

Clerk's  
Receiving Number R-00-127  
Date 5/22/00  
City \_\_\_\_\_  
Clerk \_\_\_\_\_

FRANCHISE NO. C-00-121

A FRANCHISE OF THE CITY OF MAPLE VALLEY, WASHINGTON, GRANTING UNTO THE COVINGTON WATER DISTRICT, A MUNICIPAL CORPORATION, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TWENTY YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF MAPLE VALLEY, WASHINGTON.

**Section 1. Recitals**

A. The Covington Water District has requested that the City Council of the City of Maple Valley grant to the Covington Water District a nonexclusive franchise; and

B. The City Council has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040); and

C. The franchise granted herein is intended to replace and supercede the Interlocal Agreement between the City of Maple Valley and the Covington Water District for Service and Certain Hookups to Water Systems Infrastructure.

**Section 2. Franchise Granted.** Pursuant to RCW 35A.47.040, the City of Maple Valley, a Washington municipal corporation (hereinafter the "City"), hereby grants to Covington Water District, a municipal corporation organized under the laws of the State of Washington (hereinafter the "District"), its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of 20 years, beginning on the effective date of this franchise.

The District and the City may agree to extend the term of this franchise on substantially the same terms and conditions as set forth herein for up to two extensions of five years per extension.

This franchise grants the District the right, privilege and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities for a water system, in, under, on, across, over, through, along or below the public rights-of-way located in the City of Maple Valley, as approved under City permits issued pursuant to this franchise. If, upon expiration or termination of the franchise, the City requires the District to remove any or all facilities or related appurtenances, the City and the District agree that the provisions of RCW 35.13A.050 shall apply to all "serving facilities," and that the costs of removal of such facilities not assumed by the City shall be allocated equitably based on the relative benefit to each party.

**Section 3. 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 rights-of-way, streets, avenues or all other public lands and properties of every type and description. 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-way, thoroughfares and other public properties of every type and description.

**Section 4. Relocation of Water Facilities.** If, at any time the City, deeming it advisable to improve any of its streets, avenues, alleys, roads or public property as hereinbefore designated, by grading or re-grading, planking or paving same, or altering, changing, repairing or re-improving same, the District, upon written notice by the City, shall, at its own expense,

immediately so raise, lower or move its line of pipes or improvements to conform to such new grades as may be established, or place said pipe or improvements in such location or position as shall cause the least interference with any improvements or work thereon as contemplated by the City, and the City shall in no way be held liable for any damages to the District that may occur by reason of the City's improvements, repairs or maintenance, or by the exercise of any rights so reserved in this section or grant.

**Section 5. The Districts Maps, Records and Plans.** . At no cost to the City, the District shall provide the City with a map or maps accurately reflecting the horizontal and vertical location and configuration of all its facilities, including abandoned facilities, within the public rights-of-way and upon City property. The District shall provide the City with updated maps and drawings upon request.

**Section 6. Excavations and Permits.** At no time during any construction, relocation, or maintenance shall the District occupy or obstruct in any manner whatsoever more than one-half of the traveled portion of any street, alley, or public way over which this franchise is given unless otherwise permitted by the Public Works Director. The District 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.

Whenever the District shall excavate in any public right-of-way or other public property for the purpose of non-emergency installation, construction, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so and upon obtaining a permit shall give the City at least ten days' notice during the normal work week of the District's intent to commence

work in the public right-of-way. In no case shall any work commence within any public right-of-way or other public property without a permit, except as otherwise provided in this franchise.

The District shall include with the right-of-way permit application plans (in permit-form and plans in triplicate) showing the position and location of all mains, laterals, pipes, lines and extensions sought to be constructed, laid, installed, erected, or relocated; showing the relative position of such infrastructure to existing road, street, alley, right-of-way or property lines upon plans drawn to scale; designating said roads or streets by their names and numbers; showing widths of same; and providing outlines of existing local improvements, such as sidewalks, curbs, gutters, shoulders of roadway, ditches, paved or otherwise surfaced roadways, roadways to property lines, turnouts, parking strips, telephone, electric or other utility distribution poles, water pipelines, conduits, sewer and gas pipelines, etc, as may exist on the ground sought to be occupied. The District shall specify the class and type of materials and equipment proposed to be used, and the proposed method of safeguarding and facilitating public traffic during construction. All such materials and equipment shall be new or like-new and of a class, type, and kind approved by the City. The manner of excavation, construction, installation, backfill, and the type and size of temporary structures including traffic turnouts and road obstructions shall meet with the approval of, and shall be constructed under the supervision of the City's Public Works Department.

Both parties shall be obligated to share in capital improvements as follows: when planning a paving or widening road improvement project, the City will provide the District with six months' notice of the commencement of such project. The District may coordinate its improvement activity to occur in conjunction with the City's project. However, should the District not coordinate such

improvement activity to occur in conjunction with the City's project, and the District thereafter constructs improvements in the right of way within seven (7) years of the City's project thereon, then the District shall be obligated to fully pave the right of way wherein the District's improvement is located. "Fully pave" as used in this Section shall mean paving the entire roadwaywidth in the area of the District's improvement (e.g. both lanes of a two-lane road), and a length equal to the area of disturbance, and shall not mean patching the roadway.

**Section 7. Restoration after Construction.** The District shall, after abandonment approved under Section 11 herein, or after any installation, construction, relocation, maintenance, or repair of water facilities within the franchise area, restore the surface of the right-of-way or public property 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. The District 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 obligation to restore the right of way shall not be limited solely to public appurtenances, but shall also extend to those places within the public right of way that have been improved by private property owners. By way of illustration and not limitation, these areas shall include lawns, landscaping, mailboxes driveways, and sidewalks. This restoration obligation shall not extend to shrubbery and plants. The District shall notify private property owners adjacent to the right of way of the District's planned

improvement. Such notice will be provided within a reasonable time prior to the improvement in order to enable private property owners who have expended efforts in improving the right of way or who have placed mailboxes or other appurtenances thereon sufficient opportunity to remove or protect such improvements. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

**Section 8. Emergency Work -- Permit Waiver.** In the event of any emergency in which any of the District's facilities located in or under any street, breaks, are damaged, or if the District's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the District 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 the District from the requirement of obtaining any permits necessary for this purpose, and the District shall apply for all such permits not later than the next succeeding day during which City Hall is open for business. On the same day the District commences any emergency work, the District shall make reasonable attempts to notify the City of this activity by contacting the City's police dispatch center.

**Section 9. Dangerous Conditions, Authority for City to Abate.** Whenever 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 the District, at the District'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 that the District 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, 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 the District 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. The District shall relocate, at its cost, any structures that the City Engineer objectively determines are located in a place or in a way so as to constitute a danger to the public.

**Section 10. Indemnification.** The District 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 the District's own employees to which the District might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, including refunds of charges or fees paid by customers, of which it is alleged or proven that the acts or omissions of the District, its agents, servants, officers or employees in performing this franchise caused or contributed thereto, including claims arising against the City by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the District's exercise of the rights granted herein, including payment of any monies to the City, or by virtue of the City's permitting the District's use of the City's rights-of-way or other public property, based

upon the City's inspection or lack of inspection of work performed by the District, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

Inspection or acceptance by the City of any work performed by the District at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. 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 the District refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal which the parties agree shall decide the matter), to have been a wrongful refusal on the part of the District, then the District shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

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 the District and the City, its officers, employees and agents, the District's liability hereunder shall be only to the extent of the District's negligence unless otherwise provided by law. It is further specifically and expressly understood that the indemnification provided herein constitutes the District'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 11. **Unauthorized Facilities:** Within 30 days following written notice from the City, if the District has any unauthorized system, facility or related appurtenances within the public rights-of-way of the City, then it shall, at its own expense, remove such facilities or appurtenances from the public rights-of-way of the City. A system or facility is unauthorized and subject to removal in any of the following circumstances:

- A. Upon abandonment of a facility within the public rights of way should another utility need that portion of the right of way in which the abandoned facilities are located. In the event another utility requires the use of that portion of the right of way in which the District's abandoned facilities are located, then the District shall be responsible for payment to such other utility of the District's proportionate share of the cost for removal of the abandoned infrastructure. The cost for removal of the abandoned infrastructure shall be valued at the time the other utility installs its infrastructure.
- B. If the system or facility was constructed or installed without the prior grant of an authorization.
- C. If the system or facility was constructed or installed without the prior issuance of a required right-of-way permit.
- D. If the system or facility was constructed or installed at a location not permitted by the authorization.

Provided, however, that the City may, in its sole discretion, allow the District to abandon such facilities in place. No facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of facilities must

be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon permanent abandonment in place of the property of the District, the property shall, if desired by the City, become the property of the City, and the District shall submit to the City an instrument in writing, approved by the City Attorney, transferring to the City the ownership of such property, free and clear of any lien or encumbrance. The provisions of this section shall survive the expiration, revocation, or termination of an authorization granted under this franchise agreement .

**Section 12. Street Vacations.** The City may have occasion to vacate certain streets, public ways or areas that have the District's lines and facilities located thereon. The City agrees to exert reasonable good faith efforts to reserve an easement for the District's lines and facilities when a street, public way or area is vacated. If it is not feasible for the City to reserve an easement for the District's line(s) and facilities, the proponents of the vacation shall be required (by the City) as part of land use or other permitting approvals, to reimburse the District all costs to relocate said line(s) and facilities. The provisions of this Section shall survive the expiration, revocation, or termination of this franchise agreement.

**Section 13. Modification.** The City and the District 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. In the event that legislation may be passed giving local governing bodies authority to fix just, reasonable, and compensatory rates for services under its utility franchises, then the District agrees that the City may reopen this franchise for the purpose of fixing such compensation.

**Section 14. Interlocal Agreement Superseded.** The parties agree and acknowledge that the execution of the franchise herein shall operate to supersede the Interlocal Agreement and Amendment thereto between the City and the District for Service and Certain Hookups to Water Systems Infrastructure.

**Section 15. Allocation of Equivalent Residential Units (ERUs).** The District agrees that the allocation of new service in the City based upon a pre-set ERU-per-year methodology, such as was used between the City's incorporation and the execution of this franchise, shall not be used for the term of this agreement. The District further agrees that, barring legislative, regulatory, or court action that prohibits such commitments, the District shall provide adequate water supply to meet the growth needs of the City for the term of this agreement.

**Section 16. Forfeiture and Revocation.** If the District 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 the District by the City under the provisions of this franchise, then the District shall, at the election of the Maple Valley City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to the District. 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 the District to comply with the provisions of this franchise and to recover damages and costs incurred by the City by reason of the District's failure to comply.

**Section 17. Remedies to Enforce Compliance.** In addition to any other remedy provided

herein, the City reserves the right to pursue any remedy to compel or force the District 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 18. City Ordinances and Regulations.** Nothing herein shall be deemed to direct or 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 appropriate regulations the location, elevation, manner of construction and maintenance of any facilities by the District, and the District shall promptly conform with all such regulations, unless compliance would cause the District to violate other requirements of law.

**Section 19. Survival.** All of the provisions, conditions and requirements of Sections 4, Relocation of Water Facilities; 9, Dangerous Conditions; 10, Indemnification; and 11, Abandonment of the District's Facilities, of this franchise shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to the District for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof (however, such survival period extends only through the applicable statute of limitations period). All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the District and all

privileges, as well as all obligations and liabilities of the District shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the District is named herein.

**Section 20. Severability.** If any section, sentence, clause or phrase of this franchise 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 franchise. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

**Section 21. Assignment.** This agreement may not be assigned or transferred without the written approval of the City, except the District 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 and provided that the City's approval shall not be unreasonably withheld. 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. The District shall provide prompt, written notice to the City of any such assignment.

**Section 22. 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 Maple Valley  
P.O. Box 320  
Maple Valley, WA 98038  
Attention: City Manager

Covington Water District  
18631 S.E. 300 Place  
Kent, WA 98042  
Attention: General Manager

**Section 23. Effective Date.** This Franchise is effective upon the later date of the signature of the parties thereto.

IN WITNESS WHEREOF, the parties have caused this franchise to be executed.

\_\_\_\_\_  
John Starbard, City Manager

05/22/00  
\_\_\_\_\_  
DATE

\_\_\_\_\_  
Judith Nelson, General Manager

5-11-00  
\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
Lisa M. Marshall, City Attorney

State of Washington }  
County of King }

I certify that I know or have satisfactory evidence that JOHN F. STARBARD is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the CITY MANAGER of the City of Maple Valley, Washington, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5/22/00

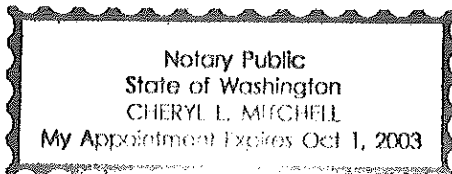


\_\_\_\_\_  
(Notary Signature)  
IRVALEENE M. MONCI  
My appointment expires 12-25-03

State of Washington }  
County of King }

I certify that I know or have satisfactory evidence that Judith L. Nelson is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the General Manager of Covington Water District to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 5-16-00



\_\_\_\_\_  
(Notary Signature)  
My appointment expires 10-1-2003