

STATE OF WASHINGTON)
)
KING COUNTY)

ss. C E R T I F I C A T I O N

I, Bonnie Ritter, Clerk-Treasurer for the Town of Yarrow Point, King County, State of Washington, do hereby certify that the attached and foregoing is a true and complete copy of:

ORDINANCE NO. 762

AN ORDINANCE OF THE TOWN OF YARROW POINT, WASHINGTON GRANTING THE CITY OF BELLEVUE A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, ADD TO, ALTER, MAINTAIN, OPERATE, REPAIR, AND REPLACE A WATER AND WASTEWATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE TOWN OF YARROW POINT, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE

Duly passed and approved by the Town Council on the 14th day of January, 2025, approved by the Mayor, and the same now remains of record in my office.

In witness wherein, I have set my hand and Town seal this 22nd day of January, 2025.

Bonnie Ritter

Bonnie Ritter, Clerk-Treasurer
Town of Yarrow Point, Washington



**TOWN OF YARROW POINT
ORDINANCE NO. 762**

AN ORDINANCE OF THE TOWN OF YARROW POINT, WASHINGTON GRANTING THE CITY OF BELLEVUE A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, ADD TO, ALTER, MAINTAIN, OPERATE, REPAIR, AND REPLACE A WATER AND WASTEWATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE TOWN OF YARROW POINT, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, the City of Bellevue, a Washington municipal corporation ("Franchisee"), owns water and wastewater facilities ("Facilities") located in the Town of Yarrow Point, a Washington non-charter municipal town ("Town"), and a portion of such Facilities are located within the Town right-of-way as hereinafter defined; and

WHEREAS, the water and wastewater services currently provided by the Franchisee are important for the health, safety, and welfare of the Town's residents, businesses, and visitors; and

WHEREAS, Chapters 35.67 and 35.92 RCW authorize the Franchisee to conduct water and wastewater services throughout any city and town, and construct and lay facilities along and upon public highways, roads and streets; and

WHEREAS, RCW 35.27.330 authorizes the Town 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 wastewater facilities; and

WHEREAS, the Town and the Franchisee have prepared this Franchise Agreement to provide for the operation of Franchisee Facilities within the Town right-of-way.

NOW, THEREFORE, THE TOWN COUNCIL OF THE YARROW POINT, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions.

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

A. "Town" means the Town of Yarrow Point, a Washington municipal corporation, and its respective successors and assigns.

B. "Franchisee" means the City of Bellevue, a Washington municipal corporation, and its respective successors and assigns.

C. "Facility" or "Facilities" includes, but is not limited to, tanks, reservoirs, water treatment facilities, meters, pipes, mains, services, valves, blow offs, vaults, fire suppression water facilities, risers, manholes, generators, pressure reducing valves ("PRVs"), pump stations, meter stations, pump stations, lift stations, lines, and Franchisee-owned service lines located in the Franchise Area as defined below, and all other necessary or convenient facilities and appurtenances thereto for the sole purpose of operating a water and wastewater utility system, whether the same be located over, on, or underground. The term does not include facilities constructed by another water or wastewater utility that may have been abandoned prior to the Franchisee assuming responsibility for water or wastewater services within the Franchise Area.

D. "Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways, rights-of-way, and public utility easements of the Town, as now laid out, platted, dedicated, acquired, conveyed, or improved; and any and all public Town roads, streets, avenues, alleys, highways, rights-of-way, and other public utility easements that may hereafter be laid out, platted, dedicated, acquired, conveyed or improved in the Franchisee's service area within the present corporate boundaries of the Town (as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within Franchisee's service area by annexation or otherwise, but shall not include private roads, streets, avenues, easements and alleys. The Franchise Area shall not include, and this Franchise shall not convey, any right to the Franchisee to install facilities on, or to otherwise use, Town owned or leased properties.

E. "Public Improvement Project" means, any capital improvement project planned by, undertaken by, or performed on behalf of the Town within the Franchise Area. The term shall include, but not be limited to, any construction, installation, relocation, widening, expansion, improvement, maintenance, repair or removal of roads, streets, sidewalks, parks, curbs, gutters, storm drainage facilities, sewer facilities, water facilities, or other capital improvement project within the Franchise Area that is planned by, undertaken by, or performed on behalf of the Town. However, any improvement project that is for the sole benefit of a private third party or another public agency, shall not be included within the meaning of the term; and said private third party or public agency shall be responsible for any relocation of the Franchisee's utilities consistent with this Agreement and to the fullest extent allowed by law.

F. "Party" or "Parties" means the Town or the Franchisee individually, or collectively as addressed in this Franchise.

G. "Revenue" means gross income received by the Franchisee from the sale of wastewater services and metered water to direct retail customers whose properties receiving such service from the Franchisee's water and wastewater system are located within the Town. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement Franchisee and utility local improvement Franchisee assessments and payments; grants; contributed assets

(contributions in aid of construction); income to recover the cost of fire suppression facilities and to pay for the provision of fire suppression services; loans; income from legal settlements not related to retail and water sales to Franchisee 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 and wastewater system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

H. “Mayor” means the Mayor of the Town of Yarrow Point, or designee.

Section 2. Franchise Granted.

A. Pursuant to RCW 35.27.330, the Town hereby grants to Franchisee, its successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, the non-exclusive right, privilege, authority and franchise to enter upon, use, and occupy the Franchise Area to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, extend, operate, and use Facilities in, upon, over, under, along, through, and across the Franchise Area for purposes of its water and wastewater utility functions as defined in Title 35 RCW.

B. Nothing contained in this Franchise is to be construed as granting permission to the Franchisee to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Franchise. Permission to go upon any other property owned or controlled by the Town must be sought on a case-by-case basis from the Town and may require lease or rental payments as a condition of such use. This Franchise does not convey any right to the Franchisee to install its Facilities on, under, over or across any facility or structure owned by a third-party without such written approval of the third-party.

C. At all times during the term of this Franchise, the Franchisee shall fully comply with all applicable federal, state, and local laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act (chapter 43.21C RCW), the State of Washington Pollution Control Law (chapter 90.48 RCW), and the Federal Clean Water Act (33 USC §§ 1251-1387). Except as otherwise provided in this Franchise, no substantive expansions, additions to or modifications or relocation of any of the Facilities shall be permitted without first having received appropriate permits from the Town.

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

Section 3. Non-interference of Facilities.

The Franchisee'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, bicycle, vehicular traffic, and ingress or egress to or from the abutting property, and in accordance with the laws of the State of Washington and the Town of Yarrow Point. Nothing herein shall preclude the Franchisee from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided the Franchisee receives prior Town approval through an appropriate permit, which shall not be unreasonably withheld, and, provided further, the Franchisee shall have the right to effect temporary road closures in the event of emergencies to maintain, repair, and replace its Facilities without prior Town approval, but the Franchisee shall obtain Town approval of such road closures as soon as reasonably possible, which approval shall not be unreasonably withheld.

Section 4. Relocation of Facilities.

A. The Franchisee agrees and covenants to protect, support, temporarily disconnect, relocate or remove from the Franchise Area any of its Facilities when reasonably required by the Town by reason of a Public Improvement Project, provided that the Franchisee shall have the privilege to temporarily or permanently bypass, in the authorized portion of the same right-of-way upon approval by the Town, sections of the Facilities to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocations ordered pursuant to this Section shall be borne by the Franchisee if the relocation is the result of a Public Improvement Project.

B. If the Town determines a Public Improvement Project necessitates the relocation or possible relocation of the Franchisee's then existing Facilities, the Town shall promptly inform the Franchisee of said need and shall initiate discussions as follows:

1. The Town will consult with the Franchisee in the pre-design phase of any Public Improvement Project in order to coordinate the Public Improvement Project's design with Franchisee's Facilities within such project's area.

2. The Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Improvement Project, or (ii) the parties execute a relocation and cost share agreement as provided in Subsection C below, or (iii) until the Town provides Franchisee with written notice regarding the relocation as provided in Subsection D below.

3. The Franchisee shall, during the predesign phase, evaluate and promptly provide comments to the Town related to any designs, alternatives to possible relocations, or alternatively, request that the parties execute a relocation agreement pursuant to Subsection C below. The Town will give any alternatives or agreement proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the Town's

reasonable judgment. In the event the Town ultimately determines that there is no other reasonable or feasible alternative, the Town shall provide a written explanation of its decisions and the Franchisee shall relocate its Facilities as otherwise provided in this section. For clarity purposes only, any alternative does not have to be fully designed.

C. The Franchisee may propose that the parties execute a relocation and cost sharing agreement that allows the Town to relocate the Franchisee's conflicting water or wastewater facilities as a component of the Public Improvement Project, with design and construction of any relocation to be approved by the Franchisee, which approval may not be unreasonably withheld, and with all design and construction costs related to the relocation to be reimbursed by the Franchisee. Due to improved design and construction efficiencies, this is the Franchisee's preferred method for relocating Franchisee's water and sewer infrastructure. If such an agreement is elected, such an agreement shall be developed/executed prior to the design phase of the Public Improvement Project, and shall include, but not be limited to, agreed upon design standards and specifications, design review, construction and inspection requirements, payment procedures, and dispute resolutions processes.

D. If a relocation agreement is not executed, the Town will provide the Franchisee, in writing, the date certain by which relocation of the Facilities is to be accomplished ("relocation notice"). The Town will provide this relocation notice as soon as reasonably possible, endeavoring to provide no less than three-hundred sixty five (365) days prior to the commencement of the construction of such Public Improvement Project, however, in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 4.B, the City will notify the Franchisee during the predesign meetings and the process mandated by the grant funding will control.

E. In the event of an emergency that involves the Franchisee's Facilities and poses a threat to public health, safety, or welfare, the Town shall provide the Franchisee notice as soon as practicable of the need for any emergency relocation and/or repair. To report an emergency, the Town shall, at a minimum, contact the Franchisee's 24-Hour Emergency Hotline (425-452-7840); and, as time permits, provide written notice to the appropriate staff contact for the Franchisee. The Franchisee shall provide a list of appropriate staff contacts, which shall be updated quarterly (without need to amend this Agreement), so the Town might identify the appropriate individual to receive notice and request updates regarding any emergency repair/relocation/mitigation response. If the Franchisee is unable to promptly respond to and address the emergency, then the Town will: (i) perform the necessary repair/relocation/mitigation itself, (ii) coordinate with Franchisee regarding any repair/relocation/mitigation effort, and (iii) be reimbursed for any emergency repair/relocation/mitigation costs reasonably incurred by the Town, consistent with the Franchisee's claims process. In performing any emergency work authorized under this subsection, the Town shall perform the repair/relocation/mitigation in a professional and workmanlike manner, consistent with all applicable laws and the Franchisee's engineering standards.

F. The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for

relocation of its Facilities by any person or entity other than the Town, where the facilities to be constructed by said person or entity are not or will not become Town-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a Town construction project.

G. The Franchisee will indemnify, hold harmless, and pay the costs of defending the Town against any and all claims, suits, actions, damages, or liabilities for delays on Town construction projects caused by or arising out of the failure of the Franchisee to remove or relocate its Facilities in a timely manner; provided, that the Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of the Franchisee or the negligence, willful misconduct, or unreasonable notice (defined as not providing notice consistent with Subsections 4(B) and 4(D)) of the Town. In the event the Town decides not to proceed with any Public Improvement Project that required the Franchisee to relocate its facilities pursuant to this Section and the Franchisee incurs costs as a result of the Town's previous direction, then the Town shall reimburse the Franchisee for any costs incurred.

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

I. If the Town performs any grind and overlay that may change the grade of the right-of-way, the need to raise and adjust Facilities (e.g. manhole covers, valve boxes, access covers) shall not be considered a relocation pursuant to this Section 4 and shall not require the Franchisee to relocate the same. Upon sixty (60) days written notice of any Town sponsored grind/overlay project, the Franchisee and Town shall perform a joint inspection and assessment of the Facilities to determine if any replacement rings, manhole, boxes, lids, and/or any other applicable replacement facilities (collectively "replacement facilities") may be required. In the event the joint assessment concludes, replacement facilities are required (e.g. to resolve any "dishing"), then the Franchisee shall provide, at its sole cost and expense, said replacement facilities to the Town. The Town shall assume all other costs related to raising and adjusting Facilities as described in this paragraph. For clarity, the inspection/assessment referenced in this subsection shall use the Franchisee's published maintenance standards then in effect – a copy of which will be provided in advance of any inspection/assessment.

J. Except for Public Improvement Projects, whenever any Third Party requires the relocation of the Franchisee's Facilities to accommodate work of such Third Party within the Franchise Area, the Franchisee shall have the right as a condition of any such relocation to receive notice of the proposed work, to review plans, and require payment to the Franchisee, at a time and upon terms acceptable to the Franchisee, for any and all costs and expenses incurred by the Franchisee in the relocation of the Franchisee's Facilities. Unless the Franchisee agrees to relocate the Facilities itself (which shall be reimbursed by the Third Party), the Third Party shall perform the relocation, consistent with all applicable laws and engineering standards of the Franchisee.

K. Except for Public Improvement Projects, any condition or requirement imposed by the Town upon any Third Party, which requires the relocation of the Franchisee's Facilities within the Franchise Area, shall include a condition or requirement causing relocation of the Franchisee's Facilities to occur subject to the provisions of Section 4(J) above.

L. Notwithstanding anything to the contrary herein, if the Town requires the subsequent relocation of any Facilities within five (5) years from the date of installation or relocation, then the Town shall bear the entire cost of such subsequent relocation.

M. Nothing in this Franchise shall require the Franchisee to bear any costs or expense in connection with the relocation of any Facilities existing under benefit of easement (other than Town owned utility easements) or other rights not arising under this Franchise.

N. Nothing in this Section 4 shall be construed to be a waiver of any right of either the Franchisee or the Town to contest any claim or assertion by the other of responsibility to pay such cost or expense.

Section 5. Maps and Records.

A. After any construction by the Franchisee within the Franchise Area is complete, the Franchisee shall provide the Town with accurate copies of as-built plans and maps in a form and content reasonably prescribed by the Public Works Director or designee. These plans and maps shall be provided at no cost to the Town, and shall include hard copies and digital files in Autocad or other industry standard readable format acceptable to the Town and delivered electronically. Thereafter, the Franchisee shall provide such maps within 10 days following a request from the Town. If additional copies are required after initial production consistent with this paragraph, such copies shall be provided at Town's sole cost and expense.

B. Within thirty (30) days of a written request from the Town, the Franchisee shall furnish the Town with information sufficient to demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

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

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

Section 6. Right-of-Way Management.

A. Permit Required. Whenever the Franchisee excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the Town for a permit to do so in accordance with the ordinances and regulations of the Town requiring permits to operate in Town right-of-way. Except for emergencies, routine maintenance, or as otherwise provided in this Franchise or applicable Town ordinance, no Franchisee excavation work shall commence within any Town right-of-way without a permit. All work shall be done to the Town's reasonable satisfaction.

B. Restoration after Construction. The Franchisee shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to Town standards as nearly as reasonably possible to its condition prior to any such work; provided that no such work shall be done prior to the obtaining of a permit therefor issued by the Town, which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the Franchise Area. The Franchisee agrees to complete all restoration work and to repair any damage to the right-of-way caused by such work at its sole cost and expense. The Franchisee further agrees to repair or replace any defective restoration work consistent with the Town's Road Standards. If the Town determines that the Franchisee has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the Town shall provide the Franchisee with written notice, which shall include a description of actions the Town believes necessary to restore the right-of-way. If the right-of-way is not restored, or restoration has not commenced, in accordance with the Town's notice within sixty (60) days of that notice, or such longer period as may be mutually agreed after good faith negotiations between Town and Franchisee, the Town, or its authorized agent, may restore the

right-of-way and the Franchisee shall be responsible for all reasonable costs and expenses incurred by the Town in restoring the right-of-way in accordance with this Section. The rights granted to the Town under this Section shall be in addition to those otherwise provided by this Franchise. Nothing in this subsection shall preclude the parties from executing a cost share agreement, allowing the Town to perform the restoration upon reimbursement in full by the Franchisee as authorized in Section 4(B)(1).

C. Survey monuments. Survey monuments shall not be removed or destroyed without the Franchisee 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. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the Town. 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.

D. Bonding Requirement. The Franchisee, as a public agency, shall not be required to comply with the Town's standard bonding requirement for working in the Town's rights-of-way.

E. Emergency Work, Permit Waiver. In the event of an emergency where (1) any Franchisee Facilities located in the right-of-way are broken or damaged and place the health or safety of any person or property in imminent danger; (2) any Franchisee construction area is in a condition as to place health or safety of any person or property in imminent danger; or (3) the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities, or Town property; then the Franchisee shall immediately take any necessary emergency measures to safeguard the area and repair, replace or relocate its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the Franchisee shall apply for any necessary permit for such activity within two (2) weeks after the emergency is abated if required by this Franchise or Town ordinance. The Franchisee shall keep the Town reasonably informed of any emergency work/response. The Town retains the right to undertake repair and replacement of Facilities in the event of an emergency in accordance with and pursuant to the Section 4(E) above.

F. Contractors and Subcontractors. The Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the Franchisee's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the Franchisee. The Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by the Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 7. 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) The Franchisee will participate in a cooperative effort with the Town to ensure that the Utilities Element of Town's Comprehensive Plan is accurate as it relates to the Franchisee's operations and is updated to ensure continued relevance at reasonable intervals.

(2) The Franchisee shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the Town as requested by the Town within a reasonable time, not exceeding thirty (30) days from receipt of a written request for such information, provided that such information is in the Franchisee's possession, or can be reasonably developed from the information in the Franchisee's possession. Provided, unless otherwise agreed, any information provided shall be for informational purposes only and shall not obligate the Franchisee to undertake any specific improvements within the Franchise Area, nor shall such information be construed as a proposal to undertake any specific improvements within the Franchise Area.

(3) The Town will provide information relevant to the Franchisee's operations within a reasonable period, not exceeding thirty (30) days of written request, to assist the Franchisee in the development or update of Franchisee's Comprehensive Water and Wastewater System Plan(s), provided that such information is in the Town's possession, or can be reasonably developed from the information in the Town's possession.

B. The Franchisee and Town 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 Franchisee and the Town 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, Franchisee shall provide the Town with a schedule of the Franchisee's planned capital improvements which may affect the rights-of-way for that year.

(3) By February 1st of each year, Town shall provide the Franchisee with a schedule of Town'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 Franchisee capital improvements and infrastructure.

(4) The Franchisee shall meet with the Town, 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 Town and the Franchisee agree to cooperate in the planning and implementation of emergency operations response procedures.

Section 8. Indemnification.

A. To the extent permitted by law, the Franchisee shall indemnify, defend and hold the Town, its agents, officers, officials (elected and appointed) 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 Franchisee or its agents, officers, officials (elected and appointed) servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted Franchisee in this Franchise; provided, however, such defense or indemnification shall not extend to injury or damage to the extent caused by the willful, tortious or negligent acts, failures and/or omissions of the Town, its agents, officers, officials (elected and appointed), employees, volunteers or assigns. Inspection or acceptance by the Town of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance by the Franchisee of any of its indemnification obligations.

B. In the event any such claim or demand be presented to or filed with the Franchisee or the Town arising out of or relating to the acts or omissions in whole or in part of the other Party, the indemnified Party shall promptly notify the other Party, 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.

C. However, 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 Town and Franchisee, their officers, officials (elected and appointed), employees and agents, Franchisee's liability hereunder shall be only to the extent of Franchisee's negligence and the Town's liability shall be only to the extent of the Town'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.

D. The Franchisee shall not introduce or use any known or classified hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, subcontractors or any person under its control to do the same. The Franchisee will be solely responsible for and will defend, indemnify, and hold the Town, its officers, officials (elected and appointed), employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney

fees and costs, arising out of or in connection with the cleanup or restoration of the Franchise Area to the extent caused by the Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by the Franchisee's agents, contractors, subcontractors, or other persons acting under the Franchisee's control, whether or not intentional.

E. The provisions of this Section 8 shall survive the expiration, revocation, or termination of this Franchise.

Section 9. Remedies to Enforce Compliance.

A. In addition to any other remedy provided herein, the Town reserves the right to pursue any remedy available at law or in equity to compel or require the Franchisee and/or its successors and assigns to comply with the terms hereof and the pursuit of any right or remedy by the Town shall not prevent the Town from thereafter declaring a forfeiture revocation for breach of the conditions herein. In addition to any other remedy provided herein, the Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the Town, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms hereof. Provided, further, that by entering into this franchise, it is not the intention of the Town or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver. The parties acknowledge that, in the event of a violation of this Franchise, the other party shall be entitled to preliminary and permanent injunctive relief without having to prove actual damages or immediate or irreparable harm or to post a bond.

B. If either party violates, or fails to comply with any of the provisions of this franchise, or should it fail to heed or comply with any notice given to such party under the provisions of this franchise (the "Defaulting Party"), the other Party (the "Non-defaulting Party") shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of any such breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within (30) thirty days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or the Defaulting Party does not substantially comply with the specified conditions or otherwise commence work to cure the default, the Non-defaulting Party may pursue any available remedy at law or in equity as provided in this section, or in the event the Franchisee has failed to timely cure the breach, the Town, at its discretion, may elect to (1) revoke this Franchise pursuant to this section, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee.

C. In addition to other remedies provided herein, if the Franchisee is not in compliance with requirements of this Franchise, and if a good faith dispute does not exist concerning such

compliance, the Town may place a moratorium on issuance of pending Franchisee permits until compliance is achieved.

Section 10. 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 Town from granting other franchises over, upon, and along the Franchise Area which do not interfere with Franchisee's rights under this Franchise. This Franchise shall not prohibit or prevent the Town from constructing, altering, maintaining, or using the Franchise Area or affect the jurisdiction of the Town over the same or any part thereof.

Section 11. Jurisdiction.

This Franchise is intended to convey limited rights and interest only as to those roads, rights-of-way, public utility easements in which the Town has an actual interest within the Franchise Area. It is not a warranty of title or of interest in Town rights-of-way.

Section 12. Franchise Term.

This Franchise shall have a term of fifteen (15) years from its Effective Date as defined in Section 34 herein, provided this Franchise shall be automatically extended for an additional five (5) year period unless either Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

Section 13. Taxes, Fees, and Assessments.

A. Permit Fees. The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in this franchise or under the laws of the Town.

B. Utility Tax. The Franchisee acknowledges that the Town is authorized under the laws of the State of Washington to impose certain taxes on Franchise and does assess a utility tax on Franchisee pursuant to YPMC Section 3.16.040(E). Nothing in this Franchise shall exempt Franchisee from payment of any and all such taxes lawfully imposed by the Town. If payment of such taxes is not made by Franchisee in a timely manner, the Town reserves the right, at its sole option, to suspend the rights granted to Franchisee by this Franchise until such time that Franchisee pays such taxes or the parties otherwise resolve any matter concerning payment thereof. The Franchisee shall have the right to recover the Utility Tax from the Franchisee's ratepayers residing within the Town and may identify the Utility Tax as a separate billing item on the utility bills.

C. Franchise Fee. Franchisee acknowledges and agrees that in consideration of the rights granted the Franchisee under this Franchise, the Town is authorized to assess on Franchisee a one percent (1%) franchise fee ("Franchise Fee") on Franchisee's Revenue beginning the first day of the first month occurring at least sixty (60) days following the Effective Date of this

Franchise, and continuing thereafter until the termination of this Franchise, including any extension of the term of this Franchise.

1. The Franchise Fee shall be paid on a quarterly basis, in accordance with the Utility Tax payments. The Franchisee shall have the right to recover the Franchise Fee from the Franchisee's ratepayers residing within the Town and may identify the Franchise Fee as a separate billing item on utility customer billings.

2. The Franchisee agrees that while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise Fee set forth herein.

D. Fire Suppression Water Facilities. If the Franchisee determines to bill the Town for fire suppression water facilities as defined in RCW 70A.145.020(1) during the term of this Franchise, the Town shall have the right, at its sole discretion, to terminate this Franchise, including the right to receive the Franchise Fee and Utility Tax from the Franchisee. The parties agree that nothing in this agreement shall prevent the Franchisee from recovering all costs of fire suppression water facilities and services from customers.

E. Failure to Pay. If the Franchisee fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

F. Rate Change. The Town reserves the right to modify any tax, fee, or other charge to be imposed on and collected from the Franchisee, and such modification may be performed at any time by the Town, consistent with applicable law. However, any modified amount shall not be collected/paid by the Franchisee unless and until the Town provides the Franchisee with written notice 90 days in advance of the date the Town expects the Franchisee to collect/pay the modified amount.

Section 14. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this Franchise and all other applicable Town ordinances and codes, including the Town's Road Standards, as they now exist or may hereafter be amended, provided the Town shall not unreasonably affect or modify any portion of this Franchise without the Franchisee's written approval. Nothing in this Franchise limits the Town's lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the Town of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the Town rights-of-way covered by this Franchise. Any location, relocation, erection or excavation by Franchisee shall be performed by Franchisee in accordance with applicable federal, state and Town rules and regulations, including the Town 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 Franchisee.

B. If any territory served by Franchisee is annexed to the Town after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to the 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 Fee for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next quarterly billing period and paid to the Town at the same time as the fee for the Franchise Area is paid for that quarterly billing period.

C. The Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all Facilities, equipment, and connections in, over, under, and upon the rights of way, wherever situated or located, shall at all times be kept and maintained in a safe condition. The Franchisee shall comply with all federal, State, and Town safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Upon reasonable notice to the Franchisee, the Town reserves the general right to inspect the Facilities covered by this Franchise to evaluate if they are constructed and maintained in a safe condition.

D. If an unsafe condition or a violation of Section 14(C) is found to exist, and becomes known to the Town, the Town agrees to give the Franchisee timely written notice of such condition and afford the Franchisee a reasonable opportunity to repair the same. If the Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the Town may make such repairs or contract for them to be made; provided said repairs and alterations are consistent with applicable laws, rules, regulations, including the Franchisee's water/sewer codes and system standards. All costs, including administrative costs, incurred by the Town in repairing any unsafe conditions shall be borne by the Franchisee and reimbursed to the Town.

E. The Franchisee shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and Town statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The Franchisee's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The Franchisee shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the Town or Town's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of the Franchisee's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise Area or job site. The Franchisee shall provide reasonable and appropriate access for the Town and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

F. Additional safety standards required include the following:

(1) All installations of Facilities shall be installed in accordance with industry-standard engineering practices.

(2) Any opening or obstruction in the rights-of-way made by the Franchisee in the course of its operations shall be protected by the Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

G. On notice from the Town that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the Town, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the Town. The stop work order shall:

(1) Be in writing;

(2) Be given to the person doing the work or posted on the work site;

(3) Be sent to the Franchisee by overnight delivery or personally delivered to the Franchisee;

(4) Indicate the nature of the alleged violation or unsafe condition; and

(5) Establish conditions under which work may be resumed.

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, vacuum relief apparatus, pump stations, generators, electrical control panels, power meters, telephone connections, grinder pumps, automated reading equipment and appurtenances, 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 Town, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the Town's land use and zoning code and applicable development pre-approved plans.

Section 16. Record of Installations and Service.

A. With respect to excavations by the Franchisee and the Town within the Franchise Area, Franchisee and the Town 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. Further, upon request from a third party or the Town's contractor, the Franchisee shall locate its Facilities consistent with the requirements of chapter 19.122 RCW.

B. Upon written request of the Town, the Franchisee shall provide the Town 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.

C. Upon written request of the Franchisee, the Town shall provide the Franchisee with the most recent update available of any plan of potential improvements to its Facilities 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.

Section 17. Shared Use of Excavations.

A. The Franchisee and the Town 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 Area informed of its intent to undertake such construction work. The Franchisee and the Town 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 the Franchisee, the Town, or Third Party, 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, ordinances or Franchisee safety policies prohibit or restrict the proximity of other utilities or facilities to Franchisee'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.

C. The Town reserves the right to not allow open trenching within any Town street within five (5) years following a street overlay or improvement project; however, the Franchisee may open a trench provided it grinds and overlays the excavation area in accordance with the Town

written and adopted street overlay policy. If possible, the Parties will make all reasonable efforts to communicate any needed shared excavations one to two years in advance.

Section 18. Insurance.

The Franchisee shall procure and maintain for the duration of the Franchise and as long as Franchisee has Facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the rights-of-way.

A. No Limitation. The Franchisee's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of the Franchisee to the coverage provided by such insurance, or otherwise limit the Town's recourse to any remedy available at law or in equity.

B. Minimum Scope of Insurance. The Franchisee shall obtain insurance of the types and coverage described below:

(1) Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The Town shall be named as an additional insured under the Franchisee's Commercial General Liability insurance policy with respect this Franchise using ISO endorsement CG 20 12 05 09 or CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.

(2) Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

(3) Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

(4) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

(5) Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The Town shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

C. Minimum Amounts of Insurance. The Franchisee shall maintain the following insurance limits:

(1) Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

(2) Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

(3) Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.

(4) Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

D. Other Insurance Provisions. The Franchisee's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the Town. Any insurance, self-insurance, or self-insured pool coverage maintained by the Town shall be in excess of the Franchisee's insurance and shall not contribute with it.

E. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII or a recognized risk management pool that complies with the standards adopted by the Washington State Risk Manager.

F. Verification of Coverage. The Franchisee shall furnish the Town with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement if available, evidencing the insurance requirements of the Franchise. Upon request by the Town, the Franchisee shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all subcontractors' coverage.

G. Contractors. The Franchisee shall cause each and every contractor to provide insurance coverage that complies with all applicable requirements of the Franchisee-provided insurance as set forth herein, except the Franchisee shall have sole responsibility for determining the limits of coverage required to be obtained by contractors.

H. Notice of Cancellation. The Franchisee shall provide the Town with written notice of any policy cancellation within two business days of their receipt of such notice.

I. Failure to Maintain Insurance. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of Franchise, upon which the Town may, after giving five business days' notice to the Franchisee to correct the breach, terminate the Franchise or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the Town on demand.

J. Franchisee – Self-Insurance. The Franchisee may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by chapter 48.62 RCW. In this regard, the Town understands that as a member of such a program the Franchisee is not able to name the Town as an “additional insured” under the liability coverage provided by the joint self-insurance program. If the Franchisee is self-insured or becomes self-insured during the term of the Franchise, the Franchisee or its affiliated parent entity shall comply with the following: (i) provide the Town, upon request, a copy of the Franchisee’s or its parent company’s most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) the Franchisee or its parent company is responsible for all payments within the self-insured retention; and (iii) the Franchisee assumes all defense and indemnity obligations as outlined in Section 8.

Section 19. Abandonment and/or Removal of Franchisee Facilities.

The Parties agree that the standard practice will be to abandon underground Franchisee Facilities in-place whenever practical, subject to the following conditions:

A. The Franchisee shall continue to own and be responsible for any such Facilities abandoned within the Franchise Area.

B. The Town shall have the right to require the Franchisee to remove any Facilities abandoned within the Franchise Area if the Town reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a Town project within the Franchise Area and the Town determines there is no other feasible alternative to the removal of the Facility. The Town will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned Franchisee Facilities, then the Franchisee shall, at the Franchisee’s expense, remove such abandoned Facilities by its own forces, by contract or by participating in the Town’s public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the Franchisee shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

C. If the Franchisee becomes aware that removal of any abandoned Facilities within the Franchise Area is required to eliminate or prevent an emergency or hazardous condition that endangers the property, life, health or safety of any person or entity, the Franchisee shall, at no cost to the Town, remove such decommissioned Facilities.

D. Within one hundred and eighty days (180) of the Franchisee's permanent cessation of use of its Facilities as determined by the Franchisee, or any portion thereof, the Franchisee shall provide the Town with record drawings showing the location of the Facilities to be abandoned.

E. Franchisee Facilities that are abandoned in-place shall be abandoned pursuant to Town standards, to the satisfaction of the Mayor or designee.

F. The Parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

Section 20. Vacation of Franchise Area.

In the event the Town vacates any portion of the Franchise Area containing Franchisee's Facilities during the Term, the Town shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The Town shall notify the Franchisee in writing not less than sixty (60) days ("Vacation Notice") before vacating all or any portion of any such area, provided the Franchisee has Facilities in such area. The Town shall secure all necessary approvals from owners of any vacated areas so as to ensure Franchisee's ability to access and use the area for purposes of its water and wastewater Facilities consistent with this Franchise Agreement, unless otherwise agreed in writing by the Franchisee. All such approvals will be in writing, recorded, with copy delivered to Franchisee. The Town may, after providing the Vacation Notice, terminate this Franchise with respect to such vacated area. This Franchise is terminated with respect to the vacated area upon the consummation of the vacation by the Town.

Section 21. Assignment.

All of the provisions, conditions, and requirements herein contained shall be binding upon the Franchisee, and no right, privilege, license or authorization granted to the Franchisee hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the Town, which the Town may not unreasonably withhold, condition or delay.

Section 22. Reservation of Rights.

The Town reserves the right, upon thirty (30) days written notice to the Franchisee, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, rule, regulation, or ordinance adopted pursuant to the Town's legitimate police power to protect the safety and welfare of the general public; provided that the Town shall not unreasonably affect or modify any portion of this Franchise without the Franchisee's written approval. Unless otherwise mandated by state or federal law, if any term or condition of this Franchise and any term or condition of any Town code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control. Any amendment or modification required under this paragraph will be reduced to writing, with copy provided to Franchisee contemporaneous with the required notice.

Section 23. 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 e-mail 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 email, it shall be deemed given at the time of the sender's receipt of electronic confirmation, but if sent after regular business hours will be deemed the next business day. 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 Town: Town Mayor
 4030 – 95th Ave NE
 Yarrow Point, WA 98004
 (425) 454-6994
 mayor@yarrowpointwa.gov

To Franchisee: Director of Utilities
 450 – 110 Ave NE
 PO Box 90012
 Bellevue, WA 98009-9012
 (425) 452-6932
 UtilCOBAdmin@bellevuewa.gov

Any Party may change its contact information and address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this Section to the other Party.

Section 24. Severability.

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

Section 25. 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 26. 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 may 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 27. Attorney Fees.

All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each Party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. In any claim or lawsuit for damages arising from the parties' performance of this Franchise, each Party shall pay all of its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit either Party's right to indemnification under Section 8 of this Franchise.

Section 28. Governing Law/Venue.

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

Section 29. 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 30. Amendment.

A. 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 8 "Indemnification" 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 Town in conjunction with the exercise (or failure to exercise) by the Franchisee 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.

B. 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 (1) and (2) referenced above, the provisions of this Franchise shall control.

Section 31. Directions to Town Clerk.

The Town Clerk is hereby authorized and directed to forward certified copies of this Franchise to the Franchisee as set forth in this Franchise. The Franchisee 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 Franchisee by this ordinance and file with the Town Clerk the Statement of Acceptance, attached hereto as Exhibit A and incorporated by reference.

Section 32. No Third-Party Beneficiaries.

There are no third-party beneficiaries of this Franchise.

Section 33. Survival.

All of the provisions, conditions, and requirements of Section 4 (Relocation of Facilities), Section 6 (Right-of-Way Management), Section 8 (Indemnification), Section 9 (Remedies to Enforce Compliance), Section 13 (Taxes, Fees, and Assessments), Section 14 (Compliance with Codes and Regulations), Section 17 (Shared use of Excavations), Section 18 (Insurance), Section 19 (Abandonment and/or removal of Franchisee Facilities) of this Franchise shall, in addition to any and all other obligation and liabilities the Franchisee may have to the Town at common law, by statute, or by contract, survive this Franchise, and any renewals or extensions, to the extent provided for in those sections.

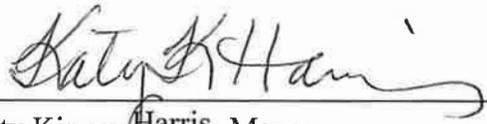
Section 34. Acceptance and Effective Date of Franchise.

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

Section 35. Effective Date of Ordinance.

This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

PASSED BY THE TOWN COUNCIL OF THE TOWN OF YARROW POINT THIS 14th DAY OF JANUARY, 2025; AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 14TH DAY OF JANUARY, 2025.



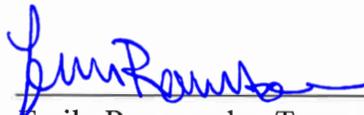
Katy Kinney Harris, Mayor

ATTEST:



Bonnie Ritter, Town Clerk-Treasurer

APPROVED AS TO FORM:



Emily Romanenko, Town Attorney

PASSED BY THE TOWN COUNCIL: January 14, 2025
PUBLISHED: January 17, 2025
EFFECTIVE DATE: January 22, 2025
ORDINANCE NO.: 762

EXHIBIT A

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of the City of Bellevue hereby declares on behalf of the City the acceptance of the nonexclusive franchise to the City of Bellevue approved by the Yarrow Point Town Council on January 14, 2025, by the adoption of Yarrow Point Town Ordinance No. 762.

DATED this _____ day of _____, 2025.

FRANCHISEE – CITY OF BELLEVUE

By: _____
Diane Carlson
Its: City Manager

EXHIBIT B

DEPICTION OF TOWN CORPORATE BOUNDARIES

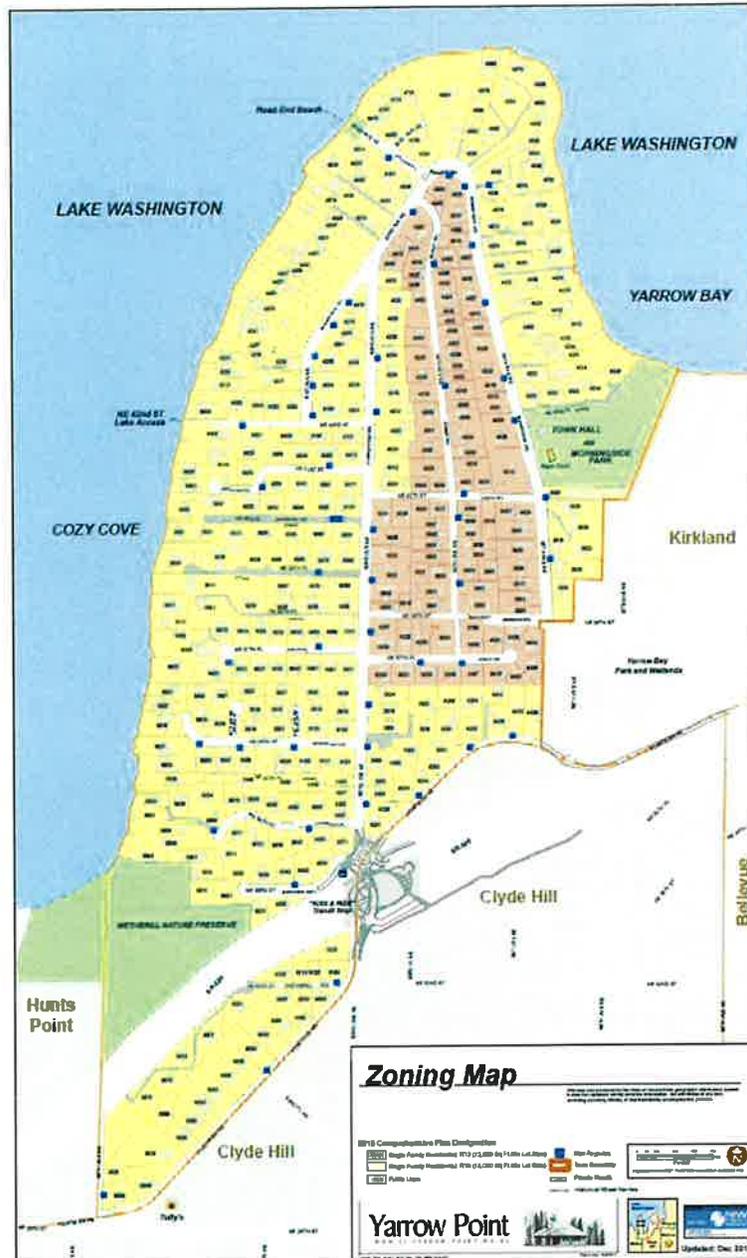


Exhibit C

City of Bellevue – Utilities Department Staff Contacts

<p><u>24-Hour Emergencies & Utilities Maintenance</u> For flooding, water main breaks, sewer overflows, and/or pollutant spills.</p>	<p>425-452-7840</p>
<p><u>Water Superintendent</u></p>	<p>Kipp Fockler <u>kfockler@bellevuewa.gov</u> 425-452-2923</p>
<p><u>Wastewater Superintendent</u></p>	<p>Jeff Kollenborn <u>jkollenbor@bellevuewa.gov</u> 425-452-7244</p>
<p><u>City of Bellevue – Utilities Dept. Leadership</u> If the superintendents listed above are not available, then please contact the personnel in the following elevation order:</p> <ul style="list-style-type: none">- Operation & Maintenance Manager - Assistant Director – Operations and Maintenance - Utilities Deputy Director	<p>Michael Evans <u>mevans@bellevuewa.gov</u> 425-452-2922</p> <p>Chad Beck <u>cbeck@bellevuewa.gov</u> 425-452-6130</p> <p>Joseph Harbour <u>jharbour@bellevuewa.gov</u> 425-452-2014</p>