

HIGHLINE WATER DISTRICT King County, Washington

RESOLUTION 23-12-20E

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF HIGHLINE WATER DISTRICT, KING COUNTY, WASHINGTON, ACCEPTING THE TERMS AND CONDITIONS OF CITY OF FEDERAL WAY ORDINANCE NO. 23-970 AUTHORIZING A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A WATER SYSTEM WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF FEDERAL WAY, WASHINGTON.

WHEREAS, Highline Water District, a Washington special purpose municipal corporation ("District"), owns water facilities ("Facilities") located in the City of Federal Way, 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 a Franchise Agreement to provide for the operation of District Facilities within the City right-of-way; and

WHEREAS, the City authorized granting the District a non-exclusive franchise to construct, maintain, operate, replace, and repair a water system within public rights-of-way of the City by the passage of Ordinance No. 23-970 on November 8, 2023, in the form attached hereto as **Attachment 1** and incorporated herein by this reference ("Ordinance" or "Franchise"); and

WHEREAS, the Ordinance provides in Section 35 that the District shall have no rights under the Franchise nor shall the District be bound by the terms and conditions of the Franchise unless the District, within thirty (30) days after the effective date of the Ordinance, files with the City of Federal Way City Clerk its written acceptance of the Franchise; and the effective date of the Ordinance was the 22nd day of November 2023; now therefore,

BE IT RESOLVED, by the Board of Commissioners of Highline Water District, King County, Washington, as follows:

1. Incorporation of Recitals. The recitals set forth above are hereby adopted as if set forth in full herein.
2. Acceptance of Franchise. The terms and conditions of the Franchise as contained in Ordinance No. 23-970 and **Attachment 1** to this Resolution are hereby accepted; and the District General Manager is authorized and directed to sign on the District's behalf the "Acceptance of Franchise" attached as Exhibit A to the Ordinance and file such executed "Acceptance of Franchise" with the Federal Way City Clerk.
3. Effective Date. This Resolution and the Franchise shall be effective the date set forth below.

HIGHLINE WATER DISTRICT King County, Washington

RESOLUTION 23-12-20E

ADOPTED by the Board of Commissioners of Highline Water District, King County, Washington, at the regular open public meeting thereof held on the **20th** day of **December 2023**.

BOARD OF COMMISSIONERS

DocuSigned by:
Daniel Johnson
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Daniel Johnson, President

DocuSigned by:
Polly Daigle
7850B84D748D4ED...
Polly Daigle, Commissioner

DocuSigned by:
Kathleen Quong-Vermeire
46FC432C4556410...
Kathleen Quong-Vermeire, Secretary

DocuSigned by:
Todd Fultz
8728D37DF2E446D...
Todd Fultz, Commissioner

Vince Koester, Commissioner

CERTIFICATE

I, Kathleen Quong Vermeire, Secretary of the Board of Commissioners of Highline Water District, King County, Washington, do hereby certify that the foregoing resolution is a true and correct copy of Resolution No. 23-12-20E of such Board, duly adopted at a regular meeting thereof held on the 20th day of December, 2023, signed by the members of such Board in attendance at such meeting and attested by myself in authentication of such adoption.

DocuSigned by:
Kathleen Quong-Vermeire
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Secretary, Board of Commissioners

ORDINANCE NO. 23-970

AN ORDINANCE of the City of Federal Way, Washington, granting Highline Water District, a nonexclusive franchise to occupy rights-of-way in the City of Federal Way, Washington, within the specified franchise area for the purposes of constructing, maintaining, operating, replacing, and repairing a public water system within and throughout the City of Federal Way.

WHEREAS, the City of Federal Way requires Highline Water District to obtain a franchise in order to operate and maintain a water service distribution system within the rights-of-way; and

WHEREAS, the City Council of Federal Way finds it is in the public interest to grant such a franchise, which will specify the rights and duties of Highline Water District; and

WHEREAS, RCW 35A.47.040 permits the City of Federal Way to grant nonexclusive franchises for the use of public streets, bridges or other public ways for utilities, *inter alia*, pipes, hydrants, services and appurtenances thereof for water service; and for other publicly and privately owned and operated facilities for public services; and

WHEREAS, in granting such a nonexclusive franchise, the City of Federal Way reserves such other powers and authorities granted to Washington code cities by general law and specifically reserves its right to adopt further regulations under its police powers.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF FEDERAL WAY, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Definitions

Where used in this Franchise the following terms shall be defined as follows:

1.1 “City” means the City of Federal Way, Washington, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.2 “Council” means the City of Federal Way Council acting in its official capacity.

1.3 “Director” means the Public Works Director, or designee, of the City of Federal Way Public Works Department.

1.4 “Facilities” means Franchisee’s water distribution system and appurtenances located or to be located within the public right-of-way.

1.5 “Franchise Area” means that portion of the rights-of-way located in the City of Federal Way and shown in Exhibit A attached hereto, and/or any other areas approved by the Federal Way City Council and incorporated into this Ordinance via amendment.

1.6 “Franchisee” means Highline Water District, a Washington special purpose municipal corporation, and its respective successors and assigns if consented to by the City of Federal Way as provided in Section 27.3 herein.

1.7 “FWRC” means the Federal Way Revised Code.

1.8 “Public Project” means City initiated capital improvement project as listed in the City’s Capital Improvement Plan, including, but not limited to, roadway improvement, pedestrian improvement projects, and City-owned utility, that is undertaken by or on behalf of the City and is funded by the City (either directly with its own funds or with other public funds obtained by the City):

1.9 “Rights-of-way” means the surface of and space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, and/or unimproved right-of-way now or hereafter be laid out, platted, dedicated, acquired, or improved within the present or extended limits of the City.

1.10 “Services” means public service business (as such term is defined in RCW 82.16.010), gas, steam, liquid fuels, water, sewer, and private and public owned and operated facilities for public services.

1.11 “Utility Easement” means a property right concerning a designated parcel(s) of land giving utility companies the permitted use of all or a portion of the private property for the good of the community.

Section 2. Grant/Acceptance

2.1 Grant of Franchise. The City hereby grants to Franchisee the nonexclusive right to enter upon the Franchise Area for the limited purpose of constructing, excavating, installing, maintaining, restoring, and repairing Facilities within the Franchise Area. This Franchise is specifically limited to the right for Franchisee to install and maintain Facilities owned and operated by Franchisee. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Services, nor to subordinate the primary use of the Rights-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service. This Section does not restrict the Franchisee’s ability to utilize telemetric devices to monitor and operate its water distribution system or to monitor and control the usage.

2.2 Acceptance by Franchisee. Franchisee shall have no rights under this Franchise, nor shall Franchisee be bound by the terms and conditions of this Franchise, unless Franchisee shall, within thirty (30) days after the effective date of this Franchise, file with the City its written acceptance of this Franchise and all of its terms and conditions. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 24. The administrative fee authorized in Section 22.1 is due within thirty (30) days of receipt of the invoice from the City.

Section 3. City Property/Non-Exclusive Franchise

3.1 City Property. This Franchise does not and shall not convey any right to Franchisee to install its Facilities on, under, over, across, or to otherwise use City-owned or leased properties of any kind outside the Franchise Area, or to install Facilities on, under, over, across or otherwise use any City-owned or leased property within the Franchise Area other than the Rights-of-Way unless an easement is granted.

3.2 Non-Exclusive Franchise. This Franchise is not an exclusive Franchise and shall not be construed to in any manner prohibit the City from granting other and further Franchises in, under, over, upon, and along the Franchise Area, nor from exercising such other powers and authorities granted to the City by the Washington State Constitution and general law, including the City's right to adopt future regulations under its police powers. Such Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description.

3.3 No Impairment of Easement Rights. The terms of this Franchise shall not impair or interfere with Franchisee's rights under any Utility Easements that cover areas within any existing or future City Rights-of-Way. The Franchisee's easement rights shall remain in effect unless formally relinquished by the Franchisee or condemned by the City.

3.4 Relinquishment of Easements. The City may request that Franchisee relinquish its easements on current or formerly private property that has or will become City property pursuant to a public or private project. Within fourteen (14) days of such request, the City and Franchisee shall

meet, confer, and negotiate with respect to the appropriate relocation or adjustment costs to be paid to Franchisee by City in exchange for relinquishment of said easements. If, following the negotiation, the City and Franchisee are able to agree to the appropriate relocation or adjustment costs, then the Franchisee shall relinquish said easements and the City shall pay Franchisee the negotiated relocation or adjustment costs.

3.5 Operation Costs. To the extent permitted by law and as otherwise expressed in this Franchise, Franchisee shall be solely responsible for the operation, maintenance, repair, and construction of its Facilities.

Section 4. Term

Subject to Franchisee filing its acceptance pursuant to Section 2.2, the term of this Franchise shall be for a period of ten (10) years commencing on the effective date of this Franchise, unless terminated earlier pursuant to this Franchise or other applicable law. The Franchise will automatically extend for up to two (2), five (5) year periods, unless either party, not less than one hundred eighty (180) days prior to the expiration of the Franchise, provides the other party of its intent to terminate the Franchise at the end of the current Franchise term.

Section 5. Hydrants and Fire Suppression System Costs

In exchange for other good and valuable considerations in the Franchise, the parties agree that during the term of the Franchise, Franchisee shall be responsible for costs to operate and maintain all portions of the water system, including fire hydrants and those components of the water system that provide fire suppression benefits (collectively the Fire Suppression System) within Franchisee's corporate boundary inside the Franchise Area.

Section 6. Location of Facilities

6.1 Location. The Facilities permitted by this Franchise shall be installed underground, except for features required to be above ground (e.g. hydrants, air releases, valve boxes, meter boxes). The location of the Facilities, their depths below the surface of ground or grade of a right-of-way, if available, and any related existing equipment to which the Facilities are connected shall be depicted on a map and submitted within fifteen (15) days upon written request of the City. Franchisee shall update such map to reflect actual or anticipated improvements to the water system. Any such map (or update thereof) so submitted shall be for informational purposes only and shall not obligate Franchisee to undertake any specific improvements, nor shall such map be construed as a proposal to undertake any specific improvements.

6.2 WSDOT. To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system (“State Highways”) these parts of the Franchise Area are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (“WSDOT”) regulations, Franchisee shall comply fully with said WSDOT requirements in addition to this Franchise, local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

6.2.1 Any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

6.2.2 Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired, and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

6.2.3 Without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

6.3 GIS Data. At such time as Franchisee develops or employs Geographic Information System ("GIS") technology, Franchisee shall submit the information required in Section 6.1 above in digital GIS format, showing the location of its Facilities within the Franchise Area.

6.4 Design Markings. In the event the City desires to design a Public Project, Franchisee shall at the City's request, provide the location of Franchisee's underground Facilities within the Franchise Area by either field markings or by locating the Facilities on the City's design drawings, and shall provide all other reasonable cooperation and assistance to the City.

6.5 One Call Locator Service. Prior to doing any work in the Franchise Area, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request from a third party or the City, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 7. Noninterference of Facilities

7.1 Maintenance of Facilities. Franchisee agrees to maintain its Facilities and perform any and all activities authorized by this Franchise: (1) so as not to unreasonably interfere with the free passage of traffic; (2) in accordance with the laws of the State of Washington and City Code Ordinance No. 23-970

requirements, Franchise provisions, regulations, resolutions and rules, as now existing or as hereafter amended; and (3) as required by the Director. This requirement applies whether the work is performed by the Franchisee, its agents, employees, subcontractors, or other third parties at Franchisee's direction.

7.2 Franchisee shall provide routine maintenance a minimum of three (3) feet in all directions to ensure visibility of above ground Facilities. Any damage to the Franchisee facilities due to the inability of the City to reasonably "see" such facilities during the course of City shoulder maintenance work shall be the responsibility of the Franchisee. The Franchisee shall not be responsible for damages caused by the negligent, willful acts or by a failure of the City to utilize reasonable care in their maintenance work.

7.3 Interference with Use of the Streets. When installing, locating, laying, or maintaining Facilities, apparatus, or improvement, Franchisee shall not interfere with the use of any street to any greater extent than is necessary, and shall leave the surface of any such street in as good condition as it was prior to performance by Franchisee of such work. Any Facility, apparatus, or improvement shall be laid, installed, located, or maintained in conformance with instructions given by, and to the satisfaction of the City. In any event, Franchisee shall, at its own expense, and to the satisfaction of the City in accordance with the terms of the right-of-way permit, restore to City standards and specifications any damage or disturbance caused to streets as a result of Franchisee's construction or operations.

Section 8. Requirement to Obtain Permits & Work in the Rights-of-Way

8.1 Permits and Permit Applications. Franchisee shall, at its expense, obtain all permits, including rights-of-way permits, and pay all permit fees required by applicable City ordinances, regulations, resolutions, and rules prior to commencing any work within the Franchise Area. The

manner of excavation, construction, installation, backfill, and temporary structures such as, but not limited to, traffic turnouts and road obstructions shall meet the standards of the FWRC and be satisfactory to the Director. All traffic control shall be in accordance with the right-of-way permit, and shall be in accordance with the Manual on Uniform Traffic Control Devices (“MUTCD”).

8.2 Emergency Exception to Permit Requirement. In the event of an emergency in which Franchisee’s Facilities within the Franchise Area are in a condition as to immediately endanger the property, life, health, or safety of any individual, Franchisee may take action immediately to correct the dangerous condition without first obtaining any required permit so long as: (1) Franchisee informs the City of the nature and extent of the emergency, and the work to be performed, as soon as reasonably possible relative to such emergency activity; and (2) such permit is obtained by Franchisee as soon as practicable following cessation of the emergency.

8.3 Routine Maintenance. Franchisee shall have the right to conduct routine maintenance to repair, modify, supplement, replace or upgrade Franchisee’s Facilities, provided the Franchisee shall obtain any necessary right-of-way use permit and any other permits or authorizations required by all applicable federal, state and local laws, rules, and regulations prior to performance of any said routine maintenance. The following non-emergency related activities such as water main flushing, valve exercising, fire hydrant exercising and other activities as approved shall be allowed to occur under the annual maintenance blanket permit.

8.4 Work in the Rights-of-Way. During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors and subcontractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as

required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

8.5 Coordination of Activities. Franchisee shall meet with the City and other franchise holders and users of the Rights-of-Way upon written notice as determined by the City, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

8.6 Public Notification of Activities. At least three (3) days prior to its intended construction of Facilities, except those activities that impact the use of the adjacent property for less than an eight (8) hour period, Franchisee shall inform all residents in the immediately affected area that a construction project will commence, the dates and nature of the project, and provide a toll-free or local phone number which the resident may call for further information. A pre-printed door hanger may be used for this purpose.

Section 9. Standard of Performance

9.1 Backfilling Requirements. The Franchisee shall not excavate for a distance of more than one hundred feet (100') without immediately backfilling and compacting to surface grade and City standards. Backfilled trench areas within a driving lane must be patched, either temporarily or permanently, before the end of the workday in which they have been opened. Trench areas within the Rights-of-Way, but not within a driving lane, must also be patched within the time limits specified by the City on the right-of-way use permit.

9.2 Restoration Standards. Final surface restoration shall be completed within thirty (30) days after completion of the work and shall be equal to or better than the surface condition prior to permit issuance in accordance with the City of Federal Way Development Guidelines.

9.3 Asphalt Overlay. Any asphalt overlay completed within the Franchise Area performed by the City or other third-party during the five (5) year-period immediately prior to the date of permit issuance shall not be open cut by Franchisee unless required by an emergency and subject to the provisions of Section 9.2 above. Franchisee shall install new asphalt overlay on any street that is open cut, whether in an emergency or otherwise, for a minimum of one (1) block (approximately 500 feet) in length from the open cut, unless determined otherwise by the Director.

9.4 As-Built Maps. Within fifteen (15) days of a written request by the City, Franchisee shall submit to the Director plans, stamped by a Professional Engineer licensed by the State of Washington, showing the “as-built” location of the Facilities.

9.5 Joint Trench. If Franchisee shall at any time plan to make excavations in any area covered by this Franchise, Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

9.5.1 Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

9.5.2 Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

9.5.3 Franchisee may deny such request for safety reasons.

9.6 Open Utility Trenches. Franchisee shall be entitled to reasonable access to open utility trenches when the City is constructing new utility trenches, provided that such access does not

interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench, additional costs, as determined by the City, attributed to Franchisee due to Franchisee's request to access the utility trenches, and any costs associated with the delay of the completion of a Public Project.

Further, the City may deny such requests if:

- 9.6.1 Such joint use unreasonably delays the work of the City;
- 9.6.2 The parties cannot agree on terms and conditions; or
- 9.6.3 Granting access to the utility trench creates a safety concern.

9.7 Safety. Franchisee 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 lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee 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 Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

9.8 Additional Safety Standards.

9.8.1 Franchisee shall endeavor to maintain all equipment and Facilities in an orderly manner, including, but not limited to, the removal of all unused pipe and appurtenances within Rights-of-Way.

9.8.2 All installations of equipment, and Facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, state, and local regulations, ordinances, and laws.

9.8.3 Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee 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.

9.9 Stop Work Order. 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:

- 9.9.1 Be in writing;
- 9.9.2 Be given to the person doing the work or posted on the work site;
- 9.9.3 Be sent to Franchisee by overnight delivery;
- 9.9.4 Indicate the nature of the alleged violation or unsafe condition; and
- 9.9.5 Establish conditions under which work may be resumed.

Section 10. Survey Markers and Monuments

10.1 Survey Markers and Monuments. Franchisee shall, using a licensed surveyor, immediately replace all markers or monuments disturbed during any work by Franchisee within the Franchise Area. Franchisee shall pay all costs associated with such lost, destroyed or disturbed monuments or markers.

10.2 Surface Markings/Stakes. Prior to Franchisee commencing any excavation work within the Franchise Area, Franchisee shall reference all monuments and markers relating to subdivisions, plats, highways, and other surveys. The reference points shall be located so that they shall not be disturbed during the Franchisee's operations under this Franchise. The method of referencing these monuments or other points shall be approved by the City before placement. The construction shall be made as expeditiously as conditions permit, and as directed by the City. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement of the monuments, shall be borne solely by the Franchisee. A complete set of reference notes for monuments and other ties shall be filed with the City.

Section 11. Work of Subcontractors and Contractors

Franchisee'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 are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee 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 Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Right of City to Complete Work

12.1 Non-Compliance/Work Performed by City. In the event Franchisee fails to comply with any applicable federal, state or City laws, ordinances, rules, regulations, or standards or with any of the terms of this Franchise, or if such work by Franchisee endangers property or the public and such noncompliance continues for a period of ten (10) days after Franchisee receives written notice from the City regarding the noncompliance, the City may, but in no event is the City obligated

to, order any work completed, including without limitation Franchisee's obligation to repair pursuant to Section 14 herein and Franchisee's obligation to remove or relocate facilities pursuant to Section 13 herein. If the City causes such work to be done by its own employees or by any person or entity other than Franchisee, Franchisee shall, upon the City's written request, immediately reimburse the City for all reasonable costs and expenses incurred by the City in having such work performed, which costs may include the City's reasonable overhead expenses and attorneys' fees; however, the City shall not have any water work accomplished by any person or entity other than Franchisee or a qualified and licensed water utility contractor.

12.2 Emergency Work Performed by City. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City, as the City may determine to be necessary, appropriate, or useful in response to any public health or safety emergency. Consistent with Section 22.2, Franchisee shall reimburse the City for the costs associated with the repair.

12.3 No Liability for Damage. The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the negligence or willful acts of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 12 except to the extent caused by the negligence or willful acts of the City, its employees, contractors, or agents.

Section 13. Required Relocation of Facilities

13.1 City Reservation of Rights. The City reserves the right to use, occupy and enjoy all or any part of the Franchise Area, either above, below, or adjacent to the Facilities, for any purpose

that is not inconsistent with the terms and conditions of this Franchise. The rights reserved herein include, without limitation, the construction, installation, and/or maintenance of any electrical, sewer or storm drainage line, traffic signals, street lights, trees, landscaping, bicycle paths and lanes, equestrian trails, sidewalks, other pedestrian amenities, and other public street improvement projects.

13.2 City's Duties. In the event the City undertakes any work, Public Project, or necessary maintenance within the Rights-of-Way in which Franchisee's facilities are located, and such work necessitates the relocation of Franchisee's then existing Facilities within the Franchise Area, the City shall:

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

13.2.2 Provide the Franchisee, at least one hundred twenty (120) days prior to the advertisement for bid of construction of such Public Project, written notice that a project is expected to require the relocation of Franchisee's 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 Franchisee's Facilities.

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

13.2.4 Nothing in this section shall be construed as to relieve Franchisee of its duty and obligation to relocate its Facilities, at Franchisee's sole cost, for any improvement project

undertaken by, or on behalf of, the City in the interest of public health, safety, welfare, or necessity, as adjudged in the sole discretion of the City.

13.3 Franchisee's Duties. Within one hundred twenty (120) days of receipt of the City notice under Section 13.2.2 requiring relocation and receipt of the plans and specifications pursuant to Section 13.2.2, Franchisee shall raise, lower, or move such Facilities within the Franchise Area at its sole cost and expense to the location or position directed by the City, to cause the least interference with the improvement, repair, or alteration contemplated by the City and to conform to such new grades as may be established. If the City improves a Right-of-Way, Franchisee shall, at its sole cost and expense, upon receipt of notice, replace the Facilities located in the improved subgrade of the improvement with substitute Facilities conforming to the specifications for the improvement of the Right-of-Way.

13.4 Relocation Alternatives. After receipt of such notice and such plans and specifications, Franchisee may submit to the City written alternatives to such relocations within thirty (30) days. The City shall within a reasonable time evaluate such alternatives and advise the Franchisee in writing whether one or more of the alternatives is suitable to accommodate work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee 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 none of the alternatives is suitable, the City shall provide the Franchisee with further written notice to that effect, and the Franchisee shall then relocate its Facilities by its own forces, by separate public works contract or by participating in the City's Public Project. The City shall cooperate with the Franchisee 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 twenty (120) days after further written notice to the Franchisee as to the Facilities to be relocated. Franchisee must finish relocation of each such Facility by the date so established.

13.5 Delay. Upon a notification of a relocation delay due to Franchisee, Franchisee agrees to work cooperatively with the City, other franchisees and utilities and the City's third-party contractor to resolve any such issues. If the Franchisee is unable to informally resolve the claims of a City contractor, subcontractor, and/or a third-party claim that arises from Franchisee's relocation delays, the Franchisee shall indemnify, defend and hold harmless the City pursuant to Section 23 from costs, claims or liability arising from such delay. The delay claim of a City utility whose funding and operations are required by Washington state law to be kept separate from those of the City's general fund shall be considered a third party claim for the purposes of this resolution process and the indemnity. The parties acknowledge and agree that Franchisee shall not be responsible for these indemnifications, defense or hold harmless requirements and/or costs, claims, liability and/or damages due to delays caused by circumstances beyond the control of Franchisee; the negligence, willful misconduct, unreasonable delay of the City, or failure of the City to give timely notice(s); or the negligence, willful misconduct or delay of any unrelated third party. In the event that the acts of a third party as set forth in the preceding sentence contribute to the delay, the Franchisee may be liable for its proportionate share of the costs, claims or liability. Circumstances beyond the control of Franchisee is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, pandemics, government orders or mandates, and any other similar act of God event.

13.6 Locate. Upon request of the City and in order to facilitate the design of City street and Rights-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if

reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities; and in compliance with Section 13.3 The City shall provide Franchisee at least fourteen (14) days' written notice prior to any request for excavation or exposure of Facilities. The City will issue to the Franchisee any required permits to locate the Franchisee's Facilities at no cost to the Franchisee.

13.7 Third Party Relocations. Whenever any person or entity, other than the City, requires the relocation of Franchisee's Facilities to accommodate the work of such person or entity within the Franchise Area, the City agrees not to use its authority to require the Franchisee to relocate the existing Facilities.

Section 14. Damage Repair

In case of damage caused by the Franchisee, its agents or employees, or by the Franchisee's Facilities to Rights-of-Way, or to public and private improvements within or adjacent to Rights-of-Way, the Franchisee agrees to repair the damage at its own cost and expense. The Franchisee shall, upon discovery of any such damage, immediately notify the City. The City will inspect the damage and set a time limit for completion of the repair. If the City discovers damage caused by the Franchisee to Rights-of-Way, or to public and private improvements within or adjacent to Rights-of-Way, the City shall give the Franchisee notice of the damage and set a time limit in which the Franchisee must repair the damage. In the event the Franchisee does not repair a right-of-way or an improvement as required in this section, the City may repair the damage pursuant to Section 12 of this Agreement. Notwithstanding the foregoing, Franchisee shall not be responsible for damages caused by third parties or resulting from other utility facilities or conditions.

Section 15. Default

15.1 **Remedies.** The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained herein shall be deemed or construed to effect any such waiver.

15.2 **Notice and Cure: Damages.** If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, City may, at its discretion, (1) commence revocation proceedings pursuant to Section 15.3, or (2) pursue other remedies as described in Section 15.1 above.

15.3 Revocation of Franchise. If Franchisee willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the City under the provisions of this Franchise, then Franchisee shall, at the election of the Federal Way City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon notice to Franchisee.

Section 16. Limited Rights

This Franchise is intended to convey only a limited right and interest to Franchisee in the Franchise Area. This Franchise is not a warranty of title or conveyance of any ownership interest in or to the Franchise Area to Franchisee. The City reserves the right to limit or exclude Franchisee's access to a specific route, public Rights-of-Way or other location when, in the judgment of the Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, public expense, inconvenience, or interference with City utilities; provided that Franchisee shall be granted reasonable access to existing Facilities.

Section 17. Eminent Domain

The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of Franchisee's Facilities within the Franchise Area for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the Franchise Area conferred by this Franchise.

Section 18. Non-Assumption

In consideration of the Franchisee bearing all costs for Fire Suppression Systems as described in Section 5, and for 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 Franchisee or any Franchisee's 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 Franchisee or any Franchisee's responsibilities, property, facilities, equipment or utility customers located within or without the City's corporate limits during the term of this Franchise.

Section 19. Vacation

If at any time the City, by ordinance, vacates all or any portion of the Franchise Area, the City shall notify Franchisee in writing not less than thirty (30) days before vacating all or any portion of the Franchise Area, if Franchisee has Facilities within such area planned for vacation. The City may, after thirty (30) days written notice to Franchisee, terminate this Franchise with respect to any such vacated area. At Franchisee's request, the City will, if practicable, reserve an easement for Franchisee's existing facilities to continue to use the vacated area. Franchisee must provide to the City information necessary for the City to reserve such easement within the thirty (30) day period. The City will not be liable for any damages or loss to the Franchisee by reason of such vacation provided notice was properly given in accordance with this Section.

Section 20. Compliance with Laws

20.1 **General.** Franchisee shall comply with all applicable federal, state and City laws, franchises, resolutions, regulations, standards, policies and procedures, as now existing or hereafter amended or adopted, including without limitation the State Environmental Policy Act; provided , however, that if any term or condition of this Franchise and any term or condition of any City law, code, franchise, resolution, regulation, standard, procedure, permit, or approval are in conflict, the term or condition of this Franchise will control.

20.2 **Future City of Federal Way Regulation.** Franchisee acknowledges that the City may pursuant to the City's legitimate police power to protect the safety and welfare of the general public, develop rules, regulations, ordinances, and specifications for the use of the Rights-of-Way which shall govern Franchisee's Facilities and activities hereunder, provided that the City shall not unreasonably affect or modify any portion of this Franchise without the Franchisee's written approval.

Section 21. Guarantee

Franchisee shall guarantee work completed by the Franchisee under this Franchise for a period of ten (10) years after completion by the Franchisee against settlement or repair including Facilities and Rights-of-Way restoration, except for settlement and repairs caused by the actions of the City or third parties, or conditions beyond the control of the Franchisee.

Section 22. Charge for Administrative Costs

22.1 **Administrative Fee.** Franchisee shall pay a one-time fee for the actual administrative expenses incurred by the City that are directly related to receiving and approving this Franchise, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Such administrative fee shall be offset against the fee deposit required pursuant to FWRC

4.22.040; provided, however, if the administrative fee exceeds the fee deposit, then the Franchisee shall remit such additional amounts within thirty (30) days of receipt of an invoice from the City. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 22.3.

22.2 Emergency Repair Costs. In addition to Section 22.1, Franchisee shall promptly reimburse the City in accordance with the provisions of Section 22.3 and Section 22.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City or other third party.

22.3 Reimbursement of Expenses. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's

Facilities or the routing or rerouting of any City utilities so as not to interfere with Franchisee's Facilities.

22.4 Calculation of Costs. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 23. Indemnification

23.1 General. Franchisee agrees to indemnify and hold harmless and defend the City, its elected officials, officers, employees, agents, and volunteers from any and all claims, demands, losses, actions, and liabilities (including costs and all attorneys' fees) to or by any and all persons or entities, including, without limitation, their respective agents, licensees, or representatives, arising from, resulting from, or connected with this Franchise to the extent caused in part or in whole by the acts, errors or omissions of the Franchisee, its officials, agents, or employees, or by the Franchisee's breach of any provisions of this Franchise; provided, however, that this section shall not be construed as requiring Franchisee to indemnify, hold harmless or defend the City against claims or damages arising from the negligence or intentional misconduct of the City, its agents or employees. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

23.2 Notification. In the event any claim, demand, suit or action is commenced against the City that gives rise to Franchisee's obligation pursuant to this Section 23, the City shall promptly notify Franchisee thereof. The City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. Franchisee's selection of an attorney to defend any such claim, demand, suit, or action shall be subject to the City's approval, which shall not be unreasonably withheld. Franchisee shall not settle or compromise any such suit or action except with prior written consent of the City, which shall not be unreasonably withheld. The City shall have the right at all times to participate through its own attorney in any suit or action which arises pursuant to this Franchise when the City determines that such participation is required to protect the interest of the City or the public. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said 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 Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

23.3 Limits on Indemnity. In the event it is determined that RCW 4.24.115 applies to this Franchise, Franchisee agrees to defend, hold harmless and indemnify the City to the maximum extent permitted thereunder, to the full extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity

claims made by the City directly against the Franchisee for claims made against the City by Franchisee's employees. This waiver has been mutually negotiated by the parties.

23.4 Inspection or Acceptance of Work. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 23. Notwithstanding any other provisions of this Section 23, Franchisee 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, 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 negligent, willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or any willful, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 24. Insurance

24.1 Minimum Limits. The Franchisee agrees to carry as a minimum, the following insurance, in such forms and with such carriers as are satisfactory to the City.

24.1.1 Workers' compensation and employer's liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

24.1.2 Commercial general liability insurance with combined single limits of liability not less than \$5,000,000 for bodily injury, including personal injury or death, products liability, contractual coverage, operations, explosion, collapse, underground and property damage; and

24.1.3 Automobile liability insurance with combined single limits of liability not less than \$5,000,000 for bodily injury, including personal injury or death, and property damage.

24.1.4 Umbrella liability policy with limits not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.

24.1.5 If Franchisee maintains umbrella insurance (primary, excess, or a combination thereof) that exceeds the above insurance limits, such insurance shall constitute compliance with this Section.

24.2 Mandatory Insurance Provisions. The comprehensive general liability insurance and automobile liability insurance policies shall be endorsed to contain the following provisions:

24.2.1 The City, its officers, elected officials, employees, and volunteers are to be named as additional insured;

24.2.2 Coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability; coverage shall be primary as to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance by the City, its officers, officials, employees, or volunteers shall be in excess of Franchisee's required insurance.

24.3 Verification of Coverage. Franchisee shall furnish the City with certificates of insurance and original endorsements evidencing the coverages required by this Section. The certificates and endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf and must be received and approved by the City prior to the commencement of any work. At the City's request, Franchisee shall deliver certified copies of all required insurance policies.

24.4 Cancellation of Policy. Upon receipt of notice from its insurer(s) Franchisee shall use commercially reasonable efforts to provide the City with thirty (30) days prior written notice of any such cancellation. Within fifteen (15) days prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 24. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 24 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 15.1 and above. Notwithstanding the cure period described in Section 15.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

24.5 No Limitation on Liability. Franchisee's maintenance of insurance as required by this Section 24 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

24.6 Self-Insurance. As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a

written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of Franchisee's financial statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

Section 25. Bond

The Franchisee, 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.

Section 26. Abandonment

26.1 In the event that the use of any part of the Facilities are discontinued for any reason for a continuous period of six (6) months or more, or in the event such system or property has been installed in any Rights-of-Way or other public place without complying with the requirements of this Franchise or other City ordinances, Franchisee shall, upon being given thirty (30) days' notice, remove at its expense all such discontinued Facilities other than any which the City may permit to be abandoned in place, with approval not to be unreasonably withheld. In the event of such removal, Franchisee shall promptly restore the Rights-of-Way or other areas from which such property has been removed to a condition satisfactory to the City.

26.2 Any property of Franchisee remaining in place ninety (90) days after such notice, termination or expiration of this Franchise shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing

contained within this Section 26 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

26.3 Any property of Franchisee to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of Franchisee in place, the property shall become that of the City, and Franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

26.4 The provisions of this Section 26 shall survive the expiration, revocation, or termination of this Franchise.

Section 27. General Provisions

27.1 Entire Agreement. This Franchise contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Franchise and no prior agreements or understandings pertaining to any such matters shall be effective for any purpose.

27.2 Modification. No provision of this Franchise may be amended or added to except by agreement in writing signed by both of the Parties.

27.3 Assignment. All of the provisions, conditions, and requirements herein contained shall be binding upon the Franchisee, and no right, privilege, license or authorization granted to the Franchisee 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 Franchisee 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.

27.4 Governing Law. This Franchise shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

27.5 Authority. Each individual executing this Franchise on behalf of the City and Franchisee represents and warrants that such individual is duly authorized to execute and deliver this Franchise on behalf of the Franchisee or the City.

27.6 Notices. Any notices required to be given by the City to Franchisee or by Franchisee to the City shall be delivered to the parties at the following addresses:

CITY OF FEDERAL WAY
Attn: Public Works Director
33325 8th Avenue South
Federal Way, WA 98003

HIGHLINE WATER DISTRICT
Attn: General Manager
23828 30th Ave S
Kent, WA 98032

with a copy to:

CITY OF FEDERAL WAY
Attn: City Attorney
33325 8th Avenue South
Federal Way, WA 98003

Any notices shall be delivered personally to the addressee of the notice or sent by United States certified mail, postage prepaid, to the address set forth herein. Any notice so sent shall be deemed received three (3) business days after the date of mailing.

27.7 Captions. The respective captions of the sections of this Franchise are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect in any respect any of the provisions of this Franchise.

27.8 Remedies Cumulative. Any remedies provided for under the terms of this Franchise are not intended to be exclusive but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

27.9 Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, intentional or not.

Section 28. Severability

If any section, sentence, clause, or phrase of this Franchise 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.

Section 29. Ratification

Any act consistent with the authority and prior to the effective date of this Franchise is hereby ratified and affirmed.

Section 30. Effective Date

This Franchise shall take effect and be in full force five (5) days after its passage and publication, according to law (see Effective Date below).

PASSED by the City Council of the City of Federal Way this 8th day of November, 2023.

CITY OF FEDERAL WAY:


JIM FERRELL, MAYOR

ATTEST:


STEPHANIE COURTNEY, CMC, CITY CLERK

APPROVED AS TO FORM:


J. RYAN CALL, CITY ATTORNEY

FILED WITH THE CITY CLERK:	<u>10/11/2023</u>
PASSED BY THE CITY COUNCIL:	<u>11/08/2023</u>
PUBLISHED:	<u>11/17/2023</u>
EFFECTIVE DATE:	<u>11/22/2023</u>
ORDINANCE NO.:	<u>23-970</u>

ACCEPTANCE:

The undersigned hereby accepts all the rights and privileges of the above granted License and acknowledges that such rights and privileges are subject to and limited by all of the terms, conditions and obligations contained therein.

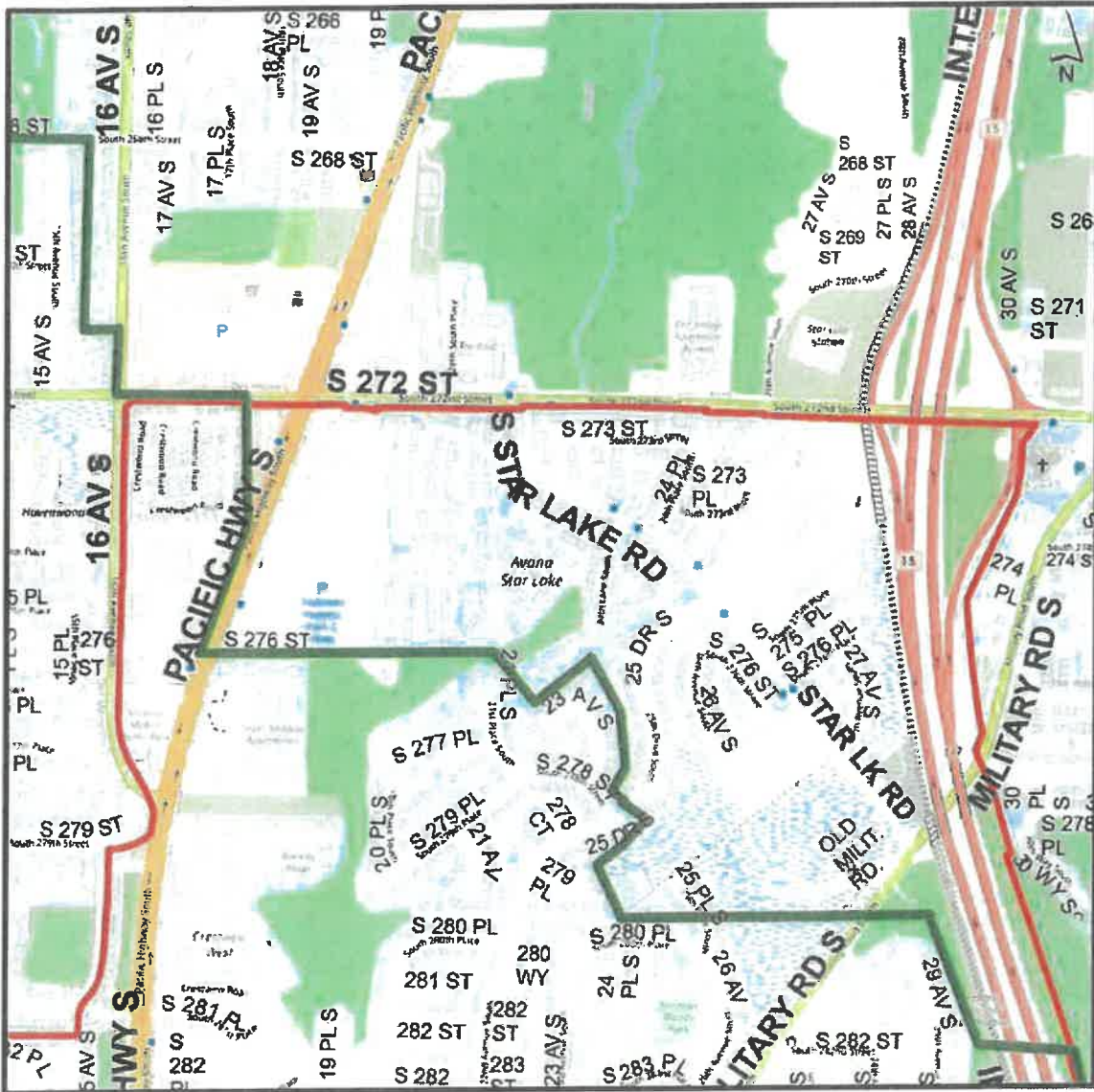
DATED this ____ day of _____, 20__.

HIGHLINE WATER DISTRICT:

By: _____

Its: _____

EXHIBIT A



Agenda Item No.: 5.5

Agenda Date: 12/20/23

Reviewed By: JSD

Subject: Accepting the terms and conditions of City of Federal Way Ordinance No. 23-970 authorizing a non-exclusive franchise to construct, maintain, operate, replace and repair a water system within public rights-of-way of the City of Federal Way, Washington

CATEGORY	
<i>Executive</i>	<input type="checkbox"/>
<i>Administrative</i>	<input checked="" type="checkbox"/>
<i>Engineering/Operations</i>	<input checked="" type="checkbox"/>

FINANCIAL			
<i>Expenditures?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
<i>Budgeted?</i>	Yes <input type="checkbox"/>	No <input type="checkbox"/>	N/A <input checked="" type="checkbox"/>
			<i>Not-to Exceed</i>
<i>Amount: \$</i> _____			

Attachments:

1. Resolution 23-12-20E w/Attachment 1 (City of Federal Way Ordinance No. 23-970)

Comments:

The City and the District have prepared a Franchise Agreement ("Franchise" or "Agreement") to provide for the operation of District Facilities within the City right-of-way, to govern the relocation of District facilities.

Staff recommends approval of this resolution.