

**WHATCOM COUNTY COUNCIL AGENDA BILL**

**NO. 94-410**

LEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Jeffrey M. Monsen	JM	8/2/94	<b>RECEIVED</b>  <b>SEP 7 1994</b>  <b>WHATCOM COUNTY COUNCIL</b>	9-13-94	Council Introduction
Division Head:				10-11-94	Council Hearing
Dept. Head: Jeffrey M. Monsen	JM	8/2/94			
Prosecutor: Daniel L. Gibson	DG	8/12/94			
Purchasing/Budget:					
Executive:	JG	9/6/94			

**SUBJECT:**

Ordinance granting a non-exclusive franchise to City of Ferndale for a period of 15 years to operate and maintain water mains and water distribution lines along certain County roads

**ATTACHMENTS:**

Ordinance

**SUMMARY STATEMENT:**

*Please complete sections of box as appropriate & explain the item below.*

Related County contract #: N/A	Should Clerk schedule a hearing? NO / <input type="checkbox"/> / YES / <input checked="" type="checkbox"/> / Requested date: 9/27/94
Amount budgeted for this item/project:	Is it (or will it be) within budget? YES / <input type="checkbox"/> / NO / <input type="checkbox"/> (Please explain below)
Budget line item number(s):	

City of Ferndale requested renewal of Ordinance No. 79-21 passed August 2, 1979 granting fifteen year domestic water mains franchise on certain county roads to City of Ferndale which expired August 2, 1994.

**ORIGINATOR'S RECOMMENDED ACTION:**

Council approval

**COMMITTEE ACTION TAKEN:**

**COUNCIL ACTION TAKEN:**

9/13/94: Introduction  
 10/11/94: Council adopted the ordinance. 7-0

**Related File Numbers:**

**Ordinance or Resolution Number (this item only):**

Ord 94-060

1 SPONSORED BY: Consent

2 PROPOSED BY: Transportation Svcs.

3 INTRODUCTION DATE: 9/13/94

1 ORDINANCE NO. 94-060

2 AN ORDINANCE IN THE MATTER OF GRANTING A NON-  
3 EXCLUSIVE FRANCHISE TO THE CITY OF FERNDALE FOR  
4 A PERIOD OF 15 YEARS PURSUANT TO STATE LAW AND  
5 SECTION 9.30 OF THE WHATCOM COUNTY HOME RULE  
6 CHARTER, TO OPERATE AND MAINTAIN WATER MAINS  
7 AND WATER DISTRIBUTION LINES ALONG CERTAIN  
8 ROADS WITHIN THE UNINCORPORATED AREAS OF  
9 WHATCOM COUNTY

10 WHEREAS, the Home Rule Charter for Whatcom County authorizes the County  
11 Council to grant non-exclusive franchises for a fixed term not to exceed 25 years for the use  
12 of any street, road or public place; and

13 WHEREAS, R.C.W. Chapter 36.55 and Section 36.55.010 provides that the County  
14 Council may grant franchises to persons or private or municipal corporations to use that  
15 right-of-way of County roads in their respective counties for the construction and  
16 maintenance of water works, gas pipes, telephones, telegraph and electrical light lines,  
17 sewers and other such facilities and including cable television wires and other cable television  
18 facilities; and

19 WHEREAS, the City of Ferndale has applied for a 15-year nonexclusive franchise for  
20 installation, operation, maintenance and repair of a twelve inch (12") domestic water main in  
21 and along certain roads in Whatcom County, Washington, and notice of this hearing having  
22 been duly published on the September 17 and October 1, 1994, in the Bellingham Herald,  
23 the official newspaper for Whatcom County, and that it appearing to the County Council that  
24 notice of said hearing having been given as required by law and that it is in the public  
25 interest to grant the franchise for a period of 15 years; and

26  
27 WHEREAS, the City of Ferndale has agreed to the addition of certain administrative  
28 provisions to the franchise as provided herein;

29 NOW, THEREFORE, BE IT ORDAINED by the Council of Whatcom County,  
30 Washington:

1           Section 1. Franchise Granted.

2           (a) A non-exclusive franchise for the City of Ferndale, located in the County of  
3 Whatcom, its successors and assignees, referred to as the grantee, is hereby granted for a  
4 period of 15 years, the non-exclusive rights and privilege to construct, erect, operate,  
5 maintain, and repair a twelve-inch (12") domestic water main and all necessary  
6 appurtenances in, along and across county roads or portions thereof as named herein.

7           (b) The rights and privileges granted herein shall apply to all roads and public ways  
8 listed as follows:

- 9           1. Mt. View Road, Section 19, Township 39 North, Range 2 East;  
10           2. Church Road, Section 24, Township 39 North, Range 1 East  
11           3. Thornton Road, Section 13, Township 39 North, Range 1 East.

12           Section 2. Acceptance of Franchise.

13           (a) No franchise hereunder shall become effective for any purpose unless and until  
14 written acceptance therefore shall have been filed with the Whatcom County Council and  
15 County Director of Transportation Services and such written acceptance shall be in form and  
16 substance as shall be prescribed and approved by the County Prosecuting Attorney and  
17 operate as an acceptance of each and every term and condition and limitation contained in  
18 this ordinance, and in such franchise;

19           (b) Such written acceptance shall be filed by Grantee not later than the thirtieth day  
20 following the effective date of the ordinance granting such franchise; and in default of the  
21 filing of such acceptance as herein required, Grantee shall be deemed to have rejected the  
22 same.

23           Section 3. Entering Rights of Way.

24           The Grantee, its successors and assignees, shall have the right and authority to enter  
25 upon the above-mentioned county roads, rights-of-way and other county property as  
26 designated hereinbefore, for the purposes of constructing, operating, maintaining and  
27 repairing water mains and water distribution lines and facilities and operating and  
28 maintaining such lines and facilities.

29           Section 4. Construction Standards.

30           All construction and installation work along and under county roads or rights-of-way  
31 or other County property outside the corporate limits of any incorporated town shall be  
32 subject to the approval and pass the inspection of the Director of Transportation Services or

1 designee and shall conform to all applicable County and State codes or regulations, and the  
2 County expressly reserves the right to prescribe how and where water mains and water  
3 distribution lines shall be installed and may from time to time, upon reasonable notice,  
4 require the removal and replacement thereof in the public interest, at the expense of the  
5 franchise holder.

6 Section 5. Construction Application.

7 (a) Prior to commencement of construction of said water mains and water distribution  
8 lines, Grantee shall first file with the Director of Transportation Services its application for  
9 permit to do such work, together with plans and specifications in duplicate showing the  
10 position and location of all such lines and facilities sought to be constructed, laid, installed or  
11 erected at that time, showing their relative position to existing county roads, rights-of-way or  
12 other county property upon plans drawn to scale, hereinafter collectively referred to as the  
13 "map of definite location."

14 (b) The water lines and appurtenant facilities shall be laid in exact conformity with  
15 said map of definite location, except in instances in which deviation may be allowed  
16 thereafter in writing by the Director of Transportation Services pursuant to application by  
17 Grantee. The plans and specifications shall specify the class and type of material and  
18 equipment to be used, manner of excavation, construction, installation, backfill, erection of  
19 temporary structures, erection of permanent structures, traffic control, traffic turn-outs and  
20 road obstruction, etc. No such construction shall be commenced without the Grantee first  
21 securing a written permit from the Director of Transportation Services, including approval  
22 endorsed on one set of plans and specifications returned to the Grantee. All such work shall  
23 be subject to the approval of and shall pass the inspection of the Director of Transportation  
24 Services or designee. The Grantee shall pay all actual and necessary costs of and expenses  
25 incurred in the examination, inspection and approval of such work on account of granting  
26 said permits.

27 Section 6. Construction on Roadways/Other County Property.

28 (a) In any work which requires breaking of soil of the county roads, rights-of-way or  
29 other county property subject to this franchise for the purpose of laying, relaying,  
30 connecting, disconnecting and repairing the said transmission lines and facilities, and making  
31 connections between the same to structures and buildings of consumers or making  
32 connections to other facilities of the Grantee now in existence or hereafter constructed, the  
33 Grantee shall be governed by and conform to the general rules adopted by the officers  
34 charged with the supervision and care of such county roads, rights-of-way, and other county  
35 property; and the Grantee at its own expense and with all convenient speed shall complete  
36 the work for which the soil has been broken and forthwith replace the work and make good  
37 the county road, rights-of-way or other county property and leave the same in as good  
38 condition as before the work was commenced.

1 (b) Applications for permits referred to in Section 5 above shall be accompanied by  
2 specifications for the restoration of the county road, rights-of-way or other county property  
3 and to the same condition it was prior to such breaking, and such specifications must be  
4 approved by the Director of Transportation Services before such breaking of the soil is  
5 commenced. Provided, that the Director of Transportation Services may require a  
6 performance bond in the sum sufficient to guarantee that such county roads, rights-of-way or  
7 other county property shall be restored to the same condition as they were prior to the  
8 breaking of the soil. Said bond shall be in addition to any other such requirements contained  
9 herein.

10 (c) The Director of Transportation Services may at any time order, or have done,  
11 any and all work that it considers necessary to restore to a safe condition any such county  
12 road, rights-of-way or other county property left by the Grantee or his agents in a condition  
13 dangerous to life or property, and the Grantee upon demand shall pay the County all costs of  
14 such work.

15 7. Construction - Other Lines and Facilities.

16 (a) All construction or installation of such water lines or water distributing systems,  
17 service, repair or relocation of same, performed above, along or within the county rights-of-  
18 way or other county property subject to this franchise shall be done in such a manner as not  
19 to interfere with the construction and maintenance of other utilities' lines, public or private,  
20 drains, drainage ditches and structure, irrigation ditches and structures located therein, nor  
21 with the grading or improvement of such county roads, rights-of-way or other county  
22 property.

23 (b) The owners of all utilities, public or private, installed prior in time to the line  
24 and facilities of the Grantee shall have preference as to the positioning and location of such  
25 utilities so installed with respect to the Grantee. Such preference shall continue in the event  
26 of the necessity of relocating or changing the grade of any such county road or right-of-way.

27 Section 8. Construction - Public Safety and Inconvenience.

28 All work done under this franchise shall be done in a thorough and workmanlike  
29 manner. In the laying of transmission lines and the construction of rights-of-way or other  
30 county property, the Grantee shall leave such trenches, ditches and tunnels in such a way as  
31 to interfere as little as possible with public travel and shall take all due and necessary  
32 precautions to guard the same, so that damage or injury shall not occur or arise by reason of  
33 such work; and where any of such trenches, ditches, or tunnels are left open at night, the  
34 Grantee shall place warning lights and barricades at such a position as to give adequate  
35 warning of such work. The Grantee shall be liable for any injury to person or persons or  
36 damage to property sustained through its carelessness or neglect, or through any failure or  
37 neglect to properly guard or give warning of any trenches, ditches or tunnels dug or  
38 maintained by the Grantee.

1           Section 9. County Rights Reserved.

2           The County of Whatcom in granting this franchise, does not waive any rights which it  
3 has now or may hereafter acquire with respect to county roads, rights-of-way or other county  
4 property and this franchise shall not be construed to deprive the County of any powers,  
5 rights or privileges which it now has or may hereafter acquire to regulate the use of and to  
6 control the county roads, rights-of-way or other County property covered by this franchise.  
7 This franchise shall be subject to the power of eminent domain, and in any proceeding under  
8 eminent domain, the franchise itself shall have no value.

9           Section 10. Relocation of Lines and Facilities.

10           (a) If at any time the County of Whatcom shall improve or change any county road,  
11 right-of-way or other county property subject to this franchise by grading or regrading,  
12 planking or paving the same, changing the grade, altering, changing, repairing or relocating  
13 the same or by constructing drainage facilities, or in the event that such county road, right-  
14 of-of way or other county property subject to this franchise shall become a Primary State  
15 Highway as provided by law, the Grantee upon written notice from the Director of  
16 Transportation Services or the Director of Highways, shall at its sole expense, immediately  
17 change the location or readjust the elevation of its transmission lines and other facilities so  
18 that the same shall not interfere with such County work and so that such lines and facilities  
19 shall conform to such new grades or routes as may be established. The County of Whatcom  
20 shall in no wise be held liable for any damage to said Grantee that may occur by reason of  
21 any of the County's improvements, changes or works above enumerated.

22           (b) All work to be performed by the Grantee under this section shall be under the  
23 direction and approval, and shall pass the inspection of the Director of Transportation  
24 Services or designee. The Grantee shall pay all actual and necessary costs and expenses  
25 incurred in the examination, inspection and approval of such work.

26           Section 11. County Road Work Permitted.

27           The laying, construction, operation and maintenance of the Grantee's transmission  
28 lines and facilities authorized by this franchise shall not preclude the County of Whatcom, its  
29 agents or its contractors from blasting, grading, excavating or doing other necessary road  
30 work contiguous to the said lines and facilities of the Grantee provided that the Grantee shall  
31 be given forty-eight (48) hours notice of said blasting or other work in order that the Grantee  
32 may protect its lines and facilities.

33           Section 12. Monuments and Survey Markers.

34           (a) Before any work is performed under this franchise which may affect any existing  
35 monuments or markers of any nature relating to subdivisions, plats, roads and all other  
36 surveys, the Grantee shall reference all such monuments and markers. The reference points

1 shall be so located that they will not be disturbed during the Grantee's operations under this  
2 franchise. The method of referencing these monuments or other points to be referenced shall  
3 be approved by the Director of Transportation Services. The replacement of all such  
4 monuments or other points to be referenced shall be approved by the Director of  
5 Transportation Services. The replacement of all such monuments or markers disturbed  
6 during construction shall be made as expeditiously as conditions permit, and as directed by  
7 the Director of Transportation Services. The cost of monuments or other markers lost,  
8 destroyed or disturbed, and the expense of replacement by approved monuments shall be  
9 borne by the Grantee.

10 (b) A complete set of reference notes for monuments and other ties shall be filed  
11 with the Whatcom County Director of Transportation Services.

12 Section 13. Vacations.

13 If at any time the County of Whatcom shall vacate any county road, right-of-way or  
14 other county property which is subject to the rights granted by this franchise and said  
15 vacation shall be for the purpose of acquiring the fee of other property interest in said road,  
16 rights-of-way or other county property for the use of Whatcom County, in either its propriety  
17 or governmental capacity, then the Council of Whatcom County may at its option and by  
18 giving thirty (30) days written notice to the Grantee, terminate this franchise with reference  
19 to such county road, right-of-way or other county property so vacated, and the County of  
20 Whatcom shall not be liable for any damages or loss to the Grantee by reason of such  
21 termination.

22 Section 14. Indemnification.

23 (a) The Grantee by acceptance of the privileges granted hereunder, does hereby agree  
24 and covenant to indemnify, defend, and save harmless Whatcom County and those persons  
25 who were, are now, or shall be duly elected or appointed officials or members or employees  
26 thereof, against and from any loss, damage, costs, charges, expenses, liability, claims,  
27 demands or judgments whatsoever kind or nature whether to persons or property, arising  
28 wholly or partially out of any act, action, neglect, omissions or default on the part of the  
29 Grantee, his sub-contractors and/or employees which may occur by reason of construction,  
30 operation and maintenance of the Grantee's said transmission lines and facilities. In case that  
31 suit or action is brought against the County of Whatcom for damages arising out of or by  
32 reason of the above-mentioned causes, the Grantee will upon notice of the filing of a claim  
33 or the commencement of said action, appear and defend the same at its sole cost and  
34 expense, and in case judgment shall be rendered against the County of Whatcom in suit or  
35 action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or  
36 action shall have finally been determined, if determined adversely to Whatcom County.  
37 Upon the Grantee's failure to satisfy said judgment within a ninety (90) day period, this  
38 franchise shall at once cease and terminate and the County of Whatcom shall have a lien  
39 upon the transmission lines and all other facilities used in its construction, operation and

1 of the Grantee's transmission system which may be enforced against the property for the full  
2 amount of any such judgment so taken against Whatcom County.

3 (b) Acceptance by the County of any work performed by the Grantee at the time of  
4 completion shall not be grounds for avoidance of this covenant.

5 Section 15. Non-Exclusive Franchise.

6 This franchise shall not be deemed to be an exclusive franchise. It shall in no manner  
7 prohibit the County of Whatcom from granting other franchises of a like nature or franchises  
8 for other public or private utilities under, along, across, over and upon any of the county  
9 roads, rights-of-way, or other County property subject to franchise, and shall in no wise  
10 prevent or prohibit the County of Whatcom from construction, altering, maintaining, using or  
11 vacating any of said roads, rights-of-way, drainage structures or facilities, irrigation structure  
12 or facilities, or any other County property or affect its jurisdiction over them with full power  
13 to make all necessary changes, relocations, repairs, maintenance as the County may deem fit.

14 Section 16. Successors and Assignees.

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

19 Section 17. Transferability.

20 Neither this franchise nor any interest therein shall be sold, transferred or assigned  
21 without the previous consent in writing of the Council of Whatcom County, such consent not  
22 be unreasonably withheld.

23 Section 18. Incorporation.

24 Whenever any of the county roads, rights-of-way or other county property as  
25 designated in this franchise, by reason of the subsequent incorporation of any town or city,  
26 or extension of the limits of any town or city shall fall within the city or town limits this  
27 franchise shall continue in force and affect as to all county roads, rights-of-way or other  
28 county property not so included in city or town limits.

29 Section 19. Enforcement/Remedies.

30 If the Grantee shall willfully violate, or fail to comply with any of the provisions of  
31 this franchise through willful or unreasonable neglect, or fail to heed or comply with any  
32 notice given the Grantee under the provisions of this franchise, then the said Grantee shall  
33 forfeit all rights conferred hereunder, and this franchise may be revoked or annulled by the

1 Council of Whatcom County. In addition to any rights implied or set out elsewhere in this  
2 ordinance, the Council reserves the right to require the Grantee to specifically comply with  
3 the terms and conditions of the franchise ordinance, and this franchise may be terminated at  
4 any time if the Grantee's lines and facilities are not operated or maintained in accordance  
5 with such statute, order or regulation.

6 Section 20. Reservation of Home Rule Charter Rights.

7 This franchise is subject to the provisions of the Home Rule Charter for Whatcom  
8 County and, in particular, Section 9.30 thereof which provides as follows: All franchises  
9 granted by the County Council shall be for a fixed term not to exceed twenty-five (25) years  
10 and no exclusive franchise shall be granted for the use of any street, road, or public place.  
11 All franchises shall be subject to the power of eminent domain and the right of the Council  
12 or the people acting for themselves through the initiative or referendum to repeal, amend or  
13 modify the franchise in the interest of the public; and every ordinance granting a franchise  
14 shall contain a reservation of these rights. In any proceeding under eminent domain the  
15 franchise itself shall have no value.

16 Section 21. Compliance with Laws and Regulations.

17 This franchise is subject to, and the Grantee shall comply with all applicable Federal,  
18 State, County or municipal laws, regulations and policies affecting performance under this  
19 franchise.

20 Section 22. Insurance.

21 (a) Upon acceptance of such franchise, the Grantee shall file with the Whatcom  
22 County Council, and shall thereafter, during the entire term of such franchise, maintain in  
23 full force and effect, a corporate insurance policy or other adequate surety agreement in the  
24 amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for the property  
25 damage coverage, and THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for  
26 public liability coverage, so as to protect the County against damages or costs as set forth in  
27 Section 14 above, and there shall be recoverable, jointly and separately from the principal  
28 and surety, any such damages or costs suffered or incurred by the County, including  
29 attorneys' fees and costs of any action, or proceedings, and including the full amount of any  
30 compensation, indemnification, cost of removal of any property or other costs which may be  
31 incurred up to the full principal amount of such insurance policy; and said condition shall be  
32 a continuing obligation during the entire term of such franchise and thereafter until Grantee  
33 shall have satisfied in full any and all obligations to the County and any user which arise out  
34 of or pertain to said franchise. Neither the provisions of this section, nor any insurance  
35 policy accepted by the County pursuant hereto, nor any damages recovered by the County  
36 thereunder, shall be construed to excuse faithful performance by the Grantee, or limit the  
37 liability of the Grantee under any franchise issued pursuant to this ordinance.

1 (b) The County reserves the right to have its legislative body review the dollar  
2 amount of said insurance policy and adjust the amount of coverage as deemed appropriate  
3 upon an annual basis.

4 Section 23. License, Tax and Other Charges.

5 No privileges or rights granted hereunder shall exempt Grantee from any future  
6 uniform rent, license, tax charge or impost which may hereafter be required by the Grantor,  
7 for revenue or as reimbursement for use and occupancy of public ways, and failure to timely  
8 remit any sums properly due thereby, shall be cause for forfeiture of rights hereunder.

9 Section 24. Severability.

10 If any portion of the ordinance is deemed invalid the remainder will remain in effect.


11 Section 25. Titles.

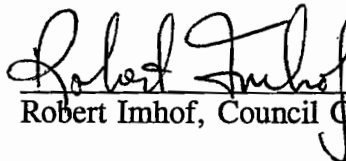
12 The section titles used herein are for reference only and should not be used for the  
13 purpose of interpreting this ordinance.

14 ADOPTED this 11th day of October, 1994.

15  
16 ATTEST:


WHATCOM COUNTY COUNCIL  
WHATCOM COUNTY, WASHINGTON

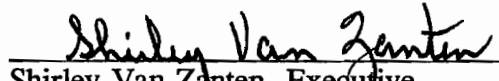
17   
18 Ramona Reeves, Council Clerk

  
Robert Imhof, Council Chair

19 APPROVED AS TO FORM:

Approved ( ) Denied

20   
21 Daniel L. Gibson  
22 Civil Deputy Prosecutor

  
Shirley Van Zanten, Executive  
Date: 10-12-94

IN THE MATTER OF FRANCHISE GRANTED TO  
THE CITY OF FERNDALE

) ACCEPTANCE OF  
) FRANCHISE

THE CITY OF FERNDALE hereby accepts, subject to all the conditions therein contained, that certain Franchise for installation, operation, maintenance, and repair of water mains and water distribution lines which shall apply to all roads and public ways listed as follows:

Mt. View Road, Section 19, Township 39 North, Range 2 East

Church Road, Section 24, Township 39 North, Range 1 East

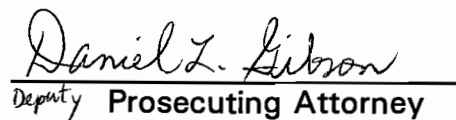
Thornton Road, Section 13, Township 39 North, Range 1 East

The Franchise granted on the 11th day of October, 1994, is for a period of fifteen (15) years from that date.

CITY OF FERNDALE

By:   
City Manager

APPROVED AS TO FORM:

  
Deputy Prosecuting Attorney

RECEIVED

NOV 14 1994

TRANSPORTATION SERVICES  
ADMINISTRATION

RECEIVED  
NOV 15 1994  
WHATCOM COUNTY  
COUNCIL