

09/20/91
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INTRODUCED BY: AUDREY GRUGER

PROPOSED NO.: 91-763

MOTION NO. 8449

A MOTION authorizing the executive to enter into an agreement with the Northeast Lake Washington Sewer and Water District for a franchise to construct, operate and maintain a water system in Council District 1.

WHEREAS, the Northeast Lake Washington Sewer and Water District has filed an application for a franchise to construct, operate and maintain a water system to serve primarily a residential area, a public school facility, and to connect the Kingsgate storage facility to the water main system in accordance with R.C.W. 36.55.010, and

WHEREAS, the district's comprehensive plan was approved on May 6, 1981 by King County Ordinance No. 5442, and

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

WHEREAS, the county executive and the Utilities Technical Review Committee have recommended approval of the franchise;

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

A. The granting of a franchise to Northeast Lake Washington Sewer and Water District, to expire on August 3, 1999, concurrent with Franchise No. 5288, to construct, operate and maintain a water system within King County is hereby approved. The county executive is authorized to enter into and execute the water system franchise, which by this reference is fully incorporated herein as part of this motion. Said franchise shall include all of the general and special conditions required by the county.

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

PASSED this 4th day of November, 19 91.

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON

Lois North
Chairman

ATTEST:

Gerald G. Peterson
Clerk of the Council

UTILITIESFRANCHISE NO. 8449

In the matter of the application for a franchise to operate, maintain, repair, and construct water transmission main(s), service lines and appurtenances in, over, along, and under county roads and road rights of way in King County, Washington.

The application of the NORTHEAST LAKE WASHINGTON SEWER AND WATER DISTRICT for a franchise to operate, maintain, repair and construct main line, water service connections, in, over, along, and under County roads and road rights of way located within the area described in attached Exhibit "A" has been heard on this 4th day of November, 19 91. 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 NORTHEAST LAKE WASHINGTON SEWER AND WATER DISTRICT, the Grantee. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair, and construct service lines and appurtenances as part of its transmission and distribution system in, over, along, and under County roads and road 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 on August 3, 1999, concurrent with their Franchise No. 5288.

Dated this 5 day of November, 1991.

KING COUNTY, WASHINGTON

BY Jesus Sanchez for
JESUS SANCHEZ FOR
TITLE KING COUNTY EXECUTIVE

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

NORTHEAST LAKE WASHINGTON
SEWER AND WATER DISTRICT
GRANTEE

BY Don Hehle
TITLE GENERAL MANAGER

Dated this 26 day of NOVEMBER, 1991.

Exhibit "A"

Portion of Section 16, Township 26 North, Range 5 East, W.M., in King County, Washington, described as follows:

Beginning at the intersection of the northerly margin of N.E. 160th Street with the West line of the East 1/2 of the Northeast 1/4 of Section 16, Township 26 North, Range 5 East, W.M.;

Thence easterly along said northerly margin and its easterly extension to the easterly margin of 124th Avenue N.E.;

Thence southerly along said easterly margin to the South line of said Section 16;

Thence westerly along said South line to the West line of the East 1/2 of the West 1/2 of said Section 16;

Thence northerly along said West line 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 NORTHEAST LAKE WASHINGTON SEWER AND WATER 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 road 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 line 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

The Grantee agrees to indemnify and hold harmless King County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors, and assigns to defend indemnify and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Grantee's exercise of rights and privileges granted by this franchise. The Grantee's obligations under this section shall include:

8. INDEMNITY AND HOLD HARMLESS (CONT'D)

- (a) Indemnification for such claims whether or not they arise from the sole negligence of either the County or the Grantee, the concurrent negligence of both parties, or the negligence of one or more third parties.
- (b) The duty to promptly accept tender of defense and provide defense to the County at the Grantee's own expense.
- (c) Indemnification of claims made by the Grantee's own employees or agents.
- (d) Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the parties.

In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this franchise agreement, the Grantee agrees to defend, hold harmless and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify and hold harmless the County for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

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,

11. REQUIREMENT OF CONSTRUCTION PERMITS (CONT'D)

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 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, provision, 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 Roads 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 Roads 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 line, 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 amend, alter, change or supplement the rights and responsibilities created in this franchise by giving thirty (30) day's written notice to the Grantee.

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.

18. EXPIRATION AND RENEWAL

To the extent described in Exhibit "A", all rights granted by this franchise to County Roads 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.

18. EXPIRATION AND RENEWAL (CON'T)

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 Roads 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.

20. NON-DISCRIMINATION CLAUSE (CONT'D)

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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