

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Ordinance No. 514 Approving the Shoreline Water District Franchise
DEPARTMENT: City Manager's Office, Public Works Department
PRESENTED BY: Ian Sievers, City Attorney; Flannary Collins, Assistant City Attorney;
Mark Relph, Public Works Director

PROBLEM/ISSUE STATEMENT:

Staff has been negotiating a new franchise agreement between the City of Shoreline and the Shoreline Water District for operating a domestic water system within Shoreline city limits. This agreement reflects the last version for which the staff would recommend to Council for adoption. The District has not adopted this agreement, or any other version. The current agreement expires after July 31st, 2008.

DISCUSSION:

An initial franchise to operate the water system owned by the Shoreline Water District, generally east of I-5, was granted by the City of Shoreline in June of 2001 through Ordinance No. 274. Extensions were invoked in 2004, 2006, 2007, 2008 with the latest providing for the current expiration date of July 31st, 2008. Staff has been negotiating over the past several months the terms of the agreement.

RECOMMENDATION

It is recommended the City Council pass Ordinance No. 514 approving a new franchise with the Shoreline Water District.

Approved By: City Manager  City Attorney _____

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INTRODUCTION

Staff is proposing a new franchise agreement between the City of Shoreline and the Shoreline Water District for operating a domestic water system within Shoreline city limits. The current agreement expires after July 31st, 2008.

DISCUSSION

An initial franchise to operate the water system owned by the Shoreline Water District, generally east of I-5, was granted by the City of Shoreline in June of 2001 through Ordinance No. 274. Extensions were invoked in 2004, 2006, 2007, 2008 with the latest providing for the current expiration date of July 31st, 2008. Staff has been negotiating over the past several months the terms of the agreement.

There are several changes between this new agreement and the previous agreement. Most of those changes are fairly minor, but the overall tone of the new agreement is one that tries to strike more of a partnership between the City and the District. A partnership that protects the overall public uses within the City right-of-way and the District's need to provide efficient and effective domestic water service to their customers.

Over the course of the past several months of discussions, there became two significant issues at the end; the definition of revenue for which the franchise fee is calculated and the relocation of District facilities. At the time of drafting this memo, staff was not able to reach a mutually acceptable agreement to both parties. This agreement represents the City's last and final offer to the District.

The District will have 15 days from the date of Council adoption to formally accept the franchise. After that time, the District would be subject to the Shoreline Municipal Code and all the permitting and related regulations.

A summary of the two outstanding issues include revenue and relocation:

1. The original definition of revenue included "...all revenue collected from District customers...". The proposed language would be income derived only from the sale of metered water to customers whose connections are within the City of Shoreline. This would specifically exclude such revenue as connection charges, late fees, sale of District property, etc.
2. The relocation of District facilities (e.g. water mains, fire hydrants, etc.) addresses which entity pays for relocations requested by the City and at what level of participation. The original franchise required the City to pay for 100% of the relocation costs for any District facility that was less than five years of age. For facilities older than five years, the District paid 100% of the cost. The last District proposal was to share in the costs 50/50 regardless of age. Staff proposed a graduated scale as shown in the agreement for City participation up to ten years.

A summary of the other notable changes include:

- A. The District wanted to change the responsibilities for abating what appears to be an unsafe condition. The existing agreement allowed the City to correct an unsafe

condition and charge the District for the cost to correct regardless of whether or not they agreed. The proposed change would require more notification and discussion to resolve the situation.

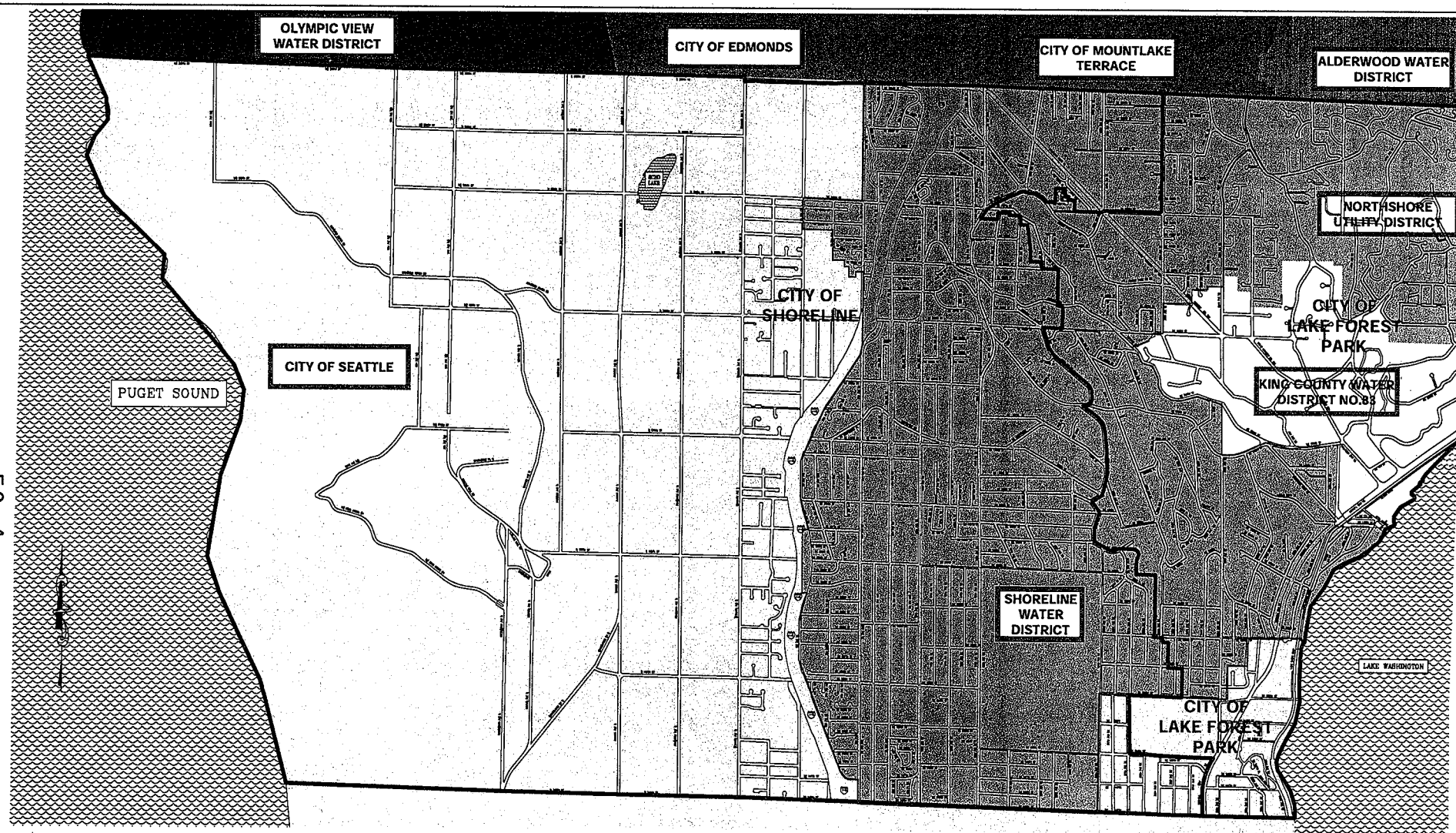
- B. One of the advantages of a franchise for the District is to allow easy access to their facilities in the right-of-way, specifically through the permitting process. Without a franchise, the District would be required to obtain a separate permit every time they stepped into the right-of-way. The "blanket permit" section of the proposed agreement has been modified to clarify the conditions when no permit is required at all and when the blanket permit applies. Staff believes the changes are in line with our current practices for the District as well as with other utility providers.
- C. There were some subtle changes made to the "planning and coordinating" section of the agreement, but those changes make it more of a partnership between the City and the District to coordinate projects and plan for the future.
- D. The term of the proposed agreement is through 2012.

RECOMMENDATION

It is recommended the City Council pass Ordinance No. 514 approving a new franchise with the Shoreline Water District.

ATTACHMENTS

- A. Shoreline Water District Service Area
- B. Proposed Ordinance No. 514



Legend

Shoreline Water District Boundary		City Limits	
Shoreline Water District		Olympic View Water District	
City of Seattle		Alderwood Water District	
King County Water District No. 83		City of Mountlake Terrace	
Northshore Utility District		City of Edmonds	



Figure 2-13
Service Area and Adjacent Systems
Shoreline Water District
Comprehensive Water System Plan

MAR 21, 2001 DRAWING NOT TO SCALE 1/4"=1' (SHEET 20 OF 24)

ORDINANCE NO. 514

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING SHORELINE WATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO OWN, CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN 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 transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service," and

WHEREAS, the Shoreline Water District's franchise, granted by Ordinance No. 274, and extended by Ordinance Nos. 455, 468, 503 and 508, expires July 31, 2008;

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of the residents of the Shoreline Community to grant another non-exclusive franchise to the Shoreline Water District for the operation of a water system within the City right-of-way; NOW, THEREFORE,

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

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 **District:** Shoreline Water District, a municipal corporation organized under RCW Title 57.
 - 1.5 **Facilities:** All pipes and appurtenances, access ways, pump stations, storage facilities, equipment, and supporting structures, located in the City's right-of-way, utilized by the District in the operation of its activities..

- 1.6 Permittee: A person who has been granted a permit by the Permitting Authority, and District operating under Section 6.6 Blanket Permit of this agreement.
- 1.7 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.8 Person: An entity or natural person.
- 1.9 Revenue: "Revenue" means income derived only from the sale of metered water to customers whose connections are within the City of Shoreline. Revenue shall not include: late fees; impact or mitigation 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; income from street lights; labor, equipment and materials charges; income from the sale of bidders documents and plan sets; or any other fees and charges.
- 1.10 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 the City of Shoreline.

2. Franchise Granted.

- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to District, its successors and assigns, subject to the terms and conditions hereinafter set forth, a Franchise beginning on the effective date of this Ordinance.
- 2.2 This Franchise shall grant District the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, 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 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.

3. **Franchise Term.** The term of the Franchise granted hereunder shall be for the period commencing upon the effective date of this ordinance through December 31, 2012 unless it is replaced by a substitute Franchise ordinance prior to that date.

4. **Franchise Fee.** In consideration of the rights granted to the District by this Agreement, the District agrees:

- 4.1 To collect and distribute to the City a Franchise fee equal to 6% of Revenue generated from its 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 Should the District be prevented by judicial or legislative action from collecting a Franchise fee on all or a part of the revenues, District shall be excused from the collection and distribution of that portion of the Franchise fee.
- 4.3 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 District is in violation of a pre-existing contractual obligation of District, then District'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.
 - 4.3.1 Should a court of competent jurisdiction declare, or change a law to make the franchise fee invalid, in whole or in part, and further declare that the franchise fee collected by the District and paid to the City to be refunded or repaid to District customers or other parties, City shall refund to District all monies collected plus any required interest in the amount required to satisfy said court declaration.

5. **City Ordinances and Regulations.**

- 5.1 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 any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. Such action(s) by the City shall not unreasonably affect or modify any portion of this agreement without the approval of the District. Should the District and City not be able to agree, they shall resolve the differences through Section 13 - Alternate Dispute Resolution.

6. **Right-of-Way Management.**

- 6.1 Excavation.

- 6.1.1 Whenever District 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. In no case shall any such work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance.
- 6.2 Abandonment of District's Facilities. Any abandoned District facility above the surface shall be removed by the District within a reasonable time. All necessary permits must be obtained prior to such work.
- 6.3 Restoration after Construction.
- 6.3.1 District 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 the District'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. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.
- 6.3.2 If it is determined that District has failed to restore the right-of-way in accordance with this Section, the City shall provide District with written notice including a description of actions the City believes necessary to restore the right-of-way.
- 6.4 Bonding Requirement. District, 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.
- 6.5 Emergency Work, Permit Waiver. In the event of any emergency where any District facilities located in the right-of-way are broken or damaged, or if District'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, District shall immediately take any necessary emergency measures to repair, replace or remove its facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve District from later obtaining any necessary permits for the emergency work. District 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.
- 6.6 Permit requirements and types of activities. The District shall be authorized to perform "Minor Activities" without a City permit of any kind and "Blanket

Activities” under the terms and conditions of this Section. All other activities will require a separate permit in accordance with City ordinances.

6.6.1 “Blanket Activities” shall be defined as those activities that cause some disruption to the right-of-way and possibly to traffic patterns but not to the degree where significant city involvement is required during the plan review and inspection processes. Examples include:

6.6.1.1 Replace, install, maintain services, valves and water mains and appurtenances in pavement, sidewalk or gravel shoulder.

6.6.1.2 Replace, install or maintain valve boxes in pavement, if not in conjunction with City generated projects (overlays, etc.).

6.6.1.3 Transverse tie-ins on joint trench projects (transverse: placed straight across).

6.6.1.4 Replace, install or maintain blowoffs, air-vacs, fire hydrants in pavement, sidewalk or gravel shoulder.

6.6.1.5 Open cutting of pavement not to exceed 70 square feet.

6.6.2 “Minor Activities” shall be defined as those activities on streets that do not cause any significant disruption of the right-of-way and traffic patterns. Typical examples include the inspection, operation and maintenance of services, pump stations, air-vacs, valves, hydrants and service meters.

6.6.3 For Blanket Activities, the District shall pay the City a permit inspection/processing fee in the amount equal to the hourly rate at the time of the permit and for a time of 2 hours. The permit fees for District activities shall not exceed permit fees charged for similar activities to any other franchise holder.

6.6.4 The District shall provide a quarterly list of permit construction activity concurrently with Franchise Fee payments listing the previous three month's activity authorized under this Section.

6.6.5 The District shall provide payment of inspection fees for quarterly activity. No statement will be provided by the City.

6.6.6 For each separate use of the right-of-way under this Section except Minor Activities or Emergencies, and prior to commencing any work on the right-of-way under this Section, the District shall fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the right-of-way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum a work time, date the work begins, date the work is estimated to be complete, location,

traffic control plan (if applicable) and a description of work to be performed.

- 6.7 Dangerous Conditions, Authority for City to Abate. Whenever Facilities or the operations of the District cause or contribute to a condition that appears to endanger any person or substantially impair the use or lateral support of the adjoining right-of-way, public or private property, the Director may immediately inform the District of the condition. The District will immediately evaluate the condition and if the District determines that a condition exists that causes endangerment to the public or impairment of the right-of-way the District will immediately mitigate the condition at no cost to the City. The resolution of the dangerous condition requires approval of the District Manager and the Director before the work begins.

6.8 Relocation of System Facilities.

- 6.8.1 In accord with the following schedule, the District 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 adopted six-year Capital Improvement Program and as amended annually by the City Council.

<u>Age of Dist. Facility</u>	<u>% of relocation by City</u>	<u>% of relocation by District</u>
5 years or less	100%	0%
5 – 10 years	50%	50%
10 + years	0%	100%

- 6.8.2 This relocation requirement shall not apply to those larger facilities that cannot reasonably be supported, disconnected, relocated or removed as set forth on Attachment A to this franchise, to be approved by both parties within 60 days of the District's adoption of this agreement. This attachment may be amended from time to time by the parties. 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.
- 6.8.3 All Facilities utilized for providing water service within District's service area and within the right-of-way shall be considered owned, operated and maintained by District.
- 6.8.4 If the City determines that a public project necessitates the relocation or removal of District's existing facilities, the City shall:
- 6.8.4.1 As soon as possible, but not less than one hundred eighty (180) days prior to the commencement of such project, City shall provide

District with written notice requiring such relocation or removal;
and

6.8.4.2 Provide District with copies of any plans and specifications pertinent to the requested relocation or removal and a proposed temporary or permanent relocation for District's facilities.

6.8.4.3 After receipt of such notice and such plans and specifications, District shall make all reasonable efforts to complete relocation of its facilities according to the above cost sharing described in Section 6.8.2.

6.8.5 District 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 District 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, District or City shall submit additional information to assist the other party in making such evaluation. The City shall give each alternative proposed by District full and fair consideration and if appropriate, state why the District's proposed alternatives are not satisfactory. In the event the City and District ultimately do not agree on a reasonable alternative, District and City shall attempt to resolve the relocation through Section 13 – Alternate Dispute Resolution.

6.8.6 If the City determines that the District's facilities must be protected, supported, temporarily or permanently disconnected, relocated or removed from the right-of-way, City shall reimburse District all costs as submitted and verified by District within 45 days of completion of the relocation or removal by the District in accord with paragraph 6.8.1 herein.

6.8.7. The provisions of this Section 6.8 shall in no manner preclude or restrict District 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.

7. Planning Coordination.

7.1 Growth Management. The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:

7.1.1 For District's service within the City limits, District 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).

7.1.2 District 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 District's operations and is updated to ensure continued relevance at reasonable intervals.

7.1.3 District 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 the District's possession, or can be reasonably developed from the information in the District's possession.

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

7.1.5 The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District 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.

7.2 System Development Information. District and 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:

7.2.1 By February 1st of each year, District shall provide the City with a schedule of its planned capital improvements, which may affect the right-of-way for that year;

7.2.2 By February 1st of each year, City shall provide the District 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 District capital improvements and infrastructure.

7.2.3 District shall meet with the City, other franchisees and users of the right-of-way as necessary, to schedule and coordinate construction activities.

7.2.4 All construction locations, activities, and schedules shall be coordinated, to minimize public inconvenience, disruption, or damages.

7.3 Emergency Operations. The City and District agree to cooperate in the planning and implementation of emergency operations response procedures.

- 7.4 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 District, and upon request, in hard copy plan form used by City or District.

8. Indemnification.

- 8.1 District 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, attorney's fees, or liability to any person, including claims by District's own employees to which District might otherwise be immune under Title 51 RCW, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of District, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the acts or omissions of District, its agents, servants, officers or employees except for claims for injuries and damages caused in whole or in part 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, District shall satisfy the same. The City may appear in any proceeding it deems necessary to protect the City's or the public's interests.
- 8.2 Inspection or acceptance by the City of any work performed by District 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.
- 8.3 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 District and the City, its officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the District'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.
- 8.4 The City hereby releases and agrees to indemnify, defend and hold harmless the District, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from District's compliance with this Agreement.

- 8.5 The City hereby releases and agrees to indemnify, defend and hold harmless the District, 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 the District or the City's enforcement of the International Fire Code.

9. **Insurance.**

- 9.1 District 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 District, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by District. District shall provide to the City an insurance certificate and proof of self-insurance, if applicable, evidencing the required insurance and a copy of the additional insured endorsements, for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, and such insurance shall evidence the following required insurance:
- 9.1.1 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
- 9.1.2 Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance excluding liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under District's Commercial General Liability insurance policy.
- 9.1.3 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.
- 9.2 Payment of deductible or self-insured retention shall be the sole responsibility of District.
- 9.3 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. District's insurance shall be primary. Any

insurance, self insurance, or insurance pool coverage maintained by the City shall be excess of District'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.

- 9.4 District shall require all its subcontractors to carry insurance consistent with this Section 9, and shall provide evidence of such insurance to the City upon request.

10. Enforcement.

- 10.1 Both City and District reserve the right to revoke and terminate this Franchise in the event of a substantial violation or breach of its terms and conditions.
- 10.2 A substantial violation or breach by City or by District shall include, but shall not be limited to, the following:
- 10.2.1 An uncured violation of any material provision of this Franchise,
- 10.2.2 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 the District or upon the City;
- 10.2.3 Failure to provide the services specified in the Franchise;
- 10.2.4 Misrepresentation of material fact during negotiations relating to this Franchise or the implementation thereof;
- 10.2.5 An uncured failure to pay fees associated with this Franchise.
- 10.2.6. Changes in existing City regulations or ordinances or new regulations or ordinances that materially change the interpretation or application of provisions in this agreement.
- 10.3 No violation or breach shall occur which is without fault of the District or the City, or which is as a result of circumstances beyond the District's or the City's reasonable control. Neither the District, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees
- 10.4 Except in the case of termination pursuant to Paragraph 10.1 of this Section, prior to any termination or revocation, the City, or the District, 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 the District 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.

11. **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:

District Manager
Shoreline Water District
P.O. Box 55367
Shoreline, WA 98155
Phone: (206) 362-8100
Fax: (206) 361-0629

City Manager
City of Shoreline
17544 Midvale Avenue N.
Shoreline, WA 98133-4921
Phone: (206) 546-1700
Fax: (206) 546-2200

12. **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.

13. **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.

14. **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.

15. **Survival.** All of the provisions, conditions and requirements of Sections 6.1 Excavation, 6.2 Abandonment Of District's Facilities, 6.3 Restoration After Construction, 6.7 Dangerous Conditions, Authority For City To Abate, 6.8 Relocation Of System Facilities, and 8 Indemnification, of this Franchise shall be in addition to any and all other obligations and liabilities District may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to District for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof only to the extent that existed prior to this agreement. 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 District and all privileges, as well as all obligations and liabilities of District shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever District is named herein..

16. **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.

17. **Directions to City Clerk.** The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District set forth in this ordinance. The District shall have fifteen (15) days from receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District in this ordinance.

18. **Publication Costs.** In accord with state law, this ordinance shall be published in full by the City.

19. **Effective Date.** This ordinance shall take effect and be in full force five days after publication.

PASSED BY THE CITY COUNCIL ON JULY 28, 2008.

Mayor Cindy Ryu

ATTEST

APPROVED AS TO FORM:

Scott Passey
City Clerk

Flannary P. Collins
Assistant City Attorney

Date of Publication: July 31, 2008
Effective Date: August 5, 2008

ORDINANCE NO. 514

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING SHORELINE WATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO OWN, CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN 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 transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service;" and

WHEREAS, the Shoreline Water District's franchise, granted by Ordinance No. 274, and extended by Ordinance Nos. 455, 468, 503 and 508, expires July 31, 2008;

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of the residents of the Shoreline Community to grant another non-exclusive franchise to the Shoreline Water District for the operation of a water system within the City right-of-way; NOW, THEREFORE,

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

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 **District:** Shoreline Water District, a municipal corporation organized under RCW Title 57.
- 1.5 **Facilities:** All pipes and appurtenances, access ways, pump stations, storage facilities, equipment, and supporting structures, located in the City's right-of-way, utilized by the District in the operation of its

activities authorized by this Ordinance. The abandonment by District of any facilities as defined herein shall not act to remove the same from this definition.

- 1.6 Permittee: A person who has been granted a permit by the Permitting Authority, and District operating under Section 6.6 Blanket Permit of this agreement.
- 1.7 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.
- 1.8 Person: An entity or natural person.
- 1.9 Revenue: ~~This terms as used herein shall refer to all revenue collected from District's customers with billing addresses that are within the corporate boundaries of the City, not including late fees.~~ "Revenue" means income derived only from the sale of metered water to customers whose connections are within the City of Shoreline. Revenue shall not include: late fees; impact or mitigation 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; income from street lights; labor, equipment and materials charges; income from the sale of bidders documents and plan sets; or any other fees and charges.
- 1.10 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, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

2. Franchise Granted.

- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to District, its successors and assigns, subject to the terms and conditions hereinafter set forth, a Franchise beginning on the effective date of this Ordinance.
- 2.2 This Franchise shall grant District the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, 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 in the City of Shoreline, ~~as approved under City permits issued by the Permitting Authority pursuant to this Franchise and City ordinances.~~

- 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 affects its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocation, 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 term of the Franchise granted hereunder shall be for the period commencing upon the effective date of this ordinance through December 31, 2004 2012, unless it is replaced by a substitute Franchise ordinance prior to that date. ~~This Franchise will automatically renew for an additional two-year period unless its termination is confirmed in writing by the City at least sixty days prior to December 31, 2004, or it is replaced by a substitute Franchise ordinance prior to that date.~~

4. **Franchise Fee.** In consideration of the rights granted to the District ~~to occupy City rights-of-way for the purpose of operating a water utility within the City and as partial compensation for the City's costs to construct, maintain, repair, develop and manage the right-of-way~~ by this Agreement, the District agrees:

- 4.1 To collect and distribute to the City a Franchise fee equal to 6% of Revenues generated from its 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 Should the District be prevented by judicial or legislative action from collecting a Franchise fee on all or a part of the revenues, District shall be excused from the collection and distribution of that portion of the Franchise fee.
- 4.3 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 District is in violation of a pre-existing contractual obligation of District, then District'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.

4.3.1 Should a court of competent jurisdiction declare, or change a law to make the franchise fee invalid, in whole or in part, and further declare that the franchise fee collected by the District and paid to the City to be refunded or repaid to District customers or other parties, City shall refund to District all monies collected plus any required interest in the amount required to satisfy said court declaration.

~~4.4 District agrees that the Franchise fee established by this Section is appropriate and that District will not be a party to or otherwise support legal or legislative action intended to result in judicial determinations or legislative action referred to in Sections 4.2 & 4.3 hereof.~~

5. City Ordinances and Regulations.

5.1 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, rights-of-way~~ including 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 location, elevation, and manner of construction and maintenance of any facilities of District located within the City right-of-way. District shall promptly conform with all such regulations, unless compliance would cause District to violate other requirements of law. Such action(s) by the City shall not unreasonably affect or modify any portion of this agreement without the approval of the District. Should the District and City not be able to agree, they shall resolve the differences through~~ Section 13 - Alternate Dispute Resolution.

6. Right-of-Way Management.

6.1 Excavation.

~~6.1.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the right-of-way so as to interfere as little as possible with the safe and unobstructed passage of traffic and the unobstructed use of adjoining property. District shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or state law, including RCW 39.04.180, for the construction of trench safety systems.~~

~~6.1.2~~ 6.1.1 Whenever District 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. In no case shall any such work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, District shall not unnecessarily obstruct the passage or use of the right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accordance with Section 6.10 of this Ordinance.

6.2 Abandonment of District's Facilities. No facilities laid, installed, constructed, or maintained in the right-of-way by District may be abandoned by District without the prior written consent of the Director of a removal plan. Any abandoned District facility above the surface shall be removed by the District within a reasonable time. All necessary permits must be obtained prior to such work.

6.3 Restoration after Construction.

6.3.1 District 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 the District'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. District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

6.3.2 If it is determined that District has failed to restore the right-of-way in accordance with this Section, the City shall provide District with written notice including a description of actions the City believes necessary to restore the right-of-way. ~~If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, the City, or its authorized agent, may restore the right-of-way. District is responsible for all costs and expenses incurred by the City in restoring the right-of-way in accordance with this Section. The rights granted to the City under this Paragraph shall be in addition to those otherwise provided by this Franchise.~~

6.4 Bonding Requirement. District, 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.

6.5 Emergency Work, Permit Waiver. In the event of any emergency where any District facilities located in the right-of-way are broken or damaged, or if District'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, District shall immediately take any necessary emergency measures to repair, replace or remove its facilities without first applying for and obtaining a permit as required by this Franchise. However, this emergency provision shall not relieve District from later obtaining any necessary permits for the emergency work. District shall apply for the required permits the next business day following the emergency work or that would have been required and obtained prior to the emergency as soon as practical given the nature and duration of the emergency.

- 6.6 ~~Blanket Permit.~~ The terms “Minor Activities” and “Blanket Activities” shall be defined in a specifically negotiated Blanket Permit Definitions, a copy of which has been filed with the City Clerk and identified by Clerk’s Receiving Number 3243. Permittee shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this Section. All other activities will require a separate permit in accordance with City ordinances.
- 6.6.1 ~~The Permittee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.~~
- 6.6.2 ~~The Permittee shall provide a monthly list of permit construction activity by the 10th of the following month listing the previous month’s activity authorized under this Section.~~
- 6.6.3 ~~The Permittee shall provide payment of inspection fees for the monthly activity on a monthly basis. No statement will be provided by the City.~~
- 6.6.4 ~~For each separate use of the right of way under this Section, and prior to commencing any work on the right of way under this Section, the Permittee shall:~~
- 6.4.1.1 ~~Fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the right of way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum the following information: Franchise ordinance number, street address nearest to the proposed work site; parcel number and description of work to be performed.~~
- 6.4.1.2 ~~Fax or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority within twenty-four (24) hours after completing work.~~
- 6.6.5 ~~In the event the Permittee fails to comply with any of the conditions set forth in this Section, the City is authorized to immediately terminate the Permittee’s authority to operate under this Section by providing Permittee written notice of such termination and the basis therefore.~~
- 6.6.6 ~~The City reserves the right to alter the terms and conditions of Subsection 6.6. and of Blanket Permit Definitions by providing thirty (30) days written notice to~~

~~the Permittee. Any change made pursuant to this Paragraph, including any change in the inspection fee stated in Blanket Permit Definitions, shall thereafter apply to all subsequent work performed pursuant to this Section. Further, the City may terminate the Permittee's authority to work in the City's right-of-way under the terms of this Section at any time without cause by providing thirty (30) days written notice to the Permittee. Notwithstanding any termination, the Permittee will not be relieved of any liability to the City.~~

6.6 Permit requirements and types of activities. The District shall be authorized to perform "Minor Activities" without a City permit of any kind and "Blanket Activities" under the terms and conditions of this Section. All other activities will require a separate permit in accordance with City ordinances.

6.6.1 "Blanket Activities" shall be defined as those activities that cause some disruption to the right-of-way and possibly to traffic patterns but not to the degree where significant city involvement is required during the plan review and inspection processes. Examples include:

6.6.1.1 Replace, install, maintain services, valves and water mains and appurtenances in pavement, sidewalk or gravel shoulder.

6.6.1.2 Replace, install or maintain valve boxes in pavement, if not in conjunction with City generated projects (overlays, etc.).

6.6.1.3 Transverse tie-ins on joint trench projects (transverse: placed straight across).

6.6.1.4 Replace, install or maintain blowoffs, air-vacs, fire hydrants in pavement, sidewalk or gravel shoulder.

6.6.1.5 Open cutting of pavement not to exceed 70 square feet.

6.6.2 "Minor Activities" shall be defined as those activities on streets that do not cause any significant disruption of the right-of-way and traffic patterns. Typical examples include the inspection, operation and maintenance of services, pump stations, air-vacs, valves, hydrants and service meters.

6.6.3 For Blanket Activities, the District shall pay the City a permit inspection/processing fee in the amount equal to the hourly rate at the time of the permit and for a time of 2 hours. The permit fees for District activities shall not exceed permit fees charged for similar activities to any other franchise holder.

6.6.4 The District shall provide a quarterly list of permit construction activity concurrently with Franchise Fee payments listing the previous three month's activity authorized under this Section.

6.6.5 The District shall provide payment of inspection fees for quarterly activity. No statement will be provided by the City.

6.6.6 For each separate use of the right-of-way under this Section except Minor Activities or Emergencies, and prior to commencing any work on the right-of-way under this Section, the District shall fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the right-of-way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum a work time, date the work begins, date the work is estimated to be complete, location, traffic control plan (if applicable) and a description of work to be performed.

~~6.7. Safety.~~

~~6.7.1 The District, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.~~

~~6.7.2 All of District's facilities in the right-of-way shall be constructed and maintained in a safe and operational condition.~~

~~6.8 — Dangerous Conditions, Authority for City to Abate.~~

~~6.8.1 Whenever Facilities or the operations of the District cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining right-of-way, public or private property, the Director may direct the District, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.~~

~~6.8.2 In the event the District fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such actions as it believes are necessary to protect persons or property and the District shall be responsible to reimburse the City for its costs.~~

6.7 Dangerous Conditions, Authority for City to Abate. Whenever Facilities or the operations of the District cause or contribute to a condition that appears to endanger any person or substantially impair the use or lateral support of the adjoining right-of-way, public or private property, the Director may immediately inform the District of the condition. The District will immediately evaluate the condition and if the District determines that a condition exists that causes endangerment to the public or impairment of the right-of-way the District will

immediately mitigate the condition at no cost to the City. The resolution of the dangerous condition requires approval of the District Manager and the Director before the work begins.

6.9 6.8 Relocation of System Facilities.

~~6.9.1~~ 6.8.1 In accord with the following schedule, Tthe District agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any right-of-way its facilities without cost to the City when so required by the City to facilitate accommodate the completion of or as a result of a public project, provided that District shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right of way and upon approval by the City, any facilities required to be temporarily disconnected or removed. As used in this Section, the term "public project" is a project included in any the City adopted six-year Capital Improvement Program and as amended annually by the City Council.

<u>Age of Dist. Facility</u>	<u>% of relocation by City</u>	<u>% of relocation by District</u>
5 years or less	100%	0%
5 – 10 years	50%	50%
10 + years	0%	100%

6.8.2 This relocation requirement shall not apply to those larger facilities that cannot reasonably be supported, disconnected, relocated or removed as set forth on Attachment A to this franchise, to be approved by both parties within 60 days of the District's adoption of this agreement. This attachment may be amended from time to time by the parties. 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.

~~6.9.2.~~ 6.8.3 All Facilities utilized for providing water service within District's service area and within the right-of-way shall be considered owned, operated and maintained by District.

~~6.9.3~~ 6.8.4 If the City determines that a public project necessitates the relocation or removal of District's existing facilities, the City shall:

~~6.9.3.1~~ 6.8.4.1 As soon as possible, but not less than ~~sixty (60)~~ one hundred eighty (180) days prior to the commencement of such project, City shall provide District with written notice requiring such relocation or removal; and

~~6.9.3.2~~ 6.8.4.2 Provide District with copies of any plans and specifications pertinent to the requested relocation or removal and a

proposed temporary or permanent relocation for District's facilities.

~~6.9.3.3.~~ 6.8.4.3 After receipt of such notice and such plans and specifications, District shall make all reasonable efforts to complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project according to the above cost sharing described in Section 6.8.2.

~~6.9.4~~ 6.8.5 District 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 District in writing if any of the alternatives are suitable to accommodate the work that necessitates the relocation of the facilities. If so requested by ~~the City~~ either party, District or City shall submit additional information to assist the other party in making such evaluation. The City shall give each alternative proposed by District full and fair consideration and if appropriate, state why the District's proposed alternatives are not satisfactory. In the event the City and District ultimately determines ~~there is no other~~ do not agree on a reasonable alternative, District and City shall ~~relocate its facilities as provided in this Section attempt to resolve the relocation through Section 13 – Alternate Dispute Resolution.~~

~~6.9.5~~ — If the City requires the relocation of Facilities within five (5) years of their installation or the subsequent relocation of Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section, then the City shall bear the entire cost of such subsequent relocation.

6.8.6 If the City determines that the District's facilities must be protected, supported, temporarily or permanently disconnected, relocated or removed from the right-of-way, City shall reimburse District all costs as submitted and verified by District within 45 days of completion of the relocation or removal by the District in accord with paragraph 6.8.1 herein.

~~6.9.6~~ 6.8.7. The provisions of ~~Section 6.9~~ this Section 6.8 shall in no manner preclude or restrict District from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, ~~where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay or increase the cost of a planned City construction project.~~

7. Planning Coordination.

- 7.1 Growth Management. The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:
- 7.1.1 For District's service within the City limits, District 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).
- 7.1.2 District 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 District's operations and is updated to ensure continued relevance at reasonable intervals.
- 7.1.3 District 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 the District's possession, or can be reasonably developed from the information in the District's possession.
- 7.1.4 District will update information provided to the City under this Section whenever there are major changes in District's system plans for Shoreline.
- 7.1.5 The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District 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.
- 7.2 System Development Information. District and City will each assign a representative whose responsibility shall be to coordinate ~~with the City~~ on planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:
- 7.2.1 By February 1st of each year, District shall provide the City ~~Manager or his designee~~ with a schedule of its planned capital improvements, which may affect the right-of-way for that year;
- 7.2.2 By February 1st of each year, City shall provide the District 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 District capital improvements and infrastructure.

~~7.2.2~~ 7.2.3 District shall meet with the City, other franchisees and users of the right-of-way as necessary ~~according to a schedule to be determined by the City,~~ to schedule and coordinate construction activities.

~~7.2.3~~ 7.2.4 All construction locations, activities, and schedules shall be coordinated, ~~as required by the City Manager or his designee,~~ to minimize public inconvenience, disruption, or damages.

7.3 Emergency Operations. The City and District agree to cooperate in the planning and implementation of emergency operations response procedures.

7.4 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 District, and upon request, in hard copy plan form used by City or District.

8. Indemnification.

8.1 District 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, attorney's fees, or liability to any person, including claims by District's own employees to which District might otherwise be immune under Title 51 RCW, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of District, its agents, servants, officers or employees in performing activities authorized by this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the acts or omissions of District, its agents, servants, officers or employees except for claims for injuries and damages caused in whole or in part 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, District shall satisfy the same. The City may appear in any proceeding it deems necessary to protect the City's or the public's interests.

8.2 Inspection or acceptance by the City of any work performed by District 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.

~~8.3 In the event District 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 District'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 District, then District 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.~~

8.4 8.3 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 District and the City, its officers, employees and agents, District's liability hereunder shall be only to the extent of District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the District'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.

8.5 8.4 The City hereby releases and agrees to indemnify, defend and hold harmless the District, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from District's compliance with Section 4 hereof this Agreement. ~~This indemnification is contingent upon District's compliance with Section 4.4 hereof.~~

8.5 The City hereby releases and agrees to indemnify, defend and hold harmless the District, 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 the District or the City's enforcement of the International Fire Code.

9. Insurance.

9.1 District 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 District, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by District. District shall provide to the City an insurance certificate and proof of self-insurance, if applicable, evidencing the required insurance and a copy of the additional insured endorsements, for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this Franchise, and such insurance shall evidence the following required insurance:

- 9.1.1 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
- 9.1.2 Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. There shall be no endorsement or modification of the Commercial General Liability insurance excluding liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under District's Commercial General Liability insurance policy.
- 9.1.3 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.
- 9.2 Payment of deductible or self-insured retention shall be the sole responsibility of District.
- 9.3 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. District's insurance shall be primary. Any insurance, self insurance, or insurance pool coverage maintained by the City shall be excess of District'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.
- 9.4 District shall require all its subcontractors to carry insurance consistent with this Section 9, and shall provide evidence of such insurance to the City upon request.

10. **Enforcement.**

- 10.1 ~~In addition to all other rights and powers retained by the City under this Franchise,~~ Both the City and District reserves the right to revoke and terminate this Franchise ~~and all rights and privileges of the District in the event of a substantial violation or breach of its terms and conditions.~~
- 10.2 A substantial violation or breach by City or by District shall include, but shall not be limited to, the following:
 - 10.2.1 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;~~

10.2.2 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 the system customers District or upon the City;

10.2.3 Failure to provide the services specified in the Franchise;

10.2.4 Misrepresentation of material fact during negotiations relating to this Franchise or the implementation thereof;

~~10.2.5 A continuous and willful pattern of grossly inadequate service~~

~~10.2.6~~ 10.2.5 An uncured failure to pay fees associated with this Franchise.

10.2.6. Changes in existing City regulations or ordinances or new regulations or ordinances that materially change the interpretation or application of provisions in this agreement.

10.3 No violation or breach shall occur which is without fault of the District or the City, or which is as a result of circumstances beyond the District's or the City's reasonable control. Neither the District, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees; ~~provided, however, that damage to equipment causing service interruption shall be deemed to be the result of circumstances beyond a District's or the City's control if it is caused by any negligent act or unintended omission of its employees (assuming proper training) or agents (assuming reasonable diligence in their selection), or sabotage or vandalism or malicious mischief by its employees or agents. A District, or the City, shall bear the burden of proof in establishing the existence of such conditions.~~

10.4 Except in the case of termination pursuant to ~~Paragraph 10.2.4~~ Paragraph 10.1 of this Section, prior to any termination or revocation, the City, or the District, 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 the District 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. ~~Within 20 days after receipt of a written declaration of default, the party that is alleged to be in default may request, in writing, a hearing before a "hearing examiner" as provided by~~

~~the City's development regulations. The hearing examiner's decision may be appealed to any court of competent jurisdiction.~~

11. 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:

District Manager
Shoreline Water District
P.O. Box 55367
Shoreline, WA 98155
Phone: (206) 362-8100
Fax: (206) 361-0629

City Manager
City of Shoreline
17544 Midvale Avenue N.
Shoreline, WA 98133-4921
Phone: (206) 546-1700
Fax: (206) 546-2200

12. 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.

13. 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.

14. 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.

~~11.~~ 15. Survival. All of the provisions, conditions and requirements of Sections 6.1 Excavation, 6.2 Abandonment Of District's Facilities, 6.3 Restoration After Construction, 6.7 6-8 Dangerous Conditions, Authority For City To Abate, 6.8 6-9 Relocation Of System Facilities, and 8 Indemnification, of this Franchise shall be in addition to any and all other obligations and liabilities District may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to District for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof only to the extent that existed prior to this agreement. 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 District and all privileges, as well as all obligations and liabilities of District shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever District is named herein..

~~12.~~ 16. 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.

~~13. **Assignment.** This Franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City. This paragraph shall not act to require City approval of any District action to mortgage or otherwise encumber its facilities, or other action related to corporate financing, financial reorganization, or refinancing activity.~~

~~14. **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:~~

District Manager
Shoreline Water District
P.O. Box 55367
Shoreline, WA 98155
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~~15. **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.~~

~~16. **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.~~

~~17. **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.~~

~~18. 17. **Directions to City Clerk.** The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District set forth in this ordinance. The District shall have sixty (60) fifteen (15) days from receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District in this ordinance.~~

~~19. 18. **Publication Costs.** In accord with state law, this ordinance shall be published in full by the City. The District shall reimburse the City for the cost of publishing this Franchise Ordinance within sixty (60) days of receipt of an invoice from the City.~~

~~20. 19. **Effective Date.** This ordinance shall take effect and be in full force five days after publication.~~

PASSED BY THE CITY COUNCIL ON JULY 28, 2008.

Mayor Cindy Ryu

ATTEST

APPROVED AS TO FORM:

Scott Passey
City Clerk

Flannary P. Collins
Assistant City Attorney

Date of Publication: July 31, 2008
Effective Date: August 5, 2008