

## ORDINANCE NO. 844

**AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO WOLLOCHET HARBOR SEWER DISTRICT, A WASHINGTON A SPECIAL UTILITY DISTRICT PROVIDING SEWER SERVICE WITHIN THE STATE OF WASHINGTON, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF GIG HARBOR, WASHINGTON, FOR A PERIOD OF TWENTY-FIVE YEARS, FOR CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A SEWER SYSTEM AND ACCESSORIES WITHIN AND THROUGH THE CITY OF GIG HARBOR, WASHINGTON.**

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WHEREAS, RCW 35A.47.040 authorizes code cities to issue non-exclusive franchises for use of public street and rights-of-way, and

WHEREAS, the Wollochet Harbor Sewer District is experiencing severe hardship due to failing sewer systems and minimal financial resources to support corrections to the existing system, therefore the City will waive all applicable fees associated with this application, and

WHEREAS, this ordinance has been introduced more than five (5) days prior to its passage by the City Council, and

WHEREAS, this ordinance has been submitted to the City Attorney and has received at least a majority vote of the entire City Council at a regular meeting, now, therefore

**THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO  
ORDAIN AS FOLLOWS:**

**Section 1. Rights Granted.** The right is hereby granted to WOLLOCHET HARBOR SEWER DISTRICT (hereinafter referred to as the "Grantee") to lay, construct, extend, maintain, repair, renew and replace sewer pipes, and accessories under, along and/or across any and all streets, avenues, roads, alleys and other rights-of-way in the City for the purpose of therein laying, constructing, extending, maintaining, renewing, replacing and repairing mains and pipes and all appurtenances thereto and accessories used and/or useful for the transmission, of sewage within and through the present or future territorial limits of the City of Gig Harbor, Washington (hereinafter referred to as the "City"), to be placed in the locations as shown on the attached plans in Exhibit A, for the term of twenty-five years from and after the effective date of this ordinance, except as hereinafter provided.

**Section 2. City's Reservation of Rights.** Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances, and permit requirements regulating the performance of the conditions of this franchise, including any valid

ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any sewer facilities of the Grantee, and the Grantee shall promptly conform with all such regulations, and permit requirements, unless compliance would cause the Grantee to violate other requirements of law.

Section 3. Approval of Plans. Prior to construction of any of the pipes, conduits, mains, facilities and appurtenances in the area described in Section 1 herein, the Grantee shall submit to the Public Works Director, in triplicate, plans drawn to an accurate scale, showing the exact location, character, position, dimensions, depth and height of the work to be done. The plans shall accurately depict the relative position and location of all pipes, conduits, mains, manholes, facilities, and appurtenances to be constructed, laid, re-laid, installed, replaced, repaired, connected or disconnected, and the existing street, or public right-of-way. All streets and public right-of-way denoted thereon shall be designated by their name and number and the local improvements therein such as roadway pavement, shoulders, sidewalks, curbs, gutters, ditches, driveways, parking strips, telephone or electric distribution poles, conduits, storm, gas or water pipes as may exist on the ground or area sought to be occupied shall be outlined.

In the construction proposed by the Grantee, all materials and equipment shall be of the first class type and kind. The exact class and type to be used shall be shown on the plans, as will the equipment to be used and the mode of safeguarding and facilitating the public traffic during construction. The manner of excavation, construction installation, backfill and temporary structures (such as traffic turnouts, road obstructions, etc.) shall meet with the approval of, pass all requirements of, and be constructed under the supervision of the director. Prior to approval of any work under this franchise, the Director may require such modifications or changes, as he deems necessary to properly protect the public in the use of the public places, and may fix the time or times within and during which such work shall be done.

The Grantee shall pay to the City such amounts as, in the judgment of the director, are reasonably necessary to investigate and process plans for construction work, to inspect such work, to secure proper field notes for location, to plat such locations on the permanent records of the City Public Works Department, to supervise such work or to inspect or reinspect as to maintenance during the progress of or after the repair of, any of the initial construction authorized under this franchise.

Section 4. Requirement for Work in Public Rights-of-Way. Whenever the Grantee shall excavate in any public right-of-way for the purpose of installation, construction, repair, maintenance or relocation of its sewer facilities, it shall apply to the City for a permit to do so and, in addition, shall give written notice to the City at least ten (10) working days notice of intent to commence work on main lines in the right-of-way, and five (5) working days notice of intent to commence work on all other lines in the right-of-way, unless such notice is waived by the Public Works Director. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this franchise ordinance.

During any period of relocation, installation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Grantee shall at all times post and maintain proper barricades and comply with all applicable regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

If the Grantee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the Grantee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

- A. Installation of any lines is compatible with all federal, state and local regulations and Grantee's construction standards;
- B. Such joint use shall not unreasonably delay the Grantee's work;
- C. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties;
- D. The Grantee may deny such request for safety reasons.

Section 5. Protection of the Public Health, Safety and Property. Whenever an accident, faulty operation, excavation, fill or other condition associated with the construction, installation, maintenance or repair of the facilities authorized under this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place or street utilities or City property, the Director may direct the Grantee, at its own expense, to take actions to protect the public, adjacent public places, City property and street utilities, and may require compliance within a prescribed time.

In the event that the district fails or refuses to take the actions directed promptly, or fails to fully comply with such directions given by the Director, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, including placing of temporary shoring, backfilling, alteration of drainage patterns and any other actions reasonable necessary to decrease the possibility of earth movement, or actions regarded as necessary safety precautions; and the Grantee shall be liable to the City for the costs thereof.

Section 6. Records. The Grantee shall at all times keep complete records showing the relative location and size of all sewer lines heretofore laid in the City, and showing the relative

location of all gates, gauges, and other service construction. Such records shall be kept current by the Grantee, who shall provide as-builts to the City after construction is complete.

Upon the City's request for information on the location of Grantee's sewer lines or other facilities prior to the designing of rights-of-way improvements or other City improvements, the Grantee shall respond with the information on both the horizontal and vertical depth location of the Grantee's facilities no later than two (2) business days after the receipt of the request, unless otherwise agreed by the parties in writing. The City, as excavator, shall have the right to receive compensation for all costs damages or other expenses incurred by the City if the Grantee does not accurately locate its facilities as required by this section and in accordance with RCW 19.122.030. In addition, nothing in this section limits the City's ability to obtain damages from the Grantee under the circumstances described in chapter 19.122 RCW, the City shall obtain recovery for its damages, costs, fees and expenses as provided by law.

**Section 7. Recovery of Costs.** The Grantee shall be responsible for all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. When the City incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a fee is not established, the Grantee shall pay such costs and expenses directly to the City.

**Section 8. Restoration.** The Grantee shall, after installation, construction, relocation, maintenance or repair of its facilities within the franchise area, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets after restoration or repair. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the affected area at its sole cost and expense.

**Section 9. Indemnification.** The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the acts or omissions of the Grantee, its officers or employees in performing this franchise are the proximate cause.

The Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the Grantee's own employees, including those claims to which the Grantee might otherwise be immune under Title 51 RCW, arising against the City (1) solely by virtue of the City's ownership or control

of the rights-of-way; (2) by virtue of the Grantee's exercise of the rights granted herein; or (3) by virtue of the City's permitting the Grantee's use of the City's rights-of-way; which claims are based upon the City's inspection or lack of inspection of work performed by the Grantee, its employees, agents officers or representatives, in connection with the work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of negligent acts or omissions of the Grantee, its employees, officers, representatives or agents in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction or work in any public right-of-way in the performance of the work or services permitted under this franchise.

Inspection or acceptance by the City of any work performed by the Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims, which are not reduced to a suit, and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the Grantee, then the Grantee shall pay all of the City's costs of defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fee for recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided herein covers claims by the Grantee's own employees from which the Grantee might otherwise be immune under Title 51 RCW, and this waiver has been mutually negotiated by the parties.

**Section 10. Bond.** Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, the Grantee shall, upon request of the City, furnish a bond executed by the Grantee and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of the Grantee's obligations under this franchise. The bond shall be conditioned so that the Grantee shall observe all of the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective

work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

Section 11. Relocation. The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street any of its installations, including abandoned facilities when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental entity acting in a governmental capacity, provided that the Grantee shall in all cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of pipeline required to be temporarily disconnected or removed. If the City determines that the project necessitates the relocation of the Grantee's then existing facilities, the City shall:

- A. At least sixty days (60) days prior to the commencement of such improvement project, provide the Grantee with written notice requiring such relocation;
- B. Provide the Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for the Grantee's facilities so that the Grantee may relocate its facilities in other City right-of-way in order to accommodate such improvement project; and
- C. After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities at no charge or expense to the City so as to accommodate the improvement project at least five (5) days prior to commencement of the project.

The Grantee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Grantee in writing if one or more of the alternatives is suitable to accommodate the work, which would otherwise necessitate relocation of the facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event, the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this section.

The provisions of this section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project.

Section 12. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said streets, avenues, alleys or public rights-of-way of every type and description. Such franchise shall in no way prevent or prohibit the City from using any of said roads, streets or public rights-of-way, or affect the City's jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way of every type and description.

Section 13. Forfeiture and Revocation. If the Grantee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon at least thirty (30) days notice to the Grantee. Prior to or at the hearing, the Grantee may request a reasonable time within which to remedy the default.

The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this ordinance, and to recover damages, costs and attorney's fees incurred by the City by reason of the Grantee's failure to comply.

In addition to any other remedy provided herein, the City reserves the right to pursue any legal remedy to compel or force the Grantee to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 14. Insurance. The Grantee shall procure and maintain for the duration of this franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the Grantee, its officials, employees and representatives. The Grantee shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this franchise ordinance.

Before beginning work on the project described in this Agreement, the Grantee shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit.
2. Commercial general liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not

limited to, contractual liability, products and completed operations, property damage, and employer's liability.

3. Professional liability insurance with no less than \$1,000,000 per occurrence or claims made basis.

Any deductibles or self-insured retention's must be declared to and approved by the City. Payment of deductible or self-insured retention's shall be the sole responsibility of the Grantee.

The insurance policy obtained by the Grantee shall name the City, its officers, officials, employees, and volunteers, as additional insureds with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees, or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary insurance as respects the City, its officers, officials, employees or volunteers. Any insurance maintained by the City, its officers, officials, employees and volunteers shall be in excess of the Grantee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice, by certified mail, return receipt requested, has been given to the City. Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

**Section 15. Assignment.** This agreement may not be assigned or transferred without the prior, written approval of the City. The Grantee shall provide prompt, written notice to the City of any such proposed assignment. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall be binding upon the successors and assigns of the Grantee, and all privileges of the Grantee shall inure to the successors and assigns as if they were mentioned herein.

**Section 16. Abandonment of Facilities.** Any plan for abandonment of any of Grantee's sewer lines or facilities installed under this franchise or any of its predecessors must be submitted to the City for its written consent. The City Public Works Director shall review the plan for abandonment prior to commencement of any work, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this franchise ordinance.

**Section 17. Modification.** The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

**Section 18. Integration.** The written provisions and terms of this franchise ordinance shall supersede all prior verbal statements of either party, and any prior franchise ordinance between

the parties. Such statements or prior franchise ordinances shall not be effective or be construed as entering into, forming a part of, or altering in any manner whatsoever, this Agreement.

**Section 19. Notice.** Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

City of Gig Harbor 3105 Judson Street Gig Harbor, WA 98335 Attn: City Administrator	Wollochet Harbor Sewer District P.O. Box 2166 Gig Harbor, WA 98335 Attn: Commissioner
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**Section 20. Binding Effect.** All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned herein.

**Section 21. Compliance with Law.** The Grantee, its subcontractors, employees and any person acting on behalf of the Grantee shall keep him/herself fully informed of all federal and state laws, and all municipal ordinances and regulations which in any manner affect the work or performance of the work authorized under this franchise ordinance, and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify the city, its officers, officials, agents employees or representatives against any claim or liability arising from or based upon the violation of any such laws and regulations.

**Section 22. Survival.** All of the provisions, conditions, and requirements of Section s 6, 7, 8, 9, 10, 11, 16, and 21 shall survive the City's franchise to the Grantee for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof.

**Section 23. Severability.** If any section, sentence, clause or phrase of this franchise ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise ordinance. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the parties reserve the right to renegotiate the grant of franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

**Section 24. Acceptance.** This franchise is granted upon the express condition that the Grantee, within thirty (30) days after the adoption of this ordinance, shall file with the Clerk of the City a written acceptance of the same, and when so accepted by the Grantee shall constitute a contract between the City and Grantee for all of the uses, services and purposes herein set forth.

**Section 25. Effective Date.** This Ordinance shall take effect after at least one publication in the City's official newspaper, and after the 26<sup>th</sup> of July, 2000, a period consisting of

thirty days after the Franchise Agreement is approved by City Council, as long as the Grantee has submitted an acceptance as required by Section 24 above.

PASSED BY THE COUNCIL OF THE CITY OF GIG HARBOR,  
WASHINGTON, AND APPROVED BY ITS MAYOR AT A REGULAR MEETING OF SAID  
COUNCIL HELD ON THIS 26<sup>TH</sup> DAY OF JUNE, 2000.

APPROVED:

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GRETCHEN WILBERT, MAYOR

ATTEST/AUTHENTICATED:

MOLLY TOWSLEE, CITY CLERK  
FILED WITH THE CITY CLERK: 6/7/00  
PASSED BY THE CITY COUNCIL: 6/26/00  
PUBLISHED: 7/5/00  
EFFECTIVE DATE: 7/26/00  
ORDINANCE NO. 844

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY:

BY \_\_\_\_\_  
CAROL A. MORRIS

#### **SUMMARY OF ORDINANCE NO. 844**

of the City of Gig Harbor, Washington

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On the 26th day of June, 2000, the City Council of the City of Gig Harbor, passed Ordinance No. 844. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, GRANTING TO WOLLOCHET HARBOR SEWER DISTRICT, A WASHINGTON UTILITY DISTRICT PROVIDING SEWER SERVICE WITHIN THE STATE OF WASHINGTON, THE RIGHT AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, ROADS, ALLEYS, LANES AND OTHER PUBLIC RIGHTS-OF-WAY IN THE CITY OF GIG HARBOR, WASHINGTON, FOR A PERIOD OF TWENTY-FIVE YEARS, FOR CONSTRUCTING, MAINTAINING, REPAIRING, RENEWING AND OPERATING A SEWER SYSTEM AND ACCESSORIES WITHIN AND THROUGH THE CITY OF GIG HARBOR, WASHINGTON.

The full text of this Ordinance will be mailed upon request.

DATED this 27<sup>th</sup> day of June, 2000.

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Molly M. Towslee, City Clerk