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ORDINANCE NO. 637

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. 518, expired December 31, 2011; and

WHEREAS, on November 16, 2011, the City Council passed Ordinance No. 613 extending the franchise granted to the Shoreline Water District through December 31, 2012; and

WHEREAS, this franchise extension was not accepted by the Shoreline Water District; instead, the Shoreline Water District Board of Commissioners on December 27, 2011 adopted Resolution 2011.12.45, which extended the City's franchise agreement to March 31, 2012; on April 9, 2012 adopted Resolution 2012.04.23 which extended the City's franchise agreement to June 6, 2012; on June 5, 2012 adopted Resolution 2012.06.37, which extended the City's franchise agreement to July 9, 2012; and on July 5, 2012 adopted Resolution 2012.07.44, which extended the City franchise agreement to August 15, 2012; and

WHEREAS, the City and the District acknowledge the Washington State Supreme Court's ruling in *Lane v. Seattle*, 164 Wn. 2nd 875 (2008) that the cost of providing fire hydrants is a governmental responsibility for which general purpose governments are required to pay; but the District is willing to accept the burden of fire hydrant costs in consideration of the terms and conditions set forth in this Franchise; and

WHEREAS, the City and the District also acknowledge the Washington Supreme Court's ruling in *Burns v. Seattle,* 161 Wn. 2nd 129 (2007), wherein Seattle City Light ("SCL") entered into franchise agreements with certain cities and agreed to pay the cities a percent of SCL's revenues derived from retail power sales to SCL customers within such cities in consideration of the cities' agreement not to exercise their statutory authority to establish a competing municipal electrical utility during the term of the Franchise; and the District is willing to pay the City a

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percent of the District's revenues derived from its retail water sales to District customers located within the franchise area in consideration of the City's agreement not to exercise, and to forebear, its statutory authority pursuant to Chapter 35.13A RCW to attempt to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise; and

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, fire hydrants, 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 Franchise: This ordinance and any amendments or modifications hereto.

   1.7 Fire Hydrants or Hydrants: The installation, operation and maintenance of fire hydrants and related water system facilities and equipment for the delivery of water for fire suppression purposes, including the over-sizing of such water system facilities and equipment for the delivery of water for fire suppression purposes.

   1.8 Permittee: A person who has been granted a permit by the Permitting Authority, and District operating under Section 9.6 of this Franchise.

   1.9 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

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City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.10 Person: An entity or natural person.

1.11 Revenue: 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; local improvement district and utility local improvement district assessments and payments; 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; sale of water to wholesale water purveyors, or any other fees and charges.

1.12 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 the 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 the 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 on the effective date of this ordinance or the date this Franchise is fully executed , whichever is later, through December 31, 2027 which may be extended by mutual written agreement of both parties.

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4. **Franchise Fee.** In consideration of the rights granted to the District by this Franchise, the District agrees to comply with the terms and considerations of operation within the City rights-of-way set forth in this ordinance and, as additional consideration, the District agrees:

4.1 To collect and distribute to the City a Franchise fee equal to 6% of Revenue generated 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, the 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 the District is in violation of a pre-existing contractual obligation of the District, then the 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 a change in law 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 be refunded or repaid to District customers or other parties, the City shall refund to the District all monies collected plus any required interest in the amount required to satisfy said court declaration.

4.4 The District will not be a party to or otherwise support legal or legislative action intended to result in judicial determination or legislative action referred to in Sections 4.2 and 4.3 hereof.

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5. **Utility Tax.**

5.1 The City has adopted Ordinance No. 634, as amended by Ordinance No. 638, adopting a Utility Tax upon water distribution operations, but providing an exemption from the tax for the District until the expiration or termination of this Franchise. The District reserves in full its rights to challenge the threatened or actual imposition of the Utility Tax as unlawful. Neither the District's acceptance of this Franchise nor the payment by the District of any Franchise fee shall operate as a waiver of the District's right to challenge the threatened or actual imposition of the Utility Tax. For the purposes of ensuring the District's ability to bring a challenge to the Utility Tax, and in consideration of the mutual benefits of this Franchise for each party, the District and City agree that any statute of limitations or other time or procedural limitation on bringing a legal action to challenge the Utility Tax, whether existing as a matter of statute, common law, or any other basis, shall be tolled during the term of this Franchise and shall not begin to run until 90 days following the expiration or termination of this Franchise. The District and City further agree that they shall not contest the other party's allegation of the timely commencement of a legal action challenging the Utility Tax if such action is commenced on or before the expiration of the 90-day period following the expiration or termination of this Franchise. The provisions of this Section 5.1 shall survive the expiration or termination of this Franchise.

5.2 District's non-payment of a Utility Tax shall not be deemed a breach or violation of this Franchise; and, further, shall not justify termination of this Franchise.

5.3 If the City enacts or adopts before or during the term of this Franchise, a Utility Tax applicable to the District, the District shall be exempt from any such tax during the term of this Franchise.

6. **Non-assumption.** In consideration of the District's payment of a Franchise fee to the City as provided in Section 4 herein, the District's acceptance of the burden to pay for hydrant costs as further provided in Section 7 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forebear its statutory authority pursuant to Chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise.

7. **Fire Hydrant Costs.**

7.1 The District agrees to be responsible for the operation, maintenance and cost of Fire Hydrants within the Franchise area, whether installed by the District or by third parties on behalf of the District; provided, should a

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court of competent jurisdiction determine the Parties may not transfer the City's responsibility to pay for Fire Hydrants to the District, or legislative action prevents the District from accepting responsibility to pay for Fire Hydrants, the District's obligation to pay for Fire Hydrants under this Section 7 shall be terminated in accordance with and to the degree required to comply with such court or legislative action; and should a court of competent jurisdiction declare that the costs for Fire Hydrants borne by the District must be repaid by the City to the District, the District's customers or other parties, City shall pay to the District all Fire Hydrant costs paid by the District during the term of this Franchise together with any required interest thereon in the amount required to satisfy any such court determination.

7.2 The District's agreement to accept responsibility for Fire Hydrant costs as provided in this Section 7 is based on its belief that the installation, operation, maintenance and payment for Fire Hydrants by the District is and shall continue to be a governmental function, and is not an activity of providing water for hire as defined in Title 80 RCW.

7.3 Notwithstanding the District's agreement to accept responsibility for Fire Hydrant costs as provided in this Section 7, the District does not represent or warrant sufficient water pressure or flow from fire hydrants for the purposes of fire suppression and protection. The District shall not have any duty, obligation or responsibility to provide fire protection and fire suppression services to the public within the franchise area. The District shall perform operational hydrant inspections and maintenance of the hydrants where every hydrant is inspected on a two year cycle. Any repairs found to be necessary will be promptly made by the District. Any hydrant whose output flow (modeled or field measured) is less than 500 gallons per minute will have the bonnet painted red. A list and location of any red colored hydrants shall be submitted to the City no later than January 31st of each year.

7.4 The City reserves in full its rights to challenge the threatened or actual imposition of a Hydrant fee, cost or assessment by the District against it as unlawful. The City's acceptance of this Franchise shall not operate as a waiver of the City's right to challenge the threatened or actual imposition of the Hydrant cost upon the City. For the purposes of ensuring the City's ability to bring a challenge, and in consideration of the mutual benefits of this Franchise for each party, the District and City agree that any statute of limitations or other time or procedural limitation on bringing a legal action to challenge the imposition of Hydrant costs on the City, whether existing as a matter of statute, common law, or any other basis, shall be tolled during the term of this Franchise and shall not begin to run until 90 days following the expiration or termination of this Franchise. The District and City further agree that they shall not contest the other party's allegation of the timely commencement of a legal action challenging imposition of a

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hydrant cost against the City if such action is commenced on or before the expiration of the 90-day period following the expiration or termination of this Franchise. The provisions of this Section 7.4 shall survive the expiration or termination of this Franchise.

7.5 Should a court of competent jurisdiction or legislative action determine the District's installation, operation, maintenance and payment for Fire Hydrants is a proprietary function, the District shall have the right to terminate and rescind all or portions of this Section 7 which shall then have no further force or effect between the Parties; and, further, City agrees to defend, indemnify and hold District harmless from and against any and all claims, suits, actions or liabilities (including costs and attorneys' fees) incurred or asserted against District directly or indirectly arising out of District's acceptance of responsibility to install, operate, maintain and pay for Fire Hydrants as provided in this Franchise.

7.6 The District's agreement to be responsible for the installation, operation, maintenance and cost of Fire Hydrants within the franchise area shall not be construed to be a waiver of any other legal obligation or duty the District may have to charge the City for any services the District may provide the City or its citizens which are determined in the future to be a governmental function for which the City must provide or pay for.

8. **City Ordinances and Regulations.**

8.1 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 the State Building Code as adopted by the City and any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the general location and elevation of new or relocated facilities of the District that are part of a public project located within the City right-of-way needed for the City's own use of the right-of-way, which may include coordination with other utilities in the right-of-way. The District shall promptly conform with all such regulations at no charge or expense to the City, unless compliance would cause the District to violate other requirements of law. Such regulations shall not unreasonably affect or modify any portion of this Franchise without the approval of the District. Should the District and the City not be able to agree, they shall resolve the differences through Section 17 - Alternate Dispute Resolution.

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9. **Right-of-Way Management.**

9.1 Excavation.

9.1.1 Whenever the 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.

9.2 Abandonment of the 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.

9.3 Restoration after Construction.

9.3.1 The 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 Districts 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. The District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

9.3.2 If it is determined that the District has failed to restore the right-of-way in accordance with this Section, the City shall provide the District with written notice including a description of actions the City believes necessary to restore the right-of-way.

9.4 Bonding Requirement. The 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.

9.5 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 the 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, the 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 the District from later

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obtaining any necessary permits for the emergency work. The 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.

9.6 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.

9.6.1 "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:

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

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

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

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

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

9.6.2 "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.

9.6.3 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 two (2) hours. The permit fees for District activities shall not exceed permit fees charged for similar activities to any other franchise holder.

9.6.4 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.

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

9.6.6 For each separate use of the right-of-way under this Section except Minor Activities or Emergencies, and prior to commencing any work in 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 the work to be performed.

9.7 Safety.

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

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

9.8 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.

9.9 Relocation of System Facilities.

9.9.1 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

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project included in the City adopted six-year Capital Improvement Program and as amended annually by the City Council.

Category	Age of District Facility	Percent of Relocation Costs Paid by City	Percent of Relocation Costs Paid by District
1)	5 years or less	100%	0%
2)	6 —10 years	50%	50%
3)	11 + years	0%	100%

9.9.2 This relocation cost allocation 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 acceptance of this ordinance. 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 (except those facilities in Category 1 above, for which the City will pay 100% of the relocation costs).

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

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

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

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

9.9.4.3 After receipt of such notice and such plans and specifications, the District shall make all reasonable efforts to complete relocation of its facilities according to the above cost sharing described in Section 9.9.2.

9.9.5 The District may, after receipt of written notice requesting relocation or removal of its facilities, submit to the City written

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alternatives to such relocation. The City shall evaluate such alternatives and advise the 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, the District or the City shall submit additional information to assist the other party in making such evaluation. The City shall give each alternative proposed by the District full and fair consideration and if appropriate, state why the District's proposed alternatives are not satisfactory. In the event the City and the District ultimately do not agree on a reasonable alternative, the District and the City shall attempt to resolve the relocation through Section 17 – Alternate Dispute Resolution.

9.9.6 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, the City shall reimburse the District all costs as submitted and verified by the District within 45 days of completion of the relocation or removal by the District in accord with Section 9.9.1 herein.

9.9.7 The provisions of this Section 9.9 shall in no manner preclude or restrict the 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.

10. **Planning Coordination.**

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

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

10.1.2 The 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 the District's operations and is updated to ensure continued relevance at reasonable intervals.

10.1.3 The 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

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reasonably developed from the information in the District's possession.

10.1.4 The District will update information provided to the City under Section 10 – Planning Coordination, whenever there are major changes in the District's system plans for Shoreline.

10.1.5 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.

10.2 System Development Information. The District and the City will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:

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

10.2.2 By February 1st of each year, the 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 the District's capital improvements and infrastructure.

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

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

10.3 Emergency Management. The City and the District agree to cooperate in emergency management planning, emergency operations response procedures, and recovery activity strategies, including identifying potential hazards and risks in the District's Facilities so that they can be either mitigated or minimized.

10.4 Maps and Records. Without charge to either party, the City and the District 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

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

11. **Survival of Wheeling Agreement Between the District and the City of Seattle.** The City acknowledges that the District is negotiating a wheeling agreement with the City of Seattle - Seattle Public Utilities (SPU) for the District's supply station located at NE 185th Street and 5th Avenue NE and an emergency connection located at NE 185th Street and 8th Avenue NE. The City agrees that if the City assumes all or part of the SPU system in Shoreline subsequent to the execution of such wheeling agreement, then the City assumes all obligations of SPU under the wheeling agreement.

12. **Indemnification.**

12.1 The 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 arising from the negligent or intentional acts or omissions of the District, its agents, servants, officers or employees in performing activities or failing to perform activities authorized by this Franchise, and including those claims arising against the City by virtue of the District's exercise of rights granted herein. 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 purpose of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of the 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 the 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, the 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.

12.2 Inspection or acceptance by the City of any work performed by the 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.

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12.3 In the event the District refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and the District's refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been wrongful refusal on the part of the District, then the District shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause as well as any judgment against the City.

12.4 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 the District and the City, its officers, employees and agents, the District's liability hereunder shall be only to the extent of the 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.

12.5 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 the District's compliance with this ordinance.

12.6 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.

13. **Insurance.**

13.1 The 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 are in connection with the exercise of the rights, privileges and authority granted hereunder to the District, its agents or employees. A combination of self-insurance and excess liability insurance may be utilized by the District. The 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:

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13.1.1 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.

13.1.2 Commercial General Liability insurance policy, written on an occurrence basis with limits no less than $5,000,000 combined single limit per occurrence and $10,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include 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.

13.1.3 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.

13.2 Payment of deductible or self-insured retention shall be the sole responsibility of District.

13.3 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. The District's insurance shall be primary. Any insurance, self insurance, or insurance pool coverage maintained by the City shall be excess of the 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.

13.4 The District shall require all its contractors working in the Franchise Area to carry insurance consistent with Section 13 - Insurance, except Commercial General Liability insurance limits may be no less than $1,000,000 per occurance and $2,000,000 aggregate, and shall provide evidence of such insurance to the City upon request.

14. **Enforcement.**

14.1 Both the City and the District reserve the right to revoke and terminate this Franchise in the event of a substantial violation or breach of its terms and conditions as provided in this Section 14.

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14.2 Except as otherwise provided in this Franchise, a substantial violation or breach by the City or by the District shall include, but shall not be limited to, the following:

14.2.1 An uncured violation of any material provision of this Franchise,

14.2.2 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;

14.2.3 Failure to provide the services specified in the Franchise;

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

14.2.5 An uncured failure to pay fees associated with this Franchise; and

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

14.3 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.

14.4 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 Franchise in accord with Section 14 - Enforcement, which declaration must be in writing.

15. **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:

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District Manager	City Manager
Shoreline Water District	City of Shoreline
P.O. Box 55367	17500 Midvale Avenue N.
Shoreline, WA 98155	Shoreline, WA 98133-4921
Phone: (206) 362-8100	Phone: (206) 801-2700
Fax: (206) 361-0629	Fax: (206) 546-2200

16. **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.

17. **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.

18. **Modification.** No provision of this Franchise shall be amended or otherwise modified, in whole or in part, except by an instrument in writing, duly approved and executed by the City and the District, which amendment shall be authorized on behalf of the City through the adoption of an appropriate ordinance.

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

20. **Survival.** All of the provisions, conditions and requirements of Sections 9.1-Excavation, 9.2 - Abandonment Of District's Facilities, 9.3 - Restoration After Construction, 9.7 - Dangerous Conditions, Authority For City To Abate, 9.8 - Relocation Of System Facilities, and 12 - Indemnification, of this Franchise shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to the 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 ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the District and all privileges, as well as all obligations and liabilities of the District shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the District is named herein.

21. **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 ordinance. The Parties may

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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.

22. **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.

23. **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 ordinance within sixty (60) days of receipt of an invoice from the City.

24. **Repealer.** Ordinance No. 613 is hereby repealed.

25. **Effective Date.** This ordinance shall take effect and be in full force five (5) days after publication.

PASSED BY THE CITY COUNCIL ON AUGUST 13, 2012.

Mayor Keith A. McGlashan

ATTEST:

Scott Passey
City Clerk

APPROVED AS TO FORM:

Ian R. Sievers
City Attorney

Date of Publication: August 16, 2012
Effective Date: August 21, 2012

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ATTACHMENT A
TO THE FRANCHISE GRANTED
TO THE SHORELINE WATER DISTRICT
BY THE CITY OF SHORELINE
August 13, 2012

In accord with paragraph 9.9.2 of the Franchise granted by the City of Shoreline to the Shoreline Water District on August 13, 2012, the following list of facilities owned, operated and maintained by the Shoreline Water District are designated as "larger facilities that cannot reasonably be supported, disconnected, relocated or removed":

1. Booster Station No. 1, (BS-1), located on NE 160th Street East of 8th Avenue N. Includes all associated piping, electrical equipment and appurtenances.
2. Booster Station No. 2, (BS-2), located NE 185th Street east of 8th Avenue NE Includes all associated piping, electrical equipment and appurtenances.
3. Supply Station No. 1, (SS-1), located on NE 192nd Street West if 16th Avenue NE. Includes all associated piping, electrical equipment and appurtenances.
4. Supply Station No. 4, (SS-4), located at NE 185th Street and 5th Avenue NE. Includes all associated piping, electrical equipment and appurtenances.
5. Proposed Supply Station No. 5, (SS 5), located at NE 145th Street and 5th Avenue NE. Includes all associated piping, electrical equipment and appurtenances.
6. Emergency Connection, located at NE 185th Street and 8th Avenue NE (south of the BS-2). Includes all associated piping and appurtenances.
7. Piping located at or near the intersection of 15th Avenue NE and NE 180th Street connecting District pumping and storage facilities located on property designated as 18012-15th Avenue NE to the District's water supply system piping on 15th Avenue NE (Shoreline Water District North City Pump Station).
8. Pressure Reducing Station No. 1 (PRS-1), located at NE 201st St near 5th Avenue NE. Includes all associated piping, electrical equipment and appurtenances.
9. Pressure Reducing Station No. 7 (PRS-7), located at NE 200st St and 25th Avenue NE. Includes all associated piping, electrical equipment and appurtenances.

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10. Pressure Reducing Station No. 8 (PRS-8), located at NE Perkins Way and 18th Avenue NE. Includes all associated piping, electrical equipment and appurtenances.
11. Intertie on NE 205th Street between Ballinger Road NE and 19th Avenue NE, includes all piping, electrical equipment and appurtenances.
12. Water Main on NE 189th Street crossing the Interstate 5 Right-of-Way.
13. Water Main on NE 205th Street crossing the Interstate 5 Right-of-Way.
14. All Water Mains on 15th Avenue NE between NE 175th Street and 15th Place N.

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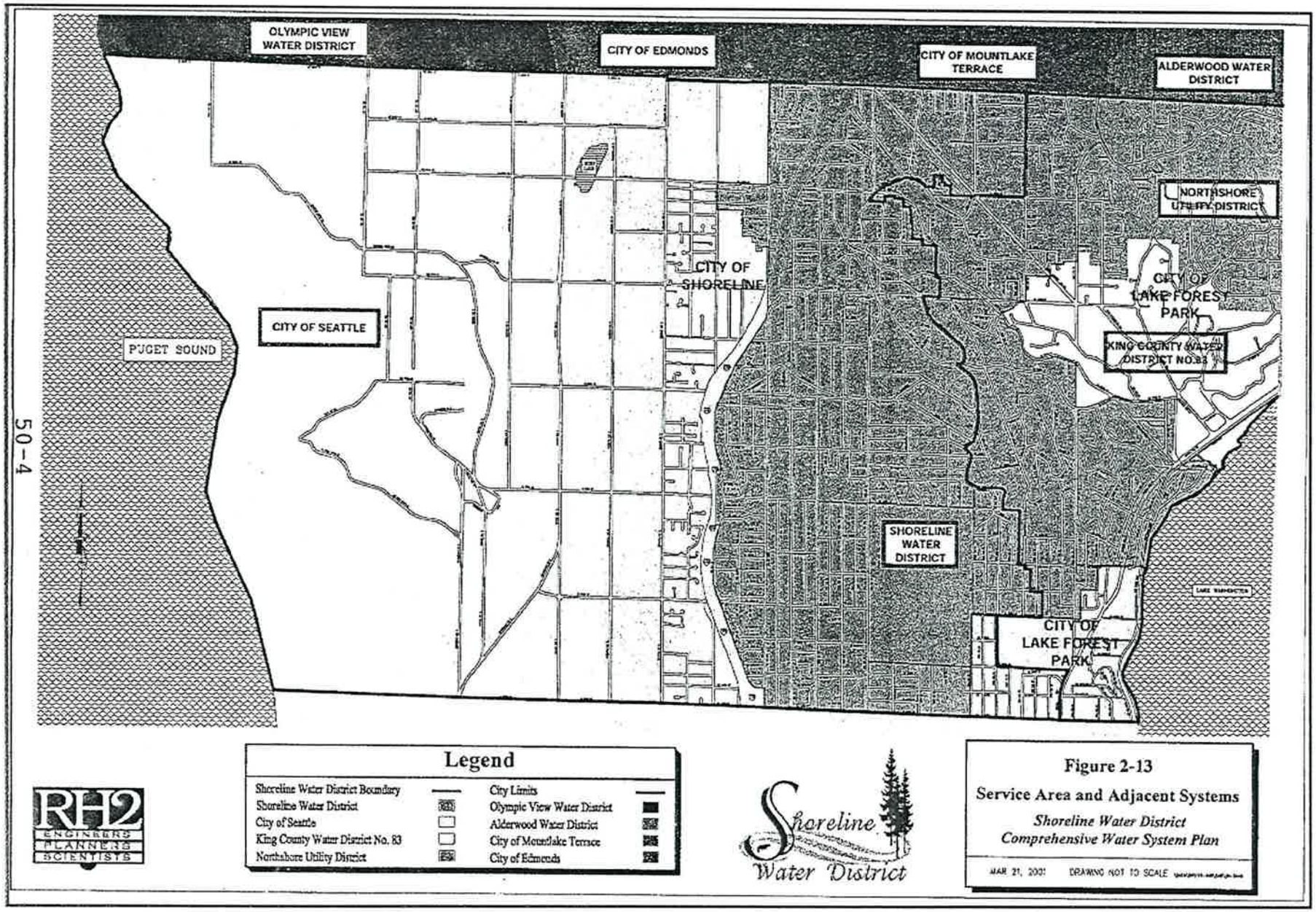
ATTACHMENT B



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