

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Ordinance No. 518 Approving the Shoreline Water District Franchise
DEPARTMENT: City Manager's Office, Public Works Department
PRESENTED BY: Ian Sievers, City Attorney; Mark Relph, Public Works Director

PROBLEM/ISSUE STATEMENT:

The City Council adopted Ordinance No. 514 on July 28th, 2008 creating a franchise with the Shoreline Water District. After adoption, the District had proposed two modifications which are reflected in the proposed ordinance. The modifications include changing the term of the franchise and a provision to waive any claims against each other over previous franchise payments.

DISCUSSION:

The City Council adopted Ordinance No. 514 on July 28th, 2008 creating a franchise with the Shoreline Water District. After adoption, the District has proposed two modifications reflected in the proposed ordinance. The modifications include changing the term of the franchise (Section 3) and a provision to waive any claims against each other over previous franchise payments (Section 8.6).

The term of the franchise would expire on December 31, 2011, thereby reducing the term from 4.5 years to 3.5 years. The requirement to waive any claims against each other for past franchise payments was a condition staff had agreed to as part of the negotiation process in exchange for the District accepting the City's proposed relocation schedule.

The District's proposed changes require Council approval, which extends the original approval timeline beyond the expiration date of the previous franchise (July 31st, 2008). Therefore, staff has included a retroactive commencement date of August 1st, 2008 in section 3. The District has agreed to this addition, but formal approval of the entire agreement by the District is expected shortly after Council adoption.

RECOMMENDATION

Staff recommends approval of the changes and thereby Council's adoptions of ordinance No. 518.

ATTACHMENTS

A. Proposed Ordinance No. 518

Approved By:

City Manager 

City Attorney 

ORDINANCE NO. 518

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, expired July 31, 2008; and

WHEREAS, the City passed Ordinance No. 514 granting a new franchise to the Shoreline Water District on July 28, 2008 but this franchise agreement was not accepted by the District; and

WHEREAS, modifications to the term with a retroactive effective date to August 1, 2008 and a mutual waiver of claims for additional payments or refund of fees arising from the previous franchise agreement have been negotiated and included in Sections 3 and 8.6;

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 August 1, 2008 through December 31, 2011 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, to 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.
- 8.6 The parties mutually waive and release each other from any claims against the other for additional payment or refund of franchise fees paid under the previous franchise agreement and its extensions.

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.
- 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; and
- 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. 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.

19. **Repealer.** Ordinance No. 514 is here by repealed.

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

PASSED BY THE CITY COUNCIL ON August 25, 2008.

Mayor Cindy Ryu

ATTEST

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian R. Sievers
City Attorney

Date of Publication: , 2008
Effective Date: , 2008