED WITH THE CITY CLERK: February 11, 2016
PASSED BY THE CITY COUNCIL: February 16, 2016
PUBLISHED: February 22, 2016
EFFECTIVE DATE: February 27, 2016
ORDINANCE NO. 2187 (2016)
SUMMARY OF ORDINANCE NO. 2187 (2016)
of the City of Bothell, Washington

On the 16th day of February, 2016, the City Council of the City of Bothell, passed Ordinance No. 2187 (2016). A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF BOTHELL GRANTING ALDERWOOD WATER AND WASTEWATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER AND SEWER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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

DATED this 16 day of February, 2016.

CITY CLERK, LAURA HATHAWAY