SEATTLE CITY COUNCIL

Legislative Summary

CB 118445

Record No.: CB 118445
Version: 1
Type: Ordinance (Ord) 124820
Status: Passed
In Control: City Clerk
File Created: 06/29/2015
Final Action: 07/29/2015

Title: AN ORDINANCE relating to the City Light Department, approving a 15-year franchise to construct, operate, maintain, replace, and repair an electrical light and power system in, across, over, along, under, through, and below certain designated public rights-of-way in the City of SeaTac.

Notes:

Sponsors: Sawant

Attachments:

Drafter: sandi.fukumoto@seattle.gov

Date

Filed with City Clerk:

Mayor's Signature:

Vetoed by Mayor:

Veto Overridden:

Veto Sustained:

Filing Requirements/Dept Action:

History of Legislative File **Legal Notice Published:** ☐ Yes ☐ No

Ver-sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Mayor	07/14/2015	Mayor's leg transmitted to Council	City Clerk			
	Action Text: The Council Bill (CB) was Mayor's leg transmitted to Council. to the City Clerk						
	Notes:						
1	City Clerk	07/14/2015	sent for review	Council President's Office			
	Action Text: The Council Bill (CB) was sent for review. to the Council President's Office						
	Notes:						
1	Council President's Office	07/15/2015	sent for review	Energy Committee			
	Action Text: The Council Bill (CB) was sent for review. to the Energy Committee						
	Notes:						
1	Full Council	07/20/2015	referred	Energy Committee			
	Action Text: The Council Bill (CB) was referred. to the Energy Committee						
	Notes:						

1	Energy Committee	07/22/2015	pass	Pass

Action Text: The Committee recommends that Full Council pass the Council Bill (CB).

In Favor: 3 Chair Sawant, Vice Chair Okamoto, Member O'Brien

Opposed: 0

1	Full Council	07/27/2015	passed	Pass

Action Text: The Council Bill (CB) was passed by the following vote and the President signed the Bill:

Notes:

In Favor: 9 Councilmember Bagshaw, Council President Burgess, Councilmember Godden, Councilmember Harrell, Councilmember Licata, Councilmember O'Brien, Councilmember Okamoto, Councilmember Rasmussen, Councilmember Sawant

Opposed: 0

1	City Clerk	07/28/2015	submitted for Mayor's signature	Mayor

Action Text: The Council Bill (CB) was submitted for Mayor's signature. to the Mayor

Notes:

1	Mayor	07/29/2015	Signed	

Action Text: The Council Bill (CB) was Signed.

Notes:

1	Mayor	07/29/2015	returned	City Clerk

Action Text: The Council Bill (CB) was returned. to the City Clerk

Notes:

1	City Clerk	07/29/2015	attested by City Clerk	

Action Text: The Ordinance (Ord) was attested by City Clerk.

Notes:

CITY OF SEATTLE

ORDINANCE 124820

COUNCIL BILL 118445

AN ORDINANCE relating to the City Light Department, approving a 15-year franchise to construct, operate, maintain, replace, and repair an electrical light and power system in, across, over, along, under, through, and below certain designated public rights-of-way in the City of SeaTac.

WHEREAS, Seattle City Light is authorized to construct, operate, maintain, replace, and repair its electrical light and power system in, across, over, along, under, through, and below certain designated public rights-of-way in the City of SeaTac under a franchise granted by the City of SeaTac Ordinance 99-1043 and accepted by the City of Seattle by Ordinance 119907, through January 1, 2015; and

WHEREAS, representatives of Seattle City Light and the City of SeaTac have been meeting on a regular basis to come to agreement on the terms of a new long-term franchise; and

WHEREAS, comprehensive terms of such a long-term franchise have been agreed upon which are acceptable to both the City of Seattle and the City of SeaTac;

NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The City of Seattle hereby approves a franchise for the operation of an electric light and power system by Seattle City Light in the City of SeaTac substantially in the form of Ordinance No. 15-1007 of the City of SeaTac, a copy of which is attached to this ordinance. The General Manager of the City Light Department is authorized to accept the franchise on Seattle's behalf.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

Passed by the City Council the 27th day of July, 2015, and signed by me in open session in authentication of its passage this 27th day of July, 2015.

President _____ of the City Council

Approved by me this 28th day of July, 2015.

Edward B. Murray, Mayor

Filed by me this 29th day of July, 2015.

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: CITY OF SEATAC ORDINANCE NO. 15-1007

ORDINANCE NO. 15-1007

AN ORDINANCE of the City of SeaTac, Washington, ("City") granting the City of Seattle, by and through its City Light Department ("Seattle City Light"), a municipal corporation, a non-exclusive franchise to construct, maintain, operate, replace and repair an electric utility system, over, along, under, and through designated public rights-of-way in the City of SeaTac, Washington.

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

WHEREAS, RCW 35A.47.040 authorizes the City "to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for ... poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy ..."; and

WHEREAS, RCW 43.09.210, the State Accountancy Act, requires payment for services rendered to be paid at its true and full value to avoid any perception that a financial benefit has been conferred; and

WHEREAS, the Washington State Constitution prohibits municipal corporations from gifting money or property, or to loan its money or credit with the exception of support for the poor and infirm, and residential energy conservation; and

WHEREAS, Seattle City Light and the City of SeaTac entered into a Franchise Agreement on January 1, 2000 with a term of 15 years; and

WHEREAS, Seattle City Light will endeavor to achieve generally consistent terms and conditions with all jurisdictions within the Seattle City Light service territory; and

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

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SEATAC, WASHINGTON, DOES ORDAIN AS FOLLOWS:

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

1.1. Abandoned Facilities: Facilities in the City's Right-of-way that SCL has designated as abandoned or have not been used by SCL and the third party users or co-owners and have been non-operational for more than 180 Days.

1.2. City: The City of SeaTac, 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.

1.3. Days: Calendar days.

1.4. Director: The head of the City Public Works Department or his or her designee.

1.5. Facilities: All wires, lines, cables, conduits, equipment, and supporting structures, including utility poles, located in the City's Right-of-way, utilized, owned or co-owned by SCL associated with activities authorized by this Agreement. Facilities also include Underground Civil Infrastructure and Underground Electrical System as defined in this Agreement.

1.6. Major Relocation Project: A Public Project greater than 500 linear feet in distance, that necessitates a relocation or undergrounding of facilities.

1.7. Minor Relocation Project: A Public Project 500 linear feet or less in distance, that necessitates a relocation or undergrounding of Facilities.

1.8. Person: An entity or natural person.

1.9. Power Distribution Infrastructure: Facilities owned and operated by Seattle City Light, up to and including 26,000 volt distribution lines.

1.10 Primary Project Costs: The costs associated with Undergrounding that provides the trench for the underground infrastructure. This includes but is not limited to, surveying, trench and vault excavation, backfill, and resurfacing, including all labor, materials, and equipment.

1.11 Private Property Infrastructure: The underground civil infrastructure, including the service lines to be located on private property, that is necessary for SCL to complete an underground service connection to the private property. Private Property Infrastructure is the responsibility of the private property owner.

1.12 Project Management Costs: Labor, equipment, and materials costs internal to each party directly related to management of work associated with Public Projects.

1.13. Public Project: City-initiated improvement project in the City Right-of-way included or contained in the City's Comprehensive Plan. This includes, but is not limited to, roadway improvements, multi-modal transportation improvements, pedestrian improvements and stormwater utility projects.

1.14 Rate Differential: The difference in the rate charged by SCL to customers within the City of Seattle and the rate charged by SCL to customers in the City, not including any utility tax that may be permitted by state law and levied by the City.

1.15 Relocation: Moving Facilities from one location to another except for moving above-grade Facilities to an underground location.

1.16. Revenue: Revenue means "Gross Income" as defined in the Seattle Municipal Code Section 5.48.020 (B), as now in effect or subsequently amended.

1.17. Right-of-way: 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 SeaTac.

1.18. SCL: Seattle City Light, an electric utility owned and operated by the City of Seattle and its respective successors and assigns.

1.19 SCL Civil Infrastructure Engineering Standards: The most current engineering guidelines, construction guidelines, materials standards, and engineering operations and practices adopted by SCL that govern the design, location, alignment, depth, materials, and engineering specifications determined by SCL in its sole discretion that apply to Civil Infrastructure associated with SCL Facilities.

1.20. Underground Civil Infrastructure: SCL's underground infrastructure necessary to contain, facilitate, and operate SCL's Underground Electrical System, including but not limited to conduit, ducts, duct banks, vaults, handholds, casing, and other non-energized electrical facilities, including all labor, materials and equipment.

1.21 Underground Electrical System: SCL's underground electrical distribution system and underground service lines, including but not limited to cables, connections, terminations, transformers, switches, and associated components, including all labor, materials and equipment.

1.22 Undergrounding: The process of converting existing or placing new electrical power distribution circuitry and support structures below finished grade (lot, sidewalk, or street, as appropriate).

2. Franchise Granted.

2.1. Pursuant to RCW 35A.47.040, the City hereby grants to SCL, its heirs, successors, and assigns, subject to the terms and conditions hereinafter set forth, a franchise beginning on the effective date of this Ordinance (the "Agreement").

2.2. This Agreement shall grant SCL the right, privilege and authority, subject to the terms and conditions hereinafter set forth, to construct, operate, maintain, replace, and

use all necessary equipment and facilities for an electric utility system, in, under, on, across, over, through, along or below the public Right-of-way located in the City, as approved under City permits.

2.3. SCL will not permit new third party users to use its Facilities without certification that said third party users have a franchise or other permission to operate in the City. This Paragraph does not restrict SCL's ability to utilize telemetric devices to monitor and operate its electrical distribution system or the usage of electrical energy.

2.4 This Agreement shall not abridge, terminate or supersede any real property rights, including but not limited to fee ownership, easements, or rights or privileges for use of real property pursuant to any existing license or permit that SCL may hold for use or occupancy of the City Right-of-way or other City property.

2.5. This Agreement is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in 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.** This Agreement shall be effective until September 30, 2030.

4. **Consideration.** The City and SCL recognize that the City has the authority under state law to establish its own municipal electric utility, and the authority to acquire SCL electric distribution properties in the City for that purpose. The City and SCL also recognize that the City has the authority to impose a utility tax on a light and power business operating within the City.

4.1. In consideration for the City agreeing not to exercise its authority to a) establish its own municipal electric utility during the term of this franchise, and b) impose a utility tax on SCL, the City and SCL agree to the following:

4.1.1. Beginning on the Effective Date (as defined in Section 27 of this Agreement), SCL shall pay the City four percent (4%) of the total amount of revenue derived from SCL service to customers in the City. SCL shall add a six percent (6%) Rate Differential to the base rates for SCL customers within the City compared to the base rates charged to SCL customers within the City of Seattle.

4.1.2. Effective January 1, 2016, SCL shall increase the payment to the City in Section 4.1.1 from four percent (4%) to six percent (6%) of the total amount of revenue derived from SCL service to customers in the City. At that time, SCL shall increase the six percent (6%) Rate Differential to an eight percent (8%) Rate Differential to the base rates for SCL customers within the City compared to the base rates charged to SCL customers within the City of Seattle. The rates from which the Rate Differential is calculated in the City shall be subject to the rate review process by the Seattle City Council, and subject to approval by Seattle City Council ordinance. However, the Rate Differential percentage shall not be affected by a change in the base rates.

4.1.3. Within one year of the Effective Date of this Agreement, and with one year advance written notice, the City may elect to change the Rate Differential established in 4.1.2. above from eight percent (8%) to six percent (6%), and beginning upon the date of any subsequent Rate Differential change taking effect, SCL shall decrease its payments to the City as provided in Section 4.1.1 above to four percent (4%) of the amount of revenue derived from SCL service to customers in the City.

4.1.4. Within a reasonable time of the City's written notice to change the Rate Differential as provided in 4.1.3 above, SCL shall provide the City with a good faith estimate and supporting information of the likely impact to SCL customer rates in the City.

4.1.5. The Mayor of Seattle shall appoint a member nominated by the suburban cities to the Seattle City Light Review Panel, who will represent the interests of suburban cities served in whole or in part by SCL.

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

4.3. Should a court of competent jurisdiction declare the consideration to be paid to the City in Section 4.1 above invalid, in whole or in part, or should a change in law make the consideration to be paid to the City in Section 4.1 above invalid, in whole or in part, this entire Agreement may be terminated by the City at any time thereafter upon 180 Days written notice. During such notice period, however, SCL and the City shall attempt to agree upon acceptable, substitute provisions.

4.4. Payments by SCL to the City provided for under Section 4.1 shall be paid monthly within 30 Days following the end of each calendar month.

5. City Ordinances and Regulations.

5.1. Except as provided for in Section 7 of this Agreement, nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any facilities of SCL located within the City Right-of-way. SCL shall promptly conform with all such regulations, unless compliance would cause SCL to violate other requirements of local, state or federal law, or industry codes or standards for the safe installation, maintenance and operation of its Facilities, including but not limited to regulations specified by the American National Standards Institute (ANSI), the North American Electrical Reliability Corporation (NERC), the National Electrical Code (NEC), the National Electrical Safety Code (NESC), and written and duly executed SCL policies and procedures.

6. Right-of-Way Management.

6.1. Excavation, Permits and Notice of Entry.

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

6.1.2. Public Right of Way Permits. Prior to performing any work in the City's Right-of-way for the purpose of installation, construction, repair, testing, maintenance or relocation of its facilities, SCL shall first apply for and obtain from the City appropriate permit(s) in accordance with the City's ordinances and regulations requiring permits to perform work or operate in the Right-of-way. Upon reasonable request by the City, SCL shall provide the City with plans, maps, and information showing the proposed and final location(s) of any facilities in accordance with Section 6.8 of this Agreement. Notwithstanding Section 6.1.5, SCL shall not commence any such work within City's Right-of-way without a permit.

The City shall grant SCL all permits, rights of entry, and rights and permissions necessary to perform the work, in a timely and consistent manner, but in no event more than 30 days exclusive of the days for SCL to respond to the City's comments and concerns.

6.1.3. Work performed by SCL shall not unnecessarily obstruct the passage or use of the Right-of-way.

6.1.4. Minor, Blanket and Major Activities.

6.1.4.1. Minor Activities Defined. Minor Activities are routine work performed by SCL that requires no excavation of the Right-of-way and can be performed while maintaining the following traffic passage requirements: no lane restrictions on arterials, street closures or traffic detours at any time. Typical examples include but are not limited to: street light lamp replacement; overhead and underground electrical distribution system maintenance in existing facilities; disconnection of service for non-payment; installation, replacement or repair of metering equipment; operation of switches; replacement of fuses or sectionalizers; and repair or maintenance of crossarms, insulators, overheard primary and secondary wires or other equipment on poles.

6.1.4.2. Requirements for Minor Activities. Minor Activities do not require a City permit, City notification, or payment of fees. Minor Activities require traffic control measures consistent with the Manual on Uniform Traffic Control Devices (MUTCD).

6.1.4.3. Blanket Activities Defined. Blanket Activities are routine work performed by SCL that require less than 35 square feet of excavation outside of any

pavement in the right-of-way on non-arterial streets. The following traffic passage requirements must be met for Blanket Activities: no street closures or traffic detours at any time; continuous two-way traffic on arterial streets or alternating two-way traffic on non-arterial streets; no lane restrictions between 7:00 a.m. and 10:00 a.m. and between 3:00 p.m. and 7:00 p.m., weekdays on arterials. Typical examples include but are not limited to: repair of damaged poles, removal of old poles, Vegetation Management in the Right-of-way and repair of underground power cables and/or conduit.

6.1.4.4. Requirements for Blanket Activities. SCL or its contractors must obtain a Right-of-Way Use Class D Permit from the City for Blanket Activities performed in the City's Right-of-way. The permit will be charged at the fee as identified in the City's Fee Schedule and hourly inspection fees shall be paid on a monthly basis within 30 Days following the end of each month. Blanket Activities require submittal of typical traffic control measures consistent with the MUTCD. For certain activities where facilities are co-owned, a Permit may be issued by the City that would allow both the primary permit holder and the primary permit holder's sub-contractors or co-owners to perform Blanket Activities, as identified in the conditions of the Permit. Permits for Blanket Activities shall be valid for no longer than twelve months.

6.1.4.5. Notification of Blanket Activities. SCL shall notify the City in writing, at least twenty-four (24) hours in advance of entering the Right-of-way, with the exception Vegetation Management Activity Notice as provided for in Subsection 6.10.2, by emailing pertinent information to permitsubmittal@ci.seatac.wa.us, which shall include at a minimum the following information: franchise ordinance number, street address nearest to the proposed work site, and description of work to be performed. SCL shall provide written notice of completion within twenty-four (24) hours after completing work.

6.1.4.6. Major Activities. All other activities not deemed Minor or Blanket Activities are Major Activities and require a complete Right-of-Way Use permit application, review and approval. Fees will be assessed individually according to the City's Fee Schedule and paid on a monthly basis within 30 Days following the end of each month.

6.1.4.7. In the event SCL fails to comply with any of the conditions set forth in this Subsection, the City is authorized to suspend SCL's authority to operate under this Subsection by providing SCL ten (10) Days advance written notice of such suspension and the basis therefore. SCL shall then have fifteen (15) Days to correct its non-compliance and submit written notification thereof to the City. The City shall then either: 1) reinstate SCL's authority to operate under this Subsection, or 2) notify SCL that its authority to operate under this Subsection has been suspended. If suspended, after thirty (30) Days SCL shall have the right to request that the City reinstate its authority to operate under this Subsection, which shall not be unreasonably withheld.

6.1.5. Emergency Work, Permit Waiver. In the event of any emergency where any facilities located in the Right-of-way are broken or damaged, or if SCL's construction area for their facilities is in such a condition as to place the health or safety of any person or property in imminent danger, SCL shall immediately take any necessary emergency measures to repair or remove its facilities without first applying for and obtaining a permit as required by this Agreement. During normal work hours, SCL however, shall verbally notify the Director as soon as possible after the event of the need to perform emergency repairs. This emergency provision shall not relieve SCL from later obtaining any required permits for the emergency work. If permits for the emergency work would normally be required, SCL shall apply for the permits the next business day following the emergency work or as soon as practical.

6.1.6. Private Property Rights of Entry. On behalf of SCL, the City shall be responsible for obtaining all rights of entry, including permits, construction easements or temporary construction easements for any work SCL is required to perform on private property in connection with any City-initiated Right-of-way, street improvement, or Public Project.

6.1.6.1 SCL shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of underground facilities consistent with sound engineering practices, City Code, and City Road Design and Construction Standards.

6.1.7. Notice of Entry. At least ten (10) Days prior to its intended construction of facilities, SCL shall inform all residents in the immediately affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.

6.1.8. At least twenty-four (24) hours prior to entering Right-of-way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, except those activities exempted from permit requirements in accord with Subsection 6.1.of this Agreement, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by SCL.

6.2. Abandonment of SCL's Facilities.

6.2.1. SCL shall not have any Abandoned Facilities in the Right-of-way without the prior written consent of the Director. As needed, but no more than twice annually, SCL shall provide the City with written notice identifying Facilities that SCL will designate as abandoned or will likely become Abandoned Facilities due to non-use, prior to the Facilities being Abandoned, along with a reasonable plan for removal of such Facilities. The removal plan shall also include the removal of utility improvements, equipment, or lines attached to SCL's Facilities. All necessary permits must be obtained prior to such removal work, which will be processed in a timely manner by the City.

6.2.2. The City may request in writing that SCL provide a determination as to whether certain Facilities are Abandoned Facilities. Such determination shall be made in

SCL's sole discretion, and SCL shall provide written notice to the City of its determination within thirty (30) Days of the City's request.

6.3. Restoration After Construction.

6.3.1. Except as may be provided for in a separate project relocation or undergrounding agreement between the City and SCL, SCL shall, after any installation, construction, relocation, maintenance, or repair of facilities within the franchise area, restore the Right-of-way to at least the same condition it was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. SCL agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.

6.3.2. If it is determined that SCL has failed to restore the Right-of-way in accordance with this Section, the City shall provide SCL with written notice including a description of actions the City believes necessary to restore the Right-of-way. If the Right-of-way is not restored in accordance with the City's notice within thirty (30) Days of that notice, the City, or its authorized agent, may restore the Right-of-way. SCL is responsible for all costs and expenses incurred by the City in restoring the Right-of-way in accordance with this Section.

6.4. City License and Bonding Requirements. SCL, as a public agency, is not required to comply with the City's standard bonding requirement for working in the City's Right-of-way. The issuance of this Franchise shall meet any and all requirements for SCL to procure a City Business License to operate, maintain, or provide other utility services within the City's jurisdiction. However, any work being performed by any private contractor shall be subject to City business license regulations and any applicable bonding requirements.

6.5. Safety.

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

6.5.2. All of SCL's facilities in the Right-of-way shall be constructed and maintained in a safe and operational condition.

6.6. Dangerous Conditions, Authority for City to Abate.

6.6.1. Whenever Facilities or the operations of SCL cause or contribute to a condition that endangers any person or substantially impairs the lateral support of the adjoining Right-of-way, public or private property, the Director may direct SCL, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment, with all necessary permits obtained in accordance with this agreement and applicable City codes and regulations. Such directive may include compliance within a prescribed time period.

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

6.7. Relocation of System Facilities.

6.7.1. Except as may be provided for in a separate project relocation or undergrounding agreement between the City and SCL, SCL agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any Right-of-way its facilities without cost to the City to the extent permitted by State law, when so required by the City, provided that SCL shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Right-of-way and upon approval by the City, any facilities required to be temporarily disconnected or removed.

6.7.2. If a Public Project necessitates the relocation of SCL's existing Facilities, the City shall:

6.7.2.1. As soon as possible prior to the commencement of project construction, but in no event not less than 90 Days for Minor Relocation Projects and one (1) year for Major Relocation Projects, provide SCL with written notice requiring such relocation; and

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

6.7.2.3. Ensure that all necessary permits and easements are issued to SCL in a timely manner so SCL may maintain the timeline established under this or separate Agreement.

6.7.2.4. After receipt of such notice and such plans and specifications, SCL shall complete overhead to overhead relocation of its facilities at least ten (10) Days prior to commencement of the project.

6.7.3. SCL's ability to accommodate such requests shall take into consideration alternatives with the least amount of interference to SCL's customers and operations, provide a more cost-effective alternative, or provide a more efficient or appropriate design or method for such relocation. SCL may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise SCL in writing if any of the alternatives are suitable to accommodate the work that necessitates the relocation of the Facilities. If so requested by the City, SCL shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by SCL full and fair consideration. Notwithstanding the above, SCL shall relocate its Facilities as provided in this Section, if the City determines to not use any alternatives proposed by SCL.

6.7.4. The provisions of this Section shall in no manner preclude or restrict SCL from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not part of a Public Project, provided that such arrangements do not unduly delay or increase the cost of a related Public Project, if any.

6.7.5. Whenever any person shall have obtained permission from the City to use any Right-of-way for the purpose of moving any building or other oversized structure, SCL, upon fourteen (14) Days written notice from the City that the use of the Right-of-way is permitted, shall raise or remove, at the expense of the person or entity desiring to move the building or structure, any of SCL's facilities that may obstruct the movement thereof; provided, that the moving of such building or structure shall be done in accordance with City Code. Where more than one path is available for the moving of such building or structure, the path of least interference, as determined by the City in consultation with SCL, shall be utilized.

6.7.6. This Section 6.7 applies only to Relocation of SCL Facilities necessitated by a Public Project as defined in this Agreement. Any Relocation of SCL Facilities requested or required by the City not related to a Public Project will be addressed through separate agreement between the parties.

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

6.8. SCL and City Maps and Records. Upon request, SCL and City mutually agree to provide each other with as-built plans, maps, and records without charge. Due to federal requirements, when the City makes a request for SCL records, City's request must set forth a legitimate business or governmental justification. Upon approval, such records will be provided to City in a format maintained by SCL. SCL reserves the right to withhold records or require City to sign a Non-Disclosure Agreement for the release of records which are deemed Critical Energy Infrastructure Information (CEII). CEII is defined as information that relates to the production, generation, transportation, transmission, or distribution of energy in which the release may cause incapacity or destruction that would negatively affect security, economic security, public health or safety, or any combination thereto. Should the City receive a public records request for information for SCL records, and if the City in consultation with SCL determines that such information is not exempt from disclosure under the Public Records Act (RCW 42.56), the City will provide a minimum of 15 days advance notice to SCL, so that SCL has an opportunity to seek, at its own expense, a judicial determination prohibiting disclosure pursuant to a public records request.

6.9 Poles and Pole Attachments. SCL, has the right to install, maintain, and remove poles in the Right-of-way. SCL will work with the City to ensure poles are removed and replaced safely and maintained properly in the City's Right-of-way to protect the welfare of the general public. The City acknowledges that SCL has existing agreements with third parties regarding the use and sharing of poles. Existing agreements with third parties for co-ownership of poles govern the use of such poles

and attachments by pole co-owners. SCL may require, and the City shall allow, that SCL and co-owners be jointly named on any applicable City permits,

6.9.1. SCL and SCL pole co-owners through their existing agreements with SCL shall remove all utility attachments and shall remove all poles prior to the poles becoming Abandoned Facilities, unless otherwise agreed to in writing with the City as outlined in Section 6.2 of this Agreement. SCL will use its rights available under existing written facilities use and ownership agreements with third parties to obtain timely removal of Abandoned Facilities.

6.9.2. SCL and SCL pole co-owners through their existing agreements with SCL shall not stage new or replacement poles in the City's Right-of-way more than thirty (30) Days in advance of the pole installation or replacement.

6.9.3. If the City wishes to attach to a SCL owned or co-owned pole, the City must complete a pole attachment application and have a valid agreement with SCL.

6.9.4. Installation, maintenance, and removal of poles for which SCL is the responsible party are subject to the permitting requirements of Subsection 6.1.4.

6.9.5. SCL will provide the City with a listing of all authorized SCL pole co-owners and third party renters who have attached to SCL poles or SCL co-owned poles within the City. The list of SCL pole co-owners and third party renters will be updated upon request of the City but not more than once annually..

6.10 Vegetation Management (VM). In accordance with City ordinances, SCL recorded easements, SCL policies and guidelines and all applicable law, including NERC requirements, WAC 296-24-960, RCW 64.12.035 and International Society of Arboriculture (ISA) Utility Pruning Best Practices, SCL has the authority to perform VM activities, which will be coordinated by an ISA certified arborist under the direction of SCL's Powerline Clearance Coordinator. VM activities include the maintenance of critical infrastructure, trimming and removing trees and other plant life, including shrubs and vines, to prevent interference with SCL's Facilities.

6.10.1 Annual City Vegetation Management Plan. SCL shall provide the Director an Annual SCL Vegetation Management Plan by December 1 each year that identifies the general location of SCL's VM regularly scheduled maintenance plans for the coming year based on SCL's 4 year transmission and feeder trimming plan. These plans will be conducted in alignment with SCL's standards and practices.

6.10.2 VM Activity Notice and Blanket Permits. For scheduled maintenance, SCL shall provide the City with at least fourteen (14) Days advance written notice by email to permitsubmittal@ci.seatac.wa.us prior to commencing VM activities in the City. The VM Activity Notice should be consistent with VM activities identified in the Annual SCL Vegetation Management Plan. The notice shall provide: 1) the locations of the VM activities and type of property (private property, City Right-of-way, or SCL property); 2) description of the VM activities, including tree topping or removal, if any; 3) required traffic control measures consistent with the Manual on Uniform Traffic Control Devices (MUTCD), if needed, including measures to maintain pedestrian access on City Right-of-way; 4) name and

contact information of the firm performing the VM activities; and 5) the general timeline and duration of VM activities.

Along with providing the City a VM Activity Notice for scheduled maintenance, for VM activity conducted in the City's Right-of-way, SCL or its contractors shall apply for and obtain any applicable Permits from the City, pursuant to Section 6.1.4 of this Agreement. Any Permit application will include the information provided in the VM Activity Notice and other pertinent information that either SCL or the City deems useful for the issuance of the Permit.

6.10.3 Property Owner Notification. SCL shall provide advance written notice to the owner of the private property where SCL desires to perform VM activities, or to the nearest adjacent property owner where SCL is performing VM activities in the City Right-of-way or on SCL Property. Said notice shall be in the form of a doorknob hanger or other City-approved communications method and shall contain a contact name, address, and telephone number where the property owner can obtain information regarding the VM activities and express concerns. Notice issued pursuant to this subsection shall be provided no sooner than ninety (90) days and no later than seven (7) days prior to commencement of any VM activities.

6.10.4 VM Clearance Distances. Clearance Distances for VM between SCL's electrical facilities and the surrounding vegetation shall align with SCL's Distribution and Transmission Tree Trimming Construction Guidelines (standard number D9-80) and shall be in accordance with clearance criteria found in WAC 296-24-960 and RCW 64.12.035. Clearance distances for distribution (lines rates 50kV or below) and transmission (lines rated 51kV or above) power lines shall conform with utility, ISA and SCL best practices.

6.10.5. VM on Private Property. SCL shall take into consideration property owners' requests regarding the trimming of trees or plant life on their property without jeopardizing the safety or the operational reliability of their Facilities. SCL reserves the right to remove trees as authorized by RCW 64.12.035.

6.10.7. VM in City Right-of-Way. The City will provide SCL a minimum of 21 days notice when planting trees under and/or adjacent to SCL Facilities on the City Right-of-way. The City will plant small growing, wire-friendly trees from an approved list provided SCL.

6.10.8. Replacement and Restoration Requirements. SCL shall be exempt from the Right-of-way tree pruning, removal and replacement requirements in City. SCL shall generally offer Urban Landscape Tree Certificates rather than re-planting services, unless another mutually acceptable arrangement is agreed upon by both SCL and the City. Replacement certificates will follow these guidelines:

For any tree removed City Light will offer as replacement a minimum of three Urban Landscape Tree Certificates or mutually acceptable equivalent for each tree being removed to the affected property owner,.

Tree replacement adjacent to SCL infrastructure will take into consideration the replacement tree's future growth and impacts to City Light critical infrastructure and access to such infrastructure.

6.10.9. Notice for Tree Removal. For trees in the City Right-of-way and on SCL Property that are identified for removal, SCL shall place signage on the tree at least ten (10) Days in advance of the removal. Said signage shall explain that the tree is being removed and shall also provide an explanation for why removal is occurring.

6.10.10. VM Debris Removal. SCL will promptly remove debris unless explicit arrangements are otherwise made. In City Right-of-way, the City may, at its sole discretion, remove and dispose of any such debris generated by SCL or its contractors that is not removed within twenty-four (24) hours of the VM activity occurring (or such shorter time period as deemed appropriate by the City if such debris poses a hazard), and bill SCL for the actual cost of said removal and disposal.

6.10.11. Hazard Abatement. The forgoing notwithstanding, SCL shall at all times have the right to perform VM activities in the Right-of-way on vegetation that poses an imminent safety concern or has caused a system failure, or is in imminent risk of doing so, including storm and emergency events, without delay for prior notice.

7. **Undergrounding.** SCL will work cooperatively with the City on Public Projects that present cost-effective means to underground utility distribution infrastructure in Rights-of-way as identified in the City's most recent Comprehensive Plan.

7.1. The City must notify SCL in writing of planned Public Projects that may require undergrounding of SCL electric facilities a minimum of one (1) year prior to the expected Project kick-off date for the design portion of the Project and with sufficient time to meet the requirements of the City of Seattle bi-annual budget cycle. Both parties are responsible for obtaining proper legislative budgetary authority to meet their project funding obligations of this Agreement.

7.2. SCL will work cooperatively with the City in design, estimating, scheduling and construction of Public Projects that require undergrounding of SCL's electrical infrastructure, including but not limited to electrical conversions, to bring such Projects to completion in the most efficient manner, and in compliance with SCL Civil Infrastructure Engineering Standards. The specific Project scope of work, applicable terms and conditions, and obligations of the parties will be agreed upon and memorialized in a separate written agreement executed by both parties, and may be subject to approval by the parties' respective City Councils.

7.3. Standard cost allocation for City-initiated undergrounding projects will generally be as follows:

7.3.1. City shall pay for 100% of the Primary Project Cost, 100% of the excavation and restoration costs, as well as 40% of the Civil Infrastructure and SCL Underground Electrical System project costs.

7.3.2. SCL will pay for 60% of the Civil Infrastructure and SCL Underground Electrical System project costs. SCL shall have no responsibility for Primary Project Costs.

7.3.3. SCL will pay 100% of SCL Project Management Costs, the City will pay 100% of the City's Project Management Costs, and all other Project costs will be included in 60/40 cost allocation as defined in Sections 7.4.1 and 7.4.2 above.

7.3.4. The Parties agree that SCL's total cost responsibility for a specific Public Project shall be limited to a sum certain agreed upon by the Parties in a separate written agreement for the undergrounding of SCL's Facilities related to that Public Project. Further, the City shall agree to release and indemnify SCL from and against any and all claims, liens, demands, actions, costs, losses, expenses, harm, damages, and liability of any kind or character (collectively, "Claims") arising out of, related to, or in connection with any and all costs of a Public Project that exceed the maximum amount of SCL's cost responsibility for undergrounding of SCL Facilities contained in a specific undergrounding agreement; provided, however, that the City shall not be required to release and indemnify SCL for cost overruns or exceedances on a Public Project to the extent such overruns or exceedances are caused by SCL's negligence.

7.3.5. Private property owners will be responsible for providing the underground Private Property Infrastructure, subject to review and approval by SCL, that is needed to provide electrical service from the public right of way to the designated service point on the private property, as well as all costs related to installing and maintaining such Private Property Infrastructure.

7.4. SCL's ability to accommodate undergrounding requests for Public Projects shall take into consideration alternatives with the least amount of interference to SCL's customers and operations. SCL may, after receipt of written notification of a Public Project requesting undergrounding of its facilities, submit to the City written alternatives to undergrounding of its facilities. The City shall evaluate such alternatives and advise SCL in writing if any of the alternatives are suitable to accommodate the Public Project. If so requested by the City, SCL shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by SCL full and fair consideration. Notwithstanding the above, SCL shall underground its Facilities as provided in this Section or as otherwise provided for in a separate written agreement executed by both parties, if the City determines to not use any alternatives proposed by SCL.

7.5. The provisions of this Section 7 shall in no manner preclude or restrict SCL from making any arrangements it may deem appropriate when responding to a request for undergrounding of its facilities by any person other than the City, where the improvements to be constructed by said person are not part of a Public Project, provided that such arrangements do not unduly delay or increase the cost of a related Public Project.

7.6. This Section 7 applies only to Undergrounding of SCL Facilities necessitated by a Public Project as defined in this Agreement. Any undergrounding of SCL Facilities requested or required by the City for a reason unrelated to a Public Project will be addressed through separate written agreement between the parties.

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

8. Street Lighting. Provided public streetlights are funded as a local government function, installation, ownership, maintenance, and operations of streetlights will be addressed under a separate agreement between the City and SCL.

9. Implementation of Service Requirements.

9.1. Rate Information. SCL shall make available all studies, reports, memoranda, or other documents provided to the legislative branches of the City of Seattle regarding the establishment of the rates, or any portion thereof, to be charged to its customers. . The City shall be provided a reasonable opportunity to review said documents and to comment or otherwise participate in Seattle's rate setting process. Opportunities for public hearings or public comment during Seattle's rate setting process will be made known through the Franchise City designated representative on the SCL Review Panel or online at www.seattle.gov.

9.2 Communication with City Customers. SCL will notify the City in advance of any planned communication to its customers in the City regarding the services and rates affected by this Agreement.

10. Planning Coordination.

10.1. Coordination of Projects and Activities

10.1.1. SCL and the City will meet in February of each year to review planned capital improvements by SCL and any planned projects or activities by City which may affect the Right-of-way for that year. Additional meetings for planning and coordination may be held as deemed necessary by both parties.

10.1.2. The City and SCL shall promptly inform the other party of any changes to codes, ordinances, policies or practices that may impact any terms or conditions of this Agreement.

10.1.3. SCL shall meet with the City, other franchisees and users of the Right-of-way, according to a schedule to be determined by the City and SCL, to schedule and coordinate construction on specific projects.

10.1.4. All construction locations, activities, and schedules shall be coordinated, as required by the Director or his or her designee, to minimize public inconvenience, disruption, or damages.

10.2. Growth Management. SCL agrees, as follows, to participate in the development of, and reasonable updates to, the utilities element of the City's comprehensive plan:

10.2.1. For SCL's service within the City limits, SCL will participate in a cooperative effort with the City to develop a Comprehensive Plan Utilities Element which meets the requirements described in RCW 36.70A.070(4).

10.2.2. SCL will participate in a cooperative effort with the City to ensure that the Utilities Element of the City's Comprehensive plan is accurate as it relates to SCL's operations and is updated to ensure it continued relevance at reasonable intervals.

10.2.3. Upon reasonable written request, SCL shall make available to the extent possible information that is not deemed confidential, sensitive, or exempt from disclosure under state or federal law related to the general location, proposed location, and capacity of existing and proposed electrical lines as requested by the Director within a reasonable time.

10.2.3. SCL will update information provided to the City under this Section 10 whenever there are major changes in SCL's electrical system plans for the City.

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

10.5. Emergency Operations. The City and SCL agree to cooperate in the planning and implementation of emergency operations response procedures. SCL will be engaged in City emergency planning process at the request of the City. The City will provide current emergency contact information to SCL's Emergency Manager.

11. Service Quality. SCL is dedicated to exceeding our customers' expectations in producing and delivering environmentally responsible, safe, low-cost, and reliable power. SCL shall exercise the same degree of technical, professional and administrative quality in serving its customers in the City that is provided to all other customers within SCL's service territory. SCL shall at all times comply with the minimum regulatory standards including but not limited to ANSI Voltage Standard C84.1 presently in effect or as may be amended by the Seattle Municipal Code.

12. City Use of SCL Property. SCL owns real properties, and holds various property interests and facilities in the City which are essential to SCL's electrical utility operations. SCL will cooperate with the City in the same manner as it does with the City of Seattle in aligning the operation and management of its property and facilities to serve the goals and objectives of the City's Comprehensive Plan, while meeting the requirements of all applicable State Laws, and pursuant to SCL's applicable Department Policies and Procedures

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

identified public uses. Fair market value compensation for use of SCL property may include in-kind or non-monetary consideration jointly determined by SCL and the City, to the extent that SCL and the City agree to do so.

12.2. Prior Approval of Specific Plans by SCL. Prior to any installation, modification or extension of any improvement on SCL property, property interest or facilities proposed by the City, the City shall supply SCL with detailed drawings and specifications relating to such proposed development. No construction, installation or modification shall be performed until the plans have been approved in writing by SCL and SCL has granted the City appropriate permission or consent to proceed with the City's work on, or use of SCL property.

12.3. Permit for City Use of SCL Property. SCL shall provide the City by separate agreement and with proper consideration for each use of SCL property requested by the City, which shall detail the terms of such use including provisions to assure the continued safe and efficient operation of the electric utility.

13. Finance.

13.1. Annual Reconciliation. Unless otherwise provided herein, all charges between the parties, except for charges for electrical service, penalties, reimbursements for breach or other forms of cure, and payment pursuant to Subsections 4.1.1 and 6.1.4, shall be accrued and reconciled annually in accord with the following process:

13.1.1. By January 31 of each calendar year, or upon such other date as the parties may agree, the parties shall exchange itemized invoices of charges that have been incurred over the previous calendar year. Said invoice shall include all information reasonably necessary to allow each party to evaluate the validity and magnitude of each charge.

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

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

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

14. Indemnification.

14.1. SCL shall indemnify, defend and hold harmless the City, its elected and appointed officials, officers, employees, or agents from any and all claims, costs, judgments, awards, or liability, including reasonable attorney fees, arising from injury or death of any person or damage to property to the extent the same is caused by the negligent acts or omissions, or willful misconduct of SCL, its agents, servants, officers, or employees in the exercise of the rights granted to SCL by this Agreement. This indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of SCL, its agents,

servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in the Right-of-way or in any other public place in performance of work or services permitted under this Agreement.

14.2. Inspection or acceptance by the City of any work performed by SCL at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification.

14.3. In the event any claim or demand for which indemnification is provided under Section 14.1 is presented to, or suit or action is commenced against the City based upon any such claim or demand, the City shall promptly notify SCL thereof, and SCL may elect, at its sole cost and expense, to settle and compromise such suit or action, or defend the same with attorneys of its choice. SCL will consider in good faith, and will not unreasonably refuse, the City's tender of the defense of any suit or claim for which indemnification is provided under Section 14.1.

14.4. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of SCL and the City, its officers, employees and agents, SCL's liability hereunder shall be only to the extent of SCL's negligence. It is further specifically and expressly understood that, solely to the extent required to enforce the indemnification provided herein, SCL waives its immunity under RCW Title 51 as provided in RCW 4.24.115; provided, however, the foregoing waiver shall not in any way preclude SCL from raising such immunity as a defense against any claim brought against SCL by any of its employees. This waiver has been mutually negotiated by the parties.

14.5. Notwithstanding any other provisions of this Franchise, SCL assumes the risk of damage to its Facilities located in the Right-of-way from activities conducted by the City, its officers, agents, employees, and contractors, except as set forth below. SCL releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of SCL's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, and contractors, in the Right-of-way, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful or malicious action on the part of the City, its officers, agents, employees, or contractors.

14.6. In the event it is determined that RCW 4.24.115 applies to this Agreement or any activity pursuant to this Agreement, SCL's indemnification obligations under Section 14.1 shall apply to the maximum extent permitted thereunder, to the full extent of SCL's negligence. Further, in any such action, the City shall have the right to participate, at its sole cost and expense, through its own attorney in any suit or action which arises pursuant to this Agreement when the City determines that such participation is in the City's best interest.

14.7. The provisions in this Section 14 shall survive the expiration or termination of this Franchise with respect to any claim, demand, suit or action for which indemnification

is provided under Section 14.1 and which is based on an act or omission that occurred during the term of this Agreement.

15. Enforcement.

15.1. In addition to all other rights and powers retained by the City under this Agreement, the City reserves the right to revoke and terminate this Agreement and all rights and privileges of SCL in the event of a substantial violation or breach of its terms and conditions. Likewise, SCL may terminate this Agreement in the event of a substantial violation or breach of its terms and conditions by the City.

15.2. A substantial violation or breach by a SCL shall include, but shall not be limited to, the following:

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

15.2.2. An intentional evasion or knowing attempt to evade any material provision of this Agreement or practice of any fraud or deceit upon the system customers or upon the City;

15.2.3. Failure to begin or substantially complete any system construction or system extension as set forth in a franchise or Right-of-way use agreement;

15.2.4. Failure to provide the services specified in the Agreement;

15.2.5. Misrepresentation of material fact during negotiations relating to this Agreement or the implementation thereof;

15.2.6. A continuous and willful pattern of grossly inadequate service and failure to respond to legitimate customer complaints;

15.2.7. An uncured failure to pay fees or consideration associated with this Agreement.

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

15.4. Except in the case of termination pursuant to Subsection 15.1 of this Agreement, prior to any termination or revocation, the City, or SCL, 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 sixty (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 sixty (60) day period, the City or SCL 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 in default, which declaration must be in writing. Within twenty (20) Days after receipt of a written declaration of default, the party that is alleged to be in default may request, in writing, Alternative Dispute Resolution as set forth in Section 21 of this Agreement.

15.5. The City may, in its discretion, provide an additional opportunity for SCL to remedy any violation or breach and come into compliance with this agreement so as to avoid the termination or revocation.

15.6. In addition to any other remedy provided for herein for violation of any provision, or failure to comply with any of the requirements of this Agreement, the City may levy liquidated damages of up to $500.00 for each of the first five (5) Days that a violation exists and up to $1,000.00 for each subsequent day that a violation exists. Payment of such liquidated damages shall not relieve any person of the duty to correct the violation.

15.7. Notwithstanding any other provision of this Agreement, any violation existing for a period greater than thirty (30) Days may be remedied by the City at SCL's expense.

16. Survival. All of the provisions, conditions and requirements of Sections 6.1 Excavation, Permits, and Notice of Entry, 6.2 Abandonment of SCL's Facilities, 6.3 Restoration After Construction, 6.6 Dangerous Conditions, Authority for City to Abate, 6.7 Relocation of System Facilities, 6.9 Poles and Pole Attachments, and 14 Indemnification, of this Agreement shall be in addition to any and all other obligations and liabilities SCL may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to SCL for the use of the areas mentioned in Section 2 of this Agreement herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Agreement shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of SCL and all privileges, as well as all obligations and liabilities of SCL shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever SCL is named herein.

17. Severability. If any Section, Subsection, sentence, clause or phrase of this Agreement is 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, Subsection, sentence, clause or phrase of this franchise Ordinance. The Parties may amend, repeal, add, replace, or modify any provision of this Agreement to preserve the intent of the parties as expressed herein prior to any finding of invalidity or unconstitutionality.

18. Assignment. This franchise shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the written approval of the City. Any costs associated with the City's review of any transfer proposed by SCL shall be reimbursed to the City by SCL.

18.1. An assignment of this Agreement shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

18.2. Except as otherwise provided herein, SCL shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of SCL's business. Every change, transfer, or acquisition of control of SCL's business 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 affected, the Agreement is terminated.

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

CEO and General Manager of Seattle City Light 700 Fifth Avenue, Suite 3100 Seattle, WA 98104-5031 Phone: (206) 684-3200 Fax: (206) 684-3158	Public Works Director City of SeaTac 4800 S. 188th Street SeaTac, WA 98188-8605 Phone: (206) 973-4800 Fax: (206) 973-4809

20. **Non-Waiver.** The failure of either party to enforce any breach or violation by the other party of any provision of this Agreement 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 Agreement.

21. **Alternate Dispute Resolution.** If the parties are unable to resolve disputes arising from the terms of this Agreement, 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 or requested by the party alleged to be in default as set forth in Section 15 of this Agreement. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

22. **Most Favored Franchise.** SCL will make a good faith effort to obtain similar terms and provisions to this Agreement in franchise agreements with other municipal jurisdictions served by SCL. The City reserves the right to request SCL to consider amending this Agreement to include terms or provisions in other SCL franchises that the City deems more favorable than the current terms of this Agreement.

23. **Entire Agreement.** This Agreement 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.

24. **Supremacy.** This Agreement represents the dominant agreement between the parties for a franchise for an electric power system within the City. In the event of any conflict between this Agreement and any City ordinance or permit, the provisions of this Agreement shall control.

25. **Directions to City Clerk.** The City Clerk is hereby directed to forward a certified copy of this Ordinance to the Superintendent of SCL, and the Seattle City Clerk.

26. **Publication Costs.** In accord with state law, this Ordinance shall be published in full. The costs of said publication shall be borne by SCL.

27. **Effective Date.** This Ordinance and Agreement shall be effective on August 1, 2015, having been: (i) introduced to the City Council not less than five days before its passage; (ii) first submitted to the City Attorney, which occurred on June 1, 2015; (iii) published at least five days prior to the effective date and as otherwise required by law; and (iv) passed at a regular meeting of the legislative body of the City of SeaTac by a vote of a majority of the entire City Council. Not later than one-hundred twenty (120) days after adoption of this Ordinance, SCL must accept in writing the terms of this Franchise herein. Failure of SCL to so accept this Franchise within said period of time shall be deemed a rejection thereof by SCL unless the time period is extended by ordinance duly passed for that purpose.

ADOPTED this _____ day of _____, 2015, and signed in authentication thereof on this _____day of _____, 2015.

CITY OF SEATAC

_____
Mia Gregerson, Mayor

ATTEST:

_____
Kristina Gregg, City Clerk

Approved as to Form:

_____
Mary Mirante Bartolo, City Attorney

(Effective Date:_____)

STATE OF WASHINGTON -- KING COUNTY

--ss.

327278 No.

CITY OF SEATTLE,CLERKS OFFICE

Affidavit of Publication

The undersigned, on oath states that he is an authorized representative of The Daily Journal of Commerce, a daily newspaper, which newspaper is a legal newspaper of general circulation and it is now and has been for more than six months prior to the date of publication hereinafter referred to, published in the English language continuously as a daily newspaper in Seattle, King County, Washington, and it is now and during all of said time was printed in an office maintained at the aforesaid place of publication of this newspaper. The Daily Journal of Commerce was on the 12th day of June, 1941, approved as a legal newspaper by the Superior Court of King County.

The notice in the exact form annexed, was published in regular issues of The Daily Journal of Commerce, which was regularly distributed to its subscribers during the below stated period. The annexed notice, a

CT:124815-821 TITLE ONLY

was published on

08/10/15

The amount of the fee charged for the foregoing publication is the sum of $124.00 which amount has been paid in full.

Subscribed and sworn to before me on

08/10/2015

Notary public for the State of Washington,
residing in Seattle

State of Washington, King County

City of Seattle

The full text of the following legislation, passed by the City Council on July 27, 2015, and published below by title only, will be mailed upon request, or can be accessed at http://clerk.seattle.gov. For information on upcoming meetings of the Seattle City Council, please ~~visit http://~~www.seattle.gov/council/calendar. Contact: Office of the City Clerk at (206) 684-8344

Ordinance 124814

AN ORDINANCE appropriating money to pay certain audited claims and ordering the payment thereof.

Ordinance 124815

AN ORDINANCE relating to the City Light Department; declaring certain real property rights surplus to utility needs; authorizing the General Manager and Chief Executive Officer to execute an agreement for the City to grant an easement for parking and access purposes over a portion of the City's fee-owned Bothell-Canal Transmission Corridor at 17524 Aurora Avenue North in the City of Shoreline, Washington; accepting payment for the true and full value of the easement from GCW Shoreline, LLC, and WG @ Shoreline, LLC; and ratifying and confirming certain prior acts.

Ordinance 124816

AN ORDINANCE relating to the City Light Department; declaring certain real property rights and improvements surplus to the City of Seattle's utility needs; and authorizing the release of an access easement and a permit for a groundwater observation well, and the conveyance of ownership of said groundwater well to James and Valerie Van Dyke in Pend Oreille County, Washington.

Ordinance 124817

AN ORDINANCE relating to the City Light Department; authorizing the execution of the Maintenance Obligations and Ownership Agreement for Boundary Substation with the Bonneville Power Administration; and ratifying and confirming certain prior acts.

Ordinance 124818

AN ORDINANCE relating to the rates, terms and conditions for the use and sale of electricity supplied by the City Light Department to customers in the city of SeaTac; and amending Sections 21.49.020, 21.49.030, 21.49.040, 21.49.052, 21.49.055, 21.49.057, 21.49.081, and 21.49.100 of the Seattle Municipal Code to implement new rates for the city of SeaTac that reflect the terms of the 2015 franchise agreement.

Ordinance 124819

AN ORDINANCE related to the City Light Department; authorizing the General Manager and Chief Executive Officer of City Light to execute a Reliability Coordinator Funding Agreement with Peak Reliability, Inc.

Ordinance 124820

AN ORDINANCE relating to the City Light Department, approving a 15-year franchise to construct, operate, maintain, replace, and repair an electrical light and power system in, across, over, along, under, through, and below certain designated public rights-of-way in the City of SeaTac.

Ordinance 124821

AN ORDINANCE relating to the Department of Parks and Recreation; authorizing the Superintendent of Parks and Recreation to sign a lease with Sprint Communications Company L.P. for continuing use of subsurface fiber-optic cable installed in the Burke Gilman Trail.

Date of publication in the Seattle Daily Journal of Commerce, August 10, 2015.

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