CITY OF EDGEWOOD
COUNCIL STUDY SESSION AGENDA
Tues., January 3, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. **CALL TO ORDER**
   Pledge of Allegiance & Roll Call

2. **COUNCIL BUSINESS**
   - ***A. Review/Discussion*** *(pg. 2)* **-** City Attorney Services Contract with Morris Law, P.C.
   - ***B. Review/Discussion*** *(pg. 18)* **-** SHARP Copier Surplus
   - ***C. Review/Discussion*** *(pg. 21)* **-** Right of Way Code Revisions EMC 12.06
   - ***D. Review/Discussion*** *(pg. 33)* **-** Mt. View-Edgewood Water Co. Franchise Agreement

3. **OTHER COUNCIL ITEMS**

4. **ADJOURN**

This meeting is accessible to persons with disabilities. For individuals who may require special accommodations, please contact City Hall at (253) 952.3299, 24 hours in advance.

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: CITY ATTORNEY CONTRACT/ MORRIS LAW, P. C.

Date: January 3, 2017

Title: City Attorney Services Contract with Morris Law, P.C.

Attachments: Resolution; City Attorney Services Contract

Submitted By: Dave Gray, Asst. City Administrator

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: The City went out for RFQs for City Attorney Services on November 3, 2016. The panel consisting of the Mayor, Assistant City Administrators, Community Development Director, and City Clerk interviewed three firms the panel unanimously recommended Carol Morris of Morris Law, P.C. as a firm qualified and willing to provide the necessary services.

Recommendation: To move Resolution No. 17-xxx, to the January 10, 2017 Regular Council meeting for approval.

Fiscal Impact: After selection of the most qualified firm, in discussions with Carol Morris, the City Administration is confident the cost of City Attorney services will be reduced by approximately $40,000 in the 2017 Fiscal Year. Services in 2016, while not finalized as of this date, are estimated to be $180,000. One of the targets for the interview team was to determine if there were ways the staff could interact more efficiently with the contract City Attorney to decrease the cost while maintaining or improving the level of risk management provided.

RESOLUTION NO. 17-XXX

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, PIERCE COUNTY, WASHINGTON AUTHORIZING THE MAYOR TO EXECUTE A CITY ATTORNEY SERVICES AGREEMENT WITH CAROL MORRIS, OF MORRIS LAW, P.C. AS CITY ATTORNEY

WHEREAS, the City determined its need to do its due diligence and submit a Request of Qualifications for City Attorney Services; and

WHEREAS, the City advertised for qualified firms and individuals to fill the position of City Attorney and a selection panel including the Mayor, Assistant City Administrators, Community Development Director and City Clerk reviewed the proposals and interviewed three firms; and

WHEREAS, the panel unanimously recommended Carol Morris of Morris Law, P.C. as a firm qualified and willing to provide the necessary services; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DOES RESOLVE AS FOLLOWS:

Section 1. The Mayor is hereby authorized to execute an agreement for City Attorney Services with Carol Morris, of Morris Law, P.C. as City Attorney substantially in the form attached here to as Exhibit A.

PASSED BY THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AT A REGULAR MEETING THEREOF, THIS xTH DAY OF JANUARY 2017

_____
Daryl Eidinger, Mayor

ATTEST:

_____
Rachel Pitzel, City Clerk

AGREEMENT FOR CITY ATTORNEY SERVICES

THIS AGREEMENT is made between the City of Edgewood, a Washington municipal corporation (hereinafter the "City") and Carol Morris of Morris Law, P.C. a corporation organized under the laws of the State of Washington, located and doing business at 3304 Rosedale Street, Suite 200, Gig Harbor, WA 98335 (hereinafter the "City Attorney").

Section 1. Purpose. The purpose of this Agreement is to retain Carol Morris as the City Attorney, and to ensure that the City receives professional services from the City Attorney in an effective, timely and cost efficient manner while ensuring that the City Attorney is appropriately and fairly compensated for services rendered.

Section 2. Duties.

A. The City Attorney shall be principally responsible for performing all legal work for the City, consistent with chapter 2.20 of the Edgewood Municipal Code, except as set forth in subsection (B) below. The following list of duties is illustrative of the services to be performed by the City Attorney, but is not necessarily inclusive of all duties:

1. The City Attorney's office is located at: 3304 Rosedale Street N.W., Suite 200, Gig Harbor, WA. (253) 851-5090. The City may schedule appointments with the City Attorney as needed, either in the Morris Law office or in City Hall in Edgewood. The City may ask the City Attorney to attend meetings on issues relating to City business in other locations.

2. The City Attorney shall review, and where directed, shall draft City ordinances, contracts, resolutions, interlocal agreements, correspondence and other legal documents as requested by the City;

3. At the Mayor's and City Council's discretion, and consistent with law, the City Attorney may be assigned to represent the City in lawsuits and other contested proceedings commenced by the City;

4. At the Mayor's and City Council's discretion, and consistent with law, the City Attorney may be assigned to represent the City in lawsuits and other contested proceedings in which the City is named as a defendant;

5. The City Attorney shall have the responsibility to review and approve all legal documents as to proper form and content;

6. Except for matters relating to employment, personnel or collective bargaining, the City Attorney shall advise the Mayor, Councilmembers, staff members, committee members, commission members and board members with regard to legal

matters relating to their respective duties being performed for the City, or by telephone, in person and/or by written memo, on routine City business;

7. The City Attorney shall be available on an as-needed basis to discuss City legal matters with citizens, and to respond to citizen inquiries in person, in writing or by telephone, involving City business;

8. The City Attorney will attend Council meetings, work sessions, and other meetings as required;

9. The City Attorney may be asked to attend board meetings, commission meetings, committee meetings or any other type of meeting on an as-needed basis, including meetings with other governmental agencies as necessary on matters involving the City; and

10. The City Attorney shall perform such other duties as are necessary and appropriate in order to provide the City with legal representation.

B. The City Attorney's duties shall not include the following:

1. Providing public defense services for indigent defendants;

2. Providing criminal prosecution services;

3. Providing legal services associated with union negotiations, collective bargaining, personnel or employment matters, or disciplinary proceedings;

4. Representing the City in any legal matter where the City Attorney is prohibited from doing so as a result of a conflict of interest under the Rules for Professional Conduct or other applicable law or regulation; and

5. Providing legal services where the City has insurance coverage that provides for legal services to the City, the City has tendered the defense of the lawsuit to the insurance carrier, and the insurance carrier has assigned the lawsuit to an attorney other than the City Attorney. Provided, however, that if the insurance carrier has assigned the lawsuit to an attorney other than the City Attorney, the City Attorney may monitor the lawsuit, as requested by the City, on a case-by-case basis. The City acknowledges that the insurance carrier may retain the City Attorney to provide legal services.

Section 3. Compensation. The City hereby agrees to pay Carol Morris, as City Attorney, for legal services at the rate of two hundred thirty dollars ($230.00) per hour. Other attorneys within Morris Law or under contract with Morris Law may assist with the provision of services to the City, with permission of the Mayor. The hourly rate for any associate is two hundred twenty dollars ($220.00) per hour. The hourly rate for Legal Assistants (non-attorneys) is seventy-five dollars ($75.00) per hour. The City

Attorney agrees that the hourly rate charged for the City Attorney's services contracted for herein shall remain locked in at the negotiated rate for a period of one (1) year from the effective date of this Agreement. After that time, the parties may negotiate a different rate or decide to maintain the rates within this paragraph.

The charges for legal services provided will be based on actual time or based on increments which are no greater than 6 minutes. Computerized legal research services (Westlaw), will not be charged to the City. If the City Attorney is asked to attend a meeting for City business, whether it is a City Council meeting, City Council workshop meeting at City Hall, court hearing or otherwise, travel will be reimbursed for round trip actual travel time at the regular hourly rate, from the Morris Law Office to the place of the meeting, courthouse or other location. No separate charges shall be paid for the following ordinary costs of doing business: local and long distance telephone costs and charges, postage, meals, clerical staff work, supplies and word processing. The City agrees to reimburse the extraordinary expenses incurred by City Attorney, at cost with no mark-up as follows: legal messenger services, large volume photocopies prepared at the City Attorney's office shall be reimbursed at the rate of $.15 per page, large volume photocopies prepared by outside reproduction service shall be reimbursed at cost; but only when approved in advance by the Mayor.

Section 4. Independent Contractor Status. It is expressly understood and agreed that the City Attorney, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and is not an employee of the City. The City shall not be liable for, nor be under any obligation to pay to the City Attorney or any of her employees, sick leave, vacation pay, overtime or any other benefits applicable to employees of the City, nor to pay or deduct any social security, income tax or other tax from the payments made to the City Attorney which may arise as an incident of the City Attorney's performance of work for the City. The City shall not be obligated to pay industrial insurance for the services rendered by the City Attorney. The parties agree that the City Attorney has the ability to control and direct the performance and details of his work, the City being interested only in the results obtained.

Section 5. Billings. The City Attorney shall submit monthly bills to the City Finance Department (City of Edgewood, 2224 - 104th Ave. E., Edgewood, WA 98372), describing the legal services provided during the previous month. The City Attorney agrees to notify the City Clerk by e-mail when 45 hours have been spent on Edgewood matters in any one month. The City Attorney shall not bill for duplicate services performed by more than one person or for services to correct Attorney errors or oversights. The City Attorney shall bill for only one participant in a conference or consultation between members of the City Attorney's firm.

The City Attorney's monthly bills shall include, at a minimum, the following information for each specific matter to which such services or costs pertain: the name of the matter; a brief description of the legal services performed; the date that the services were performed; and the amount of time spent on each date services were performed and

by whom. In addition to providing copies of all documents as specified below, the City Attorney shall provide any information that will assist the City in performing a thorough review and/or audit of the billings, as may be requested by the City. The City Attorney shall ensure that no confidential information appears on invoices, and that no additional legal review of the City Attorney's invoices shall be required in order to respond to a request for disclosure under the Public Records Act.

Unless the City objects to all or any portion of the City Attorney's invoice, the City shall pay the full amount within thirty (30) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the City Attorney of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

Section 6. Book and Records. The City Attorney agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the legal services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review, or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

Section 7. Advice and Status Reporting. The City Attorney shall provide the Mayor and City Council with timely notice and advice of all significant developments arising during performance of her services hereunder, orally or in writing, as appropriate or as requested. The City Attorney shall provide the Mayor and the appropriate department head with copies of all e-mails, pleadings, motions, discovery, correspondence, and other documents prepared by the City Attorney, including research memoranda, or received by the City Attorney unless they have been otherwise provided to the City.

Section 8. Indemnification. The City Attorney shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the City Attorney's work when completed shall not be grounds to avoid any of these covenants of indemnification. The provisions of this section shall survive the expiration or termination of this Agreement.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the City Attorney and the City, its officers, officials, employees, agents and volunteers, the City Attorney's liability hereunder shall be only to the extent of the City Attorney's negligence.

IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CITY ATTORNEY WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER. THE CITY ATTORNEY'S WAIVER OF IMMUNITY UNDER THE PROVISIONS OF THIS SECTION DOES NOT INCLUDE, OR EXTEND TO. ANY CLAIMS BY THE CITY ATTORNEY'S EMPLOYEES DIRECTLY AGAINST THE CITY ATTORNEY.

The provisions of this section shall survive the expiration or termination of this Agreement.

Section 9**.** Insurance**.** The City Attorney shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the City Attorney, its agents, representatives, or employees.

A. Minimum Scope of Insurance

City Attorney shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

3. Professional Liability insurance appropriate to the profession and as described below.

B. Minimum Amounts of Insurance. The City Attorney shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. Professional Liability insurance shall be written with limits no less than $1,000,000 per claim and $2,000,000 policy aggregate limit.

B. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Professional Liability insurance.

1. The City Attorney's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool

coverage maintained by the City shall be excess of the City Attorney's insurance and shall not contribute with it.

2. The City Attorney's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

D. Verification of Coverage. The City Attorney shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the City Attorney before execution of this Agreement.

Section 10. Equal Opportunity Employer. In all Attorney services, programs or activities, and all hiring and employment made possible by or resulting from this Agreement, there shall be no discrimination by City Attorney or by City Attorney's employees, agents, subcontractors or representatives against any person because of race, religion, color, gender, pregnancy, age (except minimum age and retirement provisions), marital status, military or veteran status, national origin, sensory, mental or physical disability, sexual orientation (including gender identity and gender expression), genetic information, or any other category protected by federal, state, or local law. This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. City Attorney shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the American With Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state, or local law or regulation regarding non-discrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the City Attorney's breach, may result in ineligibility for further City agreements.

Section 11. Assignment. The City Attorney shall not assign, transfer, subcontract or encumber any rights, duties, or interests accruing from this Agreement without the express prior written consent of the City, which consent may be withheld in the sole discretion of the City.

Section 12. Licenses. The City Attorney warrants that she and every attorney in her firm or under contract with her firm is a member in good standing with the Washington State Bar, and that any license or licenses that are required in order to perform the legal services under this Agreement have been obtained and are valid.

Section 13. Duration of Agreement; Termination.

A. Duration. The term of this Agreement shall be for three years from the date this Agreement is executed by both parties. After the three year anniversary, this Agreement shall continue indefinitely, or until terminated by either party pursuant to the terms hereof.

B. Termination. This Agreement may be terminated by either party upon ten (10) days' written notice with or without cause. In the event of termination, the City Attorney shall be entitled to compensation as provided for in this Agreement, for services performed satisfactorily to the effective date of termination; provided, however, that the City may condition payment of such compensation upon the City Attorney's delivery to the City of any and all documents, photographs, computer software, video and audio tapes, and other materials provided to the City Attorney or prepared by or for the City Attorney or the City in connection with this Agreement.

Section 14. Notices. Notices required under this Agreement shall be personally delivered or mailed, postage prepaid, as follows:

City Attorney:

Carol Morris
Morris Law, P.C.
3304 Rosedale Street N.W., Suite 200
Gig Harbor, WA 98335

City of Edgewood:

City of Edgewood
2224 104th Avenue East
Edgewood, WA 98372

Attn: Mayor

Notices given by personal delivery shall be effective immediately. Notices given by mail shall be deemed to have been delivered forty-eight hours after having been deposited in the United States mail.

Section 15. Ownership of Materials. Any and all documents, including draft documents where completed documents are unavailable, or materials prepared or caused to be prepared by the City Attorney pursuant to this Agreement shall be the property of the City at the moment of their completed preparation.

Section 16. Conflict of Interest. The City Attorney warrants and covenants that the City Attorney presently has no interest in, nor shall any interest be hereinafter acquired in, any matter which will render the services required under the provisions of

this Agreement a violation of any applicable state, local or federal law or any rule of professional conduct. In the event that any conflict of interest should nevertheless hereinafter arise, the City Attorney shall promptly notify the City of the existence of such conflict of interest.

Section 17. Time is of the Essence. The City Attorney agrees to diligently prosecute the services to be provided under this Agreement to completion and in accordance with any schedules specified herein. In the performance of this Agreement, time is of the essence.

Section 18. Confidentiality. The City Attorney agrees to maintain in confidence and not disclose to any person, association, or business, without prior written consent of the City, any secret, confidential information, knowledge or data relating to the products, process or operation of the City and/or any of its departments and divisions. The City Attorney further agrees to maintain in confidence and not disclose to any person, association, or business any data, information or material developed or obtained by City Attorney during the term of this Agreement. The covenants contained in this paragraph shall survive the termination of this Agreement for whatever cause.

Section 19. Rules of Professional Conduct. All services provided by the City Attorney and Morris Law, P.C. under this Agreement will be performed in accordance with the Rules of Professional Conduct for attorneys established by the Washington Supreme Court.

Section 20. Amendments. This Agreement is not subject to modification or amendment, except by a written authorization executed by both the City Attorney and the duly authorized representatives of the City, which written authorization shall expressly state that it is intended by the parties to amend the terms and conditions of this Agreement.

Section 21. Assignment. Any assignment of this Agreement by the City Attorney without the written consent of the City shall be void.

Section 22. Waiver. The waiver by either party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement.

Section 23. Severability. Should any part of this Agreement be declared by a final decision of a court or tribunal of competent jurisdiction to be unconstitutional, invalid, or beyond the authority of either party to enter into or carry out, such decision shall not affect the validity of the remainder of the Agreement, which shall continue in full force and effect, provided that the remainder of this Agreement, absent the unexcised portion, can be reasonably interpreted to give effect to the intentions of the parties.

Section 24. Controlling Law and Resolution of Disputes. The laws of the State of Washington shall govern this Agreement and all matters relating to it. Should any

dispute, misunderstanding ore conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the Mayor, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney's fees from the other party.

Section 25. Whole Agreement. This Agreement constitutes the entire understanding and agreement of the parties. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

Section 26. Public Records Disclosure. The City Attorney shall fully cooperate with and assist the City with respect to any request for public records received by the City and related to any public records generated, produced, created and/or possessed by the City Attorney and related to the services performed under this Agreement. Upon written demand by the City, the City Attorney shall furnish the City with full and complete copies of any such records within five business days.

The City Attorney's failure to timely provide such records upon demand shall be deemed a breach of this Agreement. To the extent that the City incurs any monetary penalties, attorneys' fees and/or any other expenses as a result of such breach, the City Attorney shall fully indemnify and hold the City harmless as set forth in this Agreement.

For purposes of this Agreement, the term "public records" shall have the same meaning as defined by Chapter 42.17 and 42.56 RCW, as said chapters have been construed by the Washington courts. The provisions of this Section shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, City Attorney and the City, by the signatures below, have executed this Agreement on the dates indicated below.

DATED this ____ day of _____, 2016.

CITY OF EDGEWOOD	CITY ATTORNEY
By: _____	By: _____
Daryl Eidinger, Mayor	Carol Morris, President Morris Law, P.C.

ATTEST:

By: _____
Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

By: _____

LAW OFFICES OF
Susan Elizabeth Drummond, PLLC

SUSAN DRUMMOND

LAW OFFICES OF SUSAN ELIZABETH DRUMMOND, PLLC
• Land use/municipal planning and litigation, 2010-present

FOSTER PEPPER, PLLC
• Land use/municipal planning and litigation, 2000-10

WASHINGTON STATE SUPREME COURT
• Intern, 2000

SEATTLE UNIVERSITY SCHOOL OF LAW
• Research Assistant, land use, 1997-99

EDUCATION
• Seattle University School of Law, J.D., 2000, cum laude
• University of Washington, B.A., 1995

HONORS
• Rising Star, Washington Law & Politics, 2009
• NW SEED, Volunteer of the Year, 2003
• Presidential Law Scholarship, SU School of Law

Representative Work

For the past 16 years, Ms. Drummond has worked on land use and municipal issues. This has included working with cities and counties on a wide range of issues, including advising on and defending legislative and quasi-judicial decisions before administrative tribunals, and the superior, appellate, and federal courts. Examples include:

- Obtained affirmation of a city's ability to amend its shoreline master program to regulate critical areas before the Washington State Supreme Court, following Board and Superior Court litigation.
- Successfully defended a city's annexation and utility service regulations before the Growth Board, Superior Court, and Court of Appeals.
- Obtained affirmation of a city's manufactured housing zoning and comprehensive plan designations before the Growth Board and Superior Court.
- Currently serve as a city attorney, providing a full range of city attorney services.
- Currently serve as a county hearings examiner, conducting monthly hearings and issuing decisions on a variety of land development matters.
- Assisted and presently assisting with permitting energy projects through county and state (Energy Facility Site Evaluation Council) siting processes, including over 2,000 megawatts of wind energy.

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Kirkland, WA 98033
206.682.0767
susan@susandrummond.com

SUSAN DRUMMOND

- Drafted state legislation amending Washington's Land Use Petition Act, Ch. 36.70C RCW, to address litigation over renewable energy projects.

- Litigated numerous administrative review cases, including before the Growth Board, Shorelines Hearings Board, and hearing examiners.

- Assisted on Endangered Species Act issues, including preparing comment, drafting legislation, and representing local jurisdictions in litigation.

Activities

WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS 2011-present
Legislative Committee

NAIOP'S SUSTAINABLE DEVELOPMENT COMMITTEE 2009-2013
Board Member

WASHINGTON STATE BAR ASSOCIATION 2008-2010
Executive Committee, Environmental and Land Use Section

CITY OF SEATTLE'S GREEN BUILDING TASK FORCE (MAYORAL APPOINTMENT) 2008-2009
Member, New Buildings Committee

CLIMATE ACTION TEAM'S STATE ENVIRONMENTAL POLICY ACT IMPLEMENTATION WORKING GROUP 2008-2009
Technical Committee

Presentations

SEPA AND NEPA COURSE, LAW SEMINARS INTERNATIONAL Speaker
SEPA and GMA: The Year in Review 2015, 2016

WASHINGTON STATE DEPT. OF COMMERCE, SHORT COURSE Speaker
Open Public Meetings Act, Public Records, and Land Use 2015

WASHINGTON'S "SLAPP" STATUTE Speaker
Washington State Association of Municipal Attorneys Spring Conference 2014

KEY GMA DECISIONS FROM THE LAST TWO DECADES Speaker
Planning Directors' Conference 2013

THE PLANNING ASSOCIATION OF WASHINGTON AND THE WASHINGTON STATE DEPARTMENT OF COMMERCE Principal Speaker 2012
A Short Course on Planning Basics

SUSTAINABLE DEVELOPMENT & GREEN BUILDING SEMINAR Program Co-Chair
The Seminar Group 2008-2011

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Kirkland, WA 98033
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susan@susandrummond.com

LAW OFFICES OF
Susan Elizabeth Drummond, PLLC

SUSAN DRUMMOND

ENSURING COMPLETION OF SUBDIVISION IMPROVEMENTS Speaker
Washington State Association of Municipal Attorneys Fall Conference 2010

THE LAND USE TOOL-KIT: PLANS, CODES,
AND FEES TO SUPPORT SMART URBAN DESIGN AND NEIGHBORHOOD PLANNING Speaker 2009
Community Energy Roadmap—Pacific Northwest Summit & Workshop

IMPLICATIONS OF FUTUREWISE CASE ON SHORELINES AND CRITICAL AREAS Speaker
Washington State Association of Municipal Attorneys Spring Conference 2009

RECENT GROWTH MANAGEMENT ACT DECISIONS Speaker
University of Washington School of Law Land Use Seminar 2003-2008

Representative Cases

Save Our Scenic Area and Friends of the Columbia Gorge v. Skamania County,
183 Wn.2d 455, 352 P.3d 177 (2015)

Friends of the Columbia Gorge, Inc. v. The State Energy Facility Site Evaluation Council,
178 Wn.2d 320, 310 P.3d 780 (2013)

Futurewise v. The Western Washington Growth Management Hearings Board,
164 Wn.2d 242, 189 P.3d 161 (2008)

Friends of the White Salmon River v. Klickitat County,
___ Wn. App. ___ (Div. II, September 15, 2015), unpublished

Skagit DO6, LLC v. Growth Management Hearings Board,
___ Wn. App. ___ (Div. I, September 17, 2012), unpublished

Publications

Washington State Real Property Deskbook
Transportation and Land Use Chapter (2002, 2011, 2016 scheduled release)

Berlin Institute of Technology, Germany (published in German and English)
Finding Leadership Where We Least Expect It: A Story from a Small Rural County (2011)

Washington State Bar Association Environmental and Land Use Law Newsletter
How Business and Local Government Can Plan for and Benefit from the Perfect Storm in Climate Change and Municipal Land Use Planning (2007)

Methods Local Jurisdictions Can Use to Encourage Development of their Wind Energy Resources (2003)

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susan@susandrummond.com

ALPS
Property & Casualty Insurance Company

HOME OFFICE ADDRESS:
111 N. Higgins, Suite 200
Missoula, MT 59802

PHONE:
(800) 367-2577

MAILING ADDRESS:
PO Box 9169
Missoula, MT 59807-9169

LAWYERS PROFESSIONAL LIABILITY INSURANCE
POLICY DECLARATIONS

NOTICE: THE POLICY IS A CLAIMS MADE AND REPORTED POLICY. NO COVERAGE EXISTS UNDER THE POLICY FOR A CLAIM WHICH IS FIRST MADE AGAINST THE INSURED OR FIRST REPORTED TO THE COMPANY BEFORE OR AFTER THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD. PLEASE READ THE POLICY CAREFULLY AND DISCUSS THE COVERAGE UNDER THE POLICY WITH YOUR INSURANCE ADVISOR.

POLICY NUMBER: ALPS20792

Item 1 – Named Insured: Morris Law PC
Address: 3304 Rosedale Street, Suite 200
Gig Harbor, WA 98335

Item 2 – Name of Each Insured Attorney: Retroactive Date
Morris, Carol 09/30/1998

Item 3 – Policy Period:

Effective Date:	09/30/2016	12:01 AM at the address stated in Item 1.
Expiration Date:	09/30/2017	
Loss Inclusion Date:	09/30/1998	

Item 4 – Limit of Liability: $1,000,000 *Each Claim
$2,000,000 Aggregate
*This means "all claims arising out of the same, related or continuing professional services."

Item 5 – Deductible: $5,000 Each Claim

Item 6 – Annual Premium: $3,156

Item 7 – Endorsements attached at inception of the policy form: LPL ENH (07-14)

Signature Page WA Amendatory First Dollar Defense Endorsement

All current and previously submitted application forms delivered to the Company are made a part of the policy. The Named Insured may obtain a copy of all application forms by submitting a written request to the Company.

Countersigned by: Kelly Barnett
Authorized Representative

Date: September 21, 2016

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: SHARP COPIER SURPLUS

Date: January 3, 2017

Title: SHARP Copier Surplus Item

Attachments: Resolution, & Exhibit A- List of Item

Submitted By: City Clerk Rachel Pitzel
Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Staff has been working to clean up and dispose of miscellaneous obsolete equipment and improve overall City performance, economy through efficiency and where possible redundancy (back up) for City business. This process will authorize the Mayor upon Council approval of a Resolution, to surplus the City owned Sharp Copier.

Once the Sharp copier is declared surplus, the Mayor will authorize staff to trade it for a used Kyocera copier to be utilized as a backup to the newly leased main Kyocera copier. The backup machine will improve overall City productivity by significantly reducing down time due to maintenance issues with our increasingly obsolescent Sharp copier as well as improve productivity at the Front Desk, where the backup machine will be located. The backup machine will also improve public access to high speed printing of planning, permitting, inspection and Council Packet documentation.

Recommendation: 1) Bring forward to next Council meeting for adoption; 2**)** Forward to Study Session for further review

Fiscal Impact: The overall impact on the City budget is almost neutral in that the Kyocera machines are cheaper to operate overall. The cost savings on maintenance and supplies will be offset by additional maintenance for a backup machine. Overall copier use may also increase, as the availability of access to the public may induce more members of the public to purchase copies. Having a larger copier available at the Front Desk may help productivity, by keeping the Front Desk personnel in the Front Desk area, but may also be negligible. The financial impacts overall are likely negligible.

RESOLUTION NO. 17-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, AUTHORIZING THE MAYOR TO DECLARE THE SHARP MX6240N COLOR MFP COPIER AS SURPLUS, AND ADMINISTER THE DONATION OR SALE OF THE ITEM

WHEREAS, the City recently contracted with Kyocera Document Solutions Northwest to provide a new leased and upgradeable Kyocera copier together with maintenance and supplies, at cost less than the current Sharp copier agreement; and

WHEREAS, the City owned Sharp copier, having become increasingly less reliable with multiple down days due to maintenance and increasing part scarcity has become necessary to replace as the City's primary copier; and

WHEREAS, the Sharp copier can be traded for a used Kyocera copier for the Sharp trade in value, that costs less to maintain and provides the City with a backup copier better utilized at the Front Desk; and

WHEREAS, the City Council desires to formally authorize the Mayor to surplus the City owned Sharp copier;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. **Surplus Declaration.** The City Council hereby declares this item as surplus and authorizes the Mayor to administer the sale of items with a value greater than the disposal cost or donation of item that serve the public interest but have nominal or no value to the City, as hereto attached as Exhibit A.

Section 2. **Effective Date.** This resolution will take effect immediately upon passage by the City Council.

ADOPTED THIS xxTH DAY OF JANUARY, 2017

_____
Daryl Eidinger, Mayor

ATTEST:

_____
Rachel Pitzel, City Clerk

EXHIBIT A

City of Edgewood
Resolution No. 17-000
Surplus Property List
January xx, 2017

Description of Item	Value- To be determined
SHARP MX6240n Color MFP Copier	Trade in for a used Kyocera Copier to standardize our copier maintenance.

- Values if any, to be determined upon sale of items, and will be attached to the Original Resolution.

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: RIGHT OF WAY CODE REVISIONS (EMC 12.06)

Date: January 3, 2017

Title: Right of Way Code Proposed Revisions EMC 12.06

Attachments: Proposed, Draft Revisions

Submitted By: Aaron C. Nix, Assistant City Administrator, Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: Staff have expressed to the City Council on previous occasions the desire to meet the Council's intention of creating a modified, streamlined permitting process as it pertains to less intrusive work by Utilities within non-critical areas within the City's Right of Way in order to cut down on the amount of work required by these Utilities and the amount of oversight required on the part of the City. In meeting these desires, City Staff, in collaboration with the City Attorney have attempted to draft language that we believe meets the intent of the City Council and provides a mechanism for cost recovery, with minimal fiscal impact to the Applicant and the City. MTVE Staff were able to review the Draft code and Jacki Masters provided these comments in her email to Staff, dated 12/29/2016:

Please see my comments on the code revisions below:

Section 12.06.095 D refers to the Public Works Direction; I think it should read Public Works Director. Also, sections 12.06.060; 12.06.095 A; B; D; and E refer to a position entitled "Public Works Director". I didn't think the City of Edgewood had a Public Works Director. When I reviewed these proposed revisions with my board, Luke and Mark (who was in attendance representing the City of Edgewood) were unaware of a Public Works Director. Since this position is mentioned several times and given authority to act, shouldn't the position be one that currently exists within the City's staff?
As always, thanks for your assistance and consideration.

Jacki Masters,
General Manager
Mt. View-Edgewood Water Company
253.863.7348

Recommendation: No formal recommendation at this point as this is a City Council Study Session item. The Mayor and Staff are looking towards the City Council to discuss these proposed modifications, receive input and guidance on next steps in ensuring equity and fairness to all utilities that utilize the City's Right of Way in providing services to the residents of Edgewood.

Fiscal Impact: Under the City's current code, any work within the City's Right of Way by a Utility is required to obtain a Right of Way Permit. This can be after the fact in an emergency situation, but in these cases, permittees are exempt from having to pay permit fees for under these circumstances. In the case of the City's past Franchise Agreement with MTVE, Right of Way permits were not required to be obtained by MTVE in cases in which work occurred outside the asphalt roadway section, but within the City's Right of Way. In cases in which work did occur within the asphalt section of the road, permits were required for paper trail purposes only. In order to ensure better tracking of the activities within the City's right of way, maintain public safety and infrastructure and ensure adequate financial tracking, as mandated by best accounting practices, code modifications are necessary, as requested by the, Mayor, City Council and Staff in order to provide for a streamlined permitting process and provide adequate cost recovery for services provided.

Chapter 12.06
RIGHT-OF-WAY FRANCHISES AND PERMITS FOR PUBLIC AND PRIVATE UTILITIES

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Sections:

12.06.010 Purpose.
12.06.020 Franchises required.
12.06.030 Nonexclusive grant.
12.06.040 Term of grant.
12.06.050 Eminent domain.
12.06.060 Application.
12.06.070 Franchise fees.
12.06.080 Review of applications.
12.06.090 Utility right-of-way permit required.
12.06.100 Application.
12.06.110 Utility right-of-way permit fees.
12.06.120 Exemption from all permit fees.
12.06.130 Interference with the right-of-way.
12.06.140 Damage to property.
12.06.150 Relocation or removal of facilities.
12.06.160 Removal of unauthorized facilities.
12.06.170 Failure to relocate.
12.06.180 Emergency removal or relocation of facilities.
12.06.190 Damage to utility's facilities.
12.06.200 Restoration of right-of-way or other private property.
12.06.210 Duty to provide information.
12.06.215 Grantee insurance.
12.06.216 General indemnification.
12.06.217 Performance and restoration surety.
12.06.218 Restoration bond.
12.06.220 Penalties.
12.06.230 Other remedies.
12.06.240 Severability.

12.06.010 Purpose.

The purpose of this chapter is to regulate THE USE OF THE PUBLIC RIGHT-OF-WAY, ESTABLISH STANDARDS FOR the granting of city right-of-way franchises for public and private utilities, and to ensure consistency of such franchises with the city comprehensive plan, sound engineering and design standards, health and sanitation regulations, and the public interest. The provisions of this chapter shall apply to all franchisees UNLESS OTHERWISE SPECIFIED; provided, that, should the provisions of a specific franchise conflict with the provisions of this chapter, the provisions of the franchise shall control. (Ord. 05-245 § 2).

12.06.020 Franchises required.

Persons and private or municipal corporations are required to obtain a right-of-way franchise approved by the Edgewood city council in order to use the right-of-way for the construction and maintenance of waterworks, gas pipes, telephone, telegraph, and electric lines, sewers, cable TV, petroleum products, and any other such public and private utilities, except that:

A. The Edgewood department of public works and any entity under contract with Edgewood shall be exempt from this requirement.

B. The waterworks, specifically including without limitation any pipelines owned and/or operated by any municipal utility for which a valid recorded easement or use right has been granted by the city council, shall be exempt from this requirement. (Ord. 09-315 § 2; Ord. 05-245 § 2).

C. IN LIEU OF A FRANCHISE, SITE-SPECIFIC FACILITIES MAY BE AUTHORIZED THROUGH A RIGHT-OF-WAY USE AGREEMENT APPROVED BY THE CITY COUNCIL.

12.06.030 Nonexclusive grant.

No franchise granted hereunder shall confer any exclusive right or authorization to occupy or use the right-of-way. (Ord. 05-245 § 2).

12.06.040 Term of grant.

Unless otherwise specified in the franchise, or unless otherwise renewed, a franchise granted hereunder shall be in effect for a term of not more than five years. (Ord. 05-245 § 2).

12.06.050 Eminent domain.

Nothing herein shall be deemed or construed to impair or affect, in any way or to any extent, the city's power of eminent domain. (Ord. 05-245 § 2).

12.06.060 Application.

Applications for right-of-way franchises shall be submitted in the form approved by the Public Works Director~~city engineer~~ to the Edgewood department of public works. (Ord. 05-245 § 2).

12.06.070 Franchise fees.

There is established ~~a $500.00 nonrefundable~~ fee for each franchise application, as established within the fee schedule, as outlined within EMC 3.35.010. Said fee will provide reimbursement to the city of Edgewood for the administrative costs and expenses associated with processing the application. The fee shall be payable in its entirety at the time each separate application for a new franchise or franchise renewal, amendment, supplement, or assignment is filed with the department of public works. Each applicant shall reimburse the city for public notice advertising and publication costs incurred in respect to each application in addition to the established~~$500.00~~ fee. Further, TO THE FULLEST EXTENT ALLOWED BY LAW, all grantees shall reimburse the city for all direct and indirect costs and expenses over and above the established fee~~$500.00~~ incurred by the city in connection with any grant, modification, amendment, renewal, or transfer of any franchise, within 30 days after written demand thereof~~. (Ord. 05-245 § 2)~~.

12.06.080 Review of applications.

The Edgewood department of public works shall be responsible for the administration and enforcement of franchises, ~~and~~ right-of-way permits and alternative ANNUAL UTILITY right-of-way permits. (Ord. 05-245 § 2).

12.06.090 Utility right-of-way permit or alternative ANNUAL UTILITY RIGHT-OF-WAY PERMIT required.

Persons and private or municipal corporations are required to obtain a utility right-of-way permit or AN alternative ANNUAL UTILITY RIGHT-OF-WAY PERMIT~~, as outlined within EMC 12.06.095,~~ approved by the Edgewood public works department~~engineer~~ for construction and maintenance of utility facilities in the public right-of-way of city roads, as outlined in EMC 12.06.020, except as noted in EMC 12.06.1~~2~~30 and 12.06.160. (Ord. 05-245 § 2).

12.06.095 Alternative, ANNUAL utility right-of-way permit.

A. PURPOSE. It is the intent of ~~the City Council~~ THIS SECTION to ESTABLISH ~~allow for~~ an alternative, streamlined permitting process UNDER WHICH FRANCHISEE MAY OBTAIN A SINGLE, ANNUAL PERMIT COLLECTIVELY AUTHORIZING ~~for~~ REPETITIVE, MARGINALLY~~less~~ intrusive activities BY ~~that~~ utilities ~~may need to undertake~~ within the city right-of-way that INDIVIDUALLY are of

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very short duration, do not entail disruption to traffic or pedestrian flows, and are OBJECTIVELY minor in nature. SUCH~~These~~ activities include:

1. Minor utility service adjustments or repair LOCATED WITHIN THE RIGHT-OF-WAY BUT outside the ~~typical roadway section (~~paved roadway, shoulder, sidewalk and/or ditchlines~~).~~
2. Other, SIMILARLY MINOR AND MARGINALLY-INTRUSIVE activities WITHIN THE RIGHT-OF-WAY, as MAY BE ~~agreed to and~~ approved by the Public Works Director.

B. DURATION. AN ~~The~~ alternative ANNUAL utility right of way ~~annual~~ permit will be valid for a MAXIMUM OF ONE calendar year and will serve as a blanket, COLLECTIVE ~~permit~~ AUTHORIZATION ~~to cover~~ FOR ALL OF THE activities ~~as outlined~~ REFERENCED above and AS FURTHER ~~agreed to~~ APPROVED by the Public Works Director~~, under a single permit~~.

C. COST REIMBURSEMENT. THE PERMITTEE~~Grantees~~ shall reimburse the city for all OF THE CITY'S direct and indirect costs and expenses in review, inspection and documentation of activities with this permit, establishing an initial cash reserve balance in the amount of $1,000, to be drawn upon as staff, CONSULTANT AND/OR LEGAL ~~hours~~EXPENSES are INCURRED~~assessed~~ for these activities, at hourly rates established within the city of Edgewood's adopted Fee Schedule. SAID~~This~~ cash reserve balance shall be replenished when the balance reaches a level below $200, within 30 days after written notice thereof by the Finance Director.

D. NOTICE. THE PERMITTEE SHALL PROVIDE NO LESS THAN 48 HOURS WRITTEN NOTICE TO THE PUBLIC WORKS DIRECTION BEFORE PERFORMING ANY OF THE ACTIVITIES AUTHORIZED UNDER AN ALTERNATIVE ANNUAL UTILITY RIGHT-OF-WAY PERMIT. SAID NOTICE SHALL INCLUDE THE NATURE, COMMENCEMENT DATE, LOCATION, DURATION AND ANTICIPATED COMPLETION DATE OF THE ACTIVITIES.

E. REQUIREMENTS; CONDITIONS. EXCEPT AS OTHERWISE PROVIDED UNDER THIS SECTION, ALL OTHER APPLICABLE REQUIREMENTS OF THIS CHAPTER SHALL APPLY WITH RESPECT TO ALTERNATIVE ANNUAL UTILITY RIGHT-OF-WAY PERMITS. WITHOUT LIMITATION OF THE FOREGOING, THE PUBLIC WORKS DIRECTOR MAY IMPOSE SUCH REASONABLE CONDITIONS OF APPROVAL UPON ANY SUCH PERMIT AS DEEMED NECESSARY OR APPROPRIATE BY THE DIRECTOR IN ORDER TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE.

12.06.100 Application.

Applications for utility right-of-way permits and alternative ANNUAL UTILITY right-of-way ~~annual~~ permits shall be submitted to the Edgewood department of public works in the form approved by the city engineer. (Ord. 05-245 § 2).

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12.06.110 Utility right-of-way permit fees.

All permit applications to perform ~~excavation~~ work on any city-owned and maintained public road surface shall be accompanied by an ~~$50.00~~ application fee, as indicated within the most current version of the City's Fee Schedule. In addition, any excavation work on any city-owned and maintained public road surface shall be accompanied by the following:

On chip sealed surfaces where estimated pavement cuts are less than 180 square feet, a cash deposit toward the final fee of a sum equal to $4.60 per square foot, times the estimated paved surface on each excavation to be made is required. For estimated pavement cuts greater than 180 square feet on chip sealed surfaces, the cash deposit shall be the sum equal to $828.00, plus an additional $828.00 per 100 lineal feet, or portion of trench length exceeding the first 100 feet.

On full depth asphalt or concrete surfaces where estimated pavement cuts are less than 960 square feet, a cash deposit is required toward the final fee of a sum equal to $4.00 per square foot, times the estimated paved surface on each excavation to be made. For estimated pavement cuts greater than 960 square feet, the cash deposit shall be the sum equal to $3,840 per 100 lineal feet or portion of the trench length exceeding the first 100 feet. (Ord. 05-245 § 2).

12.06.120 Permit Exception~~Exemption from all permit fees~~.

A. Any utility performing work as a result of a city construction or maintenance project ~~shall be exempt from any applicable permit fee. Any utility performing emergency work shall be exempt from any applicable permit fee.~~ (Ord. 05-245 § 2).

B. A right-of-way use permit shall not be required of utilities or franchised utilities when responding to emergencies that require work in the right-of-way, INCLUDING WITHOUT LIMITATION, ~~such as~~ water or sewer main breaks, gas leaks, downed power lines or similar emergencies; provided, that the department shall be notified by the responding utility or city contractor verbally or in writing, as soon as practicable following onset of an emergency. Nothing herein shall relieve a responding utility or city contractor from the requirement to apply for a right-of-way use permit within 48 hours after beginning emergency work in the right-of-way.

12.06.130 Interference with the right-of-way.

No utility may locate or maintain its facilities so as to unreasonably interfere with the use of the right-of-way by the city, by the general public or other persons authorized to use or be present in or upon the right-of-way. All such facilities shall be moved by and at the expense of the utility, temporarily or permanently, as determined by the city.

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The city of Edgewood promotes a coordinated planning effort between the department of public works and the franchised utility to minimize the need for cutting pavement that is less than 36 months old. Except as exempted in EMC 12.06.120, the fee for permission to cut pavement that is less than 36 months old is established at an additional $2.00 per square foot of disturbed pavement. (Ord. 05-245 § 2).

12.06.140 Damage to property.

No utility or any person acting on a utility's behalf shall take any action or permit any action to be done that may impair or damage any right-of-way, specifically including city property, real or personal, or other property located in, on or adjacent thereto. (Ord. 05-245 § 2).

12.06.150 Relocation or removal of facilities.

Within 30 days from the date of written notice from the city engineer, or such longer period as may be specified following written notice from the city engineer, a utility shall, at its own expense, temporarily or permanently remove, relocate, change or alter the position of any facilities within the right-of-way whenever the city engineer shall have determined that such removal, relocation, change or alteration is reasonably necessary for:

A. The construction, repair, maintenance or installation of any city or other public improvement in or upon the right-of-way.

B. The operations of the city or other governmental entity in or upon the right-of-way. (Ord. 05-245 § 2).

12.06.160 Removal of unauthorized facilities.

Within 30 days from the date of written notice from the city engineer, any utility, or other person that owns, controls or maintains any unauthorized facility or related appurtenances within the rights-of-way shall, at its own expense, remove such facilities or appurtenances from the right-of-way. If such utility fails to remove such facilities or appurtenances, the city may cause the removal and charge the utility for the costs incurred. A facility is unauthorized and subject to removal in the following circumstances:

A. Upon expiration or termination of the grantee's franchise.

B. Upon abandonment of a facility within the right-of-way.

C. If the system or facility was constructed or installed without the prior grant of a franchise.

D. If the system or facility was constructed or installed without the prior issuance of a required utility right-of-way permit.

E. If the system or facility was constructed or installed at a location not permitted by the utility's franchise.

F. Any such other reasonable circumstances deemed necessary by the city engineer. (Ord. 05-245 § 2).

12.06.170 Failure to relocate.

If a utility is required to relocate, change or alter the facilities constructed, operated and/or maintained hereunder and fails to do so, the city may cause such to occur and charge the utility for the costs incurred. (Ord. 05-245 § 2).

12.06.180 Emergency removal or relocation of facilities.

The city retains the right and privilege to cut or move any facilities located within the right-of-way as the city may determine to be necessary, appropriate or useful in response to any public health or safety emergency. (Ord. 05-245 § 2).

12.06.190 Damage to utility's facilities.

Unless directly and proximately caused by the willful, intentional or malicious acts of the city, the city shall not be liable for any damage to or loss of any facility within right-of-way as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind in the right-of-way by or on behalf of the city. (Ord. 05-245 § 2).

12.06.200 Restoration of right-of-way or other private property.

A. When a utility, or any person acting on its behalf, does any work in or affecting any right-of-way, or any other property, it shall, at its own expense, promptly remove any obstructions from the area and restore such ways or property to the same condition that existed before the work was undertaken.

B. If weather or other conditions do not permit the complete restoration required hereunder, the utility shall temporarily restore the affected right-of-way or other property. Such temporary restoration shall be at the utility's sole expense and the utility shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

C. A utility or person acting on its behalf shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting right-of-way or any other property. (Ord. 05-245 § 2).

12.06.210 Duty to provide information.

Within 10 days of completion of the work, each utility shall furnish the city engineer with information sufficient to demonstrate:

A. That the utility has complied with all requirements of this chapter.

B. That all fees due the city in connection with the facilities provided by the utility have been properly collected and paid by the utility.

C. That all books, records, maps and other documents maintained by the utility with respect to its facilities within right-of-way shall be made available for inspection by the city engineer at reasonable times and intervals.

D. That “as-built” drawings of the work have been completed and are on file with the grantee. (Ord. 05-245 § 2).

12.06.215 Grantee insurance.

Unless otherwise conditioned, each utility or contractor shall, as a condition of the grant, secure and maintain the following liability insurance policies, insuring both the grantee and the city, and its elected and appointed officers, officials, agents, representatives, and employees as additional insureds:

A. Comprehensive general liability insurance with limits not less than:

1. Two million dollars for bodily injury or death to each person;

2. Two million dollars for property damage resulting from any one accident; and

3. Two million dollars for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000.

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed operation hazard policies with limits of not less than $2,000,000.

E. The liability insurance policies required by this section shall be maintained at all times by the grantee. Each such insurance policy shall contain the following endorsement:

> It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Risk Manager of such intent to cancel or not to renew.

F. Within 60 days after receipt by the city of said notice, and in no event later than 30 days prior to said cancellation, the grantee shall obtain and furnish to the city replacement insurance policies meeting the requirements of this chapter.

G. If the grantee can show to the city risk manager's satisfaction that an entity is financially able to self-insure the exposures, a substitution for insurance will be considered. (Ord. 05-245 § 2).

12.06.216 General indemnification.

In addition to and distinct from the insurance requirements of this chapter, each grantee shall agree in writing to defend, indemnify, and hold the city and its officers, officials, employees, agents, and representatives harmless from and against any and all damages, losses and expenses, including reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from, or alleged to arise out of or result from the acts, omissions, failure to act, or misconduct of the grantee or its affiliates, officers, employees, agents, contractors, or subcontractors in the construction, operation, maintenance, repair, or removal of its facilities and in providing or offering services over the facilities or network, whether such acts or omissions are authorized, allowed, or prohibited by this chapter or by a grant agreement made or entered into pursuant to this chapter. (Ord. 05-245 § 2).

12.06.217 Performance and restoration surety.

Before a franchise granted pursuant to this chapter is effective, and as necessary thereafter, the grantee shall provide and deposit such monies, bonds, letters of credit, or other instruments in form and substance acceptable to the city as may be required by this chapter, or by an applicable franchise or other applicable code, ordinance, or rules and regulations of the city. (Ord. 05-245 § 2).

12.06.218 Restoration bond.

Unless otherwise provided in a franchise, each utility or contractor shall provide a restoration bond, written by a surety acceptable to the city, equal to at least 100 percent of the estimated cost of restoration as required as a result of constructing the grantee's facilities within rights-of-way, shall be deposited before construction commences.

A. The restoration bond shall remain in force until 60 days after substantial completion of the work, as determined by the city engineer or designee, including restoration of all rights-of-way and other property affected by the construction.

B. The restoration bond shall guarantee, to the satisfaction of the city:

1. Timely completion of restoration;

2. Restoration in compliance with applicable plans, permits, technical codes, and standards;

3. Proper restoration of the facilities as specified by the city; and

4. Restoration of the rights-of-way and any other property affected by the construction. (Ord. 05-245 § 2).

12.06.220 Penalties.

Any person found violating, disobeying, omitting, neglecting or refusing to comply with any of the provisions of this chapter is subject to a civil penalty pursuant to Chapter 1.10 EMC for each act. Each day constitutes a separate act. (Ord. 05-245 § 2).

12.06.230 Other remedies.

Nothing in this chapter shall be construed as limiting any judicial remedies that the city may have, at law or in equity, for enforcement of this chapter. (Ord. 05-245 § 2).

12.06.240 Severability.

If any section, subsection, sentence, clause, phrase, or other portion of this chapter, or its application to any person is, for any reason, declared invalid, in whole or in part by any court or agency of competent jurisdiction, said decision shall not affect the validity of the remaining portions hereof. (Ord. 05-245 § 2).

CITY OF EDGEWOOD
STAFF REPORT
STUDY SESSION AGENDA ITEM: MTVE FRANCHISE AGREEMENT

Date: January 3, 2017

Title: Draft/Revised Franchise Agreement with Mountain View/Edgewood Water Company, Version A and B.

Attachments: Draft MTVE Water Company Franchise Agreement and email from Jacki Masters received 12/15/2016.

Submitted By: Aaron C. Nix, Assistant City Administrator – Municipal Services

Approved For Agenda By: Daryl Eidinger, Mayor

Discussion: City Staff initiated discussions with the General Manager and the Operations Supervisor with Mountain View Edgewood Water Company (One of the City of Edgewood's Water Purveyors) in July of this year to begin discussions as it pertains to updating and renewing the existing Franchise Agreement that had previously been executed between the City of Edgewood and this water purveyor. Work continues on coming to agreement between the City and this water purveyor with regard to a code required franchise agreement, in addition to Council requested code modifications pertaining to right of way permitting processes.

Recommendation: N/A.

Fiscal Impact: City Staff have budgeted the costs for fees and rates associated with water consumption for City facilities that will be new to the City under this revised franchise agreement. This amount varies as water consumption fluctuates from year to year, but has been estimated for the City by the water company and budgeted for by City Staff. Future costs associated with new City connections to the Mountain View Edgewood Water Company's system will be budgeted within associated Capital Facility plans, based on the current rates established by MTVE. This figure may be modified based on the desires of the City Council in this regard.

VERSION A

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING UNTO MT. VIEW-EDGEWOOD WATER COMPANY, A NONPROFIT CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER SYSTEM INFRASTRUCTURE, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Mt. View-Edgewood Water Company, Inc., (hereinafter referred to as "MTVE") has requested that the City Council grant it a nonexclusive franchise; and

WHEREAS, MTVE has authority to contract with municipal corporations, and to construct, add to, maintain and supply water works; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, MTVE provides public drinking water to portions of citizens within the City of Edgewood, as a privately owned nonprofit municipal water corporation regulated by the Washington State Department of Health; and

WHEREAS, MTVE's public water system infrastructure and facilities are identified as critical infrastructure and its staff is classified as first responders by the Federal Government.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Franchise Granted; Term. Pursuant to RCW 35A.47.040, the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to MTVE, a non-profit public utility owned by City taxpayers and organized under the laws of the state of Washington, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth and all applicable City codes and regulations, a nonexclusive franchise beginning on the effective date set forth in Section 23 herein. The term of the franchise shall be five (5) years.

This franchise shall grant MTVE the right, privilege and authority to construct, operate, maintain, replace, and repair all necessary facilities for water delivery, in, under, on, across, over, through, along or below the public rights-of-way located in the City of Edgewood ("the Franchise Area"), as approved under City permits issued pursuant to this franchise. "Rights-of-way" as used herein

means all public streets, roads, alleys and highways of the City as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said rights-of-way. Such franchise shall in no way prevent or prohibit the City and/or the public from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, vacation, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

Section 3. Relocation of Water System Facilities.

3.1 MTVE agrees and covenants to, at MTVE's sole expense, protect, support, temporarily disconnect, relocate or remove from any rights-of-way any of MTVE's facilities when so required by the City by reason of traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, road and walkway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity (a "governmental project").

3.2 Any condition or requirement imposed by the City upon any person or entity (including without limitation any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permit for zoning, land use, construction or development) which reasonably necessitates the relocation of MTVE's Facilities within the franchise area shall be a required relocation for purposes of subsection 3.1 above.

3.3 If the City determines that a government project or other event or condition, as defined in subsections 3.1 and 3.2, necessitates the relocation of MTVE's Facilities, the City shall, to the extent reasonably practicable:

A. Notify MTVE during the planning phase to ensure collaborative effort is made to reduce project expense (to the City and MTVE), allow budgeting for the project and facilitate joint applications for grants and low-interest funding by the parties. The City will provide written notification requiring relocation of MTVE's Facilities at least ninety (90) days or additional days, approved by the Mayor or his/her designee prior to the commencement of the government project or other event or condition necessitating the relocation.
B. Provide MTVE with copies of pertinent portions of the plans and specifications for such project and where possible propose an alternative location for MTVE's Facilities so that MTVE may relocate its facilities within the current right-of-way or to other rights-of-way.
C. After receipt of such notice and such plans and specifications, MTVE shall complete relocation of its facilities at least ten (10) days prior to commencement of the project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the project, event or condition necessitating the

relocation.

3.4 Without limitation of the foregoing, MTVE shall specifically indemnify the City, its officers, employees, agents and representatives, for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting, directly or indirectly, from MTVE's failure to timely remove, adjust or relocate any of its facilities in accordance with any requirement hereunder. The provisions of this subsection shall survive the expiration or termination of this franchise.

3.5 MTVE may, after receipt of written notice requesting relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives in good faith and advise MTVE in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of MTVE's Facilities. If so requested by the City, MTVE shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MTVE full and fair consideration. In the event the City in its sole discretion ultimately determines that there is no other reasonable or feasible alternative, MTVE shall relocate its facilities as otherwise provided in this Section.

3.6 The provisions of this Section shall in no manner preclude or restrict MTVE from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City or another governmental entity, where the facilities to be constructed by said person or entity are not or will not become governmentally-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a governmental project.

Section 4. Maps and Records. After construction of any new facilities in the City rights-of-way, and as a condition of this franchise, MTVE shall make available to the City upon request and at no cost, a copy of all as-built plans, maps and records revealing the final location and condition of MTVE's facilities within the public rights-of-way. Said plans will be maintained at MTVE per Department of Homeland Security measures.

Section 5. Excavations. All construction work performed by MTVE or its contractors under or in relation to this franchise, specifically including without limitation any relocation, construction or maintenance of MTVE's facilities, shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private, and shall comply with all applicable laws and regulations. MTVE shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the state of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Excavation in City-owned rights-of-way shall be governed by the provisions of the Edgewood Municipal Code (EMC) Chapter 12.06 - "Right-of-Way Franchises and Permits for Public and Private Utilities". MTVE, at its own expense, shall secure any applicable permits required for excavating in any public right-of-way and shall give the City at least five (5) working days notice of its intent to commence work in the public right-of-way. In no case shall any work commence

on City-owned and maintained public road surfaces, without the required permit(s).

If either the City or MTVE shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, a reasonable opportunity to share such excavation, PROVIDED THAT:

A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
C. Either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 6. Restoration after Construction. MTVE shall, after abandonment, installation, construction, relocation, maintenance or repair of its facilities within the Franchise Area, restore the surface of the right-of-way to at least the same condition in which the property existed immediately prior to any such installation, construction, relocation, maintenance or repair. The City's Public Works Director shall have final approval of the condition of such rights-of-way after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. MTVE agrees to promptly complete all such restoration work and to promptly repair any damage caused by such work at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 7. WSDOT Standards. The parties expressly acknowledge that some rights-of-way within the franchise area, specifically including without limitation the Meridian Avenue / State Route 161 corridor, are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations. Without limitation of any other provision of this franchise, MTVE agrees that:

(1) any pavement trenching and restoration performed by MTVE within State Highways shall meet or exceed applicable WSDOT requirements;

(2) any portion of a State Highway damaged or injured by MTVE shall be restored, repaired and/or replaced by MTVE to a condition that meets or exceeds applicable WSDOT requirements; and

(3) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this franchise with respect to any portion of a State Highway.

Section 8. Emergency Work. Permit Waiver. In the event of any emergency in which any of MTVE's Facilities located in or under any right-of-way breaks, becomes damaged, or if MTVE's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, MTVE shall immediately take the proper emergency measures to repair its facilities, and to cure or remedy the dangerous condition(s) for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve MTVE from the

requirement of obtaining any permits necessary for this purpose, and MTVE shall apply for all such permits not later than the next succeeding day during which the Edgewood City Hall is open for business.

Section 9. Dangerous Conditions. Authority for City to Abate. Whenever the construction, installation or excavation of facilities authorized by 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 otherwise endangers the public, an adjoining public place, street utilities or City property, the Mayor may direct MTVE, at MTVE's own expense, to take actions to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time.

In the event that MTVE fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact MTVE to request MTVE affect the immediate repair, 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, or actions regarded as necessary safety precautions. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 10. Indemnification. MTVE hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including attorneys' fees and including claims by MTVE's own employees for which MTVE might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising, in whole or in part, out of the acts or omissions of MTVE, its agents, contractors, subcontractors, servants, officers or employees in the performance of this franchise, and any rights granted hereunder. The above waiver of immunity under Title 51 RCW has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by MTVE at the time of completion of construction shall not be grounds for avoidance by MTVE of any of its obligations under this Section. 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.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MTVE and the City, MTVE's liability hereunder shall be only to the extent of MTVE's negligence. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 11. Insurance. MTVE shall procure and maintain for the duration of the franchise the following liability insurance policies, insuring both MTVE and naming the City, and its elected and appointed officers, officials, agents, representatives, and employees as additional insureds:

A. Comprehensive general liability insurance with limits not less than:
   1. $2,000,000 for bodily injury or death to each person;

2. $2,000,000 for property damage resulting per occurrence; and
3. $2,000,000 for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000.

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed operation hazard policies with limits of not less than $2,000,000.

E. The liability insurance policies required by this Section shall be maintained at all times by the MTVE. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Risk Manager of such intent to cancel or not to renew."

MTVE may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing substantially the same coverage as set forth above and approved by the City.

Section 12. Restoration Bond. In lieu of a restoration bond pursuant to EMC 12.06.218, MTVE hereby warrants all work performed under this franchise and further specifically represents and warrants that all required restoration of the right-of-way shall be performed timely, in a workmanlike manner, and in full compliance with all applicable regulatory standards.

Section 13. Modification. The City and MTVE hereby reserve the right to mutually alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification. No such alteration, amendment or modification shall be effective without a writing signed by both parties.

Section 14. Forfeiture and Revocation. If MTVE willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or negligence fails to heed or comply with any notice given by the City under the provisions of this franchise, then MTVE shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Edgewood City Council after a hearing held upon notice to MTVE.

Section 15. Remedies to Enforce Compliance. The City may elect, in lieu of revocation and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling MTVE to comply with the provisions of this franchise. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force MTVE 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 16. Legal Compliance. City Ordinances and Regulations. MTVE shall comply

with applicable federal, state and local laws, rules and regulations, unless otherwise modified as part of this franchise, at all times relevant to this franchise. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. In the event of a conflict between the provisions of this franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 17. Planning Coordination.

17.1 Growth Management, The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:

17.1.1 For MTVE's service within the City limits, MTVE will participate in a cooperative effort with the City of Edgewood to develop a Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

17.1.2 MTVE will participate in a cooperative effort with the City to ensure that the Utilities Element of Edgewood's Comprehensive plan is accurate as it relates to the MTVE's operations and is updated to ensure continued relevance at reasonable intervals.

17.1.3 MTVE shall submit information relates to the general location, proposed location, and capacity of all existing and proposed facilities within the City as requested by the Public Works Director within a reasonable time frame, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the MTVE's possession, or can be reasonably developed from the information in MTVE's possession.

17.1.4 MTVE will update information provided to the City under Section 17 – Planning Coordination, whenever there are major changes in MTVE's system plans for the City of Edgewood.

17.1.5 The City will provide information relevant to MTVE's operations within a reasonable period of written request to assist MTVE in the development or update of its Comprehensive Water System Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

17.2 System Development Information. MTVE and the City

will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:

17.2.1 By February 1st of each year, MTVE shall provide the City with a schedule of its planned capital improvements, which may affect the right of way for that year.

17.2.2 By February 1st of each year, the City shall provide MTVE with a schedule of its planned capital improvements which may affect the right of way for that year including, but not limited to street overlays and repairs, storm drainage improvements and construction, and all other right of way activities that could affect MTVE's capital improvements and infrastructure.

17.2.3 MTVE shall meet with the City, other franchises and users of the right of way, as necessary, to schedule and coordinate construction activities.

17.2.4 MTVE shall ensure that all MTVE's construction locations, activities, and schedules shall be coordinated, to minimize public inconvenience, disruption, or damages.

17.3 Emergency Management. The City and MTVE agree to cooperate in emergency management planning, emergency operations response procedures, and recover activity strategies, including identifying potential hazards and risks in the MTVE's facilities so that they can be either mitigated or minimized. Provided, that nothing herein shall be construed as altering or otherwise reducing MTVE's obligations under this franchise, specifically including without limitation MTVE's obligations under Section 10.

Section 18. Acceptance. Within sixty (60) days after the passage and approval of this Ordinance, this franchise may be accepted by MTVE by its filing with the City Clerk an unconditional written acceptance thereof. Failure of MTVE to so accept this franchise within said period of time shall be deemed a rejection thereof by MTVE, and the rights and privileges herein granted shall be of no effect whatsoever, unless extended by Ordinance.

Section 19. Survival. All of the provisions, conditions and requirements of Sections 3 (Relocation of Water Facilities); Section 5 (Excavation); Section 6 (Restoration after Construction); Section 9 (Dangerous Conditions); and Section 10 (Indemnification); of this franchise shall be in addition to any and all other obligations and liabilities MTVE may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination

of this franchise. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of MTVE and all privileges, as well as all obligations and liabilities of MTVE shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever MTVE is named herein.

Section 20. Assignment. This franchise may not be assigned or transferred without the written approval of the City, except MTVE may freely assign this franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. MTVE shall provide prompt, written notice to the City of any such assignment.

Section 21. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

CITY OF EDGEWOOD	**MT. VIEW-EDGEWOOD WATER CO.**
Mayor	General Manager
2224 104th Avenue East	11610 32nd Street East
Edgewood, Washington 98372	Edgewood, Washington 98372

Section 22. Severability. If any section, sentence, clause or phrase of this 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 ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 23. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title. Provided, that the franchise granted by this ordinance shall not take effect until the City's receipt of MTVE's signed acceptance of the terms set forth herein in accordance with Section 18.

Section 24. Regulatory Authority Reserved; Water Utility Service. The parties mutually acknowledge that the City is a municipal corporation organized under the Optional Municipal Code of Title 35A RCW. Nothing herein shall be construed as a waiver, abridgement or other limitation of the City's regulatory authority and/or police power, which the City hereby expressly reserves in full. Without limitation of the forgoing, MTVE shall be required to apply for and obtain all applicable City permits, licenses and/or approvals and otherwise operate in full compliance with the requirements there of . Any water utility service provided by MTVE to City-owned properties shall be governed by a separate contract between the parties.

Section 25. Nonwaiver of Breach. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any

provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

Section 26. Entire Agreement. This franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior oral negotiations and written agreements between the parties.

Section 27. No Third Party Beneficiary. This franchise has been negotiated and executed for the exclusive benefit of the signatory parties and is enforceable only by the same. Nothing herein shall be construed as creating any rights in or for any third parties.

Section 28. Governing Law. Venue. This franchise shall be governed in all respects by the laws of the state of Washington. The exclusive venue for any dispute related to this franchise shall be the Pierce County Superior Court. The substantially prevailing party in any such dispute shall be entitled to an award of its reasonable attorney fees.

Section 29. Abandonment. If MTVE abandons any or all of its facilities during the franchise term, the City, at its option, may operate said facilities or designate another entity to operate the same temporarily until MTVE restores service under conditions acceptable to the City, or until the franchise is revoked and a new franchisee is selected by the City. If the City designates another entity to operate the water utility system, MTVE shall reimburse the City for all reasonable costs, expenses and damages incurred, including reasonable attorney fees, court expenses and attributed expenses for work conducted by the City's staff or agents.

Section 30. Taxes and Fees. Nothing contained in this franchise shall exempt MTVE from MTVE's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on MTVE. Any fees, charges and/or fines provided for in the Edgewood Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from MTVE .

Presented to Council for first reading on October 4th, 2016
Presented to Council for second reading on November 15th, 2016

ADOPTED BY THE CITY COUNCIL ON JANAURY 10, 2017

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

_____

, City Attorney

Published:
Effective:

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Mt.View-Edgewood Water Company hereby declares on behalf of Mt.View-Edgewood Water Company, the acceptance of the nonexclusive franchise to Mt. View-Edgewood Water Company approved by the Edgewood City Council on the day of , , by the adoption of Edgewood City Ordinance No. -.

DATED this day

MT. VIEW-EDGEWOOD WATER COMPANY

By: _____
Its: _____

CITY OF EDGEWOOD
2224 104th Avenue East, Edgewood, WA 98372
(253) 952-3299 Fax: (253) 952-3537

LEGAL NOTICE

NOTICE OF ORDINANCE ADOPTED BY EDGEWOOD CITY COUNCIL

The following is a summary of an Ordinance adopted by the City of Edgewood City Council on the day of , and shall take effect and be in full force on the day of ,.

ORDINANCE NO. -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING UNTO MT. VIEW-EDGEWOOD WATER COMPANY, A NONPROFIT CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER SYSTEM INFRASTRUCTURE, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

The full text of the Ordinance is available at the City Clerk's office, Edgewood City Hall, 2224 104th Avenue East, Edgewood, WA 98372 (253) 952-3299.

_____

Rachel Pitzel, City Clerk

VERSION B

ORDINANCE NO. 17-XXXX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING UNTO MT. VIEW-EDGEWOOD WATER COMPANY, A NONPROFIT CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER SYSTEM INFRASTRUCTURE, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Mt. View-Edgewood Water Company, Inc., (hereinafter referred to as "MTVE") has requested that the City Council grant it a nonexclusive franchise; and

WHEREAS, MTVE has authority to contract with municipal corporations, and to construct, add to, maintain and supply water works; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040; and

WHEREAS, MTVE provides public drinking water to portions of citizens within the City of Edgewood, as a privately owned nonprofit municipal water corporation regulated by the Washington State Department of Health; and

WHEREAS, MTVE's public water system infrastructure and facilities are identified as critical infrastructure and its staff is classified as first responders by the Federal Government.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Franchise Granted; Term. Pursuant to RCW 35A.47.040, the City of Edgewood, a Washington municipal corporation (hereinafter the "City"), hereby grants to MTVE, a non-profit public utility owned by City taxpayers and organized under the laws of the state of Washington, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth and all applicable City codes and regulations, a nonexclusive franchise beginning on the effective date set forth in Section 23 herein. The term of the franchise shall be five (5) years.

This franchise shall grant MTVE the right, privilege and authority to construct, operate, maintain, replace, and repair all necessary facilities for water delivery, in, under, on, across, over, through, along or below the public rights-of-way located in the City of Edgewood ("the Franchise Area"), as approved under City permits issued pursuant to this franchise. "Rights-of-way" as used herein

means all public streets, roads, alleys and highways of the City as now or hereafter laid out, platted, dedicated or improved.

Section 2. Non-Exclusive Franchise Grant. This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said rights-of-way. Such franchise shall in no way prevent or prohibit the City and/or the public from using any of said roads, streets or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of same as the City may deem fit, including the dedication, vacation, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares and other public properties of every type and description.

Section 3. Relocation of Water System Facilities.

3.1 MTVE agrees and covenants to, at MTVE's sole expense, protect, support, temporarily disconnect, relocate or remove from any rights-of-way any of MTVE's facilities when so required by the City by reason of traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, road and walkway construction, change or establishment of street grade, and/or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity (a "governmental project").

3.2 Any condition or requirement imposed by the City upon any person or entity (including without limitation any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permit for zoning, land use, construction or development) which reasonably necessitates the relocation of MTVE's Facilities within the franchise area shall be a required relocation for purposes of subsection 3.1 above.

3.3 If the City determines that a government project or other event or condition, as defined in subsections 3.1 and 3.2, necessitates the relocation of MTVE's Facilities, the City shall, to the extent reasonably practicable:

A. Notify MTVE during the planning phase to ensure collaborative effort is made to reduce project expense (to the City and MTVE), allow budgeting for the project and facilitate joint applications for grants and low-interest funding by the parties. The City will provide written notification requiring relocation of MTVE's Facilities at least ninety (90) days or additional days, approved by the Mayor or his/her designee prior to the commencement of the government project or other event or condition necessitating the relocation.
B. Provide MTVE with copies of pertinent portions of the plans and specifications for such project and where possible propose an alternative location for MTVE's Facilities so that MTVE may relocate its facilities within the current right-of-way or to other rights-of-way.
C. After receipt of such notice and such plans and specifications, MTVE shall complete relocation of its facilities at least ten (10) days prior to commencement of the project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the project, event or condition necessitating the

relocation.

3.4 Without limitation of the foregoing, MTVE shall specifically indemnify the City, its officers, employees, agents and representatives, for any damages, claims, additional costs or expenses assessed against, or payable by, the City related to, arising out of, or resulting, directly or indirectly, from MTVE's failure to timely remove, adjust or relocate any of its facilities in accordance with any requirement hereunder. The provisions of this subsection shall survive the expiration or termination of this franchise.

3.5 MTVE may, after receipt of written notice requesting relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives in good faith and advise MTVE in writing if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of MTVE's Facilities. If so requested by the City, MTVE shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by MTVE full and fair consideration. In the event the City in its sole discretion ultimately determines that there is no other reasonable or feasible alternative, MTVE shall relocate its facilities as otherwise provided in this Section.

3.6 The provisions of this Section shall in no manner preclude or restrict MTVE from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City or another governmental entity, where the facilities to be constructed by said person or entity are not or will not become governmentally-owned, operated or maintained facilities, provided that such arrangements do not unduly delay a governmental project.

Section 4. Maps and Records. After construction of any new facilities in the City rights-of-way, and as a condition of this franchise, MTVE shall make available to the City upon request and at no cost, a copy of all as-built plans, maps and records revealing the final location and condition of MTVE's facilities within the public rights-of-way. Said plans will be maintained at MTVE per Department of Homeland Security measures.

Section 5. Excavations. All construction work performed by MTVE or its contractors under or in relation to this franchise, specifically including without limitation any relocation, construction or maintenance of MTVE's facilities, shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private, and shall comply with all applicable laws and regulations. MTVE shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the state of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Excavation in City-owned rights-of-way shall be governed by the provisions of the Edgewood Municipal Code (EMC) Chapter 12.06 - "Right-of-Way Franchises and Permits for Public and Private Utilities". MTVE, at its own expense, shall secure any applicable permits required for excavating in any public right-of-way and shall give the City at least five (5) working days notice of its intent to commence work in the public right-of-way. In no case shall any work commence

on City-owned and maintained public road surfaces, without the required permit(s).

If either the City or MTVE shall at any time plan to make excavations in any area covered by this franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, a reasonable opportunity to share such excavation, PROVIDED THAT:

A. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
B. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
C. Either party may deny such request for safety reasons. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 6. Restoration after Construction. MTVE shall, after abandonment, installation, construction, relocation, maintenance or repair of its facilities within the Franchise Area, restore the surface of the right-of-way to at least the same condition in which the property existed immediately prior to any such installation, construction, relocation, maintenance or repair. The City's Public Works Director shall have final approval of the condition of such rights-of-way after restoration. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. MTVE agrees to promptly complete all such restoration work and to promptly repair any damage caused by such work at its sole cost and expense. The provisions of this Section shall survive the expiration, revocation or termination by other means of this franchise.

Section 7. WSDOT Standards. The parties expressly acknowledge that some rights-of-way within the franchise area, specifically including without limitation the Meridian Avenue / State Route 161 corridor, are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations. Without limitation of any other provision of this franchise, MTVE agrees that:

(1) any pavement trenching and restoration performed by MTVE within State Highways shall meet or exceed applicable WSDOT requirements;

(2) any portion of a State Highway damaged or injured by MTVE shall be restored, repaired and/or replaced by MTVE to a condition that meets or exceeds applicable WSDOT requirements; and

(3) without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this franchise with respect to any portion of a State Highway.

Section 8. Emergency Work. Permit Waiver. In the event of any emergency in which any of MTVE's Facilities located in or under any right-of-way breaks, becomes damaged, or if MTVE's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, MTVE shall immediately take the proper emergency measures to repair its facilities, and to cure or remedy the dangerous condition(s) for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve MTVE from the

requirement of obtaining any permits necessary for this purpose, and MTVE shall apply for all such permits not later than the next succeeding day during which the Edgewood City Hall is open for business.

Section 9. Dangerous Conditions. Authority for City to Abate. Whenever the construction, installation or excavation of facilities authorized by 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 otherwise endangers the public, an adjoining public place, street utilities or City property, the Mayor may direct MTVE, at MTVE's own expense, to take actions to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time.

In the event that MTVE fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact MTVE to request MTVE affect the immediate repair, 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, or actions regarded as necessary safety precautions. The provisions of this Section shall survive the expiration, revocation or termination of this franchise.

Section 10. Indemnification. MTVE hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including attorneys' fees and including claims by MTVE's own employees for which MTVE might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising, in whole or in part, out of the acts or omissions of MTVE, its agents, contractors, subcontractors, servants, officers or employees in the performance of this franchise, and any rights granted hereunder. The above waiver of immunity under Title 51 RCW has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by MTVE at the time of completion of construction shall not be grounds for avoidance by MTVE of any of its obligations under this Section. 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.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of MTVE and the City, MTVE's liability hereunder shall be only to the extent of MTVE's negligence. The provisions of this Section shall survive the expiration or termination of this franchise.

Section 11. Insurance. MTVE shall procure and maintain for the duration of the franchise the following liability insurance policies, insuring both MTVE and naming the City, and its elected and appointed officers, officials, agents, representatives, and employees as additional insureds:

A. Comprehensive general liability insurance with limits not less than:
   1. $2,000,000 for bodily injury or death to each person;

2. $2,000,000 for property damage resulting per occurrence; and
3. $2,000,000 for all other types of liability.

B. Automobile liability for owned, non-owned and hired vehicles with a limit of $1,000,000 for each person and $3,000,000 for each accident.

C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than $1,000,000.

D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed operation hazard policies with limits of not less than $2,000,000.

E. The liability insurance policies required by this Section shall be maintained at all times by the MTVE. Each such insurance policy shall contain the following endorsement:

"It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until 90 days after receipt by the City, by registered mail, of a written notice addressed to the City Risk Manager of such intent to cancel or not to renew."

MTVE may satisfy the requirements of this section by a self-insurance program or membership in an insurance pool providing substantially the same coverage as set forth above and approved by the City.

Section 12. Restoration Bond. In lieu of a restoration bond pursuant to EMC 12.06.218, MTVE hereby warrants all work performed under this franchise and further specifically represents and warrants that all required restoration of the right-of-way shall be performed timely, in a workmanlike manner, and in full compliance with all applicable regulatory standards.

Section 13. Modification. The City and MTVE hereby reserve the right to mutually alter, amend or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment or modification. No such alteration, amendment or modification shall be effective without a writing signed by both parties.

Section 14. Forfeiture and Revocation. If MTVE willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or negligence fails to heed or comply with any notice given by the City under the provisions of this franchise, then MTVE shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Edgewood City Council after a hearing held upon notice to MTVE.

Section 15. Remedies to Enforce Compliance. The City may elect, in lieu of revocation and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling MTVE to comply with the provisions of this franchise. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force MTVE 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 16. Legal Compliance. City Ordinances and Regulations. MTVE shall comply

with applicable federal, state and local laws, rules and regulations, unless otherwise modified as part of this franchise, at all times relevant to this franchise. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. In the event of a conflict between the provisions of this franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein.

Section 17. Planning Coordination.

17.1 Growth Management, The parties agree, as follows, to participate in the development of, and reasonable updates to, the each other's planning documents:

17.1.1 For MTVE's service within the City limits, MTVE will participate in a cooperative effort with the City of Edgewood to develop a Comprehensive Plan Utilities Element that meets the requirements described in RCW 36.70A.070(4).

17.1.2 MTVE will participate in a cooperative effort with the City to ensure that the Utilities Element of Edgewood's Comprehensive plan is accurate as it relates to the MTVE's operations and is updated to ensure continued relevance at reasonable intervals.

17.1.3 MTVE shall submit information relates to the general location, proposed location, and capacity of all existing and proposed facilities within the City as requested by the Public Works Director within a reasonable time frame, not exceeding sixty (60) days from receipt of a written request for such information, provided that such information is in the MTVE's possession, or can be reasonably developed from the information in MTVE's possession.

17.1.4 MTVE will update information provided to the City under Section 17 – Planning Coordination, whenever there are major changes in MTVE's system plans for the City of Edgewood.

17.1.5 The City will provide information relevant to MTVE's operations within a reasonable period of written request to assist MTVE in the development or update of its Comprehensive Water System Plan, provided that such information is in the City's possession, or can be reasonably developed from the information in the City's possession.

17.2 System Development Information. MTVE and the City

will each assign a representative whose responsibility shall be to coordinate planning for CIP projects including those that involve undergrounding. At a minimum, such coordination shall include the following:

17.2.1 By February 1st of each year, MTVE shall provide the City with a schedule of its planned capital improvements, which may affect the right of way for that year.

17.2.2 By February 1st of each year, the City shall provide MTVE with a schedule of its planned capital improvements which may affect the right of way for that year including, but not limited to street overlays and repairs, storm drainage improvements and construction, and all other right of way activities that could affect MTVE's capital improvements and infrastructure.

17.2.3 MTVE shall meet with the City, other franchises and users of the right of way, as necessary, to schedule and coordinate construction activities.

17.2.4 MTVE shall ensure that all MTVE's construction locations, activities, and schedules shall be coordinated, to minimize public inconvenience, disruption, or damages.

17.3 Emergency Management. The City and MTVE agree to cooperate in emergency management planning, emergency operations response procedures, and recover activity strategies, including identifying potential hazards and risks in the MTVE's facilities so that they can be either mitigated or minimized. Provided, that nothing herein shall be construed as altering or otherwise reducing MTVE's obligations under this franchise, specifically including without limitation MTVE's obligations under Section 10.

Section 18. Acceptance. Within sixty (60) days after the passage and approval of this Ordinance, this franchise may be accepted by MTVE by its filing with the City Clerk an unconditional written acceptance thereof. Failure of MTVE to so accept this franchise within said period of time shall be deemed a rejection thereof by MTVE, and the rights and privileges herein granted shall be of no effect whatsoever, unless extended by Ordinance.

Section 19. Survival. All of the provisions, conditions and requirements of Sections 3 (Relocation of Water Facilities); Section 5 (Excavation); Section 6 (Restoration after Construction); Section 9 (Dangerous Conditions); and Section 10 (Indemnification); of this franchise shall be in addition to any and all other obligations and liabilities MTVE may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination

of this franchise. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of MTVE and all privileges, as well as all obligations and liabilities of MTVE shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever MTVE is named herein.

Section 20. Assignment. This franchise may not be assigned or transferred without the written approval of the City, except MTVE may freely assign this franchise in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. MTVE shall provide prompt, written notice to the City of any such assignment.

Section 21. Notice. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

CITY OF EDGEWOOD	**MT. VIEW-EDGEWOOD WATER CO.**
Mayor	General Manager
2224 104th Avenue East	11610 32nd Street East
Edgewood, Washington 98372	Edgewood, Washington 98372

Section 22. Severability. If any section, sentence, clause or phrase of this 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 ordinance unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this franchise materially affected by such court's ruling.

Section 23. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect (5) days after passage and publication of an approved summary thereof consisting of the title. Provided, that the franchise granted by this ordinance shall not take effect until the City's receipt of MTVE's signed acceptance of the terms set forth herein in accordance with Section 18.

Section 24. Regulatory Authority Reserved; Water Utility Service. The parties mutually acknowledge that the City is a municipal corporation organized under the Optional Municipal Code of Title 35A RCW. Nothing herein shall be construed as a waiver, abridgement or other limitation of the City's regulatory authority and/or police power, which the City hereby expressly reserves in full. Without limitation of the forgoing, MTVE shall be required to apply for and obtain all applicable City permits, licenses and/or approvals and otherwise operate in full compliance with the requirements there of . Any water utility service provided by MTVE to City-owned properties shall be governed by a separate contract between the parties.

Section 25. Nonwaiver of Breach. The failure of either party at any time to require performance by the other of any provision hereof shall in no way affect the right of the other party hereafter to enforce the same. Nor shall the waiver by either party of any breach of any

provision hereof be taken or held to be a waiver of any succeeding breach of such provision, or as a waiver of the provision itself or any other provision.

Section 26. Entire Agreement. This franchise represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior oral negotiations and written agreements between the parties.

Section 27. No Third Party Beneficiary. This franchise has been negotiated and executed for the exclusive benefit of the signatory parties and is enforceable only by the same. Nothing herein shall be construed as creating any rights in or for any third parties.

Section 28. Governing Law. Venue. This franchise shall be governed in all respects by the laws of the state of Washington. The exclusive venue for any dispute related to this franchise shall be the Pierce County Superior Court. The substantially prevailing party in any such dispute shall be entitled to an award of its reasonable attorney fees.

Section 29. Taxes and Fees. Nothing contained in this franchise shall exempt MTVE from MTVE's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on MTVE. Any fees, charges and/or fines provided for in the Edgewood Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from MTVE .

Presented to Council for first reading on October 4th, 2016
Presented to Council for second reading on November 15th, 2016

ADOPTED BY THE CITY COUNCIL ON JANAURY 10, 2017

_____
Daryl Eidinger, Mayor

ATTEST/AUTHENTICATED:

_____
Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

_____

, City Attorney

Published:
Effective:

ACCEPTANCE OF FRANCHISE

The undersigned authorized representative of Mt.View-Edgewood Water Company hereby declares on behalf of Mt.View-Edgewood Water Company, the acceptance of the nonexclusive franchise to Mt. View-Edgewood Water Company approved by the Edgewood City Council on the day of , , by the adoption of Edgewood City Ordinance No. -.

DATED this day

MT. VIEW-EDGEWOOD WATER COMPANY

By: _____
Its: _____

CITY OF EDGEWOOD
2224 104th Avenue East, Edgewood, WA 98372
(253) 952-3299 Fax: (253) 952-3537

LEGAL NOTICE

NOTICE OF ORDINANCE ADOPTED BY EDGEWOOD CITY COUNCIL

The following is a summary of an Ordinance adopted by the City of Edgewood City Council on the day of , and shall take effect and be in full force on the day of ,.

ORDINANCE NO. -

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING UNTO MT. VIEW-EDGEWOOD WATER COMPANY, A NONPROFIT CORPORATION OF THE STATE OF WASHINGTON, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR WATER SYSTEM INFRASTRUCTURE, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF EDGEWOOD, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

The full text of the Ordinance is available at the City Clerk's office, Edgewood City Hall, 2224 104th Avenue East, Edgewood, WA 98372 (253) 952-3299.

Rachel Pitzel, City Clerk

From: Jacki Masters [mailto:jackim@mtvewater.com]
Sent: Thursday, December 15, 2016 2:32 PM
To: Aaron Nix <aaron@cityofedgewood.org>
Cc: Dave Gray <dave@cityofedgewood.org>; Mike Craig <MikeC@mtvewater.com>; Don Nelson <patanddon@comcast.net>; City of Edgewood Mayor <mayor@cityofedgewood.org>; Rachel Pitzel <rachel@cityofedgewood.org>
Subject: RE: Franchise agreement and code revisions

Aaron,

Thanks for getting this to me so quickly - much appreciated. Our Board reviewed this current version at last night's meeting and are comfortable that the terms will work for both our agencies.

I am still reviewing the proposed code language and will get you comments after Mike and I have a chance to compare notes. He is off for a few days and I will be off next week. I hope it won't be a problem for me to send comments the last week of this month.

I would also like to get started with the zoning change at the reservoir site on 48th. Will this emailed request suffice or do you need a more formal request?

Lastly, along with the re-zoning is our request to have the site designated an Essential Public Facility.

Thanks for your assistance in these matters and helping me to understand the processes.

Jacki Masters,
General Manager
Mt. View-Edgewood Water Company
253.863.7348