

ORDINANCE NO. 2018-_____

AN ORDINANCE granting to Nob Hill Water Association, a Washington Association, its successors and assigns, a domestic water franchise and the right to construct, operate, and maintain a water distribution system in the City of Yakima, Washington, and prescribing the terms of such grant.

BE IT ORDAINED BY THE CITY OF YAKIMA:

Section 1. Grant. There is hereby granted by the City of Yakima, hereinafter referred to as “the City,” to Nob Hill Water Association, a Washington Association, its successors and assigns, hereinafter collectively referred to as the “Grantee,” the right, privilege, and franchise to construct, operate, and maintain a domestic water distribution system in, through, and along the present and future streets, alleys, parkways, public and other places in that portion of the City which is legally described in “**Exhibit A**”, attached hereto and incorporated by reference herein, and which area is depicted in the map attached hereto as “**Exhibit B**”, including mains, pipes, pumps, boxes, reducing and regulating stations, laterals, conduits, and connections, including service connections, together with all of the necessary appurtenances, all of which are included on the map(s) of the Nob Hill Water Association distribution system as it presently exists as of the date of this franchise renewal “**Exhibit C**”, for the purpose of supplying domestic water to the City and the persons and organizations therein, for the full term of this franchise, subject, however, to the limitations herein set forth and provided. This ordinance does not apply to any real property or right-of-way owned by the City and located outside the City’s corporate boundaries. If Grantee desires to cross or use any City property located outside the City’s corporate boundaries, then Grantee must separately obtain prior written consent to do so from the City.

Section 2. Term. The rights, privileges, and franchises hereby granted to and conferred upon the Grantee shall, unless this franchise be sooner terminated as herein provided, extend for the full term of twenty-five (25) years from the date of acceptance hereof by the Grantee, its successors or assigns.

Section 3. Ordinance and Acceptance Constitute Contract. This ordinance and the written acceptance thereof by the Grantee shall constitute the contract between the City and the Grantee, and the same shall be binding upon and inure to the benefit of the successors and assigns of the Grantee under the limitations herein imposed.

Section 4. Water Distribution System. The Grantee now has a water distribution system in the City. As additions to the water distribution system are made, the Grantee shall submit a revised map “**Exhibit C**” of the location of all existing Nob Hill Water Association water mains that are located in the streets, alleys, parkways, and public places in the City, which map shall be submitted to and filed with the Clerk of the City or other designated official of the City, and such shall also apply to any material alteration of the present main system in use. In respect of any such additions, mains of suitable size shall be laid in the alleys except where necessary to cross streets as determined by the Grantee, except for areas where there are no alleys or where it is otherwise impractical to serve customers from mains laid in alleys, in which event the alignment of the mains shall be determined by consultation between Grantee and the Yakima City Engineer.

Section 5. Pipe Installation. All water mains to be installed by Grantee shall be constructed at a depth of at least four (4) feet below the surface of the streets and alleys of the City and shall be laid so as not to interfere with any City utilities unless consented to by a proper City authority. All construction and installation work that involves crossing City streets or rights-of-way or other City property shall be subject to the advance written approval and pass the inspection of the City Engineer. All repairs and replacements entailed by the construction, operation, and maintenance of Grantee's water distribution system and enlargements thereof shall be as provided in Section 6. If any future improvement or construction by the City of sewers, water lines, streets, or alleys make necessary changes in the location of water mains, pipes, services, attachments, or appurtenances of the Grantee, the Grantee shall, upon reasonable notice by the City and after reasonable evaluation of alternatives by the City in cooperation with the Grantee, at Grantee's expense move or change such water mains, pipes, services, attachments or appurtenances to conform to such public improvements. The City will avoid the need for such moving or changing whenever possible. In the event Federal, State or other funds are available in whole or in part for utility relocating purposes, the City shall apply for such funds and the Grantee will be reimbursed to the extent of any such funds are actually obtained.

Section 6. Repairs and Replacements. All earth, materials, sidewalks, paving, crossings or improvements of any kind disturbed, injured or removed by the Grantee shall be fully repaired or replaced promptly to the condition in which they were before the disturbance, injury or removal (or better condition) by the Grantee in accordance with and when required by the provisions of YMC 8.72. The Grantee shall protect and save the City harmless from any loss or damage resulting from Grantee's work of repair or replacement.

Section 7. Construction and Excavations. Any construction or excavations by the Grantee in any of the streets, alleys or public grounds within the limits of said City shall be done in accordance with YMC 8.72 together with all other reasonable rules, regulations, resolutions, and ordinances now enacted or to be enacted by the government of the City relating to construction or excavations in streets, alleys, and public grounds of said City. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work on account of granting the required City permits. All applications for permits under this section shall be subject to review by the Yakima City Council if the City Council so chooses. The Grantee and the City Engineer shall each have the right to appeal permit decisions described in this section to the City Council to ensure the provisions of this Franchise are being followed.

Section 8. Construction Affecting City Streets. In any work which requires breaking of surface of the City streets, rights-of-way or other City property subject to this franchise for the purpose of laying, relaying, connecting, disconnecting, and repairing the said distribution system, and making connections between the same to structures and buildings of consumers or making connections to other facilities of the Grantee now in existence or hereafter adopted by the officers charged with the supervision and care of such City roads, rights-of-way, and other City property Grantee shall obtain from the City the required excavation permit as described in YMC 8.72. The Grantee at its own expense and with all convenient speed shall complete the work for which the surface has been broken and forthwith replace the work and make good the City road, rights-of-way or other City property according to the issued permit, leaving the same in as good condition as before the work was commenced; provided, however, that no such breaking of the surface on the City roads, rights-of-way or other City property shall be done prior to the obtaining the specified excavation permit issued by the City; provided, however, that in cases of emergency arising outside of the City's regular business hours, when an immediate excavation may be necessary for protection of private or public property, Grantee

shall perform the emergency work and notify the City as set forth in YMC 8.72.030(B). Application for such a permit shall be accompanied by specifications for the restoration of the City street, right-of-way or other City property to the same condition as it was prior to such breaking, and such specifications must be approved by the City Engineer before such breaking of the surface is commenced; provided further, that the City Engineer may require a performance bond in a sum sufficient to guarantee to the City that such City street, right-of-way or other City property shall be restored to the same condition as it was prior to such breaking of the surface, the amount of said bond to be fixed by the City Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such restoration. The City Council or its designee, upon notice to the Grantee, may at any time do, or order to have done any and all work that the City considers necessary to restore to a safe condition any such City street, right-of-way or other City property left by the Grantee or its agents in a condition dangerous to life or property, and the Grantee upon demand shall pay to the City all costs of such work. All construction or installation of such lines and facilities, service repair, or relocation of the same, performed along or under the City streets, rights-of-way or other City property subject to this franchise shall be done in such a manner as not to interfere with the construction and maintenance of other utilities, public or private, drains, drainage ditches and structures, irrigation ditches and structures, located therein, nor with the grading or improvement of such City streets, rights-of-way or other City property. The owners of all utilities, public or private, installed in such City streets, rights-of-way or other City property prior in time to the lines and facilities of the Grantee shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such City street or right-of-way.

Section 9. Standard of Work. All work done under this franchise shall be done in a thorough and workmanlike manner. In the laying of water distribution lines and the construction of other facilities and the opening of trenches, the boring under City streets, rights-of-way or other City property, the Grantee shall leave such trenches, ditches, and bore sites 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; and where any of such trenches, ditches or bore sites are left open at night, the Grantee shall place warning lights and barricades at such a position as to give adequate warning of such work according to MUTCD standard. The Grantee shall indemnify the City from and shall be solely liable for any injury to person or persons or damage to property sustained through its carelessness or neglect, or through any failure or neglect to properly guard or give warning of any trenches or ditches or tunnels dug or maintained by the Grantee, as is specifically provided in Section 22 of this Franchise Agreement.

Section 10. Non-Waiver. The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City streets, rights-of-way or other City property and this franchise shall not be construed to deprive the City of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City streets, rights-of-way and other City property covered by this franchise.

Section 11. Alterations of City Property. If at any time the City shall improve or change any City street, right-of-way or other City property subject to this franchise by grading, regrading, planking or paving the same, changing the grade, altering, changing, repairing or relocating the same or by constructing, altering, changing, repairing or relocating City drainage or utility facilities the Grantee, upon written notice from the City Engineer, shall at its sole expense, within thirty (30) days change the location or readjust the elevation of its water distribution lines and other facilities so that the same shall not interfere with such City work and

so that such lines and facilities shall conform to such new grades or routes as may be established. The City shall in no way be held liable for any damages to said Grantee that may occur by reason of any of the City's improvements, changes or work above enumerated. All work performed by the Grantee under this section shall be under the direction, approval and shall pass the inspection of the City Engineer. The Grantee shall pay all reasonable costs of and expenses incurred in the examination, inspection, and approval of such work.

Section 12. Work by City Forces. The laying, construction, operation, and maintenance of the Grantee's water distribution system authorized by this franchise shall not preclude the City, its agents, or its contractors from blasting, grading, excavating, or doing other necessary road work contiguous to the lines and facilities of the Grantee provided that the Grantee shall be given forty eight (48) hours notice of said blasting or other work from the City Engineer. In accordance with YMC 8.72.070 (3), the City shall provide notice of street resurfacing or reconstruction projects planned for the following eighteen (18) months by December 1st of each calendar year and Grantee's work within the identified street project performed prior to street improvements shall not be subject to the resurfacing fee.

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, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be provided by the City 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 City Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement by approved monuments shall be borne by the Grantee. A complete set of reference notes for monuments and other ties shall be filed with the Yakima City Engineer's Office.

Section 13. Vacation of City Streets. If at any time the City shall vacate any City street, right-of-way or other City property which is subject to rights granted by this franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said street, right-of-way or other City property for the use of the City, in either its proprietary or governmental capacity, then the Yakima City Council may at their option, by giving thirty (30) days written notice to the Grantee and after granting any alternate route, terminate this franchise with reference to such City street, right-of-way or other City property so vacated, and the City shall not be liable for any damages or loss to the Grantee by reason of such termination.

Section 14. Grantee to Make Extensions and Install Service Devices. The Grantee shall at all times during the term of this franchise install and maintain, at its own expense, such services and regulating devices, and meters, as may be necessary for supplying service to its consumers. The Grantee shall make all reasonable extensions for supplying service to consumers who are inhabitants of the City. The same shall be made, supplied, and furnished under such reasonable rules and regulations as may be prescribed by the Washington Utilities and Transportation Commission, or such other agency of the State having jurisdiction over said matters.

Section 15. Meters. All water sold and distributed by the Grantee shall be by meter measurement, on the property of, or at, or in the building of, the consumer served, and the Grantee, its agents, licensees or employees shall have the right to read and inspect the water meters at all reasonable times and to go on the premises therefor. The Grantee shall furnish

good and reliable meters for the consumers, and the terms and conditions of furnishing and testing thereof shall be as prescribed by the Washington Utilities and Transportation Commission, or the regulatory body having jurisdiction over such matters.

For the purpose of billing City sanitary sewer customers located within the area served by the Grantee, the Grantee shall provide the City Utility Division with water meter readings and other pertinent information as prescribed by the Customer Service Manager of the City of Yakima, as necessary to accommodate the City's utility billing system. The meter readings may be requested on either a monthly or bi-monthly basis and shall be made available or delivered to the City Utility Division no later than the 20th day of the month in which the meters were read. The Grantee will submit on at least a bi-weekly basis reports containing any account changes or final reads for closing accounts.

The water meter readings shall be transmitted or made available to the City Utility Division utilizing data file storage/transfer software system(s) specified by the City of Yakima. The acceptable software program shall be equal to or better than the BOX software application. The system will be controlled by the City of Yakima Information Technology Division. Installation, operation and maintenance of the acceptable software program on the Grantee's computer system shall be the sole responsibility of the Grantee.

Section 16. Grantee to Make Rules and Regulations. The Grantee, its successors, and assigns may make such reasonable rules and regulations for the protection of its property, for the prevention of loss and waste, for safety purposes, for the conduct of business, and in respect of the sale or distribution of water, as may be advisable and necessary from time to time, all in accordance herewith and with valid, applicable state laws, rules, and regulations. All such rules and regulations that may specifically affect the City's property shall first be approved in writing by the City.

Section 17. Acquisition by City. The City may acquire the public utility, for the exercise of which this franchise is granted, either by agreement or by condemnation, and upon such purchase by the City, either by agreement or by condemnation, no value of this franchise itself shall be taken into account in fixing the price to be paid by the City for such utility.

Section 18. Compensation to City. In consideration of the granting of this franchise, Grantee shall pay to the City two percent (2%) of the gross income from the sale of water in the City, such payments to be made either on a monthly payment term or annually within sixty (60) days from the first of the year for the amount due on account of the preceding year. In order to determine the amount of such compensation to be paid by Grantee to the City, Grantee shall submit to the City, either monthly with each monthly payment or within 60 days after the first day of January of each year, a monthly or annual report verified by the oath of Grantee's Manager or President which conforms to the requirements set forth in Article XI, Section 7 of the City Charter, which is incorporated by reference herein. The Director of Finance and Budget of the City, or such other auditor as may be designated by the City Manager, shall be permitted to examine the books of the Grantee, its successors or assigns, at reasonable times and from time to time to determine or verify the amount of gross income and franchise fee. For purposes of this Section, "Gross Income" means the value proceeding or accruing from the sale of tangible property or service, and receipts (including all sums earned or charged whether received or not) by reason of the investment of capital in the business engaged in, including rental, royalties, fees or other emoluments, however, designated (excluding receipts or proceeds from the use or sale of real property or any interest therein and proceeds from the sale of notes, bonds, mortgages, or other evidences of indebtedness, or stock and the like) and without any deduction on account of the cost of the property sold, the cost of materials, used,

labor costs, interest or discount paid, or any expense whatsoever, and without any deduction on account of losses.

Section 19. Forfeiture of Franchise. In case of failure on part of the Grantee, its successors or assigns to comply with any of the provisions of this ordinance, or if the Grantee, its successors or assigns do or cause to be done any act or thing prohibited by or in violation of the terms of this ordinance, the Grantee, its successors or assigns shall forfeit all rights and privileges granted by this ordinance and all rights thereunder shall cease; provided that such forfeiture shall not occur or take effect until the City shall carry out the following proceedings and procedures:

Before the City may proceed to forfeit this franchise pursuant to this section, the City shall first give notice of its intention to forfeit. The City's notice shall be given to the manager of Grantee (or its successor or assignee), as well as to each of the members of the Nob Hill Water Association's Board of Governors as that Board is identified in the corporation's registration documents held by the Secretary of State. Upon receiving said notice, it shall be the duty of the Board of Governors to provide notice to the mortgagee of any recorded mortgage, the trustee of any recorded trust instrument, and to any other representative of investors of which there is a filing on record in the office of the Yakima County Auditor pertaining to Association property. The notices required herein may be given by either personal service in the manner provided by law for the service of summons, or by certified or registered mail with a return receipt requested, with full postage prepaid. The notice shall be in writing and set forth clearly and in detail the failure or violation of Grantee constituting grounds for the forfeiture. The Grantee, its successor or assignee, shall have ninety (90) days after the receipt of notice by it within which to comply with the provisions of this franchise; and in the event such failure or violation continues beyond the ninety day period, the City may bring an action in Yakima County Superior Court, or any other court of competent jurisdiction, to forfeit the franchise. If it is determined by that action that the Grantee, its successor or assignee, shall have failed to comply with this ordinance or that Grantee, its successor or assignee, shall have done or caused to be done any act or thing prohibited by or in violation of the terms of this ordinance, and that the ground or grounds of forfeiture set forth in the notice had not been cured at the time of commencement of the legal action, then the City shall have the right to the entry by the court of its judgment declaring this franchise forfeited and assessing the costs of the action, including reasonable attorneys fees, against the Grantee, its successor or assignee; provided, however, that any such failure, default or violation shall not constitute grounds for forfeiture if due materially, substantially, and reasonably to act of God, fire, flood, storm or other element or casualty, theft, war, disaster, strike, lockout, boycott, labor disturbance or disruption, governmental authority, allocations, rules or regulations, shortages of materials or labor, shipping or transportation shortages, prevailing war or war preparation induced conditions, or bona fide legal proceedings, beyond the control of Grantee, its successors or assigns.

Section 20. Remedies to Enforce Compliance. The City, in addition to its right to forfeit this ordinance and franchise, as provided in Section 19, reserves and has the right to pursue any remedy to compel the Grantee, its successors or assigns to comply with the terms hereof and furnish the service herein called for, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reason herein stated, nor shall the delay of the City in declaring a forfeiture estop it from thereafter doing so, unless the action

of the City shall be prevented, caused or contributed materially to the failure to perform or to do the act or thing complained of. If any action is commenced to enforce the remedies provided for herein, the City shall be entitled to recover from Grantee its reasonable attorneys' fees and costs incurred therein.

Section 21. Assignment of Franchise. This franchise is non-exclusive, and the same shall not be leased, assigned or otherwise alienated without the express consent of the City Council by ordinance passed for that purpose, and no rule of estoppel shall ever be invoked against the City in case it shall assert the invalidity of any attempted transfer in violation of this section.

Section 22. Indemnity, No Estoppel, No Duty.

A. Grantee shall, at its sole expense, protect, defend, indemnify and hold harmless the City, its elected officials, and in their capacity as such, the officials, agents, officers and employees of the City from any and all claims, lawsuits, demands, actions, accidents, damages, losses, liens, liabilities, penalties, fines, judgments, awards, costs and expenses arising directly or indirectly from or out of, relating to or in any way connected with the performance or non-performance, by reason of any intentional or negligent act, occurrence or omission of Grantee, whether singularly or jointly with others, its representatives, permittees, employees, contractors or subcontractors, whether or not such acts or omissions were authorized or contemplated by this franchise Ordinance or applicable law, including but not limited to the construction, installation, maintenance, alteration or modification of the water transmission/distribution system/facility(ies); arising from actual or alleged injury to persons or property, including the loss of use of property due to an occurrence, whether or not such property is physically damaged or destroyed; arising out of or alleged to arise out of Grantee's failure to comply with any and all provisions of any statute, regulation or resolution of the United States, State of Washington or any local agency applicable to Grantee and its business. Nothing herein shall be deemed to prevent the parties indemnified and held harmless herein from participating in the defense of any litigation by their own counsel at such parties' expense. Such participation shall not under any circumstances relieve Grantee from its duty of defense against liability or of paying any judgment entered against such party. Notwithstanding any provision of this Section to the contrary, Grantee shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand, lien, damage or liability arises out of or in connection with negligent acts or omissions of the City.

B. Whenever any judgment is recovered against the City or any other indemnitee for any such liability, costs, or expenses, such judgment shall be conclusive against Grantee, not only as to the amount of such damage, but as to its liability, provided Grantee has received no less than thirty (30) days notice from the City of the pendency and nature of such suit and of the City's intention to claim indemnity hereunder. Under such circumstances, Grantee may request the opportunity to defend or participate in the suit with legal counsel of its choice, at its expense, said request not to be unreasonably denied. In the event the City elects to settle a claim or suit to which Grantee is responsible for indemnification, Grantee shall first approve said settlement prior to the City accepting same. Without Grantee's prior approval of a claim settlement entered by the City the City waives its right of indemnification therein.

C. No action, error or omission, or failure to act by the City, its agents, officers, officials or employees, in connection with administering its rights, duties or

regulatory functions related to this franchise Ordinance shall be asserted by Grantee, directly, indirectly or by way of seeking indemnification or as an assertion that the City has waived or is estopped to assert any municipal right hereunder, against the City, its committees, departments, divisions, officers, elected officials or employees.

D. It is not the intent of this franchise Ordinance to acknowledge, create, imply or expand any duty or liability of the City with respect to its role as a franchising authority, in the exercise of its police powers or for any other purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group or entity.

Section 23. Insurance. Grantee shall maintain, throughout the term of this franchise Ordinance, liability insurance insuring Grantee, its officers, employees and agents, with regard to all claims and damages specified in Section 23 herein, in the minimum amounts as follows:

A. **Commercial Liability Insurance.** On or before the date this franchise Ordinance is fully executed by the parties, Grantee shall provide the City with a certificate of insurance as proof of commercial liability insurance with a minimum liability limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage. This coverage will have a per-job aggregate endorsement and Washington stop gap coverage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this franchise Ordinance. The policy shall name the City, its elected and appointed officials, officers, agents and employees as additional insureds, and shall contain a clause that the insured will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. If Grantee uses any contractors and/or subcontractors to perform any of the work referenced in this franchise Ordinance, such contractors and/or subcontractors shall maintain the same minimum limits of liability insurance and shall comply with all other provisions discussed above in this subsection entitled "Commercial Liability Insurance."

B. **Commercial Automobile Liability Insurance.** On or before the date this franchise Ordinance is fully executed by the parties, Grantee shall provide the City with a certificate of insurance as proof of commercial automobile liability insurance with a minimum liability limit of One Million Dollars (\$1,000,000) combined single limit bodily injury and property damage. Said certificate of insurance shall clearly state who the provider is, the amount of coverage, the policy number, and when the policy and provisions provided are in effect. Said policy shall be in effect for the duration of this franchise Ordinance. The policy shall name the City, its elected and appointed officials, officers, agents and employees as additional insureds, and shall contain a clause that the insured will not cancel or change the insurance without first giving the City thirty (30) calendar days prior written notice. The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington. If Grantee uses any contractors and/or subcontractors to perform any of the work referenced in this franchise Ordinance, such contractors and/or subcontractors shall maintain the same minimum limits of liability and comply with all other provisions discussed above in this subsection entitled "Commercial Automobile Liability Insurance."

C. Umbrella Liability Insurance. Grantee and its contractors and/or subcontractors (as described below), shall maintain umbrella liability insurance coverage, in an occurrence form, over underlying commercial liability and automobile liability. On or before the date this franchise Ordinance is fully executed by the parties, Grantee shall provide the City with a certificate of insurance as proof of umbrella coverage with a minimum liability limit of Ten Million Dollars (\$10,000,000). Grantee's contractors and/or subcontractors operating directly on the water transmission/distribution system shall maintain a minimum umbrella liability limit of insurance of Five Million Dollars (\$5,000,000). The insurance shall be with an insurance company or companies rated A-VII or higher in Best's Guide and admitted in the State of Washington.

Providing coverage in the amounts as set forth above shall not be construed to relieve Grantee from liability in excess of those limits.

Proof of Insurance. Grantee shall file with the City copies of all certificates of insurance showing up-to-date coverages and additional insured coverages as set forth above.

Alteration of Insurance. Insurance coverages, as required by this franchise Ordinance, shall not be changed, cancelled or otherwise altered without approval of the City. Grantee shall provide the City no less than thirty (30) days prior written notice of any such proposed change, cancellation or other alteration. The City may, at its option, review all insurance coverages. If it is determined by the City during the term of this franchise Ordinance that circumstances require and that it is reasonable and necessary to increase insurance coverage and liability limits above such coverage and limits as are set forth in this franchise Ordinance in order to adequately cover the risks of the City, Grantee and Grantee's officers, agents and employees, the City may require additional insurance to be acquired by Grantee. Should the City exercise its right to require additional insurance, the City will provide Grantee with thirty (30) days prior written notice. If Grantee does not believe that the requested amount of the additional insurance is reasonably necessary, then Grantee has the right to terminate the franchise if the City continues to require such additional insurance coverage.

Failure to Procure. Grantee acknowledges and agrees, by acceptance of this franchise Ordinance, that failure to procure and maintain the insurance coverages as detailed in Section 23 of this franchise Ordinance shall constitute a material breach of this franchise Ordinance. In the event of such failure to procure and maintain the referenced insurance coverages, the City may immediately suspend Grantee's operations under this franchise Ordinance, terminate or otherwise revoke this franchise Ordinance and/or, at its discretion, procure or renew such insurance in order to protect the City's interests and be reimbursed by Grantee for all direct costs and premiums in connection therewith.

Section 24. Compliance with Ordinances. During the term of this franchise, Grantee shall fully comply with all applicable federal and state statutes and regulations, together with all ordinances of the City pertaining to the water business and the operation and maintenance of water distribution facilities.

Section 25. Dispute Resolution for Potential Duplication of Services. In the event that either the City or the Grantee deems there to be a potential or actual duplication or overlap of services provided by the City and the Grantee in a particular area, then either the City or the

Grantee may, at its option, petition the Regional Engineer of the Washington Department of Health to resolve the dispute regarding duplication or overlap of services. Based upon evidence and arguments submitted by both the City and the Grantee, the Regional Engineer of the Washington Department of Health shall make a final determination as to which entity shall provide the exclusive domestic water service to the particular area in question so that there will be no duplication or overlap of water services in that area. The Regional Engineer's determination shall be final and binding upon the parties with no right of appeal.

Section 26. Saving Clause. If any clause, sentence or section of this ordinance be held void by any court, it shall not affect the balance hereof.

Section 27. This ordinance shall be in full force and effect 30 days after its passage, approval, and publication as provided by law and by the City Charter.

PASSED BY THE CITY COUNCIL, signed and approved this 16th day of October, 2018.

ATTEST:

Kathy Coffey, Mayor

Sonya Claar Tee, City Clerk

Publication Date: _____

Effective Date: _____

EXHIBIT A

Beginning at the Southeast corner of Section 34, Township 13 North, Range 18 E.W.M., thence South along the East line of said section 34 extended southerly to its intersection with the center-line of Ahtanum Creek; thence Westerly following the center-line of Ahtanum Creek to its intersection with the North-South center section line of Section 14, Township 12 North, Range 17 E.W.M.; thence North along the North-South center section line of Sections 14, 11 and 2, Township 12 North, Range 17 E.W.M. to the North line of said Section 2; thence East along the North line of said Section 2 to the Southeast corner of Section 35, Township 13 North, Range 17 E.W.M.; thence North along the East line of said Section 35 to the Southeast corner of Section 26, Township 13 North, Range 17 E.W.M; thence West along the South line of Sections 26 and 27 to the South quarter corner of Section 27; thence North along the North-South center Section line of Sections 27, 22 and 15 to the North line Section 15, Township 13 North, Range 17 E.W.M.; thence East along the North line of Sections 15, 14 and 13, Township 13 North, Range 17 E.W.M. and along the North line of Sections 18, 17, 16 and 15, Township 13 North, Range 18 E.W.M. to the Northeast corner of said Section 15; thence South along the East line of Sections 15, 22, 27 and 34, Township 13 North, Range 18 E.W.M. to the Southeast corner of said Section 34 and the point of beginning.