

ORDINANCE NO. 306

AN ORDINANCE GRANTING TO DRAPER IRRIGATION COMPANY A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A CULINARY WATER SYSTEM WITHIN CERTAIN SPECIFIED GEOGRAPHIC AREAS OF DRAPER CITY.

WHEREAS, the Draper Irrigation Company (the “Company”) provides and desires to continue to provide culinary water services to certain geographic areas within Draper City (the “City”); and

WHEREAS, the City in exercise of its ownership rights of public rights-of-way believes that it is presently in the best interest of the public to provide the Company a non-exclusive franchise to operate a culinary water system within certain designated areas of the City.

BE IT ORDAINED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH:

Section 1. Short Title. This Ordinance shall be known as the Draper Irrigation Franchise Ordinance.

Section 2. Franchise Grant. There is hereby granted to the Company, its successors and assigns, the franchise right, privilege, and authority, to construct, maintain and operate in the present and future streets, alleys and public ways in the City of Draper, Utah, and its successors, a culinary water system, in those areas more particularly shown on Exhibit “A” attached to this Franchise, which Exhibit is incorporated herein by this reference, together with all the necessary or desirable appurtenances, including but not limited to, underground water lines, distribution and metering facilities, for the purpose of supplying culinary water service to the designated areas of the City, and the inhabitants thereof. This franchise does not grant to the Company any right, privilege or authority to engage in any activities or business except as herein expressly set forth.

Section 3. Term. The term of the franchise granted herein is for a period from and after its effective date, until January 1, 2025, unless sooner terminated by virtue of the provisions herein contained. Following expiration of the initial term, the franchise will renew for additional periods of five years each, subject to cancellation by either party upon giving notice at least 180 days in advance of an expiration date. Any such notice of cancellation shall be in writing and delivered by certified mail to the Company at its office in Draper as noted herein.

Section 4. Acceptance by the Company. Within thirty (30) days after the passage of this Ordinance, the Company shall file an unqualified written acceptance thereof, in a form acceptable to the City Attorney, with the City Recorder of Draper City, otherwise this ordinance and the rights granted herein shall be null and void.

Section 5. Non-Exclusive Franchise. The right to use and occupy said streets, alleys, viaducts, bridges, roads, lanes and other public ways for the purposes set forth herein shall be deemed to be a non-exclusive franchise. The City will not undertake to provide culinary water service within the franchise areas during the existence for the franchise. However, the City may grant another franchise to operate a culinary water system within the franchise areas, if it determines that the Company has failed to provide an appropriate level of culinary water service in the franchise areas in accordance with the standards of the Utah State Department of Environmental Quality Division of Drinking Water or has failed to comply with applicable laws, rules and regulations for providing culinary water service as established in the current standards specifications and plan requirements for the City of Draper, and the Company fails within a reasonable period of time or refuses to take such actions as are necessary to

provide an appropriate level of service and to comply with the laws, rule and regulations governing the providing of culinary water service. The City reserves the right to itself to make use of said public streets and ways for other purposes and to grant franchises to other utility providers and other persons, firms or corporations.

Section 6. City Regulatory Authority. The City expressly reserves, and the Company expressly recognizes the City's right and duty to adopt, from time to time, in addition to the provisions herein contained, such ordinances and rules and regulations including, but not limited to, standards, specifications and plan requirements as may by the City be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Utah, the laws of Utah or City Ordinances.

Section 7. Indemnification. The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death, of any person that may occur in the construction, operation or maintenance by the Company of its facilities, lines and appurtenances hereunder. The Company shall indemnify, defend and hold the City harmless and its officers, employees, agents and representatives from and against claims, demands, liens arising from the grant of this franchise, the exercise by the Company of the related rights, or from the operations by the Company of the related rights, or from the operations of the Company within the City, and shall pay the costs of defense plus reasonable attorneys' fees. The City shall (a) give written notice to the Company of any claim, demand or lien within 30 days of receipt thereof with respect to which the City seeks indemnification hereunder and (b) unless in the City's judgment a conflict of interest exists between the City and the Company with respect to such claim, demand or lien, permit the Company to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by the Company, the Company shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, the Company shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the City or any of its officers or employees.

Section 8. Franchise Fee. This franchise is granted in consideration of the acceptance by the Company of the terms and conditions of this Ordinance as herein provided, together with the payment by the Company to the City within thirty (30) days after the collection thereof six percent (6%) of revenues from the sale of culinary water collected within the City. It is understood and agreed by and between the City and the Company that the considerations above provided shall be in lieu of any and all other franchise, occupation, privilege, license, excise, revenue or similar taxes and all other exactions (except ad valorem property taxes, special assessments for local improvements and permits or other fees) upon the revenue, property, water mains, distribution pipes, equipment, fixtures or other appurtenances of the Company's culinary water system, imposed or which may hereafter be imposed during the term of this franchise.

Section 9. Plan, Design, Construction and Installation of Company Facilities.

(a) On or before February 28 of each calendar year, or such other date the Company and City may agree upon from year to year, representatives of the Company and the City shall meet for the purpose of exchanging information and documents regarding construction and other similar work within the City, with a view towards coordinating their respective activities in those areas where such coordination may prove mutually beneficial.

(b) Whenever the Company proposes to install new underground water lines within or under the present and future streets, or public ways within the City, the Company shall submit plans and

specifications to the City Engineer at least 20 work days in advance and provide an opportunity to coordinate City construction with that of the Company.

(c) All facilities of the Company shall be located so as to cause minimum interference with the public use of streets, and other public ways and shall be maintained in good repair and condition. The Company will acquire permits where required, pay any fees generally assessed and the City shall inspect the work performed by the Company to ensure that it complies with the City's excavation and other applicable ordinances. It is understood that this work involves the health, safety and welfare of the community and from time to time must be done under circumstances which will make the prior acquisition of a permit infeasible. All water lines and appurtenant facilities constructed and maintained under the authority of this franchise shall be used, constructed and maintained in accordance with applicable federal, state and local laws, codes and regulations.

(d) If, during the course of work on its facilities, the Company causes damage to or alters any street or public way, the Company shall, at its own cost and expense, and in a manner approved by the City Engineer, replace and restore it in as good a condition as existed before the work commenced. Except in case of emergency, the Company shall, prior to commencing work in a public way or street, notify the City of plans to commence the work and acquire any required permits. The Company will abide by all applicable ordinances and reasonable rules, regulations and requirements of the City Engineer for such work.

Section 10. Company Construction, Excavations and Relocations.

(a) Construction and Location. The Company shall have the right to excavate in, occupy and use any and all streets, viaducts, bridges, roads, lanes, and public ways of the City at locations approved by the City Engineer to construct, maintain, operate, repair and remove water pipelines, valves, value boxes, and other water distribution structures and facilities owned by the Company (the "Facilities"). The Facilities shall be installed at those locations within the streets as shall be set forth in plans, specifications and maps prepared by the Company's engineer which shall be reviewed and approved by the City Engineer prior to the commencement of any construction. A print of the drawings showing the proposed location of the Facilities shall be submitted to the City Engineer who shall review the same prior to the commencement of work. The Company shall pay any review and/or inspection fees required under the City's ordinances, rules and regulations. The City Engineer will within 20 days of receiving plans and specifications as provided in Section 9(b) approve or deny the proposed construction, or approve the proposed construction with conditions. Upon approval by the City Engineer and payment of any required fees, a permit shall issue from the City to the Company's contractor, or the Company as the case may be, allowing construction of the work to proceed in accordance with the terms hereof. The City agrees it will not assess any fees for such permits which are not similarly assessed against any other privately owned utility operating within the City's rights of ways. All construction shall be carried forward to completion in accordance with the Company's plans and specifications previously approved by the City Engineer. Following completion of construction, numbered detail sheets shall be furnished to the City showing all road cuts as to location and date of cut, the distance from the right-of-way line to the water pipe center line in all streets where Facilities are installed. All applicable regulations of the City pertaining to excavation of the trench shall be fully complied with by the Company and any contractor working on behalf of the Company.

(b) Protection of Traffic during Construction. The Company and its contractor shall so conduct the construction operations so that there shall be a minimum of interference or interruption with City's streets and with respect to the handling of traffic, and shall at all times maintain such watchmen, barricades, lights or other reasonable measures for the protection of traffic as may be reasonably required to warn and safeguard the public against injury or damage during construction of the Facilities and to

prevent and abate the escape of dust and construction debris. The Company agrees to hold the City harmless from any and all liabilities arising from said construction commenced under the terms of this Ordinance. In addition to the foregoing, all traffic control shall comply with M.U.T.C.D. standards.

(c) Compaction of Backfill. The backfilling of any trench within the paved portion of the street, the shoulders thereof, or the portion under or intersecting the street, shall be thoroughly compacted. The method of compaction shall be subject to review by the City at the time the plans and specifications are reviewed by the City Engineer. The Company and its contractors shall be responsible to comply with the City's standard excavation permit requirements and construction standards. Standard permit fees shall be paid by the Company to the City on any cuts that extend into the public right-of-way. Compaction testing may be required on all backfill installed within the City's streets.

(d) Restoration of Existing Pavement. The Company shall replace, at its sole expense, any hard surface removed or damaged with the same type and depth of hard surface as that which is adjoining, including and gravel base material. Existing pavement shall be removed before restoration at least 12" beyond the disturbed area to provide an overlap of the patch onto solidified undisturbed material. In the event weather conditions do not permit immediate replacement of permanent hard surface, a temporary surface shall be placed until such time as weather conditions are favorable, at which time the temporary surface shall be removed and replaced with a permanent road surface. If the gravel surface, gravel shoulder, or gravel surface approach roads become fouled with clay or other unsuitable material, such surfacing shall be removed and replaced with new gravel surfacing material. No cleated or metal crawler-type equipment shall be permitted to operate on any City hard surface street. The repairs to hard surface shall include hard surfaces which are damaged by construction equipment used in constructing the Company's facilities. In all cases the Company hereby agrees to cause its contractor to restore those portions of the street through which the work actually traverses, to as near its original condition as is reasonably possible.

(e) Disposal of Surface Material in Cleaning Up Street. Upon completion of the work, all surplus material shall be removed from within the limits of the street. The disturbed surface shall be carefully graded to the lines and grades established. Any highway facility such as signs and culverts which are disturbed or damaged during the process of the work shall be promptly restored to as near their original condition as is reasonably possible.

(f) Reconstruction of the Street. In the event that any street, or portion thereof is so reconstructed at any future date as to location, grade or width, so as to require the adjustments of the Facilities, the Company shall assume and pay all costs incident to the adjustment of the Facilities.

(g) Crossing of Facilities and Expansion of Street System. The City shall have the right to cross said Facilities at any point deemed necessary in the future construction and expansion of the City street system, provided that the city shall use due care and diligence in the protection of the Facilities in making such crossings.

(h) Maintenance of Facilities by Company. The Facilities and their attached appurtenances shall at all times be maintained, repaired and operated by and at the expense of the Company.

(i) Relocation of Facilities. Whenever the City shall, for any lawful purpose, require the relocation, removal or reinstallation of any Facilities of the Company or its successors in any of the streets, or public ways of the City, it shall be the obligation of the Company, upon notice of such requirement to promptly commence work to remove and relocate or reinstall such Facilities as may be necessary to meet the requirements of the City. Such relocation, removal or reinstallation by the Company shall be at no cost to the City. The City will require as a condition of any non municipal

improvement or development that the reasonable cost of any relocation, removal or reinstallation of Company facilities shall be paid for by the requesting party. Any money and all rights to reimbursement from the State of Utah, the federal government or other parties to which Company may be entitled for work done by the company pursuant to this paragraph, shall be the property of Company.

(j) Water System Information. Within thirty (30) days following the Company's acceptance of this franchise, the Company shall provide the City with a digital magnetic map in dKF format (Autocad) of the Company's culinary water system. The map which the Company shall provide to the City shall be for reference and informational purposes only, and the Company makes no representations or warranties regarding the accuracy of the information set forth in the map. The Company shall provide the City with annual updates of this map. The Company will further update this map with GIS data as that data can be reasonably secured by the Company and added to the map.

Section 11. Fire Standards. As a condition of the granting of the franchise, the Company agrees to provide a system of hydrants, hydrant valves, tees and storage/pressures, in accordance with National Fire Protection Association (NFPA) Standards within the franchise area. The Company will assure that its fire protection facilities in all service areas established after the date of this Ordinance will be constructed in accordance with National Fire Protection Association (NFPA) Standards and that the Company will establish an affirmative program to upgrade existing facilities to NFPA standards within ten years hereof or according to another schedule agreed to by the Company and the City. The City will annually perform fire hydrant testing according to the standards of NFPA and the American Water Works Association and provide results of its tests to the Company.

Section 12. Water System Backup. The Company and the City will sell water to each other on an emergency basis to relieve emergency or short term short falls in the other party's water supply. Such sale of culinary water shall be made pursuant to a written agreement signed by the parties setting forth the terms and conditions governing such sales.

Section 13. Insurance. The Company shall furnish the City with written evidence of a contract or contracts of insurance with a reliable company or companies authorized to do business in the State of Utah by which contracts both the Company and the City named as additional insured are insured against any claim, demands, or loss for injury to persons or damage to property resulting from, growing out of or connected with the construction, operation or maintenance of the culinary water system of the Company with the City, which contracts of insurance shall have limits in amounts of not less than \$1,000,000.00 per occurrence, and not less than \$3,000,000.00 total coverage, except that this obligation shall not require the Company to furnish insurance against injury to persons or damages to property caused by the sole negligence of the City or its employees. The Company's insurance carrier shall give the City at least thirty (30) days notice in writing prior to the time that the insurance carrier terminates the insurance coverage naming the City as a co-insured. If the Company fails to maintain insurance coverage or to secure replacement insurance coverage as required by this Section, the City may acquire substitute insurance on behalf of the Company and/or the City and require the Company to reimburse the City for the premium.

Section 14. Assignment. The City acknowledges and agrees that the Company may assign this franchise to its affiliated Company, Draper Water Services, Inc., provided that the assignee shall be bound by all of the terms and conditions and obligations hereunder and that the City finds the financial and management capacities of Draper Water Services, are adequate to provide assurance of meeting such obligations. The Company shall not transfer or assign any rights under this franchise to another person or entity unless the City shall first give its approval in writing therefor.

Section 15. Early Termination and Revocation. The City may terminate or revoke this franchise and all rights and privileges herein provided for any of the following reasons.

(a) The Company, by act or omission, materially violates a duty or obligation herein set forth in any particular within the Company's control and with respect to which redress is not otherwise herein provided. In such event, the City may after hearing determine that such failure is of a material nature, and thereupon, after written notice given to the Company of such determination, the Company shall have ninety (90) days from the date it receives notice to remedy the conditions identified in the notice. After the expiration of such ninety (90) day period and failure to correct such conditions, the City may declare this franchise forfeited.

(b) The Company becomes insolvent, unable or unwilling to pay its debts, is adjudged bankruptcy, or all or part of its Facilities should be sold under an instrument to secure a debt and is not redeemed by the Company within thirty (30) days.

(c) Prior to revoking or terminating this franchise under this paragraph, the City shall first hold a public hearing not less than thirty (30) days prior to such revocation and shall give written notice to the Company of the public hearing on the ordinance revoking and terminating the franchise. The Company shall have an opportunity at the public hearing to be heard upon the proposed termination.

Section 16. Effect on Prior Easement. The City previously granted the Company an Easement in accordance with that certain Easement Agreement dated March 16, 1993, and recorded as Entry No. _____, in Book _____, pages _____ to _____ in the office of the Salt Lake County Recorder, State of Utah. Notwithstanding the granting of the foregoing easement, the Company and the City hereby agree that so long as the Company holds a franchise from the City to operate and maintain a culinary water system within any areas of the City, that the terms of the then current Franchise Ordinance shall be controlling and shall supersede the provisions of the aforesaid Easement with respect to the Company's culinary water system operations. The aforesaid easement shall, however, remain at all times in full force and effect with respect to the Company's pressure irrigation system. In the event the Company's franchise is terminated at any time, the aforesaid easement with respect to the Company's culinary water system shall thereafter be controlling and remain in full force and effect according to its terms.

Section 17. Utah Law. This Agreement shall be interpreted pursuant to Utah law.

Section 18. Amendments. This Agreement may be modified or amended by written agreement only. No oral modifications or amendments shall be effective.

Section 19. Severability. If any section, clause or portion of this Ordinance is declared invalid by a court of competent jurisdiction, the remainder shall not be affected thereby and shall remain in full force and effect.

PASSED AND ADOPTED BY THE CITY COUNCIL OF DRAPER CITY, STATE OF UTAH,
ON THIS 16TH DAY OF MARCH, 1999.

DRAPER CITY
By: /s/ Richard Alsop
Mayor

[City of Draper
Corporate Seal]
ATTEST:
/s/ Barbara L. Sadler

City Recorder

APPROVED AS TO FORM
City Attorney's Office
Date April 26, 1999
By /s/ Todd Godfrey