

**MIDWAY SEWER DISTRICT
RESOLUTION NO. 2018-15**

RESOLUTION APPROVING CITY OF KENT FRANCHISE AGREEMENT

Background:

1. Midway Sewer District owns and operates portions of its sewer system in City of Kent Right of Ways; and
2. Midway Sewer District Staff have worked with City of Kent staff to negotiate a mutually beneficial franchise agreement that establishes the terms and conditions that apply to both the City and District when the District has facilities located in City right of ways.; and
3. The City of Kent City Council has adopted Ordinance No. 4300 approving the Franchise term;

Resolution: NOW THEREFORE, BE IT RESOLVED, that the Board of Commissioners of Midway Sewer District hereby approve the terms of the Franchise Agreement set forth in City of Kent Ordinance No. 4300 and authorize the Chair of the Board to execute the Acceptance of Franchise document..

Adoption: ADOPTED at a regular meeting of the Board of Commissioners of Midway Sewer District on December 26, 2018 the following Commissioners being present and voting:

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner



CITY CLERK

Kimberley A. Komoto
City Clerk
220 4th Avenue South
Kent, WA 98032
Fax: 253-856-6725

PHONE: 253-856-5728

Via Certified Mail

December 14, 2018

General Manager
Midway Sewer District
P.O. Box 3487
Kent, WA 98089-0209

RE: Certified Copy of City of Kent Ordinance No. 4300 – Non-Exclusive 15-Year Franchise

To whom it may concern:

On December 11, 2018, the City of Kent adopted the enclosed Ordinance No. 4300 granting Midway Sewer District a non-exclusive 15-year franchise to construct, maintain, operate, replace and repair a 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 not caused by the City.

Pursuant to Section 27 of the ordinance, enclosed you will a certified copy of the ordinance. The district shall have 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 to the ordinance as Exhibit B.

For your convenience, I have enclosed a self-addressed, stamped envelope for you to return the Acceptance of Franchise.

Sincerely,

Kimberley A. Komoto
City Clerk

Enclosure: Certified Copy of Ordinance No. 4300

**EXHIBIT B
ACCEPTANCE OF FRANCHISE**

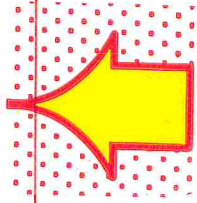
The undersigned authorized representative of Midway Sewer District (District) hereby declares on the District's behalf the District's acceptance of the nonexclusive franchise to Midway Sewer District approved by the City of Kent City Council on December 11, 2018, by the adoption of City of Kent Ordinance No. 4300.

DATED this _____ day of _____, _____.

Midway Sewer District

By: _____

Its: _____



ORDINANCE NO. 4300

AN ORDINANCE of the City Council of the City of Kent, Washington, granting Midway Sewer District a non-exclusive 15-year franchise to construct, maintain, operate, replace and repair a 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 not caused by the City.

RECITALS

A. Midway Sewer District, a Washington special purpose municipal corporation ("District"), owns and operates sewer facilities ("Facilities") and provides retail utility sewer service to customers located within the District's corporate and approved sewer utility service area boundary; 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 sewer utility system and provides sewer utility services to customers located within the City's corporate and approved sewer utility service area boundary.

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

D. RCW 57.08.005 (5) authorizes the District to conduct sewage 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 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 Midway Sewer District, a Washington municipal corporation, and its respective successors and assigns.

C. "Facility" or "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.

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 District's service area within the present corporate boundaries of the City, and as such corporate boundaries may be extended within District's service area by annexation or otherwise.

E. "Ordinance" means this Ordinance No. 4300, 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 provision of sewer service to direct retail customers whose connections to the District's sewer system are located within the City. Revenue shall not include: 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 the provision of sewer service 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; sewer availability document fees and charges; sewer system extension agreement fees and charges; income from street lights; labor, equipment and materials charges, and the Franchise Fee.

SECTION 2. - Franchise.

A. The City does hereby grant to District the right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through and across open city right-of-ways within the Franchise Area for purposes of its sewer utility 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 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. At all times during the term of this Franchise, 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. 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 reasonably believes necessary to restore the right-of-way. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and District shall be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this Section. The rights granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

SECTION 4. - Relocation of Facilities.

A. 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 City shall:

1. Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any such project; and
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 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, 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. In the event 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. 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. The City and the District agree that coordination under this Section 4 shall include evaluating the costs of alternative plans that achieve the essential function of the public improvement most efficiently for both the District and the City, and to the greatest extent possible, avoid the relocation of District Facilities.

B. If relocation of District Facilities cannot be avoided through the coordination requirements in this Section 4 and 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 fifteen (15) 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 fifteen (15) 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.

3. For the purposes of this Section 4, the date of the Facility's acceptance by the District Board of Commissioners shall determine the age of the Facility.

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, the City agrees not to require the District to relocate its Facilities. District shall have the right as a pre-condition of such relocation to require such person or entity to:

1. Make payment to 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 save 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's Facilities required in accordance with this Franchise. Any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other 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. Except as provided in Section 5(H) herein, 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 this Franchise and other applicable City regulations, the City shall provide the District with written notice including a description of the actions the City reasonably 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, damaged or plugged, or if the District's construction area for the District's 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. 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.

F. 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.

G. 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.

H. Regular Maintenance. The City will not require the District to obtain a right-of-way permit, or any other City-issued permit, to conduct regular maintenance of the District's Facilities, including, but not limited to, flushing mains, video inspecting mains, or manhole adjustments, or repairing surface areas around existing facilities, unless such maintenance impacts a traffic lane or a high pedestrian area on SR 99; SR 516; Military Road; South 272nd Street; 30th Avenue South; or South 259th Place/ South 260th Street.

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. District and City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects. 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, 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, City shall provide the District with a schedule of 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. District shall indemnify, defend and hold the City, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful,

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

B. City shall indemnify, defend and hold the District, its agents, officers, employees, volunteers and assigns harmless from and against any and all claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, servants, employees, contractors, subcontractors or assigns in exercising the rights granted City in this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, employees, volunteers or assigns.

C. In the event any such claim or demand be presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part 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 City and District, their officers, employees and agents, District's liability hereunder shall be

only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

SECTION 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 said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to District. The City may act without the thirty (30) day notice in case of an emergency.

SECTION 9. - Non-exclusive Franchise. This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit the City from granting other and further franchises over, upon, and along the Franchise Area, which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

SECTION 10. - Franchise Term. This Franchise shall have a term of fifteen (15) years from its Effective Date as defined in Section 29 herein; 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 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 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 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 the first day of the first calendar quarter occurring at least sixty (60) days after the Effective Date of this Franchise, subject to the provisions of Section 12(B) herein.

B. Franchise Fees shall be paid to the City in bi-monthly installments (meaning, every two months) 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 Section 12 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear any legal authority it may have 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. However, if a court of competent jurisdiction determines the City may not agree to forbear its statutory authority to impose an Excise Tax upon the District based on the District's revenues, gross receipts, or gross income during the term of this Franchise, or to limit any such Excise Tax on the District's revenues, gross receipts, or gross income, the District shall have the right and option, at its sole election, to (1) terminate this Franchise and the payment of Franchise Fees to the City, and if the City determines to impose an Excise Tax on the District, the District shall have the right to bring an action to challenge the legal validity of any such Excise Tax, or (2) if the Parties mutually agree, elect not to terminate this Franchise and the District may agree to pay any such Excise Tax, provided the District's Franchise Fees herein to the City shall be credited against any such Excise Tax the City may impose.

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 any legal authority it may have 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"

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 all other applicable City ordinances and codes, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without District's written approval. Nothing in this ordinance limits the City's lawful power to exercise its police power to protect the safety and welfare of the general public. Any location, relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect.

B. If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then 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 District's and the City's exclusive retail sewer service area boundaries have been established and approved by agencies with jurisdiction, including the Washington State Department of Ecology and King County. The Parties agree that their respective exclusive retail sewer service area boundaries are confirmed as described and depicted on **Exhibit A** attached hereto and incorporated herein by this reference ("City of Kent-Midway Sewer District Retail Sewer Service Area Boundary" or "Retail Sewer Service Area Boundary"). The respective exclusive retail sewer service area boundaries as provided herein shall survive any termination or expiration of this Franchise. Any modification of the exclusive retail sewer service area boundary provided herein shall be by written agreement between the Parties. This provision and the agreed exclusive retail sewer service area boundary between the Parties shall supersede, rescind, and cancel all prior agreements between the Parties relative to the Parties' respective retail sewer service area boundaries.

SECTION 14. - *Location of Facilities and Equipment.* With the exception of components that are traditionally installed at ground level or above such as manhole frame and covers, vault lids, risers, lift stations, electrical control panels, power meters, telephone connections, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

SECTION 15. - Record of Installations and Service. With respect to excavations by District and the City within the Franchise Area, District and the City shall each comply with 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, District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its 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. 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. 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 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 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. 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, 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 District. Such written evidence shall include, to the extent available from District's insurance carrier, a written certificate of

insurance with respect to any insurance maintained by 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 forty-five (45) 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 reasonable 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 centered on the Facilities to the extent possible 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 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:

General Manager
Midway Sewer District
P.O. Box 3487
Kent, WA 98089-0209
Phone: (206) 824-4960

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 shall not be deemed to be a waiver or a continuing waiver by the non-breaching Party of any subsequent breach or violation of the same or any other provision of this Franchise.

SECTION 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. 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 sewer system within the Franchise Area.

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 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 B** and incorporated herein by this reference.

SECTION 28. - *District Acceptance of Franchise.* District shall have no rights under this Franchise nor shall District be bound by the terms and conditions of this Franchise unless District shall, within thirty (30) days after the 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.

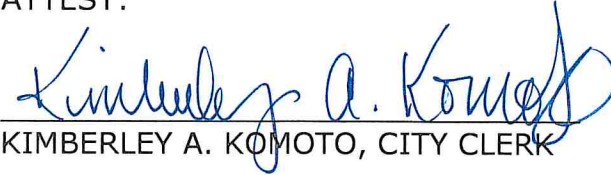
SECTION 31. - *Corrections by City Clerk or Code Reviser.* Upon approval of the city attorney, the city clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; ordinance, section, or subsection numbering; or references to 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 legislative body, is not subject to referendum, and shall take effect 30 days after its passage and publication ("Effective Date").


DANA RALPH, MAYOR

December 11, 2018
Date Approved

ATTEST:


KIMBERLEY A. KOMOTO, CITY CLERK

December 11, 2018
Date Adopted

December 14, 2018
Date Published

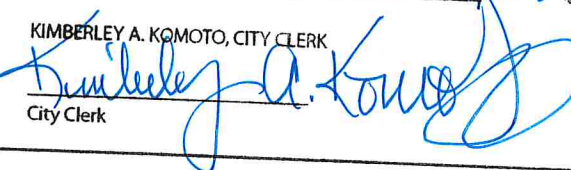
APPROVED AS TO FORM:



ARTHUR "PAT" FITZPATRICK, CITY ATTORNEY

State of Washington
County of King
City of Kent

CERTIFICATION

I KIMBERLEY A. KOMOTO, Clerk of the City of Kent, Washington, do hereby certify that the document on which this stamp is imprinted is a true and correct copy of said original as it appears on file and of record in my office and of the whole thereof IN TESTIMONY WHEREOF I have affixed this seal of the City of Kent at my office in Kent, Washington on this date December 14, 2018

KIMBERLEY A. KOMOTO, CITY CLERK

City Clerk



**City of Kent - Midway Sewer District
Retail Sewer Service Area
June 2018**

**City of Kent - Midway Sewer District
Retail Sewer Service Area
June 2018**

Midway Sewer District Boundary

EXHIBIT B
ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Midway Sewer District (District) hereby declares on the District's behalf the District's acceptance of the nonexclusive franchise to Midway Sewer District approved by the City of Kent City Council on December 11, 2018, by the adoption of City of Kent Ordinance No. 4300.

DATED this _____ day of _____, _____.

Midway Sewer District

By: _____

Its: _____