

August 20, 1996
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swdfra.ord

Introduced by **GREG NICKELS**
Proposed No: **96-762**

ORDINANCE NO. **12518**

AN ORDINANCE approving a franchise for Seattle Water Department to construct, operate and maintain a water distribution system in Council Districts 1, 5 and 8 and authorizing the Executive to execute the franchise agreement.

STATEMENT OF FACTS:

1. Seattle Water Department has filed an application for a franchise in council districts 1, 5 and 8 to construct, operate and maintain a water distribution system in accordance with R.C.W. 36.55.010 and K.C.C. 6.27.
2. Seattle Water Department's comprehensive plan was approved on October 25, 1993 by King County council Ordinance 11088.
3. The application has been referred to the relevant county departments for review; no objections have been raised to granting the franchise.
4. The King County executive has recommended approval of the franchise.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The granting of a franchise to Seattle Water Department to construct, operate and maintain a water distribution system within King County is hereby approved. The King County executive is authorized to enter into and execute the water distribution system franchise, which by this reference is fully incorporated herein. Said franchise shall include all of the general and special conditions required by the county.

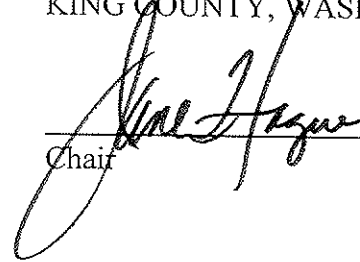
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SECTION 2. If within 60 days after the granting of this franchise, the grantee shall have failed to sign the written acceptance incorporated herein, then the rights and privileges granted herein shall be forfeited and said franchise shall be null and void.

INTRODUCED AND READ for the first time this 16TH day of September 1996.

PASSED by a vote of 13 to 0 this 12th day of November, 1996.

KING COUNTY, COUNCIL
KING COUNTY, WASHINGTON


Chair

ATTEST:


Clerk of the Council

APPROVED this 21st day of November, 1996.


King County Executive

Attachments:

A. Franchise Agreement

UTILITIES

FRANCHISE NO. 12518

In the matter of the application for a franchise to operate, maintain, repair, and construct water mains and service lines and appurtenances in, over, along, and under County roads and rights-of-way in King County, Washington.

The application of SEATTLE WATER DEPARTMENT for a franchise to operate, maintain, repair and construct water mains and service lines and appurtenances in, over, along, and under County roads and rights-of-way located within the area described in attached Exhibit A (legal description) and Exhibit C (franchise area map) has been heard on this 12th day of NOVEMBER, 19 96. All of the property described in Exhibits A and C lies outside the limits of any incorporated Town or City.

Legal notice of the franchise application and of the hearing has been given as is required by law.

The King County Council, having considered the interests proposed and advanced, and finding that the granting of this franchise is in the public interest, ORDERS that a water distribution system franchise be granted to SEATTLE WATER DEPARTMENT, the Grantee, subject to the conditions set forth in Exhibit B attached hereto, this franchise and Ordinance No. 12518. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair, and construct water mains and service lines and appurtenances as a part of its distribution system in, over, along, and under County roads and rights-of-way located within the area described in Exhibits A and C. Should Exhibits A and C conflict, the franchise area described in Exhibit A shall govern.

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This franchise is granted subject to all of the terms and conditions contained herein, in Ordinance _____ and Exhibit B and shall expire in twenty-five (25) years on 11/12, 2021

Dated this 12th day of November, 19 96

KING COUNTY, WASHINGTON

BY [Signature]
TITLE EXECUTIVE

The undersigned accept all the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained herein, in Ordinance _____ and Exhibit B of this franchise.

Seattle Public Utility
GRANTEE fka Seattle Water Dept.

BY [Signature]
TITLE Real Estate Mgr.

Dated this 22nd day of January, 19 97.

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Exhibit A

All King County road rights-of-way within the following described boundaries:

Distribution Location No. 2D

(Skyway)

In Sections 11, 12, 13 and 14, Township 23 North, Range 4 East, W. M., King County Washington.

Beginning at the north $\frac{1}{4}$ corner of Sec. 11, T 23 N, R 4 E, W.M.;
thence east along the north line of said Sec. 11 to the east margin of Renton Ave. S;
thence southerly along said east margin to the south line of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of said Sec. 11;
thence east along said south line and continuing east along the south line of the NW $\frac{1}{4}$ of the NW $\frac{1}{4}$, Sec. 12, T 23 N, R4E, W.M. to a line parallel with and 650 ft. east of the west line of said Section 12;
thence south along said parallel line to the south margin of Renton Ave. S.;
thence westerly along said south margin to the east margin of 68th Ave. S.;
thence south and southwesterly along said east margin to the west line of Sec. 12, T 23 N, R 4 E, W.M.;
thence south along said west line to the north margin of S. 128th St.;
thence east along said north margin to the east margin of 69th Ave. S. in South Beacon Hill Tracts (Vol. 13 of Plats, P. 95) extended northerly;
thence south along said east margin and said east margin extended southerly, to the northerly margin of Langston Road S. (S. 131st St.);
thence easterly, northeasterly and southeasterly along said northerly margin to the south margin of the City of Seattle's Cedar River Pipeline right of way;
thence westerly along said south margin to the east margin of 80th Ave. S.;
thence southerly along said east margin to the north margin of Martin Luther King Junior Way (FKA Empire Way S) (State Highway 900);
thence westerly along said north margin to the south line of the NE $\frac{1}{4}$ of the NE $\frac{1}{4}$ of Sec. 14, T 23 N, R 4 E, W.M.;
thence east along said south line to the east line of said Sec. 14;
thence north along said east line to the southwesterly margin of the City of Seattle's Cedar River Pipeline right of way;
thence northwesterly along said southwesterly margin to the south margin of S. 124th St.;

thence northwesterly along said northeasterly margin to the south line of the NW¼ of Sec. 11,
 T 23 N, R 4 E, W.M.;

thence east along said south margin to the SE corner of said NW¼ of Sec. 11;

thence north along the east line of said NW¼ of Sec. 11 to the north ¼ corner of said Sec. 11,
 T 23 N, R 4 E, W.M. and the point of beginning; AND

The north 650 feet, EXCEPT the west 650 feet, of the SW¼ of the NW¼ of said Section 12.

Distribution Location No. 3D

(White Center)

In Section 1 and 12, Township 23 North, Range 3 East, W.M.; AND

In Sections 4, 6, and 7, Township 23 North, Range 4 East, W.M.

<u>Subdivision</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>
ALL EXCEPT the W½ of the W½	1	23	3
All of Gordon's Addition, No. 2 (Vol. 36 of Plats, Pg. 42) in the SE¼	4	23	4
NW¼ EXCEPT the S¾ of the SE¼ of sd NW¼	6	23	4
SW¼ of the SE¼	6	23	4
SW¼ EXCEPT the NE¼ of the SW¼	6	23	4
N½ of the N½ lying Ely of Seola Beach Dr. S.W. (AKA Qualheim Ave.)	12	23	3
NW¼ EXCEPT the SW¼	7	23	4
NW¼ of the NE¼	7	23	4
SW¼ of the SW¼ of the NE¼	7	23	4
NW¼ of the NW¼ of the SE¼	7	23	4
N¾ of the NE¼ of the SW¼	7	23	4

Distribution Location No. 9D

(Shoreline)

In Sections 1, 2, and 13, Township 26 North, Range 3 East, W.M.; AND

thence east along the south line of said section and along the centerline of North 145th Street, N E 145th Street and of N E 145th Street produced east, to the west shore of Lake Washington;

thence northerly along said west shore to the north margin produced east of N E 145th Street;

thence west along said production and along the north margin of N E 145th Street to the westerly margin of Bothell Way N.E.;

thence northerly along said westerly margin to the south margin of N E 155th Street;

thence west along said south margin to the east margin of 27th Avenue N E;

thence north along said east margin to the north margin of N E 155th Street;

thence west along said north margin to the west margin of 25th Avenue N E;

thence south along said margin to the north margin of N E 145th Street;

thence westerly along said north line to the west margin of Greenwood Avenue North;

thence southerly along said west margin to the centerline of N 145th Street, and the point of beginning.

ALSO,

Beginning at the intersection of the north boundary of King County, being the centerline of Northwest 205th Street, and the west margin of 15th Avenue Northwest;

thence east along said north boundary to the west margin of 8th Avenue Northwest;

thence south along said west margin to the south margin of Northwest 205th Street;

thence west along said south margin to the west margin of 15th Avenue Northwest;

thence north along said west margin to the north boundary of King County, and the point of beginning.

ALSO,

Beginning at the intersection of the north boundary of King County, being the centerline of Northwest 205th Street, and the west margin of 3rd Avenue Northwest;

thence east along said north boundary to a point 25 feet east of the east margin of Fremont Avenue North;

thence south parallel to the east margin of Fremont Avenue North to the south margin of North 205th Street;

thence west along said south margin and the south margin of Northwest 205th Street to the west margin of 3rd Avenue Northwest;

thence north along said west margin to the north boundary of King County, and the point of beginning.

Exhibit B

TERMS AND CONDITIONS APPLICABLE TO UTILITY FRANCHISES GRANTED BY
KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. DEFINITIONS

References to any County official or office also refers to any official or office that succeeds to any or all of the responsibilities of the named office or official. References to laws or "applicable laws" include federal, state and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws include laws now in effect, as the same may be amended from time to time, and laws in effect at any point in time during the operation of this franchise. In addition, the following definitions shall apply:

Cable Services. The term "Cable Services" is used as defined in 47 United States Code 522 (5) as amended.

Cable System. The term "Cable System" is used as defined in 47 United States Code 522 (6) and King County Code 6.27A.010 (J) as amended.

County Road Rights-of-Way. The term "County Road Rights-of-Way" includes any road, street, avenue, or alley located within the area described in the attached Exhibits A and C. It does not include recreational or nature trails, except where the trails intersect or are within roads, streets, avenues or alleys.

Director. The term "Director" refers to the chief executive of the King County Department of Transportation.

Grantee. The term "Grantee" refers to SEATTLE WATER DEPARTMENT, its successors and those assignees approved pursuant to paragraph 16 herein.

Utility. The term "Utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the County property described in Exhibits A and C.

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2. ACCEPTANCE BY GRANTEEES OF TERMS AND CONDITIONS

The full acceptance of this franchise and all of its terms and conditions shall be filed with the Clerk of the Council within sixty (60) days from _____, 19____, by the Grantee. Full acceptance of this franchise is a condition precedent to its taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

3. FRANCHISE TERM

The franchise shall be in effect for a period of twenty-five (25) years from the effective date of this franchise and shall expire on _____.

4. NON-EXCLUSIVE FRANCHISE

This franchise is not exclusive. It does not prohibit King County from granting franchises for other public or private utilities, in, under, over, across, and along any County property, including County road rights-of-way.

This franchise does not prevent or prohibit King County from constructing, altering, maintaining or using any County road rights-of-way covered by this franchise. King County retains full power to make all changes, relocations, repair, maintenance, etc., as it may deem fit.

5. JURISDICTION

This franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which King County has an actual interest. It is not a warranty of title or of interest in County road rights-of-way.

Whenever any of the County road rights-of-way as designated in this franchise, by reason of the subsequent incorporation of any town or city, or extension of the limits of any Town or City, shall fall within the City or Town limits, this franchise shall continue in force and effect until such time as the incorporation and/or annexation is complete according to applicable State law, after which

All of the rights herein granted shall be subject to and governed by this franchise; provided, however, that nothing in this franchise may be construed in any way as limiting King County's authority to adopt ordinances, rules and regulations which are necessary to protect the health, safety and welfare of the general public.

6. REGULATION OF USE AND CONTROL

This franchise authorizes the use of County rights-of-way solely for the delivery by the Grantee of water to its customers. Additional uses of County rights-of-way by the Grantee shall first require a separate franchise from King County which conforms to the requirements of K.C.C. 6.27, as amended, K.C.C. 6.27A, as amended, or other applicable laws.

Any use by others of the Grantee's equipment or facilities in County rights-of-way, including for telecommunication or cable television transmissions, is prohibited unless separately authorized and approved in writing by King County. The Grantee agrees that prior to authorizing any other person to use the Grantee's equipment or facilities located in County rights-of-way, the Grantee will require the proposed user to provide the Grantee with an affidavit that it has obtained the necessary franchise or other approval from the County to operate and provide the proposed service in County rights-of-way. At least thirty (30) days prior to finalizing any agreement with a potential user for the use of the Grantee's equipment or facilities, the grantee will forward the affidavit to the King County Office of Cable Communication.

Neither the granting of this franchise nor any language, term or condition within this franchise deprives King County of any powers, rights or privileges it now has or may later acquire to regulate the use of and to control county rights-of-way covered by this franchise.

7. ENFORCEMENT

Failure of King County on one or more occasions to exercise a right or to require compliance or performance under this franchise or any applicable law, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically waived in writing. Failure of King County to enforce or exercise its rights under any provision of this franchise or applicable law does not constitute a waiver of its right to enforce or exercise a right in any other provision of this franchise or applicable law.

of, or is incidental to Grantee's exercise of rights and privileges granted by this franchise. The Grantee's obligation under this section shall include:

- (a) Indemnification for such claims whether or not they arise from the sole negligence of the Grantee, the concurrent negligence of both parties, or the negligence of one or more third parties.
- (b) The duty to promptly accept tender of defense and provide defense to the County at the Grantee's own expense.
- (c) Indemnification of claims made by the Grantee's own employees or agents.
- (d) Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, as respects the County only, which waiver has been mutually negotiated by the parties.

The Grantee shall have no obligation under this section to indemnify and hold harmless King County for claims arising from the sole negligence or willful misconduct of King County, its appointed and elected officials and employees.

In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this indemnification/hold harmless agreement, all such fees, expenses and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this franchise agreement, the Grantee agrees to defend, hold harmless and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify and hold harmless the County for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

King County shall give the Grantee timely written notice of the making of any claim or of the commencement of any such action, suit or other proceeding covered by the indemnity in this section. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the duty to defend, settle or compromise any claims arising hereunder and the County shall cooperate fully therein.

If at any time King County, in accordance with RCW Chapter 36.87, and as hereinafter amended, vacates any County Road Rights-of-Way covered by this franchise, King County will not be held liable for any damages or loss to the Grantee by reason of such vacation. King County may, after giving at least ninety (90) days written notice to the Grantee, terminate this franchise with respect to any County road Rights-of-Way vacated. Upon receiving the notice the Grantee will use its best efforts to secure a continuing easement or remove its facilities from the proposed vacation area. Alternatively, if the Grantee is unable to secure an easement or remove its facilities and so notifies King County, the King County Council may in its vacation proceedings reserve an easement for the Grantee.

10. REPAIR, REMOVAL OR RELOCATION

The Grantee shall, at no expense to the County, repair all existing facilities that it owns within County road rights-of-way, including all appurtenant facilities and service lines connecting its system to users, if such repair is required by the County for any reasonable purpose.

The Grantee shall, at no expense to the County, adjust, remove or relocate existing facilities within County road rights-of-way, including all appurtenant facilities and service lines connecting its system to users, if the County determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the County in such road right-of-way. The County shall give the Grantee written notice of such requirement as soon as practicable, at the beginning of the pre-design stage for projects that are part of the County's capital improvement program, including such available information as is reasonably necessary for the Grantee to plan for such adjustment, removal or relocation.

For projects that are a part of the County's capital improvement program, in addition to any other notice given to the Grantee, the County shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the County, and the proposed construction schedule; notwithstanding any permit conditions that may later be applied to the County project, this initial design information shall be given at least 180 days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Grantee shall respond to this notice, and to any later notices of revised designs based on permit conditions, within no more than thirty (30) days by providing to the County the best available information as to the location of all of the Grantee's facilities, including all appurtenant facilities and service lines connecting its system to users and all facilities that it has abandoned, within the area proposed for the public works project.

allocation of contractor costs, the Grantee shall reimburse the County for costs, such as for inspections or soils testing, related to the Grantee's work and reasonably incurred by the County in the administration of such joint construction contracts. Such costs shall be calculated as the direct salary cost of the time of County professional and technical personnel spent productively engaged in such work, plus overhead costs at the standard rate charged by the County on other similar projects, including joint projects with other County agencies.

11. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee, its successors or assigns, has the right, privilege and authority to enter the County road rights-of-way for the purpose of operating, maintaining, repairing, or constructing its distribution and service lines, and appurtenances, on the condition that it obtains permits approved by the Director and the Property Services Division and, when applicable, by the Department of Development and Environmental Services. Applications for work permits shall be presented to the Property Services Division, which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. In the event of an emergency, the Grantee may immediately commence the necessary work and shall apply the next business day for the work permit. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, and any other reasonably necessary repair or restoration to the County road rights-of-way. All work shall be done to the reasonable satisfaction of the Director.

All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the County road rights-of-way shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee.

All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

The Grantee shall, at no expense to the County, assume the following obligations with respect to the facilities connected to its system that are within County road rights-of-way and which it does not own, including appurtenant facilities and service lines connecting its system to users:

- (a) The Grantee shall apply for, upon request and on behalf of the owner of the facilities, a County right-of-way construction permit for any repairs required for such facilities; provided such owner agrees to reimburse the Grantee for all costs incurred by the Grantee

the health, safety or welfare of parties other than the owner or the occupants of the building served by such facilities, the Grantee shall take prompt remedial action to correct the emergency to the County's approval, which the County shall not unreasonably withhold;

(c) When the County or its contractor provides notice to the Grantee, pursuant to RCW 19.122, of its intent to excavate within County road rights-of-way, the Grantee shall provide to the County or its contractor the best information available from the Grantee's records or, where reasonable, from the use of locating equipment as to the location of such facilities, including surface markings where these would reasonably be of use in the excavation. If the Grantee fails to make good faith efforts to provide the above information within the deadlines provided by RCW 19.122, the Grantee shall hold the County harmless for all reasonable costs that result from damage to such facilities if such damage occurs as a result of the failure to provide such information. Nothing in this subsection is intended or shall be construed to create any rights in any third party or to form the basis for any obligation or liability on the part of the County or the Grantee toward any third party, nor is anything in this subsection intended or to be construed to alter the rights and responsibilities of the parties under RCW 19.122, as amended.

12. RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY

After work on, over, under or adjacent to County road rights-of-way, the Grantee is responsible for and will leave all County Road Rights of Way in as good a condition as they were before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County road rights-of-way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the County road rights-of-way to their pre-work condition. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

13. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise,

The right to operate, maintain, repair and construct Grantee's distribution and service lines and appurtenances granted by this franchise does not preclude King County, its agents or contractors from blasting, grading, or doing other road work contiguous to the Grantee's lines and appurtenances. Except in the case of an emergency, the Grantee will be given ten business days written notice of any blasting so that the Grantee may protect its lines and appurtenances. If the Grantee notifies the County within ten business days that the facilities will have to be relocated to protect them from blasting, the County will defer the blasting for up to ninety (90) days from the date of the original notice. In no event will the Grantee be given less than two business days written notice of any blasting. Notification of any excavation shall be provided through the One-Call System as provided by RCW 19.122, as hereinafter amended.

15. SURVEY MARKERS AND MONUMENTS

It shall be the responsibility of the Grantee performing any construction work in the County rights-of-way to restore any survey markers or monuments disturbed by such construction in accordance with RCW 58.09.130, and as hereinafter amended.

16. ASSIGNMENT

The Grantee shall not have the right to assign this franchise without consent of the King County Council given by Ordinance. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as surety bonds which the Council deems necessary to be posted are received. Council approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

17. EXPIRATION AND RENEWAL

To the extent described in Exhibits A and C, all rights granted by this franchise to County road rights-of-way outside incorporated towns and cities apply to all existing County road rights-of-way improved and unimproved and to all County road rights-of-way acquired by King County during the term of this franchise.

If the Grantee has initiated a renewal of this franchise, the County shall not be bound by the terms of this franchise.

operation of County roads, franchise holders, or for the construction, renewing, altering, or improving of any County road rights-of-way, or for the installation of lines and/or facilities of other franchise holders.

Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment.

If the franchise has expired, the grantee shall continue to be responsible for the operation and maintenance of existing facilities in the County road rights-of-way until removed, assigned to another franchised utility or abandoned; however the Grantee shall not have the right to provide additional services or construct new facilities. King County will issue permits required for the repair and maintenance of the existing facilities in accordance with K.C.C. 14.4.055, as amended, and Section 11 of this franchise. This section and sections 8, 10-13 and 15 of this franchise shall continue in force until such time as the lines are removed from County road rights-of-way, assigned to another franchised utility, or abandoned in place with the approval of the County Road Engineer.

18. RESERVATION OF RIGHTS

Nothing in this franchise may be construed in any way as limiting King County's exercise of any authority that may be granted to King County by state or federal laws enacted during the term of this franchise. In the event the Grantee for any reason finds the exercise of said authority by King County unacceptable (whether or not any protest is lodged), the Grantee has the option at any time after the exercise of said authority to provide King County with three years notice to terminate the franchise and withdraw from the area covered by this franchise at the conclusion of the three year notice period.

King County also specifically reserves the right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property, pursuant to an ordinance. If King County elects to exercise such authority, the fair market compensation requirement for Grantee shall be imposed by ordinance not less than one hundred eighty (180) days after written notice ("Compensation Notice") is delivered to the Grantee, said Compensation Notice identifying with specificity the definition, terms and/or formula to be used in determining such fair market compensation. Acceptance of King County's definition terms and/or formula identified in the Compensation Notice will occur if the Grantee accepts in writing within thirty (30) days of receipt of the Compensation Notice; or, if Grantee takes no action in writing within ninety (90) days of receipt of the compensation Notice; in which case the applicable ordinance that the King County Council will adopt.

Grantee's rejection of the definition, terms, and/or formula identified in the Compensation Notice will only occur if such rejection is in written form, identifying with specificity the grounds for such rejection, and delivered to King County within ninety (90) days after receipt of the Compensation Notice, in which case the below identified arbitration terms will apply:

- A. The Grantee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either the Grantee or King County may apply to the presiding judge of the King County Superior Court for the appointment of a third arbitrator. The three arbitrators will determine the method for determining the fair market compensation for the County property used by the Grantee. The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The decision of a majority of the arbitrators will bind both the Grantee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to the Grantee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.
- B. The fees of the arbitrators selected by each party shall be paid by that party, and the fees of the third arbitrator shall be paid one-half each by the County and the Grantee. The other costs of the proceeding shall be shared equally by the County and the Grantee.
- C. In the event that the question of fair market compensation is not resolved prior to the effective date specified by the ordinance authorizing said compensation, the arbitration decision will be applied retroactively to the effective date in the ordinance. If the Grantee has refused to pay the disputed amount, the Grantee will pay the retroactive sum plus interest in the amount of twelve percent (12%) per annum. If the Grantee has paid the disputed amount under protest, however, then any over-payment shall be returned to the Grantee plus interest in the amount of twelve percent (12%) per annum.
- D. In the event the Grantee for any reason finds the amount of payment required by King County for the use of its property unacceptable (whether or not any protest is lodged and whether or not the Grantee avails itself of the arbitration provision), the Grantee has the option at any time after the imposition of such required payment to provide King County with three years notice to terminate the franchise and withdraw from the area covered by this franchise at the conclusion of the three year notice period.

20. NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No persona shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons. The Grantee recognizes that King County has a policy of promoting affirmative action, equal opportunity and has resources available to assist the Grantee in these efforts.

21. PENALTY FOR VIOLATION OF CONDITIONS

If the Grantee shall violate or fail to comply with any of the material terms, conditions or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise or if the Grantee abandons its franchise, the Council may revoke this franchise. King County shall give written notice of its intent to revoke this franchise. A public hearing shall be scheduled within forty-five (45) days following the notification. The decision to revoke this franchise will become effective ninety (90) days following the public hearing if the County, by ordinance, finds:

- A. that the Grantee has not substantially cured the violation or failure to comply which was the basis of the notice; or

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D. that the revocation of the franchise is in the public interest.

During the forty-five (45) days following the notification, the Grantee shall have the opportunity to remedy the failure to comply.

22. RIGHT OF APPEAL

Decisions, requirements, or approvals of the Director are binding on the parties to this document. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

23. SEVERANCE

This agreement gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any provision of this franchise, or its application is determined to be invalid by a court of law, then the remaining provisions of this franchise shall continue and remain valid unless the dominant purpose of the franchise would be prevented or the public interest is no longer served.