

10/28/97
BT:ts
clerk 11/20/97

Introduced By:

MAGGI FIMIA
DWIGHT PELZ
Greg Nickels

Proposed No.:

97-696

ORDINANCE NO. **12965**

AN ORDINANCE approving a franchise for Seattle City Light to construct, operate and maintain an electrical system in Council Districts 1, 5, and 8, and authorizing the executive to execute the franchise agreement.

STATEMENT OF FACTS:

1. Seattle City Light has filed an application for a franchise in council districts 1, 5, and 8 to construct, operate and maintain an electrical system to serve residential, multi-family and commercial areas in accordance with R.C.W. 36.55.010 and K.C.C. 6.27.
2. The application has been referred to the relevant county departments for review.
3. 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 City Light to construct, operate and maintain an electrical system within King County is hereby approved. The King County executive is authorized to enter into and execute the electrical 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.

UTILITIES

FRANCHISE NO. **12965**

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

The application of SEATTLE CITY LIGHT for a franchise to operate, maintain, repair and construct electrical distribution 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" has been heard on this 5th day of JANUARY, 1998. All of the property described in Exhibit "A" 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 an electrical distribution system franchise be granted to SEATTLE CITY LIGHT, the Grantee, subject to the conditions set forth in Exhibit "B" attached hereto, this franchise and Ordinance No. 12965. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair, and construct electrical distribution 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 Exhibit "A".

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This franchise is granted subject to all of the terms and conditions contained herein, in Ordinance 12965 and Exhibit "B" and shall expire in ten years on 1/5, 2008.

Dated this 15 day of January, 1998.

KING COUNTY, WASHINGTON

BY: [Signature]

TITLE King County 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 12965 and Exhibit "B" of this franchise.

CITY OF SEATTLE
CITY LIGHT DEPT.
GRANTEE

BY: [Signature]

TITLE Manager Real Estate

Dated this 5th day of February, 1998.

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

AREA A:

Beginning at, and also known as the true point of beginning, the west line of 15th Avenue NE and its intersection with the north line of Section 5, Township 26 North, Range 4 East;

Thence southerly along west line to the southerly line of SR 5 (Primary State Hwy. No. 1) as established in Superior Court Cause Number 612114;

Thence northwesterly, westerly, and southerly along the southwesterly, southerly and easterly margin of SR 5 (Primary State Hwy. No. 1) East 200th Street to Swamp Creek apprd. 3-28-61, Sheet 1 of 19 and SR 5 (Primary State Hwy. No. 1) East 145th Street to East 200th Street Sheet 12 & 13 of 18 to the southerly line of NE 195th Street, situated in the SE 1/4 of Section 5, Township 26 North, Range 4 East;

Thence easterly along said south line of NE 195th Street to the west line of Lot 1, Block 14, Lago Vista Addition, Volume 30 of plats, page 45;

Thence southerly along the west line of Lots 1 through 5 of said Block 14 to the south line of said Lot 5;

Thence easterly along said south line of Lot 5 to the west margin line of 14th Avenue NE;

Thence southerly along said west margin of 14th Avenue NE to the south line of Lot 6 of said Block 14;

Thence easterly along the easterly extension of said south line of Lot 6 to the east margin of 15th Avenue NE;

Thence northerly along said east line of 15th Avenue NE to the north line of Bonnie Brook Condominium, Volume 50 of Condominium plats, Pages 37 and 40;

Thence easterly along said north line of Bonnie Brook and the north line of Lot 5, Block 15, of said Lago Vista Addition to the west line of 16th Avenue NE; all being located in Section 4, Township 26, Range 4,

Thence northerly along said west line to the point of intersection with the westerly extension of the north line of Lot 23, Block 16 of said Lago Vista Addition;

Thence east along said westerly extension and said north line of Lot 23, Block 16 to the west line of Lot 2 of said Block 16;

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Thence southerly along said west line to the south line of said Lot 2;

Thence east along said south line of Lot 2 to the west line of 18th Avenue NE;

Thence southeasterly to the northwest corner of Lot 1, Block 18 of said Lago Vista Addition;

Thence southerly along the west line of said Lot 1 to the south line thereof;

Thence east along said south line to the northwest corner of Lot 2 of said Block 18;

Thence southerly along the west line of Lots 2 through 17 to the southwest corner of Lot 17, Block 18 of said Lago Vista Addition;

Thence east along the south line of said Lot 17 to the west line of 20th Avenue NE;

Thence southerly along said west line of 20th Avenue NE and its southerly extension to the north line of the South 1/2 of the S W 1/4 of Section 4, Township 26 North, Range 4 East;

Thence east along said north line of the South 1/2 to its intersection with the northeast corner of Lot 21 of the Trafford Park Tracts,

Thence southerly along the east line of said lot to its intersection with the south margin of Perkins Way

Thence east along said margin to its intersection with the northeast corner of Tract A of Short Plat 776026, recorded under A.F.# 7806270830,

Thence southerly extension along the east line of said tract to its intersection with the southwest corner of Tract A of Short Plat S89S0179, recorded under A.F.# 9206119001,

Thence east along the south line of said tract to its northeast corner of Lot 3 of said short plat,

Thence south along the east line of said lot to its intersection with the south line of said Section 4, Township 26, Range 4 East,

Thence east along said south line to its intersection with the south margin of Perkins Way a.k.a. Corporate Boundary of the City of Lake Forest Park,

Thence northwesterly and northeasterly along said boundary to its intersection with the north margin of Perkins Way,

Thence west along said margin to its intersection with the southerly extension of the west line of the plat of Circle Cedar Park, all being in said Section 4,

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Thence north along said east line to the southwest corner of Lot A of Lake Forest Park Short Plat No. SP 84-30,

Thence north, east and west along the east line of said lot to its intersection with the south line of the plat of A.J. Nelson's Plat,

Thence west along the south line of said plat to its intersection with said plat's east line,

Thence north along the east line of said plat to its intersection with the south line of the plat of Trafford Park Homes,

Thence west along the south line of said plat to its intersection with the plat west line,

Thence north along the west line to its intersection with the northeast corner of Trafford Park,

Thence west along the north line of said plat to its intersection with the southwest corner of Lot 31 of Trafford Park Tracts Unrecorded,

Thence north along the west line of said lot to its intersection with the McAleer Creek a.k.a. the northwesterly of Lake Forest Park corporate line,

Thence northwesterly along said line to its intersection with the east line of Lot 2 of Short Plat No. 980046, recorded under A.F.#

Thence north along the east line of said lot to its intersection with the south margin of Forest Park Drive Northeast,

Thence northwesterly along said margin to its intersection with the north line of the southwest quarter of Section 4, Township 26, Range 4 East,

Thence east along said north line to its intersection with the west margin of 25th Avenue Northeast,

Thence north along said margin to its intersection with the north margin of Ballinger Way Northeast,

Thence south along said margin to its intersection with the north margin of Northeast 195th Street, continuing easterly along said margin to its intersection with the west margin of 30th Avenue Northeast,

Thence north along said margin to its intersection with the King and Snohomish County lines,

Thence west along said County lines to the true point of beginning.

Note: This franchise area is bordered by the City limits of the Cities of Shoreline and Lake Forest Park

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AREA B:

Beginning at, and also known as the true point of beginning, NW 205th Street at its intersection with the west line of 15th Avenue NW and its intersection with King County line located in the northwest corner of the northwest quarter of Section 2, Township 26 North, Range 3 East;

Thence south along the west line of 15th Avenue NW to the south line of NW 205th Street in said Section 2;

Thence east along said line to its intersection with the west margin of 8th Avenue NW located in the northeast corner of NW 1/4 of Section 1, Township 26 North, Range 3 East;

Thence north along said margin to the county line;

Thence west along said County line to the true point of beginning;

Together with that portion Northwest, North and Northeast 205th Street and its intersection with the west margin of 3rd Avenue NW, being located in Section 1, Township 26 North, Range 3 East;

Thence south to the south line of NW 205th Street located in said Section 1;

Thence east along said south line to its intersection with the west line of 15th Avenue NE being located in the NE 1/4 of Section 5, Township 26 North, Range 4 East;

Thence north along said west line to the County line being located in said Section 5;

Thence west along said County line to the true point of beginning located in said Section 2, Township 26 North, Range 3 East;

AREA C:

Those portions of Sections 1 and 12, Township 23 North, Range 3 East, W.M., Sections 4, 5, 6, 7, 8 and 9, Township 23 North, Range 4 East, W.M., AND Sections 32 and 33, Township 24 North, Range 4 East, W.M., described as follows:

Beginning at the intersection of the east margin of Seola Beach Drive SW with the westerly extension of the north right-of-way margin of SW 116th Street;

Thence easterly along the north right-of-way margin of SW 116th Street extended westerly and along the centerline of dedicated SW 116th Street to the east right-of-way margin of 12th Avenue SW;

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Thence southerly along the east right-of-way margin of 12th Avenue SW and Ambaum Boulevard SW to the north right-of-way margin of SW 128th Street;

Thence easterly along the north right-of-way margin of SW 128th Street, South 128th Street and the easterly extension thereof, to the westerly boundary of the City of Tukwila;

Thence northerly along the westerly boundary of the City of Tukwila to its intersection with the southerly boundary of the City of Seattle;

Thence southerly, southeasterly, westerly and southwesterly along the southerly boundary of the City of Seattle to the point of beginning.

AREA D:

Those portions of Sections 1, 11, 12, 13 and 14, Township 23 North, Range 4 East, W.M., AND Sections 6, 7 and 18, Township 23 North, Range 5 East, W.M., described as follows:

Beginning at the intersection of the southerly boundary of the City of Seattle with the southwesterly boundary of Lake Washington;

Thence southeasterly along the southwesterly boundary of Lake Washington to its intersection with the westerly boundary of the City of Renton;

Thence southerly, southwesterly, southeasterly and westerly along the westerly boundary of the City of Renton to its intersection with the easterly boundary of the City of Tukwila;

Thence northwesterly and northerly along the easterly boundary of the City of Tukwila to the centerline of South Juniper Street and the southerly boundary of the City of Seattle;

Thence running along the southerly boundary of the City of Seattle as follows:

Thence easterly along the centerline of South Juniper Street to the centerline of 59th Avenue South;

Thence northerly along the centerline of 59th Avenue South to the centerline of South Leo Street;

Thence easterly along the centerline of South Leo Street and its extension easterly to the easterly line of Renton Avenue South;

Thence southeasterly along the easterly line of Renton Avenue South to the south line extended westerly of Block 8, Lake Ridge Division No. 4, as recorded in Volume 40 of Plats, Pages 22 and 23, records of King County, Washington;

Thence easterly along said extended south line of Block 8, the south line of said Block 8, and the south line of Block 8, Lake Ridge Division No. 3 as recorded in Volume 40 of Plats, Page 10, records of King County, Washington, the southeast corner of said Plat of Lake Ridge Division No. 3;

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Thence northerly along the east line of said Plat to the north line to Section 12, Township 23 North, Range 4 East, W.M.;

Thence westerly along the north line of said Section 12, to the northwest corner thereof;

Thence northerly along the west line of Section 1, Township 23 North, Range 4 East, W.M., to the northwest corner of the Plat of Lakeridge Park Estates, as recorded in Volume 134 of Plats, Pages 90 and 91, records of King County, Washington;

Thence easterly along the north line of said Plat to the west boundary of Lakeridge Park;

Thence southerly along the west boundary of Lakeridge Park to the southwest corner thereof;

Thence easterly along the south boundary of Lakeridge Park to the southeast corner thereof;

Thence northerly along the westerly boundary of Lakeridge Park to the northeast corner thereof;
Thence easterly along the westerly extension of the centerline of South Ryan Street and the centerline of dedicated South Ryan Street to the point of beginning.

AREA E:

That portion of the north half of Northeast 145th Street extending from the west shore of Lake Washington to the west margin of Greenwood Avenue North, all located on Sections 16, 17 and 18, Township 26 North, Range 4 East. That portion of the right-of-way extending from Bothell Way North to the east margin of Highway 99 North is maintained by the State Department of Transportation.

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 CITY LIGHT, 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 Exhibit "A".

Council. The term "Council" refers to the King County Council, acting in its official capacity.

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the County property described in Exhibits A and C.

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 ninety (90) 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 expire in ten years 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 time the County will no longer have any responsibility for maintenance of any County roads, rights of way or other County property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of King County over County road rights-of-way or the County's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

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 electrical power to its customers. It is understood that the grantee may lay fiber optic or other communications lines and install related equipment provided that the use is directly related to the provision of electrical power and provided that the equipment and lines installed are used for no other purpose. 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 (telephone and data services), K.C.C. 6.27A, as amended (cable communication services), or other applicable law.

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 use of the grantee's equipment or facilities, the grantee will forward the affidavit to the King County Office of Cable Communication.

Where all other electrical, telephone and cable communications utility wiring is installed underground at the time of the initial construction, or when such wiring is subsequently placed underground, all of the Grantee's electrical distribution system lines or wiring and equipment shall also be placed underground on a nondiscriminatory basis with all other wire line services at no additional expense to the County. Related system equipment such as pedestals must be placed in accordance with County code requirements and underground utility rules as interpreted by the Manager of the Department of Transportation, Roads Services Division. In areas where electrical, telephone or cable communications utility wiring is aerial, the Grantee may install aerial cable, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation.

The Grantee shall use existing poles and conduits wherever possible. However, the franchise does not grant, give or convey to the Grantee the right or privilege to install its facilities in any manner on specific utility poles or in conduit or other equipment of the County or any other person without their permission. Copies of agreements for use of poles, conduits or other utility facilities must be provided upon request to the Property Services Division.

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.

8. INDEMNITY AND HOLD HARMLESS

The Grantee agrees to indemnify and hold harmless King County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors, and assigns to defend, indemnify and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out 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.

Notwithstanding the above, the County shall have no obligation to tender a defense as a condition of the indemnity where there is a material conflict between the interests of the Grantee and King County.

9. VACATION

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 a public utilities and services easement to allow the Grantee's continued use of the vacated area under permit.

10. REPAIR, REMOVAL OR RELOCATION

The Grantee hereby covenants, at its own expense, to repair, remove, relocate, adjust or underground existing facilities including all appurtenant facilities and service lines connecting its services to users within County road rights-of-way if such repair, removal, relocation or undergrounding is required by the County for any County purpose. Such repair, removal, relocation, adjustment or undergrounding shall not be unreasonably required. In addition, installation and removal of poles is the sole responsibility of the Grantee. Poles installed by the Grantee shall remain the sole responsibility of the Grantee until the poles are removed.

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 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.

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 the billed amount 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, all work performed by the Grantee on County road rights-of-way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the manual of Uniform Traffic Control Devices in force when the work is performed.

14. BLASTING REQUIREMENTS

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 before it expires, the County may, at its sole discretion, extend the term of the franchise on a month-to-month basis for up to one year. Should the County elect to extend the franchise, written notice shall be provided to the Grantee before the franchise expiration date.

If the Grantee has not applied for a renewal of this franchise before it expires, King County has the right to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe 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.

Upon expiration of this franchise, 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. 14.44.055, 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 passes will be determinative.

Nothing in this section shall be construed as an agreement by the Grantee of King County's 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. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the legality of such right.

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 written notice to terminate the franchise and to withdraw from the area covered by this franchise at the conclusion of the three year notice period.

19. COMPLIANCE WITH LAWS

Grantee shall conform to all applicable federal, state and local laws and regulations including but not limited to, the State Environmental Policy Act and King County environmental standards and ordinances.

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 person 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

- B. that the violation or failure to comply which was the basis of the notice is incapable of cure; or
- C. that the Grantee has repeatedly violated or failed to comply with any of the material terms, conditions or responsibilities of the franchise, even though the individual violations have been cured; and
- 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.

July 24, 1997

Introduced By:

LOUISE MILLER
LARRY PHILLIPS

Proposed No.:

97-469

ORDINANCE NO. **12966**

AN ORDINANCE approving the amount of the sewage treatment capacity charge for 1998 and amending Ordinance 11398 and K.C.C. 28.84.055.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. Ordinance 11398 and K.C.C. 28.84.055 is each hereby amended as follows:

The amount of the 1994 metropolitan sewage facility capacity charge adopted by Ordinance 11034, Section 5, part O shall be \$7.00 per month per residential customer or residential customer equivalent for 15 years.

The amount of the 1995 metropolitan sewage facility capacity charge adopted by Ordinance 11034, Section 5, part O shall be \$7.00 per month per residential customer or residential customer equivalent for 15 years.

The sewage treatment capacity charge shall be (~~seven dollars~~) \$7.00 (~~+~~) per month per residential customer or equivalent for fifteen years for sewer connections occurring between and including January 1, 1996 and December 31, 1996.