ORDINANCE NO. 3041

AN ORDINANCE of the City of Kent, Washington, granting unto Highline Water District (formerly King County Water District No. 75), its successors and assigns, the right, privilege, authority and franchise for twenty-five years, to lay, construct, extend, repair, renew and replace water pipes, mains and facilities under, along, and/or across certain designated streets, avenues, roads, alleys, rights-of-way and other public places of the City, all in order to operate a domestic water supply system for the purpose of public sale and distribution of water to customers within the City.

WHEREAS, both the City and the District are public agencies authorized by law to engage in furnishing domestic water service, and to that end, the City may, through the City Council, grant franchises with respect to the rights, powers, duties and obligations of the parties regarding the use of public rights-of-way and other public property, the provision of services, the maintenance and operation of facilities, the right to promulgate rules and regulations, to levy and collect special assessments, rates, charges, service charges and connection fees, the performance of contractual obligations and any other matters arising out of the provision of District service to areas within the City, all pursuant to and in accordance with RCW Sections 39.34.080, 35.92.010, 35A.47.040 and 57.08.045; and

WHEREAS, the City has determined that the District can more economically provide water service to that certain area of its corporate limits as described in Exhibit A; and
WHEREAS, the District has the ability and desire to provide water service to this area; NOW, THEREFORE:

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. FRANCHISE GRANTED. The City of Kent, Washington (the "City" herein) hereby grants to Highline Water District (the "District" herein), a water district formed under Chapter 57.08 RCW, its successors and assigns, subject to the terms and conditions set forth hereinafter, a franchise for a period of twenty-five (25) years, commencing on the effective date of this ordinance. This franchise shall grant to the District the right and privilege to lay down, construct, relay, connect, replace and/or maintain such and so many pipes, conduits and mains, and all other appurtenances, appendages and facilities thereto, in, along, through and under the avenues, streets, lanes, alleys, highways and other public places and ways in that portion of the Kent City limits as specifically described in Exhibit A, attached hereto and incorporated herein, as may be necessary, convenient and/or proper in order to provide water service to the public, and for that purpose to make any and all connections which may be necessary, convenient and/or proper.

Section 2. AUTHORITY TO MANAGE, REGULATE AND CONTROL WATER SYSTEM. After the construction of the water facilities as contemplated under this franchise, the District shall have the sole responsibility to maintain, manage, conduct and operate its water system as installed within the area described in Exhibit A, together with any additions, extensions and betterments thereto.
Section 3. AUTHORITY TO FIX SERVICE RATES. The rates charged to the water service customers within the area described in Exhibit A shall be fixed, altered, regulated and controlled solely by the District, pursuant to the limitations on such authority as set forth in RCW Chapter 57.08, or any applicable regulations promulgated thereafter by the state on the subject of rates and charges for water service.

Section 4. NON-EXCLUSIVE GRANT. This grant or privilege shall not be deemed or held to be exclusive. It shall in no manner prohibit the City from entering into other agreements or franchises of a like nature or franchises for other public or private utilities, in, over, along, across, under and upon any of the streets, avenues, highways, alleys or public places, or ways as herein described, and shall in no way prevent or prohibit the City from using any of said streets, avenues, etc., or affect its jurisdiction over them or any part of them with full power to make all necessary changes, relocations, repairs, or maintenance of same as it deems fit.

Section 5. APPROVAL OF PLANS. Prior to construction of any of the pipes, conduits, mains, facilities and appurtenances in the area described in Section 1 herein, the District shall submit, to the Director of Public Works (hereinafter the "Director"), in triplicate, plans drawn to an accurate scale, showing the exact location, character, position, dimension, depth and height of the work to be done. The plans shall accurately depict the relative position and location of all pipes, conduits, mains, manholes, facilities and appurtenances to be constructed, laid, relaid, installed, replaced, repaired, connected or disconnected, and the existing street, avenue, alley, highway, right-of-way or property
All streets, avenues, highways, alleys, lanes or ways denoted thereon shall be designated by their names and number and the local improvements therein such as roadway pavement, shoulders, sidewalks, curbs, gutters, ditches, driveways, parking strips, telephone or electric distribution poles, conduits, storm, gas or water pipe lines as may exist on the ground or area sought to be occupied shall be outlined.

In the construction proposed by the District, all materials and equipment shall be as specified in the District's general conditions and standards and as approved by the City. The exact class and type to be used shall be shown on the plans, as will the equipment to be used and the mode of safeguarding and facilitating the public traffic during construction. The manner of excavation, construction installation, backfill, and temporary structures (such as traffic turnouts, road obstructions, etc.) shall meet with the approval of, pass all requirements of, and be constructed under the supervision of the Director. Prior to approval of any work under this franchise, the Director may require such modifications or changes as he deems necessary to properly protect the public in the use of the public places, and may fix the time or times within and during which such work shall be done.

The District shall pay to the City such amounts as, in the judgment of the Director, are reasonably necessary to investigate and process any plans for construction work, to inspect such work, to secure proper field notes for location, to plat such locations on the permanent records of the City Public Works Department, to supervise such work, or to inspect or reinspect as to maintenance, during the progress of or after the repair of, any of the initial construction authorized by this franchise. The City
shall make its best efforts to complete all inspections in a timely manner.

Section 6. PROTECTION OF PUBLIC. Whenever an accident, faulty operation or excavation or fill associated with the construction, installation, maintenance or repair of the facilities authorized under this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Director may direct the District, at its own expense, to take actions to protect the public, adjacent public places, City property and street utilities, and may require compliance within a prescribed time.

In the event that the District fails or refuses to take the actions directed promptly, or fails to fully comply with such directions given by the Director, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, including placing of temporary shoring, backfilling, alteration of drainage patterns and any other actions reasonably necessary to decrease the possibility of earth movement, or actions regarded as necessary safety precautions; and the District shall be liable to the City for the costs thereof.

Section 7. REPAIR OF STREETS, SIDEWALKS AND PUBLIC PLACES. After construction, maintenance or repair of the facilities authorized by this Agreement, the District shall repair and restore any damaged or injured streets, avenues, highways or
Section 8. INDEMNIFICATION. The District hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the District's own employees to which the District might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the District, its agents, servants, officers or employees in performing this franchise agreement are the proximate cause. The District further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person including claims by the District's own employees, to which the District might otherwise be immune under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the District's exercise of the rights granted herein, or by virtue of the City's permitting the District's use of the City's rights-of-way or other public property, based upon the inspection or lack of inspection of work performed by the District, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise agreement or pursuant to any other permit or approval issued in connection hereto.
This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of the District, its agents, servants, officers or employees in barricading or providing other warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this franchise agreement. Inspection or acceptance by the City of any work performed by the District at the time of completion shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation, provided that the District shall not be liable to indemnify the City for any settlement of any action or claim effective without the consent of the District, but if settled with the consent of the District, the District shall indemnify and hold harmless the City from and against loss or liability by reason of such settlement. The District shall be obligated to indemnify the City regardless of whether the settlement of the action on the claim is made with the consent of the District if the District has refused to defend the City.

In the event that the District refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal on the part of the District, then the District shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable
attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees for recovery under this indemnification clause.

Should a court of competent jurisdiction determine that this franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the District and the City, its officers, officials, employees or agents, the District's liability hereunder shall be only to the extent of the District's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the District's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 9. INSURANCE. The District shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to the District, its officers, officials, agents, employees. The District shall provide a copy of such insurance policy to the City for its inspection prior to the adoption of this agreement, and such insurance shall evidence:

A. Automobile Liability Insurance with limits no less than $1,000,000.00 Combined Single Limit per accident for bodily injury and property damage; and
B. Commercial General Liability Insurance written on an occurrence basis with limits no less than $1,000,000.00 Combined Single Limit per occurrence and $1,000,000.00 aggregate for personal injury, bodily injury and property damage.

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

The insurance obtained by the District shall name the City, its officers, officials, employees and agents as insureds with regard to activities performed by or on behalf of the District. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or agents. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The District's insurance shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance maintained by the City, its officials, officers, employees or agents shall be in excess of the District's insurance and shall not contribute with it.

The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. Any failure to comply with the reporting provisions of the policies
shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Section 10. RELOCATION OF LINES AND FACILITIES. The District agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street or public place, any of its installations when so required by the City by reason of traffic conditions or public safety, dedications or new rights-of-way and the establishment and improvement thereof, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that the District shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any water line or portion thereof required to be temporarily disconnected or removed.

The City shall consult all as-built maps and plans filed by the District pursuant to this franchise or any permits authorized under this franchise, in order to determine whether the District has placed pipe or facilities in any area affected by a proposed City project. The City will make its best effort and attempt to design or redesign streets, avenues, alleys or public places or ways, and other City utilities to minimize the impact thereof on the District's existing water systems, including the need to require the District's facilities to be relocated. PROVIDED HOWEVER, that the City shall make the final determination on the need for relocation of the District's facilities.
Whenever the City determines that any of the above circumstances necessitate the relocation of the District's then existing facilities, the City shall notify the District in writing, and provide the District with copies of pertinent portions of the plans and specifications for such project so that District is able to relocate its facilities to accommodate the City's project at least ten (10) days prior to the project's commencement. The City shall provide notice to the District and require relocation of the facilities in a period of time that is reasonable given the circumstances surrounding the project. The City understands that pursuant to RCW 57.08.050, the District is required to comply with certain notice and bid procedures prior to commencement of any construction project. Whenever practical, given the circumstances surrounding the City's project, the City shall provide the District with sufficient notice to enable the District to comply fully with RCW 57.08.050 without resorting to emergency powers granted therein. Upon the District's failure to complete relocation of its installations and facilities as directed by the City, the City may remove same at the District's expense.

If, after reviewing the as-built maps and plans submitted by the District, the City determines that the District's pipe or facilities will not be affected by a proposed City project, no notice shall be given to the District. The City may then commence construction and if the City finds that the District's as-built maps and plans are inaccurate through the actual discovery of pipe and facilities in the construction area, the City shall notify the District and allow the District twenty-four (24) hours to remove and/or relocate its pipe and facilities. However, should the District be unable to remove and/or relocate its pipe and facilities within this twenty-four (24) hour period after
notification, the City may remove and dispose of same at the District's cost.

Section 11. ABANDONMENT OF WATER PIPE AND SYSTEM FACILITIES. No pipe, conduit, main, appurtenances, appendages or water system facilities may be abandoned by the District without the express written consent of the City. Abandonment procedures may be initiated by application of the District to the City, which application shall detail, to the City's satisfaction, the location of all pipe or facilities to be abandoned, and the procedures the District plans to implement in order to comply with all local, state and federal regulations pertaining to abandonment of water pipe and facilities constructed of asbestos cement or other material containing asbestos. The District shall, at its own cost, remove and properly dispose of all abandoned pipes and water facilities when so directed by the City for the reasons and conditions set forth in paragraph one, Section 10, Relocation of Lines and Facilities, and for street vacations. In the case of street vacations, the City shall retain and grant an easement to the District for any pipe and facilities then in use by the District. The City shall give notice to the District of any proposed project or street vacation requiring removal of abandoned pipe and facilities as set forth in Section 10. If the District does not comply within the time period set by the City, the City may arrange for the removal and proper disposal of all such pipes and facilities at the District's cost.

Section 12. EXCAVATION. During any period of installation, relocation, maintenance or repair of the District's facilities and installations, all surface structures, if any, shall be erected and used in such places and positions within said public
rights-of-way and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the District shall at all times post and maintain proper barricades during such period of construction as required by state law or City ordinance.

Whenever the District shall excavate in any public right-of-way or other public property for the purpose of installation, repair, maintenance or relocation of its facilities, it shall apply to the City for a permit to do so and except in the case of an emergency, shall give the City at least three (3) working days notice thereof. In the event that emergency work is required, the District may, without prior written notice to the City, request permits by telephone. The Director shall grant or deny such permits by telephone, but the District shall follow-up all phone emergency permit requests with a written application within three (3) working days of the telephone notification to the Director. In all other cases, the City shall approve the District's applications for permits as soon as reasonably possible. During the progress of the work, the District shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file maps or plans with the City (as described in Section 3 herein) showing the proposed and final location of the sewer facilities.

If either the City or the District shall at any time plan to make excavations in any area covered by this Agreement and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; (2) such joint use shall be
arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons.

Prior to commencement of any construction authorized by this franchise agreement, the Director shall reference all monuments and markers of every nature relating to subdivision plats, highways and all other surveys. The reference points shall be so located that they will not be disturbed during the District's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the Director. The costs of monuments or other markers lost, destroyed, or disturbed and the expense of replacement by approved monuments shall be borne by the District.

Section 13. COMPLIANCE WITH LAWS. The District, its subcontractors, employees or any person acting on behalf of the District shall keep him/herself fully informed of all federal and state laws, and all municipal ordinances and regulations which in any manner affect the work or performance of the work authorized under this franchise agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify the City, its officers, officials, agents, employees or representatives against any claim or liability arising from or based upon the violation of any such laws, ordinances or regulations.
Section 14. DISCRIMINATION. The District agrees that it shall not discriminate against any employee or applicant on the grounds of race, creed, color, religion, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap, provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The District shall ensure that applicants are employed, and that employees are treated during employment, without discrimination because of their race, color, religion, sex, national origin, creed, marital status, age or the presence of any sensory, mental or physical handicap. The District shall take such action with respect to this franchise as may be required to ensure full compliance with Chapter 49.60 RCW.

Section 15. CITY CONSTRUCTION ADJACENT TO DISTRICT INSTALLATION. The laying, construction, maintenance and operation of the said District's system of water lines, pipes, conduits, mains, etc., authorized under this franchise agreement shall not preclude the City or its accredited agents and contractors from blasting, grading or doing other necessary road work contiguous to the said District's pipe lines, provided that the District shall have forty-eight (48) hours notice of said blasting or excavation in order that the District may protect its line of pipe and property.

Section 16. MODIFICATION. The City and District hereby reserve the right to alter, amend or modify the terms and conditions of this franchise agreement upon written agreement of both parties to such alteration, amendment or modification.
Section 17. BOND. Before undertaking any of the work, improvements, repair, relocation or maintenance authorized by this franchise, the District shall, upon the request of the City, furnish a bond executed by the District and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Director of Public Works as sufficient to ensure performance of the District's obligations under this franchise. The bond shall be conditioned so that the District shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of replacement and acceptance of such repaired streets by the City.

Section 18. FORFEITURE AND REVOCATION. If the District wilfully violates or fails to comply with any of the provisions of this franchise, or through wilful or unreasonable negligence fails to heed or comply with any notice given the District under the provisions of this franchise, then the District shall, at the election of the Kent City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to the District. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the District to comply with the provisions of this franchise and to recover damages and costs incurred by the City by reason of the District's failure to comply.
Section 19. REMEDIES TO ENFORCE COMPLIANCE. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the District and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

Section 20. CITY ORDINANCES AND REGULATIONS. Nothing herein shall be deemed to direct the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of the public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation and manner of construction and maintenance of any water facilities by the District, and the District shall promptly conform with all such regulations, unless compliance would cause the District to violate other requirements of law.

Section 21. COST OF PUBLICATION. The cost of publication of this franchise ordinance shall be borne by the District.

Section 22. ASSIGNMENT. The District may not assign the rights, duties and obligations under this Agreement without the prior, written consent of the City, which consent shall not be unreasonably withheld. If such consent is given for assignment, acceptance of the assignment shall be filed by the District's successor with the City.
Section 23. SUCCESSORS AND ASSIGNS. All the provisions, conditions, regulations and requirements contained in this Agreement shall be binding upon the successors and assigns of the District, and all privileges of the District shall inure to its successors and assigns equally as if they were specifically mentioned herein.

Section 24. NOTICE. Any notice or information required or permitted to be given to the parties under this Agreement may be sent to the following addresses unless otherwise specified:

THE CITY OF KENT
Director of Public Works
Don Wickstrom
400 West Gowe
Kent, Washington 98032

HIGHLINE WATER DISTRICT
P.O. Box 3867
Kent, Washington 98032
Attn: Jim Markwell
(206-824-0375)

Section 25. ACCEPTANCE. After the passage and approval of this ordinance and within sixty days after such approval, this franchise shall be accepted by the District by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Grantee to so accept this franchise within said period of time shall be deemed a rejection thereof by the District, and the rights and privileges herein granted shall, after the expiration of the sixty day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 26. SURVIVAL. All of the provisions, conditions and requirements of Sections 6, Protection of Public; 8, Indemnification; 10, Relocation of Lines and Facilities; and 11, Abandonment of Lines and Facilities, of this franchise shall be in addition to any and all other obligations and liabilities the District may have to the City at common law, by statute, or by
contract, and shall survive the City's franchise to the District for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise ordinance shall further be binding upon the successors and assigns of the District, and all privileges, as well as all obligations and liabilities of the District shall inure to its successors and assigns equally as if they were specifically mentioned wherever the District is named herein.

Section 27. SEVERABILITY. If any section, sentence, clause or phrase of this franchise ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise. In the event that any of the provisions of this franchise are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision, or may terminate this franchise.

Section 28. EFFECTIVE DATE. This franchise ordinance shall be: (1) submitted to the Kent City Attorney; (2) introduced at least once at a regular meeting of the Kent City Council; (3) published at least once in a newspaper of general circulation in the City of Kent; and if granted by the approving vote of at least a majority of the City Council, shall be effective in thirty (30) days after execution.

DAN KELLEHER, MAYOR
I hereby certify that this is a true and correct copy of Ordinance No. 3041, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK