

OGDEN
MURPHY
WALLACE

P.L.L.C. ATTORNEYS AT LAW

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ALDERWOOD WATER
DISTRICT

2100 Westlake Center Tower • 1601 Fifth Avenue • Seattle, WA 98101-1686 • (206) 447-7000 • Fax (206) 447-0215

Greg A. Rubstello

May 15, 2000

Michael P. Ruark
Inslee Best Doezie & Ryder
777 - 108th Avenue N.E., Suite 1900
P.O. Box C-90016
Bellevue, WA 98009-9016

Arden Blacklidge
District Manager
Alderwood Water District
3626 - 156th S.W.
Lynnwood, WA 98037

Re: Franchise with City of Bothell

Dear Gentlemen:

Enclosed you will find a copy of the Franchise Ordinance approved by the Bothell City Council. When approved by the Board of Commissioners, please sign the attached "Acceptance of Franchise" and return it to this office for filing with the City Clerk.

If you have any questions concerning the approved Franchise Ordinance please feel free to contact me directly.

Very truly yours,

OGDEN MURPHY WALLACE, P.L.L.C.


Greg A. Rubstello

GAR/sbb
Enclosure

cc: JoAnne Trudel, Bothell City Clerk
James Thompson, Bothell City Manager

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ORDINANCE NO. 1802 (2000)

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING UNTO ALDERWOOD WATER DISTRICT, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, FOR THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TWO YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER AND SEWER SYSTEMS, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

WHEREAS, Alderwood Water District, ("Alderwood") has requested that the City Council grant it a nonexclusive franchise, and

WHEREAS, Alderwood has authority under RCW 57.08 to contract with other municipal corporations, and to construct, add to, maintain and supply water works and systems of sewer; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040), NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF BOTHELL, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. Pursuant to RCW 35.A.47.040, the City of Bothell, a Washington municipal corporation (hereinafter the "City"), hereby grants to Alderwood, a municipal corporation organized under the laws of the State of Washington, its

heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise beginning on the effective date of this ordinance, set forth in Section 23 herein. The term of the franchise shall be for an initial term of two (2) years. The term shall automatically renew on the anniversary date each year thereafter unless one party gives the other party written notice of intent to terminate the franchise at least six (6) months in advance of the anniversary date.

This franchise shall grant Alderwood the right, privilege and authority to construct, operate, maintain, replace, and repair all necessary facilities for water delivery and sewer collection delivery systems, in, under, on, across, over, through, along or below the public right-of-ways located in the City of Bothell, as approved under City permits issued pursuant to this franchise and applicable City codes and regulations. Public "rights-of-way" as used herein means all public streets, roads, alleys and highways of the City as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said right-of-ways. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-ways, thoroughfares and other public properties of every type and description.

Section 3. Franchise Fee. In consideration of this franchise and the City's agreement of non-assumption under Section 5. of this Franchise Agreement, Alderwood agrees to pay to the City a franchise fee in an amount and in a manner consisting of a monthly payment made on or before the 30th day of each month during the term of the franchise beginning the month of July, 2000, in an amount equal to 5% of gross income (subject to revision by the City) received by Alderwood from customers within the City of Bothell. "Gross income" means the value proceeding or accruing from the performance of Alderwood's water and sewer business, including operations incidental thereto, but without any deduction on account of the cost of the commodity furnished or sold, the cost of materials used, labor costs, interest, discount, delivery costs, taxes, or any other expense whatsoever paid or accrued and without any deduction on account of losses.

Section 4. Relocation of Water and Sewer System Facilities.

4.1 Alderwood agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that Alderwood shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of main required to be temporarily disconnected or removed.

4.2 Any condition or requirement imposed by the City upon any person or entities (including, without limitation, any condition or requirement imposed pursuant to any

contract or in conjunction with approvals for permit for zoning, land use, construction or development) which reasonably necessitates the relocation of Alderwood's facilities within the franchise area shall be a required relocation for purposes of subsection 4.1 above.

4.3 If the City determines that the project necessitates the relocation of Alderwood's then existing facilities, the City shall:

- A. At least sixty (60) days prior to the commencement of such improvement project, provide Alderwood with written notice requiring such relocation, provided, however, the City shall notify Alderwood of the need for a relocation as a result of a capital improvement project of the City as soon as the City with reasonable diligence becomes aware that relocation of utilities are required; and
- B. Provide Alderwood with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Alderwood's facilities so that Alderwood may relocate its facilities in other City right-of-way in order to accommodate such improvement project.
- C. After receipt of such notice and such plans and specifications, Alderwood shall complete relocation of its facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the City's project. Alderwood shall not be considered in breach of this Section if it is delayed by the time required to comply with state bid law

requirements for contracting out any of the relocation work and Alderwood has diligently pursued the award of the necessary contract.

4.4 Alderwood may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Alderwood in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, Alderwood shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Alderwood full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, Alderwood shall relocate its facilities as otherwise provided in this Section. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

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

Section 5. Non-Assumption. In consideration of the franchise fee and other terms and conditions of this franchise accepted by Alderwood, the City agrees that for the term of this franchise, the City shall not exercise its statutory authority (RCW 35.13.A) to assume jurisdiction over Alderwood or Alderwood's responsibilities, property, facilities and equipment within the City's corporate limits.

Section 6. Maps and Records. After construction of new facilities in the City rights-of-way, and as a condition of this franchise, Alderwood shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records revealing the final location and condition of its facilities within the public right-of-ways and public places.

Section 7. Excavations. During any period of relocation, construction or maintenance, all work performed by Alderwood or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Alderwood shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Whenever Alderwood shall excavate in any public right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its facilities, it shall secure from the City the permit(s) to do so and, in addition, shall give the City at least five (5) working days prior notice of its intent to commence work in the public right-of-way. In no case shall any work commence within any public right-of-way without the required permit(s), except as otherwise provided in this franchise ordinance.

If either the City or Alderwood shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

- B. such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
- C. either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Section 8. Restoration after Construction. Alderwood shall, after abandonment approved under Section 14 herein, or installation, construction, relocation, maintenance or repair of its facilities within the franchise area, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Alderwood agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the franchise area or other affected area at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 9. Emergency Work -- Permit Waiver. In the event of any emergency in which any of Alderwood's facilities located in or under any street breaks, becomes damaged, or if Alderwood's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Alderwood shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve Alderwood from

the requirement of obtaining any permits necessary for this purpose, and Alderwood shall apply for all such permits not later than the next succeeding day during which the Bothell City Hall is open for business.

Section 10. Dangerous Conditions, Authority for City to Abate. Whenever the construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Alderwood, at Alderwood's own expense, to take actions to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event an emergency or other condition requiring the Public Works Director to direct Alderwood to take action to protect property or facilities, the Public Words Director or his designee shall contact Alderwood as follows, unless the City is notified in writing by Alderwood of a different contact: name: _____; phone number: _____; cell/pager number: _____.

In the event that Alderwood fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Alderwood to request Alderwood affect the immediate repair, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions, and Alderwood shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 11. Indemnification. Alderwood hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by Alderwood's own employees for which Alderwood might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of Alderwood, its agents, servants, officers or employees in the performance of this franchise, and any rights granted hereunder.

Inspection or acceptance by the City of any work performed by Alderwood at the time of completion of construction shall not be grounds for avoidance by Alderwood of any of its obligations under this Section. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that Alderwood refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Alderwood, then Alderwood shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

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 Alderwood and the City, its officers, employees and agents, Alderwood's obligation hereunder shall be only to the extent of Alderwood's negligence. It is further specifically and expressly understood that the

indemnification provision provided herein constitutes Alderwood's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Section 12. Insurance. Alderwood shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Alderwood, its agents, representatives or employees. Alderwood shall provide a copy of a Certificate of Insurance to the City for its inspection prior to the adoption of this franchise ordinance, and such insurance certificate shall evidence a policy of insurance that includes:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

Alderwood may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing substantially the same coverage as set forth above.

Section 13. Modification. The City and Alderwood hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 14. Forfeiture and Revocation. If Alderwood willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Alderwood by the City under the provisions of this franchise, then Alderwood shall, at the election of the Bothell City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon notice to Alderwood.

Section 15. Remedies to Enforce Compliance. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Alderwood to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of Alderwood's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Alderwood and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 16. City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by reasonable regulations the location,

elevation, manner of construction and maintenance of water and sewer delivery facilities by Alderwood in the public rights-of-way, and Alderwood shall promptly conform with all such regulations, unless compliance would cause Alderwood to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein; provided that in no event shall the City during the term of this franchise exercise its assumption authority as agreed in Section 5 above. The provisions of Chapter 17.24 of the Bothell Municipal Code shall apply except as inconsistent or in conflict with the provisions of this Franchise Ordinance.

Section 17. Cost of Publication. The cost of the publication of this Ordinance shall be borne by Alderwood.

Section 18. Acceptance. Within sixty days after the passage and approval of this Ordinance, this franchise may be accepted by Alderwood by its filing with the City Clerk an unconditional written acceptance thereof. Failure of Alderwood to so accept this franchise within said period of time shall be deemed a rejection thereof by Alderwood, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 19. Survival. All of the provisions, conditions and requirements of Sections 3, Relocation of Water and Sewer Facilities; 4, Excavation; 7, Restoration after Construction; 9, Dangerous Conditions; and 11, Indemnification; of this franchise shall be in addition to any and all other obligations and liabilities Alderwood may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to Alderwood for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof. All

of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Alderwood and all privileges, as well as all obligations and liabilities of Alderwood shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Alderwood is named herein.

Section 20. Assignment. This agreement may not be assigned or transferred without the written approval of the City, except Alderwood may freely assign this Agreement in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. Alderwood shall provide prompt, written notice to the City of any such assignment.

Section 21. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF BOTHELL
Public Works Director
18305 - 101st N.E.
Bothell, WA 98011

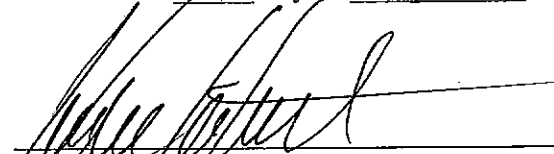
ALDERWOOD WATER DISTRICT
General Manager
3626 156th Street S.W.
Lynnwood, WA 98037-2399

Section 22. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either

party may request renegotiation of those remaining terms of this franchise materially affected by such courts' ruling.

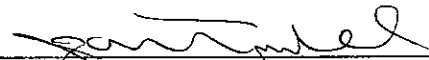
Section 23. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED by the Bothell City Council this 1st day of May, 2000.



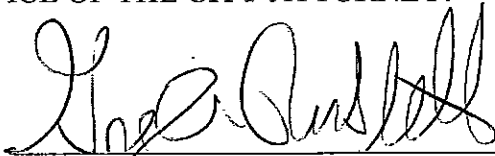
MICHAEL W. NOBLET,
Mayor

ATTEST/AUTHENTICATED:



CITY CLERK, JOANNE TRUDEL

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY 

GREG A. RUBSTELLO

FILED WITH THE CITY CLERK: April 21, 2000
PASSED BY THE CITY COUNCIL: May 1, 2000
PUBLISHED: May 10, 2000
EFFECTIVE DATE: May 15, 2000
ORDINANCE NO. 1802 (2000)

SUMMARY OF ORDINANCE NO. 1802 (2000)

of the City of Bothell, Washington

On the 1st day of May, 2000, the City Council of the City of Bothell, passed Ordinance No. 1802⁽²⁰⁰⁰⁾. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF BOTHELL, WASHINGTON, GRANTING UNTO ALDERWOOD WATER DISTRICT, A MUNICIPAL CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, FOR THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TWO YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER AND SEWER SYSTEMS, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF BOTHELL, WASHINGTON.

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

DATED this 2nd day of May, 2000.



CITY CLERK, JOANNE TRUDEL

FILED WITH THE CITY CLERK: April 21, 2000
PASSED BY THE CITY COUNCIL: May 1, 2000
PUBLISHED: May 10, 2000
EFFECTIVE DATE: May 15, 2000
ORDINANCE NO. 1802 (2000)

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Alderwood Water District hereby declares on behalf of Alderwood Water District, the acceptance of the nonexclusive franchise to Alderwood Water District approved by the Bothell City Council on MAY 1, _____, 2000, by the adoption of Bothell City Ordinance No. 1802 (2000)

DATED this 5th day of JUNE, 2000.

ALDERWOOD WATER DISTRICT

By: Paul D. McIntyre
Its: PRESIDENT