



**TO: Transportation and Infrastructure Services Committee**  
**FROM: Hari Ponnekanti, Public Works Director/ City Engineer**  
**BY: Seong Kim, Deputy Public Works Director-Utilities**  
**CC: Mayor Ekberg**  
**DATE: March 31, 2023**  
**SUBJECT: Franchise Agreement with the City of Tukwila and Highline Water District**

## ISSUE

Approve the Franchise Agreement with the City of Tukwila (The City) and the Highline Water District (HWD).

## BACKGROUND

The Highline Water District (HWD) approached the City of Tukwila (The City) to explore the possibility of franchise agreement. The HWD's main goal was to find a way to mitigate the City's permit process for efficient and time-saving operation and maintenance activities. It was sometimes difficult and time-consuming for the HWD to acquire necessary permits from the City, especially for routine maintenance activities. HWD requested a "Blanket Activities" for routine maintenance activities. The City staff viewed merits of this approach and entered into extensive discussions on this subject.

## DISCUSSION

The Highline Water District, (formerly King County Water District 75 prior to 1991), incorporated in 1946, and currently serves 620 residential and business accounts located within the City of Tukwila. The majority are residential. The City finds that the entire water system operated and maintained by the HWD is reasonably stable and reliable. We are in the process of establishing franchise agreements with external utilities that serve within our city limits. Thus far, we have successfully secured a franchise agreement with WD125 and staff have entered into negotiations with Valley View Sewer as well.

The City's staff found that establishing a franchise agreement which allows for "Blanket Activities" will be a win-win situation for both parties because HWD can carry out efficient operation and maintenance activities for the City's residents by acquiring time-saving permit process from the City, thus saving the City and HWD both time and costs. The City doesn't anticipate any negative impacts on the City's operation by allowing "Blanket Activities". "Blanket Activities" will be specifically determined every year.

"Blanket Activities" means:

- Routine maintenance activities which include simple service disconnects for customers, accessing existing vaults, maintaining hydrants/vaults, adjusting valves, vegetation management, replacing above-ground meters, installing water sampling stations, flushing activities, and lining pipes.
- Does not include cutting, removing, or disturbing the pavement surface. These activities are required to get permits from the City.

The City Attorney's office formulated this draft and completed it. The HWD also agreed upon the draft for execution.

## FINANCIAL IMPACT

The HWD's revenue of \$526,000 came from residents and businesses within the City of Tukwila in 2022. The annual franchise fee of 6%, will provide a revenue of \$31,560 to the City annually.

## RECOMMENDATION

The Council is being asked to approve the franchise agreement with the City of Tukwila and Highline Water District and consider this item at the April 10, 2023 Committee of the Whole meeting and subsequent Consent Agenda at the April 17, 2023 Regular Council Meeting.

**ATTACHMENTS:** Draft Franchise Agreement  
Tukwila Water District Map

**DRAFT**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING HIGHLINE WATER DISTRICT A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF TUKWILA, AND FIXING A TIME WHEN THE SAME SHALL BECOME EFFECTIVE.**

**WHEREAS**, Highline Water District, a Washington special purpose municipal corporation ("District"), owns water facilities ("Facilities") located in the City of Tukwila, a Washington non-charter municipal code city ("City"), and a portion of such Facilities are located within the City right-of-way as hereinafter defined; and

**WHEREAS**, RCW 57.08.005(3) authorizes the District to conduct water throughout the District and any city and town therein, and construct and lay facilities along and upon public highways, roads and streets within and without the District; and

**WHEREAS**, RCW 35A.47.040 authorizes the City to grant non-exclusive franchises for the use of the public streets above or below the surface of the ground by publicly owned and operated water facilities; and

**WHEREAS**, the City and the District have prepared this Franchise Agreement to provide for the operation of District Facilities within the City right-of-way;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:**

**Section 1. Definitions.** Where used in this franchise (the "Franchise") these terms have the following meanings:

A. "Blanket Activities" means work that does not include cutting, removing, or disturbing the pavement surface which includes but is not limited to the following activities: simple service disconnects for customers, accessing existing vaults, maintaining hydrants/vaults, raising/adjusting valves, vegetation management, replacing above-ground meter, installing water sampling stations, flushing activities, and lining pipes.

B. "City" means the City of Tukwila, a Washington municipal corporation, and its respective successors and assigns.

C. "District" means the Highline Water District, a Washington municipal corporation, and its respective successors and assigns.

D. "Facility" or "Facilities" means tanks, reservoirs, water treatment facilities, meters, pipes, mains, services, valves, blow offs, vaults, fire suppression water facilities, risers, generators, electrical control panels, power meters, telephone connections, pressure reducing valves ("PRVs"), pump stations, meter stations, lines, and District-owned service lines located in the Franchise Area as defined below, and all other necessary or convenient facilities and appurtenances thereto for the purpose of operating a water utility system, whether the same be located over, on, or underground.

E. "Franchise Area" means every and all of the public roads, streets, avenues, alleys, highways and rights-of-way of the City as now or hereafter laid out, platted, dedicated or improved; and any and all public City roads, streets, avenues, alleys, highways, and other rights-of-way that may hereafter be laid out, platted, dedicated or improved in the District's service area, within the present corporate boundaries of the City (as depicted in Exhibit B, attached hereto, which is by this reference incorporated as if fully set forth herein), and as such corporate boundaries may be extended within District's service area by annexation or otherwise, but shall not include private roads, streets, avenues, alleys or private property. The Franchise Area shall not include or convey any right to the District to install facilities on, or to otherwise use, City owned or leased properties.

F. "Ordinance" means this Ordinance No. \_\_\_\_\_, which sets forth the terms and conditions of this Franchise.

G. "Party" or "Parties" means the City or the District individually, or collectively as addressed in this Franchise.

H. "Revenue" means income received by the District from the sale of metered water to direct retail customers whose properties receiving such service from the District's water system are located within the City. Revenue shall not include: late fees; shut-off and reconnect fees; delinquent service charge collection costs and expenses; surcharges; impact or mitigation fees; permit fees and costs; any type of connection charges, general facilities charges, or local facilities charges; local improvement district and utility local improvement district assessments and payments; grants; contributed assets (contributions in aid of construction); income to recover the cost of fire suppression facilities and to pay for the provision of fire suppression services; loans; income from legal settlements not related to water sales to District customers; income from telecommunication leases or licenses; income from real property or from real property sales; income from the sale of surplus equipment, tools, or vehicles; interest income; penalties; hydraulic modeling fees; water system extension agreement fees and charges; income from street lights; labor, equipment and materials charges; or any other fees and charges.

## **Section 2. Franchise.**

A. In addition to the authority granted by State law to the District to locate, operate, and maintain its Facilities in public roads and streets, the City does hereby grant to the District the non-exclusive right, privilege, authority and franchise to construct, install, lay, support, attach, maintain, repair, renew, replace, remove, enlarge, operate and use Facilities in, upon, over, under, along, through, and across the Franchise Area for purposes of its water utility functions as defined in Title 57 RCW.

B. Nothing contained in this ordinance is to be construed as granting permission to the District to go upon any other public place other than those types of public places specifically designated as the Franchise Area in this ordinance. Permission to go upon any other property owned or controlled by the City must be sought on a case-by-case basis from the City and may require lease or rental payments as a condition of such use.

C. In addition to the rights granted to the District to undertake and perform activities within the Franchise Area as provided herein, the District shall have the right to discharge District water supply to and into the City's storm water system while performing water system flushing and other District activities, provided any District water discharged to the City's storm water system must comply with all applicable federal and state water quality standards and the City's NPDES permit relating to the City's storm water system.

D. At all times during the term of this Franchise, the District shall fully comply with all applicable federal, state and local laws and regulations and required permits, including, but not limited to, RCW 39.04.180 for construction trench safety systems, chapter 19.122 RCW for utility damage prevention, the State Environmental Policy Act, the State of Washington Pollution Control Law, and the Federal Clean Water Act.

E. The terms, conditions, and provisions of Tukwila Municipal Code ("TMC") Title 11, as currently written, or hereafter modified, are incorporated herein by reference. In the event that a conflict exists between the terms of this Franchise and the terms of the TMC, the terms of this Franchise shall control.

F. The terms of this Franchise shall not impair or interfere with the District's rights under any easements that cover areas within any existing or future City rights-of-way. The District's easement rights shall remain in effect unless formally relinquished by the District or condemned by the City.

## **Section 3. Non-interference of Facilities.**

A. The District's Facilities shall be located, relocated, and maintained within the Franchise Area so as not to unreasonably interfere with the free and safe passage of pedestrian, bicycle, and vehicular traffic and ingress or egress to or from the abutting property and in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City of Tukwila. Nothing herein shall preclude the District from effecting temporary road closures as reasonably necessary during construction or maintenance of its Facilities provided the District receives prior City approval through an appropriate permit, which shall not be unreasonably withheld, and, provided further, the District shall have the right to effect temporary road closures in the

event of emergencies to maintain, repair and replace its Facilities without prior City approval but the District shall obtain City approval of such road closures as soon as reasonably possible.

B. Whenever it is necessary for the District, in the exercise of its rights under this Franchise, to make any excavation in the Franchise Area, the District shall, upon completion of such excavation, restore the surface of the Franchise Area to City standards, as nearly as reasonably possible to its condition prior to any such excavation, installation, construction, relocation, maintenance or repair and, except as provided under Section 4, shall do so, at no expense to the City; PROVIDED, HOWEVER, that no such work shall be done prior to the obtaining of a permit therefor issued by the City, which permit shall set forth conditions pertaining to the work to be done and specifications for the restoration of the Franchise Area.

C. If the City determines that the District has failed to restore the right-of-way in accordance with the conditions set forth in this Franchise, the City shall provide the District with written notice, which shall include 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 fifteen (15) days of that notice, or such longer period as may be specified in the notice, the City, or its authorized agent, may restore the right-of-way and the District shall, except as provided in Section 4, be responsible for all reasonable costs and expenses incurred by the City in restoring the right-of-way in accordance with this section. The rights granted to the City under this section shall be in addition to those otherwise provided by this Franchise.

D. The District shall, except as provided in Section 4, at no expense to the City, expeditiously repair all existing Facilities that it owns, operates and maintains within the Franchise Area, including any damage caused directly or indirectly by its Facilities. The District shall also coordinate and manage the repair of service lines in the Franchise Area connecting its system to users.

E. Survey monuments shall not be removed or destroyed without the District first obtaining the required Department of Natural Resources (DNR) permit in accordance with RCW 58.09.130 and WAC 332-120-030, and as such statute and regulation may be modified and amended. A Professional Land Surveyor (PLS) shall be responsible for perpetuating and documenting existing monuments in compliance with the Application Permit to Remove or Destroy a Survey Monument in accordance with WAC 332-120. Following approval by the Public Land Survey Office, copies of the approved permits shall be forwarded to the City. All survey monuments, which have been distributed or displaced by such work, shall be restored pursuant to all federal, state, and local standards and specifications. The District agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole expense.

#### **Section 4. Relocation of Facilities.**

A. Whenever the City causes the grading or widening of the Franchise Area or undertakes construction of City-owned utilities, storm drainage lines, lighting, signalization, sidewalk improvements, pedestrian and bicycle amenities, or other public street improvements (collectively, "Public Improvement Projects") and the Public Improvement Project requires relocation of the District's then-existing Facilities within such Franchise Area, the City shall:

1. Pursuant to RCW 35.21.905, or as amended, consult with the District in the predesign phase of any Public Improvement Project in order to coordinate the project's design with the District Facilities within such project's area; and

2. Provide the District, at least one hundred eighty (180) days prior to the advertisement for bid of construction of such project, written notice that a project is expected to require the relocation of District Facilities, together with reasonably accurate and specific plans and specifications for such grading, widening, or construction and a proposed new location within the Franchise Area for the District's Facilities. This period of time shall be extended to three hundred sixty (360) days prior notice if the Public Improvement Project exceeds Five Hundred Thousand Dollars (\$500,000); and

3. Coordinate and work diligently with the District to minimize conflicts between existing Facilities and the project improvements, where possible, and to avoid having the District relocate its Facilities, whenever possible. The District acknowledges and agrees that there are situations and circumstances where no other feasible alternatives are available and that relocation may be necessary.

B. After receipt of such notice and such plans and specifications, District shall relocate its Facilities within the Franchise Area to accommodate street and city improvement projects; provided, however, the District may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocations. Such written notice must be received by the City within ninety (90) days of receipt of the notice described in Section 4.A.2 above. Within a reasonable time, the City shall evaluate such alternatives and advise the District in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If requested by the City, the District shall submit such additional information as is reasonably necessary to assist the City in making such evaluation. The City shall give each alternative full and fair consideration. If the City reasonably determines that there is no other feasible alternative, the City shall provide the District with further written notice ("Secondary Notice") to that effect, and the District shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's public works project in accordance with Section 4.G. The City shall cooperate with the District to designate a substitute location for its Facilities within the Franchise Area. The City will establish a date by which Facilities will be relocated, which date will be not less than one hundred eighty (180) days after receipt of the Secondary Notice by the District as to the Facility to be relocated. The District must finish relocation of each such Facility by the date so established.

C. The cost of relocating such Facilities existing within the Franchise Area shall be paid as follows:

1. If the relocation occurs within ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the City shall pay fifty percent (50%) of the cost of such relocation and the District shall pay the remaining fifty percent (50%).

2. If the relocation occurs more than ten (10) years after the District or a third party on the District's behalf constructed such Facility, then the relocation shall be at the District's sole cost.

3. However, if the City requires the relocation of Major Facilities defined as water mains of twelve (12) inch diameter or greater, supply stations, pump stations, or vault structures ("Major Facilities" or "Major Facility") to accommodate a City project, where such facility cannot reasonably be supported, disconnected, relocated or removed, then the City shall pay fifty percent (50%) of the cost of the relocation of the Major Facility and the District shall pay the remaining fifty percent (50%) without limitation on the age of the facility; provided, the City and District agree to give full and fair consideration to any lower-cost alternatives to relocating the Major Facility meeting the minimum operational requirements of the Parties, and the City and the District shall each pay fifty percent (50%) of the lower-cost alternative.

4. For the purposes of this Section 4, the date of the Facility's acceptance by the District Board of Commissioners, or the date of final contract payment for the facility's installation (whichever occurs first), shall determine the age of the Facility.

5. Whenever any State or Federal Agency with legal authority within the Franchise Area requires the relocation of District Facilities, the relocation shall be at the District's sole cost. This provision does not limit the District's rights to seek reimbursement for the costs of such relocation from the State or Federal Agency requiring the relocation.

6. Subsections 4.C.1 and 4.C.3 of this Section 4 shall not apply to relocations of District Facilities required as part of a formal declaration of emergency as defined in RCW 39.04.280(3) by the City, which is ratified by resolution of the City Council. In such cases, relocation, if necessary, shall be at the District's sole cost.

D. Whenever the City is undertaking a road or City-owned utility project or improvement, the City will not use its authority to require the District to relocate water facilities (excluding water services and hydrants) for third party franchise utilities (private utilities) on City-initiated aerial-to-underground conversion projects. If conflicts between the aerial-to-underground joint-trench and the District Facilities cannot be resolved, and relocation of District Facilities is necessary, the District shall have the right as a pre-condition of such relocation to require payment to the District for any and all costs and expenses incurred by the District in the relocation of such District Facilities. On City-initiated projects requiring aerial-to-aerial relocation of third party franchise utilities (private utilities), the District shall relocate that portion of its Facilities which are in direct conflict with the new locations of the third party franchise utility facilities, such as utility poles, or participate in securing the necessary easements where no reasonable

alternative location for the third party franchise utility facilities exist within the then existing right-of-way.

E. For the purpose of this Section 4, a project or improvement is considered to be caused by the City (as described in Section 4.A above) if the project is City-initiated and is part of the City's annually adopted Capital Improvement Project (CIP) Program, and can include projects or improvements where a third party has made an in lieu payment for a portion of the City's capital improvement project, provided, the City is responsible for the majority of the cost of the project or improvement, which, if applicable, includes any grant funding received by the City from any federal, state or local agency. A project or improvement is not considered to be caused by the City if the project or improvement is constructed by the City on behalf of a third party, where the third party is responsible for the majority of the project or improvement cost and makes payment to the City in lieu of performing the project or improvement.

F. Whenever any person or entity, other than the City, requires the relocation of District Facilities to accommodate the work of such person or entity within the Franchise Area (excluding State and Federal agencies with legal authority within the Franchise Area), the City agrees not to use its authority to require the District to relocate the existing Facilities. The District shall have the right as a pre-condition of such relocation to require such person or entity to:

1. Make payment to District at a time and upon terms acceptable to the District for any and all costs and expense incurred by the District in the relocation of District Facilities; and

2. Protect, defend, indemnify and hold the District harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of District Facilities, to the extent such injury or damage is caused by the negligence or willful misconduct of the person or entity requesting the relocation of District Facilities or other negligence or willful misconduct of the agents, servants or employees of the person or entity requesting the relocation of District Facilities.

G. If a City project requires the relocation of then existing Facilities within the Franchise Area, the District shall have the right by interlocal agreement with the City to include the relocation of any Facilities as required by the City as part of the City's public works project. Such interlocal agreement shall include and provide for, but not be limited to, the following terms and conditions:

1. The inclusion of the District's work as part of the City's project; and

2. The District to provide plans and specifications of the District's work to the City in a timely manner for inclusion as a separate bid schedule in the City project, whether such District plans and specifications are prepared by the District at the District's expense, or the City prepares the plans and specifications for the District's work at the District's expense; and

3. The City bidding the project, including the District's work by separate bid schedule, and the District's approval of the contractor's bid for the District's work in the



separate bid schedule, or, alternatively, the District's rejection of the contractor's bid for the District work and the District's right to perform the District's work through a District contractor, provided that in so doing the City's project is not unreasonably delayed; and

4. The City's contractor to install both the City work and the District work, the City's obligation to pay the City's contractor for both the City work and the District work, and the District's obligation to reimburse the City for the cost of the District work performed by the City contractor; and

5. The District's obligation to reimburse the City for District project administration and inspection fees and costs based on a time and materials basis, provided the City and the District may negotiate a lump sum payment on a per project basis, or a percentage of the total District project construction cost, and provided the District shall not be required to pay for any City-issued permits related to the City work and the District work.

H. The Parties expressly agree that this Section 4 shall not survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

#### **Section 5. Right-of-Way Management.**

A. **Permit Requirements.** Whenever the District excavates in any right-of-way for the purpose of installation, construction, operation, maintenance, repair or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with this Franchise and the ordinances and regulations of the City requiring permits to operate in City right-of-way. Except for emergencies or as otherwise provided for in this Franchise and applicable City ordinance, no District excavation work shall occur within any City right-of-way without a permit. All work shall be done to the City's reasonable satisfaction.

B. **Blanket Permits.** The District may obtain a Blanket Activities Permit for Blanket Activities, as defined in Section 1, performed in the City's rights-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 monthly. Blanket Activities require submittal of typical traffic control measures consistent with the MUTCD. Permits for Blanket Activities shall be valid for no longer than twelve (12) months.

C. **Restoration after Construction.** The District shall, after any installation, construction, relocation, operation, maintenance or repair of Facilities within the Franchise Area, restore the right-of-way to City standards as nearly as reasonably possible to its condition prior to any such work. The District agrees to promptly complete all restoration work and to promptly repair any damage to the right-of-way caused by such work at its sole cost and expense. The District further agrees to repair or replace any defective restoration work performed by the District or on its behalf consistent with the City's Infrastructure Design and Construction Standards. If it is determined the District has failed to restore the right-of-way in accordance with this Franchise and other applicable City regulations or if the District's restoration work is subsequently determined to be defective, the City shall provide the District with written notice. Any notice issued by the City shall include a description of the actions the City believes necessary to restore the right-of-way or repair or replace the work. The Parties agree the District shall not be

required to pay the City any pavement mitigation fees or similar charges relating to cutting, removing or disturbing pavement within the right-of-way if the District's pavement cutting, removing, or disturbing is in connection with a Public Improvement Project.

D. **Bonding Requirement.** The District, as a public agency, shall not be required to comply with the City's standard bonding requirement for working in the City's rights-of-way.

E. **Emergency Work, Permit Waiver.** In the event of an emergency where any District Facilities located in the right-of-way are broken or damaged, or if the District's construction area for the District's Facilities is in a condition as to place health or safety of any person or property in imminent danger, the District shall immediately take any necessary emergency measures to repair, replace or remove its Facilities without first applying for and obtaining a permit as required by this Franchise; provided the District shall notify the City as soon as reasonably possible relative to such emergency activity and shall immediately obtain a permit for such activity if required by this Franchise or City ordinance.

F. **City Work Zones.** The District shall not be required to obtain a City right-of-way permit to undertake utility work when the District has included its work as part of a City public works project in accordance with Section 4.G.

G. **City Invoices.** The City shall invoice the District for all City fees and charges relating to the issuance of any City right-of-way permit to the District, including inspection fees and charges, on a monthly basis, and the City's final fees and charges within thirty (30) days of the completion of any District work in City right-of-way subject to a City permit, and the City's final acceptance of any District work.

H. **Contractors and Subcontractors.** The District's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the District. The District shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by the District and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

## **Section 6. Planning Coordination.**

A. The Parties agree to participate in the development of, and reasonable updates to, the other Party's planning documents as follows:

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

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

3. The District shall submit information related to the general location, proposed location, and capacity of all existing and proposed Facilities within the City as requested by the City within a reasonable time, not exceeding twenty (20) days from receipt of a written request for such information, provided that such information is in the District's possession, or can be reasonably developed from the information in the District's possession.

4. The City will provide information relevant to the District's operations within a reasonable period of written request to assist the District in the development or update of the District's Comprehensive Water System Plan(s), provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

B. The District and the City shall each assign a representative whose responsibility shall be to coordinate planning for capital improvement plan projects including those that involve undergrounding. At a minimum, such coordination shall include:

1. For the purpose of planning, the District and the City shall provide each other with a copy of their respective current adopted Capital Improvement Plan annually and upon request by the other Party.

2. By February 1st of each year, the District shall provide the City with a schedule of the District's planned capital improvements which may affect the rights-of-way for that year.

3. By February 1st of each year, the City shall provide the District with a schedule of City's planned capital improvements which may affect the rights-of-way for that year including but not limited to street overlays and repairs, storm drainage improvements and construction, and all other rights-of-way activities that could affect District capital improvements and infrastructure.

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

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

6. The City and the District agree to cooperate in the planning and implementation of emergency operations response procedures.

7. Without charge to either Party, both Parties agree to provide each other with as-built plans, maps and records in electronic format as available that show the location of their respective facilities within rights-of-way.

## **Section 7. Indemnification.**

A. To the extent permitted by law, the District shall indemnify, defend and hold the City, its agents, officers, officials (elected and appointed) employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or

negligent acts, failures and/or omissions of the District or its agents, officers, officials (elected and appointed) servants, employees, contractors, subcontractors or assigns in the construction, operation or maintenance of its Facilities or in exercising the rights granted to the District in this Franchise; excluding claims relating to known or classified hazardous substances (chemical or waste) which are covered in subsection E, below; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the sole negligence or willful misconduct of the City, its agents, officers, officials (elected and appointed), employees, volunteers or assigns. Inspection or acceptance by the City of any work performed by the District at the time of completion of construction shall not be grounds for avoidance by the District of any of its indemnification obligations.

B. The City shall indemnify, defend and hold the District, its agents, officers, officials (elected and appointed), employees, volunteers and assigns harmless from and against any and all third party claims, demands, liability, loss, cost, damage or expense of any nature whatsoever, including all costs and attorney's fees, made against them on account of injury, sickness, death or damage to persons or property which is caused by or arises out of, in whole or in part, the willful, tortious or negligent acts, failures and/or omissions of City or its agents, officers, officials (elected and appointed), employees, contractors, subcontractors or assigns in the City's performance, administration and operation of this Franchise; provided, however, such indemnification shall not extend to injury or damage to the extent caused by the negligence or willful misconduct of the District, its agents, officers, officials (elected and appointed), employees, volunteers or assigns.

C. In the event any claim or demand is presented to or filed with the District or the City arising out of or relating to the acts or omissions in whole or in part of the other Party, the indemnified Party shall promptly notify the other Party, and the notified Party shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand.

D. In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the City and the District, their officers, officials (elected and appointed), employees and agents, the District's liability hereunder shall be only to the extent of the District's negligence and the City's liability shall be only to the extent of the City's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Parties' waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification.

E. The District shall not introduce or use any known or classified hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall the District allow any of its agents, contractors, subcontractors or any person under its control to do the same. The District will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials (elected and appointed), employees, agents, and volunteers harmless from and against any and all claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the Franchise Area to the extent caused by the District's use, storage, or disposal of known or classified hazardous substances, whether or not

intentional, and the use, storage, or disposal of such substances by the District's agents, contractors, subcontractors, or other persons acting under the District's control, whether or not intentional.

F. Notwithstanding any other provisions of this Section 7, the District assumes the risk of damage to its Facilities located in the rights-of-way and upon City-owned property from activities conducted by the City, its officers, officials (elected and appointed), agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any sole negligence, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, officials (elected and appointed), or contractors. The District releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, officials (elected and appointed), or contractors.

G. The provisions of this Section 7 shall survive the expiration, revocation, or termination of this Franchise.

### **Section 8. Default.**

A. If the District fails to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon the District a written order to so comply within thirty (30) days from the date such order is received by the District. If the District is not in compliance with this Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to the District. The City may act without the thirty (30) day notice in case of an emergency and may charge the costs and expenses of such action to the District. The City may in addition, by ordinance adopted no sooner than five (5) days after notice of the City Council hearing (at which the District will have an opportunity to be heard) on the impending ordinance, declare an immediate forfeiture of this Franchise, provided, however, if any material failure to comply with this Franchise by the District cannot be corrected with due diligence within said thirty (30) day period, the District's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control, in which case the time within which the District may so comply shall be extended for such time as may be reasonably necessary and so long as the District commences promptly and diligently to effect such compliance, provided a good faith dispute does not exist concerning such compliance. All rights and remedies shall be in addition to and cumulative with any and all other rights and remedies available to either the City or the District. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise, at the same time or thereafter, any other right or remedy.

B. In addition to other remedies provided herein, if the District is not in compliance with requirements of this Franchise, and if a good faith dispute does not exist concerning such compliance, the City may place a moratorium on issuance of pending District right-of-way use permits until compliance is achieved.

**Section 9. Non-exclusive Franchise.** This Franchise is not and shall not be deemed to be an exclusive Franchise. This Franchise shall not in any manner prohibit

the City from granting other franchises over, upon, and along the Franchise Area which do not interfere with District's rights under this Franchise. This Franchise shall not prohibit or prevent the City from constructing, altering, maintaining, or using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof.

**Section 10. Jurisdiction.** This Franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which the City has an actual interest within the Franchise Area. It is not a warranty of title or of interest in City rights-of-way.

**Section 11. Franchise Term.** This Franchise shall have a term of fifteen (15) years from its Effective Date as defined in Section 37 herein, provided this Franchise shall be automatically extended for one additional five (5) year period unless either Party, at least one hundred eighty (180) days prior to the termination date of the Franchise provides written notice to the other Party of its intent to terminate the Franchise at the end of the then current Franchise term (collectively, the "Term").

**Section 12. Administrative Fee.** As compensation to the City for its costs of creating and administering this Franchise, the District shall pay to the City a one-time administrative fee ("Administrative Fee") of Two Thousand Five Hundred Dollars (\$2,500.00). The Administrative Fee shall be paid by the District to the City within thirty (30) days of the Effective Date of the Franchise.

**Section 13. Non-assumption.** In consideration of the District's payment of the Franchise Fee and Administrative Fee to the City as provided in Sections 12 and 14 herein, and the District's acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise and to forbear its statutory authority pursuant to chapter 35.13A RCW or other statutes to attempt to assume jurisdiction over all or part of the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise. The City's agreement and forbearance includes not facilitating or cooperating with any other city or town to attempt, pursuant to RCW 35.13A.060 or as such statute may be amended or superseded, to assume jurisdiction over the District or any District responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the Term of this Franchise; provided, that this provision shall not be construed to prohibit or prevent the City from responding to requests for public records related to such attempts by other cities or towns .

**Section 14. Franchise Fee.**

A. In consideration of the rights granted to the District under this Franchise, the District shall pay to the City a franchise fee ("Franchise Fee") beginning the first day of the first month occurring at least thirty (30) days after the Effective Date of this Franchise, subject to the provisions of Section 14.B herein, as follows:

Six percent (6%) of the District's Revenue derived from the provision of retail water service billed to its customers after the date established in Section 14(A) and thereafter until the termination of this Franchise, including any extension of the term of this Franchise. In the event the City decides to adopt a utility, business and occupation tax, public utility tax, privilege tax, excise tax or any

other similar tax (collectively “utility tax”) upon the District based on the District’s revenues, gross receipts, or gross income during the term of this Franchise, then the District’s Franchise Fee payments under this Franchise shall be credited against any such utility tax the City may impose.

B. The Franchise Fee shall be paid to the City in bi-monthly installments due and payable within thirty (30) days following the end of the bi-monthly period.

C. Should the District be prevented by judicial or legislative action from paying any or all of the Franchise Fee, the District shall be excused from paying that portion of the Franchise Fee. Should a court of competent jurisdiction declare the Franchise Fee invalid, in whole or in part, then the District's obligation to pay the 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, provided, the Parties agree to amend this Franchise to require the District submit payment of a six percent (6%) utility tax.

D. In consideration of the District’s payment of a Franchise Fee and Administrative Fee to the City as provided herein, and the District’s acceptance of the other terms and conditions of this Franchise, the City agrees not to exercise, and to forbear, any legal authority it may have to impose compensation or a rental fee (collectively, “Rental Fee”) upon the District for the District’s use of the Franchise Area as provided for in this Franchise.

E. The District shall have the right to recover the Franchise Fee from the District’s ratepayers residing within the City and may identify the Franchise Fee as a separate billing item on utility customer billings.

F. The District agrees while this Franchise is in effect that it will not pursue or support any legal challenge to the Franchise Fee set forth herein.

G. If the District determines to bill the City for fire suppression water facilities as defined in RCW 70A.145.020(1) during the term of this Franchise, the City shall have the right, at its sole discretion, to terminate this Franchise, including the right to receive the Franchise Fee Payments from the District.

H. If the District fails to pay any fee required under this Franchise within ninety (90) days after the due date thereof, there shall be added to such fee a penalty of 1.5 percent (1.5%) of the amount of such fee.

### **Section 15. Compliance with Codes and Regulations.**

A. The rights, privileges and authority herein granted are subject to and governed by this ordinance and all other applicable City ordinances and codes, including the City’s Road Standards, as they now exist or may hereafter be amended, provided the City shall not unreasonably affect or modify any portion of this Franchise without the District’s written approval. Nothing in this ordinance limits the City’s lawful power to exercise its police power to protect the safety and welfare of the general public or deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City rights-of-way covered by this Franchise. Any location,

relocation, erection or excavation by District shall be performed by District in accordance with applicable federal, state and City rules and regulations, including the City public works policies and pre-approved plans, and any required permits, licenses or regulatory fees, and applicable safety standards then in effect or any Memorandum of Understanding with District.

B. If any territory served by District is annexed to the City after the Effective Date of this Franchise, this Franchise shall be deemed to be the new agreement required to be granted to a franchisee in annexed territory by RCW 35A.14.900 for whatever period of time is then required under that statute or the remaining time left under this Franchise for the Franchise Area, whichever is longer. Such territory shall then be governed by the terms and conditions contained herein upon the effective date of such annexation. The first Franchise Fee for any annexed area shall be calculated pro rata from the effective date of the annexation to the end of the next bi-monthly billing period and paid to the City at the same time as the fee for the Franchise Area is paid for that bi-monthly billing period.

C. The District shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all Facilities, equipment, and connections in, over, under, and upon the rights of way, wherever situated or located, shall at all times be kept and maintained in a safe condition. The District shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Upon reasonable notice to the District, the City reserves the general right to inspect the Facilities covered by this Franchise to evaluate if they are constructed and maintained in a safe condition.

D. If an unsafe condition or a violation of Section 15.C is found to exist, and becomes known to the City, the City agrees to give the District timely written notice of such condition and afford the District a reasonable opportunity to repair the same. If the District fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by the District and reimbursed to the City.

E. The District shall be solely and completely responsible to perform all work related to this Franchise in compliance with all applicable federal, state, county and City statutes, rules, regulations, ordinances, orders and codes as presently constituted or as may be subsequently amended. The District's attention is directed to the requirements of the Washington Industrial Safety and Health Act, Chapter 49.17 RCW. The District shall be solely and completely responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any works therein. The services of the City or City's consultant personnel in conducting construction review of the District's work relating to the Franchise is not intended to include review of the adequacy of the District's work methods, equipment, scaffolding, or trenching, or safety measures in, on or near such Franchise



Area or job site. The District shall provide reasonable and appropriate access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinances, rules, regulations, and the Franchise.

F. Additional safety standards required include the following:

1. All installations of Facilities shall be installed in accordance with industry-standard engineering practices.

2. Any opening or obstruction in the rights-of-way or other public places made by the District in the course of its operations shall be protected by the District at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

G. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

1. Be in writing;
2. Be given to the person doing the work or posted on the work site;
3. Be sent to the District by overnight delivery or personally delivered to the District;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

**Section 16. Location of Facilities and Equipment.** With the exception of components that are traditionally installed above ground such as fire hydrants, blow offs, vault lids, risers, pump stations, generators, electrical control panels, power meters, telephone connections, automated reading equipment and appurtenances, and utility markers, all Facilities and equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such Facilities may be installed above ground if so authorized by the City, which authorization shall not be unreasonably withheld, conditioned or delayed, consistent with the provisions of the City's land use and zoning code and applicable development pre-approved plans.

**Section 17. Record of Installations and Service.**

A. With respect to excavations by the District and the City within the Franchise Area, the District and the City shall each comply with their respective obligations pursuant to chapter 19.122 RCW, and as such statute may be modified and amended, and any other applicable state law. Further, upon request from a third party or the City's contractor, the District shall locate its Facilities consistent with the requirements of chapter 19.122 RCW.

B. Upon written request of the City, the District shall provide the City with the most recent update available of any plan of potential improvements to its Facilities within the

Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

C. Upon written request of District, the City shall provide District with the most recent update available of any plan of potential improvements to its Facilities located within the Franchise Area; provided, however, any such plan so submitted shall only be for informational purposes within the Franchise Area, nor shall such plan be construed as a proposal to undertake any specific improvements within the Franchise Area.

D. As-built drawings of the location of any Facilities placed by the District in the Franchise Area, shall be made available to the City within twenty (20) working days of request.

### **Section 18. Shared Use of Excavations.**

A. The District and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area informed of its intent to undertake such construction work. The District and the City shall further exercise best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

B. If at any time, or from time to time, either the District, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the Party causing such excavation to be made shall afford the others, upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

1. No statutes, laws, regulations, ordinances or District safety policies prohibit or restrict the proximity of other utilities or facilities to District's Facilities installed or to be installed within the area to be excavated;

2. Such joint use shall not unreasonably delay the work of the Party causing the excavation to be made;

3. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties. The Parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

C. The City reserves the right to not allow open trenching within any City street within five (5) years following a street overlay or improvement project; however, the District may open a trench provided it grinds and overlays the excavation area in accordance with the City written and adopted street overlay policy. In addition to the requirements of Section 6.B.3, the City shall provide the District with written notice of not less than one hundred eighty (180) days prior to the commencement of any street overlay or improvement project.

## **Section 19. Insurance.**

The District shall procure and maintain for the duration of the Franchise and as long as District has Facilities in the rights-of-way, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Franchise and use of the rights-of-way.

A. **No Limitation.** The District's maintenance of insurance as required by the Franchise shall not be construed to limit the liability of the District to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

B. **Minimum Scope of Insurance.** The District shall obtain insurance of the types and coverage described below:

1. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, stop gap liability, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be named as an additional insured under the District's Commercial General Liability insurance policy with respect to this Franchise using ISO endorsement CG 20 12 05 09 or CG 20 26 07 04, or substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

3. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise covering losses caused by pollution conditions that arise from the operations of the District. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

5. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the District's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the District's Excess or Umbrella Liability insurance policy.

C. **Minimum Amounts of Insurance.** The District shall maintain the following insurance limits:

1. Commercial General Liability insurance shall be written with limits no less than \$5,000,000 each occurrence, \$5,000,000 general aggregate.

2. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$5,000,000 per accident.

3. Contractors Pollution Liability insurance shall be written in an amount of at least \$1,000,000 per loss, with an annual aggregate of at least \$1,000,000.

4. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through District's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

**D. Other Insurance Provisions.** The District's Commercial General Liability, Automobile Liability, Excess or Umbrella Liability, Contractors Pollution Liability insurance policy or policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect to the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the District's insurance and shall not contribute with it.

**E. Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A: VII or a recognized risk management pool that complies with the standards adopted by the Washington State Risk Manager.

**F. Verification of Coverage.** The District shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement if available, evidencing the insurance requirements of the Franchise. Upon request by the City, the District shall furnish certified copies of all required insurance policies, including endorsements, required in this Franchise and evidence of all contractors' coverage.

**G. Contractors.** The District shall cause each and every contractor to provide insurance coverage that complies with all applicable requirements of the District-provided insurance as set forth herein, except the District shall have sole responsibility for determining the limits of coverage required to be obtained by contractors.

**H. Notice of Cancellation.** The District shall provide the City with written notice of any policy cancellation within two business days of their receipt of such notice.

**I. Failure to Maintain Insurance.** Failure on the part of the District to maintain the insurance as required shall constitute a material breach of Franchise, upon which the City may, after giving five business days' notice to the District to correct the breach, terminate the Franchise or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

**J. City Full Availability of District Limits.** If the District maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the District, irrespective of whether such limits maintained by the District are greater than those required by this Franchise or whether any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the District.

**K. District – Self-Insurance.** The District may fulfill the insurance obligations contained herein by maintaining membership in a joint self-insurance program authorized by chapter 48.62 RCW. In this regard, the City understands that as a member of such a program the District is not able to name the City as an “additional insured” under the liability coverage provided by the joint self-insurance program. If the District is self-insured or becomes self-insured during the term of the Franchise, the District or its affiliated parent entity shall comply with the following: (i) provide the City, upon request, a copy of the District’s or its parent company’s most recent audited financial statements, if such financial statements are not otherwise publicly available; (ii) the District or its parent company is responsible for all payments within the self-insured retention; and (iii) the District assumes all defense and indemnity obligations as outlined in Section 7.

### **Section 20. Abandonment and/or Removal of District Facilities.**

The Parties agree that the standard practice will be to abandon underground District Facilities in-place whenever practical, subject to the following conditions:

1. The District shall continue to own and be responsible for any such Facilities abandoned within the Franchise Area.

2. The City shall have the right to require the District to remove any Facilities abandoned within the Franchise Area if the City reasonably determines the removal of the abandoned Facility is required to facilitate the construction or installation of a City project within the Franchise Area and the City determines there is no other feasible alternative to the removal of the Facility. The City will make reasonable efforts to avoid conflicts with abandoned Facilities whenever possible, however, whenever a conflict cannot be resolved except by removal from the right-of-way of previously abandoned District Facilities, then the District shall, at the District’s expense, remove such abandoned Facilities by its own forces, by contract or by participating in the City’s public works project. When necessary, removal of abandoned Facilities shall be limited to the area of direct conflict. In removing such material, the District shall conform to all local, state, and federal regulations applicable to asbestos abatement, when applicable.

3. If the District becomes aware that removal of any abandoned Facilities within the Franchise Area is required to eliminate or prevent an emergency or hazardous condition that endangers the property, life, health or safety of any person or entity, the District shall promptly, at no cost to the City, remove such decommissioned Facilities.

4. Within one hundred and eighty days (180) of the District’s permanent cessation of use of its Facilities as determined by the District, or any portion thereof, the District shall provide the City with record drawings showing the location of the Facilities to be abandoned.

5. District Facilities that are abandoned in-place shall be abandoned pursuant to City standards, to the satisfaction of the City Public Works Director or designee.

6. The Parties expressly agree that this section shall survive the expiration, revocation or termination of this Franchise, unless modified by separate agreement.

**Section 21. Vacation of Franchise Area.** If the City processes an application and/or determines to vacate any right-of-way which is part of the Franchise Area, the City

may, after giving thirty (30) days written notice ("Vacation Notice") to the District, terminate this Franchise with respect to any City rights-of-way so vacated. However, should the District notify the City that an easement is required for existing Facilities within the proposed vacation area, the City shall require the applicant for a vacation to prepare and provide to the District the necessary easement documentation, at no cost to the District. The City shall withhold approval of such vacation until the District has notified the City that the necessary easement documentation has been secured, or provisions otherwise made acceptable to the District to maintain the viability and use of existing Facilities, provided that the District provides such notice to the City within one hundred eighty (180) days following the City's Vacation Notice to the District.

**Section 22. Assignment.** All of the provisions, conditions, and requirements herein contained shall be binding upon the District, and no right, privilege, license or authorization granted to the District hereunder may be assigned or otherwise transferred without the prior written authorization and approval of the City, which the City may not unreasonably withhold, condition or delay, provided that a merger or consolidation of District with or into another Title 57 water-sewer district shall not be considered an assignment for the purposes of this provision and shall not be subject to the City's approval.

**Section 23. Reservation of Rights.** The City reserves the right, upon thirty (30) days written notice to the District, to amend or modify the provisions or conditions of this Franchise to conform to any state, county, or federal statute, rule, regulation, or ordinance adopted pursuant to the City's legitimate police power to protect the safety and welfare of the general public; provided that the City shall not unreasonably affect or modify any portion of this Franchise without the District's written approval. Unless otherwise mandated by state or federal law, if any term or condition of this Franchise and any term or condition of any City code, ordinance, resolution, or regulation are in conflict, the terms of this Franchise shall control.

**Section 24. Notice.** Unless applicable law requires a different method of giving notice, any and all notices, demands or other communications required or desired to be given hereunder by any Party (collectively, "notices") shall be in writing and shall be validly given or made to another Party if delivered either personally or by Federal Express or other overnight delivery service of recognized standing, or if deposited in the United States Mail, certified, registered, or express mail with postage prepaid, or if sent by e-mail with electronic confirmation. If such notice is personally delivered, it shall be conclusively deemed given at the time of such delivery. If such notice is delivered by Federal Express or other overnight delivery service of recognized standing, it shall be deemed given one (1) business day after the deposit thereof with such delivery service. If such notice is mailed as provided herein, such shall be deemed given three (3) business days after the deposit thereof in the United States Mail. If such notice is sent by email, it shall be deemed given at the time of the sender's receipt of electronic confirmation. Each such

notice shall be deemed given only if properly addressed to the Party to whom such notice is to be given as follows:

To City: City Clerk  
City of Tukwila  
6200 Southcenter Boulevard  
Tukwila, WA 98188

To District: General Manager  
Highline Water District  
23828 30<sup>th</sup> Ave S  
Kent, WA 98032

Any Party may change its contact information and address for the purpose of receiving notices as herein provided by a written notice given in the manner required by this Section to the other Party.

**Section 25. Severability.** If any term, provision, condition or portion of this Franchise shall be held to be invalid by a court of competent jurisdiction, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

**Section 26. Non-Waiver.** The failure of either Party to enforce any breach or violation by the other Party or 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.

**Section 27. 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 may submit the dispute to mediation or other non-binding alternate dispute resolution process agreed to by the Parties. Unless otherwise agreed upon between the Parties or determined herein, the cost of that process shall be shared equally by the Parties.

**Section 28. Attorney Fees.** All fees and expenses for mediation or arbitration shall be borne by the parties equally. However, each party shall bear the expense of its own counsel, experts, witnesses, and preparation and presentation of evidence. In any claim or lawsuit for damages arising from the parties' performance of this Franchise, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit either Party's right to indemnification under Section 7 of this Franchise.

**Section 29. Governing Law/Venue.** This Franchise shall be governed by the laws of the State of Washington. Any suit to enforce or relating to this Franchise shall only be filed in King County Superior Court, King County, Washington.

**Section 30. 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.

**Section 31. Amendment.**

A. This Franchise may be amended only by written instrument, signed by both Parties, which specifically states that it is an amendment to this Franchise, and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, Section 7, "Indemnification," above) shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise amended by any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by the District of any and all rights, benefits, privileges, obligations, or duties in and under this Franchise, unless such permit, approval, license, agreement or document specifically:

1. References this Franchise; and
2. States that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

B. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document that does not comply with Subsections A.1 and A.2 referenced above, the provisions of this Franchise shall control.

**Section 32. Directions to City Clerk.** The City Clerk is hereby authorized and directed to forward certified copies of this ordinance to the District as set forth in this ordinance. The District shall have thirty (30) days from the receipt of the certified copy of this ordinance to accept in writing the terms of the Franchise granted to the District by this ordinance and file with the City Clerk the Statement of Acceptance, attached hereto as Exhibit A and incorporated by reference.

**Section 33. No Third-Party Beneficiaries.** There are no third-party beneficiaries of this Franchise.

**Section 34. Survival.** All of the provisions, conditions, and requirements of Section 7, Section 15, Section 18, Section 20, and Section 27 of this Franchise shall, in addition to any and all other obligation and liabilities the District may have to the City at common law, by statute, or by contract, survive this Franchise, and any renewals or extensions, to the extent provided for in those sections.

**Section 35. District Acceptance of Franchise.** The District shall have no rights under this Franchise nor shall the District be bound by the terms and conditions of this Franchise unless the District shall, within thirty (30) days after the effective date of the ordinance, file with the City its written acceptance of this Franchise.



**Section 36. Effective Date of Ordinance.** This ordinance shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

**Section 37. Effective Date of Franchise.** The terms and conditions of this ordinance shall not be binding on the City and the District unless the District Board of Commissioners within thirty (30) days of the effective date of this ordinance adopts a resolution accepting this Franchise, and the date of the adoption of such resolution by the District Board of Commissioners shall be the effective date ("Effective Date") of the Franchise.

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

\_\_\_\_\_  
Allan Ekberg, Mayor

APPROVED AS TO FORM BY:

Filed with the City Clerk: \_\_\_\_\_

Passed by the City Council: \_\_\_\_\_

Published: \_\_\_\_\_

Effective Date: \_\_\_\_\_

Ordinance Number: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney

Attachment: Exhibit A, Acceptance of Franchise form  
Exhibit B, Depiction of City Corporate Boundaries

**EXHIBIT A**

**ACCEPTANCE OF FRANCHISE**

The undersigned authorized representative of Highline Water District hereby declares on behalf of Highline Water District the acceptance of the nonexclusive franchise to Highline Water District approved by the Tukwila City Council on \_\_\_\_\_, 2023, by the adoption of Tukwila City Ordinance No. \_\_\_\_\_.

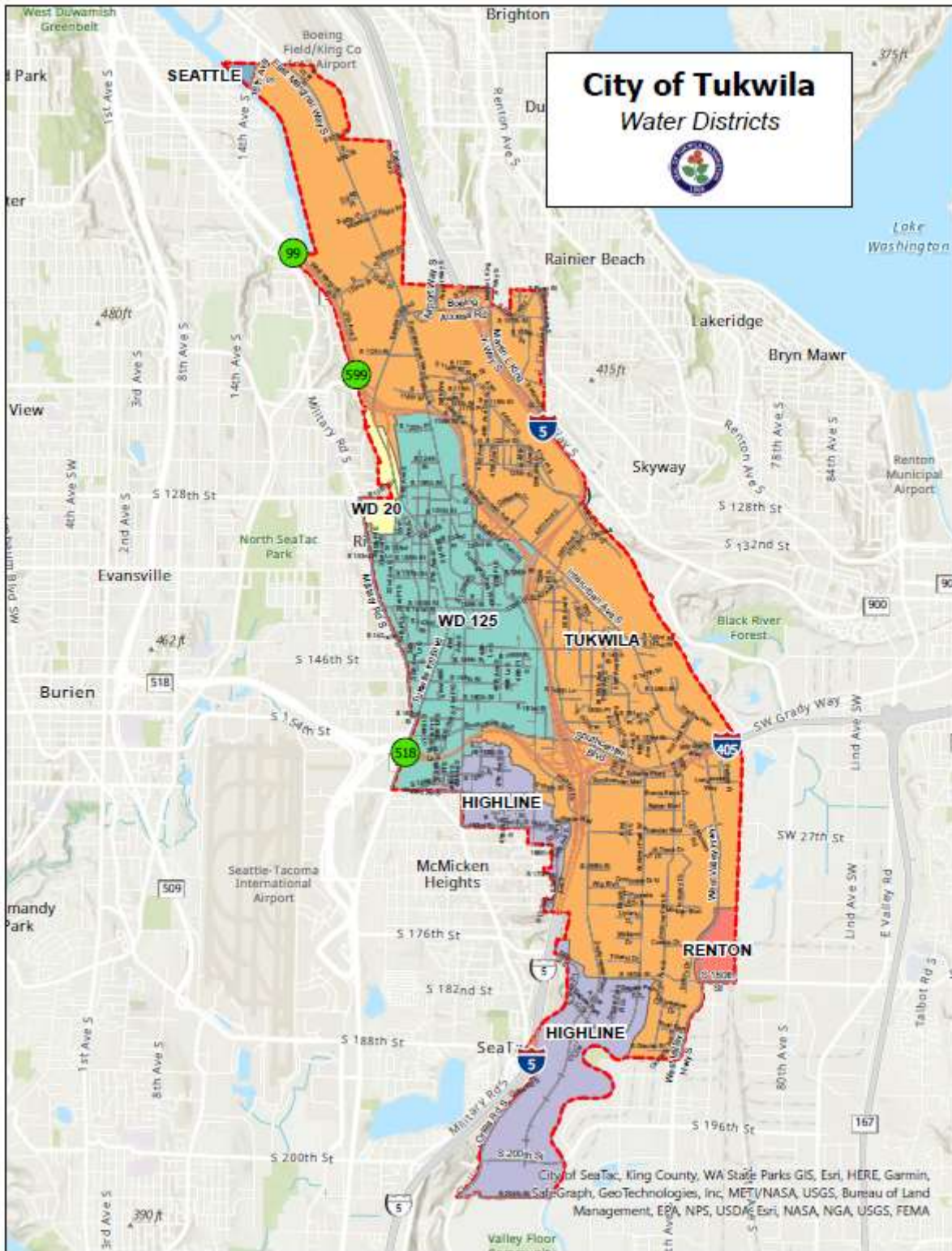
DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

Highline Water District

By: \_\_\_\_\_  
Its: \_\_\_\_\_

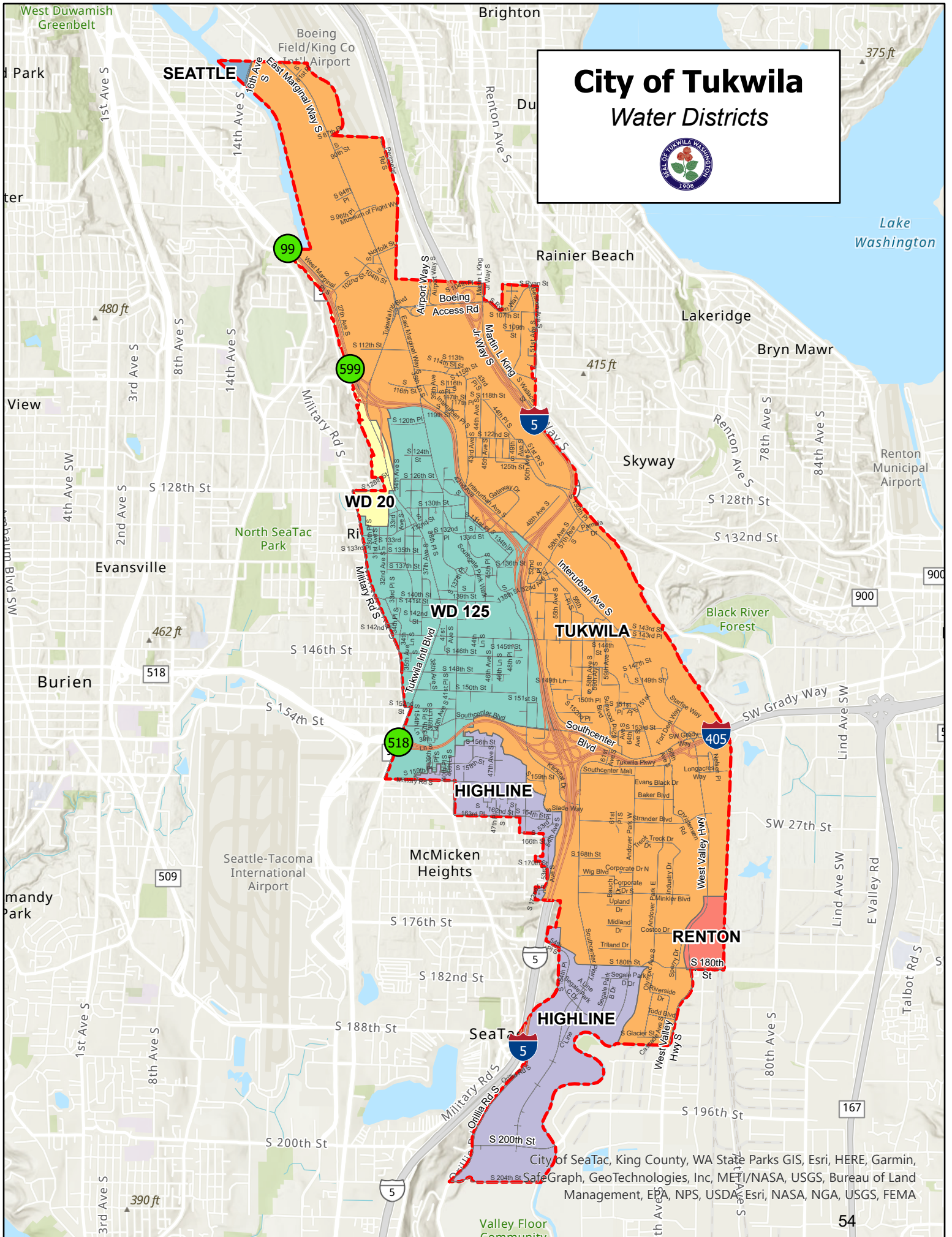
# EXHIBIT B

## DEPICTION OF CITY CORPORATE BOUNDARIES





# City of Tukwila Water Districts



City of SeaTac, King County, WA State Parks GIS, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, Bureau of Land Management, EPA, NPS, USDA, Esri, NASA, NGA, USGS, FEMA