

WEST SOUND UTILITY DISTRICT  
RESOLUTION NO. 483-14

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF WEST SOUND  
UTILITY DISTRICT APPROVING AN ONLINE SERVICE FOR SEARCHING  
UTILITY ACCOUNTS AND LIEN ACTIVITY FOR PROPERTY CLOSINGS

WHEREAS, the District Customer Service staff currently provides to title and escrow companies information on utility account balance and lien activity for property closings; and

WHEREAS, Webcheck Canopy, Inc. is a company that provides an on-line service for title and escrow companies to access the District' utility accounts and lien information; and

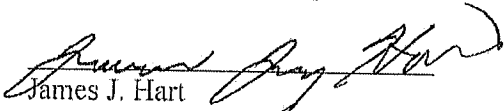
WHEREAS, subscribing to the services provided by Webcheck will save the District time by eliminating phone contacts to closers and sellers and tracking accounts, in addition to reducing the number of refund checks processed and utility write-offs; NOW, THEREFORE,

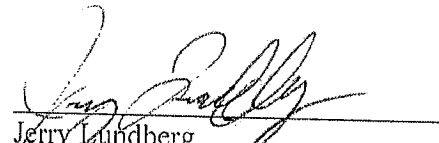
THE BOARD OF COMMISSIONERS OF WEST SOUND UTILITY DISTRICT  
HEREBY RESOLVES:

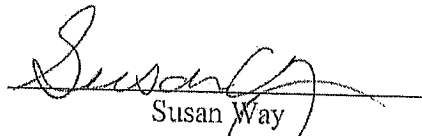
Section 1. The Board hereby approves the attached service agreement with Webcheck Canopy, Inc. (Exhibit "A") for online service for searching utility accounts and lien activity for property closing, and further authorizes the General Manager to sign the agreement with Webcheck Canopy, Inc.

APPROVED and ADOPTED by the Board of Commissioners of West Sound Utility District at a regular scheduled meeting on February 3, 2014

WEST SOUND UTILITY DISTRICT  
Kitsap County, Washington

  
James J. Hart  
Chairperson

  
Jerry Lundberg  
Vice Chairperson

  
Susan Way  
Secretary

**RECEIVED**

**FEB 18 2014**

**WEST SOUND  
UTILITY DISTRICT**

**WEBCHECK FINAL UTILITY BILLING AND LIEN  
INFORMATION ACCESS AGREEMENT**

THIS WEBCHECK FINAL UTILITY BILLING AND LIEN INFORMATION ACCESS AGREEMENT is made and entered into this 14<sup>th</sup> day of February 2014, by and between Webcheck, Inc., (hereafter referred to as "Webcheck") and West Sound Utility District (herein referred to as "West Sound").

**RECITALS:**

A. Webcheck has developed, is the owner of the licensing rights with respect to, and is marketing Internet based software and hardware applications in order to greatly improve the efficiency with which final utility billing and lien information may be exchanged between title insurance and escrow companies and municipalities and in order to assist municipalities comply with RCW 60.80.020.

B. West Sound desires to utilize Webcheck's software and hardware products and services to improve West Sound's dissemination of final utility billing and lien information to title insurance and escrow companies.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS, BENEFITS AND OBLIGATIONS CONTAINED HEREIN, THE PARTIES AGREE AS FOLLOWS:

1. IDENTIFICATION OF PARTIES. Webcheck, Inc., is a Washington corporation whose principal place of business is located at 416 West 27<sup>th</sup> Place, Kennewick, Washington 99337. West Sound Utility District is a municipal corporation located in Kitsap County, Washington, whose business address is 2924 SE Lund Ave, Port Orchard, Washington 98366.

2. WEBCHECK CANOPY. "Webcheck Canopy" is the name given by Webcheck to a bundled system which includes Internet based computer software applications developed by Webcheck and final utility billing and lien information delivery and retrieval services made available only to title insurance companies, escrow companies and other persons or entities with whom West Sound may choose to contract.

3. GRANT OF WEBCHECK CANOPY LICENSE. Webcheck hereby grants to West Sound and West Sound hereby accepts from Webcheck a nontransferable, nonexclusive license to use the Webcheck Canopy system, including all computer software upgrades to be provided by Webcheck, during the term of this Agreement.

4. SERVICE LEVEL TERMS/DATA TRANSMISSION AND SECURITY. Webcheck agrees to provide West Sound with a level of service equal to or greater than that which is set forth in the Service Level Minimums described on Annex "A" which is attached hereto and by this reference incorporated herein.

Webcheck agrees to provide data transmission and security pursuant to the terms described on Annex "B" which is attached hereto and by this reference incorporated herein.

5. WEST SOUND TO PROVIDE PARCEL AND LIEN INFORMATION. It is agreed that West Sound shall, in a regular, timely and accurate manner, provide Webcheck, via the Internet, with final utility billing and lien information which will in turn be made available by Webcheck to title insurance companies, escrow companies and other persons or entities to whom West Sound desires to provide such information using the Webcheck Canopy system. Webcheck is responsible for the physical installation of the Webcheck Canopy system. West Sound understands and acknowledges that Webcheck cannot control the accuracy of any of the final utility billing and lien information provided to Webcheck by West Sound and later transmitted by way of the Webcheck Canopy system. West Sound further understands and acknowledges that communications via the Internet may not be secure and may be subject to interception or loss. Webcheck disclaims liability for, and West Sound hereby releases Webcheck from, all damages (including, but not limited to, those for business losses and loss of data, data files or programs), liabilities, costs, attorneys' and experts' fees and all other expenses incurred by West Sound arising out of or relating to the use of the Webcheck Canopy system and its component parts other than those proximately caused by Webcheck's negligent or intentional acts.

6. ADDITIONAL DUTIES OF WEST SOUND. West Sound agrees to provide Webcheck, at no cost to Webcheck, with the necessary technical computer related personnel and cooperation in installing and maintaining the Webcheck Canopy system. West Sound further agrees to enact such firewall configuration changes as may be necessary to facilitate communications between West Sound computers and the Webcheck Canopy servers.

7. COMPENSATION/BILLING. Each Internet based utility and lien search of a particular address within the jurisdiction of West Sound made through the use of the

Webcheck Canopy system shall be considered a "hit". Except as set forth in the next paragraph of this Agreement, West Sound agrees to pay Webcheck the sum of Fifteen (\$15.00) Dollars per hit made to the Webcheck Canopy system. West Sound may, in turn, assess a charge to the utility customer for the use of the Webcheck Canopy system. The parties agree that Webcheck will send a monthly invoice to West Sound at West Sound's address set forth above (or at such other address as West Sound might in the future direct) and payment shall be made by West Sound to Webcheck at Webcheck's address set forth above (or at such other address as Webcheck might in the future direct) within thirty (30) days of West Sound's receipt of the invoice.

It is contemplated that some title and escrow companies will continue for a short period of time to rely upon the existing non-electronic method of requesting final utility billing and lien information from West Sound district staff. In such instances, West Sound plans to itself utilize the Webcheck Canopy system to search for the requested information. Webcheck agrees that, when hits are made to the Webcheck Canopy system by West Sound district staff members, Webcheck will waive the Fifteen (\$15.00) Dollars per hit fee that would otherwise be assessed. West Sound agrees, however, that in order to promote the efficient use of district staff and resources, it will nevertheless assess the utility customer the same or greater charge for providing such final utility billing and lien information manually via telephone, letter or fax, than West Sound would charge for requests for information that are made electronically via the Webcheck Canopy system.

In addition to the compensation referred to above, West Sound shall be obligated to pay to Webcheck a one time set-up and customization fee of Two Thousand Five Hundred (\$2,500.00) Dollars, which fee shall be paid to Webcheck by West Sound within ten (10) days of the date of this Agreement.

8. TERM OF AGREEMENT. This Agreement shall become effective as of the date set forth above and shall remain in effect for a period of 12 months from the date of the first "hit" as defined in Paragraph 7 above. Thereafter, this Agreement may be terminated by either party for any reason upon thirty (30) days prior notice to the other party. Such notice shall be provided in writing by the terminating party to the non-terminating party at the address set forth above (or at such other address as has been provided to the terminating party by the non-terminating party). Upon termination, West Sound shall immediately discontinue use of each and every component of the Webcheck Canopy system.

Upon termination, Webcheck shall delete from its computer systems all data with it has received from West Sound.

9. PROHIBITED ACTIONS. West Sound will not have access to the Webcheck Canopy source code. Rather, as set forth in this Agreement, West Sound shall provide final utility billing and lien information to Webcheck, parts of which information will from time to time be transmitted by Webcheck to title insurance and escrow companies using the Webcheck Canopy service. West Sound and its employees, agents and subcontractors shall not modify Webcheck Canopy or any component part thereof in any manner whatsoever or disassemble, decompile, reverse engineer or otherwise attempt to derive source code from any of the software or hardware provided by Webcheck. West Sound understands and acknowledges that Webcheck has undertaken substantial efforts and has incurred substantial expenses in developing Webcheck Canopy. The parties acknowledge and agree that, in the event that West Sound or any of its employees, agents or persons within its control violates any of the provisions of this Paragraph 9, Webcheck will be irreparably harmed. The parties further acknowledge and agree that damages for any such violations will be difficult to measure. Accordingly, the parties agree that, in the event of any such violations, Webcheck shall, in addition to any other remedies available to it at law or in equity, be entitled to obtain injunctive relief or other appropriate orders to restrain any further violations. In addition, it is agreed that West Sound shall be obligated to pay to Webcheck all of its actual damages suffered as a result of each act that West Sound or any of its employees, agents or persons within its control undertakes in violation of this Paragraph 9.

Webcheck shall not, during the term of this Agreement or after this Agreement has been terminated, sell or otherwise disseminate any data provided by West Sound except as authorized by this Agreement.

10. LIMITED WARRANTY. Webcheck warrants that it is the owner of the licensing rights with respect to Webcheck Canopy. Webcheck further warrants that the Webcheck Canopy system, if properly installed and used, shall materially conform to its intended purpose of providing Internet based final utility billing and lien information delivery and retrieval services, provided that West Sound performs its obligations set forth in this Agreement. The parties agree that West Sound shall promptly notify Webcheck in writing of any failures or defects with respect to the Webcheck Canopy system. Webcheck agrees to immediately correct such failures or defects to the extent that such failures or defects are within the control of Webcheck. Webcheck agrees to undertake reasonable efforts to ensure

security of the Webcheck Canopy system but cannot and does not guarantee absolute immunity from compromise. West Sound may elect to provide additional security at West Sound's expense and Webcheck is willing to provide security recommendations to West Sound.

11. EXCLUSIONS. Notwithstanding the warranty provisions contained herein, Webcheck shall have no warranty obligation with respect to Webcheck Canopy or any component part thereof which has been damaged by improper installation or operation by personnel not in the employment of Webcheck or by misuse, abuse or negligent use or repair or alteration or improper storage or which may have been damaged by use which does not conform to the specific or general instructions given by Webcheck or if West Sound or its employees, agents or subcontractors of West Sound has modified or attempted to modify Webcheck Canopy or any of its component parts or if the damage has occurred due to causes external to Webcheck, whether or not through the fault of West Sound or if West Sound has refused to implement changes recommended by Webcheck.

12. DISCLAIMER OF OTHER WARRANTIES. THE WARRANTY SET FORTH IN PARAGRAPH 10 ABOVE SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER LIABILITIES, OBLIGATIONS, CONDITIONS AND/OR WARRANTIES, EXPRESS OR IMPLIED (INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED AND/OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE – EXCEPT AS SET FORTH IN PARAGRAPH 10 ABOVE, AS WELL AS ANY IMPLIED AND/OR STATUTORY WARRANTIES ARISING FROM THE COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE), AND WEST SOUND HEREBY WAIVES ALL OTHER RIGHTS, OBLIGATIONS AND/OR WARRANTIES AND ASSUMES ALL RISKS AND LIABILITIES IN RESPECT THEREOF. WEBCHECK MAKES NO WARRANTY THAT THE OPERATION OF WEBCHECK CANOPY WILL BE ERROR-FREE OR WITHOUT INTERRUPTION.

13. HOLD HARMLESS BY WEBCHECK. Webcheck agrees to indemnify and hold West Sound harmless from any and all claims that might arise against West Sound as a result of damages suffered by any third party due to the negligent or intentional acts or breaches of this Agreement by Webcheck or any of its employees, agents or persons within its control.

14. HOLD HARMLESS BY WEST SOUND. West Sound agrees to indemnify and hold Webcheck harmless from any and all claims that might arise against Webcheck as a result of damages suffered by any third party as a result of the dissemination of inaccurate utility and lien information passing to or relied upon by such third party or the negligent or intentional acts of the West Sound, its employees, agents or persons within its control.

15. ATTORNEY'S FEES/VENUE/APPLICABLE LAW. The prevailing party in any suit or action between the parties arising out of this Agreement shall be entitled to recover from the other its costs and reasonable attorney's fees at trial and on appeal and venue shall lie in Thurston County, Washington, unless the parties agree otherwise. The laws of State of Washington shall apply in any such proceedings.

16. NO ASSIGNMENT BY WEST SOUND. Neither this Agreement, nor any rights hereunder, in whole or in part, shall be assignable or otherwise transferable by West Sound and any purported assignment or transfer shall be null and void.

17. NON-WAIVER. Failure of either party to insist upon strict performance of the other party's obligations hereunder shall not be construed as a waiver of strict performance thereafter of all of the other party's obligations hereunder and shall not prejudice any remedies as provided herein.

18. SEVERABILITY. If any term or provision of this Agreement shall be found to be illegal or unenforceable, then, notwithstanding such a legal finding, such term will be enforced to the maximum extent permissible and the legality and enforceability of the other provisions of this Agreement will not be affected. It is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability or limited warranty is intended by the parties to be severable and independent of any other provision and to be enforced as such.

19. SIGNATURES. Each party represents and warrants that on this date the individual executing this Agreement is duly authorized to bind its respective principal by its signature below.

20. COUNTERPARTS. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and all of which, when taken together, constitute one and the same document. The signature of any party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart.

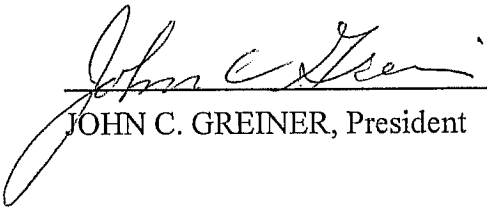
21. ENTIRE AGREEMENT. Except as otherwise set forth herein, this Agreement constitutes the entire agreement of the parties and supersedes all prior agreements

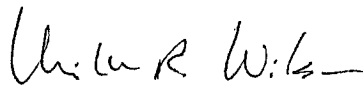
and understandings, written or oral. This Agreement may be amended only in writing executed by the parties.

IN WITNESS WHEREOF, the parties have signed this Agreement on the date set forth above.

WEBCHECK, INC.

WEST SOUND UTILITY DISTRICT

  
\_\_\_\_\_  
JOHN C. GREINER, President

  
\_\_\_\_\_  
MICHAEL R. WILSON, General Manager



## ANNEX A

### SERVICE LEVEL MINIMUMS

1. **SCHEDULED MAINTENANCE DOWNTIME:** Webcheck may schedule server downtime during the hours of 11 PM and 6 AM. Scheduled downtime shall not exceed two (2) hours per week.
2. **99% AVAILABILITY:** Webcheck guarantees that unscheduled service outages (defined as any such hardware failure, Webcheck Canopy server misconfiguration, etc., as would cause the Webcheck Canopy service to be temporarily unavailable) shall not exceed 2.5 business days in each calendar year. This means that the service shall be fully available for all uses for 99% of all normal business hours (8 a.m. to 5 p.m., Monday - Friday).
3. **EXCEPTIONS:** This minimum service level does not apply to situations beyond the immediate control of Webcheck. Such situations include, but are not limited to, extended power failure, Denial of Service (DoS) attacks, acts of war, West Sound administrative error and natural disaster.
4. **SERVICE LEVEL CREDITS:** Webcheck will compensate West Sound for the total unscheduled downtime in excess of two and one-half (2.5) business days which occurs during normal business hours. To qualify for credits, West Sound must report the downtime and Webcheck must confirm that the problem was its own. Credits shall be the greater of Fifty (\$50) Dollars per hour or five times the average hourly fees incurred by West Sound in the previous month. West Sound must request credits in writing or by e-mail within ten (10) days of service restoration.

## ANNEX B

### DATA TRANSMISSION AND SECURITY

1. **TRANSMISSION:** Data shall be transmitted to Webcheck Canopy server(s) over the Internet. Data transmission may be encrypted using Secure Sockets Layer (SSL) or such other method as may be requested by West Sound.
2. **STORAGE:** Data shall be stored on Webcheck Canopy server(s).
3. **RETRIEVAL:** Users of Webcheck Canopy must retrieve data using Webcheck Canopy's web-based interface. Users must use their unique username and password (controlled by West Sound) to access the data. Webcheck shall not issue any access codes except as authorized by West Sound.
4. **FIREWALL:** Webcheck Canopy servers are protected by stateful packet-level firewall software which allows only web-based access to the data and prevents file- or database-level access to the data.
5. **ADMINISTRATION:** Administration of Webcheck Canopy server(s) is always performed over an encrypted connection.
6. **OPERATING SYSTEM:** Webcheck Canopy server(s) run the Linux operating system and are updated regularly. No Microsoft software is used on Webcheck Canopy server(s).