

KITTITAS COUNTY
DEPARTMENT OF PUBLIC WORKS

STAFF REPORT

HEARING DATE: December 6, 2016

ACTION REQUESTED: Request to Set a Public Hearing to Consider a Non-Exclusive Irrigation Franchise with Steve Hymas along Sorenson Road.

BACKGROUND: Public Works received a Franchise Application from Steve Hymas to place an irrigation pipe along Sorenson Road.

INTERACTION: Public Works

RECOMMENDATION: Set a Public Hearing for December 20, 2016 at 2pm

HANDLING: Return one (1) signed Notice of Public Hearing

ATTACHMENTS: Franchise, Public Hearing Notice

LEAD STAFF: Lucas Huck
County Engineer

Public Notice
Kittitas County, Ellensburg WA

The Board of Kittitas County Commissioners will meet at 2:00 pm on December 20, 2016 in the Commissioner's Auditorium located at the Kittitas County Courthouse, 205 W. 5th, Room 109, Ellensburg, Washington to consider a Non-Exclusive Irrigation Franchise with Steve Hymas along Sorenson Road.

More information is online at <http://www.co.kittitas.wa.us/notices/>.

Clerk of the Board

Publish:

Daily Record: 12/08/16; 12/15/16

For more information, contact Public Works

Anyone with an interest in this matter is urged to attend said hearing where all testimony will be taken. Written comments may be received at 205 W 5th Ave. STE 108, Ellensburg, WA 98926 at or prior to the hearing.

Kittitas County complies with all ADA requirements.

**KITTITAS COUNTY PUBLIC WORKS
STATE OF WASHINGTON**

**NON-EXCLUSIVE IRRIGATION WATER FRANCHISE
TO USE COUNTY ROADS, RIGHTS-OF-WAY AND OTHER
COUNTY PROPERTY WITHIN KITTITAS COUNTY**

Application of **Steve Hymas**, (OR HIS/HER SUCCESSORS), hereafter referred to as "FRANCHISEE" for irrigation water crossing over, along and under county roads, rights-of-way and other county property in Kittitas County, Washington, as hereinafter set forth, having come on regularly for hearing before the County under the provisions of RCW Chapter 36.55, and it appearing to the Board that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the franchise herein granted;

WHEREAS, the COUNTY also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the needs for the listed parcels as described at this date as **Tax Lot Number(s) 21006, 21007 and 21008**, and that the coordination, planning, and management of the COUNTY's rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

WHEREAS, the COUNTY has determined that the development of a comprehensive plan for rights-of-way use and management is the most effective means for managing the current use of rights-of-way and ensuring prudent and appropriate decisions concerning the use of rights-of-way in the future; and

WHEREAS, "FRANCHISEE", has determined that it is in their best interests to move forward with the installation of facilities within the public rights-of-way prior to the completion of the comprehensive rights-of-way use and management plan and has agreed to abide by the terms and conditions of such a plan once it has been completed;

NOW THEREFORE; IT IS ORDERED:

Section 1. Non-exclusive Franchise Granted. The county of Kittitas hereby grants to "FRANCHISEE", subject to the conditions prescribed in this Franchise Agreement, the franchise rights and authority to construct, replace, repair, monitor, maintain, use and operate the equipment and facilities necessary for a irrigation water crossing, within the COUNTY-owned rights-of-way generally described below, and hereinafter referred to as the "franchise area":

Such franchise shall not be deemed to be exclusive to "FRANCHISEE", and shall in no way prohibit or limit the COUNTY's ability to grant other franchises, permits, or rights along, over, or under the areas to which this franchise has been granted to "FRANCHISEE"; provided, that such other franchises do not unreasonably interfere with "FRANCHISEE", exercise of franchise rights granted herein as determined by the COUNTY. This franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent, the COUNTY from using the franchise area or affect the COUNTY's jurisdiction over such area in any way.

Section 2. Authority. The Director of Public Works or his or her designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise and may develop such rules, policies, and procedures as he or she deems necessary to carry out the provisions contained herein.

Section 3. Construction Provisions and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance

with the terms of this franchise and may result in some or all of the penalties specified in Section 4. See KCC 12.56

- A. **Permit Required** - No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the franchise area without first obtaining a permit to Perform Work in the County Right-Of-Way from the COUNTY of Kittitas, Department of Public Works. "FRANCHISEE" shall post a bond in the amount deemed necessary by the Kittitas County Director of Public Works.
- B. **Coordination** - All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with COUNTY infrastructure, future COUNTY of Kittitas Capital Improvement Projects, all developer improvements, and pertinent codes and franchises.
- C. **Construction Standards** - Any construction, installation, maintenance, and restoration activities performed by or for "FRANCHISEE", within the franchise area shall be conducted and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All construction, installation, maintenance, traffic control and restoration activities shall be conducted such that they conform to the most current COUNTY of Kittitas standards in effect at the time that such activities take place, and as detailed in the Manual on Accommodating Utilities.
- D. **Underground Installation Required** - All irrigation water system components shall be installed underground unless otherwise exempted from this requirement, in writing, by the Director of Public Works for the COUNTY.
- E. **Removal or Abandonment** - Upon the removal from service of any irrigation water lines or other associated structures, facilities and amenities, "FRANCHISEE", shall comply with all applicable standards and requirements prescribed by the COUNTY of Kittitas Public Works Department for the removal or abandonment of said structures and irrigation water facilities.
- F. **"One-Call" Location & Liability** – Kittitas County will not locate private infrastructure. The "One-Call" locate will be the responsibility of the "FRANCHISEE".
- G. **As-Built Plans Required** - "FRANCHISEE" shall present as-built plans to be inspected and approved by the Kittitas County Public Works Director.
- H. **Protect Public Interest** -Applicant understands and agrees that Kittitas County Code Chapter 12.56 Incorporates provisions necessary to protect the public interest and investment with regard to utilization of County road right-of-way and further, that the provisions of Chapter 12.56 are in full force and effect as if herein included or attached to or made a part of this franchise. Detailed restoration requirements are provided in the Manual on Accommodating Utilities.
- I. **Relocation** - Whenever the COUNTY determines that it is necessary for any of "FRANCHISEE", facilities or other system components to be moved or relocated to accommodate the construction, or enhancement of any COUNTY-owned public amenity in the franchise area, the COUNTY shall notify "FRANCHISEE", in writing of such determination, and "FRANCHISEE", shall promptly submit plans for such relocation. Within ninety (90) days of the approval by the COUNTY of the plans for relocation, "FRANCHISEE", shall relocate those facilities or structures designated by the COUNTY. The costs of moving or relocating "FRANCHISEE" facilities or structures, including but not limited to costs for design, engineering and construction is the responsibility of the "FRANCHISEE".

Section 4. Franchise Compliance.

- A. Franchise Violations** - The failure by "FRANCHISEE" to comply fully with any of the provisions of this Franchise Agreement may result in a written notice from the COUNTY which describes the violations of the franchise and requests remedial action within thirty (30) days of receipt of such notice. If "FRANCHISEE", has not attained full compliance at the end of the thirty (30) day period following receipt of the violation notification, the COUNTY may declare an immediate termination of all franchise rights and privileges; provided that full compliance was reasonably possible within that thirty (30) day period. The demonstration of due diligence on the part of "FRANCHISEE", may be grounds for the grant of an extension in the period during which compliance is to be attained; provided that, "FRANCHISEE", continues to pursue correction of any violations of the Franchise Agreement noted by the COUNTY.
- B. Emergency Actions** - If any of "FRANCHISEE", actions, or any failure by "FRANCHISEE", to act to correct a situation caused by "FRANCHISEE", is deemed by the COUNTY to create a threat to life or property, the COUNTY may order "FRANCHISEE", to immediately correct said situation threat or, at the COUNTY's discretion, the COUNTY may undertake measures to correct said situation threat itself; provided that, when possible, the COUNTY shall notify "FRANCHISEE", of said threat and give "FRANCHISEE", an opportunity to correct said threat before undertaking such measures itself. "FRANCHISEE", shall be liable for all costs, expenses, and damages attributable to the correction of such an emergency situation as undertaken by the COUNTY to the extent that such situation was caused by "FRANCHISEE", and shall further be liable for all costs, expenses, and damages resulting to the COUNTY from such situation and any reimbursement of such costs to the COUNTY shall be made within thirty (30) days of written notice of the completion of such action or determination of damages by the COUNTY. The failure by "FRANCHISEE", to take appropriate action to correct a situation caused by "FRANCHISEE", and identified by the COUNTY as a threat to public or private safety or property shall be considered a violation of franchise terms and each day that such a situation continues to exist and "FRANCHISEE", fails to take appropriate action to abate said situation shall be regarded as a separate violation.
- C. Other Remedies** - Nothing contained in this Franchise Agreement shall limit the COUNTY's available remedies in the event if "FRANCHISEE" (OR HIS SUCCESSORS), failure to comply with the provisions of this Franchise Agreement, to include but not limited to, the COUNTY's right to sue for specific performance and/or damages.
- D. Removal of System** - In the event that this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, "FRANCHISEE", shall at his sole expense, promptly remove all irrigation water system components and facilities, provided that, the COUNTY, at its sole option, may allow "FRANCHISEE", to abandon its facilities in place.

Section 5. Insurance. "FRANCHISEE" shall present such insurance deemed necessary by the Kittitas County Public Works Director.

Section 6. Other Permits & Approvals. Nothing in this agreement shall relieve "FRANCHISEE", from any obligation to obtain approvals or necessary permits from applicable federal, state, and COUNTY authorities for all activities in the franchise area.

Section 7. Transfer of Ownership. The rights, privileges, benefits, title, or interest provided by this franchise shall be transferred to the new owner if any of these parcels change ownership.

Section 8. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of fifteen (15) years from the effective date of this franchise and will be renegotiable at the end of that time.

Section 9. Administrative Fees. NOT APPLICABLE

Section 10. Franchise Fee: \$600.00

Section 11. Capacity for COUNTY Use. NOT APPLICABLE

Section 12. Notices. Any notices to be served upon the COUNTY or "FRANCHISEE", shall be delivered to the following addresses respectively:

COUNTY of Kittitas
Department of Public Works
411 N. Ruby St. Suite #1
Ellensburg, WA 98926

Steve Hymas
26476 Southwest "U"
Mattawa, WA 99349

Section 13. Claims for Damages. In the construction, installation, repair, operation, and maintenance of its structures and facilities, "FRANCHISEE", shall use reasonable and appropriate precautions to avoid damage to persons or property. "FRANCHISEE", shall indemnify and save harmless the COUNTY from all claims, actions or damages of every kind or description, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any negligent act or omission of "FRANCHISEE", its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to "FRANCHISEE", by this franchise. In the event any claim or demand is presented to or filed with the COUNTY which gives rise to "FRANCHISEE", obligation pursuant to this section, the COUNTY shall within a reasonable time notify "FRANCHISEE", thereof and "FRANCHISEE", shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the COUNTY is named a party, and which suit or action is based on a claim or demand which gives rise to "FRANCHISEE", obligation pursuant to this section, the COUNTY shall promptly notify "FRANCHISEE", thereof, and "FRANCHISEE", shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, "FRANCHISEE", may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require "FRANCHISEE", to: (i) protect and save the COUNTY harmless from any claims, actions, or damages; (ii) settle or compromise any claim, demand, suit, or action; (iii) appear in or defend any suit or action; or, (iv) pay any judgment or reimburse the COUNTY's costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the sole negligence of the COUNTY. To the extent of any concurrent negligence between "FRANCHISEE", and the COUNTY, "FRANCHISEE", obligations under this paragraph shall only extend to its share of negligence or fault. The COUNTY shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege, and authority granted by or exercised pursuant to this franchise when the COUNTY determines that such participation is required to protect the interests of the COUNTY or the public. Such participation by the COUNTY shall be at the COUNTY's sole cost and expense.

Section 14. Severability. If any section, sentence, clause or phrase of this Franchise is held to be invalid or unconstitutional by a court of competent jurisdiction, the COUNTY may, at its sole option, deem the entire franchise to be affected and thereby nullified. However, in the event that a determination is made that a section, sentence, clause, or phrase in this Franchise is invalid or unconstitutional, the COUNTY may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this Franchise; provided that, if the COUNTY elects to enforce the remaining provisions of the Franchise, "FRANCHISEE", shall have the option to terminate the franchise.

Section 15. Indemnification. "FRANCHISEE", its successors and assigns, agrees and covenants to indemnify and hold harmless the County of Kittitas from and against any and all liability, loss, cost, damages, whether to persons or property, or expense of any type or nature, including reasonable attorney's fees and expert witness fees, to the extent it arises from any negligent act or omission or willful misconduct of "FRANCHISEE", its successors and assigns arising from or connected to "FRANCHISEE", work under this franchise, provided however, that in case any suit or action is instituted against the County by reason of any such damage or injury, County shall: (i) cause written notice thereof to be given unto

"FRANCHISEE"; and (ii) provide all reasonably requested assistance in defense or settlement of such claim at "FRANCHISEE", expense; and (iii) retain the right to control the defense of settlement or such claims.

Section 16. Effective Date. This Franchise shall take effect and be in full force and effect five (5) days after approval of the Kittitas County Board of Commissioners which is hereby approved.

Section 17. Other Conditions: None

This franchise is not valid until accepted and signed by "FRANCHISEE"

DATED this ____ day of _____, _____, at Ellensburg, Washington.

**BOARD OF COUNTY COMMISSIONERS
KITITAS COUNTY, WASHINGTON**

ATTEST:

Obie O'Brien, Chair

Clerk of the Board

Paul Jewell, Vice-Chair

APPROVED:

Laura Osiadacz, Commissioner

Approved as to Form:

Prosecuting Attorney

WSBA # _____

ACCEPTED:

Steve Hyman - "FRANCHISEE"-Signature

_____ - "FRANCHISEE"-Signature

Print name: STEVE HYMAN

DATED: 11-2-16

Title: _____

Print Name: _____

DATED: _____

Title: _____

SOUTH FERGUSON RD

22

SORENSEN RD

culvert
(PVC 8")

T17
N-R19 E /

Hymas

Hymas

Hymas

27

culvert is replacing an older
failed culvert.