

ORDINANCE NO. 01-234

An ordinance granting a nonexclusive Franchise for the maintenance and operation in the public rights of way of the City of Lakeside, Oregon of water utilities, declaring an emergency, and stating an effective date.

THE CITY OF LAKESIDE ORDAINS AS FOLLOWS:

§ 1. **Grant of Franchise.** The City of Lakeside, Coos County, Oregon, hereinafter called the City, does hereby grant to the Lakeside Water District, a public corporation of the State of Oregon, and to its successors and assigns, hereinafter called Grantee, a right and franchise for the period of twenty (20) years from and after the effective date of this chapter, to construct, maintain, and operate in, on and under the present and future streets, and alleys, of the City, hereinafter referred to as streets, a water supply system with all the necessary or desirable appurtenances, for the purpose of supplying water service to the City and to the inhabitants thereof, subject to the terms and conditions and to the making of payments hereinafter specified.

§ 2. **Grant Not Exclusive.** The right and franchise hereby granted shall not be exclusive; and the City expressly reserves the right, at any time for such purposes to other persons or corporations, as well as the right in its own name as a municipality to use said streets for such purposes in the event that the City shall hereafter decide to engage in the business of supplying water service for municipal or other uses. If, during the term hereof, the City shall decide to engage in such business and shall elect to acquire by condemnation or otherwise the property used by Grantee in furnishing service hereunder, no value or damage of any kind shall be claimed by or allowed to Grantee in respect to the unexpired term of the franchise hereby granted.

§ 3. **Service Territory.**

Franchise shall include the entire area of the City. If any territory is annexed to the city, the operation by the Grantee within the annexed territory is subject to all the terms of this franchise as though it were an extension made under this agreement.

Grantee's distribution system shall be capable of providing service to all potential residents requesting service within the incorporated limits of the City .

§ 4. **Regulation by the Council of the City.** The locations and methods of installation and maintenance of all pipes, fixtures, underground lines, and appurtenances thereto (hereinafter referred to as "facilities") shall be subject at all times to reasonable regulation by the Council of the City; and all such facilities shall be so constructed and maintained as to interfere as little as practicable with street, sewer services, or other traffic. All of such facilities shall be installed and at all times maintained by Grantee in accordance with good construction practice. If the removal or relocation of facilities is caused by an identifiable development of property in the area, or is made for the convenience of a customer, this agreement shall not

preclude the Grantee from charging the expense of removal or relocation to the developer or customer.

§ 5. **Services.** The service to be furnished hereunder by Grantee shall be continuous and shall be adequate for the requirements of the City and its inhabitants, subject to accidents, interferences or interruptions beyond the reasonable control of Grantee, and shall be furnished under such reasonable rules and regulations as Grantee may make from time to time for the proper conduct of its business. Such service and all rates and charges therefor and all rules and regulations pertaining thereto or to the making of necessary and proper extension of service shall be subject at all times to any rules, regulations and orders lawfully prescribed by the Public Utility Commission of Oregon, or by any other governmental authority having jurisdiction thereof.

§ 6. **Hold Harmless.** Grantee shall protect and save the City, its officers, employees and agents, harmless against and from any and all damage claims, and any and all loss, liability, cost or expense, occasioned by any negligent act or omission of Grantee in the construction, maintenance, operation or repair of Grantee's property or any use thereof; and Grantee shall at all times comply with any lawful present or future charter provisions, ordinances, rules or regulations of the City relating to the manner of occupation or use, or to the repair or improvement of said streets.

§ 7. **Franchise Fee.**

a. Grantee shall pay to the City a franchise fee or charge equivalent to five percent (5%) of Grantee's gross operating revenue as the same is defined herein.

b. "Gross operating revenue," means Grantee's gross revenues from the sale and use of water service within the corporate limits of the City, other than such revenues derived from business done with the government of the United States or any agency thereof, and after deducting therefrom any amounts paid by Grantee to the United States or to the State of Oregon as excise, occupation or business taxes upon the sale or distribution of water service in the City. At the election of the Grantee, Grantee may also deduct uncollectible accounts of customers within the City.

c. Said franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes or charges which might otherwise be levied or collected by the City from Grantee with respect to Grantee's water business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise or excise taxes or other charges for corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder.

d. Said franchise fee shall be paid monthly on or before the 20th of each month-during the term hereof, and shall be computed upon the gross operating revenue

accruing during the previous calendar month or portion thereof.

e. At the time of the payment, the Grantee shall file with the city recorder a verified statement of its gross revenues for the calendar month.

f. If the Grantee fails to pay the compensation within the time fixed, the city treasurer shall notify the city attorney. The city attorney is authorized to institute an action in the Circuit court of the state of Oregon against the Grantee to recover the amount of the compensation due the city.

§8. Collection Facilities. The Grantee shall maintain facilities in the City where its customers may pay their bills for water service during normal business hours.

§ 9. Violation. The failure of the grantee to comply with the provisions of this agreement shall operate as a forfeiture of the rights granted.

§ 10. Discrimination prohibited. The grantee shall not charge a higher or lower rate for water services within the city of Lakeside, than is charged for similar services in the District outside the city. The purpose of this provision is to prevent discrimination in rates for services of the grantee. In imposing this condition, the city does not waive any part of its regulatory powers.

§ 11. Venue. This franchise is enforceable in Coos County, Oregon, and if legal action is necessary to enforce the provisions hereof, exclusive venue shall lie in the Circuit Court, Coos county.

§ 12. Termination. The city council has the right to revoke and terminate this franchise at any time for cause upon at least 3 months' prior written notice to the Grantee. No lapse of time, expenditure of money, or any other thing shall be deemed to give the Grantee any vested interest or right in the continuation of this franchise.

§ 13. Violation. The failure of the grantee to comply with the provisions of this agreement shall operate as a forfeiture of the rights granted.

§ 14. Assignment. This franchise inures to the parties and their successors. This franchise shall not be assigned or its privileges sublet, nor shall any of the rights or privileges granted be leased, assigned, sold or transferred without the prior consent of the city council of city.

§ 15. Higher authority. This franchise is subject to all the provisions of the city charter. The District is bound by every provision of the city charter, insofar as applicable to this franchise, as though the provision was written in this agreement. Applicable provisions of the general ordinances are likewise applicable, as are special ordinances enacted by the city council in the exercise of its police powers and permits relating to operations or facilities not

§ 16. **Nonenforcement by the City.** Grantee shall not be relieved of its obligation to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance.

§ 17. **Effective date.** The general welfare of the public will be promoted if this ordinance takes effect immediately. Therefore, an emergency is declared and this ordinance shall take effect immediately upon its passage by the Council and its signature by the Mayor.

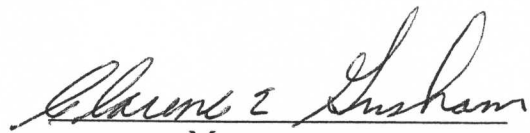
§ 18. **Acceptance of Franchise.** Within 30 days after the effective date of this Ordinance, Grantee shall file with the City Recorder a written acceptance of this franchise by notarized acceptance on a copy of this Ordinance.

FIRST READ to the Council the 10th day of May, 2001.

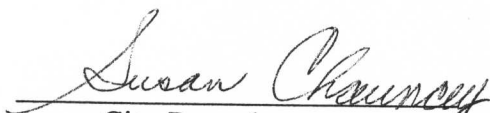
PASSED by the Council this 12th day of June, 2001.

SIGNED by the Mayor this 12th day of June, 2001.

Effective this 12th day of June, 2001.


Mayor

ATTEST:


City Recorder