

ORDINANCE NO. 2021-05

**AN ORDINANCE OF THE CITY OF VADER, GRANTING
TO LEWIS COUNTY A NON-EXCLUSIVE FRANCHISE TO
CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND
REPAIR A WATER SYSTEM WITHIN PUBLIC RIGHTS-
OF-WAY OF THE CITY OF VADER FOR A FIVE-YEAR
PERIOD, AND FIXING A TIME WHEN THE SAME SHALL
BECOME EFFECTIVE.**

WHEREAS, pursuant to Chapter 35A.47.040 RCW Lewis County has applied to the City of Vader, for a non-exclusive Franchise to construct, maintain, operate, replace, and repair a water system within City Rights-of-Way; and

WHEREAS, Lewis County was transferred the Vader water system in 2014 under an Agreement of Purchase and Sale of Water Assets (“Transfer Agreement”); and

WHEREAS, in conjunction with this Transfer Agreement, the City granted a franchise to the County, and the Parties also executed a Memorandum of Understanding regarding coordination on water issues; and

WHEREAS, the Parties further executed a subsequent Interlocal Agreement in 2015 regarding reimbursement by the City for the meter reading expense incurred by the County which the City utilizes in its sewer billings (“Meter Reading ILA”); and

WHEREAS, under the terms of the Transfer Agreement, Vader may make a request any time before December 16, 2023 to have the water system and assets returned; and

WHEREAS, if the water system is transferred back to Vader during the term of this Franchise Agreement this action would moot the County’s need for a Franchise Agreement for water in Vader; and

WHEREAS, in addition to renewing the Franchise Agreement for water, the Parties desire to address additional issues related to the Transfer Agreement, Memorandum of Understanding, and the Meter Reading ILA; and

WHEREAS, pursuant to RCW 35A.47.040, more than five days have passed since this franchise was introduced to the City's legislative body and this Ordinance has passed at a Regular Meeting of the Vader City Council by a vote of the majority of the Council, plus one; and

WHEREAS, notice of this Ordinance has been published at least once in a newspaper of general circulation in the City prior to the Council’s adoption of this Non-Exclusive Franchise; and

WHEREAS the City of Vader finds that it is in the public’s best interest to grant Lewis

County's application for a non-exclusive Franchise to construct, operate and maintain a water system within City Rights-of-Way; and

WHEREAS, Lewis County has agreed to reimburse the City for all of the costs associated with this Franchise Agreement prior to the effective date thereof; and

WHEREAS, the Vader City Council introduced this Ordinance at its meeting on _____, 2021 and adopted it at its regular meeting on _____, 2021;

NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF VADER DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Definitions.

Where used in this franchise (the "Franchise") these terms have the following meanings:

A. "City" means the City of Vader, a Washington municipal corporation, and its respective successors and assigns. The City is also the Grantor.

B. "County" means Lewis County, a Washington municipal corporation, and its respective successors and assigns. The County is also the Grantee.

C. "Facility" or "Facilities" means tanks, reservoirs, water treatment facilities, meters, pipes, mains, valves, blow offs, vaults, fire suppression water facilities, risers, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, service lines located in the Franchise Area as defined below, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a water utility system, whether the same be located over, on, 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; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the County's service area within the present corporate boundaries of the City (as depicted in Exhibit A, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within County's service area by annexation or otherwise, but shall not include private roads, streets, avenues and alleys. The Franchise Area shall not include or convey any right to the County to install facilities on, or to otherwise use, City owned or leased properties.

E. "Ordinance" means this Ordinance No. 2021-05, which sets forth the terms and conditions of this Franchise.

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

Section 2. Franchise.

2.1 Grant of Franchise. The City of Vader, a Washington municipal corporation (hereinafter "Grantor" or "City") hereby grants Lewis County, a political subdivision of the State of Washington, (hereinafter "Grantee" or "County"), a non-exclusive Franchise for the construction, operation, and maintenance of a water system within the Franchise Area. The following conditions shall apply to the Franchise granted herein:

A. The Franchise granted shall not convey any right, title or interest in the Rights-of-Way but shall be deemed a Franchise only to use and occupy the Rights-of-Way for the limited purposes and term stated herein. The Franchise shall not convey any right, title, or interest in Rights-of-Way that the County has an interest in only through agreement and does not possess an easement in the right-of-way.

B. The Franchise granted shall not authorize or excuse County from securing such further permits or other approvals as may be required to lawfully occupy, use, or perform work on, in, or under the Rights-of-Way.

C. The Franchise granted shall not be construed as any warranty of title or interest in any Right-of-Way; it does not provide the County with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof.

D. No act, event, occurrence, or thing shall give County any rights to occupy or use the Rights-of-Way permanently nor shall operate as an estoppel against the City.

E. County shall make its water services available to any customer within its Franchise Area who shall request such service, subject to the availability of facilities and the ability of the customer to pay for the water services. Water service shall be provided without discrimination, except as permitted by law, as to the terms, conditions, rates or charges for County's water services.

F. County shall comply with all applicable service quality and continuity requirements of state and federal law.

G. This grant of authority to provide the services described herein shall be limited solely to those services expressly described and no others. In the event of any ambiguity, this Franchise agreement shall be strictly construed as to the rights granted herein.

2.2 Term of Franchise. The term of this non-exclusive Franchise shall be **five (5) years**, unless earlier terminated under the terms of this Franchise Agreement and/or unless earlier terminated by the transfer of the water system to the City of Vader during the franchise term.

2.3 Non-Exclusive Franchise. The Franchise granted herein shall be non-exclusive. The City specifically reserves the right to grant, at any time, such rights, permits, licenses and/or franchises to other Persons to use the Rights-of-Way for similar or different purposes allowed hereunder as the City deems appropriate. Subject to this Franchise, County shall not prevent or prohibit the City from constructing, altering, maintaining, or using any of said Rights-of-Way, or affect its jurisdiction over them or any part of them, the City having full power and authority to make all necessary changes, relocation, repairs, or maintenance of said Rights-of-Way as the City deems appropriate.

2.4 Renewal Determinations. Within 120 business days after receiving a complete application for renewal, the City shall make a determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. Provided, however, that if this franchise is terminated under the terms of this Agreement, no explanation shall be required for the City's denial of the renewal.

2.5 Obligation to Cure as a Condition of Renewal. This Franchise shall not be renewed until any ongoing violations or defaults in County's performance of this Franchise, of the requirements of this Resolution, and all applicable laws, statutes, codes, ordinances, rules, and regulations have been cured, or a plan detailing the corrective action to be taken by County has been approved by the City. Failure to comply with the terms of an approved plan shall be grounds for non-renewal or immediate revocation of this Franchise.

2.6 Franchise Area. The Franchise Area shall include all City rights of way within the existing and future corporate boundaries of the City of Vader ("Rights-of-Way"). The Franchise granted herein does not give or grant to County the right, privilege, or authority to install water system facilities at any other location in the City.

2.7 Amendment of Franchise for Territory Changes. Should County not be able to install water system facilities within the Franchise Area, County shall request from the City, in writing, a deviation from the Franchise Area described above. If County desires to extend or locate its water system facilities in Rights-of-Way which are not included in this Franchise, County shall apply in writing for an amendment to the Franchise. If the City orders County to locate or relocate its water system facilities in Rights-of-Way not included in this Franchise, the City shall grant a Franchise amendment for the area change without further application.

2.8 Right to Require Removal of Property. At the expiration of this Franchise, and if County has not obtained a new Franchise from the City, the City shall have the right to require County to remove all or any part of County's water system facilities under this Franchise from the Rights-of-Way and restore the affected area, all at County's expense. Removal and restoration shall be to the satisfaction of the City. If County fails to do so, the City may perform the work or cause it to be done and collect the cost thereof from County.

Section 3. Operation in Rights-of-Way.

3.1 Construction or Alteration. Water system facilities shall be constructed, operated,

and maintained in accordance with this Franchise and all applicable Federal, State, and City codes, rules, and regulations. County shall comply with all lawful City resolutions and ordinances regarding the acquisition of permits and/or such other items as may be required in order to construct, operate, replace, repair, and maintain its water system facilities. County shall pay to the City all reasonable costs of granting or enforcing the provisions of this Franchise including, but not limited to, City fees related to the issuance of utility permits, excavation permits, or right of way use permits.

A. Within limits reasonably related to the City's role in protecting public health, safety and welfare, the City may require that water system facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Right-of-Way; may deny access if County is not willing to comply with City's requirements; and may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, and may require County to cooperate with others to minimize adverse impacts on the Rights-of-Way through joint trenching and other arrangements.

3.2 Non-Interference. In installing, constructing, operating, repairing, replacing, and maintaining its water system, County shall not interfere with the use of the Rights-of-Way by the City, by the general public or other Persons authorized to use or be present in or upon the Rights-of-Way. Work in the Right-of-Way, on other public property, near public property, or on or near private property shall be done in a manner that causes the least interference with the rights and reasonable convenience of property owners and residents. County's water system shall be constructed and maintained in such manner as to not interfere with any other pipes, wires, conduits, pedestals, structures, or other facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. In the event of such interference, the City may require the removal or relocation of County's water system from the property in question at County's expense.

3.3 Traffic Control. County shall comply with generally accepted traffic control provisions.

3.4 Consistency with Designated Use. Notwithstanding this Franchise to use City Rights-of-Way, County shall not be permitted to place its facilities in a right of way if such use is inconsistent with the terms, conditions, or provisions by which such right-of-way was created or dedicated.

3.5 Restoration of Improvements. Upon completion of any construction, operation, repair, replacement, or maintenance work, County shall promptly restore any disturbed or damaged property.

3.6 Rights-of-Way and Other Public Property. County shall warrant any restoration work performed by or for County in the Right-of-Way or on other public property for one (1) year. If restoration is not satisfactorily performed by the County within a reasonable time, the City may, after 48 hours prior notice to the County, or without notice where the disturbance or damage may create a risk to public health or safety, cause the necessary repairs to be made and recover the cost of those repairs from the County, including the costs of inspection and supervision. Within thirty

(30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, such itemized costs shall be paid by the County to the City.

3.7 Damage to County's Water System Facilities. To the extent permitted by Washington law, the City shall not be liable for any damage to or loss of any of County's water system or any interruption in water services within the Rights-of-Way as a result of or in connection with any emergency removal or relocation, public works, public improvements, construction, excavation, grading, filling, or work of any kind in the Rights-of-Way by or on behalf of the City or any Person under contract with the City, except for damage caused by the sole negligence of the City. The City shall not be responsible for any damages, losses, or liability arising from the issuance or approval by the City of a permit, license, or franchise to any third party.

3.8 Hazardous Substances.

County shall comply with any and all applicable laws, statutes, regulations and orders concerning hazardous substances relating to County's water system and County's actions and omissions in the City rights-of-way.

A. County agrees to indemnify, defend, and hold harmless the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by County's water system and County's actions and omissions in the City rights of way.

3.9 Notice of Work. County shall provide the City advance notice of emergency and non-emergency work within City rights-of-way.

3.10 Movement of Water System Facilities for Other Franchise Holders If any removal, replacement, modification, or disconnection of the water system is required to accommodate the construction, operation or repair of the facilities or equipment of another City franchise holder, County shall, after at least thirty (30) days' advance written notice, take action to effect the necessary changes requested by the responsible entity. County may require that the costs associated with the removal or relocation be paid by the benefited party.

3.11 Work of Contractors and Subcontractors. County's contractors and subcontractors shall be licensed and bonded in accordance with state law. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by County. County shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and other applicable law and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is County's responsibility to ensure that contractors, subcontractors or other persons performing work on County's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

3.12 Inspection of Construction and Facilities. The City may inspect any of County's facilities, equipment or construction at any time upon at least twenty-four (24) hours' notice, or, in case of emergency, upon demand without prior notice. The City shall have the right to charge

generally applicable inspection fees therefor. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order County, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to correct, inspect, administer, and repair the unsafe condition if County fails to do so, and to charge County therefor.

3.13 Stop Work. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City.

A. The stop work order shall:

1. Be in writing;
2. Be given to the Person doing the work, or posted on the work site;
3. Be sent to County by overnight delivery at the address given herein;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

Section 4. Financial Provisions.

4.1 Release, Indemnity and Hold Harmless. In addition to and distinct from the insurance requirements of this Franchise, County releases and shall hold harmless City, its elected and appointed officers, officials, employees, volunteers, agents, and representatives from any and all claims, losses, costs, liabilities, damages and expenses, including, but not limited to, those of County's lessees, and also including, but not limited to, reasonable attorneys' fees: 1) arising out of or alleged to arise out of any claim for damages for County's violation of infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any Person; 2) arising out of or in connection with County's acts or omissions during the installation of any water system facilities, the performance of any work, the operation of any water system facilities, or the County's systems; and 3) arising out of or in connection with the acts or omissions of County or any of its suppliers or contractors of any tier, or anyone acting on County's behalf in connection with said installation of water system facilities, performance of work, or operation of water system facilities or County's system.

A. Such hold harmless shall include any demand, claim, suit or judgment for damages to property or injury to or death of Persons, including officers, agents, and employees of any Person including payment made under or in connection with any Worker's Compensation Law or under any plan for employees' disability and death benefits, which may arise out of or be caused or contributed to directly or indirectly by the erection, maintenance, presence, operation, use, or removal of County's water system facilities or installations of water system facilities including any claims or demands of customers of County with respect thereto.

B. City shall not be liable to County or to County's customers, and County hereby holds harmless the City against any and all such claims or demands, suits, or judgments for loss, liability, damages, and expense by County's customers, or for any

interruption to the service of County, or for interference with the operation of the water system, except for claims or demands, suits, or judgments or interruption of service or interference with operations caused by the sole negligence of the City.

C. To the fullest extent permitted by applicable law, the foregoing release and hold harmless provisions shall apply to and be for the benefit of the City.

D. Inspection or acceptance by the City of any work performed by County shall not be grounds for avoidance by County of any of its obligations under this Section. 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.

E. 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 County and the City, County's liability hereunder shall be only to the extent of County's negligence.

F. The provisions of Section 4.1 shall survive the expiration or termination of this Franchise. Further, all provisions of Section 4.1 shall apply to the successors and assigns of County.

4.2 Insurance.

A. County's insurance policy of self-insurance must provide liability coverage, and include public liability coverage for bodily injury, property damage, and personal injury of not less than TWO MILLION (\$2,000,000.00) combined single limit per occurrence, with a general aggregate amount of not less than FOUR MILLION (\$4,000,000.00) per policy period. The County certifies that it is self-insured and agrees to provide acceptable evidence of its self-insured status to City.

B. In the event the County, after commencement of this Agreement, elects to terminate its self-insured status and secure commercial liability coverage, the County will promptly notify City, and provide a certificate of insurance from an insurer licensed to conduct business in the State of Washington.

Coverage, if obtained by the County in compliance with this section, shall not be deemed as having relieved the County of any liability.

4.3 Payment of Utility Taxes. The City has imposed a utility tax on water. The current rate is seven (7) percent of the total gross amount assessed monthly or bimonthly on charges for use for water furnished to each and every customer in the City. County has been remitting these utility taxes to City under the prior franchise agreement and County agrees to continue to do so under this Franchise Agreement. Such taxes are due and payable monthly to City based on the prior month's gross receipts and such taxes shall be remitted to the City no later than the end of the month following the County's collection of such taxes from the customer.

4.4 No limitation. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should County provide service other than a water system.

4.5 Reimbursement. County shall reimburse the City within thirty (30) calendar days after receipt of written demand for all reasonable amounts paid and costs incurred by the City in relation to this Franchise or the enforcement thereof, including the City's legal fees in reviewing, drafting, researching, and negotiating this Franchise Agreement.

Section 5. Coordination between water and sewer.

5.1 Coordination, in general. The Parties are both municipal government agencies. The City operates a sewer system in the Franchise Area. The County operates a water system which was transferred from the City and which may be transferred back to the City during this Franchise Term. Use of the sanitary sewer system requires water and all water typically drains to the sewer system which is then subject to wastewater treatment by the sewer provider. Therefore, sewer rates are based on water consumption volumes. When water service is turned on, sometimes the customer does not also seek to start sewer service. When this happens, the customer is still using sewer service without permission from the City and without payment for these services. The Parties agreed to coordinate with each other when they executed a Memorandum of Understanding ("MOU") on or about December 19, 2013 for the purpose of promoting intergovernmental consultation while the County owns the and operates the water utility which was transferred to it under the Transfer Agreement. The MOU requires the Parties to coordinate regarding the water system, including new connections, projects in the Franchise area, etc. The coordination and cooperation as set forth in this section is consistent with the MOU.

5.2 Water Connections Require Sewer Connections. When a customer requests water service for a property located within the City limits of Vader, the County agrees that it will inform the customer that the customer will also need to obtain sewer service from Vader. The County will promptly notify the City when a request for new water service is received. The City will promptly communicate to the County whether the customer has also obtained sewer services. For the purposes of this Section, "promptly" means within three business days.

Section 6. Additional Franchise Provisions.

6.1 Publication Costs. County shall assume the costs of publication associated with this Franchise as such publication is required by law.

6.2 Eminent Domain. This Franchise is subject to the power of eminent domain and the right of the City or the people acting for themselves through the initiative or referendum process to repeal, amend, or modify this Franchise. In any proceeding under eminent domain, this Franchise itself shall have no value.

6.3 Revocation or Termination. This Franchise may be revoked or terminated after notice, and opportunity to cure.

Failure of County, after written notice, to perform properly and completely each term, condition, or obligation imposed upon it pursuant to this Franchise, will result in the City having the authority to terminate this Franchise.

At the expiration of the term of this Franchise or upon its revocation or termination, the City shall have the right to require County to remove its water system facilities within one year from the City Rights-of-Way. County shall be liable for any costs incurred in removing any water system facilities of County and restoring any City Rights-of-Way. In removing its structures and equipment, County shall refill, at its own expense, any excavation that is made by it and shall leave all Rights-of-Way, public places and private property in as good condition as that prevailing prior to County's removal of its equipment without affecting the electrical or telephone cable wires or attachments. The indemnification and insurance provisions and the letter of credit shall remain in full force and effect during the period of removal, and County shall not be entitled to, and agrees not to request, compensation of any sort therefor.

If County fails to remove its water system facilities to the City's satisfaction in the time frame required by the City, the City may perform the work and collect the cost thereof from County.

A revocation or termination of this Franchise shall not prejudice any other remedy for breach of contract, damages, non-payment or otherwise which the City has under this Franchise or under law.

6.4 Modification. The City and County reserve the right to modify the terms and conditions of this Franchise upon written agreement of both Parties to such modification or in the exercise of the City's police power authority or other authority pursuant to applicable laws.

6.5 Franchise Subject to Future City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances 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 facilities by the County, and the County shall promptly conform with all such regulations, unless compliance would cause the County to violate other requirements of law.

6.6 Assignments or Transfers. In no event shall a sale, lease, sharing, transfer, assignment, or disposal of ownership, interest, or control to an entity or person other than the City be approved without the transferee acknowledging the obligations under this Franchise, becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the City.

6.7 Termination of Franchise based on Transfer of Water System to City. The Parties entered into an Agreement of Purchase and Sale of Water Assets ("Transfer Agreement") which they executed on or about February 24, 2014. This Transfer Agreement was authorized by the

County via Resolution 13-504 and by the City via Resolution 12-2013. If the water system is transferred from the County to the City under the terms of the Transfer Agreement during the term of this Franchise Agreement, then this Franchise Agreement shall automatically terminate upon the effective date or closing date of that transfer, except that any sections that are expressly intended to survive termination, shall continue to survive.

6.8 Receivership and Foreclosure. At the option of the City, subject to applicable law, this Franchise may be revoked one hundred twenty (120) days after the appointment of a receiver or trustee to take over and conduct the business of County whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless:

A. The receivership or trusteeship is vacated within one hundred twenty (120) days of appointment; or

B. The receivers or trustees have, within one hundred twenty (120) days after their election or appointment, fully complied with all the terms and provisions of this Franchise and have remedied all defaults under the Franchise. Additionally, the receivers or trustees shall have executed an agreement duly approved by the court having jurisdiction, by which the receivers or trustees assume and agree to be bound by each and every term, provision and limitation of this Franchise.

If there is a foreclosure or other involuntary sale of the whole or any part of the property and equipment of County, the City may serve notice of revocation on County and to the purchaser at the sale, and the rights and privileges of County under this Franchise shall be revoked thirty (30) days after service of such notice, unless:

- (1) The City has approved the transfer of the Franchise, in accordance with the procedures set forth in this Franchise and as provided by law; and
- (2) The purchaser has covenanted and agreed with the City to assume and be bound by all of the terms and conditions of this Franchise.

6.9 Service of Notice. Except as provided herein, any notices required or permitted to be given under this Franchise shall be deemed properly served when deposited with the United States Postal Service, postage paid, addressed to the party to receive same. Such communication shall also be sent via email.

Notice to the City shall be sent to:

City of Vader
Attn. City Clerk
PO Box 189
Vader, WA 98593
Email: VaderCity@centurylink.net

Notice to County shall be sent to:

Lewis County Public Works Department
2025 NE Kresky Avenue
Chehalis, WA 98532
Email: Martin.Roy@lewiscountywa.gov

County shall promptly notify the City of any change in notice address.

6.10 Open Records. The City, including its authorized representative, shall have access to, and the right to inspect, any books and records of County which are reasonably related to the administration or enforcement of the terms of this Franchise or County's facilities within the rights-of-way. The City may, in writing, request copies of any such records or books and County shall provide such copies within thirty (30) days of the transmittal of such request. One (1) copy of all reports and records required under this or any other subsection shall be furnished to the City, at the sole expense of County.

6.11 Severability. The Parties understand and agree that if a court holds any part, term, or provision of this Franchise to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the Parties' rights and obligations shall be construed and enforced as if the Franchise did not contain the particular invalid provision. Should the City determine that the severed portions substantially alter the Franchise so that the original intent and purpose of this Franchise no longer exists, the City may, in its sole discretion, terminate this Franchise without cost or penalty.

6.12 Remedies. All remedies and penalties under this Franchise, including termination of this Franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Franchise, including termination of this Franchise, are not exclusive, and the City reserves the right to enforce the provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity.

6.13 Nonwaiver of Rights. The City and County agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Franchise does not constitute a waiver of such provision(s), future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Franchise at a subsequent time.

6.14 Choice of Law. This Franchise has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Franchise shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

6.15 Jurisdiction. Any action at law, suit in equity, or judicial proceeding arising out of this Franchise shall be instituted and maintained only in any of the courts of competent jurisdiction in Lewis County, Washington.

6.16 Context. When consistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

6.17 Entire Agreement. The Parties agree that this Franchise is the complete expression of the terms and conditions hereunder, and supersedes all prior rights, agreements, or proposals concerning the specific subject matter of this Franchise except as specifically set forth herein. Any oral or written representations or understandings not incorporated herein are specifically excluded. This Franchise is executed in duplicate originals and executed by the persons signing below who

warrant that they have the authority to execute this Franchise.

6.18 Familiarity with Franchise. The County acknowledges and warrants by acceptance of the rights, privileges and agreements granted herein, that it has carefully read and fully comprehends the terms and conditions of this Franchise and is willing to and does accept all lawful and reasonable risks of the meaning of the provisions, terms and conditions herein.

6.19 Acceptance. Within thirty (30) days after adoption of this Franchise by the City, this Franchise may be accepted by County by executing this Franchise in duplicate, signing the acceptance (Exhibit B), and filing it with the Vader City Clerk. Further, the executed Franchise shall be returned accompanied by the required evidence of insurance as provided in Section 4.2 of this Franchise. In the event County fails to accept this Franchise or fails to comply with all conditions of acceptance as set forth herein within thirty (30) days after adoption by the City Council, this Franchise shall be null and void.

Section 7. Recitals Incorporated into Franchise Agreement. The recitals in this Ordinance are expressly incorporated and made part of the Franchise Agreement.

Section 8. Performance Bond and Insurance. The Performance Bond and insurance policies provided by Lewis County pursuant to the Franchise shall remain in effect during the franchise period and any extension thereof.

Section 9. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the County as set forth in this ordinance. County shall have thirty (30) days from the receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the County by this ordinance and file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit "B," and incorporated by reference.

Section 10. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be 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 Ordinance.

Section 11. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 12. Effective Date. This Ordinance shall be effective five days after publication as provided by law. The terms and conditions of this ordinance shall not be binding on the City and the County unless the County Board of Commissioners within thirty (30) days of the effective date of this ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the County Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

///

ADOPTED by the City Council of the City of Vader and attested by the City Clerk in authentication of such passage on this _____ day of _____, 2021.

APPROVED by the Mayor this _____ day of _____, 2021.

Joe Schey, Mayor

ATTEST/AUTHENTICATED:

Dianne Floyd, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Jennifer S. Robertson

PASSED BY THE CITY COUNCIL: _____
DATE PUBLISHED: _____
EFFECTIVE DATE: _____
ORDINANCE NO: 2021-05

Exhibit “A”
Map of Boundaries of Water System in City of Vader Boundaries

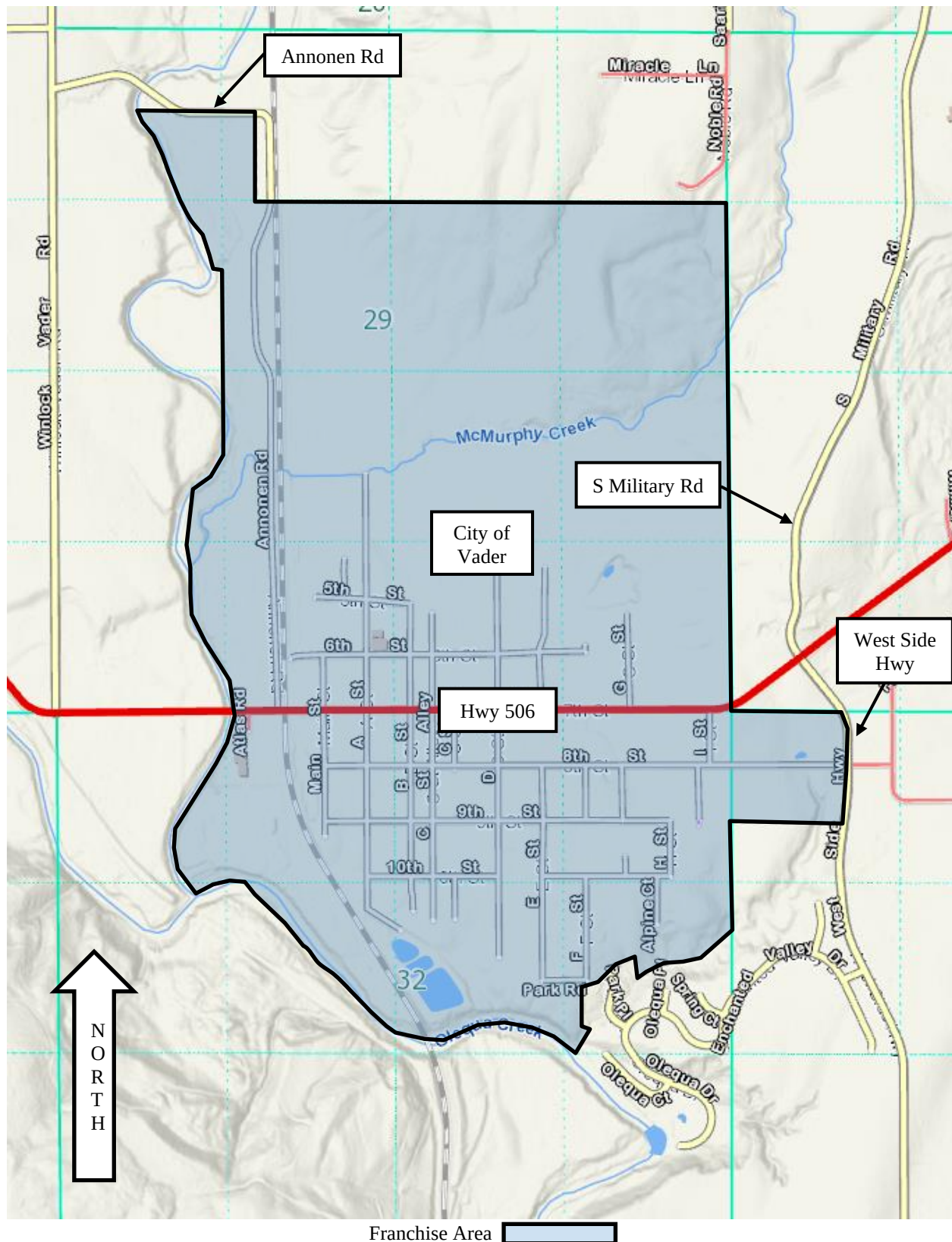


Exhibit "B"

ACCEPTANCE BY LEWIS COUNTY

The undersigned authorized representative of Lewis County hereby declares on behalf of Lewis County the acceptance of the nonexclusive franchise to Lewis County approved by the Vader City Council on _____, 2021, by adoption of Vader Ordinance No. 2021-05.

ACCEPTED this ____ day of _____, 2021.

LEWIS COUNTY

By: _____
(Authorized Representative Signature)

NOTARY BLOCK FOR LEWIS COUNTY

STATE OF WASHINGTON)
) SS.
County of Lewis)

On this ____ day of _____, 2021, before me personally appeared _____, to me known to be the _____ of Lewis County that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of Lewis County, for the uses and purposes therein mentioned, and on oath stated that was authorized to execute said instrument.

SUBSCRIBED AND SWORN TO before me this_ day of _____, 2021.

NOTARY PUBLIC in and for the State of
Washington, residing at _____
My commission expires: _____