

Introduced by: Dave Mooney

NO: 75-630

MOTION NO. 2200

A MOTION authorizing the County Executive to enter into a contract with the Upper Preston Water Association for a franchise to lay down, construct, maintain and operate a water system.

WHEREAS, the Upper Preston Water Association, as provided in R.C.W. 36.55.010 of the State of Washington, has properly filed an application for a replacement of franchise, to lay down, construct, maintain and operate a water system, and

WHEREAS, Resolution 75-2 of the Utilities Technical Review Committee certifies that the comprehensive plan of said water association has been reviewed and deemed to be in compliance with Ordinance 1709 and Sec. 13.24 of the King County Code, and have recommended approval of the plan by the Council, and

WHEREAS, the application has been referred to the County Executive for investigation of the feasibility thereof and the checking of the plans and description of the location thereof, and

WHEREAS, an environmental assessment has been prepared which resulted in a declaration of no significant impact, and

WHEREAS, the County Executive has recommended approval of said franchise,

NOW, THEREFORE, be it moved by the Council of King County:

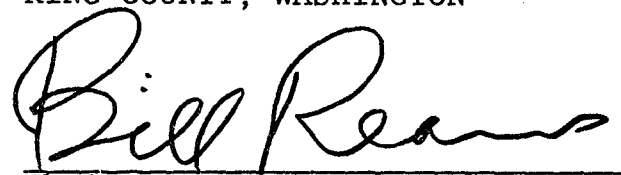
The County Executive is hereby authorized to enter into and execute the attached water system franchise contract for the Upper Preston Water Association which by this reference, is incorporated herein as part of the Motion. Said franchise is granted to the Upper Preston Water Association for the term of five (5) years, and includes a legal description of the location and all of the general special conditions required by the County.

If within thirty (30) days after the granting of this franchise the applicant shall have failed to sign the incorporated

1 written acceptance herein, then the herein rights and privileges
2 shall be deemed forfeited and said franchise shall be declared
3 null and void.

4 PASSED this 20th day of October, 1975.

5 KING COUNTY COUNCIL
6 KING COUNTY, WASHINGTON

7 
8
9 Chairman

10 ATTEST:

11
12 
13 Clerk of the Council

IN THE MATTER of the application

of Upper Preston Water Association
to lay down, construct, maintain
and operate a system of water lines,
laterals, and service
lines.

2200

KING COUNTY, WASHINGTON, granting franchise rights to

Upper Preston Water Association for Water main installations,
maintenance and operation:

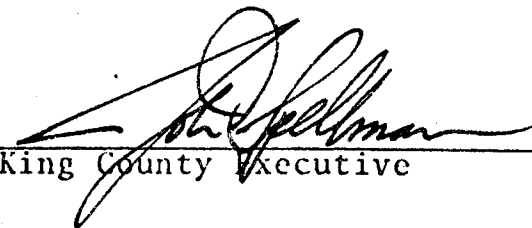
The application of Upper Preston Water Association, Grantee,
for a franchise to lay down, construct, maintain and operate a Water
line, including mains, laterals, appurtenances and service
pipe along, under and across such county roads, streets, avenues,
boulevards, alleys and public places hereinafter called "rights of way",
within the area hereinafter described, was publicly announced and scheduled
to be heard on this 20th day of October, 1975, and it has
been demonstrated to the King County Council, hereinafter called "Council"
that all of said rights of way lie outside the limits of any incorporated
town or city. Due and legal notice of said application and of the hearing
has been given by posting and publication and in manner and as required
by law. The Council has considered said application and is advised in
the premises.

NOW, THEREFORE, King County, Washington, pursuant to Motion No. 2200
2200 duly and regularly enacted by its Council on the 20th
day of October, 1975, hereby grants to said Upper Preston Water
Association, hereinafter called the "Grantee", and to its
successors and assigns, for the term of 5 years from the date
hereof; the rights, privilege, authority and franchise for itself, its
successors and assigns, to lay down, construct, maintain and operate
Water mains, laterals and service lines along, under and across
such county rights of way, together with all necessary equipment of every
sort necessary, subject to all the terms and conditions hereof, and to
all of the terms and conditions contained in the "General Terms and
Conditions applicable to all right of way franchises Granted by King County
a copy of which is attached hereto as Exhibit "A", and to the following
special terms:

The location and nature of the franchise is more particularly
described as follows:

In the N/W. 1/4 of Section 3; Township 23 N, R. 7 E.W.M.
On the Lovegrin Mill Road form King County Sta. 6+90 to King County Sta. 13 + 70
According to Survey No. 1467 Engineers map No. 11-20

Dated this 20th day of October, 19 75.

BY: 
King County Executive

The undersigned hereby accepts all the rights and privileges of the above granted franchise subject to all the terms, conditions, stipulations and obligations contained therein.

Grantee

President

Secretary

Dated this ____ day of _____, 19 ____.

APPROVED AS TO FORM & LEGALITY

EXHIBIT "A"

GENERAL TERMS AND CONDITIONS APPLICABLE TO ALL RIGHT OF WAY FRANCHISES GRANTED BY KING COUNTY

DEFINITIONS

Right of Way. The term "Right of Way" shall be understood to include any and every road, street, avenue, alley or other public place designated or specified in this franchise in, upon, under, over, across and along which rights are, or are intended to be, vested in the grantee, its successors and assigns under and by virtue of this franchise.

Director. The term "Director" shall be understood to mean the chief executive of King County Department of Public Works, Utilities and Transportation.

Utility. The term "Utility" shall be understood to mean, as the context may require, either the grantee herein, or any other person, firm or corporation, either public or private which may hold a franchise to maintain and operate similar facilities in, upon, under, over, across and along any of the public rights of way, or portions thereof, within the area specified.

Council. The term "Council" shall be understood to refer in all cases to the King County Council, hereinafter called the "Council", acting in its official capacity.

Other Governing Body. The term "Other Governing Body" shall be understood to mean such public official or other public board or body as may have power and jurisdiction over rights of way and be legally vested for the time being with jurisdiction and authority to permit or regulate the installation and maintenance of lines and other facilities, in, upon, under, over, across and along the rights of way within the specified area.

1. ACCEPTANCE BY GRANTEE OF TERMS AND CONDITIONS

Grantee shall be deemed to have abandoned and forfeited all of the rights, privileges and authority hereby granted, unless within thirty (30) days from the date hereof it shall file with the Council its written acceptance of this franchise, subject to all of the terms, conditions, stipulations and obligations herein contained and imposed, and in case the grantee shall fail so to do within the time aforesaid, this franchise shall be null and void and of no effect.

2. EXCLUSIVE FRANCHISE UNCONSTITUTIONAL

This franchise shall not be deemed or held to be an exclusive franchise, and shall not in any manner prohibit the Council from granting other and further franchises of any kind or character that they may deem proper in, upon, under, over, across and along any right of way within the area described herein, and this franchise shall in no way prohibit or prevent the public from using any such right of way, or affect the jurisdiction of King County over such rights of way, or any part thereof, or their power to make all necessary improvements, repairs or changes therein.

3. JURISDICTION

This document shall not be construed by grantee, or any other person, persons or corporations, as a warranty of title or title of interest in county roads and rights of way, but is intended to convey such rights and interest only as to those roads and rights of way in which King County has an actual interest.

4. REGULATION OF USE AND CONTROL

The County of King granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to county roads, rights of way or other county property and this franchise shall not be construed to deprive the county of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the county roads, rights of way and other county property covered by this franchise.

5. VACATION

If at any time the County of King shall vacate any county road, rights of way or other county property which is subject to rights granted by this franchise the County of King shall not be liable for any damages or loss to the grantee by reason of such vacation.

6. RESPONSIBILITY FOR DAMAGES

The grantee agrees for itself, its successors and assigns, to indemnify and hold harmless King County, its appointed and elective officials and employees from and against all loss or expense, including attorney's fees and costs arising out of any act, error or omission or the exercise of the rights and privileges granted under this franchise.

7. FRANCHISE VALUATION

If any public body having authority to do so shall acquire by purchase or condemnation during the term of this franchise any of the grantee's property erected hereunder, the addition to be made to the sum of all other elements of value by reason of the element which is the right to occupy the public ways evidenced by this franchise, shall be no greater than the actual cost of obtaining such franchise.

8. REQUIREMENT OF CONSTRUCTION PERMITS

The said grantee, its successors or assigns, shall have the right and authority to enter upon the county roads and rights of way described herein and situated without any incorporated cities or towns, for the purpose of constructing, extending, repairing or replacing, servicing and otherwise operating and maintaining its lines and facilities and connecting the same with consumer service lines; upon the condition that prior to such work within the county roads or rights of way, the grantee shall first obtain a work permit approved by the Director of Public Works, hereinafter called the Director.

Applications for work permits shall first be presented to the Real Property Division which may require copies of plans, blueprints, cross sections or such further detail of the work to be done as is, or may be, required by ordinance in other instances. Such work, whether done by the grantee, its contractors or third parties connecting to the grantee's lines or facilities, shall include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the pre-existing county roads or rights of way, and shall be to the satisfaction of the Director.

All permits shall be applied for and given in the name of the grantee who shall be held responsible for all work done thereunder, whether the work to be done thereunder by the forces of the grantee, its contractors or by third parties connecting to the lines or facilities of the grantee.

The Grantee shall post a bond to King County in the amount necessary for road restoration, the amount of bond shall be set by the Department of Public Works and filed with the Real Property Division before the issuance of any permit.

9. COMMENCEMENT OF WORK

The grantee shall commence construction work under this franchise within one year from the date hereof. If, at the expiration of five (5) years from date hereof, there shall be any right of way on which no construction work has been done by the grantee hereunder, the Council, upon ninety (90) days' notice in writing to the grantee, may cancel and revoke this franchise as to all such rights of way upon which no construction work shall have been done, said rights of way to be specified in such notice; provided, however, if within said period of ninety (90) days the grantee shall begin construction work in good faith upon any of said rights of way, then, notwithstanding such notice, this franchise shall be and remain in full force and effect as to all of such rights of way upon which the grantee shall have begun construction work in good faith as aforesaid. The Council in its discretion may revoke such notice, either in whole or in part, at any time after the same may have been given.

10. SUPERVISION OF CONSTRUCTION BY DEPARTMENT OF PUBLIC WORKS

All construction and installation work on county roads, streets or alleys outside of the corporate limits of any incorporated town, shall be under the supervision and pass the inspection of the King County Director of Public Works.

11. RESTORATION OF RIGHT OF WAY

The grantee shall be responsible for and leave all county roads and rights of way in as good condition, after work on, under or adjacent to the county roads or rights of way, as the same were before such work. In the event that the grantee, its contractors, or third parties connecting to grantee's lines or facilities under a work permit, shall fail to restore the county roads or rights of way to the condition that pre-existed such work and to the satisfaction of the Director, King County reserves the right to make such repairs or restorations to such roads or rights of way, and upon presentation of an itemized bill for such repairs or restorations, including the cost of labor and equipment, the grantee shall pay the said bill within thirty days. In the event that suit is brought upon failure to pay the bill within said thirty days, and upon judgment being entered in favor of King County, grantee shall further pay all the actual costs, disbursements and attorney's fees incurred thereby.

12. REMOVAL OR RELOCATION OF FACILITIES INSTALLED BY GRANTEE

Upon the relocation or change of grade by the public authorities of any right of way described herein, any lines or facilities erected upon or within any portion of such right of way shall, if necessary, be removed by the grantee at its own expense so that it shall not interfere with the work of relocation or change of grade, and shall be re-set in accordance with the provisions above set forth so that the location and elevation of such line or facilities shall conform to the new grade and location of the right of way. Grantee shall likewise, at its own expense, upon demand of the Director, relocate any line or facility which shall interfere with a reasonably located driveway giving access to abutting property. King County shall in no event be held liable for any damages to said grantee that may occur by reason of the County's improvements, repairs or maintenance or by the exercise of any rights so reserved in this section.

13. 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, right of way and all other surveys. The reference points shall be so located

that they will not be disturbed during the grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the Director. The cost of monuments or other markers lost, destroyed, or disturbed and the expense of replacement by approved monuments shall be borne by the grantee.

14. BLASTING REQUIREMENTS

The laying, construction, maintenance and operation of the said grantee's system of lines and facilities granted under this franchise shall not preclude King County, its accredited agents, or its contractors, from blasting, grading, or doing other necessary road work contiguous to the said grantee's lines and facilities, provided that the grantee shall have seventy two (72) hours notice of said blasting or excavating in order that said grantee may protect its lines, facilities and property.

15. ASSIGNMENT OF RIGHTS TO THIRD PARTY

The grantee shall have the right to assign this franchise provided, however, no such assignment shall be of any force or effect unless written notice of such assignment shall be filed with the Clerk of the Council within thirty (30) days thereafter, together with an acceptance by the assignee in writing of all the terms, covenants and conditions of this franchise and an agreement of such assignee to perform and be bound by all of the terms and conditions of this franchise.

All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the grantee and all privileges, as well as all obligations and liabilities of the grantee, shall inure to its successors and assigns equally as if they were specifically mentioned wherever the grantee is mentioned.

16. EXPIRATION AND RENEWAL

All rights granted by this franchise to county roads and rights of way outside of incorporated cities and towns, shall apply to all existing county roads and rights of way, whether improved or unimproved, and shall further include all county roads and rights of way acquired by King County after the date of execution of this document.

If, upon expiration of this franchise, grantee shall not have applied for renewal of same, King County shall have the right to remove such lines or facilities of the grantee as are reasonably necessary for the safe condition of the roads or rights of way or facilities of other franchise holders and such as are reasonably necessary to remove for the construction, renewing, altering or improving of such roads or rights of way, and such as are reasonably necessary to remove for the installation of lines and/or facilities of other franchise holders. Grantee shall be liable for the costs incurred in such removal including the cost of labor and equipment; provided that such removal is effective within two years from the expiration date hereof.

17. RIGHT TO AMEND

King County reserves for itself the right at any time upon ninety (90) days written notice to the grantee, to so change, amend, modify or amplify any of the provisions or conditions herein enumerated to conform to any state statute, order of the Washington Public Service

Commission or county regulation, relating to the public welfare, health, safety or right of way regulation, as may hereafter be enacted, adopted or promulgated and this franchise may be terminated at any time if the grantee's lines and facilities are not operated or maintained in accordance with such statute or regulation.

18. ENVIRONMENTAL PROTECTION AND ENABLING ORDINANCES

Grantee must conform to Washington State and King County Environmental Policy Acts (Ordinance 1700) and amendments thereto.

19. 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, age, race, color, creed or national origin 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 Franchise Agreement on the ground of sex, race, color, creed, national origin, or age, except by minimum age and retirement provisions.

Any violation of this provision shall be considered a violation of 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.

20. 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 heed 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 provided, however, that the Council shall give thirty (30) days written notice of its intention to do so, during which period the grantee shall have the opportunity to remedy the failure to comply.

21. RATES

The grantee agrees that it shall be subject to all authority now or hereafter possessed by the County, or any other regulatory body having competent jurisdiction, to fix just, reasonable and compensatory rates for service hereunder.

22. RIGHT OF APPEAL

Whenever the decision, requirement or approval is by this document to be a determination of the King County Engineer, that determination shall bind the parties hereto. Appeals from such determination will be made by filing a Complaint with the King County Prosecutor.

23. SEVERANCE

This agreement shall be construed to give effect to such purposes and uses under this franchise which are consistent with economical and efficient service 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 the franchise shall subsist and remain valid, unless the dominant purpose of the franchise or the public interest therein is thwarted thereby.