SHORELINE

**City of Shoreline**
17544 Midvale Avenue North
Shoreline, Washington 98133-4921
(206) 546-1700 ◆ FAX (206) 546-2200

Clerk's Receiving
No. 1072
Date 12/16/99
R.A. Rose

December 3, 1999

Diana Gale
Managing Director, Seattle Public Utilities
C/O Raj Manjas, Acting Director
710 Second Avenue, 10th Floor
Seattle, WA 98104

Re: Shoreline Franchise Agreement for Water and Wastewater Divisions

Dear Ms. Gale:

Attached are certified copies of Ordinance Nos. 214 and 215 passed by our Council on November 29, 1999, granting Seattle Public Utilities Water and Wastewater Divisions, respectively, franchises to operate within Shoreline. We appreciate the assistance and diligence of your staff in working with us to reach agreement on these ordinances within a very tight timeframe.

It is my understanding that the terms and conditions included in Section 9.5 of the agreement are important to the City of Seattle. I wish to confirm that they are included in the franchise. This section, along with Section 4.4 and other important provisions of these agreements, were shared with our Council.

Please obtain the appropriate authorized signature(s) at the bottom of this letter acknowledging acceptance of these franchises in accordance with Section 18 thereof and return this letter to me within 60 days. We look forward to continuing to work with Seattle Public Utilities on issues of mutual concern and to provide high quality water related services within Shoreline.

Sincerely,

Robert E. Deis
City Manager

Enc.

Raj Manhas 12/9/99
Signed Date

Please print name: Raj Manhas
Acting Director
Seattle Public Utilities Water Division

Raj Manhas 12/9/99
Signed Date

Please print name: Raj Manhas
Acting Director
Seattle Public Utilities Wastewater Division

# ORDINANCE NO. 214

## AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING SEATTLE PUBLIC UTILITIES WATER DIVISION A NON-EXCLUSIVE FRANCHISE TO 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 transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service;" and

WHEREAS, the Council finds that it is in the bests interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Seattle Public Utilities Water Division for the operation of a water system within the City right-of-way;

**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 head of the Planning and Development Services department of the City, or the head of the Public Works department of the City, or the designee of either of these individuals.

   1.4. Facilities: All pipes, access ways, pump stations, storage facilities, equipment, and supporting structures, located in the City's right-of-way, utilized by the Grantee in the operation of activities authorized by this Ordinance. The abandonment by Grantee of any facilities as defined herein shall not act to remove the same from this definition.

   1.5. Grantee: As incorporated or used herein shall refer to Seattle Public Utilities Water Division (SPU).

1.6. Permittee: A person who has been granted a permit by the Permitting Authority, and SPU operating under Section 6.6 Blanket Permit of this agreement.

1.7. Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.8. Person: An entity or natural person.

1.9. Revenue: This term as used herein shall refer to all revenue collected from SPU's customers with billing addresses that are within the corporate boundaries of the City.

1.10. 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, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

1.11. SPU: Seattle Public Utilities Water Division, a water utility owned and operated by 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 water system, in, under, on, across, over, through, along or below the public right-of-way located in the City of Shoreline, as approved under City permits issued by the Permitting Authority pursuant to this franchise and City ordinances.

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

3. **Franchise Term.** The term of the franchise granted hereunder shall be for the period commencing upon the effective date of this ordinance through December 31, 2001. This franchise will automatically renew for an additional two-year period unless its termination is confirmed in writing by the City at least sixty days prior to December 31, 2001, or it is replaced by a substitute franchise ordinance prior to that date.

4. **Franchise Fee.** In consideration of the right granted to SPU to occupy City rights-of-way for the purpose of operating a water utility within the City and as partial compensation for the City's costs to construct, maintain, repair, develop, and manage the right-of-way, SPU agrees:

   4.1. To collect and distribute to the City a franchise fee equal to 6% of Revenues.

      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 the 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 & 4.3 hereof.

5. **City Ordinances and Regulations.**

   5.1. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any facilities of SPU located within the City right-of-way. SPU shall promptly conform with all such regulations, unless compliance would cause SPU to violate other requirements of law.

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

   6.1. Excavation.

      6.1.1. During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the right-of-way so as to interfere as little as possible with the safe and unobstructed passage of traffic and the unobstructed use of adjoining property. SPU shall at all times post and

maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or state law, including RCW 39.04.180, for the construction of trench safety systems.

6.1.2. 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. In no case shall any such work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, SPU shall not unnecessarily obstruct the passage or use of the right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accordance with Section 6.10 of this Ordinance.

6.2. Abandonment of SPU's Facilities. No facilities laid, installed, constructed, or maintained in the right-of-way by SPU may be abandoned by SPU without the prior written consent of the Director of a removal plan. All necessary permits must be obtained prior to such work.

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. 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. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, the City, or its authorized agent, may restore the right-of-way. SPU is responsible for all 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 Paragraph shall be in addition to those otherwise provided by this franchise.

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 facilities located in the right-of-way are broken or damaged, or if SPU's construction area for their facilities is in such a condition as to place the health or safety of any person or property in imminent danger, SPU shall immediately take any necessary emergency measures to repair 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 required permits the next business day following the emergency work or as soon as practical given the nature and duration of the emergency.

6.6. Blanket Permit. The terms "Minor Activities" and "Blanket Activities" shall be defined in a specifically negotiated Blanket Permit Definitions, a copy of which has been filed with the City Clerk and identified by Clerk's Receiving Number 1042. Permittee shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this Section. All other activities will require a separate permit in accordance with City ordinances.

6.6.1. The Permittee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.

6.6.2. The Permittee shall provide a monthly list of permit construction activity by the 10th of the following month listing the previous month's activity authorized under this Section.

6.6.3. The Permittee shall provide payment of inspection fees for the monthly activity on a monthly basis. No statement will be provided by the City.

6.6.4. For each separate use of the right-of-way under this Section, and prior to commencing any work on the right-of-way under this Section, the Permittee shall:

6.6.4.1. Fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the right-of-way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum the following information: franchise ordinance number, street address nearest to the proposed work site; parcel number and description of work to be performed.

6.6.4.2. Fax or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority within twenty-four (24) hours after completing work.

6.6.5. In the event the Permittee fails to comply with any of the conditions set forth in this Section, the City is authorized to immediately terminate the Permittee's authority to operate under this Section by providing Permittee written notice of such termination and the basis therefore.

6.6.6. The City reserves the right to alter the terms and conditions of Subsection 6.6. and of Blanket Permit Definitions by providing thirty (30) days written notice to the Permittee. Any change made pursuant to this Paragraph, including any change in the inspection fee stated in Blanket Permit Definitions, shall thereafter apply to all subsequent work performed pursuant to this Section. Further, the City may terminate the Permittee's authority to work in the City's right-of-way under the terms of this Section at any time without cause by providing thirty (30) days written notice to the Permittee. Notwithstanding any termination, the Permittee will not be relieved of any liability to the City.

6.7. Safety.

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

6.7.2. All of Grantee's facilities in the right-of-way shall be constructed and 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 the Grantee cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining right-of-way, public or private property, the Director may direct the Grantee, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

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

6.9. Relocation of System Facilities.

6.9.1. SPU agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any right-of-way its facilities without cost to the City, when so required by the City, provided that SPU shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way and upon approval by the City, any facilities required to be temporarily disconnected or removed.

6.9.2. 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.

6.9.3. If the City determines that a public project necessitates the relocation of SPU's existing facilities, the City shall:

6.9.3.1. As soon as possible, but not less than sixty (60) days prior to the commencement of such project, provide SPU with written notice requiring such relocation; and

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

6.9.3.3. After receipt of such notice and such plans and specifications, SPU shall complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.

6.9.4. SPU may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise 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 the City, SPU shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by SPU full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, SPU shall relocate its facilities as provided in this Section.

6.9.5. The provisions of 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 other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay or increase the cost of a planned City construction project.

6.10. SPU's Maps and Records. As a condition of this franchise, and without charge to the City, SPU agrees to provide the City 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 and, upon request, in hard copy plan form used by 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 City.

7. **Planning Coordination.**

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

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).

7.1.2. 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 it continued relevance at reasonable intervals.

7.1.3. 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.

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

7.2. System Development Information. SPU will assign a representative whose responsibility shall be to coordinate with the City on 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 Manager or his designee with a schedule of its planned capital improvements, which may affect the right of way for that year;

7.2.2. SPU shall meet with the City, other franchisees and users of the right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and

7.2.3. All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or his designee, 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.

8. **Service Quality.** SPU shall exercise the same degree of technical, professional and administrative quality in serving its customers in the City that is provided to all other customers 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 provision of water services.

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 or liability to any person, including claims by SPU's own employees to which SPU might otherwise be immune under Title 51 RCW, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of SPU, its agents, servants, officers or employees in performing activities authorized by this franchise, including those claims arising against the City by virtue of SPU's exercise of the rights granted herein. This covenant of indemnification shall include, but not be limited by this reference, claims against the City arising as a result of the negligent acts or omissions of SPU, its agents, servants, officers or employees. 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.

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. This waiver has been mutually negotiated by the parties.

9.5. The City hereby releases and agrees to indemnify, defend and hold harmless the 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 hereof. This indemnification is contingent upon SPU's compliance with Section 4.4 hereof.

10. **Enforcement.**

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

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

10.2.1. 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;

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

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

10.2.4. Failure to provide the services specified in the franchise;

10.2.5. Misrepresentation of material fact during negotiations relating to this franchise or the implementation thereof;

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

10.2.7. An uncured failure to pay fees associated with this franchise

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

10.4. Except in the case of termination pursuant to Paragraph 10.2.5. of this Section, prior to any termination or revocation, the City, or the Grantee, 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 the Grantee 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, which declaration must be in writing. Within 20 days after receipt of a written declaration of default, the party that is alleged to be in default may request, in writing, a hearing before a "hearing examiner" as provided by the City's development regulations. The hearing examiner's decision may be appealed to any court of competent jurisdiction.

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

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

10.7. Any violation existing for a period greater then 30 days may be remedied by the City at the Grantee's expense.

11. **Survival.** All of the provisions, conditions and requirements of Sections 6.1 Excavation, 6.2 Abandonment Of SPU's Facilities, 6.3 Restoration After Construction, 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.

12. **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.

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

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

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 Managing Director | Director of Public Works |
| Dexter Horton Building, 10th Floor | City of Shoreline |
| 710 Second Avenue | 17544 Midvale Avenue N. |
| Seattle, WA 98104 | Shoreline, WA 98133-4921 |
| Phone: (206) 684-5851 | Phone: (206) 546-1700 |
| Fax: (206) 684-4631 | Fax: (206) 546-2200 |

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

19. **Publication Costs.** In accord with state law, this ordinance shall be published in full.

20. **Effective Date.** This ordinance shall take effect and be in full force five day after publication. The City Clerk is hereby directed to publish this ordinance in full.

**PASSED BY THE CITY COUNCIL ON NOVEMBER 29, 1999.**

Mayor Scott Jepsen

**ATTEST:**

Sharon Mattioli

Sharon Mattioli, CMC
City Clerk

CERTIFICATION

I, the undersigned, RUTH ANN ROSE, DEPUTY CITY CLERK of the City of Shoreline, Washington, certify that this is a true and correct copy of Ordinance No. 214

Subscribed and sealed this 1st day of Dec., 1999.

Ruth Ann Rose

RUTH ANN ROSE
DEPUTY CITY CLERK

**APPROVED AS TO FORM:**

Ian Sievers
City Attorney

Date of Publication: December 3, 1999
Effective Date: December 8, 1999

# ORDINANCE NO. 215

**AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING SEATTLE PUBLIC UTILITIES WASTEWATER DIVISION A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A SANITARY SEWER 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 transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated facilities for public service;" and

WHEREAS, the Council finds that it is in the bests interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to Seattle Public Utilities Wastewater Division for the operation of a sewer system within the City right-of-way;

**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 head of the Planning and Development Services department of the City, or the head of the Public Works department of the City, or the designee of either of these individuals.

   1.4. Facilities: All pipes, access ways, pump stations, storage facilities, equipment, and supporting structures, located in the City's right-of-way, utilized by the Grantee in the operation of activities authorized by this Ordinance. The abandonment by Grantee of any facilities as defined herein shall not act to remove the same from this definition.

1.5. Grantee: As incorporated or used herein shall refer to Seattle Public Utilities Wastewater Division (SPU).

1.6. Permittee: A person who has been granted a permit by the Permitting Authority, and SPU operating under Section 6.6 Blanket Permit of this agreement.

1.7. Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's right-of-way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

1.8. Person: An entity or natural person.

1.9. Revenue: This term as used herein shall refer to all revenue collected from SPU's customers with billing addresses that are within the corporate boundaries of the City.

1.10. 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, utility easement, and/or road right-of-way now or hereafter held or administered by the City of Shoreline.

1.11. SPU: Seattle Public Utilities Wastewater Division, a sewer utility owned and operated by 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 sewer system, in, under, on, across, over, through, along or below the public right-of-way located in the City of Shoreline, as approved under City permits issued by the Permitting Authority pursuant to this franchise and City ordinances.

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

3. **Franchise Term.** The term of the franchise granted hereunder shall be for the period commencing upon the effective date of this ordinance through December 31, 2001. This

franchise will automatically renew for an additional two-year period unless its termination is confirmed in writing by the City at least sixty days prior to December 31, 2001, or it is replaced by a substitute franchise ordinance prior to that date.

4. **Franchise Fee.** In consideration of the right granted to SPU to occupy City rights-of-way for the purpose of operating a sanitary sewer utility within the City and as partial compensation for the City's costs to construct, maintain, repair, develop, and manage the right-of-way, SPU agrees:

   4.1. To collect and distribute to the City a franchise fee equal to 6% of Revenues.

      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 the 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 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 & 4.3 hereof.

5. **City Ordinances and Regulations.**

   5.1. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control, by appropriate regulations, the location, elevation, and manner of construction and maintenance of any facilities of SPU located within the City right-of-way. SPU shall promptly conform with all such regulations, unless compliance would cause SPU to violate other requirements of law.

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

6.1. Excavation.

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

6.1.2. 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. In no case shall any such work commence within any right-of-way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, SPU shall not unnecessarily obstruct the passage or use of the right-of-way, and shall provide the City with plans, maps, and information showing the proposed and final location of any facilities in accordance with Section 6.10 of this Ordinance.

6.2. Abandonment of SPU's Facilities. No facilities laid, installed, constructed, or maintained in the right-of-way by SPU may be abandoned by SPU without the prior written consent of the Director of a removal plan. All necessary permits must be obtained prior to such work.

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. 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. If the right-of-way is not restored in accordance with the City's notice within fifteen (15) days of that notice, the City, or its authorized agent, may restore the right-of-way. SPU is responsible for all 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 Paragraph shall be in addition to those otherwise provided by this franchise.

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 facilities located in the right-of-way are broken or damaged, or if SPU's construction area for their facilities is in such a condition as to place the health or safety of any person or property in imminent danger, SPU shall immediately take any necessary emergency measures to repair 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 required permits the next business day following the emergency work or as soon as practical given the nature and duration of the emergency.

6.6. Blanket Permit. The terms "Minor Activities" and "Blanket Activities" shall be defined in a specifically negotiated Blanket Permit Definitions, a copy of which has been filed with the City Clerk and identified by Clerk's Receiving Number 1043. Permittee shall be authorized to perform Minor Activities without a City permit of any kind and Blanket Activities under the terms and conditions of this Section. All other activities will require a separate permit in accordance with City ordinances.

6.6.1. The Permittee shall pay the City a permit inspection/processing fee in the amount set out in Blanket Permit Definitions.

6.6.2. The Permittee shall provide a monthly list of permit construction activity by the 10th of the following month listing the previous month's activity authorized under this Section.

6.6.3. The Permittee shall provide payment of inspection fees for the monthly activity on a monthly basis. No statement will be provided by the City.

6.6.4. For each separate use of the right-of-way under this Section, and prior to commencing any work on the right-of-way under this Section, the Permittee shall:

6.6.4.1. Fax or otherwise deliver to the Permitting Authority, at least twenty-four (24) hours in advance of entering the right-of-way, a City Inspection Request Form, as provided by the Permitting Authority, which shall include at a minimum the following information: franchise ordinance number, street address nearest to the proposed work site; parcel number and description of work to be performed.

6.6.4.2. Fax or deliver to the Permitting Authority a notice of completion in the form provided by the Permitting Authority within twenty-four (24) hours after completing work.

6.6.5. In the event the Permittee fails to comply with any of the conditions set forth in this Section, the City is authorized to immediately terminate the Permittee's authority to operate under this Section by providing Permittee written notice of such termination and the basis therefore.

6.6.6. The City reserves the right to alter the terms and conditions of Subsection 6.6. and of Blanket Permit Definitions by providing thirty (30) days written notice to the Permittee. Any change made pursuant to this Paragraph, including any change in the inspection fee stated in Blanket Permit Definitions, shall thereafter apply to all subsequent work performed pursuant to this Section. Further, the City may terminate the Permittee's authority to work in the City's right-of-way under the terms of this Section at any time without cause by providing thirty (30) days written notice to the Permittee. Notwithstanding any termination, the Permittee will not be relieved of any liability to the City.

6.7. Safety.

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

6.7.2. All of Grantee's facilities in the right-of-way shall be constructed and 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 the Grantee cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of the adjoining right-of-way, public or private property, the Director may direct the Grantee, at no charge or expense to the City, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.

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

6.9. Relocation of System Facilities.

6.9.1. SPU agrees and covenants to protect, support, temporarily disconnect, relocate or remove from any right-of-way its facilities without cost to the City, when so required by the City, provided that SPU shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way and upon approval by the City, any facilities required to be temporarily disconnected or removed.

6.9.2. All Facilities utilized for providing sanitary sewer service within SPU's service area and within the right-of-way shall be considered owned, operated and maintained by SPU.

6.9.3. If the City determines that a public project necessitates the relocation of SPU's existing facilities, the City shall:

6.9.3.1. As soon as possible, but not less than sixty (60) days prior to the commencement of such project, provide SPU with written notice requiring such relocation; and

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

6.9.3.3. After receipt of such notice and such plans and specifications, SPU shall complete relocation of its facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.

6.9.4. SPU may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise 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 the City, SPU shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by SPU full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, SPU shall relocate its facilities as provided in this Section.

6.9.5. The provisions of 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 other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay or increase the cost of a planned City construction project.

6.10. SPU's Maps and Records. As a condition of this franchise, and without charge to the City, SPU agrees to provide the City 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 and, upon request, in hard copy plan form used by 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 City.

7. **Planning Coordination.**

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

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).

7.1.2. 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 it continued relevance at reasonable intervals.

7.1.3. 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.

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

7.2. System Development Information. SPU will assign a representative whose responsibility shall be to coordinate with the City on 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 Manager or his designee with a schedule of its planned capital improvements, which may affect the right of way for that year;

7.2.2. SPU shall meet with the City, other franchisees and users of the right-of-way, according to a schedule to be determined by the City, to schedule and coordinate construction; and

7.2.3. All construction locations, activities, and schedules shall be coordinated, as required by the City Manager or his designee, 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.

8. **Service Quality.** SPU shall exercise the same degree of technical, professional and administrative quality in serving its customers in the City that is provided to all other customers 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 provision of wastewater services.

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 or liability to any person, including claims by SPU's own employees to which SPU might otherwise be immune under Title 51 RCW, arising from personal injury or damage to property allegedly due to the negligent or intentional acts or omissions of SPU, its agents, servants, officers or employees in performing activities authorized by this franchise, including those claims arising against the City by virtue of SPU's exercise of the rights granted herein. This covenant of indemnification shall include, but not be limited by this reference,

claims against the City arising as a result of the negligent acts or omissions of SPU, its agents, servants, officers or employees. 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.

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. This waiver has been mutually negotiated by the parties.

9.5. The City hereby releases and agrees to indemnify, defend and hold harmless the 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 hereof. This indemnification is contingent upon SPU's compliance with Section 4.4 hereof.

10. **Enforcement.**

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

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

10.2.1. 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;

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

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

10.2.4. Failure to provide the services specified in the franchise;

10.2.5. Misrepresentation of material fact during negotiations relating to this franchise or the implementation thereof;

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

10.2.7. An uncured failure to pay fees associated with this franchise

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

10.4. Except in the case of termination pursuant to Paragraph 10.2.5. of this Section, prior to any termination or revocation, the City, or the Grantee, 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 the Grantee 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, which declaration must be in writing. Within 20 days after receipt of a written declaration of default, the party that is alleged to be in default may request, in writing, a hearing before a "hearing examiner" as provided by the City's development regulations. The hearing examiner's decision may be appealed to any court of competent jurisdiction.

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

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

10.7. Any violation existing for a period greater then 30 days may be remedied by the City at the Grantee's expense.

11. **Survival.** All of the provisions, conditions and requirements of Sections 6.1 Excavation, 6.2 Abandonment Of SPU's Facilities, 6.3 Restoration After Construction, 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.

12. **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.

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

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

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 Managing Director**
**Dexter Horton Building, 10th Floor**
**710 Second Avenue**
**Seattle, WA 98104**
**Phone: (206) 684-5851**
**Fax: (206) 684-4631**

**Director of Public Works**
**City of Shoreline**
**17544 Midvale Avenue N.**
**Shoreline, WA 98133-4921**
**Phone: (206) 546-1700**
**Fax: (206) 546-2200**

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

19. **Publication Costs.** In accord with state law, this ordinance shall be published in full.

20. **Effective Date.** This ordinance shall take effect and be in full force five days after publication. The City Clerk is hereby directed to publish this ordinance in full.

**PASSED BY THE CITY COUNCIL ON NOVEMBER 29, 1999.**

Mayor Scott Jepsen

**ATTEST:**

Sharon Mattioli, CMC
City Clerk

**APPROVED AS TO FORM:**

Ian Sievers
City Attorney

Date of Publication: December 3, 1999
Effective Date: December 8, 1999

CERTIFICATION

I, the undersigned, RUTH ANN ROSE, DEPUTY CITY CLERK of the City of Shoreline, Washington, certify that this is a true and correct copy of Ordinance No. 215

Subscribed and sealed this 1st day of Dec., 1999.

RUTH ANN ROSE
DEPUTY CITY CLERK