

**ALDERWOOD WATER & WASTEWATER DISTRICT
SNOHOMISH COUNTY, WASHINGTON
RESOLUTION NO. 2601-2012**

A RESOLUTION of the Board of Commissioners of the Alderwood Water & Wastewater District (the "District"), Snohomish County, Washington, authorizing the General Manager to accept a franchise agreement with the City of Mukilteo (the "City").

WHEREAS, the Alderwood Water & Wastewater District provides sewer and water service to the southernmost portion of the city of Mukilteo; 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 Mukilteo; 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 governments, but have allowed for these responsibilities to be returned to such a district under agreement with the municipality in exchange for reasonable compensation; and

WHEREAS, the Alderwood Water & Wastewater District and the City of Mukilteo have negotiated a franchise agreement which 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 for twenty-five years; and

WHEREAS, the City Council of Mukilteo has approved Ordinance No. 1301, granting Alderwood Water & Wastewater District a franchise to construct, maintain and operate a water and sewer system within City rights-of-way; and

WHEREAS, by Resolution 2381-2000 the Board has authorized collection of fees associated with executed franchise agreements; and

WHEREAS, the Alderwood Water & Wastewater District Board of Commissioners have 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 Mukilteo's Ordinance No. 1301, which is attached as Exhibit A.
2. The District's General Manager is hereby authorized and directed to transmit to the City of Mukilteo the District's acceptance of the franchise agreement.
3. District staff shall begin to collect franchise payment fees from customers within the subject franchise area per the agreement and per Resolution 2381-2000.

PASSED AND ADOPTED BY THE BOARD OF COMMISSIONERS OF
THE ALDERWOOD WATER & WASTEWATER DISTRICT, Snohomish County,
Washington, at a regular meeting thereof held this 16th day of July 2012.

Larry D. Jones, President

Roy N. George
Roy N. George, Vice President


Donna J. Cross
Donna J. Cross, Secretary

Paul D. McIntyre
Paul D. McIntyre, Commissioner



Michael R. Dixon, Commissioner

ATTEST:



Secretary

EXHIBIT A

ORDINANCE NO. 1301

AN ORDINANCE OF THE CITY OF MUKILTEO 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 MUKILTEO, WASHINGTON, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, ALDERWOOD WATER AND WASTEWATER DISTRICT, a Washington special purpose municipal corporation ("District"), owns water and sewer facilities ("Facilities") located in the City of Mukilteo, 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 therein, 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 and the District have drafted a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; and

WHEREAS, the Parties acknowledge the Washington State Supreme Court's ruling in *Lane v. Seattle*, 164 Wn.2d 875 (2008), that the cost of providing fire hydrants is a general government responsibility that the City is required to pay; but the District is willing to accept the burden of fire hydrant costs the City is responsible for in consideration of the terms and conditions set forth in this Franchise; and

WHEREAS, the Parties also acknowledge the Washington Supreme Court's ruling in *Burns v. Seattle*, 161 Wn.2d 129 (2007), wherein Seattle City Light ("SCL") entered into franchise agreements with certain cities and agreed to pay the cities a percent of SCL's revenues derived from retail power sales to SCL customers within such cities in consideration of the cities' agreement not to exercise their statutory authority to establish a competing municipal electrical utility during the term of the franchise; and the District is willing to pay the City a percent of the District's revenues derived from its retail water and sewer sales to District customers located within the Franchise Area in consideration of the City's agreement not to exercise, and to forbear, its statutory authority pursuant to chapter 35.13A RCW 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;

NOW THEREFORE, City Council of the City of Mukilteo 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 Mukilteo, a Washington municipal corporation, and its respective successors and assigns.

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

C. "Facilities" means tanks, reservoirs, meters, pipes, mains, services, valves, blow-offs, vaults, fire hydrants, risers, manholes, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lift stations, lines, 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.

F. "Ordinance" means this Ordinance No. 1301, which sets forth the terms and conditions of this Franchise.

G. "Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

H. "Revenue" means income received by the District from the sale of metered water and the provision of sewer service to direct retail customers whose connections to the District's water and sewer systems are located within the City. 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; grants; contributed assets (contributions in aid of construction); loans; income from legal settlements not related to water sales or the provision of sewer service to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water or sewer

system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

Section 2. Franchise.

A. The City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water and sewer utility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

B. Nothing contained in this Ordinance is to be construed as granting permission to District 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.

C. At all times during the term of this Franchise, District shall fully comply with all applicable federal, state, and local laws and regulations.

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 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 of the State of Washington. 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, which shall not be unreasonably withheld, and, provided further, District shall have the right to effect temporary road closures in the event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval 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. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of storm drainage lines, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvements (for purposes other than those described in section 4(D) below) and such project requires the relocation of District's then existing Facilities within the Franchise Area, the City shall:

(1) Pursuant to RCW 35.21.905, or as amended, consult with District in the predesign phase of any such project in order to coordinate the project's design with District Facilities within such project's area;

(2) Provide District, at least one hundred eighty (180) days prior to the commencement of such project, written notice that a project is expected to require relocation; and

(3) Provide District with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for District's Facilities.

B. After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and utility improvement project; provided, however, District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time evaluate such alternatives and advise District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. In the event the City ultimately reasonably determines that there is no other reasonable or feasible alternative, then District shall relocate its Facilities as otherwise provided in this Section 4. The City shall cooperate with District to designate a substitute location for its Facilities within the Franchise Area. City will establish a date by which Facilities will be relocated, which date will be not less than one hundred twenty (120) days after written notice to District as to the facility to be relocated. District must finish relocation of each such Facility by the date so established.

C. The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(1) If the relocation occurs within six (6) years after the District initially constructed such Facility, then the relocation shall be at the City's sole cost;

(2) If the relocation occurs more than six (6) years but within fifteen (15) years after the District initially constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%); and

(3) If the relocation occurs more than fifteen (15) years after the District initially constructed such Facility, then the relocation shall be at the District's sole cost.

However, if the City requires the relocation of major Facilities defined as water transmission mains of ten (10) inch diameter or greater, gravity sewer mains of eight (8) inch diameter or greater, sewer force mains, supply stations, pump stations or vault structures ("Major Facilities") to accommodate the completion of or as a result of a City project that cannot reasonably be supported, disconnected, relocated or removed and the relocation occurs (1) within six (6) years after the District initially constructed such Major Facility, then the relocation shall be at the City's sole cost, or (2) more than six (6) years after the District initially constructed such Major Facility, then the City shall pay fifty percent (50%) of the cost of the relocation and the District shall pay the remaining fifty percent (50%) without limitation on the time period for such cost sharing. The Major Facilities existing as of the Effective Date of this Franchise are identified on **Exhibit A** attached hereto and incorporated herein by this reference which may be updated every three years by the District.

For relocations of single service lines of one and one half inch (1 1/2") or less, single fire hydrants or blow-off assemblies, the District shall pay the first Five Thousand Dollars (\$5,000) of each such relocation and the City shall pay its cost in excess of Five Thousand Dollars (\$5,000). However payments by the District pursuant to this provision shall not exceed Fifty Thousand Dollars (\$50,000) per year. The dollar amounts provided in this paragraph shall be adjusted annually by the increase, if any, in the amount equal to the CPI-U for the Seattle-Everett area, June to June.

D. Whenever any person or entity, other than the City, requires the relocation of District's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the City requires the relocation of District's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then District shall have the right as a condition of such relocation to require such person or entity to:

(1) Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

(2) Protect, defend, indemnify and save the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

E. This Section 4 shall govern all relocations of District's Facilities required in accordance with this Franchise. Any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other right not in the Franchise Area shall be borne by the City, provided the City obtains the District's prior consent to such location or relocation.

F. For the purpose of this Section 4, a project or improvement is considered to be caused by the City (as described in 4(A) above) if it is permitted by the City and both of the following conditions exist:

(1) The City is lead agency for the project or improvement, and

(2) The City is responsible for over 50% of the overall costs of said improvement or project, which 50%, if applicable, includes any grant money received by the City from another entity for the project.

Section 5. Planning Coordination.

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

(1) For the District's service area within the City limits, the District will participate in a cooperative effort with the City to develop City's Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

(2) The District will participate in a cooperative effort with the City to ensure that the Utilities Element of City's Comprehensive Plan is accurate as it relates to the District's operations and is updated to ensure continued relevance at reasonable intervals.

(3) The District shall submit 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) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of 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.

B. District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

(1) For the purpose of planning, the District and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other party.

(2) By February 1st of each year, District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

(3) By February 1st of each year, City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

(4) The District shall meet with the City, and other franchisees and users of the right-of-way, as necessary, to schedule and coordinate construction activities.

(5) All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption or damages.

(6) The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

(7) Without charge to either Party, both Parties agree to provide each other 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.

Section 6. Indemnification.

A. District 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 which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

B. City shall indemnify, defend and hold the District, 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 which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

C. In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other party, the party shall promptly notify the other party thereof, and the notified party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

D. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, 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 City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

Section 7. Default.

If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District 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 District. 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 District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District'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 the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided good faith dispute does not exist concerning such compliance.

In addition to other remedies provided herein, if the District is not in compliance with requirements of the Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

Section 8. Non-exclusive Franchise.

This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

Section 9. Franchise Term.

This Franchise shall have a term of twenty-five (25) years from its Effective Date.

Section 10. Franchise Fee.

As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City an annual franchise fee ("Franchise Fee") of Five Hundred Dollars (\$500.00). The Franchise Fee shall be paid by the District 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.

Section 11. Non-assumption.

In consideration of the District's payment of a Franchise Payment to the City as provided in Section 12 herein, the District's acceptance of the burden to pay for hydrant costs as further provided in Section 13 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 12. 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 exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW 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, District shall pay to the City a franchise payment in the amount of one percent (1%) of the District's Revenue (the "Franchise Payment"), beginning the first day of the first calendar quarter occurring at least sixty (60) days after the Effective Date of this Franchise, subject to the provisions of Section 12(C) herein.

B. The City shall have the right to increase the Franchise Payment in increments not to exceed two percent (2%) per year, provided in no event shall the Franchise Payment ever exceed six percent (6%). The Franchise Payment shall not be increased prior to January 1, 2014, and the City shall provide at least one hundred eighty (180) days' prior written notice to the District of any increase before such increase takes effect.

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).

D. Should the District be prevented by judicial or legislative action from paying any or all of the Franchise Payments, the District shall be excused from paying that portion of the Franchise Payment. Should a court of competent jurisdiction declare, or a change in law make the Franchise Payment invalid, in whole or in part, or should a court of competent jurisdiction hold that the Franchise Payments are in violation of a pre-existing contractual obligation of District, then District's obligation to pay the Franchise Payments to the City under this Section shall be terminated in accordance with and to the degree required to comply with such court action; and should a court of competent jurisdiction declare that the Franchise Payments collected by the District and paid to the City must be repaid by the City to the District, the District's customers or other parties, City shall refund to District all Franchise Payments collected together with any required interest in the amount required to satisfy any such court declaration. City shall defend, indemnify and hold District harmless from and against any and all claims, suits, actions or liabilities (including costs and attorneys' fees) incurred or asserted against District directly or indirectly arising out of District's payment of the Franchise Payments as provided in this Franchise.

E. If the Washington State Legislature authorizes the City to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or other tax (collectively "utility tax") upon District based on District's revenues, or upon any other basis, District's

Franchise Payments herein to the City shall be credited against such a utility tax as the City may impose and District shall be obligated to pay only the statutorily defined tax liability in excess thereof.

F. The District shall have the right to recover the Franchise Payments from the District's ratepayers residing within the City and may identify the Franchise Payments as a separate billing item on utility customer billings.

Section 13. 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.

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 13 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. In the event of legislative action transferring responsibility for the provision, maintenance and payment of Fire Hydrants to water-sewer districts, the obligations of the Parties in this Section 13 shall terminate effective upon the date of transfer of responsibility, unless any such legislative action is invalidated or determined to be unlawful by a court of competent jurisdiction.

D. Notwithstanding the District's agreement to be responsible for the cost to provide and maintain Fire Hydrant as provided in this Section 13, the Parties acknowledge and agree that the provision, maintenance and payment for Fire Hydrants by the District is and shall continue to be a governmental function, and is not an activity of providing water for hire as defined in Title 80 RCW.

E. The City shall be responsible to provide fire protection and fire suppression services to the public within the Franchise Area which the Parties acknowledge is a governmental function, and the District does not represent or warrant sufficient water pressure or flow from fire hydrants for the purposes of fire suppression and protection. 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.

F. The Parties acknowledge that the provision, maintenance and payment for Fire Hydrants is a governmental function that falls within the protections of the Public Duty Doctrine. Should a court of competent jurisdiction or legislative action determine a water-sewer district's provision, maintenance and payment for Fire Hydrants is a proprietary function, each party shall have the right to terminate and rescind all or any portion of this Section 13 by written notice to the other party which shall then have no further force or effect between the Parties; and, further, City agrees to defend, indemnify and hold District harmless from and against any and all claims, suits, actions or liabilities (including costs and reasonable attorneys' fees) incurred or asserted by third parties against District directly or indirectly arising out of District's acceptance of responsibility to provide, maintain and pay for Fire Hydrants as provided in this Franchise, except in the event a court of competent jurisdiction determines that the District's conduct triggered an exception to the Public Duty Doctrine where immunity would have been provided but for the District's conduct.

G. The District's agreement to be responsible for the installation, operation, maintenance and cost of Fire Hydrants within the Franchise Area shall not be construed to be a waiver of any other legal obligation or duty the District may have to charge the City for any other services the District may provide the City or its citizens which are determined in the future to be a governmental function for which the City must provide or pay.

Section 14. Compliance with Codes and Regulations.

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. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and city rules and regulations, including the City Public Works Policies and Pre-approved Plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

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.

Section 15. Location of Facilities and Equipment.

With the exception of components that are traditionally installed above ground such as fire hydrants, blow-offs, vault lids, risers, manhole covers, pump stations, lift stations, generators, electrical control panels, power meters, telephone connections, and utility markers, 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, consistent with the provisions of the City's Land Use Code and applicable development pre-approved plans.

Section 16. Record of Installations and Service.

With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

Upon written request of the City, District 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 only 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.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise Area; provided, however, any such plan so submitted shall only 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 of the precise location of any Facilities placed by District in any street, alley, avenue, highway, easement, etc., shall be made available to the City within ten (10) working days of request.

Section 17. Shared Use of Excavations.

A. 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.

B. If at any time, or from time to time, either District, 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:

(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 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 one hundred eighty (180) 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.

Section 18. Insurance.

District shall maintain in full force and effect throughout the term of this Franchise, a minimum of Two Million Dollars (\$2,000,000.00) liability insurance for property damage and bodily injury.

The City shall be named as an additional insured on any policy of liability insurance obtained by District for the purpose of complying with the requirements of this Section.

In satisfying the insurance requirement set forth in this section, District may self-insure against such risks in such amounts as are consistent with good utility practice. District shall provide the City with sufficient written evidence, the sufficiency of which shall be determined at the reasonable discretion of the City, upon request, that such insurance (or self-insurance) is being so maintained by District. Such written evidence shall include, to the extent available from District's insurance carrier, a written certificate of insurance with respect to any insurance maintained by District in compliance with this Section.

Section 19. 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.

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. Notwithstanding the foregoing, District may assign this Franchise to an affiliate, parent or subsidiary or as part of any corporate financing, reorganization or refinancing which does not require assignment to any but an affiliate, parent or subsidiary without the consent of, but upon notice to, the City.

Section 21. 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 Mukilteo
 11930 Cyrus Way
 Mukilteo, WA 98275
 Phone: (425) 263-8000
 Fax: (425) 212-2069

To District : General Manager
Alderwood Water and Wastewater District
3626 – 156th Street SW
Lynnwood, WA 98087
Phone: (425) 743-4605
Fax: (425) 742-4562

With copy to: Alderwood Water & Wastewater District General Counsel
Short Cressman & Burgess PLLC
999 Third Avenue, Suite 3000
Seattle, WA 98104

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 22. Severability.

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

Section 23. Non-Waiver.

The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

Section 24. 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 25. 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 26. 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 27. Amendment.

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 6 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 District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

(1) References this Franchise; and

(2) 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.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with subsections (a) and (b) referenced immediately above, the provisions of this Franchise shall control.

Section 28. 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 29. District Acceptance of Franchise.

District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.

Section 30. Effective Date of Ordinance.

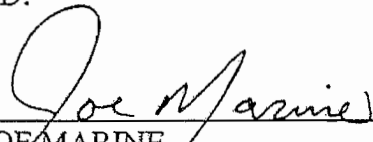
This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Section 31. Effective Date of Franchise.

The terms and conditions of this ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

PASSED by the City Council and APPROVED by the Mayor this 2nd day of July, 2012.

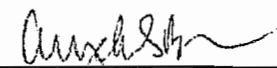
APPROVED:


MAYOR JOE MARINE

ATTEST/AUTHENTICATED:


CITY CLERK, CHRISTINA J. BOUGHMAN

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:


ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 7-02-12
PASSED BY THE CITY COUNCIL: 7-02-12
PUBLISHED: 7-06-12
EFFECTIVE DATE: 7-11-12
ORDINANCE NO. 1301

EXHIBIT A

DISTRICT MAJOR FACILITIES

A list of all District Major Facilities referenced in this Franchise and a map depicting all water and sewer facilities which are District Major Facilities existing as of the Effective Date of the Franchise shall be provided by the District to the City no later than District acceptance of this Franchise and administratively attached to and incorporated into this Exhibit A, as may be administratively updated from time to time as provided in this Franchise.

Exhibit A - Major Water Facilities

<u>Road Name</u>	<u>Beginning Location</u>	<u>Ending Location</u>
Harbour Pointe Blvd.	Mukilteo Speedway (SR-525)	City limits
Harbour Heights Drive	Easement west of 13117 Harbour Heights Drive	Easement west of 13112 Harbour Heights Drive
43rd Ave W	130th PL SW	North To end of road
133rd ST SW	Intersection	44th Ave W
42nd PL W	Southeast property line of 13430 42nd Ave W	Crossing at address #13433
47th PL W	North corner Property line of 13602 47th PL W	Crossing at address #13506
Mukilteo Speedway (SR-525)	Intersection	Beverly Park Road
Possession Way	Harbour Pointe Blvd.	Harbour Reach Drive
Harbour Reach Drive	49th PL W	Harbour Pointe Blvd
Cyrus Way	Southwest property line of 11777 Cyrus Way	Harbour Pointe Blvd
Mukilteo Speedway (SR-525)	Harbour Pointe Blvd.	121st St SW
City of Mukilteo NGPA	City of Mukilteo NGPA	City of Mukilteo NGPA

Exhibit A - Sewer Major Facilities

<u>Road Name</u>	<u>Beginning Location</u>	<u>Ending Location</u>
63rd PL W	Clubhouse Lane	South to end of road
126th ST SW	63rd PL W	West to end of road
Clubhouse Lane	63rd PL W	North to end of road
128th ST SW	House #6104	End of road
61st Ave W	128th ST SW	Clubhouse Lane
60th Ave W	127th ST SW	End of road
127th ST SW	61st Ave W	End of road
126th ST SW	61st Ave W	End of road
Ironwood Lane	Clubhouse Lane	61st Ave W
Clubhouse Lane	61st Ave W	Harbour Pointe Blvd.
Double Eagle Drive	60th Ave W	Harbour Pointe Blvd.
125th PL SW	Double Eagle Drive	End of road
56th PL W	128th ST SW	End of road
55th Ave W	56th PL W	127th ST SW
128th ST SW	56th PL W	End of road
57th Ave W	128th ST SW	End of road
57th PL W	128th ST SW	End of road
55th PL W	55th Ave W	Harbour Pointe Blvd.
125th PL SW	55th PL W	End of road
54th Ave W	127th ST SW	End of road
52nd PL W	127th ST SW	Harbour Pointe Blvd.
126th ST SW	52nd PL W	End of road
125th ST SW	55th PL W	End of road
52nd PL W	127th ST SW	End of road
Eagles Nest Drive	Blue Heron Blvd.	End of road
Finch ST	Eagles Nest Drive	End of road
Hummingbird ST	Finch ST	End of road
Sandpiper Lane	Finch ST	End of road
Osprey Lane	Blue Heron Blvd.	End of road
49th Ave W	House #12808	North to end of road
50th PL W	131st ST SW	49th Ave W
125th PL W	52nd PL W	End of road
Evergreen Drive	Mukilteo Speedway (SR-525)	North to end of road

Exhibit A - Sewer Major Facilities

<u>Road Name</u>	<u>Beginning Location</u>	<u>Ending Location</u>
131st ST SW	50th PL W	47th PL W
47th PL W	Harbour Heights Drive	131st ST SW
48th PL W	131st ST SW	End of road
47th PL W	131st ST SW	City limits
131st PL W	45th Ave W	End of road
45th Ave W	Harbour Heights Drive	133rd ST SW
46th PL W	47th PL W	End of road (North and South)
42nd Ave W	45th PL W	House #13509
44th Ave W	Harbour Heights Drive	42nd Ave W
133rd ST SW	44th Ave W	45th Ave W
42nd Ave W	Harbour Heights Drive	47th PL W
42nd PL W	130th PL SW	South to end of road
130th PL W	44th Ave W	West to end of road
45th CT W	47th PL W	North to end of road
130th PL SW	44th Ave W	42nd Ave W
42nd CT W	42nd Ave W	End of road
Pacific Pointe Lane	Beverly Park Road	West to end of road
Harbour Heights Drive	Beverly Park Road	49th Ave W
Bayview Drive	Clubhouse Lane	West to end of road
Preswick Lane	59th Ave W	Bayview Drive
59th Ave W	Clubhouse Lane	North to City limits
117th PL SW	59th Ave W	West to end of road
116th CT SW	59th Ave W	West to end of road
Championship Circle	Clubhouse Lane	Clubhouse Lane
122nd PL SW	Championship Circle	East to end of road
Cyrus Way	Southwest property line of 11601	South to Harbour Pointe Blvd.
Harbour Pointe Blvd.	East property line of 4200 Harbour Pointe Blvd.	East to Mukilteo Speedway (SR-525)
Cyrus Way	Address #12125	Address #12303
Wilmington Way	Brighton PL	Bridgeport Place
Hartford Way	Wilmington Way	Northport DR
Camden Place	Beginning of road	End of road
Bridgeport Place	Hartford Way	East and West to end of road
Possession Way	City limits	Harbour Pointe Blvd

Exhibit A - Sewer Major Facilities

<u>Road Name</u>	<u>Beginning Location</u>	<u>Ending Location</u>
Harbour Reach Drive	Address #12121	Address #11781
Northport Drive	Hartford Way	Possession Way
Dover Court	Wilmington Way	East to end of road
Concord Way	Wilmington Way	East and North to end of road
Holyoke ST	Wilmington Way	Concord Way
Brighton Place	Wilmington Way	East and West end of road
Pointes Drive	Possession Way	Harbour Reach Drive
Arbors Circle	Beginning of road	Around circle to end of road
125th PL SW	54th Ave W	East to end of road
54th Ave W	127th ST SW	South to end of road
127th ST SW	54th Ave W	55th Ave W
Blue Heron Blvd	Eagles Nest Drive	Osprey Lane
South Road	Evergreen DR	3816 South Road
South Road	Intersection with propose Harbour Reach DR	East 300 feet
Beverly Park Road	Pacific Place	South to City limits
Beverly Park Road	Crossing at address #12808	
Mukilteo Speedway (SR-525)	Crossing at address #12138	
Mukilteo Speedway (SR-525)	Crossing at address #11832	
Harbour Pointe Blvd.	Crossing at east Mukilteo Speedway (SR-525)	
Mukilteo Speedway (SR-525)	Crossing at address #17000 north property line	
Harbour Pointe Blvd.	Crossing at intersection of Clubhouse Lane	
Harbour Pointe Blvd.	Crossing east of intersection of Harbour Reach DR	
43rd Ave W	130th PL SW	End of road
City of Mukilteo NGPA	City of Mukilteo NGPA	City of Mukilteo NGPA



LD
WAREHOUSE

NORTH