

ORDINANCE NO. 1041

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF DES MOINES, WASHINGTON, granting to Highline Water District, a municipal corporation and public utility selling and distributing water within King County, the right and franchise to use and occupy the rights-of-way of the city of Des Moines, Washington, for constructing, maintaining, repairing, renewing, and operating a water distribution system and accessories within and through the city of Des Moines, Washington.

WHEREAS, the city council finds that it is in the public interest to specify the rights and duties of the water district through a franchise, and

WHEREAS, in so exercising this authority pursuant to RCW 35A.47.040 relating to franchises and permits, the city of Des Moines reserves such other powers and authorities held by Washington code cities; now therefore,

THE CITY COUNCIL OF THE CITY OF DES MOINES DO ORDAIN AS FOLLOWS:

Sec. 1. Franchise subject to right-of-way use code. This franchise is subject to the terms, definitions, and conditions of chapter 12.04 DMMC as presently constituted or as may be subsequently amended.

Sec. 2. Powers and authorities. Highline Water District ("grantee") is granted the right to lay, construct, extend, repair, renew, and replace water pipes and mains and accessories under, along, and/or across rights-of-way in the city of Des Moines, Washington ("city"), within Highline Water District, including all territory subsequently annexed by the city, and to use and occupy the rights-of-way for the purpose of laying, constructing, extending, maintaining, renewing, replacing, and repairing mains and pipes and appurtenances and accessories used or useful for the sale and distribution of water within and through the present or future territorial limits of the city for the term of ten (10) years from the effective date of this ordinance, except as provided.

Sec. 3. Location of pipe submitted to city, Right-of-way use permit required, Conditions. The location of the water pipe, laterals, and appurtenances, their depths below surface of ground or grade of a right-of-way, shall be submitted to the city for approval. The grantee must apply for a permit before commencing construction work, accompanied by blueprints (permit form and blueprints in triplicate), showing the position and location of the mains, laterals, and extensions to be constructed, laid, installed, or erected at that time, showing their relative position to existing rights-of-way or property lines upon prints drawn to scale, designating rights-of-way by their names and numbers, showing widths of same, giving outlines of local improvements, such as, but not limited to, sidewalks, curbs, gutters, shoulders of roadway, ditches, paved roadways, roadways to property lines, turnouts, parking strips, telephone or electric distribution poles, and water pipelines existing on the ground to be occupied. The grantee shall specify the class and type of materials used shown in detail plats, equipment to be used, and mode of safeguarding and facilitating the public traffic during construction. Materials and equipment shall be in new or like-new condition for its type and kind. The manner of excavation, construction, installation, backfill, and temporary structures such as, but not limited to, traffic turnouts and road obstructions shall meet with the approval, pass the requirements of, and be constructed under the supervision of the city. If it is necessary to close or obstruct a right-of-way to effectuate the work, the grantee shall comply with DMMC 12.04.200. The grantee shall indicate on the right-of-way use permit application the time needed to complete the work. The time limit is subject

to approval by the city as a condition of the issuance of the right-of-way use permit.

Sec. 4. Right-of-way repair standards. The grantee shall not excavate for a distance of more than two hundred fifty feet (250') without immediately backfilling and compacting to surface grade and city standards. Backfilled trench areas within a driving lane must be patched, either temporarily or permanently, before the end of the work day in which they have been opened. Trench areas within the right-of-way, but not in a driving lane must be patched within the time limits specified by the city on the right-of-way use permit. Final surface restoration shall be completed within the time specified on the permit and shall be equal to or better than the surface condition prior to permit issuance. Excavation and backfilling shall be as required in DMMC 12.04.250 and 12.04.260 as presently constituted or as may be subsequently amended. Street construction shall comply with the standards enacted in chapter 12.28 DMMC as presently constituted or as may be subsequently amended.

Sec. 5. Notification to fire district. If it is necessary to shut down or diminish the water pressure so that fire hydrants may be affected, the grantee shall notify the appropriate fire district by telephone followed by faxed transmittal of written notification, that water pressure or fire flow conditions have been affected. In case of a known shutdown or diminished water flow, at least forty-eight (48) hour notification to the fire district is required. If more than one fire hydrant is affected, grantee must provide a map of the affected area to the appropriate fire district. An out-of-service ring shall be installed on the two and one-half inch (2-1/2") discharge nozzle of any fire hydrant affected.

Sec. 6. Right-of-way condition upon completion of work. After laying and installing mains or after other construction work, the grantee shall leave the rights-of-way in as good and safe condition as they were before the commencement of work by the grantee. The city has the right of final approval on the completed work and repairs.

Sec. 7. Damage repair. In case of damage by the grantee or by the facilities of the grantee to rights-of-way, or to public and private improvements to rights-of-way, the grantee agrees to repair the damage at its own cost and expense. The grantee shall immediately notify the city of the damage. The city will inspect the damage, and set a time limit for completion of the repair. If the city discovers damage caused by the grantee to rights-of-way, or to public and private improvements to rights-of-way, the city shall give the grantee notice of the damage and set a time limit so the grantee may repair the damage. The city may, in the event the grantee does not repair a right-of-way or an improvement to a right-of-way as required in this section, do, order, and have done the repairs, and the grantee, upon demand, shall pay to the city the actual costs of the work.

Sec. 8. Guarantee. Grantee shall guarantee work completed by the grantee under this franchise for a period of ten (10) years against settlement or repair.

Sec. 9. Cleaning after construction. At the end of each day of construction or work by the grantee, the grantee shall take steps to ensure the area involved is adequately cleaned.

Sec. 10. Indemnification.

(1) The grantee agrees to protect and save harmless the city or its agents from all claims, actions, or damages that may occur to or be suffered by a person or property by reason of, or in the course of performing work under this franchise, to the extent the claims, actions, or damages are caused by the willfully tortuous or negligent act or omissions of grantee in

exercising the rights granted grantee in this franchise. In case that suit or action is brought against the city for damages arising out of or by reason of the above-mentioned causes, the grantee shall, upon notice to it of the commencement of the action, defend the same at its sole cost and expense, and in case judgment is rendered against the city in suit or action, shall satisfy the judgment within ninety (90) days after the suit or action has been determined, if determined adversely to the city; except, that the grantee has the right to employ its own counsel in a cause of action and be given the exclusive management of the defense.

(2) Acceptance of the work by the city at the time of completion is no defense to this hold harmless provision.

Sec. 11. Arbitration and mediation. Disputes arising under this agreement shall be resolved by submission of the dispute to the local office of the Judicial Arbitration & Mediation Service, Inc. (J.A.M.S.), or similar arbitration and/or mediation organization if J.A.M.S. is no longer in operation, first for mediation and then binding arbitration. The complaining party must contact J.A.M.S. or other similar organization to initiate the mediation process. In the event the dispute is not resolved by mediation, any controversy, dispute, or claim arising out of, in connection with, or in relation to the interpretation, performance, or breach of this agreement shall be resolved, at the request of either party, by a general reference conducted by a jurist from the panel of J.A.M.S., or other similar organization, appointed pursuant to the provisions of chapter 4.48 RCW. The parties intend this general reference agreement to be specifically enforceable in accordance with RCW 4.48.120. There shall be no right to appeal the decision of the designated or appointed jurist.

Sec. 12. Right of city to undertake maintenance work. The laying, construction, maintenance, and operation of grantee's system of water pipe, laterals and appurtenances granted under this franchise shall not preclude the city, its accredited agents or its contractors from doing necessary maintenance work contiguous to the pipeline, provided that the grantee shall have sufficient notice of blasting or excavating in order that grantee may protect its lines of pipe and property.

Sec. 13. Notice to grantee of work by city. If the city improves a right-of-way, the grantee, upon three (3) days written notice by the city, shall at its own expense, raise, lower, or move its line of pipes to conform to such new grades as may be established, or place the pipe in a location or position causing the least interference with the improvement, repair, or alteration contemplated by the city. If the city improves a right-of-way, grantee shall, upon three (3) days written notice by the city, at its own expense, replace the pipe or pipes as may be in or through the improved subgrade of the improvement with pipe or pipes conforming to the specifications for the improvement of the right-of-way.

Sec. 14. Monuments referenced. Before commencing work under this franchise, the grantee shall reference all monuments and markers relating to subdivisions, plats, highway, and other surveys. The reference points shall be located so that they shall not be disturbed during the grantee's operations under this franchise. The method of referencing these monuments or other points shall be approved by the city before placement. The replacement of the monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the city. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement of the monuments, shall be borne by the grantee. A complete set of reference notes for monuments and other ties shall be filed with the city.

Sec. 15. Nonexclusive franchise. This grant or privilege is not an exclusive franchise. It does not 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 rights-of-way and in no way prevents the city from using its rights-of-way, or affects its jurisdiction over them, with full power to make changes, such as but not limited to, relocations, repairs, or maintenance.

Sec. 16. Franchise binding. This franchise agreement is binding upon the successors and assigns of the grantee and the privileges of the grantee shall inure to itself, its successors, and assigns equally as if they were specifically mentioned whenever the grantee is mentioned.

Sec. 17. Default. If the grantee, its successors or assigns willfully violates or fails to comply with the provisions of this grant, or through willful or unreasonable neglect fails to comply with notice given the grantee under the provisions of this grant, then the grantee, its successors or assigns has thirty (30) days from receipt of written notice of a violation to comply or forfeit rights granted by this franchise, and this franchise may be revoked or annulled by the city.

Sec. 18. City's authority to amend franchise. The city reserves the right, upon thirty (30) days written notice to the grantee, to change, amend, modify, or amplify the provisions or conditions of this franchise to conform to state, county, or city statute, ordinance, or regulation relating to public welfare, health, or safety as may be enacted, amended, or adopted. The city reserves the right to terminate this franchise upon thirty (30) days written notice to the grantee if grantee fails or refuses to comply with such changes, amendments, modifications, or amplifications.

Sec. 19. Failure to sign. If within sixty (60) days after granting of this franchise the grantee has failed to sign its written acceptance, then the granted rights and privileges are forfeited and declared null and void.

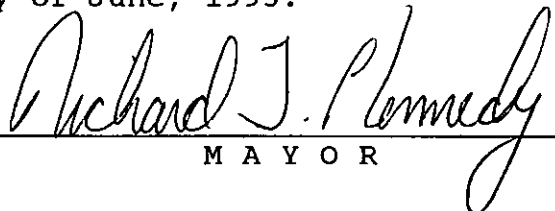
Sec. 20. Severability - Construction.

(1) If a section, subsection, paragraph, sentence, clause, or phrase of this ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

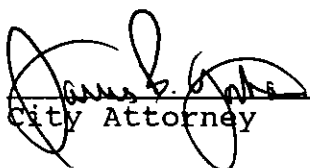
(2) If the provisions of this ordinance are found to be inconsistent with other provisions of the Des Moines Municipal Code, this ordinance is deemed to control.

Sec. 21. Effective date. This ordinance shall take effect and be in full force five (5) days after its passage, approval and publication according to law.

PASSED BY the city council of the city of Des Moines, Washington this 10th day of June, 1993 and signed in authentication thereof this 10th day of June, 1993.


MAYOR

APPROVED AS TO FORM:


City Attorney

ATTEST:

Denis Staab
City Clerk

Published: June 16, 1993

The undersigned accepts all rights and privileges of the above-granted franchise, subject to all the terms, conditions, and obligations outlined in the franchise.

DATED this 30th day of June, 1994.

Paul Cassin
President, Board of Commissioners

Secretary, Board of Commissioners

Steve M. Rose
Commissioner

LEGAL NOTICE

SUMMARY OF ADOPTED ORDINANCE

CITY OF DES MOINES

ORDINANCE NO. 1041, Adopted June 10, 1993.

DESCRIPTION OF MAIN POINTS OF THE ORDINANCE:

This ordinance grants to Highline Water District, a municipal corporation and public utility selling and distributing water within King County, the right and franchise to use and occupy the rights-of-way of the city of Des Moines, Washington, for constructing, maintaining, repairing, renewing, and operating a water distribution system and accessories within and through the city of Des Moines, Washington.

The full text of the ordinance will be mailed without cost upon request.

Denis Staab
City Clerk

Published: June 16, 1993

8-776

HIGHLINE WATER DISTRICT

Resolution 93-6-30C

**RESOLUTION APPROVING FRANCHISE AGREEMENT
BETWEEN THE CITY OF DES MOINES AND HIGHLINE
WATER DISTRICT (DES MOINES ORDINANCE #1041)**

Whereas Highline Water District serves customers within the corporate boundaries of the City of Des Moines; and

Whereas RCW 35A47.040 provides authority for the City of Des Moines to permit and regulate under such restrictions and conditions as it may set by ordinance to grant a franchise for the transmission and distribution of water when deemed in the best interest of the citizens of Tukwila; and

Whereas it is necessary, from time to time, for the City of Des Moines to grant to Highline Water District the right to use streets, avenues, roads, boulevards, alleys, lanes and other public places and ways for the purpose of conveying water;


Now Therefore, Be It Resolved:

1. Highline Water District approves the draft Franchise Agreement (attached as Exhibit A), which has been approved by the Des Moines City Council on June 16, 1993.

Adopted by the Board of Commissioners at a Regular Meeting held this 30th day of June 1993.



FRED CURCIO, President



GLEN M. ROSE, Vice President

GEORGE L. BLOMBERG, Secretary