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ORDINANCE NO. 804

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

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

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

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

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

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

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

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

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

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

1.2 Days: Calendar days.

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1.3 Director: The City Manager or designee.

1.4 Facilities: All pipes and appurtenances, access ways, pump stations, storage facilities, fire hydrants, equipment, and supporting structures, located in the City's right-of-way, ~~installed~~ owned by SPU or utilized in the operation of its activities authorized by this Ordinance.

1.5 Franchise Area: Those portions of the City of Shoreline in which the Franchise granted herein is applicable, including, collectively, all Rights of Way in the outlined areas shown as "Portions of SPU's Retail Service Area within the City of Shoreline" on the map attached to and incorporated herein by reference as Exhibit A and any Rights of Way outside of that outlined area where existing Facilities are currently located shown generally as "SPU Regional Water System Facilities" on Exhibit A. The Parties may amend Exhibit A by written agreement consistent with Section 9.6.

1.6 Person: An entity or natural person.

1.7 Revenue: Income derived by SPU only from the sale of retail metered water to customers whose connections are within the City of Shoreline. Revenue shall not include: late fees; any type of connection charges, general facilities charges, or local facilities charges; grants; contributed assets (CIAC); loans; income from legal settlements not related to water sales; income from cellular antenna leases; income from real property or real property sales; income from the sale of surplus equipment, tools or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement (WSEA) fees and charges; equipment and materials charges; income from the sale of bidders documents and plan sets; or any other fees and charges.

1.8 Right-of-Way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, easement, and/or road right-of-way ~~now or hereafter held or administered by~~ within the ~~City of Shoreline~~ Franchise Area.

1.9 Relocation: As used herein shall mean to protect, support, temporarily disconnect, relocate or remove SPU facilities in the City right-of-way.

1.10 SPU: Seattle Public Utilities, a department of the City of Seattle, a municipal corporation, and its respective successors and assigns.

2. **Franchise Granted.**

2.1 Pursuant to RCW 35A.47.040, the City hereby grants to SPU, its successors and assigns, subject to the terms and conditions hereinafter set forth, ~~a~~ an Amended, Extended, and Restated Franchise beginning on the effective date of this Ordinance.

2.2 This Franchise shall grant SPU the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, test, inspect, maintain, replace, and use all necessary equipment and Facilities for a public water

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

2.3 This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any Right-of-Way. Such franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other City property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, Relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way or other public properties of every type and description.

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

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

4.1 To collect and distribute to the City a Franchise fee equal to 6% of Revenue generated from its water system operations within the City.

4.1.1 This Franchise fee shall be collected beginning upon the effective date of this Franchise.

4.1.2 Proceeds of the Franchise fee collected shall be distributed to the City no later than 30 days after the end of each calendar quarter (quarters ending at the end of March, June, September and December).

4.2 To establish a Shoreline Asset Management Priority Program ("Program") as more particularly described in Exhibit B to this Franchise, as may be amended from time to time by written agreement between the City and SPU.

4.3 Should SPU be prevented by judicial or legislative action from collecting a Franchise fee on all or a part of the Revenues, or from establishing the Program, SPU shall be excused from the collection and distribution of that portion of the Franchise fee or the implementation of the Program.

4.4 Should a court of competent jurisdiction declare, or a change in law make the Franchise fee to be collected on behalf of the City invalid, in whole or in part, or

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

4.5 SPU agrees that the franchise fee established by this Section is appropriate and that SPU will not be a party to or otherwise support in any way, legal or legislative action intended to result in judicial determinations or legislative action referred to in Sections 4.~~2~~3 and 4.~~3~~4 hereof.

4.6 Should SPU be prevented or precluded from implementation of the Program, SPU and the City shall meet within three (3) months of such invalidating action and work together, in good faith, to modify the Program to address the invalidity in order to meet the original intent of the parties. Should the parties be unable to agree or to so modify the Program, the City may, in its sole discretion, terminate this Franchise.

5. **Municipal Water Utility.** In consideration of SPU's payment of the Franchise Fee and establishment of the Program under Section 4 above; acceptance of the responsibility to provide and pay for fire hydrants and related fire suppression water facilities within the City of Shoreline; and SPU's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise its right to establish its own separate municipal water utility within SPU's retail water service area within Shoreline during the term of this Franchise.

6. **Fire Suppression Water Facilities and Services.**

6.1 Pursuant to RCW 70.315.040, SPU agrees to be responsible for the installation, operation, inspection, testing, maintenance, repair and replacement of fire suppression water facilities and to provide fire suppression water services as those terms are defined in RCW 70.315.020 within SPU's Retail Water Service Area within the Franchise Area, including the costs thereof.

6.2 SPU shall perform or cause to perform fire hydrant inspections and testing on each fire hydrant that is part of SPU's Facilities, on an annual cycle through 2020, and on a two-year cycle thereafter. SPU has entered into a Memorandum of Agreement with the Shoreline Fire District (SFD), dated February 1, 2018 which may be amended from time to time, where the SFD has agreed to conduct the inspections and testing and SPU will reimburse SFD.

6.3 SPU will perform any maintenance and repairs to fire hydrants in accordance with the priority system that it uses within the City of Seattle, e.g. out of service hydrants receive the highest priority response.

6.4 SPU will provide periodic reports to the City in a form acceptable to the City confirming inspections and repairs done in response to inspections by SFD or other report to SPU.

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

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

7. **City Ordinances and Regulations.** Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the rights-of-way including the State Building Code and any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the general location and, elevation of new or relocated Facilities of SPU that are part of a public project located within the City Right-of-way needed for the City's own use of the Right-of-Way, which may include coordination with other utilities in the Right-of-Way. SPU shall promptly conform with all such regulations at no charge or expense to the City, unless compliance would cause SPU to violate other requirements of law. Such regulations shall not unreasonably affect or modify any portion of this agreement without the approval of SPU. Should SPU and City not be able to agree, they shall resolve the differences through Section ~~16~~ 18- Alternate Dispute Resolution.

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

8.1 Permits Required. Whenever SPU excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance, or Relocation of its Facilities, it shall apply to the City for a permit to do so in accord with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way, and consistent with Section ~~6.6~~ 8.6 of this Franchise. In no case shall any such work commence within any Right-of-Way without a permit, except as otherwise provided in this Franchise.

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

8.3 Restoration after Construction.

8.3.1 SPU shall, after any installation, construction, Relocation, maintenance, or repair of Facilities within the Franchise area, restore the Right-of-Way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, Relocation, maintenance or repair. Restoration shall not require an improvement to a condition that substantially exceeds the condition prior to SPU's activities. All concrete encased monuments, which have been disturbed or displaced by such work, shall be restored pursuant to all federal, state and local standards and specifications. SPU agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

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

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

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

8.6 Excavations.

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

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

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

8.7 Safety.

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

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

8.8 Dangerous Conditions, Authority for City to Abate.

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

8.8.2 In the event the Grantee fails or refuses to promptly take action as required in Section ~~6~~8.8.1, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the City may take such reasonable actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the City for its reasonable costs.

8.9 Relocation of System Facilities.

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

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

8.9.2 This Relocation requirement shall not apply to pipelines 24 inches in diameter and larger that cannot reasonably be supported, disconnected, relocated or removed. If these Facilities are required to be moved in order to accommodate the completion of or as a result of a public project, the City shall pay 50% of the Relocation cost.

8.9.3 All Facilities utilized for providing water service within SPU's service area and within the Right-of-Way shall be considered owned, operated and maintained by SPU.

8.9.4 If the City determines that a public project necessitates the Relocation or removal of SPU's existing Facilities, the City shall:

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

8.9.4.2 Provide SPU with copies of any plans and specifications pertinent to the requested Relocation or removal and a proposed temporary or permanent Relocation for SPU's Facilities.

8.9.4.3 After receipt of such notice and such plans and specifications, SPU shall complete Relocation of its Facilities at least ten (10) days prior to commencement of the project according to the above cost sharing described in this Section.

8.9.5 SPU may, after receipt of written notice requesting Relocation or removal of its Facilities, submit to the City written alternatives to such Relocation. The City shall evaluate such alternatives and advise SPU in writing if any of the alternatives are suitable to accommodate the work that necessitates the Relocation of the Facilities. If so requested by either party, SPU or City shall submit additional information to assist the other party in making such evaluation. The City shall give each alternative proposed by SPU full and fair consideration and, if appropriate, state why SPU's proposed alternatives are not satisfactory. In the event the City and SPU ultimately do not agree on a reasonable alternative, SPU and City shall attempt to resolve the Relocation through Section ~~16~~ 18 - Alternate Dispute Resolution.

8.9.6 If the City determines that SPU's Facilities must be protected, supported, temporarily or permanently disconnected, relocated or removed from the Right-of-Way, City shall reimburse SPU all costs as submitted and verified

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by SPU within forty-five (45) days of completion of the Relocation or removal by SPU in accord with paragraph ~~6~~8.9.1 and ~~6~~8.9.2 herein.

8.9.7 The provisions of this Section ~~6~~8.9 shall in no manner preclude or restrict SPU from making any arrangements it may deem appropriate when responding to a request for Relocation of its Facilities by any person or entity other than the City.

9. **~~Planning~~ Coordination.**

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

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

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

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

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

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

9.2 ~~System Development Information.~~ Capital Improvement Plans SPU and the City will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:

9.2.1 By February 1st of each year, SPU shall provide the City with a schedule of its planned capital improvements, which may affect the Right-of-Way for that year;

9.2.2 By February 1st of each year, the City shall provide SPU with a schedule of its planned capital improvements which may affect the Right-of-Way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other Right-of-Way activities that could affect SPU capital improvements and infrastructure.

9.2.3 SPU shall meet with the City, other franchisees and users of the Right-of-Way as necessary to schedule and coordinate construction.

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

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

9.4 General Coordination and Information.

9.4.1 Meter Reading Information. SPU will cooperate with the City as it assumes the Ronald Wastewater District ("District") and SPU will continue to provide the water consumption and billing data it has provided to the District, to the District or the City, as the case may be during the transition and after the assumption, for SPU's retail water customers that are within the boundaries of the District being assumed by the City for the purposes of rate setting, billing and required reporting to King County. The City and SPU will include the process for this information through the management agreement references in Section 9.6.

9.4.2 Annual Meeting. The City and SPU agree to meet and confer at least annually to discuss any issues of concern or opportunities for cooperation.

9.5 Designated Representatives or Liaisons. The parties shall each designate a representative, which can be changed at any time, with written notice to the other party. SPU's representative shall be from the Water Line of Business and be responsible for coordinating with any other part of the SPU organization as needed.

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

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

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

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

11. **Indemnification.**

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

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11.2 Inspection or acceptance by the City of any work performed by SPU at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be settled prior to the culmination of any litigation or the institution of any litigation.

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

11.4 Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of SPU and the City, its officers, employees and agents, SPU's liability hereunder shall be only to the extent of SPU's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes SPU's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Franchise.

11.5 The City hereby releases and agrees to indemnify and hold harmless SPU, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from SPU's compliance with Section 4.1 of this Agreement. This indemnification is contingent upon SPU's compliance with Section 4.45 hereof.

11.6 The City hereby releases and agrees to indemnify, defend and hold harmless SPU, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any person arising from City's decision to issue development permits based on accurate information on fire flow and water availability provided by SPU or the City's enforcement of the International Fire Code.

12. **Insurance.**

12.1 SPU shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to SPU, its agents, representatives or employees. Prior to adoption of this franchise ordinance, SPU shall provide an insurance endorsement, naming the

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

12.1.1 Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than $2,000,000 Combined Single Limit per accident for bodily injury and property damage; and

12.1.2 Commercial General Liability insurance, written on an occurrence basis with limits no less than $5,000,000 combined single limit per occurrence and $10,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

12.1.3 Excess Liability in an amount of $5,000,000 each occurrence and $5,000,000 aggregate limit. The City shall be named as an additional insured on the Excess Liability insurance policy.

12.2 The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. SPU's insurance shall be primary. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of SPU's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

12.3 SPU shall require all its subcontractors to carry insurance consistent with this Section ~~10~~12, and shall provide evidence of such insurance to the City upon request

12.4 SPU may satisfy the requirements of this Section by a self-insurance program.

13. **Enforcement.**

13.1 Both the City and SPU reserve the right to revoke and terminate this Franchise in the event of a substantial violation or breach of its terms and conditions.

13.2 A substantial violation or breach by City or by SPU shall include, but shall not be limited to, the following:

13.2.1 An uncured violation of any material provision of this Franchise or any material rule, order or regulation of the City made pursuant to its power to protect the public health, safety and welfare;

13.2.2 An intentional evasion or knowing attempt by either party to evade any material provision of this Franchise or practice of any fraud or deceit upon SPU or upon the City;

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13.2.3 Failure to provide the services specified in Sections ~~6.9~~8.9 and ~~8~~10 of the Franchise;

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

13.2.5 An uncured failure to pay fees associated with this Franchise.

13.3 No violation or breach shall occur which is without fault of SPU or the City, or which is as a result of circumstances beyond SPU's or the City's reasonable control. Neither SPU, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees.

13.4 Except in the case of termination pursuant to Paragraph ~~11.2.5~~ 13.2.5 of this Section, prior to any termination or revocation, the City, or SPU, shall provide the other with detailed written notice of any substantial violation or material breach upon which it proposes to take action. The party who is allegedly in breach shall have a period of 60 days following such written notice to cure the alleged violation or breach, demonstrate to the other's satisfaction that a violation or breach does not exist, or submit a plan satisfactory to the other to correct the violation or breach. If, at the end of said 60-day period, the City or SPU reasonably believes that a substantial violation or material breach is continuing and the party in breach is not taking satisfactory corrective action, the other may declare that the party in breach is in default and may terminate this Agreement in accord with this Section, which declaration must be in writing.

13.5 The City or SPU may, in its discretion, provide in writing additional time to remedy any violation or breach and come into compliance with this agreement so as to avoid the termination or revocation.

13.6 Either party may remedy any material violation existing for a period of greater than 60 days (or greater than any additional time allowed in writing according to section ~~11.5~~13.5 above) to protect public health, safety or property at the violating party's expense.

14. **Survival**. All of the provisions, conditions and requirements of Sections ~~6.3~~8.2 Abandonment Of SPU's Facilities, ~~6.4~~ 8.3 Restoration After Construction, ~~6.6~~ 8.6 Excavation, ~~6.8~~ 8.8 Dangerous Conditions, Authority For City To Abate, ~~6.9~~ 8.9 Relocation Of System Facilities, and ~~9~~ 11 Indemnification of this Franchise shall be in addition to any and all other obligations and liabilities SPU may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to SPU for the use of the areas mentioned in Section 2 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of SPU and all privileges, as well as all obligations and liabilities of SPU shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever SPU is named herein.

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

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

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

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

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

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

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

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

20. **Severability.** If any Section, sentence, clause or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other Section, sentence, clause or phrase of this Franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Franchise to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

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

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

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

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

PASSED BY THE CITY COUNCIL ON NOVEMBER 6, 2017.

Mayor Christopher Roberts

ATTEST

Jessica Simulcik-Smith
City Clerk

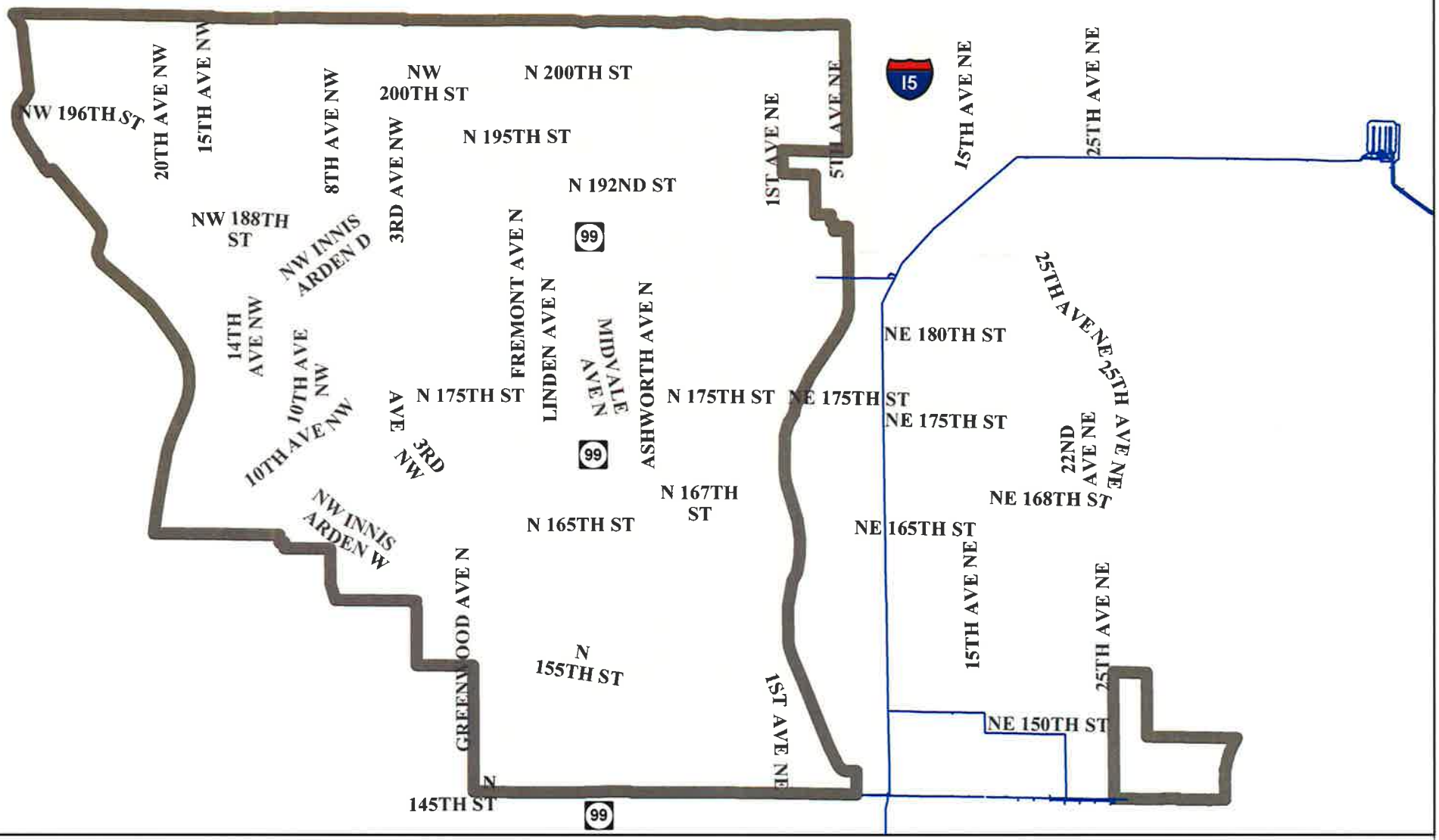
APPROVED AS TO FORM:

Margaret King
City Attorney

Publication: November 9, 2017
Effective Date: January 11, 2018

EXHIBIT A: Map of Franchise Area
EXHIBIT B: The Shoreline Asset Management Priority Program

ORIGINAL Exhibit A



City of Shoreline

SPU Regional Water System Facilities

Portion of SPU's Retail Service Area Within The City of Shoreline

N W E S

0 500 1,000 2,000 3,000 4,000 Feet

CITY OF SHORELINE

Note: This map is for the purpose of defining the Franchise Area only. For information on the complete Seattle Retail Water Service Area, please see SPU's Water System Plan, as may be amended from time to time. http://www.seattle.gov/util/Documents/Plans/Water/WaterSystemPlan/index.htm

Date: 10/5/2017 Req# 12970

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EXHIBIT B
SHORELINE ASSET MANAGEMENT PRIORITY PROGRAM

Purpose:
The City of Shoreline (City) and Seattle Public Utilities (SPU) desire to increase their city-to-city partnership, in particular, in SPU's provision of municipal water utility services to portions of the City. As part of that partnership and in consideration of the Amended, Restated and Extended Franchise, SPU has agreed to establish a program to provide an opportunity for City priorities to be reflected in asset management decisions made by SPU, but within the City's jurisdiction.

A. Shoreline Asset Management Priority Program

1. SPU will establish a Shoreline Asset Management Priority Program ("Program"), that will be used to prioritize and implement certain SPU distribution system capital improvements in SPU's retail service area within the City of Shoreline that are in addition to capital improvements SPU would normally program under its standard practices. This Program is intended to reflect City of Shoreline priorities in certain asset management decisions made by SPU that may be different than the capital planning priorities or levels of service within SPU's distribution system within the City of Seattle. The types of SPU distribution system capital improvements that could be prioritized under this Program include:
    a. different fire flow and fire protection standards
    b. different standards for general/minimum pipe sizes
    c. mainline extensions, expansion projects and gridding/redundancy done in advance of actual development projects

2. The Shoreline Asset Management Priority Program includes the following provisions:
    a. The Program will be effective beginning in 2018 and continue for the remaining term of the Amended, Restated, and Extended Franchise granted by Ordinance No. 804. The parties understand and agree that due to the timing of the granting of the amended Franchise, the 2018 target would not be implemented until 2019 and that it would be prudent to plan for the 2018 and 2019 targets in the first year of the Program, and then annually thereafter.
    b. Each year of the Program, the City and SPU will meet to develop a project list of eligible capital improvements within SPU's retail service area within the City of Shoreline ("Project List"). The Project List will include:
        i. Identification of Shoreline priority capital improvements

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ii. Project list would prioritize and target $1 million of capital improvement projects per year of the Program based on SPU's estimated total project costs at 30% design.

iii. If total project cost estimate of a project on the Project List at the 90% design point is 25% or more than the cost estimate at 30% design, the parties will mutually agree to either A) remove the project from the Project List and replace with an alternative or B) continue the project and agree that the increased portion of the project cost would come from another year's $1M target (or be paid by the City).

iv. The Parties can mutually agree to a capital project that is over $1M in one year with agreement that up to 2 additional year's target amounts will be used up by that project, e.*g.* if $3M project in year 1, next new project would be year 4.

c. Project List Development

i. Annually, between January and February each year, the parties will work together to develop the Project List in advance of SPU developing its spending plans and budget/CIP submissions for the following year. In general, Shoreline would identify and propose a list of capital projects or improvements to the SPU distribution system within the City of Shoreline that it would like prioritized in its jurisdiction and the parties would work together to prioritize the list for implementation the following year.

ii. SPU would then follow its normal capital planning process and share the 30% design estimated total project cost with the City.

iii. The City will have opportunity to review and comment during the design process at the normal design milestones.

iv. Upon acceptance of a project design by the City, SPU would program the agreed project(s) in its Distribution System Improvements (C1128 under BCL C110B) CIP category and carry out the project as part of its annual CIP program, which is subject to Seattle City Council adoption and appropriation of funds.

v. SPU will diligently pursue the agreed projects programmed in its annual CIP program and provide periodic progress reports on the projects.