

ORDINANCE NO. 09-11

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

WHEREAS, Covington Water District, a Washington special purpose municipal corporation ("District"), owns water facilities ("Facilities") located in the City of Covington, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way (ROW) as hereinafter defined; and

WHEREAS, RCW 57.08.005(3) and (5) authorize the District to conduct water 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 sewer 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;

NOW THEREFORE, the City Council of the City of Covington do ordain as follows:

Section 1. Definitions. Where used in this franchise (the "Franchise") these terms have the following meanings:

(a) "City" means the City of Covington, a Washington Municipal Corporation, and its respective successors and assigns.

(b) "District" means the Covington Water District, a Washington special purpose Municipal Corporation, and its respective successors and assigns.

(c) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and rights-of-way of the City as now laid out, platted, dedicated or improved in District's service area within the present corporate boundaries of the City, and as such corporate boundaries may be extended within District's service area by annexation or otherwise.

(d) "Facilities" means tanks, meters, pipes, mains, services, valves, blow-offs, vaults, fire hydrants, risers, manholes, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lift stations, lines, and all other necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

(e) "Ordinance" means this Ordinance No. 09-11, which sets forth the terms and conditions of this Franchise.

(f) "Revenue" means income derived by the District from the sale of metered water to customers whose connections to the District's water system are located within the City. Revenue shall not include: late fees; impact or mitigation fees; any type of connection charges, general facilities charges, or local facilities charges; grants; contributed assets (CIAC); loans; income from legal settlements not related to water sales to District 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 system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

(g) Types of Work: Class A, B or C:

"Class A work" means work that has little or no effect on the ROW. Examples of Class A work include accessing existing manholes, hand holes and vaults, repairing or maintaining hydrants while breaking four (4) square feet or less of pavement, raising valves, trimming trees, providing cathodic protection, replacing above-ground meters, and installing water sampling stations. A permit is not needed for Class A work.

"Class B work" means work that has a moderate effect on the ROW. Examples of Class B work include making an initial pavement cut of between four (4) and fifteen (15) square feet, removing two (2) or fewer panels of sidewalk and associated curb and gutter, trenching the ROW for twenty-five (25) linear feet or less outside the paved area, installing short side utility services while disturbing between four (4) and fifteen (15) square feet of pavement, pushing under a road for pipe-bursting / pipe replacement work, and installing underground vaults. The permit requirements, if any, for Class B work shall be determined by the City on a case-by-case basis. Any Class B work requiring traffic control or inspection shall require a permit. A programmatic permit may be issued by the City for low-impact and routine Class B work including, but not limited to, flushing.

"Class C work" means work that has a major impact on the ROW. Examples of Class C work includes constructing any capital related work, installation of 100 linear feet or more of underground utility piping within the ROW or attaching to any bridge structure, and constructing a main line or any open cut road crossing. A permit is always necessary for Class C work.

Any work to be performed on SE 272nd (Kent Kangley Road) shall be classified only as either Class B or Class C work.

Section 2. Franchise.

A. Facilities within Franchise Area. The City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across the Franchise Area for purposes of its water utility functions as defined in Title 57 RCW beginning on the Effective Date of this Ordinance.

B. Maintenance of Facilities within Franchise Area. The City does hereby grant to District the right, privilege, authority and franchise to maintain and operate its facilities located in, upon, over,

under, along, through and across the Franchise Area. Activities may include, but not be limited, to flushing, hydrant exercise and other non-contractor maintenance work. This type of work shall be considered Class B work pursuant to Section 1(g).

C. **Permission Required to Enter Onto Other City Property.** Nothing contained in this Ordinance is to be construed as granting permission to District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this Ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City.

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

E. **Exclusive Operation of Water System.** The City hereby grants the District the exclusive right to operate a water system.

Section 3. Non-interference of Facilities.

A. District'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 and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington. Nothing herein shall preclude District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided District receives prior City approval, which shall not be unreasonably withheld.

B. Whenever it is necessary for District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards and at least 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. 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.

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(B) 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; and
- (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.
- (4) Provide information to the District regarding street overlay projects for the opportunity to adjust valves located or to adjust valves that are deemed a traffic issue by the City. Valve adjustment is considered Class B work and a permit is not normally required, unless the project is part of a larger road repair or construction job. The permit will be obtained by the entity serving as the lead agency for the project.
- (5) Enter an Interlocal Agreement with the District for the coordination and allocation of costs of work accomplished through competitive bidding when it is deemed efficient and cost effective for citizens and ratepayers of the two municipalities to complete construction work under one contract.

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

- (I) if the relocation occurs within six (6) years after District initially constructed such Facility, then the relocation shall be at the City's sole cost, except as otherwise provided below relating to phased projects;
- (II) if the relocation occurs more than six (6) years but within ten (10) years after District initially constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and District shall pay the remaining fifty percent (50%); and
- (III) if the relocation occurs more than ten (10) years after District initially constructed such Facility, then the relocation shall be at District's sole cost.

- (IV) For the purpose of planning, 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.

The City and District agree that phased projects require special treatment in order to avoid potential inequities in the assignment of relocation costs when Facilities installed as part of a planned phased project need to be relocated within the 6-year period described in subparagraph (I) above. In situations where a subsequent phase of a project requires a modification to Facilities constructed during an earlier phase of the same project within the referenced 6-year period, the parties agree that the City shall not be responsible for relocation costs associated with modifications to, or replacements of, the first forty (40) feet of water pipe (i.e., two lengths of standard length pipe) that were installed in an earlier phase of the project. The City and District acknowledge that this special rule relating to phased projects will help facilitate the efficient planning and implementation of phased projects.

B. 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 District for any and all costs and expense incurred by District in the relocation of District's Facilities; and
- (2) protect, defend, indemnify and save 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's 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's Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District's Facilities.

C. This Section 4 shall govern all relocations of District's Facilities required in accordance with this Franchise. Any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other rights not in the Franchise Area shall be borne by the City, provided the City obtains the District's prior consent to such location or relocation.

D. District recognizes the need for the City to maintain adequate width for installation and maintenance of City owned utilities such as, but not limited to, sanitary sewer, water, storm drainage and telecommunication facilities. Thus, the City reserves the right to maintain reasonable clear zones within the public right-of-way for installation and maintenance of said utilities. The clear zones for each right-of-way segment shall be noted and conditioned with the issuance of each right-of-way permit. If adequate clear zones are unable to be achieved on a particular right-of-way, District shall locate in an alternate right-of-way, obtain easements from private property owners, or propose alternate construction methods, which maintain and/or enhance the existing clear zones.

E. 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 either 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 from another entity for the project.

Section 5. Planning Coordination.

A. Growth Management. The parties agree to participate in the development of, and reasonable updates to, the other party's planning documents as follows:

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

2. 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 District's operations and is updated to ensure continued relevance at reasonable intervals.

3. 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 its Comprehensive Water Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

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

1. By February 1st of each year, District shall provide the City with a schedule of its planned capital improvements which may affect the right-of-way for that year.

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

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

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

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

6. 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 right-of-

way, measured from the center line of the right-of-way, using a minimum scale of one inch equals one hundred feet (1"=100'). Maps shall be provided in Geographical Information System (GIS) or other digital electronic format used by the City or the District, and upon request, in hard copy plan form used by City or District.

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; provided further, this indemnity provision shall not be construed to be a waiver of any legal obligation or duty District may have to charge the City and any legal obligation or duty the City may have to pay for the cost of fire hydrants and related fire suppression services and facilities provided by District within the Franchise Area, nor shall this indemnity provision be construed to be a waiver of any legal obligation or duty District may have to charge the City for any services District may provide the City which are determined in the future to be a governmental function which the City should provide or pay for.

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 to the other party, the party shall promptly notify the other party thereof, and the party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

D. City hereby releases and agrees to indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, costs, judgments, awards or liability to any person arising from District's compliance with this Franchise.

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

F. 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 District shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon District a written order to so comply within thirty (30) days from the date such order is received by District. If 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 is given to District, 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 (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 District may so comply shall be extended for such time as may be reasonably necessary and so long as 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 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. Subject to the provisions of Section 10 and 11 below, this Franchise is and shall remain in full force and effect from its Effective Date as defined in Section 26 herein until November 30, 2021, and on November 30 every ten (10) years thereafter, the term shall automatically be extended for an additional ten (10) years, unless either District or the City gives the other party written notice of non-renewal prior to any such renewal date, in which case this Franchise shall terminate ten (10) years after such renewal date; however, 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 passage date of the Ordinance referred to in Section 28 herein, file with the City its written acceptance of this Franchise, in a form acceptable to the City Attorney.

Section 10. 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 the City 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 District.

B. In the event that any territory served by District is annexed to the City after the effective date of this Franchise, this franchise agreement shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this franchise agreement for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation.

Section 11. 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, 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 Land Use Code and applicable development pre-approved plans.

Section 12. 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 their 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 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.

As-built drawings of the precise 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.

Section 13. Shared Use of Excavations. 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 Areas 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.

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:

- (a) 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;

(b) such joint use shall not unreasonably delay the work of the party causing the excavation to be made;

(c) 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.

The City reserves the right to require District to joint trench with other facilities if both parties are anticipating trenching within the same portion of the Franchise Area and provided that the terms of (a), (b) and (c) above are met.

Section 14. Insurance. District shall maintain in full force and effect throughout the term of this Franchise, a minimum of One Million Dollars (\$ 1,000,000.00) 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.

Section 15. 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 perpetual easement 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 16. 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 RCW 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.

Section 17. 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 Covington
16720 SE 271st Street, Suite 100
Covington, WA 98042
253-638-1110

To District : General Manager
Covington Water District
18631 SE 300th Place
Covington, WA 98042
253-631-0565

With copy to: General Counsel
Inslee, Best, Doezie & Ryder, PS
Symetra Financial Center
Suite 1900
777 - 108th Avenue N.E.
Bellevue, WA 98009

Any party hereto 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 hereto.

Section 18. 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 19. 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 20. 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 a 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.

Section 21. 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 King County Superior Court, King County, Washington.

Section 22. 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 23. 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:

(a) references this Franchise; and

(b) 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 24. 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 25. 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 26. 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 five (5) days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

Section 27. Superseding Clause. This ordinance supersedes any and all other franchise agreements, ordinances, and/or resolutions between the City and District.

Passed by the City Council on the 27th day of September, 2011.


Mayor Margaret Harto

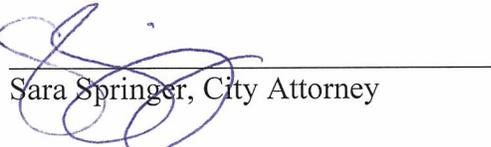
PUBLISHED: 09-30-2011

EFFECTIVE: 10-05-2011

ATTESTED:


Sharon Scott, City Clerk

APPROVED AS TO FORM:


Sara Springer, City Attorney

UNCONDITIONAL ACCEPTANCE OF CITY FRANCHISE

I, the undersigned official of Covington Water District, am authorized to bind Covington Water District and to unconditionally accept the terms and conditions of the foregoing Franchise (Ordinance No. _____), which are hereby accepted by Covington Water District.

I certify that this Franchise and all terms and conditions thereof are accepted without qualification or reservation.

DATED this _____ day of _____, 2011.

By: _____

Name: _____

Title: _____

Witness: _____

Name: _____