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Judi Gladstone
SPU Shoreline Franchise ORD
July 29, 2011
Version # 2

ORDINANCE _____

AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept a franchise agreement with the City of Shoreline, Washington for the operation of a water system within public rights-of-way of the City of Shoreline for up to nine years, and ratifying and confirming certain prior acts.

WHEREAS, the City of Seattle, through Seattle Public Utilities, has operated a water system within City of Shoreline rights-of-way, including retail water service to a portion of the City of Shoreline, under a non-exclusive franchise agreement effective December 8, 1999, which had been previously extended and expired June 30, 2011; and

WHEREAS, the City of Shoreline and Seattle Public Utilities desire to initiate a new franchise for the continued operation of the water system for up to nine years and the City of Shoreline has granted such pursuant to Ordinance No. 606, adopted June 20, 2011; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. The Director of Seattle Public Utilities is authorized to accept the new franchise agreement, a copy of which is included as Attachment 1, which the City of Shoreline granted pursuant to Ordinance No. 606, which extends the franchise for a water system in the City of Shoreline for up to nine years through June 30, 2020.

Section 2. Any act consistent with the authority of this ordinance that is taken after passage of this ordinance, but prior to its effective date is hereby ratified and confirmed.

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Section 3. 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 ____ day of _____, 2011, and signed by me in open session in authentication of its passage this

_____ day of _____, 2011.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2011.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2011.

_____

Monica Martinez Simmons, City Clerk

(Seal)

ATTACHMENT 1 – Water System Franchise, City of Shoreline Ordinance No. 606

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Attachment 1: Water System Franchise, City of Shoreline Ordinance No. 606

ORDINANCE NO. 606

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING THE CITY OF SEATTLE, ACTING THROUGH SEATTLE PUBLIC UTILITIES, A NON-EXCLUSIVE FRANCHISE TO OWN, CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

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

WHEREAS, RCW 35A.47.040 authorizes the City "to grant nonexclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for... facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof...for 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 finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to SPU for the operation of a public water system within the City right-of-way, on the terms and conditions stated below; NOW, THEREFORE,

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

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

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

1.2 Days: Calendar days.

1.3 Director: The City Manager or designee.

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

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1.5 Person: An entity or natural person.

1.6 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.

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

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 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, maintain, replace, and use all necessary equipment and Facilities for a public water system, in, under, on, across, over, through, along or below the public Right-of-Way located in the City of Shoreline.

2.3 This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any Right-of-Way. 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.

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3. **Franchise Term.** The initial term of the Franchise granted hereunder shall be three (3) years commencing 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, unless either party gives the other 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.

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

4.3 Should a court of competent jurisdiction declare, or a change in law make the Franchise fee to be collected on behalf of the City invalid, in whole or in part, or should a court of competent jurisdiction hold that the collection of the Franchise fee by 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.

4.4 SPU agrees that the franchise fee established by this Section is appropriate and that SPU will not be a party to or otherwise support legal or legislative action intended to result in judicial determinations or legislative action referred to in Sections 4.2 and 4.3 hereof.

5. **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

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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 - Alternate Dispute Resolution.

6. **Right-of-Way Management**.

6.1 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 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.

6.2 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.

6.3 Restoration after Construction.

6.3.1 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.

6.3.2 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 – Alternative Dispute Resolution.

6.4 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.

6.5 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

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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.

6.6 Excavations.

6.6.1 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 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.

6.6.2 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.

6.7 Safety.

6.7.1 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.

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

6.8 Dangerous Conditions, Authority for City to Abate.

6.8.1 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

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reasonable time period. The resolution of the dangerous condition requires approval of SPU Manager and the Director before the work begins.

6.8.2 In the event the Grantee fails or refuses to promptly take action as required in Section 6.8.1, 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.

6.9 Relocation of System Facilities.

6.9.1 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.

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%

6.9.2 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.

6.9.3 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.

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

6.9.4.1 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

6.9.4.2 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.

6.9.4.3 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.

6.9.5 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 - Alternate Dispute Resolution.

6.9.6. 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 by SPU within forty-five (45) days of completion of the Relocation or removal by SPU in accord with paragraph 6.9.1 and 6.9.2 herein.

6.9.7 The provisions of this Section 6.9 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.

7. Planning Coordination.

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

7.1.1 For SPU's service within the City limits, 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). 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.

7.1.2 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

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that such information is in SPU's possession, or can be reasonably developed from the information in SPU's possession.

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

7.1.4 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.

7.2 System Development Information. 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:

7.2.1 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;

7.2.2 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.

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

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

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

7.4 Maps and Records. Without charge to either party, both parties agree to provide each other with as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way, measured from the center line of the Right-of-Way, using a minimum scale of one inch equals one hundred feet (1"=100'). Maps shall be provided in Geographical Information System (GIS) or other digital electronic format used by the City or 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

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and all information received to the extent necessary to meet Homeland Security objectives and in accordance with public records laws.

8. 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.

9. Indemnification.

9.1 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.

9.2 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.

9.3 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.

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9.4 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.

9.5 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 4.4 hereof.

9.6 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.

10. Insurance.

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

10.1.1 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

10.1.2 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.

10.1.3 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.

10.2 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.

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

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

11. Enforcement.

11.1 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.

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

11.2.1 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;

11.2.2 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;

11.2.3 Failure to provide the services specified in Sections 6.9 and 8 of the Franchise;

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

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

11.3 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

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control. Neither SPU, nor the City, shall be excused by economic hardship nor by nonfeasance or malfeasance of its directors, officers, agents or employees.

11.4 Except in the case of termination pursuant to Paragraph 11.2.5 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.

11.5 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.

11.6 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 above) to protect public health, safety or property at the violating party's expense.

12. Survival. All of the provisions, conditions and requirements of Sections 6.3 Abandonment Of SPU's Facilities, 6.4 Restoration After Construction, 6.6 Excavation, 6.8 Dangerous Conditions, Authority For City To Abate, 6.9 Relocation Of System Facilities, and 9 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.

13. 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.

13.1 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

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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.

14. 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

15. 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.

16. 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.

17. 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.

18. 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.

19. Directions to City Clerk. The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to SPU set forth in this ordinance. 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.

20. 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.

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

PASSED BY THE CITY COUNCIL ON June 20, 2011.

Mayor Keith McGlashan

ATTEST

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Publication: , 2011
Effective Date: , 2011

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Form revised: December 14, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Public Utilities	Judi Gladstone 684-4642	Karen Grove 684-5805

Legislation Title: AN ORDINANCE relating to Seattle Public Utilities; authorizing the Director of Seattle Public Utilities to accept a franchise agreement with the City of Shoreline, Washington for the operation of a water system within public rights-of-way of the City of Shoreline for up to nine years, and ratifying and confirming certain prior acts.

Summary of the Legislation: The proposed legislation would continue a recently expired franchise agreement with the City of Shoreline for SPU to operate a water system within the City right-of-way.

Background: Seattle Public Utilities was first granted a franchise to operate a water system in the City of Shoreline, west of Interstate 5, in December, 1999. That initial franchise agreement was renewed seven times. The last extension was in 2009 and provided for a June 30, 2011, expiration date. This proposed ordinance would authorize SPU to enter into a new, three year franchise agreement, with automatic renewal allowed at two subsequent three year intervals.

Like the previous agreement, this agreement includes a franchise fee of 6% of Shoreline water revenues. SPU builds the franchise fee into the rates charged retail customers within the City of Shoreline and remits the collected funds to the City of Shoreline. The new franchise agreement also includes cost sharing on relocation of infrastructure, based on the age of the infrastructure, when the City of Shoreline asks SPU to relocate its facilities to accommodate a public capital improvement project in Shoreline.

__X__ This legislation has financial implications.

This proposed Bill would continue a legal framework that provides SPU the certainty of franchise rights when it operates a Water System in part of the City of Shoreline. SPU's 2011 Adopted Budget and the 2012-2014 proposed Water Rates assume that SPU continues this franchise with the associated operational and capital costs and related rate-based revenue. In addition, approval of this proposed Bill will allow SPU to continue to charge its customers in Shoreline a franchise fee of 6%, as specified by the City of Shoreline, and remit all franchise fees collected to the City of Shoreline. The financial impacts of the continued franchise will be included in the development of the 2012 Proposed Budget and the revenue tables included with the budget document. There are no position impacts associated with this proposed Bill.

What is the financial cost of not implementing the legislation?

If the ordinance is not approved, SPU would discontinue collecting the 6% franchise fee for the City of Shoreline and would continue selling water to those customers without the certainty of

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franchise rights. Discontinuing the franchise fee would result in SPU incurring administrative costs. Since there would be inadequate time to change the rates for Shoreline customers, SPU would over-collect fees until whenever a new rates ordinance was adopted. The over-collected funds would potentially need to be refunded to Shoreline customers. In addition, when a franchise fee is reinstated, those fees would have to be reinstituted at additional administrative cost.

Does this legislation affect any departments besides the originating department?

No

What are the possible alternatives to the legislation that could achieve the same or similar objectives?

None

Is the legislation subject to public hearing requirements?

No

Other Issues:

None

List attachments to the fiscal note below:

None