

**WEST SOUND UTILITY DISTRICT  
RESOLUTION 725-18**

**A RESOLUTION OF THE  
WEST SOUND UTILITY DISTRICT BOARD OF COMMISSIONERS  
APPROVING THE CITY OF PORT ORCHARD  
FRANCHISE AGREEMENT**

**WHEREAS**, West Sound Utility District has been performing water and sewer utility services within the rights-of-way of the City of Port Orchard for years without a franchise agreement; and

**WHEREAS**, the City and District have determined that it would be in the best interest of the City and District to establish terms and conditions under which District services can be provided within City rights-of-way through the execution of a new franchise agreement; and

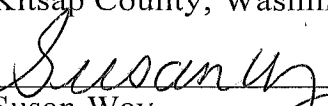
**WHEREAS**, the City and District have reviewed, discussed and negotiated terms and conditions for such franchise agreement; NOW, THEREFORE,

**THE BOARD OF COMMISSIONERS OF WEST SOUND UTILITY DISTRICT HEREBY RESOLVES:**

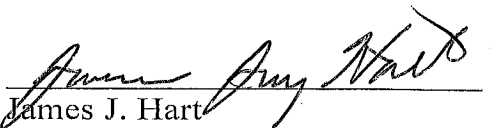
**Section 1.** The Board of Commissioners hereby agrees to the terms and conditions of the attached City of Port Orchard Franchise Agreement (Exhibit "A").

**APPROVED and ADOPTED** by the Board of Commissioners of West Sound Utility District at a regular scheduled meeting on May 21, 2018.

**WEST SOUND UTILITY DISTRICT**  
Kitsap County, Washington

  
\_\_\_\_\_  
Susan Way  
Chairperson

  
\_\_\_\_\_  
Jerry Lundberg  
Secretary

  
\_\_\_\_\_  
James J. Hart  
Vice Chairperson

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF PORT ORCHARD, WASHINGTON, GRANTING THE WEST SOUND UTILITY DISTRICT, A WASHINGTON SPECIAL PURPOSE DISTRICT, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH AND CONNECT FACILITIES BETWEEN, AND TO MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA FOR PURPOSES OF TRANSMISSION, DISTRIBUTION AND SALE OF WATER AND SEWER SERVICES.

WHEREAS, the West Sound Utility District (hereafter "WSUD") has historically provided water and sewer services to the City of Port Orchard (hereafter the "City"); and

WHEREAS, the parties have concluded that it is in the interests of the City and WSUD to enter into a franchise agreement to establish the terms and conditions under which such services will continue to be provided; and

WHEREAS, this Ordinance will establish said franchise agreement with WSUD and will benefit the City; **NOW THEREFORE,**

**THE CITY COUNCIL OF THE CITY OF PORT ORCHARD, WASHINGTON, DO ORDAIN AS FOLLOWS:**

**SECTION 1. DEFINITIONS.**

1.1 Where used in this franchise agreement ("Franchise" or "Agreement") the following terms shall mean:

1.1.1 "City" or "Port Orchard" means the City of Port Orchard, a code city organized and existing under RCW Title 35A, and a municipal corporation of the State of Washington, and its respective successors and assigns.

1.1.2 "City street" and "rights-of-way" shall mean "Street" and "Right-of-way" as those terms are defined by the Port Orchard Municipal Code Section 12.24.210, located within the area described in the attached **Exhibit A**.

1.1.3 "Construct" or "Construction" shall mean placing, removing, replacing, adding new, and repairing Facilities and may include, but is not limited to, digging and/or excavating for the purposes of placing, removing, replacing adding new, and repairing Facilities.

1.1.4 "Council" means the Port Orchard City Council, acting in its official capacity.

1.1.5 "Director" means the Port Orchard Public Works Director.

1.1.6 "Facilities" means, collectively, any and all (i) tanks, meters, pipes, mains, services, valves, blow-offs, vaults, fire hydrants, risers, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations, lift stations and lines; and (ii) any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.7 "Franchise" means the grant of rights, privileges, authority, terms, and conditions embodied in this Ordinance.

1.1.8 "Franchise Area" means any, every and all right-of-way for public roads, streets, avenues, alleys, highways and other public ways of the City as now laid out, platted, dedicated or improved in WSUD's service area within the present corporate boundaries of the City. For purposes of this definition, right-of-way includes property owned by the City in fee and used for public roads and other public ways of the City.

1.1.9 "Grantee" and "WSUD" mean the West Sound Utility District, a municipal corporation organized and existing under Title 57 RCW, its successors and those assignees approved pursuant to the requirements of this Franchise.

1.1.10 "Maintenance" or "Maintain" means examining, testing, inspecting, repairing, maintaining, and replacing the Facilities or any part thereof as required or as necessary for safe operation.

1.1.11 "Operate" or "Operations" means the use of WSUD Facilities for the transmission, distribution, handling, and sale of water and sewer services within and through the Franchise Area.

1.1.12 "Ordinance" means this Ordinance No. \_\_\_\_\_, which sets forth the terms and conditions of this Franchise.

1.1.13 "Other Governing Body" means any public official or other public board or body which may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the City street rights-of-way described in **Exhibit A**.

1.1.14 "Public right-of-way improvement" means a City-funded capital improvement to the public right-of-way.

1.1.15 "Relocation" means relocation, replacement, or extension of WSUD Facilities within the Franchise Area as provided for in Section 4 herein unless otherwise noted.

1.1.16 "Utility" means either the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across and along any of the City streets or rights-of-way described in **Exhibit A**.

## **SECTION 2. FACILITIES WITHIN THE FRANCHISE AREA.**

2.1 Franchise. The Port Orchard City Council, having considered the interests proposed and advanced, and finding that the granting of a franchise is in the public interest, does hereby grant to WSUD, the Grantee, the right, privilege, authority and franchise to construct, support, attach and connect Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of its water and sewer utility functions as defined in Title 57 RCW.

2.2 Term. This Franchise is granted subject to all of the terms and conditions contained within this Agreement and shall expire in approximately twenty (20) years; more specifically, on December 31, 2037.

2.3 Permission Required to Enter onto other City Property. Nothing contained in this Ordinance is to be construed as granting permission to WSUD 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.

2.4 Compliance with Laws and Regulations. At all times during the term of this Franchise, WSUD shall fully comply with all applicable federal, state, and local laws and regulations.

2.5 Property Outside the Franchise Area. This Franchise shall not convey any right to WSUD to install its Facilities on, under, over or across, or to otherwise use, any City-owned or leased properties of any kind that are located outside the Franchise Area. Further, this Franchise shall not govern or apply to Facilities located on WSUD-owned or leased properties or easements (whether inside or outside of the Franchise Area, whether granted by a private or public entity, and whether now existing or hereafter acquired) and such Facilities are not, and will not be deemed to be, located pursuant to rights derived from this Franchise or pursuant to rights otherwise granted by the City.

## **SECTION 3. NONINTERFERENCE WITH FACILITIES.**

3.1 WSUD's Facilities shall be located, relocated and maintained within the Franchise Area so as not to unreasonably interfere with the free passage of pedestrian and vehicular traffic, and ingress or egress to or from the abutting property, and in accordance with all applicable federal and state laws, rules and regulations and all applicable local government laws, rules and regulations. WSUD shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded WSUD by such City codes and ordinances.

3.2 Nothing herein shall preclude WSUD from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities, provided WSUD

receives prior City approval, which shall not be unreasonably withheld. Whenever it shall be necessary for WSUD, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, WSUD shall, upon completion of such excavation, restore the surface of the Franchise Area, as nearly as practicable, to the same condition it was in prior to such excavation.

3.3 The City and WSUD shall exercise best efforts to coordinate construction work that 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. When feasible, the City and WSUD shall consider joint projects. The City and WSUD 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 WSUD, 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:

3.3.1 no statutes, laws, regulations or ordinances prohibit or restrict the proximity of other utilities or facilities to WSUD's Facilities installed or to be installed within the area to be excavated;

3.3.2 Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

3.3.3 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.

#### **SECTION 4. RELOCATION OF FACILITIES.**

4.1 Whenever the City causes a public right-of-way improvement to be undertaken within the Franchise Area by reason of, including but not limited to, traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, road and walkway construction, change or establishment of street grade, the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, and such public right-of-way improvement requires the relocation of WSUD's then existing Facilities within the Franchise Area (for purposes other than those described in Paragraph 4.2, below), the City shall:

4.1.1 Notify WSUD during the planning phase to ensure collaborative effort is made to reduce project expense (to the City and WSUD), allow budgeting for the project and facilitate joint applications for grants and low-interest funding by the parties. The City will provide written notification requiring relocation of WSUD's Facilities at least one hundred eighty (180) days prior to the commencement of City project. The City shall also Provide WSUD with copies of pertinent portions of the plans and specifications for such improvement project and where possible propose an alternative location for

WSUD's Facilities so that WSUD may relocate its facilities within the current right-of-way or other right-of-way; and

4.1.2 Provide WSUD with copies of the pertinent portions of the plans and specifications for such public right-of-way improvement.

After receipt of such notice and such plans and specifications, WSUD shall relocate such Facilities within the Franchise Area at no charge to the City. The City will make its best efforts to avoid the need for such relocation whenever possible. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section 4.1, the City shall bear the entire cost of such subsequent relocation. In the event the City receives any federal, state or other funds for water or sewer relocation purposes, the Grantee will be given credit to the extent any such funds are actually received by the City.

4.2 Whenever: (i) any public or private development within the Franchise Area, other than a public right-of-way improvement, requires the relocation of WSUD's Facilities within the Franchise Area to accommodate such development; or (ii) the City requires the relocation of WSUD's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, WSUD shall have the right as a condition of such relocation to require such developer, person or entity to make payment to WSUD, at a time and upon terms acceptable to WSUD, for any and all costs and expenses incurred by WSUD in the relocation of WSUD's Facilities.

4.3 Any condition or requirement imposed by the City upon any person or entity, other than the City or WSUD (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of WSUD's Facilities shall be a required location for purposes of Section 4.2.

4.4 Nothing in this Section 4 "Relocation of Facilities" shall require WSUD to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise, regardless of whether such easement or other rights are on public or private property and regardless of whether this Franchise co-exists with such easement or other rights.

4.5 The provisions of this Section shall in no manner preclude or restrict WSUD from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project and provided that WSUD acquires all required approvals from the City, including right of way permits.

## **SECTION 5. INDEMNIFICATION.**

5.1 WSUD shall indemnify and hold the City harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence of WSUD, its agents, officers,

servants or employees in exercising the rights granted to WSUD in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the City, the City shall promptly notify WSUD thereof, and WSUD shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the City based upon any such claim or demand, the City shall likewise promptly notify WSUD thereof, and WSUD shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. This provision shall survive the termination of this Franchise.

5.2 This indemnity provision shall not be considered a waiver to any defenses to which the City may be entitled in such action or suit defended by WSUD, including any defenses of sovereign immunity.

5.3 Without limiting WSUD's indemnification obligations that might arise for the reasons set forth in Section 5.1, the City hereby releases and agrees to indemnify, defend and hold WSUD, its agents, officers, servants, and employees harmless from and against any and all claims, costs, judgments, awards or liability to any person arising from WSUD's compliance with this Franchise.

5.4 The City hereby releases and agrees to indemnify, defend and hold WSUD, its agents, officers, servants, and employees harmless from and against any and all claims, costs, judgments, awards or liability to any person to the extent they arose from the City's decision to issue development permits based on accurate information on fire flow and water availability provided by WSUD or the City's enforcement of the International Fire Code.

5.5 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 the City and WSUD, their agents, officers, servants, and employees, WSUD's liability hereunder shall be only to the extent of WSUD'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 6. INSURANCE.**

6.1 WSUD shall procure and maintain for the duration of this Franchise insurance or equivalent self-insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to WSUD, its agents, representatives, officers or employees in such amounts as are consistent with good utility practice. Upon the City's request, WSUD shall provide the City with reasonable written evidence that WSUD is maintaining such insurance or self-insurance.

6.1.1 WSUD shall procure and maintain insurance or self-insurance to cover risk of loss related to automobile liability, general liability, pollution liability, personal property, vehicles, and equipment, and workers' compensation exposures.

## **SECTION 7. VACATION OR DISPOSAL OF FRANCHISE AREA.**

7.1 In the event the City vacates or disposes of any portion of the Franchise Area during the term of this Franchise wherein WSUD has located Facilities, the City shall provide, or require that those seeking vacation provide, WSUD prior notice of same to allow WSUD to review and comment on the proposed vacation. If requested by WSUD, the City shall, in its vacation or disposal procedure, reserve an easement for utilities suitable for WSUD's Facilities. If WSUD's Facilities must be relocated from a vacated public right-of-way, the petitioner of said vacation will bear the expense of moving said Facilities.

## **SECTION 8. DEFAULT.**

8.1 If WSUD fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given WSUD by the City under the provisions of this Franchise, then the City may serve upon WSUD a written order to so comply within thirty (30) days from the date such order is received by WSUD. If WSUD 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 WSUD. 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 WSUD will have an opportunity to be heard) on the impending ordinance is given to WSUD, declare an immediate forfeiture of this Franchise; provided, however, that if any material failure to comply with this Franchise by WSUD cannot be corrected with due diligence within said thirty (30) day period (WSUD's obligation to comply and proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which WSUD may so comply shall be extended for such time as may be reasonably necessary and so long as WSUD commences promptly and works diligently to effect such compliance), provided a good faith dispute does not exist concerning such compliance.

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

## **SECTION 9. NONEXCLUSIVE FRANCHISE.**

9.1 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 WSUD'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 10. FRANCHISE TERM.**

10.1 This Franchise is hereby granted for a term of twenty (20) years from and after the date of the final acceptance of this Ordinance by WSUD, herein referred to as the primary term. This Franchise will automatically renew for successive terms of five (5) years unless



cancelled at the end of a term by either party by written notice to the other party no less than one hundred eighty (180) calendar days prior to the end of the primary term or the then-current successive term.

10.2 WSUD shall have no rights under this Franchise, nor shall WSUD be bound by the terms and conditions of this Franchise unless WSUD shall, within sixty (60) days after the effective date of the Ordinance, file with the City its written acceptance of the Ordinance.

10.3 The City specifically reserves for itself the right to impose taxes, use fees, costs, service requirements, or other fees on WSUD for the privilege of conducting this business in the City of Port Orchard, for the use of the City's rights-of-way, to pay for the costs of regulating this activity, or for any other public purpose so long as those taxes, use fees, costs, service requirements or other fees, as authorized by law, are imposed by ordinance, and after one hundred eighty (180) days written notice to WSUD.

## **SECTION 11. COMPLIANCE WITH CODES AND REGULATIONS.**

11.1 The rights, privileges and authority herein granted are subject to and governed by this Ordinance and all other applicable ordinances and codes of the City of Port Orchard, as they now exist or may hereafter be amended, provided the City shall not affect or modify any portion of this Franchise without WSUD'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, or excavation by WSUD shall be performed by WSUD in accordance with applicable federal, state and local rules and regulations, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with WSUD.

11.2 In the event of any emergency in which any of WSUD's facilities located in or under any street fails, becomes damaged, or if WSUD's construction area is otherwise in such a condition as to immediately endanger the property (public or private), life, health or safety of any individual, WSUD shall immediately, to the extent permitted by City regulations, take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve WSUD from the requirement of later obtaining any permits necessary for this purpose, and WSUD shall apply for all such permits not later than the next succeeding day during which the City is open for business.

11.3 Upon written inquiry, WSUD shall provide a specific reference to either the federal, state or local law establishing the basis for WSUD's actions related to a specific franchise issue, provided this provision shall not be construed to limit, waive or modify WSUD's right to privileged and confidential attorney-client communications.

11.4 In the event that any territory served by WSUD is annexed to the City after the effective date of this Franchise, this franchise agreement 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 agreement 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.

## **SECTION 12. LOCATION OF FACILITIES AND EQUIPMENT.**

12.1 With the exception of components that are traditionally installed above ground, such as fire hydrants, blow-offs, vault lids, risers, manhole covers 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 13. SECURITY.**

13.1 In lieu of any bond required pursuant to City Code, WSUD hereby warrants all work performed under this franchise and further specifically represents and warrants that all required restoration of the right-of-way shall be performed timely, in a workmanlike manner, and in full compliance with all applicable regulatory standards. Additionally, WSUD will require any contractor performing work on its behalf that is subject to the terms of this Franchise to provide all necessary bonds and insurance protecting the City and WSUD.

## **SECTION 14. RECORD OF INSTALLATIONS AND SERVICE.**

14.1 With respect to excavations by WSUD and the City within the Franchise Area, WSUD and the City shall each comply with its respective obligations pursuant to Chapter 19.122 RCW, and any other applicable state law.

14.2 Upon written request of the City, WSUD 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.

14.3 As-built drawings of the precise location of any Facilities placed by WSUD in any street, alley, avenue, highway, easement, etc., shall be made available to the City within ten (10) working days of request.

## **SECTION 15. ASSIGNMENT.**

15.1 This Franchise may not be assigned or transferred without the written consent of the City. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. WSUD shall provide prompt written notice to the City of any such assignment or transfer, and all of the provisions, terms, conditions, and requirements of this Franchise shall be binding upon successors and assigns as if they were specifically mentioned wherever WSUD is named herein.

## **SECTION 16. ACCEPTANCE.**

16.1 This Franchise is granted upon the express condition that WSUD, within sixty (60) days after the adoption of this Ordinance, shall file with the clerk of the City a written acceptance of the same.

## **SECTION 17. SURVIVAL.**

17.1 All of the provisions, terms, conditions and requirements of Sections 4 ("Relocation of Facilities"); 5 ("Indemnification"); and 6 ("Insurance") of this Franchise shall be in addition to any and all other obligations and liabilities WSUD may have to the City at common law, by statute, or by contract and shall survive the termination or expiration of this Franchise and any renewals or extensions thereof.

## **SECTION 18. NOTICE.**

18.1 Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF PORT ORCHARD  
Mayor  
216 Prospect Street  
Port Orchard, WA 98366

WEST SOUND UTILITY DISTRICT  
General Manager  
2924 SE Lund Ave.  
Port Orchard, WA 98366

## **SECTION 19. SEVERABILITY.**

19.1 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 20. MISCELLANEOUS.**

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

20.1.1 References this Franchise; and

20.1.2 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, the provisions of this Franchise shall control.

20.2 In the event any suit or action is commenced by the City against WSUD or by WSUD against the City in a court of competent jurisdiction: (a) to enforce the terms and conditions of this Franchise; or (b) on account of any default under or breach of this Franchise, the prevailing party in such suit or action shall be entitled to recover, in addition to all other relief, from the other party all reasonable attorney's fees incurred by the prevailing party in connection with such suit or action.

**SECTION 21. EFFECTIVE DATE.**

21.1 This Ordinance shall take effect five days after its passage and publication as required by law.

PASSED by a majority vote of the City Council of the City of Port Orchard, signed by the Mayor and attested by the Clerk in authentication of such passage this \_\_\_\_ day of \_\_\_\_\_, 2018.

\_\_\_\_\_  
Robert Putaansuu, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Brandy Rinearson, CMC, City Clerk

\_\_\_\_\_  
Sharon Cates, City Attorney