

**WATER SERVICE FRANCHISE - AVION WATER COMPANY
(ORDINANCE NO. NS-1514, as amended)**

Section 1: Short Title.

This ordinance shall be known as the "Avion Water Service Franchise." The purpose of this ordinance is to promote and ensure the efficient allocation, regulation and use of domestic water and its provision to Bend residents and to avoid duplication of facilities, capital expenditure and other related resources.

Section 2: Definitions.

For the purpose of this ordinance, the following terms shall have the meaning provided below:

- (1) "City" is the City of Bend, Oregon.
- (2) "Company" is Avion Water Company, the grantee of the rights under this franchise, and its successors or assigns.
- (3) "Council" is the City Council of the City of Bend.
- (4) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) "Facilities" shall mean all real property, fixtures and equipment used by Company in the provision of water services throughout its system, whether located inside or outside of City, and includes, but is not limited to, main transmission lines, distribution systems and all other things used in the provision of water services by Company.
- (6) "Urban Growth Boundary" shall mean those properties within City's present city limits and the Urban Growth Boundary as they now exist and as they may change from time to time in the future.

Section 3: Grant of Authority.

City grants to Company the right and privilege to construct, erect, operate and maintain its facilities, in, upon, along, across, above, over and under the streets, alleys, and public ways now laid out or dedicated, and all extensions thereof, and additions thereto, for the provision of water services in City. This franchise is nonexclusive in that the City reserves the right to operate a water system within the public ways and to grant a similar use of streets, alleys and public ways to another person. The City will not serve new customers within the Company's Water Service Area, unless the Company will not serve the customer(s) or the utility is not providing service that meets the standards of a public water utility. The City will not provide service to new customers within the Company's water service area without first providing the Company ten days written notice. This notice shall not be required in the case of an emergency.

Section 4: Compliance with Laws, Rules and Regulations.

At all times during the term of this franchise, Company shall comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon, and the City of Bend; including appropriate agencies and subdivisions thereof. Company shall be subject to the lawful exercise of the police power of City and to such reasonable regulations as City may from time to time hereafter adopt. Company shall have 30 days after written notice to remedy any non-compliance. If any non-compliance cannot reasonably be remedied within 30 days, City shall not declare a default for non-compliance provided Company is taking reasonable steps to remedy the non-compliance as soon as is reasonably practicable. This 30 day notice requirement shall not apply in emergency-type situations where the preservation of public health, safety or welfare requires that immediate action be taken.

Section 5: Company Liability, Indemnification of City and Insurance.

- (1) Company shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.
- (2) Company shall pay, save harmless and indemnify City from any loss or claim against City on account of or in connection with any activity of Company in the construction, operation or maintenance of its facilities and services.

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- (3) This franchise shall not be effective until Company secures, and shall at all times be conditioned upon Company maintaining, a comprehensive liability insurance policy which shall contain the following provisions:
- (a) Bodily injury policy limits of \$500,000 for each person and \$500,000 for each occurrence.
 - (b) Property damage policy limits of \$500,000.
 - (c) An endorsement for completed operations coverage.
 - (d) A designation of City, its officers, agents and employees, as an additional insured for liability arising from or in connection with this franchise.
 - (e) An endorsement requiring 10 days' written notice to City prior to the cancellation of the insurance coverage.
 - (f) A certificate evidencing insurance as described in this ordinance shall be deposited with City.
 - (g) In the event that City's tort liability limits are raised by the Oregon Legislature to exceed the limits described in this Section, Company shall obtain and maintain insurance in the amount of City's tort liability limits.

Section 6: Facilities and Service Standards.

For the term of this franchise, Company shall construct, operate and maintain its facilities and provide services as follows:

- (1) Company shall provide its customers with good quality water services; and supply potable water to its customers in compliance with all applicable laws, rules and regulations.
- (2) Company shall construct and maintain those portions of its facilities that are located within the City of Bend and within the Urban Growth Boundary surrounding the City, as it exists and changes, in compliance with City and State standards for the provision of the service. Compliance with City standards shall include, but not be limited to:

- (a) Standards for construction and installation of the water system, including the use of C-900 or ductile iron pipe and restoration of City streets.
 - (b) Provision of standard City fire flows throughout the water system, subject to verification by the Fire Department with notice. At least annually or upon request by the City, the Company will provide the City with a written report of individual hydrant conditions.
 - (c) City inspection and approval of system design and installation pursuant to generally accepted practices and standards in the water utility area.
 - (d) Compliance with City construction standards shall be required only for facilities which are constructed or installed after the commencement of this franchise.
- (3) Company shall maintain and improve its facilities according to generally accepted practices and standards in the regional water utility industry.
- (4) Company's service to properties within the City shall be confined to the properties shown on the map entitled "Water Service Area Exhibit" which is marked EXHIBIT A, Amended July, 2007 attached hereto and incorporated by reference herein. Company shall not serve any other properties within the City. Exhibit A, Amended July, 2007, shall replace the existing water service area allocation between the City of Bend and Company.

[NOTE: Exhibit A is located in City of Bend Ordinance Book directly preceding Ordinance No. NS-2060.]

Company shall not serve any other properties within the Urban Growth Boundary.

- (5) Unless prohibited by law or the Oregon Public Utilities Commission, in cases where City provides sewer services to a Company customer, Company agrees to terminate the service of Company's customer, at the request of City, if the customer becomes delinquent in the payment of the customer's sewer service bill.

Section 7: Company Rules.

Company shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be reasonably necessary to enable Company to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to its customers. Company rules and regulations shall be subject to the provisions of this ordinance and any other governmental regulations. A copy of said rules and all amendments thereto shall be filed with the Office of City Manager.

Section 8: Conditions on Street Occupancy.

Company agrees to comply with the following conditions:

- (1) **Use.** All facilities installed by Company within the Urban Growth Boundary after the date of this ordinance shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places. Company shall obtain street cut permits for all street cuts and shall comply with the provisions of City's street cut ordinance.
- (2) **Restoration.** In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Company, Company shall, at its own cost and expense and in a manner approved by City, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before the disturbance. If Company fails to make restoration as required, City shall cause the repairs to be made at the expense of Company.
- (3) **Relocation.** City may require Company to change the location of any facility within the public right of way when the public convenience requires such change or removal and the expense thereof shall be paid by Company. City shall give Company reasonable notice of any changes required and Company shall have a reasonable time within which to make the requested change. If Company refuses to make the change requested by City or does not make the change within a reasonable time after the request of City, City may make the change and collect the cost of making said change from Company.

- (4) Placement of Facilities. Company shall not place its facilities where they will interfere with any existing gas, electric or telephone fixture or sewer or water facility. All facilities placed in the City street shall be placed as City directs.

Section 9: **Notice of Intent to Sell.**

Company shall not enter into any binding agreement to sell, assign, dispose of or transfer in any manner whatsoever any interest in this franchise, nor transfer, permit transfer of controlling interest in the Company, without first providing to the City sixty (60) days written notice of Company's intent to sell.

Section 10: **Transfer of Franchise.**

Company shall not sell, assign, dispose of or transfer in any manner whatsoever any interest in this franchise or in the technical facilities used with this franchise, nor transfer or permit transfer of controlling interest in Company without prior written approval of Council. Such approval shall be based upon the following criteria: Company shall be required to demonstrate to the satisfaction of the Council that Company's proposed purchaser, assignee or transferee has such financial and managerial resources as are sufficient to maintain the then current quality of service and to comply fully with the terms of this franchise prior to the Council granting such approval. Such approval, based upon the above criteria, shall not be unreasonably withheld by the Council. If the PUC approves the transfer, the transfer shall be presumed to be reasonable.

Section 11: **City Right in Franchise.**

City shall have the right to inspect all construction or installation of Company facilities, subject to the provisions of this ordinance and to make such inspections as it shall find necessary to ensure compliance with governing laws, rules and regulations.

Section 12: **Franchise Fee.**

Company shall pay the franchise fee established by Section 3.112 of the Bend Code. A comparable fee shall be paid by the City's water utility. For purposes of calculating the franchise fee, the term "gross operating revenue" in Bend Code Section 3.112 shall mean all Company income recognized by the Oregon Public Utility Commission for rate setting purposes. The franchise fee provided herein is subject to Public Utility Commission approval.

Section 13: **Rate and Services Regulation.**

City shall not regulate Company's rates so long as Company's rates are regulated by the Oregon Public Utility Commission or comparable governmental entity.

Section 14: **Company Records and Reports.**

Company shall keep accurate books of account at an office within the State of Oregon throughout the term of this franchise. Company shall produce its books of account for inspection by City at any time during normal business hours, after reasonable notice by City, and City may audit Company's books from time to time. City may require periodic reports from Company relating to its operation and revenue within City. Prior to requesting periodic reports, City shall first review the annual report submitted by Company to the P.U.C.

Section 15: **System Data.**

Company shall maintain, at a local office, current maps and other operational data relating to its facilities and system operations in the City of Bend. City may inspect these maps and data at any time during normal business hours.

Section 16: **Enforcement of Franchise.**

City and Company shall have all remedies provided by law, including termination of this franchise, to enforce the terms and conditions of this franchise. Failure to enforce any provision of this ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this ordinance.

Section 17: **Franchise Term.**

This franchise is granted for a term of 20 years beginning with the acceptance by Company of the amendment to the franchise adopted by the Bend City Council in July, 2007.

Section 18: **Acceptance of Franchise.**

Within 30 days from the effective date of this ordinance, Company shall file with the City Recorder a written, unconditional acceptance of this franchise and all of its terms and conditions. If Company fails to do so, this ordinance shall be void and of no effect whatsoever.

Section 19: Franchise a Contract.

City and Company intend that this franchise shall constitute a contractual obligation between City and Company with respect to Company's service and facilities outside of City and within the Urban Growth Boundary. The parties contemplate that the City's corporate limits will expand through annexation within the Urban Growth Boundary throughout the term of this franchise through City's annexation of properties within the Urban Growth Boundary. The parties intend that the terms and conditions of this franchise shall apply to Company's activities outside the City limits, but within the Urban Growth Boundary, as a contractual obligation so that as properties served by Company are annexed there will not be any significant difference in facilities or service standards.

Section 20: Constitutionality.

If any section, subsection, sentence, clause or portion of this ordinance is for any reason held invalid or is rendered unconstitutional by court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the constitutionality of the remaining portion hereof. If for any reason the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by law shall be the franchise fee allowed by this franchise.

[Section 11-20.1 through 11-20.19 added by Ordinance No. NS-1514, passed June 20, 1990]

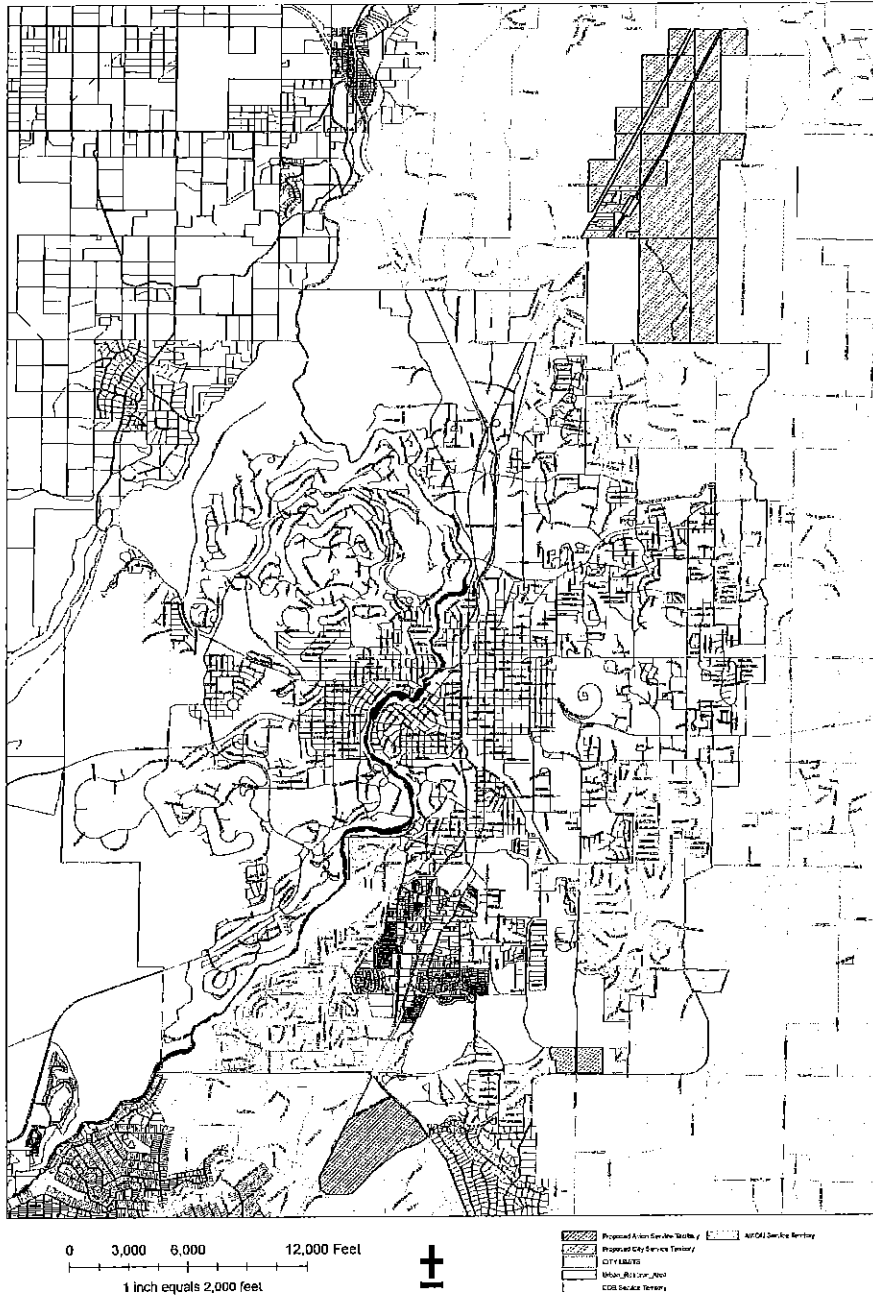
[Sections 11-20.6 and 11-20.16 amended by Ordinance No. NS-1549, passed November 6, 1991]

[Section 11.20.1 through 11.20.20 amended by Ordinance No. NS-1748, passed June 7, 2000]

[Section 12 amended by Ordinance No. NS-1997, passed February 1, 2006]

[Sections 6 and 17 amended by Ord. Ns-2060, passed July 2, 2007]

**Avion Water Company Inc / City of Bend
Proposed Service Territory Exchange 2007**



[Exhibit A Amended by Ord. NS-2060, passed July 2, 2007]

Amended 12/21/16
by Ord. 2284

**ORDINANCE NO. NS-1514
WATER SERVICE FRANCHISE**

AN ORDINANCE GRANTING AVION WATER COMPANY A FRANCHISE TO PROVIDE WATER SERVICE WITHIN THE CITY OF BEND.

THE CITY OF BEND DOES ORDAIN AS FOLLOWS:

Section 1: Short Title.

This ordinance shall be known as the "Avion Water Service Franchise."

Section 2: Definitions.

For the purpose of this ordinance, the following terms shall have the meaning provided below:

- (1) "City" is the City of Bend, Oregon.
- (2) "Company" is Avion Water Company, the grantee of the rights under this franchise, and its successors or assigns.
- (3) "Commission" is the City Commission of the City of Bend.
- (4) "Person" means any person, firm, partnership, association, corporation, company or organization of any kind.
- (5) "Facilities" shall mean all real property, fixtures and equipment used by Company in the provision of water services throughout its system, whether located inside or outside of City, and includes, but is not limited to, main transmission lines, distribution systems and all other things used in the provision of water services by Company.
- (6) "Urban Growth Boundary" shall mean those properties within City's present city limits and the Urban Growth Boundary as they now exist and as they may change from time to time in the future.

Section 3: Grant of Authority.

City grants to Avion Water Company the right and privilege to construct, erect, operate and maintain its facilities, in, upon, along, across, above, over and under the streets, alleys, and public ways now laid out or dedicated, and all extensions thereof, and additions thereto, for the provision of water services in City. This franchise is nonexclusive and City reserves the right to operate a water system within the public ways and to grant a similar use of streets, alleys and public ways to another person.

Section 4: Compliance with Laws, Rules and Regulations.

At all times during the term of this franchise, Company shall comply with all applicable laws, rules and regulations of the United States of America, the State of Oregon, and the City of Bend; including all agencies and subdivisions thereof. Company shall be subject to the lawful exercise of the police power of City and to such reasonable regulations as City may from time to time hereafter adopt.

Section 5: Company Liability, Indemnification of City and Insurance.

- (1) Company shall at all times conduct its operations under this franchise, including installation, construction or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or City.
- (2) Company shall pay, save harmless and indemnify City from any loss or claim against City on account of or in connection with any activity of Company in the construction, operation or maintenance of its facilities and services.
- (3) This franchise shall not be effective until Company secures, and shall at all times be conditioned upon Company maintaining, a comprehensive liability insurance policy which shall contain the following provisions:

- (a) Bodily injury policy limits of \$500,000 for each person and \$500,000 for each occurrence.
- (b) Property damage policy limits of \$500,000.
- (c) An endorsement for completed operations coverage.
- (d) A designation of City, its officers, agents and employees, as an additional insured for liability arising from or in connection with this franchise.
- (e) An endorsement requiring 10 days' written notice to City prior to the cancellation of the insurance coverage.
- (f) A certificate evidencing insurance as described in this ordinance shall be deposited with City.
- (g) In the event that City's tort liability limits are raised by the Oregon Legislature to exceed the limits described in this Section, Company shall obtain and maintain insurance in the amount of City's tort liability limits.

Section 6: Facilities and Service Standards.

For the term of this franchise, Company shall construct, operate and maintain its facilities and provide services as follows:

- (1) Company shall provide its customers with good quality water services; and supply potable water to its customers in compliance with all applicable laws, rules and regulations.
- (2) Company shall construct and maintain those portions of its facilities that are located within the Urban Growth Boundary in compliance with City standards for the provision of the service. Compliance with City standards shall include, but not be limited to:
 - (a) Standards for construction and installation of the water system, including the use of C-900 or ductile iron pipe and restoration of City streets.
 - (b) Provision of standard City fire flows throughout the water system.
 - (c) City inspection and approval of system design and installation.
 - (d) Compliance with City construction standards shall be required only for facilities which are constructed or installed after the commencement of this franchise.
- (3) Company shall maintain and improve its facilities according to generally accepted practices and standards in the water utility industry.
- (4) Company's service to properties within the Urban Growth Boundary shall be confined to those properties presently served by Company, the Elkhorn Subdivision, the 27th Street south of Bear Creek Road area (described on Exhibit "A" which is attached as a part of this ordinance), the city pressure level 3 areas around Elkhorn subdivision (described on Exhibit "B" which is attached as a part of this ordinance), the Knott Road area (described on Exhibit "C" which is attached as a part of this ordinance), and such other areas as may be determined by City. Company shall not serve any other properties within the Urban Growth Boundary except with City's express written consent.
- (5) Unless prohibited by law, in cases where City provides sewer services to a Company customer, Company agrees to terminate the service of Company's customer, at the request of City, if the customer becomes delinquent in the payment of the customer's sewer service bill.

Section 7: Company Rules.

Company shall have authority to promulgate such reasonable rules and regulations governing the conduct of its business as shall be reasonably necessary to enable Company to exercise its rights and perform its obligations under this franchise, and to assure uninterrupted service to its customers. Company rules and regulations shall be subject to the provisions of this ordinance and any other governmental regulations. A copy of said rules and all amendments thereto shall be filed with the Office of City Manager.

Section 8: Conditions on Street Occupancy.

Company agrees to comply with the following conditions:

- (1) Use. All facilities installed by Company within the Urban Growth Boundary after the date of this ordinance shall be so located as to cause minimum interference with the proper use of streets, alleys and other public ways and places, and to cause minimum interference with the rights or reasonable convenience of property owners who adjoin any of the streets, alleys or other public ways or places. Company shall obtain street cut permits for all street cuts and shall comply with the provisions of City's street cut ordinance.
- (2) Restoration. In case of any disturbance of pavement, sidewalk, driveway or other surfacing by Company, Company shall, at its own cost and expense and in a manner approved by City, replace and restore all paving, sidewalk, driveway or surface of any street or alley disturbed, in as good condition as before the disturbance. If Company fails to make restoration as required, City shall cause the repairs to be made at the expense of Company.
- (3) Relocation. City may require Company to change the location of any facility within the public right of way when the public convenience requires such change or removal and the expense thereof shall be paid by Company. City shall give Company reasonable notice of any changes required and Company shall have a reasonable time within which to make the requested change. If Company refuses to make the change requested by City or does not make the change within a reasonable time after the request of City, City may make the change and collect the cost of making said change from Company.
- (4) Placement of Facilities. Company shall not place its facilities where they will interfere with any gas, electric or telephone fixture or sewer or water facility. All facilities placed in the street shall be placed as City directs.

Section 9: Transfer of Franchise.

Company shall not sell, assign, dispose of or transfer in any manner whatsoever any interest in this franchise or in the technical facilities used with this franchise, nor transfer or permit transfer of controlling interest in Company without prior written approval of Commission. Such approval shall be based upon the following criteria: Company shall be required to demonstrate to the satisfaction of the Commission that Company's proposed purchaser, assignee or transferee has such financial and managerial resources as are sufficient to maintain the then current quality of service and to comply fully with the terms of this franchise prior to the Commission granting such approval. Such approval, based upon the above criteria, shall not be unreasonably withheld by the Commission.

Section 10: City Right in Franchise.

- (1) City Supervision and Inspection. City shall have the right to supervise all construction or installation of Company facilities, subject to the provisions of this ordinance and to make such inspections as it shall find necessary to ensure compliance with governing laws, rules and regulations.

Section 11: No Franchise Fee.

City shall not charge a franchise fee for Company's services unless City's water utility pays a comparable fee.

Section 12: Rate and Services Regulation.

City shall not regulate Company's rates so long as Company's rates are regulated by the Oregon Public Utility Commission or comparable governmental entity.

Section 13: Company Records and Reports.

Company shall keep accurate books of account at an office within the State of Oregon throughout the term of this franchise. Company shall produce its books of account for inspection by City at any time during normal business hours and City may audit Company's books from time to time. City may require periodic reports from Company relating to its operation and revenue within City.

Section 14: System Data.

Company shall maintain, at a local office, current maps and other operational data relating to its facilities and system operations in the City of Bend. City may inspect these maps and data at any time during normal business hours.

Section 15: Enforcement of Franchise.

City and Company shall have all remedies provided by law, including termination of this franchise, to enforce the terms and conditions of this franchise. Failure to enforce any provision of this ordinance shall not be construed as a waiver of a breach of any other term, condition or obligation of this ordinance.

Section 16: Franchise Term.

This franchise is granted to a term of 10 years beginning June 15, 1990.

Section 17: Acceptance of Franchise.

Within 30 days from the effective date of this ordinance, Company shall file with the City Recorder-Treasurer a written, unconditional acceptance of this franchise and all of its terms and conditions. If Company fails to do so, this ordinance shall be void and of no effect whatsoever.

Section 18: Franchise a Contract.

City and Company intend that this franchise shall constitute a contractual obligation between City and Company with respect to Company's service and facilities outside of City and within the Urban Growth Boundary. The parties contemplate that the City's corporate limits will expand through annexation within the Urban Growth Boundary throughout the term of this franchise through City's annexation of properties within the Urban Growth Boundary. The parties intend that the terms and conditions of this franchise shall apply to Company's activities outside the City limits, but within the Urban Growth Boundary, as a contractual obligation so that as properties served by Company are annexed there will not be any significant difference in facilities or service standards.

Section 19: Constitutionality.

If any section, subsection, sentence, clause or portion of this ordinance is for any reason held invalid or is rendered unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the constitutionality of the remaining portion hereof. If for any reason the franchise fee is invalidated or amended by the act of any court or governmental agency, then the highest reasonable franchise fee allowed by law shall be the franchise fee allowed by this franchise.

Read for the first time this 6th day of June, 1990.

Read for the second time this 20th day of June, 1990.

Placed upon its passage this 20th day of June, 1990.

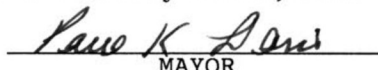
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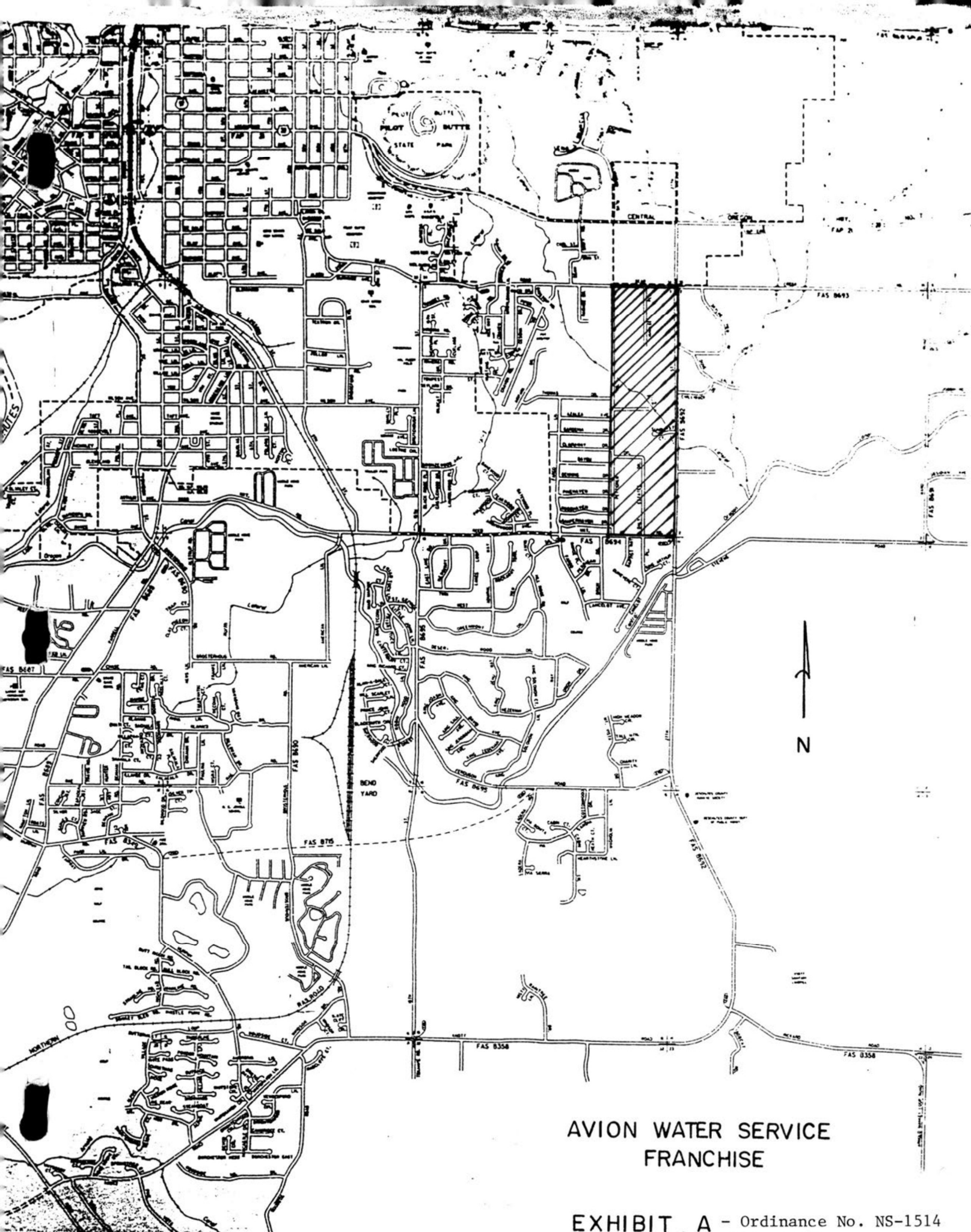
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Submitted to and authenticated by the Mayor this 20th day of June, 1990.

ATTEST:

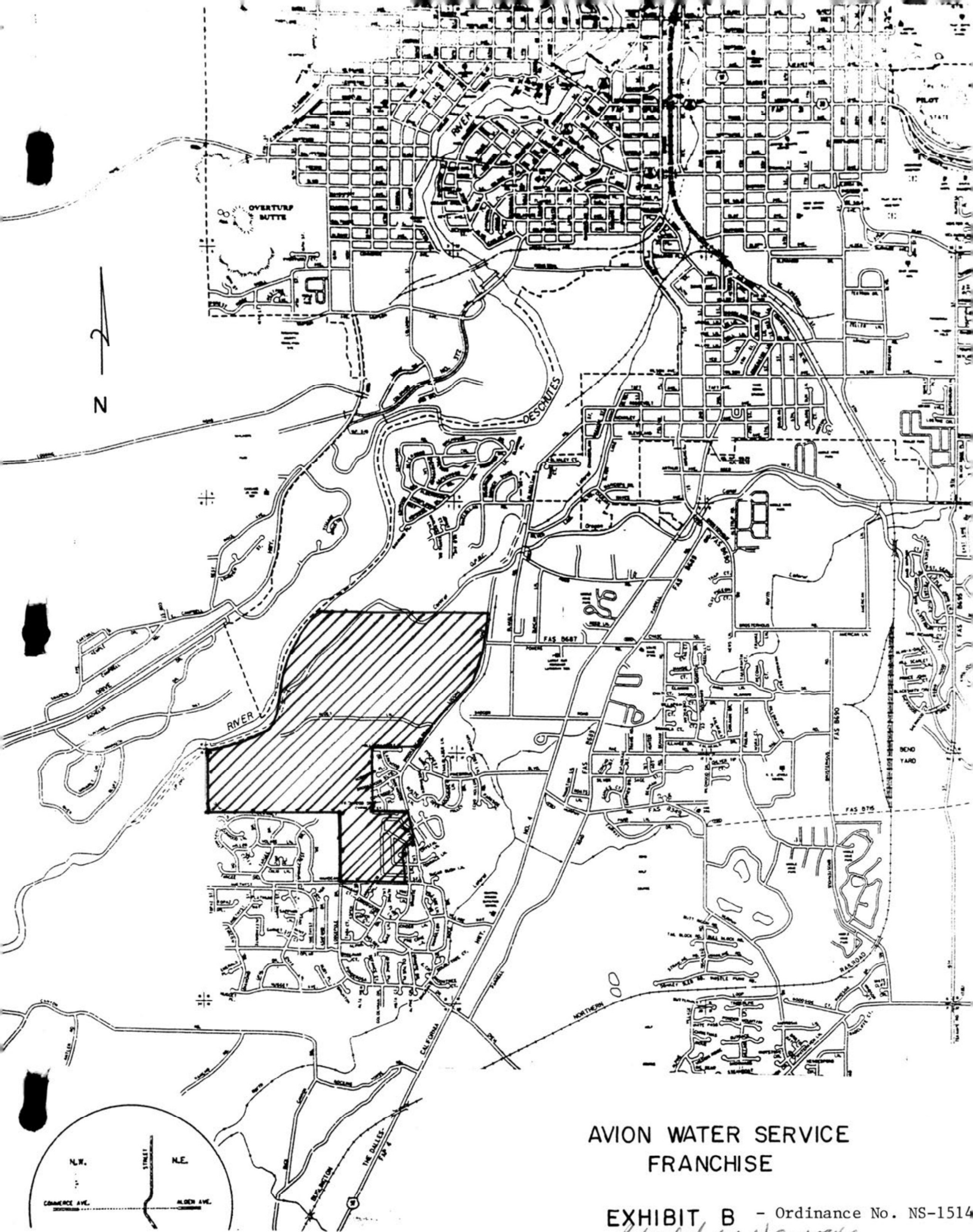

Recorder-Treasurer


MAYOR



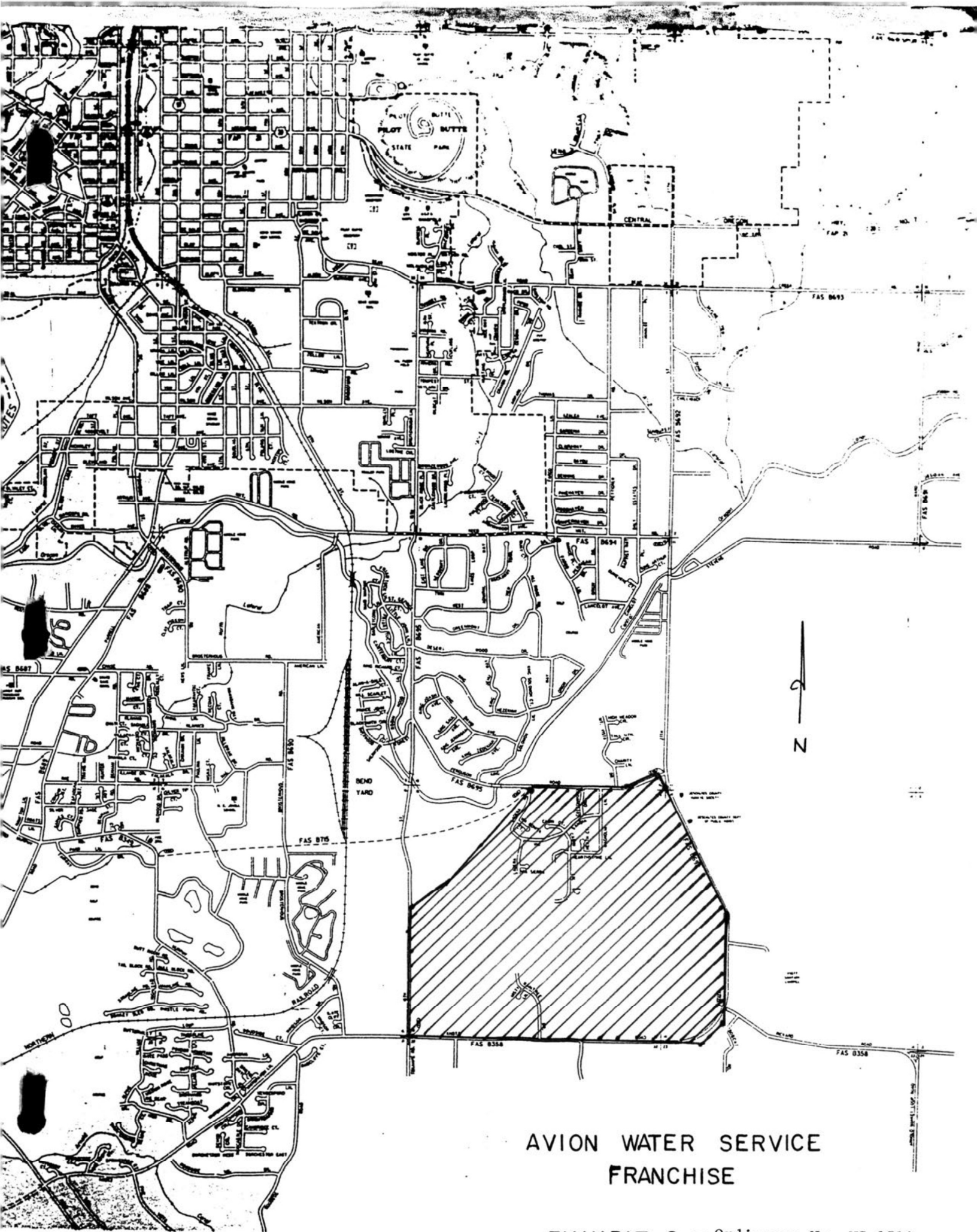
AVION WATER SERVICE
FRANCHISE

EXHIBIT A - Ordinance No. NS-1514
Repealed by NS-1549



AVION WATER SERVICE
FRANCHISE

EXHIBIT B - Ordinance No. NS-1514
Repealed by NS-1549



AVION WATER SERVICE
FRANCHISE