

CLEARANCES	Initial	Date	Date Received in Council Office:	Agenda date	Assigned to:
Originator: Mary Scrimsher	MS	1/2/96	RECEIVED JAN 17 1996 WHATCOM COUNTY COUNCIL	1/23/96	Council Introduction
Division Head:				2/20/96	Hearing
Dept. Head: Jeff Monsen	JM	1/8			
Prosecutor: Randall J. Watts	RJW	1/3/96			
Purchasing/Budget:					
Executive:	PH	1-16-96			

SUBJECT:

25 Year Franchise for Birch Bay Water and Sewer District

ATTACHMENTS:

Letter of request from D.P. Sizemore, District Manager of Birch Bay Water & Sewer District.

SUMMARY 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: February 6, 1996
Amount budgeted for this item/project:	Is it (or will it be) within budget? YES / <input checked="" type="checkbox"/> / NO / <input type="checkbox"/> / (Please explain below)
Budget line item number(s):	

ORIGINATOR'S RECOMMENDED ACTION:

To adopt this 25-year non-exclusive Franchise.

COMMITTEE ACTION TAKEN:

COUNCIL ACTION TAKEN:

1996-32-

1/23/96: Introduced

2/20/96: Amended and adopted 7-0. Ord. 96-009

Adopted Resolution Number (this item only):

1 SPONSORED BY: Consent

2 PROPOSED BY: Consent

3 INTRODUCTION DATE: 1/23/96

1 ORDINANCE NO. 96-009

2 AN ORDINANCE IN THE MATTER OF GRANTING A NON-
3 EXCLUSIVE FRANCHISE TO THE BIRCH BAY WATER AND
4 SEWER DISTRICT FOR A PERIOD OF 25 YEARS PURSUANT
5 TO STATE LAW AND SECTION 9.30 OF THE WHATCOM
6 COUNTY HOME RULE CHARTER, TO OPERATE AND
7 MAINTAIN WATER & SEWER MAINS AND WATER
8 DISTRIBUTION LINES ALONG CERTAIN ROADS WITHIN
9 THE 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 of
13 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 right-
16 of-way of County roads in their respective counties for the construction and maintenance of
17 water works, gas pipes, telephones, telegraph and electrical light lines, sewers and other such
18 facilities and including cable television wires and other cable television facilities; and

19 WHEREAS, the Birch Bay Water and Sewer District has applied for a 25-year
20 nonexclusive franchise for installation, operation, maintenance and repair of water mains and
21 sewer mains in and along certain roads in Whatcom County, Washington, and notice of this
22 hearing having been duly published on the 27 day of ~~January~~ 1996, in the Bellingham
23 Herald, the official newspaper for Whatcom County, and that it appearing to the County
24 Council that notice of said hearing having been given as required by law and that it is in the
25 public interest to grant the franchise for a period of 25 years; and
26

27 WHEREAS, the Birch Bay Water and Sewer District has agreed to the addition of
28 certain administrative 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 Birch Bay Water and Sewer District, located in
3 the 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 water main and sewer 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. **Portal Way and Loomis Trail Road** - located within sections 16, 17, 20, 21, 22,
10 26, 27, 35, & 36, T40N, R1E, W.M. as described herein ; approximately 2.2 miles of Sewer
11 Force Main from just north of Birch Bay Lynden Road northwest along Portal Way and then
12 west on Loomis Trail Road to an existing manhole 0.82 miles east of Blaine Road. Construct
13 approximately 7.3 miles of a 9.2 mile 16 inch water supply pipeline and appurtenances to
14 convey treated Nooksack River water from Brown Road at Malloy Road in Ferndale east to
15 Portal Way, then northwest along Portal Way, then west on Loomis Trail Road to intertie with
16 an existing pipeline 0.82 miles east of Blaine Road on Loomis Trail Road. Approximately 325
17 lineal feet of the sewer force main and 310 lineal feet of the water pipeline will be within the
.8 shoreline jurisdiction of California Creek.

19 Section 2. Acceptance of Franchise.

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

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

1 Section 3. Entering Rights of Way.

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

7 Section 4. Construction Standards.

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

15 Section 5. Maintenance and Restoration

16 (a) Restoration. In case of disturbance of any road, public way, paved area or public
17 improvement, the Grantee shall, at its own cost and expense and in accordance with the
18 requirements of local law, restore such road, public way, paved area or public improvement to
19 substantially the same condition as existed before the work involving such disturbance took
20 place.
21

22 (b) Maintenance. The Grantee shall maintain all above ground improvements that it
23 places on County right-of-way pursuant to this franchise. In order to avoid interference with
24 the County's ability to maintain the right-of-way, the Grantee shall provide a clear zone of five
25 (5) feet on all sides of such improvements.

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

28 (c) Disputes. In any dispute over the adequacy of restoration or maintenance relative to
29 this Section, final determination shall be the prerogative of the Public Works Department of
30 Whatcom County.

1 Section 6. Construction Application.

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

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

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

22 (a) In any work which requires breaking of soil of the county roads, rights-of-way or
23 other county property subject to this franchise for the purpose of laying, relaying, connecting,
24 disconnecting and repairing the said transmission lines and facilities, and making connections
25 between the same to structures and buildings of consumers or making connections to other
26 facilities of the Grantee now in existence or hereafter constructed, the Grantee shall be
27 governed by and conform to the general rules adopted by the officers charged with the
28 supervision and care of such county roads, rights-of-way, and other county property; and the
29 Grantee at its own expense and with all convenient speed shall complete the work for which
30 the soil has been broken and forthwith replace the work and make good the county road,
31 rights-of-way or other county property and leave the same in as good condition as before the
32 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 Public Works before such breaking of the soil is commenced.
5 Provided, that the Director of Public Works may require a performance bond in the sum
6 sufficient to guarantee that such county roads, rights-of-way or other county property shall be
7 restored to the same condition as they were prior to the breaking of the soil. Said bond shall
8 be in addition to any other such requirements contained herein.

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

13 8. Construction - Other Lines and Facilities.

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

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

25 Section 9. Construction - Public Safety and Inconvenience.

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

1 sustained through its carelessness or neglect, or through any failure or neglect to properly
2 guard or give warning of any trenches, ditches or tunnels dug or maintained by the Grantee.

3 Section 10. County Rights Reserved.

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

11 Section 11. Relocation of Lines and Facilities.

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

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

28 Section 12. County Road Work Permitted.

29 The laying, construction, operation and maintenance of the Grantee's transmission lines
30 and facilities authorized by this franchise shall not preclude the County of Whatcom, its agents
31 or its contractors from blasting, grading, excavating or doing other necessary road work
32 contiguous to the said lines and facilities of the Grantee provided that the Grantee shall be

1 given forty-eight (48) hours notice of said blasting or other work in order that the Grantee may
2 protect its lines and facilities.

3 Section 13. Monuments and Survey Markers.

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

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

17 Section 14. Vacations.

18 If at any time the County of Whatcom shall vacate any county road, right-of-way or
19 other county property which is subject to the rights granted by this franchise and said vacation
20 shall be for the purpose of acquiring the fee of other property interest in said road, rights-of-
21 way or other county property for the use of Whatcom County, in either its propriety or
22 governmental capacity, then the Council of Whatcom County may at its option and by giving
23 thirty (30) days written notice to the Grantee, terminate this franchise with reference to such
24 county road, right-of-way or other county property so vacated, and the County of Whatcom
25 shall not be liable for any damages or loss to the Grantee by reason of such termination. Prior
26 to vacation, Grantee shall be granted a ten (10) foot wide permanent easement for any existing
27 utility line.

28 Section 15. Indemnification.

29 (a) The Grantee by acceptance of the privileges granted hereunder, does hereby agree
30 and covenant to indemnify, defend, and save harmless Whatcom County and those persons
31 who were, are now, or shall be duly elected or appointed officials or members or employees
32 thereof, against and from any loss, damage, costs, charges, expenses, liability, claims,

1 demands or judgments whatsoever kind or nature whether to persons or property, arising
2 wholly or partially out of any act, action, neglect, omissions or default on the part of the
3 Grantee, his sub-contractors and/or employees which may occur by reason of construction,
4 operation and maintenance of the Grantee's said transmission lines and facilities. In case that
5 suit or action is brought against the County of Whatcom for damages arising out of or by
6 reason of the above-mentioned causes, the Grantee will upon notice of the filing of a claim or
7 the commencement of said action, appear and defend the same at its sole cost and expense, and
8 in case judgment shall be rendered against the County of Whatcom in suit or action, the
9 Grantee will fully satisfy said judgment within ninety (90) days after said suit or action shall
10 have finally been determined, if determined adversely to Whatcom County. Upon the
11 Grantee's failure to satisfy said judgment within a ninety (90) day period, this franchise shall
12 at once cease and terminate and the County of Whatcom shall have a lien upon the
13 transmission lines and all other facilities used in its construction, operation and maintenance of
14 the Grantee's transmission system which may be enforced against the property for the full
15 amount of any such judgment so taken against Whatcom County.

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

18 Section 16. Non-Exclusive Franchise.

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

27 Section 17. Successors and Assignees.

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

1 Section 18. Transferability.

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

5 Section 19. Incorporation.

6 Whenever any of the county roads, rights-of-way or other county property as
7 designated in this franchise, by reason of the subsequent incorporation of any town or city, or
8 extension of the limits of any town or city shall fall within the city or town limits this franchise
9 shall continue in force and affect as to all county roads, rights-of-way or other county property
10 not so included in city or town limits.

11 Section 20. Enforcement/Remedies.

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

21 Section 21. Reservation of Home Rule Charter Rights.

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

31 Section 22. Compliance with Laws and Regulations.

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

4 Section 23. Insurance.

5 (a) Upon acceptance of such franchise, the Grantee shall file with the Whatcom County
6 Council, and shall thereafter, during the entire term of such franchise, maintain in full force
7 and effect, a corporate insurance policy or other adequate surety agreement in the amount of
8 ONE MILLION DOLLARS (\$1,000,000.00) for the property damage coverage, and FIVE
9 HUNDRED THOUSAND DOLLARS (\$500,000.00) for public liability coverage, so as to
10 protect the County against damages or costs as set forth in Section 14 above, and there shall be
11 recoverable, jointly and separately from the principal and surety, any such damages or costs
12 suffered or incurred by the County, including attorneys' fees and costs of any action, or
13 proceedings, and including the full amount of any compensation, indemnification, cost of
14 removal of any property or other costs which may be incurred up to the full principal amount
15 of such insurance policy; and said condition shall be a continuing obligation during the entire
16 term of such franchise and thereafter until Grantee shall have satisfied in full any and all
17 obligations to the County and any user which arise out of or pertain to said franchise. Neither
18 the provisions of this section, nor any insurance policy accepted by the County pursuant
19 hereto, nor any damages recovered by the County thereunder, shall be construed to excuse
0 faithful performance by the Grantee, or limit the liability of the Grantee under any franchise
21 issued pursuant to this ordinance.

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

25 Section 24. License, Tax and Other Charges.

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

30 Section 25. Severability.

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

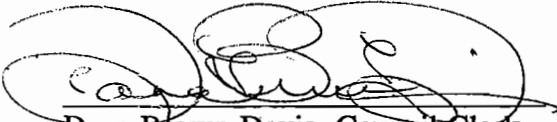
32 Section 26. Titles.


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

3 ADOPTED this 20 day of February 1996.

4 ATTEST :


WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

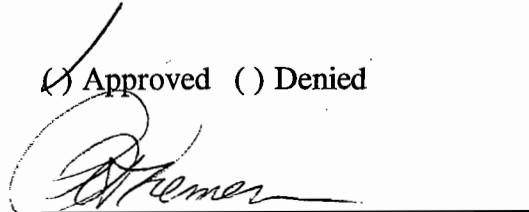
6 
7 Dana Brown-Davis, Council Clerk


L. Ward Nelson, Council Chair

8 APPROVED AS TO FORM:

Approved Denied

9 
10 Civil Deputy Prosecutor
11


Pete Kremen, County Executive
Date: 2-26-96

12 ..wpdocs\forms\water.fm