

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Seattle City Light Franchise Adoption Schedule and Process
DEPARTMENT:	City Manager's Office
PRESENTED BY:	John Norris, CMO Management Analyst
ACTION:	<input type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input checked="" type="checkbox"/> Discussion

PROBLEM/ISSUE STATEMENT:

As per SMC 12.25.010, all entities which use the City's rights-of-way for operation and maintenance of their facilities are required to have a non-exclusive franchise or right-of-way site permit with the City. The City's current franchise with Seattle City Light, which was granted by Shoreline Ordinance No. 187, expires on January 31, 2014. This 15-year franchise became effective January 1, 1999. While the City and Seattle City Light have begun negotiations for a new right-of-way franchise, this discussion will serve as an opportunity to provide the Council the schedule and process for the franchise negotiation, as well as an opportunity for the public to provide comment to the Council regarding Shoreline citizens' needs and interests for the franchise agreement.

RESOURCE/FINANCIAL IMPACT:

There is no fiscal impact to discussing the schedule and processing of a franchise agreement with Seattle City Light. In 2011, the City received \$1,744,855 from Seattle City Light for the annual contract fee payment. Although staff does not anticipate that a change in the contract fee rate will be negotiated in the forthcoming franchise agreement, the fiscal impacts, if any, of the franchise will be discussed when the franchise has been negotiated and is brought back to Council for review and adoption.

RECOMMENDATION:

This staff report is for discussion purposes only. No action is required.

Approved by: City Manager **JU** City Attorney **IS**

BACKGROUND:

As per SMC 12.25.010, all entities which use the City's rights-of-way for operation and maintenance of their facilities are required to have a non-exclusive franchise with the City or a right-of-way site permit issued under SMC Chapter 12.15. The City's current franchise with Seattle City Light (SCL), which was granted by Shoreline Ordinance No. 187, expires on January 31, 2014. This 15-year franchise became effective January 1, 1999.

During the negotiation of the City's current franchise with SCL in 1997 and 1998, negotiating the "contract fee payment" in the franchise (which equates to 6% of the amount of revenue derived from the power and distribution portions of SCL service to customers in the City) was a major issue for the City at the time. This contract fee payment, which is similar in magnitude to franchise fee rates in the City's other utility franchises, was established in consideration of the City not exercising its authority to establish its own municipal electric utility or acquire SCL electric distribution infrastructure in the City for that purpose. In other words, for the City agreeing to 'stay out of the electric business', SCL agreed to a 6% fee payment to Shoreline. Other significant issues addressed in the last franchise negotiation include consideration of use of SCL's property in Shoreline, street light management, infrastructure undergrounding, and service rate differentials between Shoreline and the City of Shoreline. The City's prior franchise with SCL (which was originally granted to King County and then transferred to the City) was silent on all of these issues.

While these issues were addressed in the current franchise agreement, staff has held internal discussions across various departments to better understand how the language in the current franchise can be significantly improved. These improvements will hopefully be made as the City and SCL move deeper into the franchise negotiation. Tonight's discussion however will serve as an opportunity to provide the Council the schedule and process for the franchise negotiation, as well as an opportunity for the public to provide comment to the Council regarding what their needs and interests are for the franchise agreement.

FRANCHISE NEGOTIATION SCHEDULE AND PROCESS:

In early 2012, staff reached out to SCL to begin the franchise renewal process. Unfortunately, due to the retirement of the City's former SCL Account Executive, SCL did not provide a staff contact to move the discussion forward until later in 2012. At the same time, staff did begin speaking with other cities in the SCL service territory about working together on the franchise negotiation. The following cities all have franchises with SCL (also noted are their franchise expiration dates):

- City of Shoreline – January 2014
- City of Burien – February 2014
- City of Lake Forest Park – April 2014
- City of SeaTac – January 2015
- City of Tukwila – 2018

Given that the majority of the cities have franchise expiration dates within one year of each other and given that common franchise issues and interests were identified between these cities, city staff agreed to work together and share information throughout the negotiation with SCL. Although collectively negotiating a “franchise template” was at first agreed to by SCL (process where SCL negotiates with all cities on a common franchise agreement at one time), when SCL’s newly hired Account Executive discussed the renewal with SCL management this fall, SCL decided that it would rather negotiate franchise language with each City individually. However, SCL did understand that cities would likely continue to work together and share information about the renewal process.

To this end, staff from all franchise cities have continued to meet to discuss common interests and issues in the franchise. In December 2012, staff from all cities met our SCL Account Executive, Sandi Fukumoto, on three occasions to look at areas of interest in the franchise and have a discussion about where SCL feels the document can be improved. It is hoped that these meetings will set the stage for an initial SCL-produced “red-line” draft of the renewed franchise document.

Looking forward, SCL has stated that they will work to produce an initial draft of the renewed franchise by the end of the first quarter of 2013. Staff is also working internally with a cross-departmental team to look at issues in the franchise and draft franchise language that we will likely propose to SCL. Once an initial draft franchise is provided, staff will begin negotiating individually with SCL and City of Seattle legal staff on final draft franchise language for Council review and approval.

Given that the franchise agreement must be approved by both the City of Shoreline and the City of Seattle, SCL has stated that the City of Seattle legislative process for franchise approval may take up to six months. Due to this lengthy legislative process, staff and SCL are working to have the final draft franchise negotiated by June 2013. If this timeframe is not able to be met, staff may bring an ordinance to the Council later in 2013 that extends the City’s current franchise with SCL. Although this is not desirable, this is always an option if the franchise negotiation takes longer than anticipated.

STAFF-IDENTIFIED FRANCHISE ISSUES:

Through the internal staff discussions and common interest discussions held between franchise cities, staff has come up with ten major franchise issues for discussion with SCL. They are:

1. Consideration – 8% differential in the power portion of the rates between suburban rate payers and City of Seattle rate payers.
2. Right-of-Way Management
3. Pole Management
4. Tree Trimming/Vegetation Management
5. Undergrounding/Relocation of Facilities
6. Street Lighting
7. Planning Coordination

8. Service Quality and Service Quality Standards
9. Franchise Enforcement
10. Use of SCL Property

It should be noted that this list is not exhaustive, nor is it in rank order of importance or priority. Rather, it is a list of issues identified by the City and shared by other cities that staff feels should be focused on during the negotiation. While all of these issues are addressed in the current franchise, these topics can be improved upon through more clear, comprehensive language and additional content. Staff is also interested in hearing from Council with regard to specific issues the Council feels staff should focus on during the negotiation.

STAKEHOLDER OUTREACH:

Although there is no prescriptive public process identified in the municipal code for right-of-way franchise renewals, staff felt that it was important to hear from the public with regards to their needs and interests for the SCL franchise agreement. This input will help staff as the City moves forward with the negotiation process with SCL. In addition to this agenda item, the public will also have the opportunity to provide comment on the draft franchise when it is provided to the Council for review and approval. Staff will likely hold a public hearing prior to the Council taking action on the franchise, and will then also discuss the franchise ordinance again with Council prior to adoption where additional public comment may be provided.

In addition to these opportunities for the public to provide input, staff will also seek input from the City's Tree Board on the draft Vegetation Management section of the franchise. This section covers trimming and pruning of trees and other vegetation overhanging SCL's power lines. This discussion will be held with the Park Board/Tree Board on Thursday, February 21. Information about this discussion, including an agenda packet, can be found on the Parks, Recreation and Cultural Services Board webpage (<http://shorelinewa.gov/index.aspx?page=914>) the Friday prior to this Board meeting.

RESOURCE/FINANCIAL IMPACT:

There is no fiscal impact to discussing the schedule and processing of a franchise agreement with Seattle City Light. In 2011, the City received \$1,744,855 from Seattle City Light for the annual contract fee payment. Although staff does not anticipate that a change in the contract fee rate will be negotiated in the forthcoming franchise agreement, the fiscal impacts, if any, of the franchise will be discussed when the franchise has been negotiated and is brought back to Council for review and adoption.

RECOMMENDATION:

This staff report is for discussion purposes only. No action is required.

ATTACHMENTS:

A: Current Seattle City Light Franchise, Ordinance No. 187

ORDINANCE NO. 187

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON,
GRANTING SEATTLE CITY LIGHT, AN ELECTRIC UTILITY OWNED
AND OPERATED BY THE CITY OF SEATTLE A MUNICIPAL
CORPORATION, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT,
MAINTAIN, OPERATE, REPLACE AND REPAIR AN ELECTRIC
LIGHT AND POWER SYSTEM, IN, ACROSS, OVER, ALONG, UNDER,
THROUGH AND BELOW CERTAIN DESIGNATED 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 ... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy ..."; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Seattle City Light for the operation of an electric light and power system within the City right-of-way;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE,
WASHINGTON, DOES 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 head of the Planning and Development Services department of the City, or the head of the Public Works department of the City, or the designee of either of these individuals.

1.4. Facilities: All wires, lines, cables, conduits, equipment, and supporting structures, located in the City's right-of-way, utilized by the grantee in the operation of activities authorized by this Ordinance. The abandonment by grantee of any facilities as defined herein shall not act to remove the same from this definition.

1.5. Grantee: As incorporated or used herein shall refer to Seattle City Light (SCL).

1.6. Permittee: A person who has been granted a permit by the Permitting Authority, and SCL operating under Section 6.7 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 term as used herein shall have the same meaning as utilized by the City of Seattle in calculating the amount of utility tax payable by SCL to the City of Seattle.
- 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.
- 1.11. SCL: Seattle City Light, an electric utility owned and operated by the City of Seattle a municipal corporation, and its respective successors and assigns.

2. Franchise Granted.

- 2.1. Pursuant to RCW 35A.47.040, the City hereby grants to SCL, its heirs, 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 SCL 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 an electric light and power 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 specifically does not authorize SCL to place facilities or to otherwise utilize facilities in the City's right-of-way to provide telecommunications, cable television, point-to-point data communications, or similar services either via wire or wireless technologies regardless of whether these services are provided to any person outside SCL's organization. This Paragraph does not restrict SCL's ability to utilize telemetric devices to monitor and operate its electrical distribution system or the usage of electrical energy.
- 2.4. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any right-of-way. Such franchise shall in no way prevent or prohibit the City from using any Right-of-way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new right-of-ways or other public properties of every type and description.

3. Franchise Term. The term of the franchise granted hereunder shall be for the period of fifteen (15) years counted from the last day of the calendar month in which this ordinance became effective.

4. Consideration. It is recognized by the City and by SCL that the City has the authority to establish its own municipal electric utility, and the authority to acquire SCL electric distribution properties in the City for that purpose.

4.1. In consideration for the City agreeing not to exercise such authority during the term of this franchise, SCL agrees to the following:

4.1.1. SCL shall pay the City six percent of the amount of revenue derived from the power portion of SCL service to customers in the City, and shall pay the City zero percent of the amount of revenue derived from the distribution portion of SCL service to customers in the City. The City retains the authority to change the above percentages, to a maximum of six percent on the power portion of SCL service and to a maximum of six percent on the distribution portion of SCL service during the course of the franchise upon one year written notice to SCL.

4.1.2. SCL shall not include any part of the power portion of the payment to the City provided in Section 4.1.1. above as a component of any rate differential between customers served by SCL in the City and customers served by SCL in other jurisdictions.

4.1.3. SCL shall not charge greater than an eight percent differential in the power portion of the rates to customers in the City compared to the power portion of the rates charged to similar customers in the City of Seattle, and any differential in the power portion of the rates charged to customers in the City shall be the result of a rate review process conducted by the Seattle City Council. The power portion of SCL service to customers in the City is approximately fifty percent of the rates at the time of entering into this franchise. Any subsequent shift in the proportion of power vs. distribution in the rates to SCL customers in the City shall be the result of a rate review process conducted by the Seattle City Council.

4.1.4. SCL shall provide the City with a good faith estimate and supporting information, within a reasonable time from the City's request, of the likely differential rate impact on the distribution portion of the rates in the City, which other than the payment related to the distribution portion of SCL service under Section 4.1.1. above, may only be created by an operational request or requirement of the City which is different from operational standards in other areas served by SCL.

4.1.5. SCL shall appoint a member nominated by the City and other suburban cities to its Citizens' Rate Advisory Committee who will represent the interests of suburban cities served in whole or in part by SCL.

4.2. Should the City of Seattle be prevented by judicial or legislative action from collecting a utility tax on all or a part of the revenues derived by SCL from customers in the City, SCL shall reduce the payments to the City provided in Section 4.1.1. above by an equivalent amount.

- 4.3. Should a court of competent jurisdiction declare the consideration to be paid to the City in Section 4.1.1. above invalid, in whole or in part, or should a change in law make the consideration to be paid to the City in Section 4.1.1. above invalid, in whole or in part, this entire Agreement may be terminated by the City at any time thereafter upon 180 days written notice. During such notice period, however, SCL and the City shall attempt to agree upon acceptable, substitute provisions.
- 4.4. Payments provided for under this Section shall be paid monthly within 30 days following the end of each month.

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, 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 SCL located within the City right-of-way. SCL shall promptly conform with all such regulations, unless compliance would cause SCL to violate other requirements of law.

6. Right-of-Way Management.

6.1. Excavation And Notice Of Entry.

- 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. SCL 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. Whenever SCL 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, SCL 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 accord with Section 6.11 of this Ordinance.
- 6.1.3. At least ten (10) days prior to its intended construction of facilities, Grantee shall inform all residents in the immediately affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local

number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.

- 6.1.4. At least twenty-four (24) hours prior to entering right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, except those activities exempted from permit requirements in accord with Section 6.7 and Blanket Permit Definitions, a copy of which has been filed with the City Clerk and identified by Clerk's Receiving Number **781**, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by the Grantee. The Grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of underground facilities consistent with sound engineering practices.

6.2. Abandonment of SCL's Facilities. No facilities laid, installed, constructed, or maintained in the right-of-way by SCL may be abandoned by SCL without the prior written consent of the Director of a removal plan. All necessary permits must be obtained prior to such work.

6.3. Restoration after Construction.

- 6.3.1. SCL 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. 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. SCL 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 SCL has failed to restore the right-of-way in accord with this Section, the City shall provide SCL 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 accord with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the right-of-way. SCL is responsible for all costs and expenses incurred by the City in restoring the right-of-way in accord 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. SCL, 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. Tree Trimming. Upon approval of the City, which shall not be unreasonably withheld or delayed, and in accordance with City ordinances, the Grantee shall have the authority to trim trees and other plant life upon and overhanging the right-of-way to prevent interference with the Grantee's facilities.

- 6.5.1. The Grantee shall provide at least seven (7) days advanced written notice to the owner of the property on which any tree or plant life Grantee desires to trim is

located. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information from the Grantee regarding its vegetation management plans. The Grantee shall make a good faith effort to conform with property owners' requests regarding the trimming of trees or plant life on their property without jeopardizing the safety or the operational reliability of their Facilities.

6.5.2. In regards to trees or other plant life in the right-of-way, the Grantee shall provide at least a seven (7) days advanced written notice to the nearest adjacent property owner. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information regarding vegetation management plans and express concerns. The Grantee shall obtain authorization from the Director of all vegetation management plans regarding trees and other plant life in the right-of-way including tree removal or replacement programs.

6.5.3. The Grantee shall be responsible for removal of an debris generated during its vegetation management activities. The City may, at its sole discretion, remove and dispose of any such debris on City right-of-way that is not removed within twenty-four (24) hours and charge the Grantee for the cost of said removal and disposal.

6.5.4. The forgoing notwithstanding, Grantee shall at all times have the right to trim vegetation in the right-of-way that has caused a system failure, or is in imminent risk of doing so, without delay for prior notice.

6.6. Emergency Work, Permit Waiver. In the event of any emergency where any facilities located in the right-of-way are broken or damaged, or if SCL'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, SCL shall immediately take any necessary emergency measures to repair or remove its facilities without first applying for and obtaining a permit as required by this franchise. However, this emergency provision shall not relieve SCL from later obtaining any necessary permits for the emergency work. SCL shall apply for the required permits the next business day following the emergency work or as soon as practical.

6.7. 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 781. A 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 accord with City ordinances.

6.7.1. The Permittee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.

6.7.2. 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.

- 6.7.3. The Permittee shall provide payment of inspection fees for the monthly activity on an annual basis as provided by Section 13. No monthly statement will be provided by the City.
- 6.7.4. 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:
 - 6.7.4.1. 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 no., street address nearest to the proposed work site; parcel no. and description of work to be performed.
 - 6.7.4.2. 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.
- 6.7.5. 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.
- 6.7.6. The City reserves the right to alter the terms and conditions of Subsection 6.7, 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.

6.8. Safety.

- 6.8.1. The Grantee, 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.
- 6.8.2. All of Grantee's facilities in the right-of-way shall be constructed and maintained in a safe and operational condition.

6.9. Dangerous Conditions, Authority for City to Abate.

- 6.9.1. Whenever Facilities or the operations of the Grantee 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 Grantee, 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.

- 6.9.2. In the event the Grantee 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 Grantee shall be responsible to reimburse the City for its costs.

6.10. Relocation of System Facilities.

- 6.10.1. SCL 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, provided that SCL 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.
- 6.10.2. If the City determines that a public project necessitates the relocation of SCL's existing facilities, the City shall:
- 6.10.2.1. As soon as possible, but not less than sixty (60) days prior to the commencement of such project, provide SCL with written notice requiring such relocation; and
- 6.10.2.2. Provide SCL with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for SCL's facilities.
- 6.10.2.3. After receipt of such notice and such plans and specifications, SCL shall complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.
- 6.10.3. SCL may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise SCL 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, SCL shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by SCL full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, SCL shall relocate its facilities as provided in this Section.
- 6.10.4. The provisions of this Section 6.10 shall in no manner preclude or restrict SCL from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person 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.

6.10.5. Whenever any person shall have obtained permission from the City to use any right-of-way for the purpose of moving any building or other oversized structure, SCL, upon fourteen (14) days written notice from the City or the Permittee (Provided the same can show sufficient evidence of a valid City permit), shall raise or remove, at the expense of the Permittee desiring to move the building or structure, any of SCL's facilities that may obstruct the movement thereof; provided, that the moving of such building or structure shall be done in accordance with regulations and general ordinances of the City. Where more than one path is available for the moving of such building or structure, the path of least interference, as determined by the City, shall be utilized.

6.11. SCL's Maps and Records. As a condition of this franchise, and without charge to the City, SCL agrees to provide the City 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 and, upon request, in hard copy plan form used by SCL. This information shall be provided between one hundred twenty (120) and one hundred eighty (180) days of the effective date of this Ordinance and shall be updated upon reasonable request by the City.

7. Undergrounding. SCL hereby affirms its understanding and agreement that its activities within the City must comply with Shoreline City Ordinance No. 82, Establishing Minimum Requirements And Procedures For The Underground Installation Of Electric And Communication Facilities Within Shoreline, and in exchange for an exemption from the requirements of Section 6(b) of that ordinance, and in accord with Section 6(b)(1) thereof, SCL hereby agrees and covenants to the following:

7.1. Information. SCL shall provide to the City of Shoreline, or any entity that has noticed SCL of a joint trenching project under Section 12 of Shoreline City Ordinance No. 82, all reasonably requested information regarding the nature and location of facilities installed, owned, operated, or maintained by SCL within a proposed undergrounding area. Said information will be provided within a reasonable period of time, not to exceed thirty (30) days following the request.

7.2. Notice. SCL shall respond to any notification pursuant to Section 12 of Shoreline City Ordinance No. 82, within forty five (45) days following such notification with written commitment either to participate in the proposed project or to remove its facilities.

7.3. Cost. SCL agrees to bear its proportionate share of all costs common to participants in any joint trenching project and to bear the entire cost of all materials and labor particularly necessary for the underground installation of its facilities and, upon the completion of that installation, the removal of the overhead facilities replaced thereby.

8. Street Lighting. As a condition of placing its facilities in the public streets and as part of the electric service it provides to its customers in Shoreline, SCL shall install, maintain, and

furnish equipment and power for street illumination in accord with policies and standards established by the City of Shoreline.

9. Implementation of Service Requirements.

- 9.1. Rate Information.** SCL shall provide the City with copies of all studies, reports, memoranda, or other documents provided to the legislative branches of the City of Seattle regarding the establishment of the rates, or any portion thereof, to be charged to customers in Shoreline within seven (7) days of the transmission of said documents to the legislative branches of the City of Seattle. Shoreline shall be provided a reasonable opportunity to review said documents and to comment or otherwise participate in Seattle's rate setting process. SCL shall ensure that the City receives reasonable advanced notice of all public hearings or other opportunities for the City to represent the interests of SCL customers within Shoreline during Seattle's rate setting process.
- 9.2. City Council to Review Rates.** The City Council shall have the authority to establish policies regarding the implementation of SCL service requirements included in Sections 7, and 8. SCL shall assist the City Council in establishing these policies and in determining the impact, if any, such policies may have upon SCL customers within the City limits.
- 9.3. Amortization.** The term of the Franchise herein notwithstanding, SCL shall amortize capital expenditures incurred in order to meet the requirements of this franchise in accordance with its standard financial policies.
- 9.4. Communication with City Customers.** SCL will review with the City in advance any planned communication to its customers in the City regarding the services and rates affected by this franchise.

10. Planning Coordination.

- 10.1. Growth Management.** SCL agrees, as follows, to participate in the development of, and reasonable updates to, the utilities element of the City's comprehensive plan:
- 10.1.1. For SCL's service within the City limits, SCL will participate in a cooperative effort with the City of Shoreline to develop a Comprehensive Plan Utilities Element which meets the requirements described in RCW 36.70A.070(4).
- 10.1.2. SCL 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 SCL's operations and is updated to ensure it continued relevance at reasonable intervals.
- 10.1.3. SCL shall submit information related to the general location, proposed location, and capacity of all existing and proposed electrical lines as requested by the Director within a reasonable time, not exceeding sixty (60) days from receipt of a written request for such information.
- 10.1.4. SCL will updated information provided to the City under this Section 10 whenever there are major changes in SCL's electrical system plans for Shoreline.

10.2. System Development Information. SCL will 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:

- 10.2.1. By February 1st of each year, SCL 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;
- 10.2.2. SCL shall meet with the City, other franchisees and users of the right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and
- 10.2.3. 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.

10.3. Development of Right-of-Way Standards. SCL herein agrees to provide the staff-support necessary to enable SCL to meaningfully participate in the City's ongoing development of Right-of-Way Standards. By way of illustration and not limitation, this participation shall include attendance at City planning meetings, review and comment of documents proposed for adoption, and any other activities that may be required in the formulation of Right of Way Standards.

10.4. Coordination of Permitting Activities. The parties agree to attempt to reduce the number of transactions at different locations that must be completed by a Shoreline applicant for a land use permit as follows:

- 10.4.1. If the City provides office space at City Hall for SCL at no charge, SCL will assign a representative who will keep regular hours at City Hall pursuant to a schedule mutually acceptable to both parties, so long as there is sufficient workload. The SCL representative will participate with City staff in reviewing land use plans and permits requiring coordination with or approval by SCL, including any project requiring new or changed electric service or easements within the City limits.

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

11. Service Quality. SCL shall exercise the same degree of technical, professional and administrative quality in serving its customers in the City that is required within the electrical energy industry and that is provided to all other customers with similar circumstances within SCL's service territory. SCL shall at all times comply with the minimum regulatory standards presently in effect or as may be amended for the sale and distribution of electrical energy.

12. City Use of SCL Property. SCL owns properties and facilities in the City which are essential to SCL's electrical utility operations. SCL will cooperate with the City in the same manner as it does with the City of Seattle in aligning the operation and management of its property and facilities to serve the goals and objectives of the City, including the City's use

of SCL property for public purposes, while at the same time protecting the safe and efficient operation of SCL's electric utility.

12.1. Favorable Consideration of City Requests. SCL shall give every favorable consideration to a request by the City for use of SCL property, including requests by the City to use SCL property for such public uses as public parks, public open space, public trails for non-motorized transportation, surface water management, or other specifically identified public uses.

12.2. Public Adoption of Proposed Uses. Each proposed use of SCL property by the City shall first be approved by Council action consistent with the City's Comprehensive Plan.

12.3. Prior Approval of Specific Plans by SCL. Prior to any installation, modification or extension of any improvement on SCL property proposed by the City, the City shall supply SCL with detailed drawings and specifications relating to such proposed development. No construction, installation or modification shall be performed until the plans have been approved in writing by SCL.

12.4. Permit for City Use of SCL Property. SCL shall provide the City with a separate permit, in a form similar to that used for the City of Seattle, for each use of SCL property requested by the City, which shall detail the terms of such use including provisions to assure the continued safe and efficient operation of the electric utility.

13. Finance.

13.1. Annual Reconciliation. Unless otherwise provided herein, all charges between the parties, except for charges for electrical service to specific City buildings, penalties, reimbursements for breach or other forms of cure, and payment pursuant to Section 4.1.1, shall be accrued and reconciled annually in accord with the following process:

13.1.1. Within thirty (30) days of the anniversary of the execution of this agreement, or upon such other date as the parties may agree, the parties shall exchange itemized invoices of charges that have been incurred over the previous 12 month period. Said invoice shall include all information reasonably necessary to allow each party to evaluate the validity and magnitude of each charge.

13.1.2. Each party shall have forty five (45) days to provide the other with written notice disputing any specific charge on the other's invoice. If an invoice is not disputed within this period, then the invoice will be deemed accurate.

13.1.3. Undisputed charges shall be set off against each other. The party with a remaining balance due after the set off, shall provide a reconciled invoice to the other party. Said invoice shall be satisfied within forty five (45) days of its receipt.

13.2. Other Charges. Unless otherwise provided herein, charges between the parties shall be paid within forty five (45) days of the receipt of a written invoice for said charge.

14. Indemnification.

- 14.1. SCL 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 or liability to any person, including claims by SCL's own employees to which SCL might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property of which the negligent acts or omissions of SCL, its agents, servants, officers or employees in performing activities authorized by this franchise. SCL further 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 or liability to any person (including claims by SCL's own employees, including those claims to which SCL might otherwise have immunity under Title 51 RCW) arising against the City solely by virtue of the City's ownership or control of the right-of-ways or other public properties, by virtue of SCL's exercise of the rights granted herein, or by virtue of the City's permitting SCL's use of the right-of-way or other public property based upon the inspection or lack of inspection of work performed by SCL, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with 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 negligent acts or omissions of SCL, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, agents, and volunteers, or any of them, SCL shall satisfy the same.
- 14.2. Inspection or acceptance by the City of any work performed by SCL 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 compromised prior to the culmination of any litigation or the institution of any litigation.
- 14.3. In the event SCL 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 SCL'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 SCL, then SCL 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.
- 14.4. Should a court of competent jurisdiction determine that this franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of SCL and the City, its officers, employees and agents, SCL's liability

hereunder shall be only to the extent of SCL's negligence. This waiver has been mutually negotiated by the parties.

15. Enforcement.

- 15.1. In addition to all other rights and powers retained by the City under this franchise, the City reserves the right to revoke and terminate this franchise and all rights and privileges of the Grantee in the event of a substantial violation or breach of its terms and conditions. Likewise, SCL may terminate this franchise in the event of a substantial violation or breach of its terms and conditions by the City.
- 15.2. A substantial violation or breach by a Grantee shall include, but shall not be limited to, the following:
 - 15.2.1. 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;
 - 15.2.2. An intentional evasion or knowing attempt to evade any material provision of this franchise or practice of any fraud or deceit upon the system customers or upon the City;
 - 15.2.3. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise or right-of-way use agreement;
 - 15.2.4. Failure to provide the services specified in the franchise;
 - 15.2.5. Misrepresentation of material fact during negotiations relating to this franchise or the implementation thereof;
 - 15.2.6. A continuous and willful pattern of grossly inadequate service and failure to respond to legitimate customer complaints;
 - 15.2.7. An uncured failure to pay fees associated with this franchise
- 15.3. No violation or breach shall occur which is without fault of the Grantee or the City, or which is as a result of circumstances beyond the Grantee's or the City's reasonable control. Neither the Grantee, 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 Grantee'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 Grantee, or the City, shall bear the burden of proof in establishing the existence of such conditions.
- 15.4. Except in the case of termination pursuant to Paragraph 15.2.5. of this Section, prior to any termination or revocation, the City, or the Grantee, 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 Grantee 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, which declaration must be in writing. Within 20 days after receipt of a written declaration of default from the party that is alleged to be in default, the party 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.

- 15.5. The City may, in its discretion, provide an additional opportunity for the Grantee to remedy any violation or breach and come into compliance with this agreement so as to avoid the termination or revocation.
- 15.6. In addition to any other remedy provided for herein for violation of any provision, or failure to comply with any of the requirements of this franchise, the City may levy liquidated damages of up to \$500.00 for each of the first five days that a violation exists and up to \$1,000.00 for each subsequent day that a violation exists. Payment of such liquidated damages shall not relieve any person of the duty to correct the violation.
- 15.7. Any violation existing for a period greater than 30 days may be remedied by the City at the Grantee's expense.

16. Survival. All of the provisions, conditions and requirements of Sections 6.1 Excavation And Notice Of Entry, 6.2 Abandonment Of SCL's Facilities, 6.3 Restoration After Construction, 6.9 Dangerous Conditions, Authority For City To Abate, 6.10 Relocation Of System Facilities, and 14 Indemnification, of this franchise shall be in addition to any and all other obligations and liabilities SCL may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to SCL for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of SCL and all privileges, as well as all obligations and liabilities of SCL shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever SCL is named herein.

17. 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.

18. 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. Any costs associated with the City's review of any transfer proposed by the Grantee shall be reimbursed to the City by the Grantee.

- 18.1. An assignment of this franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.
- 18.2. Except as otherwise provided herein, the Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Every change, transfer, or acquisition of control of the Grantee's company shall cause a review of the proposed transfer. In the event that the City denies its consent and such change, transfer or acquisition of control has been effected, the Franchise is terminated.

19. 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:

Superintendent of Seattle City Light
700 Fifth Avenue, Suite 3100
Seattle, WA 98104-5031
Phone: (206) 684-3200
Fax: (206) 684-3158

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

20. 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.

21. 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.

22. 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.

23. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the Grantee set forth in this ordinance. The Grantee shall have sixty (60) days from receipt of the certified copy of this ordinance to accept in writing the terms of the franchise granted to the Grantee in this ordinance.

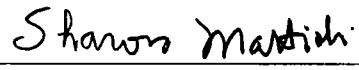
24. Publication Costs. In accord with state law, this ordinance shall be published in full. The costs of said publication shall be borne by the Grantee.

25. Effective Date. If accepted by the Grantee, this ordinance shall take effect and be in full force as of January 1, 1999. The City Clerk is hereby directed to publish this ordinance in full.


PASSED BY THE CITY COUNCIL ON DECEMBER 14, 1998.


Mayor Scott Jepsen

ATTEST:


Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:


Bruce L. Disend
City Attorney

Date of Publication: December 18, 1998
Effective Date: January 1, 1999