

PUBLIC UTILITIES FRANCHISE

Granted by Clallam County Board of Commissioners
to

City of Sequim

This franchise to construct, extend, connect, repair, maintain, operate and remove transmission and effluent lines owned and/or operated by the City of Sequim for power, water, and wastewater facilities over, under, along, and upon the county roads within Clallam County is granted to the City of Sequim upon the following express terms and conditions:

1. **DEFINITIONS:** The term "county roads" or "roads" as used herein shall include, but not be limited to, county roads, avenues, alleys, streets, boulevards, public ways, public rights-of-way, viaducts, and bridges. In addition to the enumerations herein, "county roads" or "roads" shall also include: all roads in Sections 16, 17, 18, 19, 20, 21, 28, 29, 30, and 31, Township 30N, Range 3W; and Sections 13, 24, and 25, Township 30 N, Range 4W, W.M.
2. **ANNEXATION:** Whenever any of the road as designated in this franchise shall fall within a city or town limits by reason of subsequent incorporation or annexation, then all the rights and privileges herein granted shall terminate in respect to said roads so incorporated or annexed; but this franchise shall continue in force and effect in respect to all roads not so incorporated or annexed.
3. **POWERS:** The Grantee shall have the right and authority to enter upon the above-mentioned roads for the purpose of construction, extension, connection, repair, maintenance, operation, and removal of facilities as authorized herein in conformity with such county, state, and federal codes, regulations and standards, as now or hereafter amended, governing such facilities.
4. **TERM:** The franchise granted by this ordinance shall last for a term of twenty (20) years from the date of grant unless terminated by either party upon 180 days written notice to the non-terminating party. Said notice of termination shall be deemed complete on the third day following mailing to, by certified mail, return receipt requested, or upon personal service at, the non-terminating party's principal place of business.
5. **PERMITS:** Before any work is done by the Grantee under this franchise, it shall first file with the Director of the Clallam County Department of Public Works (hereinafter the Director) an application for a permit to do such work, accompanied by design drawings in triplicate showing the position, location, and type of facilities sought to be constructed, extended, connected, repaired, maintained, operated or removed, showing the relative positions to existing roads and property lines. Such prints shall be submitted on 24-inch by 36-inch paper. Such drawings shall be drawn to scale (1 inch = 50 feet) giving an accurate graphic representation of local improvements including, but not limited to, sidewalks, roadways, property line turnouts, parking strips, telephone distribution poles, electric distribution poles, conduits, sewer lines, water lines, as may exist over, under, along, and upon the roads sought to be occupied and immediately adjacent thereto and said locations shall be drawn in such a manner that identification in the field is possible. The Director shall either approve and issue the permit, approve subject to conditions, or reject the application. If the application is rejected, the Director shall provide the Grantee, in written form, with an explanation of the reasons that the application was rejected.

Permits shall not be required for work performed by Grantee's personnel and equipment relating to the following provided that no obstruction, improvement, or construction is located so as to constitute a hazard to motor or pedestrian traffic:

- a. Tree trimming and brushing, unless the vegetation in need of trimming or brushing is the subject of a "no trim" agreement between Clallam

Public Utilities Franchise

- County and the property owner, his heirs, successors, or assigns, where the vegetation is located;
- b. Maintenance repairs where no damage to the road or its appurtenances will occur;
 - c. Installation of customer service laterals from existing lines where no damage to the road or its appurtenances will occur;
 - d. Emergency work provided that Grantee shall notify the Director of the nature and scope of said emergency work as soon thereafter as possible but in no event later than forty-eight (48) hours after commencement of said emergency work and shall provide the Director, if requested to do so, with as-built drawings which are consistent with the requirements for permit drawings hereunder.
6. **COMPLIANCE WITH LAW AND STANDARDS:** The Grantee shall construct, extend, connect, repair, maintain, operate, and remove its facilities at its own risk. The Director shall inspect said construction, extension, repair, maintenance, or removal to determine whether the construction, extension, repair, maintenance, or removal adversely impacts the county road. Approval by the Director of the construction, extension, repair, maintenance, or removal shall not be construed as an approval of the nature, extent, quality, or workmanship of the Grantee's work and shall be construed to mean nothing other than that the Grantee's work does not adversely impact the physical characteristics of the county road. The location of all the Grantee's facilities, their depth below or height above the surface of the ground or grade of any road, and their lateral location in relation to the road centerline shall be in compliance with all county, state, and federal codes, regulations, and standards. The Grantee shall at all times insure that its construction, extension, connection, repair, maintenance, operation, and removal of its facilities does not diminish the safety of the public using, or in proximity to, county roads.
7. **RECORDS:** Grantee shall at all times keep at its principal place of business full and complete plans, maps, and records showing the location of all franchise facilities located over, under, along, or upon the roads. Grantee shall file with the Director on or before the first Monday of February of each year, a current map or set of maps drawn in the same manner as design drawings as set forth in Paragraph 5 of this franchise, showing the location of all franchise facilities installed over, under, along, or upon the roads within the limits of Clallam County during the previous calendar year. Said map or set thereof shall be provided on reproduction quality mylar or, alternatively, if the Grantee elects to provide non-reproducible copies, then additional copies shall be available to Clallam County if requested at no cost to Clallam County.
8. **RESTORATIONS:** The Grantee shall leave all roads in as good and safe condition in all respects as they were before the commencement of such work by the Grantee, its officers, agents, contractors, or employees, or when such condition has met with the approval of the Director.
- In case of any damage to said roads or their appurtenances, including, but not limited to, turnouts, gutters, ditches, wood or concrete walks, drain pipes, hand or embankment rails, bridges, trestles, wharves or landings, or to the property of third parties, resulting from any work performed or failed to be performed by the Grantee, the Grantee agrees to immediately repair said damage at its own cost and expense to the satisfaction of the Director. Clallam County may at any time, do, order, and have done any and all work considered necessary to restore to a good and safe condition any such roads or appurtenances left by the Grantee, its officers, agents, contractors, or employees in a condition different from that which existed prior to the work and the Grantee, upon demand, shall pay to the County all costs of such construction or repair and of doing such work.

Public Utilities Franchise

9. **HOLD HARMLESS:** The Grantee shall defend and indemnify Clallam County, its officers, agents, and employees, and any and all other public agencies and their members, officers, agents, and employees, against any and all claims, demands, suits, actions, damages, expenses and costs, including a reasonable attorney fee, for injury to or death of any person or any damage to any property caused by the Grantee, its officers, agents, contractors, or employees, by any manner whatsoever, in the construction, extension, connection, repair, maintenance, operation, or removal of its facilities, or arising out of the exercise of any right or privilege under this franchise.
- Approval by the county pursuant to Paragraph 5 of this franchise shall be no defense for avoidance of this covenant.
10. **CONCURRENT POWERS:** The construction, extension, connection, repair, maintenance, operation, or removal of the Grantee's facilities shall not preclude Clallam County, its officers, agents, contractors, or employees from blasting, grading, or doing other necessary road work contiguous to the Grantee's facilities, provided that the Grantee shall have ten (10) days notice of said blasting, excavating, or embanking in order that the Grantee may protect its facilities.
- If, at any time, Clallam County, deeming it advisable to improve any of its roads by, including, but not limited to, grading, regrading, paving, altering, repairing, realigning, widening, or draining, the Grantee, upon written notice by Clallam County, shall, at its own expense, except as detailed below, immediately so raise, lower, or move its facilities to allow Clallam County to complete its road improvement and to conform to such improved roads and the county shall in no way be held liable for any damages to Grantee that may occur by reason of the county's improvements or by the exercise of any rights so reserved in this section or grant, except as a result of negligence on the part of the county. Said notice shall indicate the date by which the Grantee is required to raise, lower, or move its facilities by the date set forth in the written notice shall entitle Clallam County to liquidated damages in the amount of \$250.00 per day for each day of non-compliance.
- The Grantee shall raise, lower, or move its facilities at the County's expense if the Grantee shall have prior easement or right-of-use rights, or as otherwise agreed to between the parties.
11. **FRANCHISE NOT EXCLUSIVE:** This grant or privilege shall not be deemed or held to be an exclusive franchise. It shall in no manner prohibit Clallam County from granting other franchises of a like nature for other public or private purposes over, under, along, or upon any of the county roads and shall in no way prevent or prohibit Clallam County from using any of said roads or effect its jurisdiction over them or any part of them, with full power to make all necessary changes, relocation, repairs, maintenance, etc., at it deems fit.
12. **ASSIGNMENT:** Grantee shall not have the right to assign the franchise or otherwise transfer it in any manner whatsoever, or sell, lease, license, or permit others to use or transfer in any manner whatsoever any interest in all or any part of its facilities that are installed or operated hereunder, except on prior written approval of the Board of Clallam County Commissioners. In the event that the Board of Clallam County Commissioners determines that the assignment should be approved, that approval shall be contingent upon acceptance of the terms of the franchise by the assignee in a form satisfactory to the Board and the payment of all costs and expenses incurred by Clallam County in approving the assignment.
13. **FORFEITURE:** The franchise may be forfeited, at the option of the county, upon failure or violation by Grantee to observe the terms and conditions set forth herein. Forfeiture may be exercised by written notice to Grantee

Public Utilities Franchise

of failure to observe the terms and conditions hereof, followed by Grantee's refusal to eliminate or correct such failure or violation within 120 days. In the event of any failure or violation, the county may bring suit in the manner provided by law for the forfeiture of the franchise without the necessity of resorting to procedures in quo warranto, and the exercise of such remedy of forfeiture shall not preclude exercise of any other right or remedy given to the county by law, whether exercised concurrently or subsequently.

14. **ABANDONMENT:** Grantee may at any time abandon the rights and authority granted hereunder, provided that six (6) months' prior written notice of intention to abandon is given to the Board of County Commissioners and provided further that all roads occupied by Grantee's facilities are restored to that condition existing immediately before such facilities were removed.
15. **AMENDMENTS:** Clallam County reserves for itself the right at any time upon forty-eight (48) hours notice to the Grantee to change, amend, modify, or amplify any of the provisions or conditions herein enumerated to conform to any local, state, or federal law or regulation or recognized engineering practice relating to the public welfare, health, safety, or highway design as may hereinafter be adopted or recognized.
16. **MONUMENT REFERENCE:** Before any work is performed under this franchise, the Grantee shall reference all monuments and markers of every nature relating to subdivision plats, highways, and all other surveys that are affected by such work. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the Director before placement. The replacement of all such monuments or markers disturbed during the Grantee's operation shall be made as expeditiously as conditions permit and as directed by the Director. The cost of monuments or other markers lost, destroyed, or disturbed and the expense of replacement of approved monuments shall be borne by the Grantee. Said reference of monuments shall be performed by a surveyor licensed by the State of Washington or such other person authorized by state law to prepare and file a survey.
17. **REMOVAL:** Except as otherwise provided herein, within six (6) months after the use of any facilities has been permanently discontinued or this franchise expires or is otherwise terminated, Grantee shall forthwith remove its facilities from the roads. Grantee shall restore such roads to that condition existing immediately before such facilities were removed; provided that such property shall not be removed if the Director shall determine that such removal will cause unreasonable damage to such roads and provided further, that should the Director request that any facilities be allowed to remain in place for the use of the Grantor, then such facilities shall not be removed, and title thereto shall be transferred to Grantor at an agreed upon price. The Director may, at his discretion, permit any other facilities to be abandoned in place, provided that Grantee shall submit to the Director an instrument transferring to the county ownership of such facilities. In the event that the Grantee does not forthwith remove its facilities as required herein, Clallam County reserves the right to effect such removal and assess all costs associated therewith against the Grantee. Upon presentation of an invoice, the Grantee shall pay the amounts stated therein to Clallam County.
18. **SEVERABILITY:** If any article, section, sentence, clause, or phrase of this ordinance is for any reason held illegal, invalid, or unconstitutional, such invalidity shall not affect the validity of the franchise or any of the remaining portions. The invalidity of any portion of this franchise shall not abate, reduce, or otherwise affect any consideration or other obligation required of Grantee.

Public Utilities Franchise

19. **ADDITIONAL POWERS:** This franchise shall be subject to the power of eminent domain and the right of the Board of Clallam County Commissioners or the people acting for themselves through the initiative or referendum to repeal, amend, or modify the franchise in the interests of the public.
20. **ENFORCEMENT:** In the event that Clallam County seeks judicial enforcement of any term of this agreement, the Grantee shall reimburse Clallam County for all disbursements and costs incurred, including a reasonable attorney's fee, if Clallam County prevails.
21. **ACCEPTANCE:** The undersigned hereby accepts all the rights and privileges of the above-granted franchise subject to all the terms, conditions, stipulations, and obligations contained herein.

Edward Beggs
Signature

Mayor (City of Sequim)
Title

July 14, 1988
Date

P O Box 2108
Address

Sequim, WA. 98382
Address