

**ORDINANCE NO. 417**

AN ORDINANCE OF THE CITY OF BRIER GRANTING ALDERWOOD WATER AND WASTEWATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER AND WASTEWATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF BRIER, WASHINGTON, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

WHEREAS, ALDERWOOD WATER AND WASTEWATER DISTRICT, a Washington special purpose municipal corporation ("District"), owns water and wastewater facilities ("Facilities") located in the City of Brier, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

WHEREAS, RCW 57.08.005(3) and (5) authorize the District to conduct water and wastewater throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

WHEREAS, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water and wastewater facilities; and

WHEREAS, the City and the District have drafted a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; and

WHEREAS, the Parties acknowledge that in 2013 the Legislature passed SHB 1512 which recognizes that water utilities serve a dual function of providing safe drinking water and providing water for fire protection, and which further provides that water utilities are authorized to "allocate and recover the cost of fire suppression water facilities and services from their customers as costs of complying with state laws and regulations, or from customers based on service to, benefits conferred upon, and burdens and impacts caused by various classes of customers, or both;" and

WHEREAS, SHB 1512 further authorizes cities to contract with water utilities for the provision of fire suppression water facilities and services; and

WHEREAS, the District has historically provided fire protection water services and facilities within its district boundaries; and

WHEREAS, the District is willing to continue providing fire suppression water services and facilities within the City and will continue to allocate the costs of such facilities and services to its customers within the City (1) in order to comply with state





to the same condition existing prior to any such excavation, installation, construction, relocation, maintenance or repair. Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

C. If it is determined that the District has failed to restore the right-of-way in accordance with this Section, the City shall provide the District with written notice, which shall include a description of actions the City believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this Section. The rights granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

#### Section 4. Relocation of Facilities.

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of storm drainage lines, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvements (for purposes other than those described in section 4(D) below) and such project requires the relocation of District's then existing Facilities within the Franchise Area, the City shall:

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

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

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

B. After receipt of such notice and such plans and specifications, District shall relocate such Facilities within the Franchise Area so as to accommodate such street and utility improvement project; provided, however, District may, within a reasonable time not exceeding thirty (30) days after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. The City shall within a reasonable time not exceeding thirty (30) days, evaluate such alternatives and advise District in writing whether one or more of the alternatives is suitable to

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

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

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

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

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

For relocations of single service lines of one and one half inch (1 1/2") or less, single fire hydrants or blow-off assemblies, the District shall pay the first Five Thousand Dollars (\$5,000) of each such relocation, and the City and the District each shall pay fifty percent (50%) of the cost in excess of Five Thousand Dollars (\$5,000). The dollar amounts provided in this paragraph shall be adjusted annually by the increase, if any, in the amount equal to the CPI-U for the Seattle-Everett area, June to June.

Minor adjustments to District Facilities to accommodate normal maintenance, repair and preservation of City improvements within the Franchise area shall be paid for by the District. This includes work to accommodate road repaving and surface repairs.

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

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

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

E. This Section 4 shall govern all relocations of District's Facilities required in accordance with this Franchise.

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

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

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

#### Section 5. Planning Coordination.

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

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

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

(3) The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

(4) The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of District's Comprehensive Water or Wastewater Comprehensive

Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

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

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

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

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

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

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

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

(7) Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records that show the vertical and horizontal location of its facilities within rights-of-way, measured from the center line of the rights-of-way. Maps shall be provided in the digital electronic format used by the City or the District unless the Parties agree on another format.

#### Section 6. Indemnification.

A. District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of District or its agents, servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted District in this Franchise; provided, however, such indemnification shall not extend to injury or damage

to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

B. City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise or in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

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

D. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of City and District, their officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

#### Section 7. Default.

If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably



necessary and so long as the District commences promptly and diligently to effect such compliance, provided good faith dispute does not exist concerning such compliance.

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

#### Section 8. Non-exclusive Franchise.

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

#### Section 9. Franchise Term.

This Franchise shall have an initial term that expires September 30, 2034. The Franchise shall automatically renew on that date for an additional ten (10) year term unless either party provides the other party with a written demand to renegotiate or terminate the Franchise no later than September 30, 2033.

#### Section 10. Franchise Fee.

As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a Franchise Application Fee of One Thousand Dollars (\$1,000.00) within thirty days of the effective date of this franchise, and an annual franchise fee ("Franchise Fee") of One Thousand Dollars (\$1,000.00). The Franchise Fee shall be paid by the District to the City by January 31 of each calendar year, provided the Franchise Fee shall be prorated in the first calendar year based on the Effective Date of the Franchise.

#### Section 11. Non-assumption.

In consideration of the District's acceptance of the burden to pay for hydrant costs as further provided in Section 13 herein, District's payment of such Franchise Payment to the City as provided in Section 12 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over

the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise; provided, this provision shall not be construed to prohibit or prevent the City from responding to requests for public records related to such attempts by other cities or towns or from performing other duties or obligations required by law.

Section 12. Franchise Payment.

A. In consideration of the rights granted District under this Franchise for Facilities in the Franchise Area and the City's agreement to not exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW to attempt to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise, the District shall pay to the City a franchise payment in the amount of one percent (1%) of the District's Revenue per section 1H of this Franchise (the "Franchise Payment"), beginning the first day of the first calendar quarter at least sixty (60) days after the Effective Date of this Franchise, subject to the provisions of Section 12(C) herein.

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

C. Franchise Payments shall be paid to the City in quarterly installments. Franchise Payments for each calendar quarter or portion thereof shall be due thirty (30) days following the end of the calendar quarter (quarters ending at the end of March, June, September and December).

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

E. If the Washington State Legislature authorizes the City to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or other tax (collectively "utility tax") upon District based on District's revenues, or upon any other basis, District's Franchise Payments herein to the City shall be credited against such a utility tax as the City may impose and District shall be obligated to pay only the statutorily defined tax liability in excess of franchise payments.

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

#### Section 13. Fire Hydrant Costs.

A. As partial consideration for the rights granted to the District under this Franchise, the District agrees to be responsible for the cost to provide and maintain Fire Hydrants within the Franchise Area, whether installed by the District or by third parties as part of the District's water system.

B. In the event a court of competent jurisdiction determines the City may not by contract transfer the City's responsibility to pay for the provision of Fire Hydrants to the District, or legislative action prevents the District from accepting responsibility for the cost to provide and maintain Fire Hydrants, the District's obligation to pay for the provision and maintenance of Fire Hydrants under this Section 13 shall be terminated in accordance with and to the degree required to comply with such court or legislative action. In the event the District's obligation to pay for the provision and maintenance of Fire Hydrants is so terminated, both Parties shall have the right within ninety (90) days of any such court determination or legislative action to request Franchise amendments to take effect no sooner than the District's obligation to pay is terminated. In the event the Parties do not reach agreement on the amendment of the Franchise within one hundred eighty (180) days of a Party's request to amend the Franchise, this Franchise shall terminate without further action by the Parties.

C. The City shall be responsible to provide fire protection and fire suppression services to the public within the Franchise Area which the Parties acknowledge is a governmental function, and the District does not represent or warrant sufficient water pressure or flow from fire hydrants for the purposes of fire suppression and protection. The District shall not have any duty, obligation or responsibility to provide fire protection and fire suppression services to the public within the Franchise Area. Nothing in this section prevents the City from transferring fire protection and fire suppression services to a fire protection district, regional fire authority or other governmental provider of such services.

#### Section 14. Water Provided for City Purposes.

A. The District agrees to furnish to the City a reasonable amount of water for

street cleaning at no charge. At such time that the District has a metered water outlet available that is reasonably accessible to City crews, the City shall take street-cleaning water from that site whenever possible. Water from such metered water outlets also shall be at no charge. In all cases, the City shall report quantities used to the District.

B. The District shall furnish water for firefighting and the training of fire department personnel at no charge to the City.

#### Section 15. Compliance with Codes and Regulations.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and city rules and regulations, including but not limited to City public works policies; policies relating to the Facilities; pre-approved plans; and any required permits, licenses, regulatory fees, and safety standards then in effect.

B. In the event that any territory served by District is annexed to the City after the effective date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise Payment for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next calendar quarter and paid to the City at the same time as the fee for the Franchise Area is paid for that quarter.

#### Section 16. Location of Facilities and Equipment.

With the exception of components that are traditionally installed above ground such as fire hydrants, blow-offs, vault lids, risers, manhole covers, pump stations, lift stations, generators, electrical control panels, power meters, telephone connections, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's Code and applicable development pre-approved plans.

#### Section 17. Record of Installations and Service.

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

Upon written request of the City, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its improvements located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

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

#### Section 18. Shared Use of Excavations.

A. District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area informed of its intent to undertake such construction work. District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

B. If at any time, or from time to time, either District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

(1) No statutes, laws, regulations or ordinances prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

(2) Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made;

(3) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or improvement project. District shall be given written notice at least one hundred eighty (180) days prior to the commencement of the project. Required trenching due to an emergency will not be subject to five (5) year street trenching moratoriums.

#### Section 19. Insurance.

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

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

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

#### Section 20. Vacation of Franchise Area.

If the City determines to vacate any right-of-way which is part of the Franchise Area where District Facilities are located or maintained, any ordinance vacating such right-of-way shall provide and condition such vacation on District obtaining at no cost to District a permanent easement at least fifteen (15) feet wide in such vacated right-of-way for the construction, operation, maintenance, repair and replacement of its facilities located and to be located in such vacated right-of-way.

#### Section 21. Assignment.

All of the provisions, conditions, and requirements herein contained shall be binding upon District, and no right, privilege, license or authorization granted to District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the

purposes of this provision and shall not be subject to the City's approval. Notwithstanding the foregoing, District may assign this Franchise to an affiliate, parent or subsidiary or as part of any corporate financing, reorganization or refinancing which does not require assignment to any but an affiliate, parent or subsidiary without the consent of, but upon notice to, the City.

Section 22. Notice.

Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by facsimile transmission with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by facsimile transmission, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City:                   City Clerk  
                                  City of Brier  
                                  2901 228th St. SW  
                                  Brier, Washington 98036  
                                  Phone: (425) 775-5440  
                                  Fax: (425) 672-9025

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

Any Party may change its address for the purpose of receiving notices as herein provided by a written notice given in the manner aforesaid to the other Party.

Section 23. Severability.

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

Section 24. 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 25. Alternate Dispute Resolution.

If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

Section 26. Governing Law/Venue.

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

Section 27. 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 28. Amendment.

This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 6 above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:



(1) References this Franchise; and

(2) States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

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

Section 29. Directions to City Clerk.

The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District as set forth in this ordinance. District shall have thirty (30) days from the receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District by this ordinance.

Section 30. District Acceptance of Franchise.

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

Section 31. Effective Date of Ordinance.

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

Section 32. Effective Date of Franchise.

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

PASSED by the City Council and APPROVED by the Mayor this 12<sup>TH</sup> day of August, 2014.

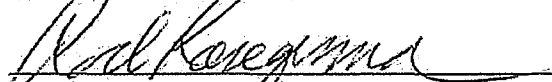
APPROVED:

  
MAYOR BOB COLINAS

ATTEST/AUTHENTICATED:

  
CITY CLERK, PAULA SWISHER

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

  
ROD KASEGUMA

FILED WITH THE CITY CLERK:	08/01/2014
PASSED BY THE CITY COUNCIL:	08/12/2014
PUBLISHED:	08/15/2014
EFFECTIVE DATE:	08/20/2014

**SUMMARY OF ORDINANCE NO. 417**

of the City of Brier, Washington

---

On the 12<sup>th</sup> day of August, 2014, the City Council of the City of Brier, passed Ordinance No. 417. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF BRIER GRANTING ALDERWOOD WATER AND WASTEWATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER AND SEWER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF BRIER, WASHINGTON, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.

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

DATED this 13<sup>th</sup> day of August, 2014.

  
CITY CLERK, PAULA SWISHER