

SPONSORED BY: _____

PROPOSED BY: Executive

INTRODUCTION DATE: _____

ORDINANCE NO. _____

GRANTING NORTHWEST WATER ASSOCIATION A FRANCHISE AND THE RIGHT, PRIVILEGE, AND AUTHORITY THEREUNDER TO LOCATE, SET, ERECT, LAY, CONSTRUCT, EXTEND, SUPPORT, ATTACH, CONNECT, MAINTAIN, REPAIR, REPLACE, ENLARGE, OPERATE AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, ACROSS AND THROUGH THE FRANCHISE AREA TO ALLOW FOR THE PROVISION OF WATER SERVICES.

WHEREAS, Northwest Water Association (hereinafter referred to as "Northwest Water"), has applied for a twenty-five (25) year franchise; and

WHEREAS, the Home Rule Charter for Whatcom County authorizes the County Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use of any street, road, or public place;

WHEREAS, RCW 36.55.010, Whatcom County Charter Section 9.30, and Whatcom County Code Chapter 12.24 address the requirements pertaining to the granting of franchises by the County; and

WHEREAS, Northwest Water has operated a system of water mains and water distribution lines and other facilities within a portion of Whatcom County under a previous twenty five-year franchise ordinance, adopted by the County Council on October 5, 1993 and approved by the County Executive;

WHEREAS, Northwest Water seeks a non-exclusive twenty-five (25) year franchise to construct, erect, alter, lay, support, connect, improve, renew, replace, repair, operate and maintain water transmission and distribution facilities upon, under, over, across and along certain roads and other areas in Whatcom County, Washington; and

WHEREAS, the application of Northwest Water has come on regularly to be heard by the County Council on the ___ day of _____, 2019, and notice of this hearing having been duly published on the ___ day of _____, 2019, and the ___ day of _____, 2019, in the Bellingham Herald, a daily newspaper published in Whatcom County having county-wide circulation; and

WHEREAS, it appears to the Council that notice of said application and hearing thereon has been given as required by law in RCW 36.55.040; and

WHEREAS, this Council finds, after having considered said application and being otherwise fully advised in the premises, that it is in the public interest for this Council to grant the franchise for a period of twenty-five (25) years; and

WHEREAS, Whatcom County and Northwest Water intend that the previous franchises granted to Northwest Water that pertain to water lines for the provision of water services shall be terminated and be replaced by this Franchise;

NOW, THEREFORE, BE IT ORDAINED by the Whatcom County Council that the language set forth below, in Sections 1 through 20, shall constitute the franchise agreement between Whatcom County and Northwest Water, which shall be and become effective as set forth in Section 13 thereof:

Section 1. Definitions.

1.1 Where used in this franchise agreement ("Franchise"), the following terms shall mean:

1.1.1 "County" means the County of Whatcom, a political subdivision of the State of Washington, and its successors and assigns.

1.1.2 "Northwest Water" means Northwest Water Association, and its successors and assigns.

1.1.3 "Franchise Area" means all public county roads, county public ways, and county property now owned or hereafter dedicated to the County within Sections 33, 34, and 35, Township 39 North, Range 2 East of W.M., and Sections 2 and 3, Township 38 North, Range 2 East of W.M. in Whatcom County, Washington as may hereafter be amended and attached hereto.. In addition any portion of Smith Road, Northwest Drive, Waschke Road, Aldrich Road, Slater Road, and Pacific Highway outside of the previous described area.

1.1.4 "Facilities" means, collectively, any and all water transmission and distribution systems, including but not limited to tanks, meters, pipes, mains, services, valves, manholes, pressure reducing valves ("PRVs"), pump stations, meter stations and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground.

1.1.5 "Ordinance" means Ordinance No. _____, which sets forth the terms and conditions of this Franchise.

1.1.6 "Right-of-Way": As used herein shall refer to the surface of and space along, above, and below any public street, road, way, lane, drive, alley or easement within the Franchise Area;

1.1.7 "Relocation": As used herein shall mean to protect, support, temporarily disconnect, relocate and/or remove Northwest Water facilities within or from within the County right-of-way.

Section 2. Facilities Within Franchise Area.

2.1 The County does hereby grant to Northwest Water a Franchise, and the right, privilege, and authority thereunder, to construct, operate, maintain, replace, and use all

necessary equipment and facilities for a public water system, in, under, on, across, over, through, along, or below the public rights-of-way located in the Franchise Area.

2.2 This Franchise is subject to the terms and conditions hereinafter set forth.

Section 3. County Authority.

3.1 The County, in granting this Franchise, does not waive any rights which it now has or may hereafter acquire with respect to the Franchise Area, and this Franchise shall not be construed to deprive the County of any powers, rights, or privileges which it now has, or may hereafter acquire, to regulate the use of and to control the Franchise Area.

Section 4. Noninterference of Facilities.

4.1 As to new Facilities, Northwest Water's Facilities shall be placed and maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Prior to the installation of new Facilities within the Franchise Area, Northwest Water may request that the County determine whether the proposed placement of the Facilities will unreasonably interfere with the free and safe passage of traffic, and the County shall make such determination in writing within a reasonable period of time. If the proposed location is not approved by the County Engineer, the County Engineer shall advise in writing what reasonable modifications to the proposed location of the Facilities are necessary for the County Engineer to issue a determination that the proposed location of the Facilities will not unreasonably interfere with the free and safe passage of traffic.

If Northwest Water proceeds to install new Facilities without first obtaining the County Engineer's determination that the proposed location of the Facilities will then unreasonably interfere with the free and safe passage of traffic then, upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Northwest Water which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Northwest Water shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Northwest Water by such County codes and ordinances.

4.2 Northwest Water's existing Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with all applicable laws, rules, and regulations. Upon determination by the County that current placement of particular Facilities unreasonably interferes with free or safe passage of traffic, the County shall notify Northwest Water which shall, at its own expense, act promptly to rectify the problem in consultation with the County. Northwest Water shall exercise its rights under this Franchise and within the Franchise Area in accordance with all County codes and ordinances governing use and occupancy of the Franchise Area; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this

Franchise, the terms and conditions of this Franchise shall govern and control to the extent authorized by law; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Northwest Water by such County codes and ordinances.

4.3 All construction or installation of such Facilities, service, repair, or relocation of the same, performed over, above, along or under the Franchise Area shall be done in such a manner as not to interfere unreasonably with the construction and maintenance of other existing utilities, lines, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of the Franchise Area. The owners of all utilities, public or private, installed in the Franchise Area prior in time to the Facilities of Northwest Water shall have preference as to the positioning and location of such utilities so installed with respect to Northwest Water. Such preference shall continue in the event of the necessity of relocating or changing the grade of the Franchise Area. Northwest Water shall have such preference as to owners of all utilities, public or private, initially installed in the Franchise Area subsequent in time to Northwest Water's Facilities.

4.4 The locating, laying, construction, operation and maintenance of Northwest Water's Facilities authorized by this Franchise shall not preclude the County, its agents or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to Northwest Water's Facilities, provided that Northwest Water and the County shall first check with the locator service to determine whether or not any of Northwest Water's lines are located in the proposed work area. Upon finding from the locator service that Northwest Water does have lines located within the proposed work area, the County shall provide Northwest Water with seventy-two (72) hours notice of proposed work, except if a lesser time for notice is warranted by emergency, in order that the Northwest Water may protect its Facilities. Failure of Northwest Water to properly notify the locator service of the location of its lines and Facilities shall relieve County of its duty to provide Northwest Water the otherwise-required advance notice of proposed work.

4.5 Northwest Water shall maintain all above-ground Facilities that it places in the Franchise Area. In order to avoid interference with the County's ability to maintain the Franchise Area, Northwest Water shall provide a clear zone of five (5) feet on all sides of such above-ground Facilities. If Northwest Water fails to comply with this provision, and by its failure, property is damaged, then Northwest Water shall be deemed responsible for all damages caused thereby and the County shall be released from any responsibility therefore. For these purposes, "clear zone" means an area that is mowed or otherwise maintained so that the Facilities are readily visible to County maintenance operations.

Section 5. Construction Within the Franchise Area.

5.1 All construction and installation work within the Franchise Area shall be subject to the approval and pass the inspection of the County Engineer, and shall conform to all applicable local, state and federal standards, codes or regulations, and the County expressly reserves the right to prescribe standards as to how and where Facilities shall be installed. The standards shall be consistent with reasonable standards and standard engineering practices in the applicable industries.

5.2 Prior to commencement of construction of any new Facilities, Northwest Water shall

first file with the County Engineer its application for permits to do such work, together with plans and specifications in duplicate showing the position and location of all such Facilities sought to be constructed, laid, installed or erected at that time showing their position relative to existing County roads, rights-of-way, or other County property within the Franchise Area upon plans drawn to scale. The Facilities shall be laid in conformity with said plans and specifications of definite location, except in instances in which deviation may be allowed thereafter in writing by the County Engineer. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, backfill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc. No such construction shall be commenced without Northwest Water first securing a written permit from the County Engineer, including approval endorsed on one set of plans and specifications returned to Northwest Water. All such work shall be subject to the approval of and shall pass the inspection of the County Engineer. Northwest Water shall pay all costs of and expenses incurred in the examination, inspection and approval of such work on account of granting the said permits.

5.3 In any work which requires breaking of soil within the Franchise Area for the purpose of laying, relaying, connecting, disconnecting, constructing, maintaining and repairing Northwest Water's Facilities, and making connections between the same to structures and buildings of consumers or making connections to other Facilities now in existence or hereafter constructed, Northwest Water shall be governed by and conform to the general rules adopted by the County Engineer; and Northwest Water at its own expense and with due diligence shall complete the work for which the soil has been broken and forthwith replace the work and make good the Franchise Area and leave the same in as good condition as before the work was commenced; provided, however, that no such breaking of the soil within the Franchise Area shall be done prior to the obtaining of a permit issued by the County Engineer. Applications for such a permit shall be accompanied by specifications for the restoration of the Franchise Area to the same condition as it was in prior to such breaking, and such specifications must be approved by the County Engineer before such breaking of the soil is commenced; provided further, that the County Engineer may require a performance bond in a reasonable sum sufficient to guarantee that such Franchise Area shall be restored to the same condition as it was in prior to such breaking of the soil, the amount of said bond to be fixed by the County Engineer. Northwest Water shall pay all costs of and expenses incurred in the examination, inspection and approval of such restoration. The County Engineer may at any time do, order, or have done, any and all work that the County Engineer considers necessary to restore to a safe condition any Franchise Area left by Northwest Water or its agents in a condition dangerous to life or property, and Northwest Water upon demand shall pay to the County all costs of such work, the County having first provided notice of such condition to Northwest Water and a reasonable time to cure such unsafe condition, provided however, in the event of damage to the Franchise Area caused by Northwest Water that necessitates immediate repair by the County or its agents on an emergency basis where notice to Northwest Water or providing an opportunity to cure is not feasible considering nature of the emergency and necessary repair, as determined by the County Engineer using professional engineering standards, no such notice and reasonable time to cure shall be required as a condition of repayment by Northwest Water.

5.4 In preparing plans and specifications for the installation of Facilities within the Franchise Area, Northwest Water shall reasonably conform to the standards and specifications established by the County Engineer. Northwest Water shall consult with the County Engineer in case it plans to deviate from the established standards and specifications in the course of

installing Facilities within the Franchise Area and must demonstrate to the satisfaction of the County Engineer that its plans will achieve a legal and functionally equivalent result.

5.5 All work done by and for Northwest Water under this Franchise shall be done in a thorough and workmanlike manner. In the construction of Facilities and the opening of trenches within and the tunneling under the Franchise Area, Northwest Water shall leave such trenches and tunnels in such a way as to interfere as little as possible with public travel, and shall take all due and necessary precautions to guard the same, so that damage or injury shall not occur or arise by reason of such work. Where any of such trenches, ditches, or tunnels are left open at night, Northwest Water shall place warning lights and barricades at such a position as to give adequate warning of such work, per the MUTCD (Manual on Uniform Traffic Control Devices). Northwest Water shall be liable for any injury to person or persons or damage to property to the extent proximately caused by its carelessness or neglect, or to the extent proximately caused by any failure or neglect to properly guard or give warning of any trenches, ditches or tunnels dug or maintained by Northwest Water.

5.6 Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads and all other surveys, Northwest Water shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during Northwest Water's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by Northwest Water. A complete set of reference notes for monuments and other ties shall be filed with the County Engineer's Office.

Section 6. Relocation of Facilities.

6.1 Northwest Water shall, at its sole expense and with due diligence, relocate or adjust the elevation of any of its Facilities upon receipt of written request from the County Engineer when determined reasonably necessary based upon sound engineering principles by the County Engineer for improvement to the County facilities in the Franchise Area, provided that the elevations required by the County are not in violation of local, state or federal law and are reasonable necessary for safety purposes. Northwest Water shall coordinate such relocation or adjustment of its Facilities with the County and shall perform the same in a timely fashion so that, absent conditions beyond the control of Northwest Water, such relocation or adjustment of Northwest Water's Facilities will not impede or delay pending changes to the Franchise Area.

6.2 Northwest Water may propose to the County alternatives to reduce or eliminate the need for relocation of its Facilities pursuant to Section 6.1. Upon the County's receipt from Northwest Water of such alternatives in writing, the County shall evaluate such alternatives and shall advise Northwest Water in writing if one or more of such alternatives are suitable to accommodate the work that would otherwise necessitate relocation of Northwest Water's Facilities. In evaluating such alternatives, the County shall give each alternative proposed by Northwest Water full and fair consideration with due regard to all the facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. In the event the County reasonably determines that such alternatives are not appropriate, Northwest Water shall

relocate its Facilities as otherwise provided in Section 6.1. Any acceptance by the County of such alternatives shall not excuse (nor shall be construed to excuse) Northwest Water from future relocation or adjustment of Northwest Water's Facilities pursuant to this Section 6.

6.3 As qualified in Sections 6.1 and 6.2 above, and in Section 6.4 below, whenever any person or entity, other than the County, requires the relocation of Northwest Water's Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the County requires the relocation of Northwest Water's Facilities within the Franchise Area for the benefit of any person or entity other than the County, then Northwest Water shall have the right as a condition of such relocation to require such person or entity to:

6.3.1 Make payment to Northwest Water, at a time and upon terms acceptable to Northwest Water, which acceptance shall not be unreasonably withheld, for any and all costs and expenses incurred by Northwest Water in the relocation of Northwest Water's Facilities; and

6.3.2 Indemnify and save Northwest Water 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 Northwest Water's Facilities, to the extent such injury or damage is caused by the negligence of the person or entity requesting the relocation of Northwest Water's Facilities or the negligence of the agents, servants or employees of the person or entity requesting the relocation of Northwest Water's Facilities.

6.4 Any condition or requirement imposed by the County upon any person or entity, other than Northwest Water or the County (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) which requires the relocation of Northwest Water's Facilities shall be a required relocation for purposes of Section 6.3; provided, however:

6.4.1 If the County notifies Northwest Water in writing that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the grading or widening of the Franchise Area on the County's behalf consistent with the County's Six-Year Road Construction Program, then Northwest Water shall relocate its Facilities within the Franchise Area in accordance with Section 6.1.

6.4.2 If the County notifies Northwest Water in writing that the County will bear a portion of the costs of, or will provide funding towards, a project that includes grading or widening of the Franchise Area resulting from the imposition of such condition or requirement upon such person or entity, then Northwest Water agrees to bear a portion of its costs and expenses to relocate its Facilities to accommodate such grading or widening, such portion borne by Northwest Water being a percentage equal to that percentage of such project's costs borne or funded by the County (the "County Contribution"); provided, however, in no event shall such portion borne by Northwest Water exceed the dollar amount of such County Contribution. "Project" shall mean that work directly bearing on the area that necessitates relocation by Northwest Water, and shall not include other off-site improvements that may be performed at the same time. In all other respects such relocation shall be a required relocation for the purposes of Section 6.3 and without limiting the foregoing, Northwest Water shall have the right as a condition of such relocation to require such person or entity to pay to Northwest Water all relocation costs and expenses in excess of the portion borne by Northwest Water under this Section 6.4.2.

6.4.3 If the Facilities to be relocated pursuant to this subsection 6.4 have been located at or relocated within the preceding five (5) years to a location upon which the County had agreed at the time without reservation, then Northwest Water shall be entitled to recovery of all its costs and expenses incurred in the relocation of its Facilities from the party on whom the condition for road improvements was placed. Documentation of any such agreement between the County and Northwest Water shall be kept in conjunction with the encroachment permit issued by the County for the work of relocation.

6.5 Nothing in this Section 6 shall require Northwest Water to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from or addressed by this Franchise.

Section 7. Indemnification.

7.1 To the extent permitted by law, Northwest Water shall defend, indemnify and hold the County harmless from any and all claims, demands, suits, actions, costs and expenses, including but not limited to attorney's fees, made against it on account of injury or damage to the person or property of another, but only to the extent such injury or damage is caused by the actions or failure to act of Northwest Water, its agents, servants or employees in exercising the rights granted to Northwest Water in this Franchise; provided, however, that in the event any such claim or demand be presented to or filed with the County, the County shall promptly notify Northwest Water thereof, and Northwest Water shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand; provided further, that in the event any suit or action is begun against the County based upon any such claim or demand, the County shall likewise promptly notify Northwest Water thereof, and Northwest Water shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election. Notwithstanding the foregoing, if damages to another or others result from concurrent negligence of Northwest Water and the County, Northwest Water and the County shall each be responsible for, and this indemnification provision shall be operative so that each party bears, the proportionate share attributable to its own negligence. In case judgment which is not appealed shall be rendered against the County in such suit or action, Northwest Water shall fully satisfy said judgment within ninety (90) days after said suit or action shall have finally been determined. Upon Northwest Water's failure to satisfy said judgment within ninety (90) days, the County may elect to terminate this Franchise pursuant to the terms of Section 19 herein. The provision for reimbursement of the County shall survive the termination of this Franchise.

7.2 Acceptance by the County of any work performed by Northwest Water at the time of completion shall not be grounds for avoidance of the covenant in Section 7.1 above.

Section 8. Acquisition of Right-of-Way.

8.1 In the event that Northwest Water proposes to acquire easements for the location or relocation of its Facilities outside of, and adjacent to the Franchise Area, Northwest Water shall notify the County of the same and the County shall have the option, with the concurrence of Northwest Water, to acquire in place of such Northwest Water proposed easements, additional public rights-of-way or equivalent public utility easements for use by Northwest Water. Any such

public rights-of-way acquired by the County shall become Franchise Area. Any such public utility easements so acquired by the County shall not be Franchise Area (and shall not be subject to the terms and conditions of this Franchise) and Northwest Water's use of such public utility easements shall be subject to the terms and conditions of such public utility easements. Provided the above section does not apply to Northwest Water's customer service lines and only to easements related to new transmission water pipelines.¹

Section 9. Vacation of the Franchise Area.

9.1 If at any time the County shall seek to vacate any portion of the Franchise Area and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area for the use of the County, in either its proprietary or governmental capacity, and there are no Facilities located in the Franchise Area, then the County Engineer may at his option and by giving thirty (30) days written notice to Northwest Water, terminate this franchise with reference to such portion of the Franchise Area so vacated, and the County shall not be liable for any damages or loss to Northwest Water allegedly incurred by reason of such termination. Nothing herein shall limit or prevent Northwest Water from exercising its powers of eminent domain. Should Northwest Water notify the County of its intent to consider exercising its power of eminent domain to obtain an easement for the Facilities located within the area of the Franchise to be terminated, the termination of the Franchise shall be tolled for a period of no less than one hundred and twenty (120) days from the date of notice.

9.2 If at any time the County shall vacate any portion of the Franchise Area in which Facilities are installed at the time of said vacation, and said vacation shall be for the purpose of acquiring the fee or other property interest in said portion of the Franchise Area by other than the County, then the County shall, in its vacation procedure, unless otherwise waived in writing by Northwest Water, reserve an easement to Northwest Water for Northwest Water's Facilities as reasonably necessary for the continued use, operation, maintenance and repair of the Facilities as located in the portion of the Franchise Area to be vacated.

Section 10. Moving Buildings within the Franchise Area.

10.1 If any person or entity obtains permission from the County to use the Franchise Area for the moving or removal of any building or other object, the County shall, prior to granting such permission, direct such person or entity to arrange with Northwest Water for the temporary adjustment of Northwest Water's Facilities necessary to accommodate the moving or removal of such building or other object. Such person or entity shall make such arrangements, upon terms and conditions acceptable to Northwest Water, not less than fourteen (14) days prior to the moving or removal of such building or other object. In such event, Northwest Water shall, at the sole cost and expense of the person or entity desiring to move or remove such building or other object, adjust any of its Facilities which may obstruct the moving or removal of such building or object.

Section 11. Locating Facilities.

¹ A distinction is drawn here between public rights-of-way which are or shall become Franchise Area and thus governed by the terms of the franchise ordinance, and public utility easements which shall not become Franchise Area, the use of which shall be governed by the terms and conditions of the easements themselves and not by the franchise ordinance.

11.1 Northwest Water and the County acknowledge and commit to fully comply with their respective obligations, as the same may arise from time to time, under Chapter 19.122 RCW (Underground Utilities Locator Statute) or any other law applicable to determining the location of utility facilities.

Section 12. Nonexclusive Franchise.

12.1 This Franchise is not and shall not be deemed to be an exclusive franchise. It shall not in any manner prohibit the County from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over, and upon any part of the Franchise Area, and shall in no way prevent or prohibit the County from constructing, altering, maintaining, using, or vacating any part thereof, or affect its jurisdiction over any part thereof with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the County may deem fit.

Section 13. Franchise Term; Effect on Existing Franchises for Same Purpose.

13.1 This Franchise is and shall remain in full force and effect for a period of twenty-five (25) years from and after the effective date of the Ordinance; provided, however, Northwest Water shall have no rights under this Franchise nor shall Northwest Water be bound by the terms and conditions of this Franchise unless Northwest Water shall, within thirty (30) days after the effective date of the Ordinance, file with the County its written acceptance of the franchise agreement contained within the Ordinance.

13.1.1 No franchise hereunder shall become effective for any purpose unless and until written acceptance therefore shall have been filed with the Whatcom County Council and County Director of Public Works and such written acceptance shall be in the form and substance as shall be prescribed and approved by the County Prosecuting Attorney and operate as an acceptance of each and every term and condition and limitation contained in this ordinance, and in such franchise; and

13.1.2 Such written acceptance shall be filed by Northwest Water not later than the thirtieth (30th) day following the effective date of the Ordinance granting such franchise; and in default of the filing of such written acceptance as herein required, Northwest Water shall be deemed to have rejected the same. In case of Northwest Water's tardy acceptance of franchise, the County's recognition thereof shall be strictly at its discretion.

13.2 The existing franchise between the Parties pertaining to the same subject matter, i.e., Northwest Water's Facilities, which was granted by the County and accepted by Northwest Water on May 31, 1978, shall be superseded and replaced by this franchise upon the effective date of this franchise as provided above.

13.3 This Franchise agreement sets forth and constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof. This Franchise agreement supersedes any and all prior agreements, negotiations, correspondence, undertakings, promises, covenants, arrangements, communications, representations, and warranties, whether oral or written, of any party to this agreement.

Section 14. Assignment.

14.1 Neither this Franchise nor any interest herein shall be sold, transferred, or assigned without the prior consent in writing of the County Council, which consent shall not be unreasonably withheld, except that the Northwest Water may mortgage this Franchise to the trustee for its bond holders. Any approved assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the County, together with its written acceptance of all terms and conditions of this Franchise.

14.2 All the provisions, conditions, and requirements herein contained shall be binding upon the successors and assigns of Northwest Water, and all privileges, as well as all obligations and liabilities of the grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever Northwest Water is mentioned.

Section 15. Amendment.

15.1 Except as addressed in and through Section 15.3 below, 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 5 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 County in conjunction with the exercise (or failure to exercise) by Northwest Water any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

15.1.1 References this Franchise; and

15.1.2 States that it supersedes this Franchise to the extent it contains terms and conditions that 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, the provisions of this Franchise shall control.

15.2 If, during the term of this Franchise, there becomes effective any change in federal or state law (including changes approved by the Washington Utilities and Transportation Commission) which:

15.2.1 Affords either party the opportunity to negotiate in good faith a term or condition of this Franchise which term or condition would not have, prior to such change, been consistent with federal or state law; or

15.2.2 Pre-empts or otherwise renders null and void any term or condition of this Franchise which has there-to-fore been negotiated in good faith; then, in such event, either party may notify the other party in writing that such party desires to commence negotiations to amend

this Franchise. Such negotiations shall encompass only the specific term or condition affected by such change in federal or state law and neither party shall be obligated to re-open negotiation on any other term or condition of this Franchise. Within thirty (30) days from and after the other party's receipt of such written notice, the parties shall, at a mutually agreeable time and place, commence such negotiations. Pending completion of such negotiations resulting in mutually agreeable amendment of this Franchise, adoption of such amendment by Ordinance by the County and acceptance of such Ordinance by Northwest Water, and except as to any portion thereof which has been pre-empted or otherwise rendered null and void by such change in federal or state law, this Franchise shall remain in full force and effect.

15.3 Notwithstanding any language to the contrary contained herein, this Franchise is subject to the provisions of the Whatcom County Charter, Section 9.30, and all rights belonging to the County and its people as set forth therein are hereby reserved thereto.

Section 16. Miscellaneous

16.1 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. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections or paragraphs.

16.2 This Franchise is subject to the requirements of any and all applicable laws, rules, and regulations, including the Whatcom County Code, as currently enacted or hereafter modified. In the event of any actual conflict between the provisions of this Franchise and the requirements of the Whatcom County Code or County-enacted rules or regulations, the provisions of this Franchise shall control, to the extent authorized by law.

16.3 All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

For County: County Executive
Whatcom County Courthouse.
311 Grand Ave.
Bellingham, WA 98225

For Northwest Water: President
Northwest Water Association
5168 Graveline Road
Bellingham, WA 98226

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

16.4 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.

Section 17. Incorporation and Annexation.

17.1 Whenever any part of the Franchise Area, by reason of the subsequent incorporation of any town or city, or extension of the limits of any town or city, shall fall within the city or town limits, this Franchise shall continue in force and effect as to all of the Franchise Area not so included in city or town limits.

Section 18. Insurance.

18.1 During the term of this Franchise Northwest Water shall keep in effect, a liability insurance policy covering all liability of Northwest Water to the County, including any assumed by contract between Northwest Water and any other party, with limits at least in the amount of \$1,000,000. In lieu of the insurance requirement of this Section, Northwest Water may self-insure against such risks. At the time of Northwest Water's acceptance of this Franchise and otherwise upon the County's request, Northwest Water shall provide the County with certificate(s) of insurance or evidence of self-insurance reflecting the requirements of this section.

Section 19. Forfeiture and Termination of Franchise.

19.1 If Northwest Water shall willfully violate or fail, through willful or unreasonable neglect, to comply with any of the provisions of this Franchise for sixty (60) days after receipt of written notice from the County, then the County shall have the right by ordinance to declare Northwest Water's forfeiture of all rights hereunder and to declare this Franchise terminated and of no further force or effect thereafter; provided, however, if any failure to comply with this Franchise by Northwest Water cannot be corrected with due diligence within said sixty (60) day period (Northwest Water's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Northwest Water may so comply shall be extended for such time as may be reasonably necessary and so long as Northwest Water commences promptly and diligently to effect such compliance.

Section 20. Effective Date.

20.1 This Ordinance shall be effective ten (10) days after being signed by the County Executive, with the Franchise granted hereunder finally effective pursuant to the terms of Sections 13.1, 13.1.1, and 13.1.2, having been: (i) introduced to the County Council not less than thirteen (13) days before its passage; (ii) brought to public notice by such notice having been posted in three (3) public places in Bellingham at least fifteen (15) days before the day fixed for the public hearing; (iii) published at least twice in the official newspaper for the County and no later than five (5) days prior to the day fixed for the hearing and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the County of Whatcom by a

vote of at least _____ members of the County Council on _____, 2019.

ADOPTED this ____ day of _____, 2019.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

Dana Brown-Davis, Clerk of the Council

Rud Browne, Council Chair

APPROVED AS TO FORM:

() Approved () Denied

Civil Deputy Prosecutor

Jack Louws, County Executive

CLERK OF THE COUNCIL

Dana Brown-Davis, C.M.C.

COUNTY COURTHOUSE

311 Grand Avenue, Suite #105
Bellingham, WA 98225-4038
(360) 778-5010



COUNCILMEMBERS

Timothy Ballew II
Barbara Brenner
Rud Browne
Barry Buchanan
Tyler Byrd
Todd Donovan
Satpal Sidhu

WHATCOM COUNTY COUNCIL

July 17, 2018

Northwest Water Association
Attn: Tim Brinkley, Pres.
5168 Graveline Road
Bellingham, WA 98226

RE: Receipt of Franchise Application

Dear Mr. Brinkley:

We have received the Application for Franchise you submitted on behalf of Northwest Water Association. The fee of \$500 has been deposited and the paperwork has been forwarded to our Public Works Department. They will review the submission and prepare the necessary documents for Council consideration at a later date. The person in Public Works who will likely be contacting you soon is Andrew Hester.

I have enclosed a receipt for your payment of the application fee. I look forward to working with you in the future as this franchise process continues.

Sincerely,

A handwritten signature in cursive script that reads "Marina Engels".

Marina Engels, CMC
Deputy Clerk of the Council

C: Andrew Hester, Public Works
AB2018-215

RECEIVED

JUL 16 2018

WHATCOM COUNTY COUNCIL

APPLICATION FOR FRANCHISE

TO THE WHATCOM COUNTY COUNCIL:

COPY

COMES NOW, Northwest Water Association

who respectfully petitions the Whatcom County Council for a twenty-five (25) year franchise to lay, construct, maintain, and repair

water mains and water distribution lines in and along certain roads in Whatcom County Washington.

and all necessary appurtenances along, over, and across the following roads situated

in Whatcom County, Washington: T 39N R2E S33, 34, 35, 2, 3 T 38N R2E S 34

Smith Road, Graveline Rd, Sunset Avenue, Northwest Drive, Waschke Rd, W Larson Rd, Aldrich Rd, Lange Rd, Slater Rd, Pacific Hwy, Byers Rd, Bristol Place, Fat Dog Lane.

The petitioner further requests that the Whatcom County Council fix a time and place for a public hearing on the granting of this continuation of franchise, and that public notice be given, at the expense of the petitioner, as provided by law; and that, at said hearing, petitioner be granted the franchise continuation herein requested.

DATED: 7-10-18

Northwest Water Association

Company Name

5168 Graveline Rd

Mailing Address

Bellingham WA 98226

City State Zip

360 384 6489

Phone Number

[Signature] Pres

Signature of authorized agent/owner

Jim L Brinkley Pres

Print or type name

Chapter 12.24
FRANCHISE REQUIREMENTS

Sections:

- 12.24.011 Authority.
- 12.24.021 Application requirements.
- 12.24.025 Transfer of ownership or control.
- 12.24.031 Forward to public works.
- 12.24.041 Ordinance.
- 12.24.051 Application – Notice of hearing.
- 12.24.061 Recording of franchise.
- 12.24.070 Submittal of plans and specifications.
- 12.24.080 Time limit.
- 12.24.090 Surety bonds.
- 12.24.100 Inspection.
- 12.24.110 Approval of alteration or revision.
- 12.24.120 Liability for construction or maintenance.

12.24.011 Authority.

This chapter is enacted pursuant to authority contained in Chapter 36.55 RCW and Whatcom County Charter Section 9.30. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.021 Application requirements.

- A. Application for franchises on county roads and bridges shall be submitted to the Whatcom County council pursuant to RCW 36.55.040.
- B. Every franchise application submitted to the county council shall be accompanied by a franchise application fee as set forth in the current Whatcom County unified fee schedule.
- C. Every franchise application submitted to the county council must also be accompanied by a sketch of the proposed installation. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.025 Transfer of ownership or control.

A. A franchise shall not be sold, transferred, leased, assigned or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, unless approval is granted by the county council to ensure a review of circumstances not present at the time of the adoption of the original franchise. The council's approval shall not be unreasonably withheld.

12.24.061 Recording of franchise.

The Whatcom County council clerk shall cause the franchise to be recorded by the county auditor pursuant to RCW 36.55.080. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.070 Submittal of plans and specifications.

There shall be submitted to the director of Whatcom County public works or the county engineer three copies of the final plans, specifications or special provisions of the proposed installation, at the time of the granting of a franchise. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.020. Formerly 12.24.020).

12.24.080 Time limit.

There shall be a time limit imposed upon the construction of any facility granted by franchise on any county road or bridge, subject to the approval of the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.030. Formerly 12.24.030).

12.24.090 Surety bonds.

There shall be a surety bond posted at the time of granting a franchise for any facility upon a county road or bridge to ensure replacement of any county road or bridge to its original condition and shall be in an amount not less than 10 percent of the total estimate of the proposed installation and releasable only by the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.040. Formerly 12.24.040).

12.24.100 Inspection.

There shall be adequate inspection by an inspector approved by the county engineer who shall be responsible to the county engineer for all construction of any facility upon any county road or bridge. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.050. Formerly 12.24.050).

12.24.110 Approval of alteration or revision.

No alteration or revisions of plans as submitted at the time of granting a franchise shall be permitted by a person or persons, or any franchise-holder, unless prior approval is requested and submitted to the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.060. Formerly 12.24.060).

12.24.120 Liability for construction or maintenance.

The foregoing regulations are not to be construed as relieving the franchise holder of any responsibility or liability for the construction, reconstruction, or maintenance of such facilities as the franchise may grant. (Ord. 2008-005 Exh. A; Ord. 2004-022; prior code § 4.44.070. Formerly 12.24.070).

parties. The word "control" as use herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

C. A franchisee shall promptly notify the county council prior to any proposed change in, or transfer of or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition by any other party of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the county council adopts a resolution denying its consent and such change transfer or acquisition of control has been effected, the county may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

D. Application for transfer of ownership or control shall be submitted to the county council.

E. Every franchise application for transfer of ownership submitted to the county council shall be accompanied by a franchise transfer of ownership fee as set forth in the current Whatcom County Unified Fee Schedule.

F. Regardless of the circumstances, a franchisee shall promptly notify the county prior to any proposed name change of the franchisee's company. In the event that the county approves a resolution withholding its consent to the name change within 60 days of receipt of notice thereof, the county may cancel the franchise unless the parties to such change reverse its effects within 60 days after the county notifies the franchisee of its intent to cancel the franchise hereunder. (Ord. 2008-005 Exh. A).

12.24.031 Forward to public works.

Upon receipt of franchise application, application fee, and sketch of proposed installation, or application for transfer of ownership and transfer of ownership fee, the clerk of the council shall forward a complete copy to the director of Whatcom County public works or the county engineer. (Ord. 2008-005 Exh. A; Ord. 2004-022; Ord. 93-066 Exh. A; prior code § 4.44.010. Formerly 12.24.010).

12.24.041 Ordinance.

Whatcom County public works director or the county engineer shall prepare an ordinance granting the franchise for consideration by the county council. (Ord. 2008-005 Exh. A; Ord. 2004-022).

12.24.051 Application – Notice of hearing.

The clerk of the council shall schedule a public hearing on the ordinance granting the franchise pursuant to RCW 36.55.050. (Ord. 2008-005 Exh. A; Ord. 2004-022).

Whatcom County public works director or the county engineer shall prepare an ordinance granting the franchise for consideration by the county council. (Ord. 2008-005 Exh. A; Ord. 2004-022).

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12.24.100 Inspection.

Such costs associated with this review process shall be reimbursed to the county council by a new prospective franchisee.

B. An assignment of a franchise shall be deemed to occur if there is an actual change in control or where ownership of 50 percent or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as use herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

C. A franchisee shall promptly notify the county council prior to any proposed change in, or transfer of or acquisition by any other party of control of a franchisee's company. Every change, transfer, or acquisition by any other party of control of a franchisee's company shall cause a review of the proposed transfer. In the event that the county council adopts a resolution denying its consent and such change transfer or acquisition of control has been effected, the county may cancel the franchise. Approval shall not be required for mortgaging purposes or if said transfer is from a franchisee to another person or entity controlling, controlled by, or under common control with a franchisee.

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12.24.120 Liability for construction or maintenance.

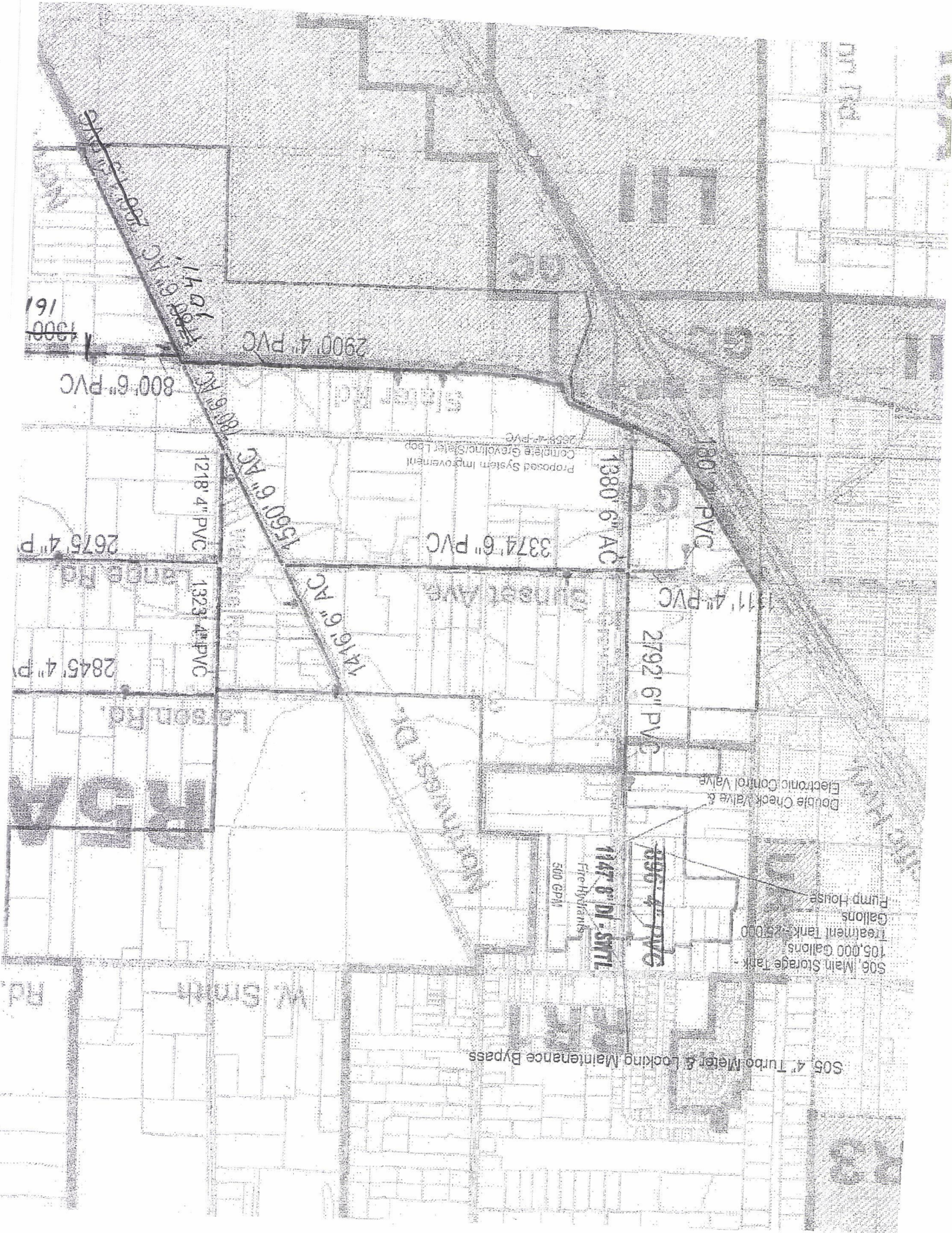
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Northwest Water Association

USE OF WHATCOM COUNTY'S
AGREEMENT WITH THE FOLLO
Whatcom County disclaims any
of this map. For more in

er Association



S05 4 Turbo Meter & Locking Maintenance Bypass

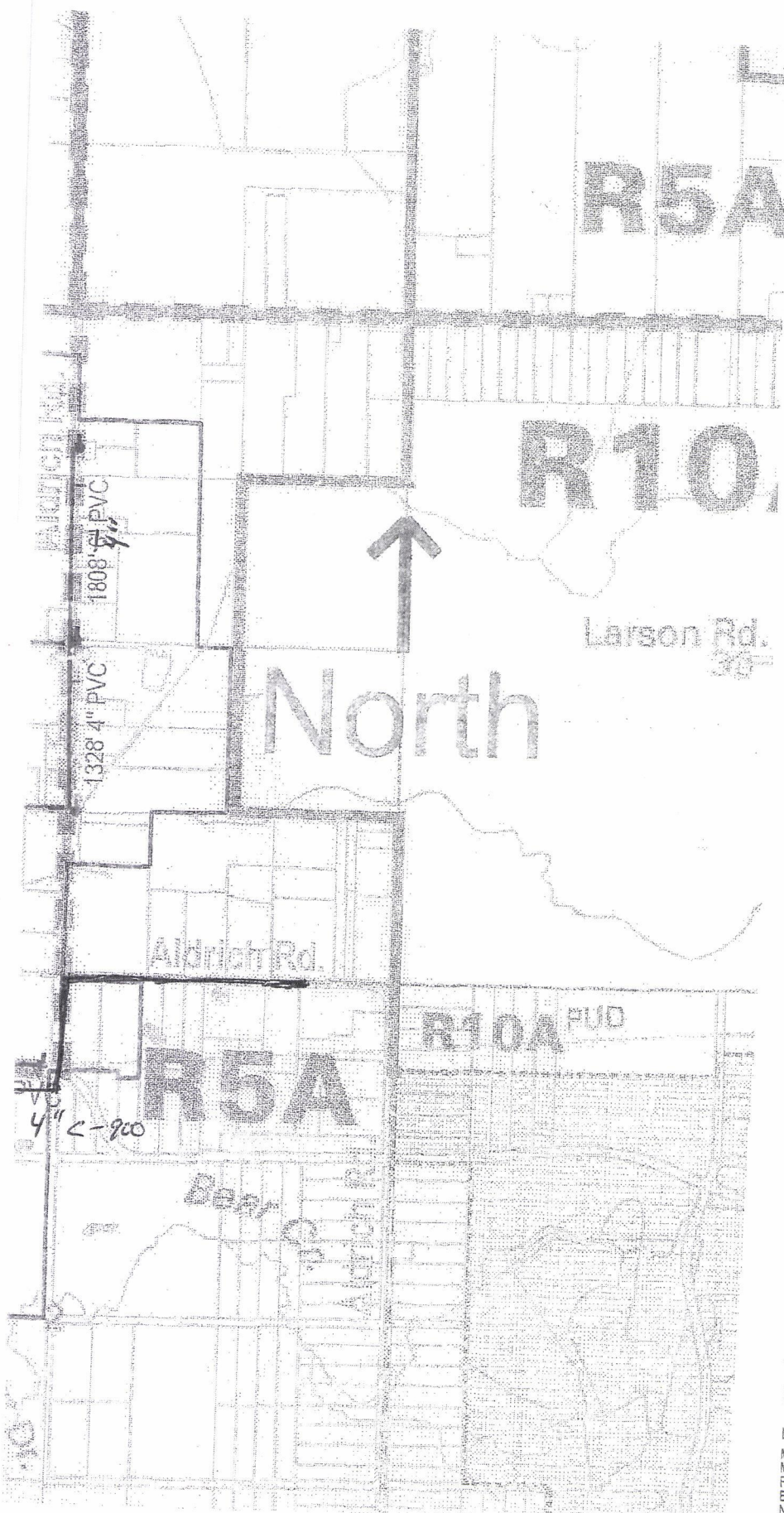
S06 Main Storage Tank -
105,000 Gallons
Treatment Tank - 25,000
Gallons
Pump House

Double Check Valve &
Electronic Control Valve

1147 8" DI - SMTL
Fire Hydrants
500 GPM

Proposed System Improvement
Complete Gravity/Staler Loop
2558-4" PVC

1300
161



Notes:

The 896' PVC & 1147' 8" DI on Graveline will be installed in summer 2004.
 The NWWAI Utility Service Area shown here will be in effect summer 2004.

All PVC joints are assumed to be glued except for:
 896' PVC on Graveline Road,
 1808' PVC on Aldrich Road,
 which have slip joints.

The Utility Service Area of the NWWAI covers approximately 1,200 acres.

The total length of distribution piping is almost exactly 6 miles.

**Northwest Water Association, Inc.
 Facilities & Service Area**

- Distribution Pipes —————
- Utility Service Area —————
- Manual Flow Control Valves ●
- 2" Blowoff ↓
- System Booster Pumps Limited Fire Hydrant ●
- Planned Improvements - - - - -

Lines and Symbols Overlaid on Whatcom County Title 20 Zoning Map
 Map made by:
 Michael Robbins
 Project Coordinator
 Board of Directors
 NWWAI, January 2004


5168 Graveline Road
 Bellingham, WA. 98226

NORTHWEST WATER ASSOC.
C/O CHERYL A BRINKLEY
5168 GRAVELINE RD.
BELLINGHAM, WA 98226-9055

19-10/1250

4326

DATE 7-10-18

Whatcom County Council | \$ 500.⁰⁰
PAY TO THE ORDER OF Five Hundred and 00/100 DOLLARS  Security Features included. Details on Back.

usbank.

MEMO Franchise

[Signature]

⑆ 125000 105⑆ 15350 1908476⑈ 4326

RECEIPT
Whatcom County

200420

DEPARTMENT Council DATE 7/16/18

RECEIVED FROM Nw Water Association
ADDRESS _____

IN PAYMENT OF Franchise Application

FUND _____ AMOUNT PAID \$500.00

REVENUE CODE _____

OLD BAL.		
PAID		
BAL. DUE		

CASH			
CHECK	500	00	#4326
MONEY ORD.			

SIGNATURE [Signature]

NOTE - All three copies of all voided receipts must be retained
in department's numerical file.