

08/19/93
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INTRODUCED BY: GREG NICKELS
BRUCE LAING

PROPOSED NO.: 93-667

MOTION NO. 9148

A MOTION authorizing the Executive to enter into an agreement with the Cedar River Water and Sewer District for a franchise to construct, operate and maintain a sewer system in Council Districts 6 and 8.

WHEREAS, the Cedar River Water and Sewer District has filed an application for a franchise in council districts 6 and 8 to construct, operate and maintain sewer system to serve residential, multi-family and commercial areas in accordance with R.C.W. 36.55.010, and

WHEREAS, the district's comprehensive plan was approved on October 12, 1992, by King County council Ordinance 10595, and

WHEREAS, the application has been referred to the relevant county departments for review, and

WHEREAS, the county executive has recommended approval of the franchise;

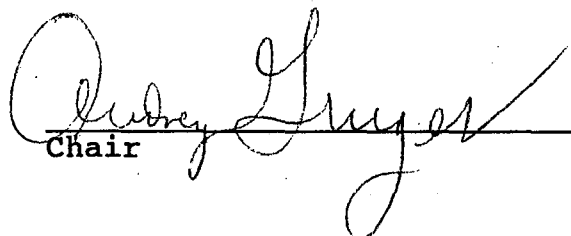
NOW, THEREFORE, BE IT MOVED by the Council of King County:

A. The granting of a twenty-five year franchise to the Cedar River Water and Sewer District to construct, operate and maintain a sewer system within King County is hereby approved. The county executive is authorized to enter into and execute the sewer system franchise, which by this reference is fully incorporated herein. Said franchise shall include all of the general and special conditions required by the county.

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2 B. If within 30 days after the granting of this franchise,
3 the applicant shall have failed to sign the written acceptance
4 incorporated herein, then the rights and privileges granted herein
5 shall be forfeited and said franchise shall be null and void.

6 PASSED this 11th day of October, 1923

7
8 KING COUNTY COUNCIL
9 KING COUNTY, WASHINGTON

10 
11 Chair

12 ATTEST:

13 
14 Clerk of the Council

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16 Attachment:

17 A. Franchise Agreement
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FRANCHISE NO. 9148

In the matter of the application for a franchise to operate, maintain, repair, and construct SEWER mains and service lines, and appurtenances in, over, along, and under County roads and rights-of-way in King County, Washington.

The application of the CEDAR RIVER WATER AND SEWER DISTRICT for a franchise to operate, maintain, repair and construct sewer mains and service lines, and appurtenances in, over, along, and under County roads and rights-of-way located within the area described in attached Exhibit "A" has been heard on this 11th day of October, 1923. All of the property described in Exhibit "A" lies outside the limits of any incorporated Town or City.

Legal notice of the franchise application and of the hearing has been given as is required by law.

The King County Council, having considered the interests proposed and advanced, and finding that the granting of this franchise is in the public interest, ORDERS that a franchise be granted to the CEDAR RIVER WATER AND SEWER DISTRICT, the Grantee. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair and construct main(s) and service lines and appurtenances as a part of its transmission and distribution system in, over, along, and under County roads and rights-of-way located within the area described in Exhibit "A".

This franchise is granted subject to all of the terms and conditions contained within, and shall expire in twenty five years on October 11, 2018.

Dated this _____ day of _____, 19____.

KING COUNTY, WASHINGTON

BY _____

TITLE _____

The undersigned accepts all the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained within.

CEDAR RIVER WATER AND SEWER DISTRICT, GRANTEE

BY _____

TITLE _____

Dated this _____ day of _____, 19____.

Exhibit "A"

Those portions of Sections 22, 23, 25, 26, 27, 34, 35 and 36, Township 23 North, Range 5 East, W.M., King County, Washington also that portion of Section 1, Township 22 North, Range 5 East W.M., King County, Washington described as follows:

Beginning at the intersection of the west line of said Section 22 with the centerline of the Cedar River; Thence southerly along the west line of said Sections 22 and 27 to the southwest corner of said Section 27; Thence easterly along the south line of said Section 27 to the northwest corner of the N E 1/4 of the N W 1/4 of the N E 1/4 of said Section 34; Thence southerly along the west line of said subdivision to the southwest corner thereof; Thence easterly along the south line of the North 1/2 of the North 1/2 of the N E 1/4 of said Section 34 to the southwesterly margin of S E Petrovitsky Road; Thence southeasterly along said southwesterly margin to the southwesterly margin of the City of Seattle's Lake Youngs Tunnel right-of-way; Thence southeasterly along said southwesterly margin of Lake Youngs Tunnel right-of-way to the south line of the North 1/2 of said Section 35; Thence easterly along said south line to the southeast corner of the N E 1/4 of said Section 35; Thence northerly along the east line of said subdivision to said southwesterly margin of S E Petrovitsky road; Thence southeasterly along said southwesterly margin of S E Petrovitsky Road through said Section 34 and said Section 1 to the east line of Section 1; Thence northerly along the east line of said Sections 1, 36 and 25 to the northeast corner of the South 1/2 of the S E 1/4 of said Section 25; Thence westerly along the north line of said subdivision to the northwest corner thereof; Thence southerly along the west line of said subdivision to the southeast corner of the S W 1/4 of said Section 25; Thence westerly along the south line of said subdivision to the southwest corner of said Section 25; Thence northerly along the west line of said Section 25 to the southeast corner of said Section 23; Thence westerly along the south line of said Section 23 to its intersection with the easterly line of Lot 7, Valley Fair No. 2, according to the plat thereof, recorded in Volume 131 of plats, pages 39 through 43, Records of King County, Washington; Thence northerly and westerly along the common line between Tract A of said Valley Fair No. 2 and Lots 7 through 13, and 15 through 26 to an intersection with the east line of the S W 1/4 of said Section 23; Thence southerly along said west line to the southeast corner of said subdivision; Thence westerly along the south line of said Sections 23 and 22 to an intersection with the southerly production of the northwesterly line of that parcel of land conveyed by Deed, recorded under King County Auditor's File No. 5817922; Thence northerly on said southerly production to the most westerly corner of said parcel of land; Thence southeasterly to the northwest corner of the South 1/2 of the S E 1/4 of the S W 1/4 of said Section 23; Thence easterly

to the northwest corner of said Tract A of said Valley Fair No. 2; Thence easterly along the north line of said Tract A and the easterly extension thereof to an intersection with the east line of the west 201 feet of the S W 1/4 of said Section 24; Thence northerly along said east line to the southerly right-of-way margin of Primary State Highway No. 5 (Renton-Maple Valley Road); Thence westerly along said southerly right-of-way margin to the centerline of the Cedar River; Thence generally southwesterly along the centerline of the Cedar River to the Point of Beginning.

TERMS AND CONDITIONS APPLICABLE TO
UTILITIES FRANCHISES GRANTED BY KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. DEFINITIONS

County Road Rights-of-Way. The term "County Road Rights-of-Way" includes any road, street, avenue, or alley located within the area described in the attached Exhibit "A".

Director. The term "Director" refers to the chief executive of the King County Department of Public Works.

Grantee. The term "Grantee" refers to the CEDAR RIVER WATER AND SEWER DISTRICT its successors and those assignees approved pursuant to paragraph 16 herein.

Utility. The term "utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the County property described in Exhibit "A".

Council. The term "Council" refers to the King County Council, acting in its official capacity.

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the county property described in Exhibit "A".

2. ACCEPTANCE BY GRANTEES OF TERMS AND CONDITIONS

The full acceptance of this franchise and all of its terms and conditions shall be filed with the Clerk of the Council within thirty (30) days from _____, 19____, by the Grantee. Full acceptance of this franchise is a condition precedent to its

taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

3. NON-EXCLUSIVE FRANCHISE

This franchise is not exclusive. It does not prohibit King County from granting franchises for other public or private utilities, in, under, over, across, and along any County property, including County road rights-of-way.

This franchise does not prevent or prohibit King County from constructing, altering, maintaining or using any County road rights-of-way covered by this franchise. King County retains full power to make all changes, relocations, repair, maintenance, etc. as it may deem fit.

4. JURISDICTION

This franchise is intended to convey limited rights and interest only as to those roads and rights of way in which King County has an actual interest. It is not a warranty of title or of interest in County road rights-of-way.

Whenever any of the County road rights-of-way as designated in this franchise, by reason of the subsequent incorporation of any Town or City or extension of the limits of any Town or City, shall later fall within the City or Town limits, this franchise shall continue in force and effect until such time as the incorporation and/or annexation is complete according to applicable State law, after which time the County will no longer have any responsibility for maintenance of any County roads, rights-of-way or other County property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of King County over County road rights-of-way or the County's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

5. REGULATION OF USE AND CONTROL

This franchise does not deprive King County of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the County road rights-of-way covered by this franchise.

6. EMINENT DOMAIN

This franchise and the limited rights and interests for the operation, maintenance, repair, and construction of Grantee's transmission and service lines and appurtenances are subject to the exercise of eminent domain. In the event of an exercise of eminent domain by King County, the value to be attributed to all the rights and interests granted under this franchise shall not exceed the actual amount the Grantee paid to King County in obtaining this franchise.

7. ENFORCEMENT

Failure of King County to enforce any provision of this agreement does not constitute a waiver of its right to enforce that provision or any other provision of this agreement.

8. INDEMNITY AND HOLD HARMLESS

In consideration for the benefits conferred upon the Grantee by this franchise, the Grantee agrees to defend, indemnify and hold King County harmless to the maximum extent permitted by law for activities taken by the granting of this franchise. The Grantee's obligation hereunder to defend, indemnify and hold King County harmless includes:

(a) Full indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury due to the sole negligence of the Grantee.

(b) Full indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury due to the concurrent negligence of King County and the Grantee if the conduct complained of against the Grantee is not within this scope of RCW 4.24.115, or if that statute is repealed.

(c) Indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury due to the concurrent negligence of King County and the Grantee, but only to the extent of the Grantee's negligence if the conduct complained of against the Grantee is within the scope of RCW 4.24.115.

(d) Indemnification together with costs of defense for claims, suits and judgments arising from allegations of injury to the Grantee; s employee(s) allege to be caused by the concurrent negligence of King County and the Grantee. However, this section (4) is valid and enforceable only to the extent of the Grantee's negligence, and is made despite any immunities afforded the Grantee under industrial insurance, Title 51 RCW, which immunities are

hereby specifically waived by the Grantee, this waiver having been mutually negotiated by the parties.

In the event that King County incurs costs to enforce any provision of this indemnification/hold harmless agreement, they shall be recoverable in full from the Grantee.

For the purposes of this section the terms "costs" include reasonable attorney's fees and all expenses incurred in anticipation of and/or in proceeding with litigation; and "injury" includes death, injury to person and damage to property.

9. VACATION

If at any time King County vacates any County road rights-of-way covered by this franchise, King County will not be held liable for any damages or loss to the Grantee by reason of such vacation. King County may, after giving thirty (30) day's written notice to the Grantee, terminate this franchise with respect to any County road rights-of-way vacated.

10. INSTALLATION, REPAIR, REMOVAL OR RELOCATION

The Grantee hereby covenants, at its own expense, to install, repair, remove or relocate existing facilities including all appurtenant facilities and service lines connecting its services to users within County road rights-of-way if such installation, repair, removal, or relocation is required by the County for any purpose.

11. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee has the right, privilege and authority to enter the County road rights-of-way for the purpose of operating, maintaining, repairing, or constructing its transmission and service lines and appurtenances on the condition that it obtains permits approved by the Director and Real Property Division and, when applicable, by the Building and Land Development Division. Applications for work permits shall be presented to the Real Property Division which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading, and any other

11. REQUIREMENT OF CONSTRUCTION PERMITS (CON'T.)

reasonably necessary repair or restoration to the County road rights-of-way. All work shall be done to the satisfaction of the Director.

All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the County road rights-of-way shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee. All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

The Grantee shall post a bond to King County in the amount sufficient for any road repair or restoration. The amount of the bond shall be set by the Director and must be filed with the Real Property Division before a permit will be issued.

12. RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY

After work on, under or adjacent to County road rights-of-way, the Grantee is responsible for and will leave all County road rights-of-way in as good a condition as they were in before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County road rights-of-way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the County road rights-of-way to its pre-work condition. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

13. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on County road rights-of-way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the annual of Uniform Traffic Control Devices in force when the work is performed.

14. BLASTING REQUIREMENTS

The right to operate, maintain, repair and construct Grantee's transmission and service lines and appurtenances granted by this franchise, does not preclude King County, its agents or contractors from blasting, grading, or doing other road work contiguous to the Grantee's lines, and appurtenances. When practical, the Grantee will be given forty-eight (48) hours notice of any blasting or excavating so that the Grantee may protect its lines and appurtenances.

15. SURVEY MARKERS AND MONUMENTS

Before any work is performed under this franchise, the Grantee shall establish two or more reference marks to all monuments and markers of every nature relating to subdivisions, plats, rights of way, and all other surveys. The reference points shall be located so that they will not be disturbed during any of Grantee's operations under this franchise. The method of referencing monuments or other markers or points shall be approved by the Director before placement. The replacement of all markers or monuments disturbed during any construction of the Grantee shall be made as promptly as conditions permit and as ordered by the Director. The cost of monuments or markers lost, destroyed, or disturbed and the expense of replacement with approved markers or monuments shall be borne by the Grantee.

16. ASSIGNMENT

The Grantee shall not have the right to assign this franchise without the consent of the King County Council given by Motion. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as surety bonds which the Council deems necessary to be posted are received. Council approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

17. MODIFICATIONS AND/OR REVOCATION

King County may, upon giving thirty (30) days written notice to the Grantee, amend, alter, change or supplement the rights and responsibilities created in this franchise. If the Grantee, its successors or assigns shall violate or fail to comply with any of the terms, conditions or stipulations or any modifications of this franchise, King County may notify the Grantee of the County's intent to revoke the franchise. A public hearing shall be scheduled within 45 days following the notification. The decision to revoke this franchise will become effective 90 days following the public hearing if the County finds the revocation to be in the public interest.

King County specifically reserves for itself the right to impose taxes, use fees, costs, service requirements, or other fees on the Grantee for the privilege of conducting this business in King County, for the use of the County's property, to pay for the cost of regulating this activity, or for any other public purpose so long as those taxes, use fees, costs, service requirements or other fees are imposed by ordinance, and after 180 days written notice to the Grantee.

18. EXPIRATION AND RENEWAL

To the extent described in Exhibit "A", all rights granted by this franchise to County road rights-of-way outside incorporated Towns and Cities apply to all existing County road rights-of-way improved and unimproved and to all County road rights-of-way acquired by King County during the term of this franchise.

If the Grantee has not applied for a renewal of this franchise before it expires, King County has the right to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of County roads, franchise holders, or for the construction, renewing, altering, or improving of any County road rights-of-way, or for the installation of lines and/or facilities of other franchise holders.

Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment, provided that any removal is effected within two (2) years from the expiration date of this franchise.

Upon expiration of this franchise, the Grantee shall continue to be responsible for the operation and maintenance of existing facilities in the County road rights-of-way but shall not have the right to provide additional services.

19. COMPLIANCE WITH LAWS

Grantee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and King County environmental standards and ordinances.

20. NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons. The Grantee recognizes that King County has a policy of promoting affirmative action, equal opportunity and has resources available to assist Grantee in these efforts.

21. PENALTY FOR VIOLATION OF CONDITIONS

If the Grantee shall violate or fail to comply with any of the terms, conditions or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise, the Council may revoke, amend, alter, change or supplement this franchise. The Council shall give thirty (30) day's written notice to the Grantee of its intention to do so, during which period the Grantee shall have the opportunity to remedy the failure to comply.

22. RATES

The Grantee agrees that it shall be subject to all authority now or later possessed by the County or any other governing body having competent jurisdiction to fix just, reasonable, and compensatory rates for services under this franchise.

23. RIGHT OF APPEAL

Decisions, requirements, or approvals of the Director are binding on the parties to this document. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

24. SEVERANCE

This agreement gives effect to purposes and uses which are consistent with economical and efficient services rendered in the public interest. If any provision of this franchise, or its application is determined to be invalid by a court of law, then the remaining provisions of this franchise shall continue and remain valid unless the dominant purpose of the franchise would be prevented or the public interest is no longer served.

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Rev 05/27/92