

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
inator: Mary Scrimsher	ms	1/22	RECEIVED JAN 18 1995 WHATCOM COUNTY COUNCIL	1/24/95:	Council
Division Head:				3/7/95	Hearing
Dept. Head: Jeffrey M. Monsen	jm	1/9/95			
Prosecutor: Randall J. Watts	RJW	1/4/95			
Purchasing/Budget:					
Executive:	lg	1/17/95			

SUBJECT: *Petition for 25 year Non-Exclusive Water Franchise for the Hemmi Road Water Association. (Not a renewal).*

The Hemmi Road Water Association has approximately 14 years remaining on their existing Franchise Agreement. Due to a large and very expensive upgrade of their water system, their financial institution has required at least a twenty five (25) year Franchise Agreement prior to granting the loan. Therefore, the only way to fulfill this request is to grant an entirely new 25 year franchise and eliminate the current franchise agreement. Whatcom County Council recently has only been granting this type of Franchise for fifteen (15) years. This would be an exception.

ATTACHMENTS: *Petition for Franchise, 25 year Franchise (Not a renewal)*

PRIMARY STATEMENT:

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

Related County contract #:	Should Clerk schedule a hearing? NO / <input type="checkbox"/> / YES / <input checked="" type="checkbox"/> / Requested date: January
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):	

ORIGINATOR'S RECOMMENDED ACTION: *To grant the Hemmi Road Water Association a 25 year Non-Exclusive Franchise so that they may proceed to upgrade their water system.*

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

1/24/95: Introduced
 3/7/95: Adopted 7-0

Related File Numbers:

Ordinance or Resolution Number (this item only): Ord. 95-015

1 SPONSORED BY: Consent

2 PROPOSED BY: Public Works

3 INTRODUCTION DATE: 1/24/95

4 ORDINANCE NO. 95-015

5 AN ORDINANCE IN THE MATTER OF GRANTING A NON-
6 EXCLUSIVE FRANCHISE TO THE HEMMI ROAD WATER
7 ASSOCIATION FOR A PERIOD OF 25 YEARS PURSUANT TO
8 STATE LAW AND SECTION 9.30 OF THE WHATCOM
9 COUNTY HOME RULE CHARTER, TO OPERATE AND
10 MAINTAIN WATER MAINS AND WATER DISTRIBUTION
11 LINES ALONG CERTAIN ROADS WITHIN THE
12 UNINCORPORATED AREAS OF WHATCOM COUNTY
13

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

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

23 WHEREAS, the Hemmi Road Water Association has applied for a 25-year
24 nonexclusive franchise for installation, operation, maintenance and repair of a domestic water
25 main in and along certain roads in Whatcom County, Washington, and notice of this hearing
26 having been duly published on the Jan. 28 and February 18, 1995, in the Bellingham
27 Herald, the official newspaper for Whatcom County, and that it appearing to the County
28 Council that notice of said hearing having been given as required by law and that it is in the
29 public interest to grant the franchise for a period of 25 years; and
30

31 WHEREAS, the has agreed to the addition of certain administrative provisions to the
32 franchise as provided herein;

33 NOW, THEREFORE, BE IT ORDAINED by the Council of Whatcom County,
34 Washington:

1 Section 1. Franchise Granted.

2 (a) A non-exclusive franchise for the Hemmi Road Water Association, located in the
3 County of Whatcom, its successors and assignees, referred to as the grantee, is hereby
4 granted for a period of 25 years, the non-exclusive rights and privilege to construct, erect,
5 operate, maintain, and repair a domestic water main and all necessary appurtenances in,
6 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. East Laurel Road from its intersection with a point 1/5 mile east of the
10 Hannegan Road to its eastern end in Section 22, Township 39 North, Range 3
11 East of W.M.
- 12 2. Hemmi Road from its intersection with the Hannegan road to its intersection
13 with the Mission Road (along the north lines of Sections 21, 22, 23, and 24,
14 Township 39 North, Range 3 East of W.M.).
- 15 3. Central Road from its intersection with the Noon Road to its intersection with
16 the Everson-Goshen Road (between Section 14 and Section 11, Township 39
17 North, Range 3 East of W.M.).
- 3 4. Noon Road from its intersection with the Central Road to the south line of
19 Section 22, Township 39 North, Range 3 East of W.M.
- 20 5. Everson-Goshen Road from its intersection with the point common to the
21 southwest corner of the Northwest quarter of Section 12 and the southeast
22 corner of the Northeast quarter of Section 11, Township 39 North, Range 3
23 East of W.M. to its intersection with a point common to the southeast corner
24 of Section 23 and the southwest corner of Section 24, Township 39 North,
25 Range 3 East of W.M.

26 Section 2. Acceptance of Franchise.

28 (a) No franchise hereunder shall become effective for any purpose unless and until
29 written acceptance therefore shall have been filed with the Whatcom County Council and
30 County Director of Public Works and such written acceptance shall be in form and substance
31 as shall be prescribed and approved by the County Prosecuting Attorney and operate as an
32 acceptance of each and every term and condition and limitation contained in this ordinance,
33 and in such franchise;

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

5 Section 3. Entering Rights of Way.

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

11 Section 4. Construction Standards.

12 All construction and installation work along and under county roads or rights-of-way
13 or other County property outside the corporate limits of any incorporated town shall be
14 subject to the approval and pass the inspection of the Director of Public Works or
15 designee and shall conform to all applicable County and State codes or regulations, and the
16 County expressly reserves the right to prescribe how and where water mains and water
17 distribution lines shall be installed and may from time to time, upon reasonable notice,
18 require the removal and replacement thereof in the public interest, at the expense of the
19 franchise holder.

20 Section 5. Construction Application.

21 (a) Prior to commencement of construction of said water mains and water distribution
22 lines, Grantee shall first file with the Director of Public Works its application for permit to
23 do such work, together with plans and specifications in duplicate showing the position and
24 location of all such lines and facilities sought to be constructed, laid, installed or erected at
25 that time, showing their relative position to existing county roads, rights-of-way or other
26 county property upon plans drawn to scale, hereinafter collectively referred to as the "map of
27 definite location."

28 (b) The water lines and appurtenant facilities shall be laid in exact conformity with
29 said map of definite location, except in instances in which deviation may be allowed
30 thereafter in writing by the Director of Public Works pursuant to application by Grantee.
31 The plans and specifications shall specify the class and type of material and equipment to be
32 used, manner of excavation, construction, installation, backfill, erection of temporary
33 structures, erection of permanent structures, traffic control, traffic turn-outs and road
34 obstruction, etc. No such construction shall be commenced without the Grantee first
35 securing a written permit from the Director of Public Works, including approval endorsed on
36 one set of plans and specifications returned to the Grantee. All such work shall be subject to
37 the approval of and shall pass the inspection of the Director of Public Works or designee.

1 The Grantee shall pay all actual and necessary costs of and expenses incurred in the
2 examination, inspection and approval of such work on account of granting said permits.

3 Section 6. Maintenance

4 The Grantee shall maintain all above ground improvements that it places on County
5 right-of-way pursuant to this franchise. In order to avoid interference with the County's
6 ability to maintain the right-of-way, the Grantee shall provide a clear zone of five feet on all
7 sides of such improvements.

8 If the Grantee fails to comply with this provision, and by its failure, property is
9 damaged, then the Grantee shall be responsible for all damages caused thereby.

10 Section 7. Construction on Roadways/Other County Property.

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

22 (b) Applications for permits referred to in Section 5 above shall be accompanied by
23 specifications for the restoration of the county road, rights-of-way or other county property
24 and to the same condition it was prior to such breaking, and such specifications must be
25 approved by the Director of Public Works before such breaking of the soil is commenced.
26 Provided, that the Director of Public Works may require a performance bond in the sum
27 sufficient to guarantee that such county roads, rights-of-way or other county property shall be
28 restored to the same condition as they were prior to the breaking of the soil. Said bond shall
29 be in addition to any other such requirements contained herein.

30 (c) The Director of Public Works may at any time order, or have done, any and all
31 work that it considers necessary to restore to a safe condition any such county road, rights-
32 of-way or other county property left by the Grantee or his agents in a condition dangerous to
33 life or property, and the Grantee upon demand shall pay the County all costs of such work.

1 Section 8. Construction - Other Lines and Facilities.

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

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

13 Section 9. Construction - Public Safety and Inconvenience.

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

25 Section 10. County Rights Reserved.

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

33 Section 11. Relocation of Lines and Facilities.

34 (a) If at any time the County of Whatcom shall improve or change any county road,
35 right-of-way or other county property subject to this franchise by grading or regrading,
36 planking or paving the same, changing the grade, altering, changing, repairing or relocating

1 the same or by constructing drainage facilities, or in the event that such county road, right-
2 of-of way or other county property subject to this franchise shall become a Primary State
3 Highway as provided by law, the Grantee upon written notice from the Director of Public
4 Works or Director of Highways, shall at its sole expense, immediately change the location or
5 readjust the elevation of its transmission lines and other facilities so that the same shall not
6 interfere with such County work and so that such lines and facilities shall conform to such
7 new grades or routes as may be established. The County of Whatcom shall in no wise be
8 held liable for any damage to said Grantee that may occur by reason of any of the County's
9 improvements, changes or works above enumerated.

10 (b) All work to be performed by the Grantee under this section shall be under the
11 direction and approval, and shall pass the inspection of the Director of Public Works or
12 designee. The Grantee shall pay all actual and necessary costs and expenses incurred in the
13 examination, inspection and approval of such work.

14 Section 12. County Road Work Permitted.

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

21 Section 13. Monuments and Survey Markers.

22 (a) Before any work is performed under this franchise which may affect any existing
23 monuments or markers of any nature relating to subdivisions, plats, roads and all other
24 surveys, the Grantee shall reference all such monuments and markers. The reference points
25 shall be so located that they will not be disturbed during the Grantee's operations under this
26 franchise. The method of referencing these monuments or other points to be referenced shall
27 be approved by the Director of Public Works. The replacement of all such monuments or
28 other points to be referenced shall be approved by the Director of Public Works. The
29 replacement of all such monuments or markers disturbed during construction shall be made
30 as expeditiously as conditions permit, and as directed by the Director of Public Works. The
31 cost of monuments or other markers lost, destroyed or disturbed, and the expense of
32 replacement by approved monuments shall be borne by the Grantee.

33 (b) A complete set of reference notes for monuments and other ties shall be filed
34 with the Whatcom County Director of Public Works.

1 Section 14. Vacations.

2 If at any time the County of Whatcom shall vacate any county road, right-of-way or
3 other county property which is subject to the rights granted by this franchise and said
4 vacation shall be for the purpose of acquiring the fee of other property interest in said road,
5 rights-of-way or other county property for the use of Whatcom County, in either its propriety
6 or governmental capacity, then the Council of Whatcom County may at its option and by
7 giving thirty (30) days written notice to the Grantee, terminate this franchise with reference
8 to such county road, right-of-way or other county property so vacated, and the County of
9 Whatcom shall not be liable for any damages or loss to the Grantee by reason of such
10 termination.

11 Section 15. Indemnification.

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

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

33 Section 16. Non-Exclusive Franchise.

34 This franchise shall not be deemed to be an exclusive franchise. It shall in no manner
35 prohibit the County of Whatcom from granting other franchises of a like nature or franchises
36 for other public or private utilities under, along, across, over and upon any of the county
37 roads, rights-of-way, or other County property subject to franchise, and shall in no wise

1 prevent or prohibit the County of Whatcom from construction, altering, maintaining, using or
2 vacating any of said roads, rights-of-way, drainage structures or facilities, irrigation structure
3 or facilities, or any other County property or affect its jurisdiction over them with full power
4 to make all necessary changes, relocations, repairs, maintenance as the County may deem fit.

5 Section 17. Successors and Assignees.

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

10 Section 18. Transferability.

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

14 Section 19. Incorporation.

15 Whenever any of the county roads, rights-of-way or other county property as
16 designated in this franchise, by reason of the subsequent incorporation of any town or city,
17 or extension of the limits of any town or city shall fall within the city or town limits this
18 franchise shall continue in force and affect as to all county roads, rights-of-way or other
19 county property not so included in city or town limits.

20 Section 20. Enforcement/Remedies.

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

30 Section 21. Reservation of Home Rule Charter Rights.

31 This franchise is subject to the provisions of the Home Rule Charter for Whatcom
32 County and, in particular, Section 9.30 thereof which provides as follows: All franchises
33 granted by the County Council shall be for a fixed term not to exceed twenty-five (25) years
34 and no exclusive franchise shall be granted for the use of any street, road, or public place.

1 All franchises shall be subject to the power of eminent domain and the right of the Council
2 or the people acting for themselves through the initiative or referendum to repeal, amend or
3 modify the franchise in the interest of the public; and every ordinance granting a franchise
4 shall contain a reservation of these rights. In any proceeding under eminent domain the
5 franchise itself shall have no value.

6 Section 22. Compliance with Laws and Regulations.

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

10 Section 23. Insurance.

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

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

31 Section 24. License, Tax and Other Charges.

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

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Section 25. Severability.

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

Section 26. Titles.

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

ADOPTED this 7th day of March, 1995.

ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON



to Ramona Reeves, Council Clerk



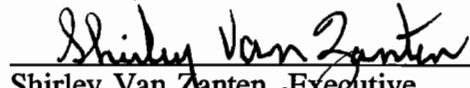
Robert Imhof, Council Chair

APPROVED AS TO FORM:

Approved () Denied



Civil Deputy Prosecutor



Shirley Van Zanten, Executive
Date: _____