

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

SUBJECT:

Ordinance granting a non-exclusive franchise to Y-Squalicum Lake Water Association, Inc. for a period of 15 years to operate and maintain water mains and water distributions 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):	

Y-Squalicum Lake Water Association, Inc. requested renewal of a 25 year franchise granted September 25, 1969 to the Association to install, operate and maintain water mains and water distribution lines along certain County roads which will expire September 25, 1994.

ORIGINATOR'S RECOMMENDED ACTION:

Council approval

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

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

Related File Numbers:

Ordinance or Resolution Number (this item only):

Ord 94-061

1 SPONSORED BY: Consent

2 PROPOSED BY: Transporation Svcs.

3 INTRODUCTION DATE: 9/13/94

1 ORDINANCE NO. 94-061

2 AN ORDINANCE IN THE MATTER OF GRANTING A NON-
3 EXCLUSIVE FRANCHISE TO THE Y-SQUALICUM LAKE
4 WATER ASSOCIATION, INC. FOR A PERIOD OF 15 YEARS
5 PURSUANT TO STATE LAW AND SECTION 9.30 OF THE
6 WHATCOM COUNTY HOME RULE CHARTER, TO OPERATE
7 AND MAINTAIN WATER MAINS AND WATER DISTRIBU-
8 TION LINES ALONG CERTAIN ROADS WITHIN THE
9 UNINCORPORATED AREAS OF WHATCOM COUNTY
10

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

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

20 WHEREAS, the Y-Squalicum Lake Water Association, Inc. has applied for a 15-year
21 nonexclusive franchise for installation, operation, maintenance and repair of water mains and
22 water distribution lines in and along certain roads in Whatcom County, Washington, and
23 notice of this hearing having been duly published on the September 17 and October 1,
24 1994, in the Bellingham Herald, the official newspaper for Whatcom County, and that it
25 appearing to the County Council that notice of said hearing having been given as required by
26 law and that it is in the public interest to grant the franchise for a period of 15 years; and
27

28 WHEREAS, the Y-Squalicum Lake Water Association, Inc. has agreed to the addition
29 of certain administrative provisions to the franchise as provided herein;

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

1 Section 1. Franchise Granted.

2 (a) A non-exclusive franchise for the Y-Squalicum Lake Water Association, Inc.,
3 located in the County of Whatcom, its successors and assignees, referred to as the grantee, is
4 hereby granted for a period of 15 years, the non-exclusive rights and privilege to construct,
5 erect, operate, maintain, and repair water mains and all necessary lateral lines in, along and
6 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 On the Squalicum Lake Road, also known as Whatcom County Road,
10 No. 80, from its intersection with the South boundary of Section 19,
11 Township 38 North, Range 4 East; North to its intersection with the
12 North Y Road, also known as Whatcom County Road No. 114 on the
13 Jensen Road, also known as Whatcom County Road No. 80 and on the
14 South Y Road and North Y Road, also known as Whatcom County
15 Roads No. 80 and 324, respectively, and on that portion of the
16 Henderson Road, also known as Whatcom County Road No. 178 which
17 lies between the Squalicum Lake Road and the South Y Road, all of
18 which roads are located in Sections 7, 18 and 19, Township 38 North
19 of Range 4 East of W.M.

20
21 Section 2. Acceptance of Franchise.

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

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

32 Section 3. Entering Rights of Way.

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

1 Section 4. Construction Standards.

2 All construction and installation work along and under county roads or rights-of-way
3 or other County property outside the corporate limits of any incorporated town shall be
4 subject to the approval and pass the inspection of the Director of Transportation Services or
5 designee and shall conform to all applicable County and State codes or regulations, and the
6 County expressly reserves the right to prescribe how and where water mains and water
7 distribution lines shall be installed and may from time to time, upon reasonable notice,
8 require the removal and replacement thereof in the public interest, at the expense of the
9 franchise holder.

10 Section 5. Construction Application.

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

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

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

32 (a) In any work which requires breaking of soil of the county roads, rights-of-way or
33 other county property subject to this franchise for the purpose of laying, relaying,
34 connecting, disconnecting and repairing the said transmission lines and facilities, and making
35 connections between the same to structures and buildings of consumers or making
36 connections to other facilities of the Grantee now in existence or hereafter constructed, the
37 Grantee shall be governed by and conform to the general rules adopted by the officers

1 charged with the supervision and care of such county roads, rights-of-way, and other county
2 property; and the Grantee at its own expense and with all convenient speed shall complete
3 the work for which the soil has been broken and forthwith replace the work and make good
4 the county road, rights-of-way or other county property and leave the same in as good
5 condition as before the work was commenced.

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

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

20 7. Construction - Other Lines and Facilities.

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

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

32 Section 8. Construction - Public Safety and Inconvenience.

33 All work done under this franchise shall be done in a thorough and workmanlike
34 manner. In the laying of transmission lines and the construction of rights-of-way or other
35 county property, the Grantee shall leave such trenches, ditches and tunnels in such a way as
36 to interfere as little as possible with public travel and shall take all due and necessary
37 precautions to guard the same, so that damage or injury shall not occur or arise by reason of

1 such work; and where any of such trenches, ditches, or tunnels are left open at night, the
2 Grantee shall place warning lights and barricades at such a position as to give adequate
3 warning of such work. The Grantee shall be liable for any injury to person or persons or
4 damage to property sustained through its carelessness or neglect, or through any failure or
5 neglect to properly guard or give warning of any trenches, ditches or tunnels dug or
6 maintained by the Grantee.

7 Section 9. County Rights Reserved.

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

15 Section 10. Relocation of Lines and Facilities.

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

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

32 Section 11. County Road Work Permitted.

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

1 Section 12. Monuments and Survey Markers.

2 (a) Before any work is performed under this franchise which may affect any existing
3 monuments or markers of any nature relating to subdivisions, plats, roads and all other
4 surveys, the Grantee shall reference all such monuments and markers. The reference points
5 shall be so located that they will not be disturbed during the Grantee's operations under this
6 franchise. The method of referencing these monuments or other points to be referenced shall
7 be approved by the Director of Transportation Services. The replacement of all such
8 monuments or other points to be referenced shall be approved by the Director of
9 Transportation Services. The replacement of all such monuments or markers disturbed
10 during construction shall be made as expeditiously as conditions permit, and as directed by
11 the Director of Transportation Services. The cost of monuments or other markers lost,
12 destroyed or disturbed, and the expense of replacement by approved monuments shall be
13 borne by the Grantee.

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

16 Section 13. Vacations.

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

26 Section 14. Indemnification.

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

1 action, the Grantee will fully satisfy said judgment within ninety (90) days after said suit or
2 action shall have finally been determined, if determined adversely to Whatcom County.
3 Upon the Grantee's failure to satisfy said judgment within a ninety (90) day period, this
4 franchise shall at once cease and terminate and the County of Whatcom shall have a lien
5 upon the transmission lines and all other facilities used in its construction, operation and
6 maintenance of the Grantee's transmission system which may be enforced against the
7 property for the full amount of any such judgment so taken against Whatcom County.

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

10 Section 15. Non-Exclusive Franchise.

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

19 Section 16. Successors and Assignees.

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

24 Section 17. Transferability.

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

28 Section 18. Incorporation.

29 Whenever any of the county roads, rights-of-way or other county property as
30 designated in this franchise, by reason of the subsequent incorporation of any town or city,
31 or extension of the limits of any town or city shall fall within the city or town limits this
32 franchise shall continue in force and affect as to all county roads, rights-of-way or other
33 county property not so included in city or town limits.

1 Section 19. Enforcement/Remedies.

2 If the Grantee shall willfully violate, or fail to comply with any of the provisions of
3 this franchise through willful or unreasonable neglect, or fail to heed or comply with any
4 notice given the Grantee under the provisions of this franchise, then the said Grantee shall
5 forfeit all rights conferred hereunder, and this franchise may be revoked or annulled by the
6 Council of Whatcom County. In addition to any rights implied or set out elsewhere in this
7 ordinance, the Council reserves the right to require the Grantee to specifically comply with
8 the terms and conditions of the franchise ordinance, and this franchise may be terminated at
9 any time if the Grantee's lines and facilities are not operated or maintained in accordance
10 with such statute, order or regulation.

11 Section 20. Reservation of Home Rule Charter Rights.

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

21 Section 21. Compliance with Laws and Regulations.

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

25 Section 22. Insurance.

26 (a) Upon acceptance of such franchise, the Grantee shall file with the Whatcom
27 County Council, and shall thereafter, during the entire term of such franchise, maintain in
28 full force and effect, a corporate insurance policy or other adequate surety agreement in the
29 amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) for the property
30 damage coverage, and THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) for
31 public liability coverage, so as to protect the County against damages or costs as set forth in
32 Section 14 above, and there shall be recoverable, jointly and separately from the principal
33 and surety, any such damages or costs suffered or incurred by the County, including
34 attorneys' fees and costs of any action, or proceedings, and including the full amount of any
35 compensation, indemnification, cost of removal of any property or other costs which may be
36 incurred up to the full principal amount of such insurance policy; and said condition shall be
37 a continuing obligation during the entire term of such franchise and thereafter until Grantee

1 shall have satisfied in full any and all obligations to the County and any user which arise out
2 of or pertain to said franchise. Neither the provisions of this section, nor any insurance
3 policy accepted by the County pursuant hereto, nor any damages recovered by the County
4 thereunder, shall be construed to excuse faithful performance by the Grantee, or limit the
5 liability of the Grantee under any franchise issued pursuant to this ordinance.

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

9 Section 23. License, Tax and Other Charges.

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

14 Section 24. Severability.

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

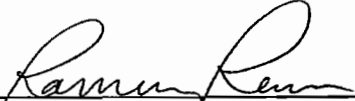
16 Section 25. Titles.


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

19 ADOPTED this 11th day of October, 1994.

20
21 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

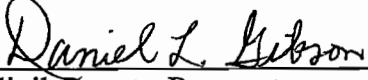
22 
23 _____
Ramona Reeves, Council Clerk

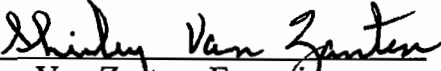


Robert Imhof, Council Chair

24 APPROVED AS TO FORM:

Approved () Denied

25 
26 _____
Civil Deputy Prosecutor



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

IN THE MATTER OF FRANCHISE GRANTED TO) ACCEPTANCE OF
THE Y-SQUALICUM WATER ASSOCIATION) FRANCHISE

THE Y-SQUALICUM WATER ASSOCIATION 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:

On the Squalicum Lake Road, also known as Whatcom County Road, No. 80, from its intersection with the South boundary of Section 19, Township 38 North, Range 4 East; North to its intersection with the North Y Road, also known as Whatcom County Road No. 114 on the Jensen Road, also known as Whatcom County Road No. 80 and on the South Y Road and North Y Road, also known as Whatcom County Roads No. 80 and 324, respectively, and on that portion of the Henderson Road, also known as Whatcom County Road No. 178 which lies between the Squalicum Lake Road and the South Y Road, all of which roads are located in Sections 7, 18 and 19, Township 38 North of Range 4 East of W.M.

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

Y-SQUALICUM WATER ASSOCIATION

By: Terry A. Hoge
President,

APPROVED AS TO FORM:

Daniel L. Gibson
Prosecuting Attorney