

Ordinance No. 00265

[Council Meeting Minutes of 01/11/19](#)

ORDINANCE NO. 265

AN ORDINANCE of the City Council of the City of Lakewood, Washington, granting unto the City of Tacoma Department of Public Utilities, Water Division, a municipal corporation, its successors and assigns, the right, privilege, authority and nonexclusive franchise for twenty years, to construct, maintain, operate, replace, repair and renew a water distribution and transmission system and accessories, in, across, over, along, under, through and below certain designated public rights-of-way of the City of Lakewood, Washington

WHEREAS, the City of Tacoma Department of Public Utilities, Water Division has requested that the City Council grant it a nonexclusive franchise; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040); NOW, THEREFORE,

THE CITY COUNCIL OF CITY OF LAKEWOOD, WASHINGTON, DO ORDAIN as follows:

Section 1. Franchise Granted. Pursuant to RCW 35A.47.040, the City of Lakewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to City of Tacoma, Department of Public Utilities, Water Division, a municipal corporation organized under the laws of the State of Washington (hereinafter "Grantee"), its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of 20 years, beginning on the effective date of this ordinance.

Pursuant to RCW 35A.47.040, the City of Lakewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to City of Tacoma, Department of Public Utilities, Water Division, a municipal corporation organized under the laws of the State of Washington (hereinafter "Grantee"), its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of 20 years, beginning on the effective date of this ordinance.

Grantee and City may agree to extend the term of this franchise on substantially the same terms and conditions as set forth herein for up to two extensions of five years per extension.

This franchise grants the Grantee the right, privilege and authority to construct, operate, maintain, replace, repair, renew and use all water pipes, mains, appurtenances and accessories necessary for the transmission and distribution of water in, under, on, across, over, through, along or below the public rights-of-way and public places located in the City of Lakewood, as approved under City permits issued pursuant to this franchise.

Section 2. Non-Exclusive Franchise Grant. 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 of said rights-of-way, streets, avenues or all other public lands and properties of every type and description. 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. It is provided, however, the City agrees not to compete with Grantee as a water utility system or provider of water in the current service area of the Grantee during the period of this Franchise.

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 of said rights-of-way, streets, avenues or all other public lands and properties of every type and description. 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. It is provided, however, the City agrees not to compete with Grantee as a water utility system or provider of water in the current service area of the Grantee during the period of this

Franchise.

Section 3. Relocation of Water Distribution Facilities. The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street, any component of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by the City, provided that the Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of water line or facility required to be temporarily disconnected or removed. The provisions of this section shall not be applicable if the relocation need results from a private development, use or activity.

The Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street, any component of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by the City, provided that the Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of water line or facility required to be temporarily disconnected or removed. The provisions of this section shall not be applicable if the relocation need results from a private development, use or activity.

If the City determines that the project necessitates the relocation of the Grantee's then existing facilities, the City shall:

A. At least ninety (90) days prior to commencement of construction of such improvement project, provide the Grantee with written notice and plans requiring such relocation, unless another time period for the notice is agreed to by the parties for a particular project; and

B. Provide the Grantee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for the Grantee's facilities so that the Grantee may relocate its facilities in other City rights-of-way in order to accommodate such improvement project.

After receipt of such notice and such plans and specifications, the Grantee shall complete relocation of its facilities at no charge or expense to the City (except as hereinafter provided) so as to accommodate the improvement project construction schedule.

The Grantee 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 the Grantee in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the facilities. If so requested by the City, the Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Grantee full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, the Grantee shall relocate its facilities as otherwise provided in this Section. Provided, however, the parties agree to exercise good faith, reasonable and timely decision making especially when issues arise in the field pertaining to relocations. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

The provisions of this Section shall in no manner preclude or restrict the Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a City construction project. The City on occasion will be constructing, reconstructing and/or relocating roads, streets, public ways, areas or facilities within the right-of-way or property which will require Grantee to install and/or relocate part of its water system. Grantee will be relying on the alignment, lines and grades as set forth in City's approval plans wherein Grantee thereafter constructs or reconstructs its water system in accordance with City's requirements and City standards. Therefore, if City thereafter again adjusts and/or revises the alignment, line or grade for a road, street, public way or area, before this part of the Grantee's water system has been in place for fifteen (15) years (commencing with the initial City revision), then City agrees to reimburse Grantee a pro rata share of the total relocation costs based on a one hundred (100) year life expectancy for the portion of Grantee's water system that is affected by the City revision unless differently agreed to in writing by City and Grantee at the time of the installation or relocation.

Section 4. Consideration For Agreement. (a) The consideration for this agreement includes, but is not limited to, the mutual and individual benefits of this agreement that allow each of the parties the ability to make long term planning decisions in light of the provisions set forth herein, the waiver of permit fees, as provided in Section 10 of this agreement, the non-competition provisions as provided in Section 16 of this agreement.

(a) The consideration for this agreement includes, but is not limited to, the mutual and individual benefits of this agreement that allow each of the parties the ability to make long term planning decisions in light of the provisions set forth herein, the waiver of permit fees, as provided in Section 10 of this agreement, the non-competition provisions as provided in Section 16 of this agreement.

(b) If the City grants to any other water provider a franchise with terms that are over-all more favorable than those set forth herein, or allows any other water provider to operate within City under terms that are over-all more favorable to the other water provider than the terms set forth herein, Grantee shall have the right to renegotiate the provisions of this franchise that Grantee believes are over-all less favorable than those granted or allowed to the other water provider. Provided however, Grantee may not exercise this above re-negotiation right for a period of one year from the effective date of this franchise. Grantee shall also have the right to renegotiate the provisions of this franchise that are affected by a substantial change in state or federal law that would allow the City the opportunity to tax and assess additional revenue from the Grantee's operations within the corporate boundaries of the City.

In the case where the parties do not agree on the re-negotiation or identification of affected provisions of this franchise, the parties agree to a binding arbitration process as follows: Each of the parties shall select an arbitrator, and the two arbitrators shall select a third arbitrator. If the two arbitrators are unable to select a third arbitrator, the third arbitrator shall be selected by the Presiding Judge of the Pierce County Superior Court. In accordance with the procedures of Chapter 7.04 of the Revised Code of Washington, the panel of three arbitrators shall review the evidence and authorities presented by the parties and hear the argument of the parties, and thereafter decide the issue(s) presented for arbitration. The arbitrators shall be authorized to require each party to provide to the other reasonable discovery. The arbitrators shall render their decision based upon their interpretation of the provisions of this franchise agreement. The arbitrators are not empowered to modify or amend the text of this franchise agreement. The parties agree to be bound by the decisions of the panel of arbitrators as to the identification of affected provisions of this franchise and/or the re-negotiation thereof.

If there is a substantial change in the law that undermines the ability of one or both of the parties to receive the benefits of this agreement, one or both of the parties may re-open this agreement to address the terms affected by the substantial change in the law.

Section 5. The Grantee's Maps, Records and Plans. After construction is complete, and at a reasonable time thereafter, the Grantee shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records for facilities within the City Limits.

After construction is complete, and at a reasonable time thereafter, the Grantee shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records for facilities within the City Limits.

Section 6. Excavations. During any period of relocation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as practicable with the free passage of traffic and the free use of adjoining property, and the Grantee 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 the laws of the State of Washington.

During any period of relocation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public rights-of-way and other public properties so as to interfere as little as practicable with the free passage of traffic and the free use of adjoining property, and the Grantee 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 the laws of the State of Washington.

Whenever the Grantee shall excavate in any public right-of-way or other public property for the purpose of installation, construction, repair, replacement, renewal, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so and upon obtaining a permit shall give the City at least twenty-four (24) hours notice during the normal work week of the Grantee's intent to commence work in the public right-of-way. In no case shall any work commence within any public right-of-way or other public property without a permit, except as otherwise provided in this franchise ordinance. During the progress of the work, the Grantee shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file as-built plans or maps with the City showing the proposed and final location of its facilities.

If either the City or the Grantee shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

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

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

C. Either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Section 7. Restoration after Construction. The Grantee shall, after abandonment or installation, construction, relocation, renewal, rehabilitation, maintenance, or repair of water facilities within the franchise area, restore the surface of the right-of-way or public property to at least the same condition the property was in immediately prior to any such installation, construction, relocation, renewal, rehabilitation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. 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. The Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the franchise area or other affected area at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

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Section 8. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the Grantee's facilities located in or under any street, breaks or leaks, are damaged, or if the Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Grantee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Grantee from the requirement of obtaining any permits necessary for this purpose, and the Grantee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business.

In the event of any emergency in which any of the Grantee's facilities located in or under any street, breaks or leaks, are damaged, or if the Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the Grantee shall immediately take the proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Grantee from the requirement of obtaining any permits necessary for this purpose, and the Grantee shall apply for all such permits not later than the next succeeding day during which City Hall is open for business.

Section 9. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct the Grantee, at the Grantee's own expense, to take actions to protect the public, adjacent public places, City property or street utilities; and such action may include compliance within a prescribed time.

Whenever construction, installation or excavation of facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct the Grantee, at the Grantee's own expense, to take actions to protect the public, adjacent public places, City property or street utilities; and such action may include compliance within a prescribed time.

In the event that the Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Grantee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation or termination of this franchise. Grantee shall relocate, at its cost, water utility system facilities that the City Engineer objectively determines are located in a place or in a way so as to

constitute a danger to the public.

Section 10. Permits and Fees.

Grantee shall be required to obtain all permits from the City necessary for work in the City and/or in the City's rights-of-way. In consideration of this agreement, including the factors set forth in Section 4 and 16 hereof, Grantee shall not be subject to any permit fees associated with Grantee's activities (except those undertaken for a private development customer) through the authority granted in this franchise ordinance or under the laws of the City.

Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency caused by the negligence of the Grantee. City agrees to process Grantee's and Grantee's contractors permits in the same expeditious manner as other permit applicants' permits are processed. Permits may be processed by facsimile or electronic mail.

Section 11. Indemnification. The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, including refunds of charges or fees paid by customers, of which it is alleged or proven that the acts or omissions of the Grantee, its agents, servants, officers or employees in performing this franchise caused or contributed thereto, including claims arising against the City by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Grantee's exercise of the rights granted herein, including payment of any monies to the City, or by virtue of the City's permitting the Grantee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the Grantee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

The Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the Grantee's own employees to which the Grantee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property, monetary losses, including refunds of charges or fees paid by customers, of which it is alleged or proven that the acts or omissions of the Grantee, its agents, servants, officers or employees in performing this franchise caused or contributed thereto, including claims arising against the City by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Grantee's exercise of the rights granted herein, including payment of any monies to the City, or by virtue of the City's permitting the Grantee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the Grantee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise.

Inspection or acceptance by the City of any work performed by the Grantee 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 which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, 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 the Grantee, then the Grantee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Grantee and the City, its officers, employees and agents, the Grantee's liability hereunder shall be only to the extent of the Grantee's negligence unless otherwise provided by law. It is further specifically and expressly understood that the indemnification provided herein constitutes the Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this Section shall survive the expiration or termination of this franchise agreement.

Section 12. Insurance. Grantee is currently self insured and has excess insurance coverage for potential liability in

excess of its self insured retention amounts. To the extent that Grantee is legally obligated by this franchise, Grantee's self insurance fund and/or insurance policies shall provide adequate protection to City in amounts equivalent to the levels set forth herein below. Grantee's general comprehensive liability policy which includes automobile liability coverage (if such a policy continues to be obtained), shall have an endorsement naming City and its officers and employees as additional insureds for their actions pursuant to this franchise.

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The amounts of insurance coverage that the grantee shall maintain, whether by self insurance or insurance policies shall not be the equivalent of less than the following:

A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and

B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

Any deductibles or self-insured retention must be declared to and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of the Grantee.

Any insurance policy(ies) obtained by the Grantee to comply herewith shall name the City (its officers, employees and volunteers,) as an additional insured with regard to activities performed by or on behalf of the Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Grantee's insurance shall be primary insurance with respect to the City, its officers, officials, employees and volunteers. Any insurance policy or policies obtained by the Grantee to comply with this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

Any failure to comply with the insurance reporting provisions of the policies required herein shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Section 13. Abandonment of Grantee's Facilities. No water line larger than 12 inches or significant facility installed by the Grantee under street pavement may be abandoned by the Grantee without the express written consent of the City. Any proposal for abandonment that requires City consent or removal of the Grantee's facilities subject to this section must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. If any twelve (12) inch or larger diameter abandoned facility conflicts with City projects, the Grantee will remove said abandoned facility at its own expense. The provisions of this Section shall survive the expiration, revocation or termination of this franchise agreement.

No water line larger than 12 inches or significant facility installed by the Grantee under street pavement may be abandoned by the Grantee without the express written consent of the City. Any proposal for abandonment that requires City consent or removal of the Grantee's facilities subject to this section must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. If any twelve (12) inch or larger diameter abandoned facility conflicts with City projects, the Grantee will remove said abandoned facility at its own expense. The provisions of this Section shall survive the expiration, revocation or termination of this franchise agreement.

Section 14. Street Vacations. City may have occasion to vacate certain streets, public ways or areas that have Grantee's lines and facilities located thereon. City agrees to exert reasonable good faith efforts to reserve an easement for Grantee's lines and facilities when a street, public way or area is vacated. If it is not feasible for City to reserve an easement for Grantee's line(s) and facilities, the proponents of the vacation shall be required (by the City) as part of land use or other permitting approvals, to reimburse Grantee all costs to relocate said line(s) and facilities.

City may have occasion to vacate certain streets, public ways or areas that have Grantee's lines and facilities located thereon. City agrees to exert reasonable good faith efforts to reserve an easement for Grantee's lines and facilities when a street, public way or area is vacated. If it is not feasible for City to reserve an easement for Grantee's line(s) and facilities, the proponents of the vacation shall be required (by the City) as part of land use or other permitting approvals, to reimburse Grantee all costs to relocate said line(s) and facilities.

Section 15. Modification. The City and the Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification.

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Section 16 Exercise of City Authority. The parties acknowledge that the City has authority to operate its own water system and also the authority to contract with other public or private entities for the purchase of water. For several reasons City does not desire to exercise that authority at the present time. Grantee agrees that for and in consideration of the City not exercising its said authority, City is entitled to require an administrative fee be paid by Grantee. Therefore, Grantee agrees that for and in consideration of the City not exercising its authority to operate its own water system in the service area served by Grantee, or not contracting with other public or private entities for the purchase of water in said service area, and the other factors of consideration set forth in Section 4 of this agreement, Grantee shall pay to the City an annual fee in the amount of eight (8) percent of gross revenues Grantee receives from Grantee's water system customers served from Grantee's water system located within City's street rights-of-way. Gross revenues means money or funds received by reason of transaction of water utility service business including sales of water to customers. Gross revenue does not include: (a) uncollected amounts; (b) amounts received from condemnation award or condemnation settlements; (c) amounts received as compensation or reimbursement of damages to or protection of any property of Grantee; (d) amounts received as compensation for or in aid to construction; (e) amounts collected as sales tax; (f) discounts, returns, allowances and repossessions; and (g) amounts received from surcharge to water rates for system improvements necessary to meet Grantee's standards.

The parties acknowledge that the City has authority to operate its own water system and also the authority to contract with other public or private entities for the purchase of water. For several reasons City does not desire to exercise that authority at the present time. Grantee agrees that for and in consideration of the City not exercising its said authority, City is entitled to require an administrative fee be paid by Grantee. Therefore, Grantee agrees that for and in consideration of the City not exercising its authority to operate its own water system in the service area served by Grantee, or not contracting with other public or private entities for the purchase of water in said service area, and the other factors of consideration set forth in Section 4 of this agreement, Grantee shall pay to the City an annual fee in the amount of eight (8) percent of gross revenues Grantee receives from Grantee's water system customers served from Grantee's water system located within City's street rights-of-way. Gross revenues means money or funds received by reason of transaction of water utility service business including sales of water to customers. Gross revenue does not include: (a) uncollected amounts; (b) amounts received from condemnation award or condemnation settlements; (c) amounts received as compensation or reimbursement of damages to or protection of any property of Grantee; (d) amounts received as compensation for or in aid to construction; (e) amounts collected as sales tax; (f) discounts, returns, allowances and repossessions; and (g) amounts received from surcharge to water rates for system improvements necessary to meet Grantee's standards.

The payments to City shall be made quarterly, in four equal payments each year, on or before March 31, June 30, September 30, December 31 of each year during the term hereof. It is provided, however, that absent any Federal, State or other governmental laws or regulations to the contrary, such payments made by the Grantee to the City shall not result in a surcharge to the customers in the City. It is further provided that nothing herein shall be deemed to impair the authority of the City to exercise its governmental powers.

Section 17. Forfeiture and Revocation. If the Grantee 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 the Grantee by the City under the provisions of this franchise, then the Grantee shall, at the election of the Lakewood City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to the Grantee. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply.

If the Grantee 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 the Grantee by the City under the provisions of this franchise,

then the Grantee shall, at the election of the Lakewood City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to the Grantee. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Grantee to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of the Grantee's failure to comply.

Section 18. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Grantee 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.

In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Grantee 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.

Section 19. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid 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, manner of construction and maintenance of any facilities by the Grantee, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

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 valid 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, manner of construction and maintenance of any facilities by the Grantee, and the Grantee shall promptly conform with all such regulations, unless compliance would cause the Grantee to violate other requirements of law.

Section 20. Cost of Publication. The cost of the publication of this Ordinance and/or its summaries shall be borne by the Grantee.

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Section 21. Acceptance. Within sixty days after the passage and approval of this Ordinance, this franchise may be accepted by the Grantee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Grantee to so accept this franchise within said period of time shall be deemed a rejection thereof by the Grantee, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

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Section 22. Survival. All of the provisions, conditions and requirements of Sections 3, Relocation of Water Facilities; 9, Dangerous Conditions; and 11, Indemnification, of this franchise shall be in addition to any and all other obligations and liabilities the Grantee may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to the Grantee for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof (however, such survival period extends only through the applicable statute of limitations period). 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 the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

All of the provisions, conditions and requirements of Sections 3, Relocation of Water Facilities; 9, Dangerous Conditions; and 11, Indemnification, of this franchise shall be in addition to any and all other obligations and liabilities the Grantee may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to the Grantee for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof (however, such survival period extends only through

the applicable statute of limitations period). 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 the Grantee and all privileges, as well as all obligations and liabilities of the Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Grantee is named herein.

Section 23. 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. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

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. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise, or may terminate this franchise.

Section 24. Assignment. This agreement may not be assigned or transferred without the written approval of the City, except the Grantee may freely assign this Agreement in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing and provided that the City's approval shall not be unreasonably withheld. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The Grantee shall provide prompt, written notice to the City of any such assignment.

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Section 25. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

City of Tacoma

Department of Public Utilities

Water Division

3628 South 35th Street

Tacoma, WA 98409

Attention: Water Superintendent

Until 11-15-01 After 11-15-01

City of Lakewood City of Lakewood

10510 Gravelly Lake Drive S.W. 6000 Main Street S.W.

Lakewood, WA 98499 Lakewood, WA 98499

Attention: City Manager Attention: City Manager

Section 26. Effective Date. This Ordinance has first been submitted to the Lakewood City Attorney; granted an approving vote of at least a majority of the City Council at a regular meeting after initial introduction on _____, and a summary of the ordinance has been published at least once in a newspaper of general circulation in the City of Lakewood. This franchise ordinance shall be effective five (5) days after passage and publication as provided for by law.

This Ordinance has first been submitted to the Lakewood City Attorney; granted an approving vote of at least a majority of the City Council at a regular meeting after initial introduction on _____, and a summary of the ordinance has been published at least once in a newspaper of general circulation in the City of Lakewood. This franchise ordinance shall be effective five (5) days after passage and publication as provided for by law.

ADOPTED by the City Council this 19th day of November 19, 2001.

CITY OF LAKEWOOD

Bill Harrison, Mayor

Attest:

Alice M. Bush, CMC, City Clerk

Approved as to Form:

Daniel B. Heid, City Attorney

HONORABLE MAYOR AND CITY COUNCIL
CITY OF LAKEWOOD, WASHINGTON

In the matter of the application of he City of Tacoma Department of Public Utilities, Water Division, a municipal corporation, its successors and assigns, for the right, privilege, authority and nonexclusive franchise for twenty years, to construct, maintain, operate, replace, repair and renew a water distribution and transmission system and accessories, in, across, over, along,

Franchise Ordinance No. _____

ACCEPTANCE

under, through and below certain designated public rights-of-way of the City of Lakewood, Washington

WHEREAS, the City Council of the City of Lakewood, Washington, has granted a franchise to Tacoma Department of Public Utilities, Water Division, a municipal corporation, hereinafter "Tacoma," its successors and assigns, by enacting Ordinance No. _____, bearing the date of _____, 20__; and

WHEREAS, a copy of said Ordinance granting said franchise was received by Tacoma on _____, 20__, from said City of Lakewood, Pierce County, Washington.

NOW, THEREFORE, Tacoma, a municipal corporation, for itself, its successors and assigns, hereby accepts said Ordinance and all the terms and conditions thereof, and files this, its written acceptance, with the City of Lakewood, Pierce County, Washington.

IN TESTIMONY WHEREOF said Tacoma Department of Public Utilities, Water Division, has caused this written Acceptance to be executed in its name by _____, its _____, thereunto duly authorized on this

_____ day of _____, 200__.

CITY OF TACOMA DEPARTMENT OF ATTEST: PUBLIC UTILITIES, WATER DIVISION

_____ By:_____

Copy received for City of Lakewood

on _____, 200__

By:_____

Alice M. Bush, CMC, Lakewood City Clerk

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