

TO ALL COUNCILMEMBERS:

Additional Information

For

March 12, 2019

Public Works Committee #1 **Council - Public Hearing #1**

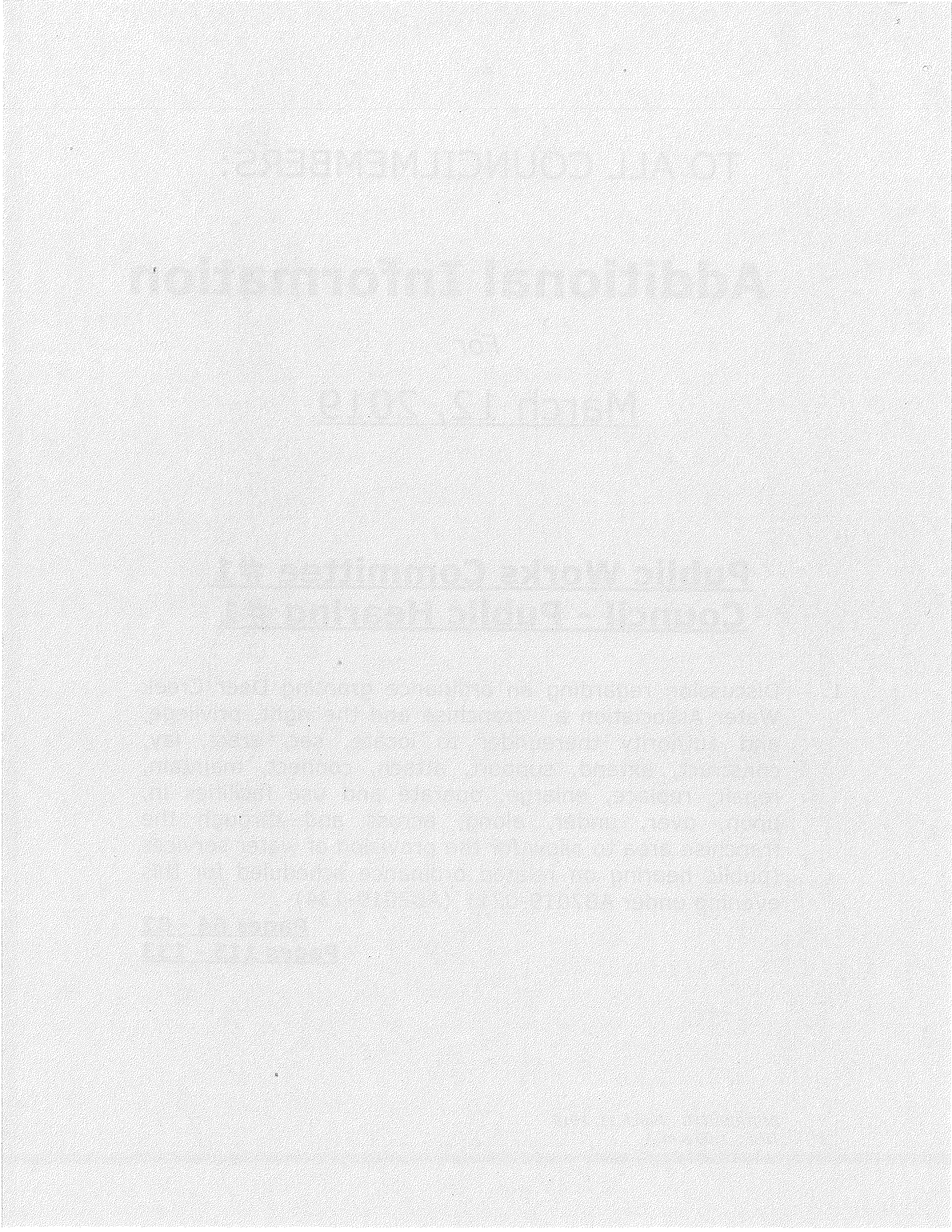
1. Discussion regarding an ordinance granting Deer Creek Water Association a franchise and the right, privilege, and authority thereunder to locate, set, erect, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use facilities in, upon, over, under, along, across and through the franchise area to allow for the provision of water services (public hearing on related ordinance scheduled for this evening under AB2019-021) (AB2019-134)

Pages 64 - 82

Pages 115 - 133

DISTRIBUTED: March 11, 2019

TIME: 1:00 p.m.



Jennifer Schneider

From: Dana Brown-Davis
Sent: Monday, March 11, 2019 10:32 AM
To: Jennifer Schneider
Subject: FW: Council Meeting-Deer Creek Franchise Agreement
Attachments: Water Franchise Example City of Shoreline.pdf; Water Franchise Example Pierce County.pdf

Hey, Jen:

Please distribute as additional information for tomorrow.

Thank you.

Dana

From: Marina Engels
Sent: Monday, March 11, 2019 10:22 AM
To: Dana Brown-Davis
Subject: FW: Council Meeting-Deer Creek Franchise Agreement

Thought you should see this. Additional information?

Sent from [Mail](#) for Windows 10

From: Andrew Hester
Sent: Monday, March 11, 2019 10:00:30 AM
To: Tyler Schroeder; Christopher Quinn
Cc: Jon Hutchings; John Wolpers; Marina Engels
Subject: RE: Council Meeting-Deer Creek Franchise Agreement

Hello,

At the County Council Public Works Committee meeting on February 26th there was discussion regarding including language to the franchise agreement relating to Deer Creek Water Association's provision of service (process how they deny service I believe was the issue).

I believe the question was could the language legally be added to the franchise agreement. I reviewed RCW 36.55 and I don't think that anything prohibits the County from adding language to the franchise agreement that relates to a water association's service requirements. Attached are two franchise agreements that have language regarding service requirements (highlighted).

I do not think that this would be a concern for Public Works as long as the rest of the agreement remains unchanged as Public Works' only concerned is with how the water facilities are managed within the ROW. It would be a significant policy change for the County as water/power franchises have never had this kind of language included in them previously. FYI, cable franchise's do have customer service provisions.

I am happy to attend the Public Works Committee and the Public Hearing at tomorrow's Council meeting but I'm not sure I will have anything to offer as I believe the questions the Council will have will be legal in nature or related to water service regulations.

Thanks,

Andrew

From: Tyler Schroeder
Sent: Wednesday, February 20, 2019 8:13 AM
To: Andrew Hester
Cc: Jon Hutchings; John Wolpers; Christopher Quinn; Marina Engels
Subject: RE: Council Meeting-Deer Creek Franchise Agreement

Thanks Andrew, I recommend keeping the discussion at PW committee. We can give Council some background on what the franchise does.

Thanks again,

Tyler R. Schroeder
Whatcom County Deputy Executive



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Bellingham, WA 98225
Ph 360 778 5207

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From: Andrew Hester
Sent: Wednesday, February 20, 2019 8:11 AM
To: Tyler Schroeder
Cc: Jon Hutchings; John Wolpers; Christopher Quinn; Marina Engels
Subject: FW: Council Meeting-Deer Creek Franchise Agreement
Importance: High

Hello Tyler,

See the below email. I have a discussion item for the Deer Creek Water franchise scheduled for the Public Works Committee at the February 26th Council meeting. Should we still have that discussion? FYI, the public hearing is scheduled for the March 12th Council meeting.

Thanks,

Andrew

From: John Wolpers
Sent: Tuesday, February 19, 2019 9:57 AM
To: Andrew Hester; Jon Hutchings
Subject: Council Meeting-Deer Creek Franchise Agreement

All,
The Councils water issue concern with Deer Creek Water Association and the Karusa's has been rectified. The franchise agreement scheduled for Council should move forward and I believe my presence is not needed at Council.

John



John Wolpers, RS | Environmental Health Manager

Whatcom County Health Department

Main: 360 778-6000

[Website](#) | [Facebook](#) | [Twitter](#)

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My incoming and outgoing email communication is subject to disclosure.

ORDINANCE NO. 804

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AMENDING, EXTENDING, AND RESTATING THE FRANCHISE GRANTED TO THE CITY OF SEATTLE, ACTING THROUGH SEATTLE PUBLIC UTILITIES, BY ORDINANCE NO. 606, FOR A NON-EXCLUSIVE FRANCHISE TO OWN, CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN CERTAIN AREAS IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

WHEREAS, RCW 35A.47.040 authorizes the City "to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for... facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof...for water, sewer and other private and publicly owned and operated facilities for public service;" and

WHEREAS, The City of Seattle, acting through Seattle Public Utilities ("SPU") is a municipal corporation that owns and operates a water system and related facilities located within and serving residents of the City of Shoreline; and

WHEREAS, the City Council adopted Ordinance No. 606 on June 20, 2011 granting the City of Seattle a non-exclusive franchise for the operation of a public water system within the City right-of-way with a term extending through June 2020 for a total of 9 years; and

WHEREAS, the City Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to amend the non-exclusive franchise to SPU to clarify certain provisions and to extend the term through June 2026, for a total of 15 years, on the amended and restated terms and conditions stated below; NOW, THEREFORE,

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

Section 1. ORDINANCE 606 Amended. Ordinance 606, granting a non-exclusive franchise to own, construct, maintain, operate, replace and repair a water system within public rights of way within the City of Shoreline, is hereby amended to read as follows and all sections and subsections shall be renumbered accordingly:

1. **Definitions.** The following terms contained herein, unless otherwise indicated, shall be defined as follows:

1.1 **City:** The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.

1.2 **Days:** Calendar days.

- 1.3 Director: The City Manager or designee.
- 1.4 Facilities: All pipes and appurtenances, access ways, pump stations, storage facilities, fire hydrants, equipment, and supporting structures, located in the City's right-of-way, installed owned by SPU or utilized in the operation of its activities authorized by this Ordinance.
- 1.5 Franchise Area: Those portions of the City of Shoreline in which the Franchise granted herein is applicable, including, collectively, all Rights of Way in the outlined areas shown as "Portions of SPU's Retail Service Area within the City of Shoreline" on the map attached to and incorporated herein by reference as Exhibit A and any Rights of Way outside of that outlined area where existing Facilities are currently located shown generally as "SPU Regional Water System Facilities" on Exhibit A. The Parties may amend Exhibit A by written agreement consistent with Section 9.6.
- 1.6 Person: An entity or natural person.
- 1.7 Revenue: Income derived by SPU only from the sale of retail metered water to customers whose connections are within the City of Shoreline. Revenue shall not include: late fees; any type of connection charges, general facilities charges, or local facilities charges; grants; contributed assets (CIAC); loans; income from legal settlements not related to water sales; income from cellular antenna leases; income from real property or real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement (WSEA) fees and charges; equipment and materials charges; income from the sale of bidders documents and plan sets; or any other fees and charges.
- 1.8 Right-of-Way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, easement, and/or road right-of-way ~~now or hereafter held or administered by~~ within the City of Shoreline Franchise Area.
- 1.9 Relocation: As used herein shall mean to protect, support, temporarily disconnect, relocate or remove SPU facilities in the City right-of-way.
- 1.10 SPU: Seattle Public Utilities, a department of the City of Seattle, a municipal corporation, and its respective successors and assigns.
2. Franchise Granted.
- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to SPU, its successors and assigns, subject to the terms and conditions hereinafter set forth, a an Amended, Extended, and Restated Franchise beginning on the effective date of this Ordinance.
- 2.2 This Franchise shall grant SPU the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, test, inspect, maintain, replace, and use all necessary equipment and Facilities for a public water

system, in, under, on, across, over, through, along or below the public Right-of-Way located within the Franchise Area, in the City of Shoreline.

- 2.3 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 Right-of-Way. Such franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, Relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way or other public properties of every type and description.

3. Franchise Term. The initial amended and extended term of the Franchise granted hereunder shall be ~~three (3)~~ fifteen (15) years ~~commencing which commenced on the date of acceptance by SPU. At the expiration of the initial term and of each succeeding term, this franchise shall be extended for two additional terms of three (3) years each,~~ November 1, 2011 pursuant to City Ordinance No. 606 and will continue through November 1, 2026, unless either party gives the other ~~sooner terminated or modified by written notice of intent to terminate, which notice may be given without cause, but shall be given at least six (6) months before the expiration date~~ agreement of the City and SPU.

4. Consideration. In consideration of the rights granted to SPU by this Agreement, SPU agrees to comply with the terms and conditions of operation within the City rights-of-way set forth in this agreement and, as additional consideration, SPU agrees:

- 4.1 To collect and distribute to the City a Franchise fee equal to 6% of Revenue generated from its water system operations within the City.
- 4.1.1 This Franchise fee shall be collected beginning upon the effective date of this Franchise.
- 4.1.2 Proceeds of the Franchise fee collected shall be distributed to the City no later than 30 days after the end of each calendar quarter (quarters ending at the end of March, June, September and December).
- 4.2 To establish a Shoreline Asset Management Priority Program ("Program") as more particularly described in Exhibit B to this Franchise, as may be amended from time to time by written agreement between the City and SPU.
- 4.3 Should SPU be prevented by judicial or legislative action from collecting a Franchise fee on all or a part of the Revenues, or from establishing the Program, SPU shall be excused from the collection and distribution of that portion of the Franchise fee or the implementation of the Program.
- 4.4 Should a court of competent jurisdiction declare, or a change in law make the Franchise fee to be collected on behalf of the City invalid, in whole or in part, or

should a court of competent jurisdiction hold that the collection of the Franchise fee by SPU is in violation of a pre-existing contractual obligation of SPU, then SPU's obligation to collect and distribute a Franchise fee to the City under this Section shall be terminated in accordance with and to the degree required to comply with such court action.

- 4.5 SPU agrees that the franchise fee established by this Section is appropriate and that SPU will not be a party to or otherwise support in any way, legal or legislative action intended to result in judicial determinations or legislative action referred to in Sections 4.23 and 4.34 hereof.
- 4.6 Should SPU be prevented or precluded from implementation of the Program, SPU and the City shall meet within three (3) months of such invalidating action and work together, in good faith, to modify the Program to address the invalidity in order to meet the original intent of the parties. Should the parties be unable to agree or to so modify the Program, the City may, in its sole discretion, terminate this Franchise.
5. Municipal Water Utility. In consideration of SPU's payment of the Franchise Fee and establishment of the Program under Section 4 above; acceptance of the responsibility to provide and pay for fire hydrants and related fire suppression water facilities within the City of Shoreline; and SPU's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise its right to establish its own separate municipal water utility within SPU's retail water service area within Shoreline during the term of this Franchise.
6. Fire Suppression Water Facilities and Services.
 - 6.1 Pursuant to RCW 70.315.040, SPU agrees to be responsible for the installation, operation, inspection, testing, maintenance, repair and replacement of fire suppression water facilities and to provide fire suppression water services as those terms are defined in RCW 70.315.020 within SPU's Retail Water Service Area within the Franchise Area, including the costs thereof.
 - 6.2 SPU shall perform or cause to perform fire hydrant inspections and testing on each fire hydrant that is part of SPU's Facilities, on an annual cycle through 2020, and on a two-year cycle thereafter. SPU has entered into a Memorandum of Agreement with the Shoreline Fire District (SFD), dated _____, which may be amended from time to time, where the SFD has agreed to conduct the inspections and testing and SPU will reimburse SFD.
 - 6.3 SPU will perform any maintenance and repairs to fire hydrants in accordance with the priority system that it uses within the City of Seattle, e.g. out of service hydrants receive the highest priority response.
 - 6.4 SPU will provide periodic reports to the City in a form acceptable to the City confirming inspections and repairs done in response to inspections by SFD or other report to SPU.

6.5 SPU does not represent or warrant sufficient water pressure or flow from its fire suppression water facilities and SPU shall not have any duty, obligation, or responsibility to provide any other fire protection and suppression services to the public within the Franchise Area.

6.6 Should a court of competent jurisdiction declare, or a change in law make SPU's acceptance of responsibilities under this section invalid, in whole or in part, then SPU's obligation to provide the fire suppression water facilities and services at its cost shall be terminated in accordance with and only to the degree required to comply with such court action or change in law, and provided further that this provision should only apply if the court decision or legislation is explicitly and expressly applicable to existing Franchises. In addition, to the extent any such court order or change in law requires the City to refund the costs of the fire suppression water facilities and services to SPU or its customers and provided further that this provision will only apply if the court decision or legislation is explicitly and expressly retroactive and applicable to existing Franchises, the City shall refund SPU or its customers the costs of providing the fire suppression water facilities and services together with any required interest in the amount and for the period required to satisfy the applicable order or rule. Should this occur, SPU and the City shall meet within three (3) months of such invalidating action and work together, in good faith, to modify this Section 6 to address the invalidity in order to meet the original intent of the parties.

7. **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 rights-of-way including the State Building Code and any reasonable 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 general location and, elevation of new or relocated Facilities of SPU that are part of a public project located within the City Right-of-way needed for the City's own use of the Right-of-Way, which may include coordination with other utilities in the Right-of-Way. SPU shall promptly conform with all such regulations at no charge or expense to the City, unless compliance would cause SPU to violate other requirements of law. Such regulations shall not unreasonably affect or modify any portion of this agreement without the approval of SPU. Should SPU and City not be able to agree, they shall resolve the differences through Section 16 18- Alternate Dispute Resolution.

8. **Right-of-Way Management.**

8.1 **Permits Required.** Whenever SPU excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance, or Relocation of its Facilities, it shall apply to the City for a permit to do so in accord with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way, and consistent with Section 6-6 8.6 of this Franchise. In no case shall any such work commence within any Right-of-Way without a permit, except as otherwise provided in this Franchise.

8.2 Abandonment of SPU's Facilities. No Facilities laid, installed, constructed, or maintained in the Right-of-Way by SPU, except for surface facilities or mains that are 12 inches or smaller, may be abandoned by SPU without the prior written consent of the Director of a plan, which will not be unreasonably withheld. All necessary permits must be obtained prior to such work. Any abandoned SPU surface facility shall be removed by SPU within a reasonable time.

8.3 Restoration after Construction.

8.3.1 SPU shall, after any installation, construction, Relocation, maintenance, or repair of Facilities within the Franchise area, restore the Right-of-Way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, Relocation, maintenance or repair. Restoration shall not require an improvement to a condition that substantially exceeds the condition prior to SPU's activities. 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. SPU agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

8.3.2 If it is determined that SPU has failed to restore the Right-of-Way in accordance with this Section, the City shall provide SPU with written notice including a description of actions the City believes necessary to restore the Right-of-Way. Any dispute over failure to restore shall be resolved in compliance with Section 16 18 – Alternative Dispute Resolution.

~~8.4 Bonding Requirement. SPU, as a public agency, is not required to comply with the City's standard bonding requirement for working in the City's Right-of-Way.~~

8.5 Emergency Work, Permit Waiver. In the event of any emergency where any SPU Facilities located in the Right-of-Way are broken or damaged, or if SPU's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, SPU shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve SPU from later obtaining any necessary permits for the emergency work. SPU shall apply for the permits that would have been required and obtained prior to the emergency as soon as practical given the nature and duration of the emergency.

8.6 Excavations.

8.6.1 SPU shall secure City rights-of-way permits to work in the public rights-of-way, including but not limited to Capital Improvements Program projects, water main repairs, and work involving excavation in the Right-of-Way. This would include disruption of all motorized and non-motorized travel

portions of the Right-of-Way, including all surface water drainage facilities. For all routine operations in the public rights-of-way, such as flushing, painting hydrants, vegetation maintenance and work within existing chambers, no permit will be required.

8.6.2 If either party plans to excavate in the public rights-of-way, then upon a written request from the other, that party may share excavation upon mutually agreeable terms and conditions.

8.7 Safety.

8.7.1 SPU, in accordance with applicable federal, state, and local health and safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, operation, and repair of Facilities utilizing methods and devices commonly accepted for public water utility operations to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property and shall accomplish work in a manner that will minimize interference with traffic and use of adjoining property.

8.7.2 All of SPU's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition.

8.8 Dangerous Conditions, Authority for City to Abate.

8.8.1 Whenever Facilities or the operations of SPU cause or contribute to a condition that reasonably appears to endanger any person or substantially impair the use or lateral support of the adjoining Right-of-Way, public or private property, SPU, at no charge or expense to the City, will take actions to resolve the conflict or remove the endangerment within a reasonable time period. The resolution of the dangerous condition requires approval of SPU Manager and the Director before the work begins.

8.8.2 In the event the Grantee fails or refuses to promptly take action as required in Section 68.8.1, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such reasonable actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the City for its reasonable costs.

8.9 Relocation of System Facilities.

8.9.1 In accordance with the following schedule, SPU agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any Right-of-Way its Facilities when so required by the City, to accommodate the completion of or as a result of a public project. As used in this Section, the term "public project" is a project included in the City's adopted six-year Capital Improvement Program as amended annually by the City Council.

<u>Age of SPU Facility</u>	<u>% of Relocation by City</u>	<u>% of Relocation by SPU</u>
5 years or less	100%	0%
5-10 years	50%	50%
10 + years	0%	100%

- 8.9.2 This Relocation requirement shall not apply to pipelines 24 inches in diameter and larger that cannot reasonably be supported, disconnected, relocated or removed. If these Facilities are required to be moved in order to accommodate the completion of or as a result of a public project, the City shall pay 50% of the Relocation cost.
- 8.9.3 All Facilities utilized for providing water service within SPU's service area and within the Right-of-Way shall be considered owned, operated and maintained by SPU.
- 8.9.4 If the City determines that a public project necessitates the Relocation or removal of SPU's existing Facilities, the City shall:
- 8.9.4.1 As soon as possible, but not less than one hundred eighty (180) days prior to the commencement of such project, provide SPU with written notice requiring such Relocation or removal; and
 - 8.9.4.2 Provide SPU with copies of any plans and specifications pertinent to the requested Relocation or removal and a proposed temporary or permanent Relocation for SPU's Facilities.
 - 8.9.4.3 After receipt of such notice and such plans and specifications, SPU shall complete Relocation of its Facilities at least ten (10) days prior to commencement of the project according to the above cost sharing described in this Section.
- 8.9.5 SPU may, after receipt of written notice requesting Relocation or removal of its Facilities, submit to the City written alternatives to such Relocation. The City shall evaluate such alternatives and advise SPU in writing if any of the alternatives are suitable to accommodate the work that necessitates the Relocation of the Facilities. If so requested by either party, SPU or City shall submit additional information to assist the other party in making such evaluation. The City shall give each alternative proposed by SPU full and fair consideration and, if appropriate, state why SPU's proposed alternatives are not satisfactory. In the event the City and SPU ultimately do not agree on a reasonable alternative, SPU and City shall attempt to resolve the Relocation through Section 46 18 - Alternate Dispute Resolution.
- 8.9.6 If the City determines that SPU's Facilities must be protected, supported, temporarily or permanently disconnected, relocated or removed from the Right-of-Way, City shall reimburse SPU all costs as submitted and verified

by SPU within forty-five (45) days of completion of the Relocation or removal by SPU in accord with paragraph 68.9.1 and 68.9.2 herein.

8.9.7 The provisions of this Section 68.9 shall in no manner preclude or restrict SPU 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.

9. Planning Coordination.

9.1 Growth Management. The parties agree to participate in the development of, and reasonable updates to the relevant portions of each other's planning documents:

9.1.1 For SPU's retail water service within the City limits Franchise Area, SPU will participate in a cooperative effort with the City of Shoreline to develop a Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4) and fulfills SPU's duty as a municipal water supplier to provide water within its service area pursuant to RCW 43.20.260 so as to be consistent with the City's Comprehensive Plan and development regulations for water service. SPU will participate in a cooperative effort with the City to ensure that the Utilities Element of Shoreline's Comprehensive plan is accurate as it relates to SPU's operations and is updated to ensure continued relevance at reasonable intervals compliance with RCW 36.70A.070(4) and consistency with City of Shoreline laws, ordinances, plans and regulations as required by RCW 43.20.260 and WAC 246-490-108 as they now exist or may hereafter be amended.

9.1.2 SPU shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the Director within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in SPU's possession, or can be reasonably developed from the information in SPU's possession.

9.1.3 SPU will update information provided to the City under this Section whenever there are major changes in SPU's system plans for Shoreline.

9.1.4 The City will provide information relevant to SPU's operations within a reasonable period of written request to assist SPU in the development or update of its Comprehensive Water System Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession. In updating its Water System Plan, SPU will adopt and/or amend its Water System Plan to plan for existing Facilities and such Facilities as may be required pursuant to RCW 43.20.260 and WAC 246-290-108, as they currently exist or hereafter may

be amended, and consistent with SPU's utility service policies or as agreed by the parties.

- 9.2 System Development Information. Capital Improvement Plans SPU and the City will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:
- 9.2.1 By February 1st of each year, SPU shall provide the City with a schedule of its planned capital improvements, which may affect the Right-of-Way for that year;
 - 9.2.2 By February 1st of each year, the City shall provide SPU with a schedule of its planned capital improvements which may affect the Right-of-Way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other Right-of-Way activities that could affect SPU capital improvements and infrastructure.
 - 9.2.3 SPU shall meet with the City, other franchisees and users of the Right-of-Way as necessary to schedule and coordinate construction.
 - 9.2.4 All construction locations, activities, and schedules shall be coordinated to minimize public inconvenience, disruption, or damages.
- 9.3 Emergency Operations. The City and SPU agree to cooperate in the planning and implementation of emergency operations response procedures.
- 9.4 General Coordination and Information.
- 9.4.1 Meter Reading Information. SPU will cooperate with the City as it assumes the Ronald Wastewater District ("District") and SPU will continue to provide the water consumption and billing data it has provided to the District, to the District or the City, as the case may be during the transition and after the assumption, for SPU's retail water customers that are within the boundaries of the District being assumed by the City for the purposes of rate setting, billing and required reporting to King County. The City and SPU will include the process for this information through the management agreement references in Section 9.6.
 - 9.4.2 Annual Meeting. The City and SPU agree to meet and confer at least annually to discuss any issues of concern or opportunities for cooperation.
- 9.5 Designated Representatives or Liaisons. The parties shall each designate a representative, which can be changed at any time, with written notice to the other party. SPU's representative shall be from the Water Line of Business and be responsible for coordinating with any other part of the SPU organization as needed.

SPU shall also designate a particular point of contact within the Development Services Office for developers doing projects within the Franchise Area.

9.6 Management Agreements. The parties may agree to execute written letter or management agreements to implement or clarify provisions of this Agreement or address new issues relating to the provisions of this Agreement as long as they are consistent with the substantive terms of this Agreement and applicable laws.

9.7 Maps and Records. Without charge to either party, both parties agree to provide each other with as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way, measured from the center line of the Right-of-Way, using a minimum scale of one inch equals one hundred feet (1"=100'). Maps shall be provided in Geographical Information System (GIS) or other digital electronic format used by the City or SPU, and upon request, in hard copy plan form used by City or SPU. This information shall be provided between one hundred twenty (120) and one hundred eighty (180) days of the effective date of this Ordinance and shall be updated upon reasonable request by the either party. The City and SPU agree to maintain confidentiality of any and all information received to the extent necessary to meet Homeland Security objectives and in accordance with public records laws.

10. Equivalent Service Quality. SPU shall provide the same services to customers in the City that is provided to all other customers with similar circumstances within SPU's service territory. SPU shall at all times comply with the minimum regulatory standards presently in effect or as may be amended for the operation of a public water utility.

11. Indemnification.

11.1 SPU hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards, attorneys' fees, or liability to any person arising from the negligent or intentional acts or omissions of SPU, its agents, servants, officers or employees in performing activities or failing to perform activities authorized by this Franchise, and including those claims arising against the City by virtue of SPU's exercise of rights granted herein. It is further specifically and expressly understood that the indemnification provided herein constitutes SPU's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the acts or omissions of SPU, its agents, servants, officers or employees except for claims for injuries and damages caused by the sole negligence of the City. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, SPU shall satisfy the same. The City may appear in any proceeding it deems necessary to protect the City's or the public's interests.

- 11.2 Inspection or acceptance by the City of any work performed by SPU 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 that are not reduced to a suit and any claims that may be settled prior to the culmination of any litigation or the institution of any litigation.
- 11.3 In the event SPU refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and SPU's 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 SPU, then SPU shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause as well as any judgment against the City.
- 11.4 Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of SPU and the City, its officers, employees and agents, SPU's liability hereunder shall be only to the extent of SPU's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes SPU's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Franchise.
- 11.5 The City hereby releases and agrees to indemnify and hold harmless SPU, its ~~elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from SPU's compliance with Section 4.1 of this Agreement.~~ This indemnification is contingent upon SPU's compliance with Section 4.45 hereof.
- 11.6 The City hereby releases and agrees to indemnify, defend and hold harmless SPU, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from City's decision to issue development permits based on accurate information on fire flow and water availability provided by SPU or the City's enforcement of the International Fire Code.

12. Insurance.

- 12.1 SPU shall procure and maintain for the duration of the 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 SPU, its agents, representatives or employees. Prior to adoption of this franchise ordinance, SPU shall provide an insurance endorsement, naming the

City as an additional insured, and such endorsement shall evidence a policy of insurance that includes:

- 12.1.1 Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than \$2,000,000 Combined Single Limit per accident for bodily injury and property damage; and
- 12.1.2 Commercial General Liability insurance, written on an occurrence basis with limits no less than \$5,000,000 combined single limit per occurrence and \$10,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.
- 12.1.3 Excess Liability in an amount of \$5,000,000 each occurrence and \$5,000,000 aggregate limit. The City shall be named as an additional insured on the Excess Liability insurance policy.
- 12.2 The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. 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. SPU's insurance shall be primary. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of SPU's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.
- 12.3 SPU shall require all its subcontractors to carry insurance consistent with this Section ~~4012~~, and shall provide evidence of such insurance to the City upon request
- 12.4 SPU may satisfy the requirements of this Section by a self-insurance program.

13. Enforcement.

- 13.1 Both the City and SPU reserve the right to revoke and terminate this Franchise in the event of a substantial violation or breach of its terms and conditions.
- 13.2 A substantial violation or breach by City or by SPU shall include, but shall not be limited to, the following:
 - 13.2.1 An uncured violation of any material provision of this Franchise or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;
 - 13.2.2 An intentional evasion or knowing attempt by either party to evade any material provision of this Franchise or practice of any fraud or deceit upon SPU or upon the City;

- 13.2.3 Failure to provide the services specified in Sections ~~6-98.9~~ and ~~810~~ of the Franchise;
- 13.2.4 Misrepresentation of material fact during negotiations relating to this Franchise or the implementation thereof;
- 13.2.5 An uncured failure to pay fees associated with this Franchise.
- 13.3 No violation or breach shall occur which is without fault of SPU or the City, or which is as a result of circumstances beyond SPU's or the City's reasonable control. Neither SPU, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees.
- 13.4 Except in the case of termination pursuant to Paragraph ~~11-2.5~~ 13.2.5 of this Section, prior to any termination or revocation, the City, or SPU, shall provide the other with detailed written notice of any substantial violation or material breach upon which it proposes to take action. The party who is allegedly in breach shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the end of said 60-day period, the City or SPU reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default and may terminate this Agreement in accord with this Section, which declaration must be in writing.
- 13.5 The City or SPU may, in its discretion, provide in writing additional time to remedy ~~any violation or breach and come into compliance with this agreement so as to avoid the termination or revocation.~~
- 13.6 Either party may remedy any material violation existing for a period of greater than 60 days (or greater than any additional time allowed in writing according to section ~~11-513.5~~ above) to protect public health, safety or property at the violating party's expense.

14. **Survival.** All of the provisions, conditions and requirements of Sections ~~6-38.2~~ Abandonment Of SPU's Facilities, ~~6-4-8.3~~ Restoration After Construction, ~~6-6~~ 8.6 Excavation, ~~6-8~~ 8.8 Dangerous Conditions, Authority For City To Abate, ~~6-9~~ 8.9 Relocation Of System Facilities, and ~~9~~ 11 Indemnification of this Franchise shall be in addition to any and all other obligations and liabilities SPU may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to SPU for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. 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 SPU and all privileges, as well as all obligations and liabilities of SPU shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever SPU is named herein.

15. **Assignment.** This franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary merger, consolidation or otherwise, without the written approval of the City which shall not be unreasonably withheld. Any costs associated with the City's review of any transfer proposed by the Grantee shall be reimbursed to the City by SPU.

15.1 Except as otherwise provided herein, SPU shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of SPU's utility. Every change, transfer, or acquisition of control of SPU's utility shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been effected, the Franchise is terminated.

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

Seattle Public Utilities Director
Seattle Municipal Tower
700 Fifth Avenue, Ste. 4900
PO Box 34018
Seattle, WA 98124-4018
Phone: (206) 684-5851
Fax: (206) 684-4631

Director of Public Works
City of Shoreline
17500 Midvale Avenue N.
Shoreline, WA 98133-4921
Phone: (206) 801-2700
Fax: (206) 546-7868

17. **Non-Waiver.** The failure of either party to enforce any breach or violation by the other party of any provision of this Franchise shall not be deemed to be a waiver or a continuing waiver by the non-breaching party of any subsequent breach or violation of the same or any other provision of this Franchise.

18. **Alternate Dispute Resolution.** If the parties are unable to resolve disputes arising from the terms of this Franchise, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

19. **Entire Agreement.** This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

20. **Severability.** If any Section, sentence, clause or phrase of this 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. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

21. **Directions to City Clerk.** Upon approval of the City Attorney, the City Clerk is authorized to make necessary corrections to this ordinance, including the corrections of scrivener or

clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references. The City Clerk is also authorized and directed to forward certified copies of this ordinance to SPU. SPU shall have sixty (60) days from receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to SPU in this ordinance.

22. **Publication Costs.** In accord with state law, this ordinance shall be published in full by the City. SPU shall reimburse the City for the cost of publishing this Franchise ordinance within sixty (60) days of receipt of an invoice from the City.

23. **Effective Date.** This ordinance shall take effect and be in full force ~~five days after publication~~ after publication and upon acceptance by SPU.

PASSED BY THE CITY COUNCIL ON NOVEMBER 6, 2017.

Mayor Christopher Roberts

ATTEST

APPROVED AS TO FORM:

Jessica Simulcik-Smith
City Clerk

Margaret King
City Attorney

Publication: November 9, 2017

Effective Date: _____

EXHIBIT A: Map of Franchise Area

EXHIBIT B: The Shoreline Asset Management Priority Program

1 Sponsored by: Councilmember Terry Lee
2 Requested by: County Executive/Public Works & Utilities
3
4
5

6 **ORDINANCE NO. 2009-78**
7

8
9 **An Ordinance of the Pierce County Council Granting a Non-Exclusive**
10 **Franchise to the Shore Acres Water Company, for Location**
11 **of Waterlines on Certain County-Owned Rights-of-Way; and**
12 **Authorizing the County Executive to Execute Said Franchise.**
13

14 **Whereas**, Shore Acres Water Company of Pierce County, Washington, has
15 applied for a non-exclusive Franchise to construct, operate, and maintain a waterline
16 system under and along Pierce County roads, highways, and other County properties in
17 Pierce County, Washington, as hereinafter set forth; and
18

19 **Whereas**, the proposed franchise is non-exclusive and does not establish a right,
20 either expressly or implied, to the water purveyor to provide water service to properties
21 located outside of their approved water service area. Furthermore, the request for this
22 franchise is consistent with the Pierce County Coordinated Water System Plan (CWSP)
23 provided that no extension of water service occurs without following the service area
24 adjustment provisions outlined in the CWSP.
25

26 **Whereas**, said application for Franchise came on regularly for hearing before the
27 Pierce County Council on the date set forth below under the provisions of Chapter 36.55
28 Revised Code of Washington; and
29

30 **Whereas**, it appears to the Council that notice of said hearing has been duly
31 given to the public and those interested in providing the same service applied for by the
32 applicant as required by law and that it is in the public interest to grant the Franchise;
33

34 **Now Therefore,**

35 **BE IT ORDAINED by the Council of Pierce County:**
36

37 Section 1. A non-exclusive Franchise, a copy of which is attached hereto and
38 identified as Exhibit A, is hereby given and granted to Shore Acres Water Company, of
39 Pierce County, Washington, hereinafter referred to as the Grantee, for a period of 15
40 years from and after the date of filing of the Franchise to be granted with the Clerk of
41 the Pierce County Council.

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Section 2. The Executive of Pierce County is hereby authorized to execute said Franchise.

PASSED this 27th day of October, 2009.

ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

Denise D. Johnson
Denise D. Johnson
Clerk of the Council

Roger Bush
Roger Bush
Council Chair

Pat McCarthy
Pat McCarthy
Pierce County Executive
Approved Vetoed this
2 day of November, 2009.

Dates of Publication of
Notice of Public Hearing: September 30 + October 7, 2009

Effective Date of Ordinance: November 12, 2009

1 PROVIDED, HOWEVER, that no such work shall be done prior to obtaining
2 permits therefore issued by the Pierce County Engineer (hereinafter "Engineer"), which
3 permits shall set forth conditions pertaining to the work to be done and specifications for
4 the restoration of the roads to the same condition as they were prior to such work; and
5

6 PROVIDED FURTHER, the Engineer, in his or her discretion, may require a
7 bond in a sum sufficient to guarantee to Pierce County that such roads shall be restored
8 to the same condition as existed prior to such work. If Grantee does not repair County
9 roads to the satisfaction of the Engineer, Pierce County Public Works and Utilities may,
10 at its sole discretion, repair such County roads, or cause them to be repaired, and
11 Grantee hereby agrees to reimburse the County of Pierce for the cost of such work,
12 including overhead costs.
13

14 Before any work is performed under this Franchise, which may affect any existing
15 monuments or markers of any nature relating to section subdivisions, plats, roads, and
16 all other surveys, Grantee shall reference all such monuments and markers in
17 accordance with RCW 58.09.130. The reference points shall be so located that they will
18 not be disturbed during Grantee's operations under this Franchise. The method of
19 referencing these monuments or other points to be referenced shall be approved by the
20 County Engineer. The replacement of all such monuments or markers disturbed during
21 construction shall be made as expeditiously as conditions permit, and as directed by the
22 County Engineer. The cost of monuments or other markers lost, destroyed, or
23 disturbed, and the expense of replacement with approved monuments shall be borne by
24 Grantee.
25

26 A complete set of reference notes for monuments and other ties shall be filed
27 with Pierce County Public Works and Utilities.

28 II

29 The water mains and pipes shall be laid down as directed by the Engineer at a
30 depth of not less than 36 inches below the surface of the ground under and along the
31 County roads, and in such a manner as not to interfere unnecessarily with the
32 construction of sewers and drains, nor with the grading of County roads. All surface
33 appurtenances to the water system shall be installed or constructed as approved by the
34 Engineer.

35 III

36 All work done under this Franchise shall be done in a thorough and professional
37 manner. In the laying of water pipes and conduits and the digging of ditches therefore,
38 Grantee shall leave ditches in such a way as to interfere as little as possible with public
39 travel and shall take all due and necessary precautions to ensure that damage or injury
40 shall not occur or arise by reason of such work; and that where any ditches or trenches
41 are left open at night, Grantee shall place at all crossings suitable lights in such a
42 position to guard against danger, and Grantee shall be liable for all property damage or
43 personal injury that may be caused by reason of any injury sustained through Grantee's
44 negligence by reason of any person, animal or property being injured through any
45



1 negligence of Grantee, or by reason of any damage caused through the neglect to
2 properly guard any ditches or trenches dug or maintained by Grantee. The Engineer
3 may specify actions to be taken to ensure the safety of the public and Grantee shall
4 comply with such specifications.

5 IV

6 The County of Pierce, in granting this Franchise does not waive any rights that it
7 now holds or may hereafter acquire and shall not be construed to deprive the County of
8 Pierce of any powers, rights, or privileges that it now has or may hereafter acquire,
9 including the right of eminent domain to regulate use and control of County roads
10 covered by this Franchise, or to go upon any and all County roads and highways for the
11 purpose of constructing and improving the same in such a manner as the County of
12 Pierce, or its representatives may elect.

13 V

14 Grantee shall provide a certificate of insurance showing evidence of commercial
15 general liability and property damage liability insurance that includes but is not limited to
16 the operations of Grantee, Grantee's protective liability, products completed operation's
17 coverage, broad form blanket contractual liability:

18 COVERAGES

LIMITS OF LIABILITY

19 Commercial General Liability Insurance
20 Bodily Injury Liability

\$2,000,000 Each
Occurrence

21 Property Damage Liability

\$250,000 Each
Occurrence

22 or
23 COMBINED SINGLE
24 LIMIT COVERAGE OF
25 \$2,000,000
26
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30 The general requirements of the policy shall contain:

31 Pierce County is named as an additional insured in this Franchise, to applicable
32 coverage.
33

34 In the event of nonrenewal, cancellation, or material change in the coverage
35 provided, 30 days' written notice will be furnished to the County prior to the date
36 of nonrenewal, cancellation, or change. Such notice shall be sent to the
37 Engineer, Pierce County Public Works and Utilities, 2702 South 42nd Street,
38 Suite 201, Tacoma, Washington 98409.
39

40 Pierce County has no obligation to report occurrences to the insurance
41 companies unless a claim is filed with the County; and Pierce County has no
42 obligations to pay premiums.
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Grantee's insurance policies shall contain a "cross-liability" endorsement substantially as follows:

The inclusion of more than one Insured under this policy shall not affect the rights of any Insured with respect to any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy has been issued to each, except that nothing herein shall operate to increase Grantee's liability beyond the amount or amounts for which Grantee would have been liable had only one Insured been named.

Grantee's insurance is primary over any insurance that may be carried by Pierce County. Grantee agrees to provide proof of insurance each year to Pierce County.

Grantee agrees to defend, indemnify, and save harmless Pierce County, its appointed and elected officials and employees, from and against all loss or expense, including but not limited to, judgments, settlements, attorney's fees, and costs by reasons of any and all claims and demands upon the County, its elected or appointed officials or employees for damages because of personal or bodily injury including death at any time resulting therefrom, sustained by any person or persons, and on account of damage to property including loss of use thereof, whether such injury to persons or damage to property is due to the negligence of Grantee, its contractors, its or their employees or agents, Pierce County, its appointed or elected officers, or its employees or agents, except only such injury or damage as shall have been occasioned by the sole negligence of Pierce County, its appointed or elected officials or employees.

If the claim, suit, or action for injuries, death, or damages as provided for in this Franchise agreement is caused by or results from the concurrent negligence of (a) Pierce County or Pierce County's agents or employees; or (b) Grantee, or Grantee's agents or employees, the indemnity provisions provided for in this Franchise shall be valid and enforceable only to the extent of Grantee's negligence.

Grantee specifically and expressly waives any immunity under Industrial Insurance Title 51 RCW, and acknowledges that this waiver was mutually agreed upon by the parties herein.



VI

1
2 If, at any time, the County of Pierce shall vacate any County street, road or alley
3 that is subject to rights granted by this Franchise, the Pierce County Council may, at its
4 option, and by giving 30 days written notice to Grantee, its successors and assigns,
5 terminate this Franchise with reference to such County road, street, or alley so vacated
6 and the County of Pierce shall not be liable for any damages or loss to Grantee by
7 reason of such termination.

VII

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9
10 If, at any time, a new County road is created or established, and constructed, or
11 an existing County road is reconstructed, realigned, or its grade is changed, or if sewer
12 or drainage facilities, or any other facilities within future or existing County road rights of
13 way are constructed, reconstructed, maintained, or relocated (all such work to be called
14 "County Projects" hereinafter) and if the installation of the facilities as allowed in this
15 Franchise, and all supplements and changes thereto, should interfere in any manner
16 with any such County Projects then Grantee at no expense to Pierce County shall, upon
17 notice, change the location or adjust the elevation of its facilities so that such facilities
18 shall not interfere with such County Projects.

19
20 When relocation of Grantee's facilities are required by such County Projects, the
21 following procedures shall be followed:

- 22
23 1. Pierce County shall make available to Grantee a list of anticipated projects
24 for each new budget period as soon as is reasonably possible.
- 25
26 2. Pierce County shall provide to Grantee two sets of preliminary plans for
27 individual projects as soon as such plans are developed to a state of
28 reasonable certainty, and shall advise Grantee of the anticipated date of
29 start of work on such projects.
- 30
31 3. Grantee shall, when requested by Pierce County in writing, locate its
32 facilities in the field, show those locations on one set of preliminary plans
33 provided, and return that set to Pierce County Public Works and Utilities
34 within four weeks of receiving the written request.
- 35
36 4. Pierce County shall provide to Grantee final plans for such projects as
37 soon as such plans are available and shall confirm or correct the
38 anticipated date of start of work on such projects.
- 39
40 5. Pierce County shall assist Grantee in determining how its facilities shall be
41 relocated. Such assistance by Pierce County shall include, at a minimum,
42 copies of plans (as required above) and specifications for such County
43 Projects, and information known to Pierce County as to existing survey
44 control available for location of such County Projects. Such assistance
45 shall not subject Pierce County to any liability for the costs of relocating
46 the subject facilities a second time if Grantee incorrectly relocated its
47 facilities the first time.
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6. When requested, Pierce County and Grantee shall meet to discuss how County Projects and utility relocations can be accomplished with the least impact on the other. Pierce County's decision shall be final in such matters, but shall not be unreasonable.

7. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

Relocation of Grantee's facilities shall normally be accomplished in advance of County Projects. In the event relocation of Grantee's facilities is done concurrently with such Projects, Pierce County shall be so notified and agree to a written schedule for relocation. Compliance with such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with County Projects.

8. If Grantee does not relocate its facilities in a timely manner as required above, Pierce County may relocate, or cause to be relocated, such facilities of Grantee as Pierce County deems necessary, and in the manner Pierce County deems necessary, in its sole discretion. Grantee hereby indemnifies and holds Pierce County, its employees, officers, officials, and agents totally free and harmless from all and any liability which may arise from damages caused by the relocation by Pierce County of the facilities of Grantee, even if such damages and liability arise from the negligence of Pierce County, its employees, officers, officials, and agents.

9. Grantee hereby indemnifies and holds harmless Pierce County, its officers, officials, and employees, from damages that may arise from Grantee's failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above, or any other act or omission by Grantee, its contractor(s), agents, officers, or employees related to the provisions of this Franchise.

10. It shall be conclusively presumed that Pierce County will have suffered damages as a result of exercising its rights as set forth in Item 8 above, and compensation for such damages will be difficult to ascertain, and therefore, Grantee shall compensate Pierce County for such damages in the amount of twice the amount of the cost of such relocation of Grantee's facilities by Pierce County.



- 1 11. The exercise of its rights, as set forth in Item 8 above, by Pierce County in
2 no way relieves Grantee of completing and/or finalizing the relocation of its
3 facilities at no expense to Pierce County, if the relocation work done by
4 Pierce County is incomplete.
- 5
6 12. In the event a lawsuit is brought by Pierce County against Grantee to
7 collect damages presumed under Item 10 above for the exercise by Pierce
8 County of its rights under Item 8 above, Grantee hereby agrees the only
9 issue will be the actual cost to Pierce County for relocating Grantee's
10 facilities. The party prevailing in such an action shall be allowed its legal
11 fees and costs.

12
13 VIII

14 Grantee shall not sell, transfer, or assign this Franchise without first notifying the
15 Pierce County Council. The terms and conditions set forth herein shall be binding on
16 Grantee's successors and assigns unless amended by the Council of Pierce County.

17
18 IX

19 This Franchise is granted upon the further express condition that it shall not be
20 an exclusive Franchise and shall not, in any manner, prohibit the County of Pierce from
21 granting any other Franchise under and along any of the said County roads of any kind
22 and character or territories that may be deemed proper by the Pierce County Council,
23 and this Franchise shall not in any way prevent the County of Pierce from using the
24 County rights of way, or affect the jurisdiction over them, and every part of them by the
25 County of Pierce with full power to make the necessary repairs, changes and alterations
26 in the same and like manner as though this Franchise had never been granted.

27
28 Pierce County reserves for itself the right to so change, amend, modify, or
29 amplify this Franchise to conform to any State statute, order of the Washington Utilities
30 and Transportation Commission, or County regulation, ordinance, or right-of-way
31 regulation, as may hereafter be enacted, adopted, or promulgated. This Franchise may
32 be terminated at any time upon 90 days written notice to Grantee to terminate this
33 Franchise if Grantee fails to comply with its terms and conditions, or if Grantee fails to
34 comply with such changes, amendments, modifications, or amplifications and upon
35 termination Pierce County shall have a lien upon all equipment and materials erected or
36 placed under this Franchise, which lien may be enforced to reimburse Pierce County for
37 any reasonable expenses and payments incurred in terminating this Franchise, and to
38 cure defaults by Grantee.

39
40 Grantee agrees to and shall provide available financial information to the County
41 upon reasonable request. Grantee agrees to and shall during regular business allow
42 agents of Pierce County access for inspection and reproduction of all of Grantee's
43 business records, gross revenue reports, or rules and regulations relevant to a
44 determination of the gross revenues received by Grantee from the area served by the
45 facilities permitted by this Franchise.

46
47 Furthermore, all Grantees shall, within 30 days after written demand thereof on
48 the anniversary of said grant, modification, amendment, renewal, or transfer of any



1 franchise, reimburse Pierce County for all direct and indirect costs and expenses
2 incurred by the County in the preceding 12 months in connection with any said
3 franchise. Any and all costs associated with providing service to County customers that
4 has been approved by Pierce County for invoicing shall be presented to the County on
5 the anniversary of the franchise.
6

7 X

8 In the event that the territory covered by this Franchise shall at any time during
9 the Franchise period be included within the limits of any incorporated city or town, the
10 authorities of said city or town shall have the right, to be exercised at their discretion, to
11 acquire by purchase or condemnation, any part of such pipes, conduits, and water
12 system other than transmission lines at a price to be based upon the reasonable value
13 of the same at the time, without any additional value for the Franchise or any unexpired
14 period thereof, and upon such acquirement, this grant and Franchise shall immediately
15 terminate, only that portion to be incorporated.
16

17 XI

18 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises
19 provides in part: All Franchises shall be subject to the right of the Council, or the people
20 acting for themselves through referendum, to repeal for cause, amend, or modify the
21 Franchise in the interest of the public, and agrees to said condition.
22

23 XII

24 ~~Any failure to render adequate service to the patrons of said water system, or the~~
25 ~~discontinuance of such water services without fault on the part of the patron or patrons~~
26 ~~involved, for a period of 30 days, shall work a forfeiture of this Franchise, at the~~
27 ~~discretion of the Pierce County Council, unless the failure should result from causes~~
28 ~~beyond human control.~~
29

30 XIII

31 Venue and jurisdiction for any controversy arising from the Franchise shall be in
32 Pierce County, Washington.
33

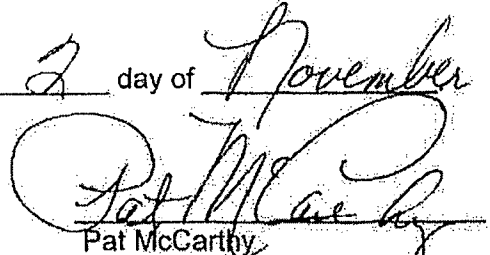
34 XIV

35 Grantee shall provide full acceptance of this Franchise and all its terms and
36 conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County
37 Council within 60 days from November 2, 2009. This requirement
38 shall be a condition precedent to the Franchise taking effect. If Grantee does not
39 provide a signed copy of the Franchise as set forth in this Section, this Franchise shall
40 be null and void.
41
42

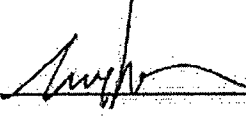


1 Pursuant to RCW 36.55.080, a copy of this Franchise shall be recorded in the
2 Office of the Pierce County Auditor.

3
4 DATED at Tacoma, Washington, this 2 day of November
5 2009.

6
7
8 
9 Pat McCarthy
10 Pierce County Executive

11
12
13 Shore Acres Water Company accepts and agrees to comply with all terms and
14 conditions of this Franchise.

15
16 Scott Wagner 
17 Name

18
19 PRESIDENT
20 Title

21
22
23 Shore Acres Water Company
24 Company, Corporate Name, or Individual

25
26
27 12/3/09
28 Date

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