



ORDINANCE NO. 26-725

AN ORDINANCE OF THE CITY OF WINSTON, OREGON CITY COUNCIL GRANTING A NON-EXCLUSIVE FRANCHISE TO THE WINSTON-DILLARD WATER DISTRICT, FOR THE MAINTENANCE AND OPERATION OF A WATER SYSTEM.

WHEREAS the City of Winston owns and operates rights-of-ways, easements and alleys; and,

WHEREAS under ORS 264.550, and ORS 221.420 all utilities operating within a city's corporate limits may be required to enter into a franchise agreement with the city for use of the rights-of-way, easements and alleys; and,

WHEREAS the Winston Dillard Water District is a water utility operating within the corporate limits of the City of Winston; and,

WHEREAS the City desires to set forth the terms and conditions by which Winston-Dillard Water District shall use the public ways of the City.

NOW, THEREFORE, THE CITY OF WINSTON, OREGON, CITY COUNCIL HEREBY ORDAINS AS FOLLOWS:

SECTION 1. Grant of Franchise and General Utility Easement

City hereby grants to Winston Dillard Water District the right, power, privilege and authority to enter upon all roads, rights- of-way, streets, alleys, highways, or structures, lying within the Franchise Area to locate, construct, operate and maintain its Facilities for the purpose of controlling, distributing, storing, and transmitting Water, as may be necessary to provide Water service.

1.1 Effective Date. This Ordinance will become effective per **SECTION 12** at the end of this Ordinance.

SECTION 2. Term.

The rights, privileges and Franchise granted to Winston Dillard Water District will extend for an initial term of five (5) years from the Effective Date (September 16, 2031), and shall automatically extend for successive one (1) year terms unless, (a) a new agreement is entered into; (b) the Franchise is terminated by agreement between the Parties; or (c) either party provides the other party not less than one hundred eighty (180) days prior written notice of its intent not to renew a successive term.

SECTION 3. Acceptance by Winston-Dillard Water District.

Within thirty (30) days after the passage of this ordinance by the City, Winston-Dillard Water District shall file an unqualified written acceptance thereof, with the City Recorder, otherwise the ordinance and the rights granted herein shall be null and void.

SECTION 4. Non-Exclusive Franchise.

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises within the Franchise Area that do not interfere with Winston Dillard Water District's rights under this Franchise. City may not, however, award a Water Franchise to another party under more favorable or less onerous terms than those of this Franchise without this Franchise being amended to reflect such more favorable or less onerous terms.

4.1 Assignment of Franchise. Winston Dillard Water District shall have the right to assign its rights, benefits and privileges under this Franchise. Any assignee shall, within thirty (30) days of the date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. As permitted by federal law, and state law, and Commission regulation Winston Dillard Water District shall have the right, without notice to or consent of the City, to mortgage or hypothecate its rights, benefits and privileges in and under this Franchise as security for indebtedness.

SECTION 5. Franchise Fees.

5.1 In consideration of the rights, privileges, and franchise granted by City to Winston Dillard Water District under this Franchise, Winston Dillard Water District will pay City six percent (6%) of Winston Dillard Water District's Gross Revenues derived from service to customers located within City (the "Franchise Fee"). Winston Dillard Water District will pay the Franchise Fee in quarterly installments, which quarterly installments will be due not later than thirty (30) days following the end of the quarter to which the payment relates.

5.2 For the purposes of this subsection, "City" means the area within the corporate limits of the City as now constituted, together with any area hereafter annexed by the City.

5.3 The Franchise Fee amount of 6% shall be fixed. The City may modify the Fee and terms of the agreement with six (6) months' notice to Franchisee.

5.4 Franchisee shall provide free of charge to City bulk water for use by Public Works Department for 12 months for each year of the agreement.

5.5 Contemporaneously with each quarterly payment, Winston Dillard Water District will file with City a sworn statement describing the total gross revenues Winston Dillard Water District received during the applicable quarter ("the Accounting Statement"). City's acceptance of any payments under this Section will not constitute a waiver by City of any Winston Dillard Water District breach of this Franchise.

5.6 Inspection of Books and Records. On thirty (30) days' advance written notice to Winston Dillard Water District, City may review such Winston Dillard Water District books, records, documentation, and/or information that City reasonably determines necessary or appropriate to audit an Accounting Statement and/or ascertain Winston Dillard Water District's compliance with this Franchise. Winston Dillard Water District will cooperate with City in conducting any inspection and/or audit in-person, by mail or electronic means and will correct any discrepancies affecting City's interest in a prompt and efficient manner. Winston Dillard Water District will keep all its books, records, documentation, and/or information at its Winston, Oregon headquarters.

5.7 Equality of Franchise Fees and Costs. In the event that the City increases charges as prescribed by law upon Winston Dillard Water District for any fees, taxes or other costs in connection-with the issuance, maintenance, existence, continuation, and/or use of the Franchise or public right-of-way granted herein, City shall impose equivalent charges for any fees, taxes or other costs upon any and all other franchisee(s) doing the same business as or competing with Winston Dillard Water District.

In the event that City does not impose equivalent charges upon other franchisee(s) doing the same business as or competing with Winston Dillard Water District, the City will charge Winston Dillard Water District the fees, taxes or other costs imposed upon Winston Dillard Water District prior to the increase until all franchisee(s) doing the same business as or competing with Winston Dillard Water District are charged the same.

SECTION 6. Winston Dillard Water District Operations And Maintenance.

6.1 Compliance with Laws, Regulations, Codes and Standards. In carrying out any authorized activities under the privileges granted by this Franchise, Winston Dillard Water District shall meet accepted industry standards and codes and shall comply with all applicable laws, regulations and ordinances of any governmental entity with jurisdiction over Winston Dillard Water District's Facilities in the Franchise Area. This includes all applicable, laws, regulations and ordinances existing as of the Effective Date or as may be subsequently enacted by any governmental entity with jurisdiction over Winston Dillard Water District's operations within the Franchise Area. The City shall have the right to make and enforce reasonable rules and regulations that are not discriminatory in nature. Prior to the adoption of any new rule, procedure or policy of general applicability such as right-of-way construction standards, public works standards, right-of-way permit fees, street cutting fees, and/or development permit fees, Winston Dillard Water District shall be provided a written draft document for comment with a response period of not less than thirty (30) days. Notwithstanding the foregoing, failure to provide such notice shall not invalidate such new rules, procedures, or policies of general applicability, nor exempt Winston Dillard Water District from compliance with such new rules, procedures or policies. Service shall be supplied to the City and its inhabitants in accordance with Winston Dillard Water District's rules and regulations.

6.2 Facility location by Winston Dillard Water District and Non- interference. Winston Dillard Water District shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable Water service, subject to the following non-interference requirements. All construction, installation, repair or relocation of Winston Dillard Water District's Facilities performed by Winston Dillard Water District in the Franchise Area will be done in such a manner as not to interfere with existing facilities of other, public or private, including drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such roads, rights of way or other public property subject to this franchise.

6.3 Facility Location Information. Winston Dillard Water District shall provide the City, upon the City's reasonable request, Facility location information in electronic or hard copy showing the location of its Facilities at specific locations within the Franchised Area, to the extent such information is reasonably available. Winston Dillard Water District does not warrant the accuracy of any such Facility location information provided and, to the extent the location of Facilities is shown, such Facilities may be shown in their approximate location. With respect to any excavations within the Franchise Area undertaken by or on behalf of Winston Dillard Water District or the City, nothing stated in this Franchise is intended (nor shall be construed) to relieve either Party of their respective obligations arising under the State one-call law with respect to determining the location of existing underground utility facilities in the vicinity of such excavations prior to commencing work.

6.4 Vegetation Management—Removal of Trees/Vegetation Encroachment. The right of Winston Dillard Water District to maintain its Facilities shall include the right, as exercised in Winston Dillard Water District's professional discretion to minimize the likelihood that encroaching (either above or below the ground) vegetation can interfere with or limit access to Winston Dillard Water District's Facilities or pose a threat to public safety and welfare. Winston Dillard Water District or its agents may accordingly remove or limit, without recourse or payment of compensation at its

sole expense, the growth of vegetation which encroaches upon its Facilities and/or Water transmission and distribution corridors within the Franchise Area.

6.5 Right of Excavation. For the purpose of implementing the privileges granted under this Franchise, and subject to the conditions described herein, Winston Dillard Water District is authorized to make any necessary excavations in, under and across the streets, alleys, roads rights-of-way and public grounds within the Franchise Area. Such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the public as may be feasible. Winston Dillard Water District shall remove all debris stemming from excavation and construction. The Right-of-way surface shall be restored by Winston Dillard Water District after excavation, in accordance with applicable City and Winston Dillard Water District specifications. Prior to performing such work, Winston Dillard Water District shall obtain all legally required permits at no expense to Winston Dillard Water District, including the opening or disturbance of any Right-of-way-within the Franchise Area. Permits are being provided at no cost by the City in exchange for water use records requested from the water district and provided to the City. City shall cooperate with Winston Dillard Water District in granting any permits required, providing such grant and subsequent construction by Winston Dillard Water District shall not unduly interfere with the use of such Rights-of-way. Winston Dillard Water District shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Water Franchise in the Franchise Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by City as to other public utility companies and other entities operating in the City. The payment of any generally applicable and non-discriminatory right-of-way permit fees, street cutting fees, or development permit fees shall be required in addition to payment of the Franchise Fee herein.

6.6 Emergency Work. In the event of an emergency requiring immediate action by Winston Dillard Water District to protect the public health and safety or for the protection of its Facilities, or the property of the City or other persons in the Franchise Area, Winston Dillard Water District may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City or at the next available opportunity.

SECTION 7. Reservation Of City's Rights And Powers.

7.1 Reservation of Right. The City, in granting this Franchise, does not waive any rights which it may not have or may subsequently acquire with respect to road rights-of-way or other property of City under this Franchise, and this Franchise shall not be construed to deprive the City of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City's roads, rights-of-way and other public property covered by this Franchise. Nothing in the terms of this Franchise shall be construed or deemed to prevent the City from exercising at any time and any power of eminent domain granted to it under the laws of the State.

7.2 Necessary Construction/Maintenance by City. The construction, operation and maintenance of Winston Dillard Water District's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to Winston Dillard Water District's Facilities; provided that Winston Dillard Water District shall be given not less than ten (10) business days' notice of said work, except in events of emergency when there exists an unforeseen and substantial risk or threat to public health, safety, welfare, or waste of resources in which case the City will make reasonable efforts to contact Winston Dillard Water District prior to doing said work; and provided further that, if Winston Dillard Water District provided an accurate location of its facilities upon request, the City, its agents and contractors, shall be liable for any damages, including any consequential damages to third parties,

caused by said work to any Facilities belonging to Winston Dillard Water District, up to the amount of liability under the Oregon Tort Claims Act.

7.3 Expansion of Winston Dillard Water District's Facilities. Facilities in the City's Franchise Area that are incidental to the Franchise Area, or that have been, or are at any future time acquired, newly constructed, leased, or utilized in any manner by Winston Dillard Water District shall be subject to all provisions of this Franchise.

7.4 Change of Boundaries of the City. Any subsequent additions or modifications of the boundaries of the City, whether by annexation, consolidation, or otherwise, shall be subject to the provisions of this Franchise as to all such areas.

7.5 Removal of Abandoned Facilities. During the Term of this Franchise, or upon a revocation or non-renewal of this Franchise, the City may direct Winston Dillard Water District to remove designated abandoned Facilities from the Franchise Area at its own expense and as soon as practicable, but only where such abandoned Facilities constitute a demonstrated threat to public health and safety, or become a facility detrimental to the aesthetics of the community.

7.6 Vacation of Properties by City. If, at any time, the City shall vacate any road, right-of-way or other public property which is subject to rights granted by this Franchise, such vacation shall be subject to the reservation of a perpetual easement to Winston Dillard Water District for the purpose of constructing, reconstructing, operating, maintaining, repairing and upgrading Winston Dillard Water District's Facilities on the affected property. The City shall, in its vacation procedure, reserve and grant said easement to Winston Dillard Water District for existing Winston Dillard Water District's Facilities and shall also expressly prohibit any use of the vacated properties which will interfere with Winston Dillard Water District's full enjoyment and use of said easement.

SECTION 8. Relocation Of Winston Dillard Water District's Facilities.

8.1 Relocation of Facilities Requested by City. Upon request of the City, Winston Dillard Water District shall relocate its Facilities as necessary within the Franchise Area as specifically designated in design plans that are no less than sixty (60) percent complete by the City for such purpose. For purposes of this provision, all reasonable efforts shall be made by the City, with input from Winston Dillard Water District, to minimize the impacts of potential relocation. The City shall provide Winston Dillard Water District reasonable notice of any intended or expected requirement or request to relocate Winston Dillard Water District's Facilities. Said notice shall not be less than ninety (90) calendar days prior to any such relocation and, depending on the circumstances, may be greater than one hundred twenty (120) calendar days if necessary, to allow Winston Dillard Water District sufficient time to arrange for relocation upon consultation with the City. In cases of emergency, or where not otherwise reasonably foreseeable by the City, the notice requirements of this Section may be shortened by discussion and agreement between the Parties. The City shall use reasonable efforts to cause any such relocation to be consistent with any applicable long-term development plan(s) of the City. In the event a relocation forces Winston Dillard Water District off City's existing Right(s)-of-way then the City shall accommodate such relocation by securing an acceptable, alternate location for, and removing any obstructions, including, without limitation, trees, vegetation, or other objects that may interfere with the installation, operation, repair, upgrade or maintenance of Winston Dillard Water District's Facilities on the affected Property. If the City requires the subsequent relocation of any of Winston Dillard Water District's Facilities within five (5) years from the date of relocation of such Facilities or installation of new Facilities that is the result of the same Right-of-way project, regardless of the cause for either the initial or subsequent relocation, the City shall bear the entire cost of such

subsequent relocation. Winston Dillard Water District agrees to relocate all Facilities promptly within a reasonable time. Upon notice from the City, the parties agree to meet and determine a reasonable relocation time, which shall not exceed the time normally needed for construction projects of the nature of the City's relocation request unless otherwise mutually agreed. This Section shall not apply to Facilities in place pursuant to private easement held by Winston Dillard Water District, regardless of whether such Facilities are also located within the Franchise Area. In the event the City requests relocation of Facilities that are in place pursuant to an existing easement, said relocation shall be treated in the same manner as a relocation requested by third parties under *Section 54.062*, below, with the City bearing the expense of relocation.

8.2 Relocation of Facilities Requested by Third Parties. City acknowledges that Winston Dillard Water District is obligated to provide Water service and related line extension or relocation of Facilities for the benefit of its customers and to require compensation for such services on a non-preferential basis. If Facilities are to be relocated at the request of or for the main benefit of a third party, the City shall not require Winston Dillard Water District to relocate its Facilities until such time as a suitable location can be found and the third party has entered into an agreement to reimburse Winston Dillard Water District for its reasonable costs of relocation.

8.3 Availability of Other Funds. In the event the City applies for federal, state or other non-City funding for right-of-way improvements, the City shall make a reasonable effort to include funding for utility relocation purposes, provided such funds do not interfere with the City's right to obtain the same or similar funds, or otherwise create any expense or detriment to the City. The City may recover all costs from granting federal or state agency, including internal costs, associated with obtaining such funds.

SECTION 9. Indemnity.

9.1 Indemnification of City. Winston Dillard Water District shall indemnify, defend, and hold the City (including its officers, agents, employees and volunteers) harmless for, from and against any and all claims for injury, damage, loss, cost, expense (including court and appeal costs and attorney, architect, and engineering fees or expenses) and liability of any kind arising from or connected with (a) any act or omission of Winston Dillard Water District to keep its Facilities in a safe condition; (b) any casualty or accident caused by the officers, employees, agents, contractors, or subcontractors of Winston Dillard Water District in the construction, operation, maintenance, repair or removal of its Facilities; and (c) any breach of this Franchise. However, this provision shall not apply to the negligent or willful acts or omissions of the City, for which the City will indemnify Winston Dillard Water District as provided by *Section 54.062* of this Franchise and to the extent allowable under the Oregon Tort Claims Act.

9.2 Indemnification of Winston Dillard Water District. To the extent permitted by law, City agrees to defend and indemnify Winston Dillard Water District, its officers and employees, from any and all liabilities, claims, causes of action, losses, damages and expenses, including costs and reasonable attorney fees, that Winston Dillard Water District may sustain, incur, become liable for, or be required to pay, as a consequence of or arising from, the negligent acts or omissions of the City, its appointed and elected officers and employees, agents, contractors in connection with City's obligations under this Franchise; provided, however, that this indemnification provision shall not apply to the extent that said liabilities, claims, damages, losses and so forth were caused by or result from the negligence of Winston Dillard Water District, its employees or agents.

SECTION 10. Franchise Dispute Resolution.

10.1 Non-waiver. Failure of a Party to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the Party shall have the right to declare any such breach or default at any time. Failure of a Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default. In addition, the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

10.2 Dispute Resolution by the Parties. Disputes regarding the interpretation or execution of the terms of this Franchise that cannot be resolved by department counterparts representing the Parties, shall be submitted to the City's Attorney and an attorney representing Winston Dillard Water District for resolution. If a mutually satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the Parties.

10.3 Right of Enforcement. No provision of this Franchise shall be deemed to bar the right of the City or Winston Dillard Water District to seek judicial relief from a violation of any provision of the Franchise to recover monetary damages for such violations by the other Party or to seek enforcement of the other Party's obligations under this Franchise by means of specific performance, injunctive relief or any other remedy at law or in equity pursuant to *Section 54.084*. Exclusive venue for any litigation between the City and Winston Dillard Water District arising under or regarding this Franchise shall occur, if in the state courts, in Douglas County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

10.4 Attorneys' Fees and Costs. Each Party shall pay for its own attorneys' fees and costs incurred in any dispute resolution process or legal action arising out of the existence of this Franchise.

SECTION 11. General Provisions.

11.1 Franchise as Contract, no Third-Party Beneficiaries. This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Franchise does not and is not intended to confer any rights or remedies upon any persons, entities or beneficiaries other than the Parties.

11.2 Force Majeure. In the event the Parties are delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond said Party's control (Force Majeure) including, without limitation, third party labor disputes, fire, explosion, flood, earthquake, power outage, acts of God, war or other hostilities and civil commotion, then said Party's performance shall be excused during the period of the Force Majeure occurrence. Each affected Party will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence, said Party will promptly resume performance of the affected Franchise obligations in an orderly and expeditious manner.

11.3 Prior Franchises Superseded. As of the Effective Date, this Franchise shall supersede all prior Water franchises for the Franchise Area previously granted to Winston Dillard Water District or its predecessors by City, and shall affirm, authorize and ratify all prior installations authorized by permits or other action not previously covered by prior Franchise. Termination of the prior Franchise shall not, however, relieve the Parties from any obligations which accrued under said Franchise prior to its termination, including but not limited to, any outstanding indemnity, reimbursement or administrative fee payment obligations.

11.4 Severability. The Franchise is granted pursuant to the laws of the State of Oregon relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase

of this Franchise is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the Franchise or any of the remaining portions. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of the Parties.

11.5 Changes or Amendments. Changes or amendments to this Franchise shall be in writing and shall not be effective until lawfully adopted by the City and agreed to by Winston Dillard Water District.

11.6 Supremacy and Governing Law. This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Oregon. In the event of any conflict between this Franchise and any City ordinance, regulation or permit, the provisions of this Franchise shall control.

11.7 Headings. The headings or titles in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.

11.8 Abandonment or Suspension of Franchise Rights and Obligations. Winston Dillard Water District may at any time abandon the rights and authorities granted hereunder, provided that six (6) months' written notice of intention to abandon is given to City.

11.9 Venue. This Franchise Agreement has been made entirely within the state of Oregon. If any suit or action is filed by any party to enforce this Franchise Agreement or otherwise with respect to the subject matter of this Agreement, exclusive venue shall be in the federal or state courts in Douglas County, Oregon.

11.10 Insurance. Winston Dillard Water District shall procure and maintain for the duration of the Franchise, insurance, or evidence of self-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 Winston Dillard Water District, its agents, representatives or employees. Winston Dillard Water District shall provide a copy of such insurance certificate to the City for its inspection prior to the adoption of this Franchise, and such insurance shall evidence:

- Comprehensive general liability insurance, written on a claims made basis, with limits not less than: (a) \$2,000,000 for bodily injury or death to each person; (b) \$2,000,000 for property damage resulting from any one accident; and (c) \$2,000,000 for all other types of liability;
- Automobile liability for owned, non-owned and hired vehicles with a limit of \$1,000,000 for each person and \$1,000,000 for each accident;
- Worker's compensation coverage in accordance with the applicable laws of the state of Oregon.
- Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$2,000,000.

SECTION 12. This Ordinance will be in effect on the 30th day following its adoption.

FIRST READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 3RD DAY OF AUGUST 2026.

SECOND READING BY THE CITY OF WINSTON, OREGON, CITY COUNCIL, ON THIS 17TH DAY OF AUGUST 2026.

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