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Franchise to City of
Seattle - Tolt Pipeline II

ORIGINAL

ORDINANCE NO. 1541

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, GRANTING THE CITY OF SEATTLE THE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO USE AND OCCUPY THE STREETS, AVENUES, LANES, ALLEYS, HIGHWAYS, AND OTHER RIGHTS OF WAY OF THE CITY OF REDMOND, WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, RECONSTRUCTING, ALTERING, OPERATING, MAINTAINING, PROTECTING AND REPAIRING A REGIONAL WATER TRANSMISSION PIPELINE SYSTEM KNOWN AS TOLT PIPELINE NO. 2.

WHEREAS, The City of Seattle, Washington (hereinafter "Seattle"), is currently involved in the construction of the Tolt River Pipeline No. 2 (hereinafter "TPL #2") regional water transmission pipeline system, and

WHEREAS, a portion of the route of TPL #2 will pass through the City of Redmond, Washington (hereinafter "Redmond") and Seattle has applied to Redmond for a franchise to install a portion of the TPL #2 in certain City streets and public rights of way, and

WHEREAS, the Redmond City Council has determined to grant the franchise to Seattle subject to certain terms and conditions which the Council deems necessary due to the nature of the TPL #2 project, now, therefore,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Franchise Granted. The City of Seattle is hereby granted the right, privilege, authority and franchise to

construct, reconstruct, alter, operate, maintain, protect and repair the TPL #2 along, across, and through those streets, avenues, lanes, alleys, highways, and other rights of way in Redmond, which are identified on Exhibit "A" attached hereto and incorporated herein by this reference as if set forth in full.

Section 2. Installation Standards.

A. Pursuant to the undergrounding requirements of the Redmond Municipal Code, all facilities and equipment comprising TPL #2 which are to be installed underground shall be located at a minimum depth of 48 inches.

B. All facilities shall be installed and maintained at such places and positions as shall least interfere with the free passage of traffic and be in accordance with the laws of the State of Washington, the ordinances of Redmond regulating such construction and the Redmond construction standards.

C. The plans and specifications for the construction of TPL #2 have been reviewed by the Redmond public works department and found to be in substantial compliance with Redmond standards. Upon approval of all necessary Redmond permits, construction will be authorized. The following specific construction standards shall apply to construction maintenance and repair of all facilities constructed pursuant to this franchise:

1. All City of Redmond construction standards in effect at the time of the maintenance or repair.
2. All City of Redmond excavation standards in effect at the time of the maintenance or repair.

D. Whenever it shall be necessary for Seattle, its officers, employees, agents, independent contractors, or third persons acting under the direction of Seattle, in exercise of any right granted by this ordinance, to excavate any area, then Seattle shall without delay restore the surface of said area as nearly as practicable to the same condition it was in prior to the excavation and in accordance with Redmond standards in effect at the time of the excavation. The City Engineer shall have final approval of the sufficiency of restoration in these areas. In the event that Seattle, its officers, employees, agents, independent contractors or third persons acting under Seattle's direction, should fail to restore said excavation areas to the satisfaction of the Redmond City Engineer, Redmond, upon thirty (30) days notice, may make such repairs or restorations as are necessary to return these areas to a condition which is as close as is reasonably practicable to their pre-excavation condition. Within thirty (30) days of presentation of an itemized invoice, including the reasonable costs of labor and equipment, Seattle shall pay the reasonable costs of restoration or repair. If suit is brought as a result of Seattle's failure to pay for repair or restoration, and Redmond is the prevailing party in such suit, then Seattle shall pay all of the actual costs incurred by Redmond thereby, including reasonable attorneys' fees and other litigation-related costs, together with interest at the rate of 1 percent per month from the invoice presentation date. However, Seattle shall not be required to pay

such actual costs, including reasonable attorneys' fees and other litigation-related costs, to the extent that such costs are caused by the negligence of Redmond, its officers, agents, servants, independent contractors or employees.

Section 3. Relocation. Whenever any person or entity, other than Redmond or any person acting under the direction or control of Redmond, requests Seattle to relocate its facilities in order to accommodate the work or facilities of such person or entity within the area for which this franchise is granted, then Seattle shall have the right to refuse such relocation or to impose such terms and conditions upon such relocation as Seattle deems appropriate.

Section 4. Indemnification.

A. In the progress of any work performed, including the construction, reconstruction, alteration, installation, repair, operation, protection and maintenance of all water pipelines, mains, service lines, attachments, appurtenances, apparatus, appliances and other facilities, Seattle shall use reasonable and proper safety precautions to avoid damage to persons or property.

B. Seattle hereby agrees to indemnify, defend and hold harmless Redmond, its officers, agents and employees, from all claims, actions and damages of every kind or description which may accrue to, or be suffered by, any person or persons, including, but not limited to, employees of Seattle, corporation or property by reason of, in whole or in part, any act or activity carried on by Seattle, its officers, agents, servants,

independent contractors, or employees, in the exercise or in furtherance of the privileges and authority granted herein, except to the extent that such damages or losses are caused by the negligence of Redmond, its officers, agents, or employees. To the extent necessary to fulfill this indemnity obligation and only as to claims against Redmond, its officers, agents and employees arising out of the exercise or in furtherance of the privileges and authority granted herein, Seattle waives whatever rights against suits by its employees that it may have by virtue of the Washington State Workers Compensation laws, RCW Title 51, or other similar state or federal legislation. In the event any claim or demand is presented to or filed with Redmond which may give rise to Seattle's duty to hold Redmond harmless, Redmond shall, within a reasonable time, notify Seattle of such claim or demand, and Seattle shall have the right, at its election, to settle or compromise such claim or demand. In the event any suit or action is commenced in which Redmond is named as a party, and which such suit or demand alleges facts which might give rise to Seattle's obligation to hold Redmond harmless, Seattle shall be notified thereof, and Seattle shall have the right, at its sole cost and expense, to defend, settle or compromise such suit or action by attorneys of its own election. Should Seattle decline to defend such suit or action and it is determined by a court of law that Seattle has a duty under this franchise to defend and hold Redmond harmless in connection with the cause of action alleged in such suit or action, Seattle hereby agrees to reimburse Redmond for Redmond's costs and expenses, including

reasonable attorney's fees, incurred in defending such suit or action, and in prosecuting Redmond's right to be held harmless. However, Seattle shall not be required to reimburse Redmond for such costs and expenses, including attorney's fees, to the extent that Redmond, its officers, agents, servants, independent contractors or employees are adjudged negligent in a final, non-appealable judgment entered by a court of competent jurisdiction. Redmond shall reimburse Seattle for costs and expenses, including reasonable attorneys fees, that Seattle incurs in defending any suit against Redmond, its officers, agents, servants, independent contractors and employees but only to the extent that Redmond, its officers, agents, servants, independent contractors or employees are adjudged negligent in a final non-appealable judgment entered by a court of competent jurisdiction and only in proportion to the relationship that the negligence of Redmond, its officers, agents, servants, independent contractors or employees bears to the overall negligence of all parties defendant or persons liable in such action.

C. Redmond shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege or authority granted by or exercised pursuant to this franchise where Redmond determines that such participation is required to protect the interests of the City or public.

Section 5. Self Insurance Redmond and Seattle understand that Seattle is self-insured at the present time with

respect to liabilities which may arise out of the exercise or in furtherance of the privileges and authority granted herein. Seattle agrees that in setting the amount of its self-insurance reserves, Seattle will assess the risks inherent in the construction, reconstruction, operation, maintenance, protection and repair of TPL #2 and adjust its reserves accordingly. In the event that Seattle shall, at any time, determine not to fund its self-insured reserves or at any time determines to purchase liability insurance and to cease self-insurance, then, and in that event, Seattle shall obtain and shall continuously maintain in force during the remaining term of this franchise, public liability insurance written on an occurrence basis in an amount not less than \$1,000,000 per person and \$2,000,000 per occurrence for personal injuries and property damage arising out of the exercise of the franchise granted herein. The policy of insurance shall name Redmond as an additional insured and shall contain a provision that it will not be cancelled or reduced without sixty (60) days advance written notice to Redmond. The form of this policy shall be approved by Redmond.

Section 6. Nonexclusive Franchise. This franchise is not and shall not be deemed to be an exclusive franchise. This franchise shall not in any manner prohibit Redmond from granting other and further franchises, permits or rights over, upon, under, in and along the areas to which this franchise applies, except to the extent that such additional franchise or right would substantially interfere with Seattle's exercise of its franchise rights. This franchise shall not prohibit nor prevent

Redmond from using the franchise areas or affect the jurisdiction of Redmond over the same or any part thereof.

Section 7. Compliance.

A. If Seattle fails to comply with any provision of this franchise, Redmond may compel compliance by serving upon Seattle a written notice of the violation and the direction to comply within ninety (90) days from the date the order is received by Seattle. If Seattle is not in compliance with this franchise after expiration of said ninety (90) day period, and such noncompliance is substantial and material and not due to events beyond Seattle's control, Redmond may declare an immediate forfeiture and termination of this franchise, provided, however, that if any failure to comply with this franchise by Seattle cannot be corrected with due diligence within said ninety (90) day period, then Redmond shall extend the time for compliance for such time as may be reasonably necessary for Seattle to comply, so long as Seattle commences prompt and diligent action to affect such compliance.

B. The notice requirement of Paragraph (A) of this Section shall not apply if the noncompliance of Seattle results, in Redmond's opinion, in any emergency or life threatening condition. In such case, Redmond may set a period of less than ninety (90) days for Seattle to comply and may set such conditions and specifications for compliance as are reasonable under the circumstances. In the event that Seattle fails to comply with any time or condition set for compliance under this paragraph, and such failure is not due to events beyond Seattle's

control, Redmond may declare an immediate forfeiture and termination of this franchise and may take whatever steps Redmond deems necessary to correct the emergency condition and restore safety. In such an event, Seattle shall be liable to Redmond for all costs and expenses incurred by Redmond in taking such corrective action, except to the extent such costs and expenses result from the negligence of Redmond, its employees and agents.

C. Nothing herein shall limit the remedies available to either party in the event of a breach by the other party of any term of this franchise. Each party may sue for injunctive relief, specific performance and/or damages in addition to the remedies provided herein.

D. Seattle may, in its sole discretion, terminate this franchise at any time, upon ninety (90) days written notice to Redmond. Such termination shall not, however, act to terminate or release Seattle from any obligations accruing under this franchise prior to termination, including, but not limited to, the obligation to indemnify, defend and hold harmless from injuries or damages occurring prior to termination, as provided in Section 4 above, or after termination and until Seattle's removal of its facilities pursuant to subparagraph E below.

E. In the event this franchise is forfeited or terminated for any reason stated herein, Seattle shall, within a reasonable time and at its sole cost and expense, remove all of its equipment and facilities from the areas for which this franchise is granted and restore such areas to a condition which is as close to their condition prior to installation of the

equipment and facilities as is reasonably practicable. When such removal is complete, Seattle shall have no further obligations under this franchise, except those which may have accrued prior to or during removal, including, but not limited to, the obligation to indemnify, defend and hold harmless as provided in Section 4.

Section 8. Other Permits Required. Nothing in this franchise shall relieve Seattle of the obligation to obtain any and all necessary federal, state and City permits for the construction of its facilities within the City of Redmond, Washington, including, but not limited to, excavation and street use permits required by the Redmond Municipal Code. Seattle shall be required to obtain all necessary permits prior to the commencement of any work in the franchise areas.

Section 9. Assignment. This franchise cannot be sold, transferred, leased, assigned or disposed of, in whole or in part, either by force or involuntary sale, merger, consolidation or otherwise without prior written approval of the City of Redmond, which approval shall not be unreasonably withheld, provided, however, that Seattle may, without Redmond's prior written approval, assign its rights hereunder to a duly constituted public authority, commission or agency whose primary purpose is the purveyance of water to the public.

Section 10. Franchise Term. The franchise granted by this ordinance shall be for a period of 50 years, commencing on the date this ordinance becomes effective, provided that Seattle shall have no rights under this franchise unless and until

Seattle files with Redmond a written consent to all terms and conditions of this franchise ordinance, and the franchise granted by this ordinance shall be null and void if such written consent is not filed within sixty (60) days after the effective date of this ordinance. Provided, further, if Seattle fails to commence installation of the TPL #2 in Redmond within two (2) years from and after the date that this franchise becomes effective, then the rights herein granted shall cease, and this franchise shall be terminated.

Section 11. Police Powers Not Affected. Nothing herein shall be deemed to affect Redmond's ability to exercise its police powers.

Section 12. Notices. All notices required to be given by this franchise shall be given or served and shall not be deemed to have been duly given or served, unless in writing and forwarded by certified or registered mail, addressed to the addresses of the parties specified below.

TO: CITY OF REDMOND

Public Works Director
CITY OF REDMOND
15670 N.E. 85th Street
Redmond, Washington 98052

TO: THE CITY OF SEATTLE

Superintendent of Water
THE CITY OF SEATTLE
710 Second Ave.
Dexter Horton Bldg., 10th Floor
Seattle, WA 98104

Or such other addresses as the parties from time to time may direct.

Section 13. Severability. If any material term, provision, condition, or portion of this ordinance shall be held to be invalid by the decision of any court or regulatory body of competent jurisdiction, Redmond may, at its option, deem the entire franchise to be affected and nullified. However, in the event of such a determination of invalidity as to any material part of this ordinance, Redmond may elect to treat the portion declared invalid as severable and enforce the remaining provisions of this ordinance.

Section 14. Effective Date. This ordinance, being an exercise of a power specifically delegated to Redmond's legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of the ordinance or a summary thereof consisting of the title.

APPROVED:

Doreen Marchione
MAYOR, DOREEN MARCHIONE

ATTEST/AUTHENTICATED:

Doris A. Schaible
CITY CLERK, DORIS SCHAIBLE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

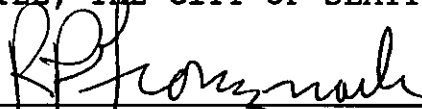
BY James E. [Signature]

FILED WITH THE CITY CLERK:	1-11-90	FIRST READING:	1-16-90
PASSED BY THE CITY COUNCIL:	1-16-90	FINAL ADOPTION:	2-06-90
PUBLISHED:	1-21-90 and 2-11-90		
EFFECTIVE DATE:	2-16-90		
ORDINANCE NO. _____	1541		

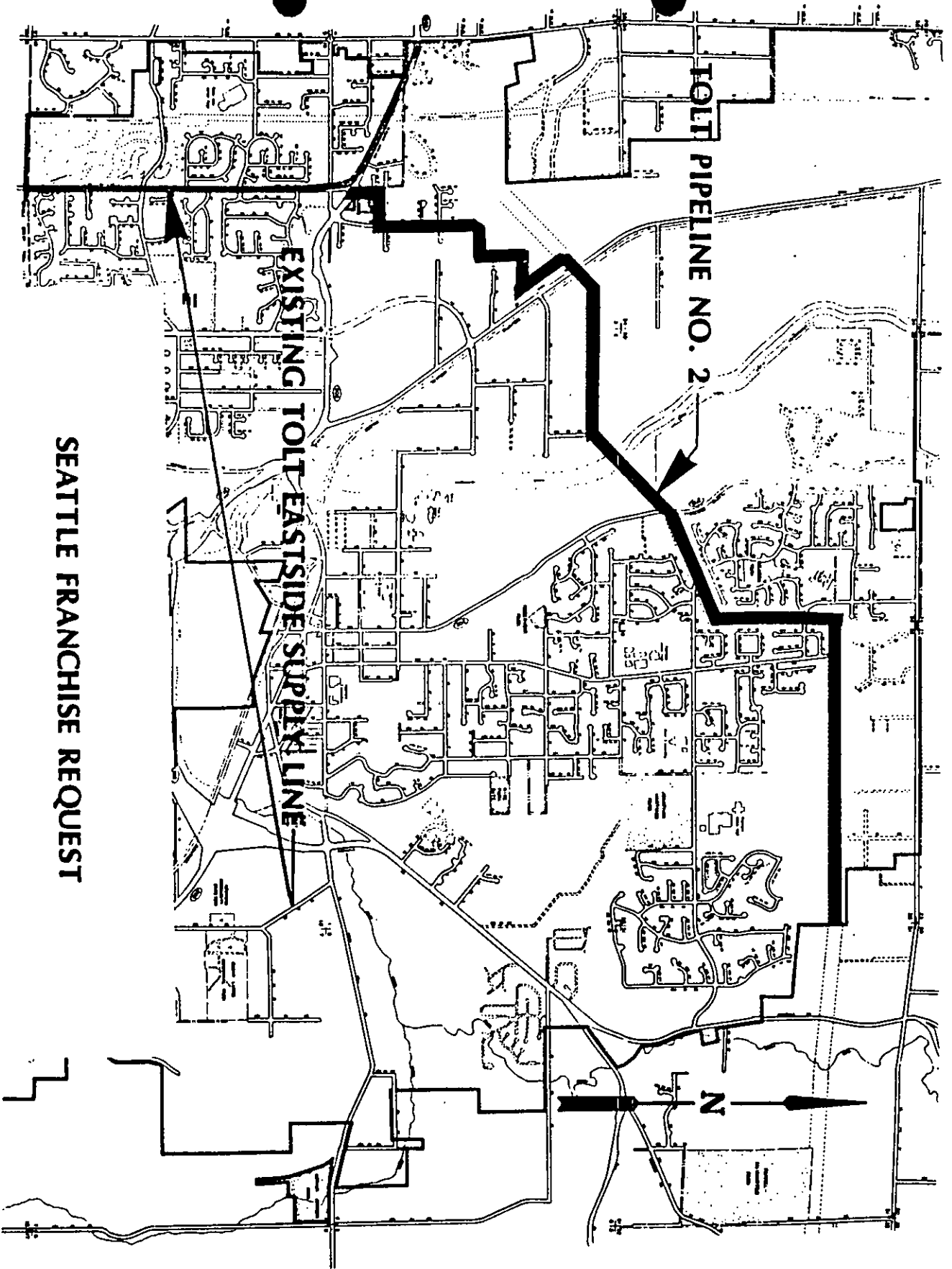
The undersigned accepts all of the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained within.

GRANTEE, THE CITY OF SEATTLE

By



ROBERT P. GRONCZNAK
Superintendent of Water



SEATTLE FRANCHISE REQUEST