



SOOS CREEK WATER AND SEWER DISTRICT

KING COUNTY, WASHINGTON

RESOLUTION NO. 3721-C

A RESOLUTION of the Board of Commissioners of Soos Creek Water and Sewer District, King County, Washington, accepting Water and Sewer Franchise Agreement with City of Kent.

WHEREAS, the District and the City of Kent have reached agreement regarding the terms of a Franchise Agreement for authorization to the District for use of the City's streets, bridges and other public ways for water facilities and sanitary sewer facilities within portions of the City; and

WHEREAS, the City Council of the City of Kent has considered and approved the terms of the proposed Franchise Agreement by adoption of City of Kent Ordinance No. 4388; and

WHEREAS, the Board of Commissioners of the District has considered and accepts the terms of the Franchise Agreement Ordinance No. 4388;

NOW, THEREFORE, BE IT RESOLVED by the Commissioners of Soos Creek Water and Sewer District, King County, Washington, as follows:

SECTION 1: That the Board of Commissioners of Soos Creek Water and Sewer District hereby authorizes execution of the following:

**ACCEPTANCE BY SOOS CREEK WATER AND SEWER DISTRICT
OF TERMS OF CITY OF KENT FRANCHISE ORDINANCE NO. 4388; PROVISION OF
WATER AND SEWER SERVICE BY DISTRICT WITHIN THE CITY**

SECTION 2: That the District's General Manager, Ron Speer, is authorized to execute the Acceptance of the Franchise Ordinance on behalf of the District.

SECTION 3: That the District shall take such action as is appropriate to accomplish the terms and purposes hereof.

RESOLUTION NO. 3721-C

SUBJECT: Approving Franchise Agreement with
City of Kent; Water and Sewer Service

SECTION 4: That a copy of Kent Ordinance No. 4388 is attached hereto as Exhibit A; and the terms thereof are incorporated herein by this reference as though fully set forth.

Adopted by the Board of Commissioners of Soos Creek Water and Sewer District, King County, Washington, at a regular open public meeting thereof on the 20th day of January, 2021.



ALICE MARSHALL, President

VIRTUAL APPROVAL

ALAN EADES, Secretary

VIRTUAL APPROVAL

DAROLD STROUD, Commissioner

VIRTUAL APPROVAL

GARY CLINE, Commissioner



STEVE PFAFE, Commissioner

RESOLUTION NO. 3721-C

SUBJECT: Approving Franchise Agreement with
City of Kent; Water and Sewer Service

PAGE - 2

ORDINANCE NO. 4388

AN ORDINANCE of the City Council of the City of Kent, Washington, granting Soos Creek Water and Sewer District a non-exclusive 10-year franchise to construct, maintain, operate, replace and repair a water and sewer system within public rights-of-way of the City of Kent, imposing a franchise fee in the amount of six percent on the District's revenues and setting forth other provisions concerning the relocation of District facilities to accommodate projects caused by the City and other projects.

RECITALS

A. Soos Creek Water and Sewer District, a Washington special purpose municipal corporation ("District"), owns and operates water and sanitary sewer facilities ("Facilities") and provides retail utility water service and sewer collection service to customers located within the District's corporate and approved retail water utility service area and sewer service boundaries; a portion of the District's Facilities are located in the City of Kent, a Washington non-charter municipal code city ("City"), within the City's right-of-way as hereinafter defined; and

B. The City also owns and operates a water utility and sewer system and provides retail water utility and sewer services to customers located with the City's corporate and approved retail water and sewer utility service area boundaries.

C. Portions of the District's and the City's corporate and retail water utility service area and sewer service boundaries are adjacent.

D. RCW 57.08.005 (3) authorizes the District to conduct water and sanitary sewer collection 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

E. 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

F. The City and the District have prepared a Franchise Agreement ("Franchise" or "Agreement") to provide for the operation of District Facilities within the City right-of-way, to impose a franchise fee of six percent on District revenues and to govern the relocation of District Facilities;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON, DOES HEREBY ORDAIN AS FOLLOWS:

ORDINANCE

SECTION 1. - *Definitions.* Where used in this Franchise these terms have the following meanings:

A. "City" means the City of Kent, a Washington municipal corporation, and its respective successors and assigns.

B. "District" means Soos Creek Water and Sewer District, a Washington municipal corporation, and its respective successors and assigns.

C. "Facilities" means both Sewer and Water Facilities as defined within this Section 1.

D. "Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved in the District's service area within the present corporate boundaries of the City, and as such corporate boundaries may be extended within the District's service area by annexation or otherwise; provided, however, "Franchise Area" for purposes of this Ordinance shall not include the locations of Facilities existing under benefit of easement or other right.

E. "Ordinance" means this Ordinance No. 4388, which sets forth the terms and conditions of this Franchise.

F. "Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

G. "Revenue" means income received by the District from the sale of metered water to direct retail customers whose connections to the District's water system are located within the City. It also includes income received by the District from the provision of sewer collection service to direct retail customers whose connections to the District's sewer system are located within the City. Revenue shall not include: King County Wastewater Treatment Division charges; late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); loans; income from legal settlements not related to water or sewer collection service 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 or sewer service availability document fees and charges; water system or sewer system extension agreement fees and charges; income from street lights; labor, equipment and materials charges and the Franchise Fee.

H. "Sewer Facility" or "Sewer Facilities" means manholes, pipes, mains, laterals, forcemains, valves, vaults, risers, generators, electrical control panels, power meters, telephone connections, lift stations, lines and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a wastewater utility system, whether the same be located at the surface or underground.

I. "Water Facility" or "Water Facilities" means tanks, reservoirs, water treatment facilities, meters, pipes, mains, services, valves, blow offs, vaults, fire suppression water facilities, risers, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, interties, lines, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a water utility system, whether the same be located over or under ground.

SECTION 2. - Franchise.

A. The City does hereby grant to the 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 open city rights-of-way within the Franchise Area for purposes of its water utility and sewer facility functions as defined in Title 57 RCW beginning on the Effective Date of this Franchise; provided the City's grant of the right to use the Franchise Area to the District as provided herein for its Facilities shall not be construed to require the District to provide such Facilities to the City.

B. Nothing contained in this Ordinance is to be construed as granting permission to the 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.

C. In addition to the rights granted to the District to undertake and perform activities within the Franchise Area as provided herein, the District shall have the right to discharge District water supply to and into the City's storm water system while performing water system flushing and other District activities, provided any District water to be discharged to the City's storm water system must comply with applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system.

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

SECTION 3. - Non-interference of Facilities.

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

B. 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 the later of thirty (30) days of that notice; or such longer period as may be necessary to comply with applicable statutory bid laws; or such longer period as may be specified in the notice; the City, or its authorized agent, may restore the right-of-way and the 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. Subject to each Party's prior and consistent compliance with the Section 6 Planning Coordination requirements below, whenever the City causes the grading or widening of the Franchise Area or undertakes construction of storm drainage lines, lighting, signalization, sidewalk improvement, pedestrian amenities, or other public street improvements (for purposes other than those described in Section 4(D) below) and such project requires the relocation of the District's then existing Facilities within the Franchise Area, the following shall take place:

(1) Pursuant to RCW 35.21.905, or as amended, the City shall consult with the District in the predesign phase of any such project. The City and the District agree that cost to taxpayers and ratepayers will be a significant consideration in consultations regarding design of any such project.

(2) After receipt of written notice from the City, the District shall design and relocate such Facilities within the Franchise Area within ninety (90) days for a smaller project and two hundred forty (240) days for a larger project to accommodate the City project, unless the Parties agree on a different time; in any event, the City and the District will, in good faith, use their best efforts to coordinate their project schedules to avoid delay to the City's project. A smaller project for Water Facilities includes but is not limited to adjusting at minimal time and cost, a water service line or a meter to a new grade or location, adjustment of a valve box, relocation or extension of a fire hydrant, or relocation of an air vac assembly or blow off. A smaller project for Sewer Facilities includes but is not limited to adjusting at minimal time and cost, a sewer service line or a manhole frame and cover to a new grade or location, adjustment of a valve box, or relocation of an air vac assembly. Notwithstanding the above, the District may, at any time within thirty (30) calendar days after receipt of written notice requesting the 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 the 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, the District shall submit such additional information as is necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines there is no other reasonable or feasible alternative, the City shall provide the District with further written notice to that effect. In that event, the City shall provide the District with conceptual plans and specifications for the City project and the District shall then relocate its Facilities by the date so established.

(3) The City shall coordinate and work with the District to minimize conflicts between existing Facilities and the public improvements where

possible, and to avoid having the District relocate its Facilities whenever possible.

B. If a City project causes the relocation of District Facilities, the cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

(1) If the relocation occurs within ten (10) years after the District or a third party on the District's behalf initially constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%);

(2) If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf initially constructed such Facility, then the relocation shall be at the District's sole cost.

C. Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area, or whenever the City requires the relocation of District Facilities within the Franchise Area for the benefit of any person or entity other than the City or the Washington State Department of Transportation, then the District shall have the right as a pre-condition of such relocation to require such person or entity to:

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

(2) Protect, defend, indemnify and hold the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction

with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

D. This Section 4 shall govern all relocations of District 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 right 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.

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

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

(2) Developer assessments, impact fees, contributions in aid of construction, and contributions in lieu of construction make up a minority of the overall costs of the improvement or project.

F. If a City project requires the relocation of then existing Facilities within the Franchise Area as provided in this Section 4, the District and the City may agree to include the relocation of any Facilities as part of the City's public works project under terms and conditions agreed between the City and the District.

SECTION 5. - Right-of-Way Management.

A. Excavation. Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in City right-of-way. No District work shall commence within any City right-of-way without a permit, except as otherwise provided in this Franchise and applicable City Ordinance.

B. Restoration after Construction. The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. If it is determined the District has failed to restore the right-of-way in accordance with the requirement of permits procured for such work, the City shall provide the District with written notice including a description of the actions the City believes necessary to restore the right-of-way.

C. Bonding Requirement. The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's right-of-way.

D. Emergency Work, Permit Waiver. In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for

and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City ordinance.

E. Minor Maintenance Work. The District shall be authorized to perform minor maintenance activities without a City permit of any kind. The District shall only conduct minor maintenance activities between the hours of 9:00 A.M. and 3:00 P.M. to avoid unreasonably impeding traffic flows on the following portions of these streets:

- 108th Ave SE – entire length
- 116th Ave SE – entire length
- 152nd Ave SE – south city limits to Kent-Kangley
- SE 208th St – entire length
- SE 218th St/98th Ave S/SE 216th St – entire length
- SE 240th St – entire length
- SE 256th St – entire length
- Kent-Kangley Rd (SR 516) – entire length

All other activities will require a permit in accordance with City ordinances. Minor maintenance activities for which a permit is not required include the following:

- Cleaning sewer lines
- Water main flushing
- Leak testing
- Locating and marking District Facilities
- Manhole inspections
- Sewer main television inspections
- Activities where traffic control is not needed and where no excavation is needed

Even if a permit is not required, the District shall conform to the traffic control standards established in the latest Manual on Uniform Traffic Control Devices (MUTCD) and Chapter 468-95 of the Washington Administrative Code (WAC) when performing any minor maintenance activities.

F. City Work Zones. The District shall not be required to obtain a City right-of-way permit to undertake utility work to accommodate a City-initiated project when the City and the District are jointly undertaking a project in the Franchise Area and the District work is located within the City "work zone" for which the City has already approved a traffic control, pedestrian safety or other applicable plans.

G. Complete Right-of-Way Permit Applications. If the District is required to obtain any permit from the City to undertake utility work in the Right-of-Way in the Franchise Area, the City shall provide written review comments within twenty-one (21) calendar days of receiving a complete application for such permit. If the permit application requires resubmittal by the District, the City shall complete all subsequent reviews within fourteen (14) days of the receipt of such submittal. To be considered complete for purposes of this Section, the application must show existing utilities, hard surfaces and proposed restoration.

H. City Invoices. The City shall invoice the District for all City fees and charges relating to the issuance of any City permits to the District, such as a City right-of-way permit or franchise street use permit, to undertake utility work in the Franchise Area, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within sixty (60) calendar days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any such District work. The District shall pay all such City fees and charges within thirty (30)

calendar days of receipt of the City's invoice for such fees and charges, except for any disputed fees and charges.

SECTION 6. - Planning Coordination.

A. The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents to the extent they apply to the District's service area within the City limits as follows:

(1) Each Party will participate in a cooperative effort to develop their respective Comprehensive Plan Utilities Elements that meet the requirements described in RCW 36.70A.070 (4).

(2) Each Party will participate in a cooperative effort with the other Party to ensure that the Utilities Elements of their Comprehensive Plans are accurate as they relate to their operations and are updated to ensure continued relevance at reasonable intervals.

(3) Each Party shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities as requested by the other Party 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 non-requesting Party's possession, or can be reasonably developed from the information in the non-requesting Party's possession.

(4) Each Party will provide information relevant to their operations within a reasonable period of written request to assist the other Party in the development or update of their respective Comprehensive Plan(s), provided that such information is in the non-requesting Party's possession, or can be

reasonably developed from the information in the non-requesting Party's possession.

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

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

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

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

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

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

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

(7) Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of its facilities within rights-of-way.

SECTION 7. - Indemnification.

A. The 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 the District or its agents, servants, employees, contractors, subcontractors or assigns in exercising the rights granted to the District in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the City, its agents, officers, employees, volunteers or assigns.

B. The 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 the City or its agents, servants, employees, contractors, subcontractors or assigns in exercising the rights granted to the City in this Franchise; provided, however, such

indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

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

D. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the City and the District, their officers, employees and agents, the District's liability hereunder shall be only to the extent of the 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 8. - Default. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of this thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to the District. The City may act without the thirty (30) day notice in case of an emergency.

SECTION 9. - *Non-exclusive Franchise.* This Franchise is not 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 the 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 10. - *Franchise Term.* This Franchise shall have a term of ten (10) years from its Effective Date as defined in Section 29; provided, this Franchise shall be automatically extended for one additional five (5) year period unless either Party at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the Franchise term; provided, at the end of the five (5) year term, this Franchise shall be automatically extended for successive one (1) year periods unless either Party at least one hundred twenty (120) prior to the termination date of any one (1) year extension provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term.

SECTION 11. - *Non-assumption.* In consideration of the District's payment of the Franchise Fee to the City as provided in Section 12, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to Chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt pursuant to RCW 35.13A.060 or as such statute may be amended or superseded to assume jurisdiction over the District or any

District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise.

SECTION 12. - Franchise Fee.

A. In consideration of the rights granted to the District under this Franchise, the District shall pay to the City a franchise fee ("Franchise Fee") in the amount of six percent (6.0%) of the District's Revenue beginning on January 1, 2021, subject to the provisions of Section 12(B) herein.

B. Franchise Fees shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

C. Should the District be prevented by judicial or legislative action from paying any or all of the Franchise Fees, the District shall be excused from paying that portion of the Franchise Fee and this Franchise agreement will immediately terminate, unless the Parties otherwise agree.

D. In consideration of the District's payment of a Franchise Fee to the City as provided in this Section 12, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its legal authority to impose a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any other tax (collectively, "Excise Tax") upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise.

E. In consideration of the District's payment of a Franchise Fee to the City as provided herein, and the District's acceptance of the other terms and conditions of this Franchise; the City agrees not to exercise and to forbear

its legal authority to impose compensation or a rental fee (collectively, "Rental Fee") upon the District for the District's use of the Franchise Area as provided for herein.

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

"Effect of City of Kent Franchise Fee: \$X.xx"

G. If at any time during the term of this Franchise, the District includes, or agrees to include, King County Wastewater Division charges in the calculation of a franchise fee or utility tax owed to any other municipality, these charges will immediately be included in the definition of revenue in Section 1.D and used to calculate the Franchise Fee. The Parties will execute any documents necessary to effectuate this change.

SECTION 13. - Compliance with Codes and Regulations; Annexations; Service Area Boundary.

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and 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 the 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 the District shall be performed by the 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.

B. If any territory served by the District is annexed to the City after the Effective Date of this Franchise, this Franchise will 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 remaining under this Franchise for the Franchise Area, unless a longer time period is required by that statute. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise Fee for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly period and paid to the City at the same time as the fee for the Franchise Area is paid for that quarter.

C. The Service Area Agreements that presently exist between the City and the District are depicted in **Exhibit B**, the contents of which are incorporated herein by this reference.

D. The District agrees that the City may provide sewer service to its Kent East Hill Operations Center (KEHOC Property) without constructing improvements to District facilities or paying District connection fees and/or charges, so long as the City retains ownership of the KEHOC Property. The City and the District will acquire any approvals and execute any documents necessary to effectuate this Section 13.D.

SECTION 14. - Location of Facilities and Equipment. With the exception of components that are traditionally installed above ground such as fire hydrants, blow offs, manhole frames and covers, vault lids, risers, pump stations, lift stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and

appurtenances, 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 and zoning code and applicable development pre-approved plans.

SECTION 15. - *Record of Installations and Service.* With respect to excavations by the District and the City within the Franchise Area, the District and the City shall each comply with its respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law.

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

Available as-built drawings of the location of any Facilities located within the Franchise Area shall be made available to the requesting Party within a reasonable time, which should typically not exceed fourteen (14) calendar days of request.

SECTION 16. - Shared Use of Excavations.

A. The District and the City shall exercise best efforts to coordinate construction work that either Party 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. The District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

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

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

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

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

SECTION 17. - Insurance. The District shall maintain in full force and effect throughout the term of this Franchise, a minimum of Two Million Dollars (\$2,000,000.00) liability insurance for property damage and bodily injury. In satisfying the insurance requirement set forth in this Section, the District may self-insure against such risks in such amounts as are consistent with good utility practice. Upon request, the District shall provide the City with sufficient written evidence, as determined by the City in its reasonable discretion, that such insurance (or self-insurance) is being so maintained by the District. Such written evidence shall include, to the extent available from the District's insurance carrier, a written certificate of insurance with respect to any insurance maintained by the District in compliance with this Section.

SECTION 18. - Abandonment and/or Removal of District Facilities. The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

(1) The District shall continue to own and be responsible for any such facilities abandoned within the Franchise Area.

(2) The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if the City reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other reasonable or feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District's expense, remove such abandoned Facilities by their own forces or

by participating in the City's public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

(3) Within ten (10) calendar days of the District's permanent cessation of use of any of its Facilities as determined by the District, or any portion thereof, the District will, in good faith, use its best efforts to provide as-built drawings locating the abandoned Facilities or if unable to provide as-built drawings, will provide the most complete and accurate drawings the District can make available to provide adequate notice of the location of all abandoned Facilities.

(4) District Facilities that are abandoned in-place shall be abandoned pursuant to City Standards, to the satisfaction of the Public Works Director.

(5) The Parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

SECTION 19. - 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 the District obtaining, at no cost to the District, a permanent easement at least fifteen (15) feet wide in such vacated right-of-way for the construction, operation, maintenance, repair and replacement of its Facilities located and to be located in such vacated right-of-way.

SECTION 20. - *Assignment.* All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the 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 the District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

SECTION 21. - *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 e-mail 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 email, 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 Kent

220 Fourth Avenue South
Kent, WA 98032
Phone: (253) 856-5725 Fax: (253) 856-6725

To District:

Ron Speer,
General Manager
14616 S.E. 192nd Street
Renton, Washington 98058

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

SECTION 22. - *Non-Waiver.* The failure of either Party to enforce any breach or violation by the other Party or any provision of this Franchise will not 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 23. - *Alternate Dispute Resolution.* If the Parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. If mediation fails after an agreed amount of time, the Parties may agree to have the mediator assume the role of arbitrator, and decide the matter as a binding arbitration within the parameters of the Parties' last proposals in the mediation. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

SECTION 24. - *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 25. - *Entire Agreement.* The Recitals set forth above are hereby incorporated herein in full by this reference. 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. This Franchise shall supersede, rescind and cancel any prior franchise or agreement granted by the City to the District to locate and operate a public water system or sanitary sewer collection system within the Franchise Area; except for service area agreements previously negotiated and executed.

SECTION 26. - *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 7 "Indemnification" 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 the District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

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

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with Subsections (1) and (2) referenced immediately above, the provisions of this Franchise shall control.

SECTION 27. - *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. The District shall have thirty (30) days from the date of receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District by this ordinance and file with the City Clerk the executed statement of Acceptance of Franchise, attached hereto as **Exhibit A** and incorporated herein by this reference.

SECTION 28. - *District Acceptance of Franchise.* The District shall have no rights under this Franchise nor shall the District be bound by the terms and conditions of this Franchise unless the District shall, within thirty (30) days after the receipt of the certified copy of this ordinance as addressed in Section 27 herein, file with the City its written acceptance of this Franchise.

SECTION 29. - *Effective Date of Franchise.* The terms and conditions of this ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the receipt of the certified copy of this ordinance as addressed in Section 27 herein adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

SECTION 30. – Severability. If any one or more section, subsection, or sentence of this franchise is held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portion of this franchise and the same shall remain in full force and effect.

SECTION 31. – Corrections by City Clerk or Code Reviser. Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to other local, state, or federal laws, codes, rules, or regulations.

SECTION 32. – Effective Date of Ordinance. This ordinance, being an exercise of a power specifically delegated to the City’s legislative body, is not subject to referendum. This ordinance shall take effect and be in force thirty (30) days from and after its passage, as provided by law.



DANA RALPH, MAYOR

February 2, 2021
Date Approved

ATTEST:

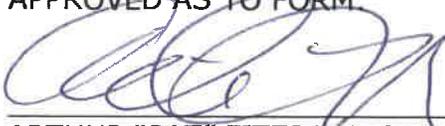


KIMBERLEY A. KOMOTO, CITY CLERK

February 2, 2021
Date Adopted

February 5, 2021
Date Published

APPROVED AS TO FORM:



ARTHUR "PAT" FITZPATRICK, CITY ATTORNEY

**EXHIBIT A
ACCEPTANCE OF FRANCHISE**

The undersigned authorized representative of Soos Creek Water and Sewer District (District) hereby declares on the District's behalf the District's acceptance of the nonexclusive franchise to the District approved by the City of Kent City Council on February 2, 2021, by the adoption of City of Kent Ordinance No. 4388.

DATED this 4 day of FEBRUARY, 2021.

Soos Creek Water and Sewer District

By: 
Its: G. M.

Exhibit B-1

City of Kent - Soos Creek Water Sewer District
Retail Water Service Area Boundary Map

October 2020

