Angela Steel
SDOT, Seattle Steam Franchise Fee RES
March 23, 2012
Version #3

RESOLUTION 31381

A RESOLUTION relating to the franchise permit granted to the Seattle Steam Limited Partnership by Ordinance 121067, as amended by Ordinance 122260, to maintain and operate a thermal energy system in and along certain streets, avenues, alleys, and public places in the City of Seattle by establishing the annual fee for the next ten years of the permit.

WHEREAS by Ordinance 121067, as amended by Ordinance 122260, the City of Seattle (City) authorized a franchise permit for the Seattle Steam Limited Partnership to lay down, replace, renew, maintain, and operate pipes, conduits, and other necessary appurtenances ("a thermal energy system") in and along certain streets, avenues, alleys, and public places for a term of 50 years beginning on March 15, 2002; and

WHEREAS, Section 7 of the franchise permit authorized by Ordinance 121067, as amended by Ordinance 122260, established the annual fee for the 50-year term of the franchise at $10,000, subject to adjustment by the City at the end of every tenth year. Any adjustment to the annual fee shall not be increased by more than $5,000 for any 10-year period; and

WHEREAS, in making this recommendation, the Director of the Seattle Department of Transportation (Director) considered the gross revenues that the Seattle Steam Limited Partnership submitted to the City, and recommends that the annual fee adjustment be granted; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. Beginning for the 11th year of the permission granted in Ordinance 121067, as amended by Ordinance 122260, which year commences on March 15, 2012, the Seattle Steam Limited Partnership shall promptly pay to the City upon statements rendered by the Director a fee of $13,354 annually until March 14, 2052, subject to adjustment as provided by Section 7 of Ordinance 121067, as amended by Ordinance 122260.

Adopted by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its adoption this_____ day of _____, 2012.

_____

President _____of the City Council

THE MAYOR CONCURRING:

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Department of Transportation	Angela Steel/684-5967	Rebecca Guerra/684-5339

Legislation Title:
A RESOLUTION relating to the franchise permit granted to the Seattle Steam Limited Partnership by Ordinance 121067, as amended by Ordinance 122260, to maintain and operate a thermal energy system in and along certain streets, avenues, alleys, and public places in the City of Seattle by establishing the annual fee for the next ten years of the permit.

Summary of the Legislation:
The legislation establishes the annual fee for the next 40 years of the franchise term permit granted to Seattle Steam Limited Partnership by Ordinance 121067, as amended by Ordinance 122260, to maintain and operate a thermal energy system in and along certain streets, avenues, alleys, and public places in the City of Seattle.

Seattle Steam Limited Partnership is to pay the City of Seattle an annual fee of $13,354 commencing on March 15, 2012, and annually thereafter. As authorized by Ordinance 121067, adjustments to the annual fee may be made at the end of every tenth year of the franchise term. Approval of any fee decrease or increase shall be by Resolution of the City Council. Such fee shall not be increased by more than $5,000 for any 10-year period over the preceding 10-year period. All payments shall be credited to the General Fund.

Background:
In 1952, by Ordinance 81038, as amended by Ordinance 81177, the City granted Seattle Steam Corporation a 50-year franchise for the right, privilege, and authority to lay down, replace, renew, maintain, and operate pipes, conduits, and other necessary appurtenances in and along certain streets, avenues, alleys, and public places in the City of Seattle and to transmit, sell, and deliver steam for heating purposes and steam power and to charge and collect reasonable rates, tolls, and compensation. The annual fee for the last 25 years of this franchise was in the range of $7,600-$7,900 per year and was calculated based on the lineal foot and diameter of the pipe. This ordinance expired on March 14, 2002.

In 2003, by Ordinance 121067, as amended by Ordinance 122260, the City granted the Seattle Steam Limited Partnership a 50-year franchise for similar franchise utility rights as established in Ordinance 81038, as amended by Ordinance 81177. Ordinance 121067 established the annual fee of $10,000, commencing on March 15, 2002 until March 14, 2052. As noted in the fiscal note for Ordinance 121067, the $10,000 annual fee was established by making a comparison to the City of San Francisco's possession[sic] tax (2011 rate for 'possessory tax' ~$23K). Essentially, the $10,000 annual fee was negotiated between the City and the Seattle Steam Limited Partnership

and was not based on any standardized fee methodology. Other cities base franchise fees on a percentage of gross revenue of the franchisee consistently as an aspect of doing business and collecting revenue in the public right-of-way.

In an effort to establish a standard thermal energy franchise fee methodology that can be used consistently at the end of year 2021, 2031, and 2041, while still keeping with the intent of the authorizing Ordinance 121067, SDOT looked at past practices in establishing the existing $10K annual fee and attempted to formalize a fee methodology. As noted in the fiscal note for Ordinance 121067, Seattle Steam Limited Partnership paid $1,054,731 in utility taxes to the City in 2001. This 'utility occupation tax' is based on 6% of the gross revenue of the company. The $10K annual rate established by Ordinance 121067 in 2003 was 0.95% of the occupation utility tax paid in 2001. Based on this 0.95% adjustment factor, the new annual fee would be adjusted to $13,354 based on the occupation utility tax paid to the City in 2011.

Going forward, the annual fee would be adjusted at the end of every tenth year by assessing the 0.95% adjustment factor to the occupation utility tax paid for the tenth year. The proposal to amend the annual fee by 0.95% of the occupation utility tax paid is within the intent of the authorizing ordinance, which allowed the City to amend the fee on the 10th year of the term, but not to increase by more than $5,000. The 0.95% methodology establishes a standard fee assessment and is also consistent with how the original $10K annual fee was established.

Please check one of the following:

____ **This legislation does not have any financial implications.**

___x_ **This legislation has financial implications.**

Appropriations: N/A

Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
General Fund 00100	Seattle Department of Transportation	Annual Fee	$13,354	$13,354
TOTAL			**$13,354**	**$13,354**

Revenue/Reimbursement Notes: N/A

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact: N/A

Do positions sunset in the future? No

Spending/Cash Flow: N/A

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No

b) **What is the financial cost of not implementing the legislation?**
If the legislation is not enacted by the City Council, the City of Seattle would only be able to assess the $10,000 annual fee for the next 10 years of the franchise permit. The City will not receive the additional 10-year revenue of $33,540.

c) **Does this legislation affect any departments besides the originating department?**
No

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?** None

e) **Is a public hearing required for this legislation?**
No

f) **Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?**
No

g) **Does this legislation affect a piece of property?**
No

h) **Other Issues:** N/A

List attachments to the fiscal note below: N/A

City of Seattle
Office of the Mayor

May 1, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that will establish the annual fee for the next 40 years of the franchise term permit granted to Seattle Steam Limited Partnership by Ordinance 121067, as amended by Ordinance 122260. This franchise ordinance allows the Seattle Steam Limited Partnership to maintain and operate a thermal energy system in and along certain streets, avenues, alleys, and public places in the City of Seattle as a franchise utility.

Ordinance 121067 allows the City to adjust the annual fee at the end of every tenth year of the franchise term. Approval of any fee decrease or increase shall only be by Resolution of the City Council. Any proposed fee increase may not exceed $5,000 for any 10-year period.

Thank you for your consideration of this legislation. Should you have questions, please contact Angela Steel at 684-5967.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov