CITY OF KENT

ORDINANCE NO. 1144

AN ORDINANCE granting to Water District No. 75, King County, Washington, a municipal corporation, the right and franchise to use and occupy the streets and other public ways and places of a portion of the City of Kent, Washington, for construction, maintenance and operation of a water distribution system.

BE IT ORDAINED by the Council of the City of Kent as follows:

Section 1: Definitions. The following definitions are provided for the sole purpose of proper interpretation and administration of this ordinance:

(A) Operate or operation shall mean construction, laying, maintenance, testing, operating, extending, renewing, removing, replacing, repairing, and using a water distribution system.

(B) Distribution system, system and main used either in the singular or plural herein shall mean and include the water pipes and pipelines, mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, existing and presently planned storage tanks, and all attachments, appurtenances and appliances necessary and incidental thereto or in any way appertaining to the distribution and use of water.

(C) Streets or public places shall mean and include streets, alleys, sidewalks, curbs, roads, highways, avenues, thoroughfares, parkways, bridges, viaducts, public grounds, public improvements, property owned now or hereafter acquired by the Water District within the present and/or future corporate limits of the city.

Section 2: Grant. The City of Kent in King County, Washington, hereinafter referred to as "The City", grants to Water District No. 75, King County, Washington, hereinafter called "The District", and its successors and assigns, the right, privilege, authority and franchise, for a term of fifty (50) years
from and after the effective date of this ordinance, to operate the existing distribution system, together with future extensions, additions and acquisitions thereto situate west of Primary State Highway No. 1 (the new freeway) and within the territorial limits of the City as said territorial limits are presently constituted or as hereinafter extended by annexation to the City.

Section 3: Rights. The District shall continue to exercise, within the territory above described, all rights, privileges, powers and functions of the District as provided by law as if there had been no annexation, including but not by way of limitation, the right to levy and collect special assessments, adopt and carry out the provisions of its comprehensive plan, or amendments thereto, for a system of improvements, and issue and sell revenue and general obligation bonds within or related to the aforedescribed area. Said rights, however, shall be subject to the specific provisions of this ordinance concerning permits, safety, street restoration and related matters.

Section 4: Limitation upon city water service. Pursuant to that certain "agreement" by and between the City and the District, as approved by Ordinance No. 1136 of the City and Resolution No. 62-7-5B of the District, and as part of the consideration of said agreement and dismissal by the District of its pending litigation against the City, the City does hereby expressly covenant and agree not to, during the term of this franchise, serve or furnish water to any customers or persons within the aforedescribed territory during the term of the franchise, unless so required by law.

Section 5: Cooperation and previous agreements. The City and the District agree to cooperate in all manner and things in order to effectuate the intent and purpose of this franchise and of the agreement between the City and the District referred to
in the immediately preceding paragraph hereof. Nothing contained in this ordinance shall be in derogation of or intended to supersede any of the provisions of the agreement referred to in the immediately preceding paragraph hereof. In the case of inconsistency between any of the provisions of this ordinance and of the aforesaid agreement or ambiguity arising as a result of the provisions of this franchise and of the aforesaid agreement, this franchise and the aforesaid agreement shall be read and construed together to effectuate the purpose and intention of the parties. Any matters not specifically referred to in this ordinance shall be governed by the agreement referred to in the immediately preceding paragraph hereof.

Section 6: Permits and easements. The City shall, subject to reasonable general ordinances of the City concerning safety, street restoration, planning and zoning, and other aspects of the City's police power, grant to the District such permits and easements as are necessary and reasonable in the District's operation of its distribution system. The location of mains and other portions of the District's distribution system shall be determined by the District subject to the approval of the City and its engineer. Except in emergencies the District shall, before entering upon and in the streets for purposes of repair, extension, etc., of portions of the District's distribution system, first file with the City an application for a permit to do such work. Said application for permit shall be accompanied by drawings showing the position and location of the affected portion of the water distribution system and its relative position in regard to existing streets.

Section 7: Plans and records. The District shall at all times keep full and complete plans, plats, specifications, profiles and records showing the exact "as built" location, depth and size of all portions of the water distribution system within the
aforedescribed area and showing the location of all valves and appurtenances. Said records shall be subject to inspection at all reasonable times at the District office by the proper officials and agents of the City and a copy of any such plans, plats or specifications shall be furnished to the City by the District upon request.

Section 8: Specifications and standards. Specifications, standards and methods of construction of the District's system shall be determined by the District. In applying for a permit to enter in or upon the streets the District shall, if requested by the City, specify the class and type of material to be used and the equipment to be used and the mode of safeguarding and facilitating public traffic during construction.

Section 9: Restoration of streets. The District shall, after construction of or on any portion of the distribution system, restore all streets or public places in as good and safe condition in all respects as they were before the commencement of such work and in accordance with uniform standards and general ordinances of the City related thereto.

Section 10: Protection of City. The District, by acceptance of this franchise, hereby agrees for itself, its successors and assigns, to protect and save harmless the City from all claims, actions or damages of every kind and description which may accrue to or be suffered by any person or persons, corporation or property by reason of any negligent construction, operation or maintenance of the District distribution system, or by the improper occupation of the streets, or by reason of the negligent manner of safeguarding any excavation or construction.

Section 11: Relocation. If at any time the City deems it advisable to improve any street in which any portion of the District's system is installed, and said improvement shall neces-
sitate relocation or lowering of any portion of the District's system, the District will at its own expense, upon thirty (30) days' written notice by the City, relocate, raise, lower or move the affected portion of its system to conform to such new grades as may be established and shall place the affected portion of its system in such location or position as shall cause the least interference with any such improvement; provided, however, that the District shall be required to relocate or move the affected portion of its distribution system only if said portion interferes with said improvement and no alternative plan for the improvement is reasonably feasible.

Section 12: Other utilities. This grant shall not be exclusive and shall in no manner, except as hereinbefore provided regarding water service by the City itself, prohibit the City from granting other franchises of a like nature or franchises for other public or private utilities over, along, across, under and upon any of the City's streets and shall in no wise prohibit or prevent the City from using any of its streets with full power to make all necessary changes, relocations, repairs, maintenance, etc., of the same as the City shall deem fit; provided, however, that the District shall not be required to relocate or move any of its facilities merely for the convenience of other utilities and uses of the street.

Section 13: Successors. All of the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the District and all privileges of the District shall inure to its successors and assigns.

Section 14: Condemnation. The City agrees that it will not, during the term of this franchise, condemn or otherwise appropriate any portion of the District's system except as is pro-
vided in the agreement between the City and the District referred to in Section 4 hereof or except as required by law and does hereby agree not to exercise any rights of acquisition provided for in Sections 2 and 3, Chapter 248, Laws of the State of Washington of 1951, except as the same shall be agreed to by the District.

Section 15: Acceptance. This ordinance shall be in full force and effect from and after its passage and its acceptance by the District. The District may accept this franchise by filing of a certified copy or duplicate original of a resolution of its Board of Water Commissioners to that effect with the City Clerk.

PASSED by the Council of the City of Kent, this ___ day of ___, 1962, at a regular meeting thereof.

APPROVED this ___ day of ___, 1962

By ______________
Mayor

Approved as to Form:

__________________________
City Attorney

Attest:

__________________________
City Clerk