

ORDINANCE NO. 2661

AN ORDINANCE granting to Washington State Department of Transportation the right and franchise to construct, lay, maintain and operate a storm water line and outfall for the transmission of storm water over, under, and across certain real property, and specifying the limitations and conditions of such franchise.

THE CITY COUNCIL OF THE CITY OF CAMAS DO ORDAIN AS FOLLOWS:

Section I

GRANT OF FRANCHISE

Washington State Department of Transportation, hereinafter referred to as "Grantee," is hereby granted the right, privilege, and franchise to construct, lay, maintain, and operate a storm water line and outfall, and related appurtenances, for the transmission of storm water over, under, and across the real property described in Exhibit A, attached hereto and by this reference incorporated herein.

The right, privilege, and franchise herein granted shall be deemed non-exclusive, and shall continue and endure throughout the term of this ordinance so long as the Grantee is in compliance with all the terms of this ordinance and all applicable laws and regulations of the federal, state and local government.

Section II

TERM

This franchise and the rights granted hereunder to Grantee in this ordinance shall extend and endure for a term of twenty-five (25) years from the effective date of this ordinance unless terminated sooner by the City as hereinafter provided.

Section III

CONSTRUCTION AND MAINTENANCE

All work done by Grantee in connection with the construction, operation, and maintenance of said storm water line and outfall shall be performed to the satisfaction and subject to the supervision of the city public works director or other duly constituted representative of the City.

Grantee shall not cause any permanent injury to the streets of the City or to the City's utilities located therein, nor shall Grantee in any manner unreasonably disturb or interfere with any water or sewer lines or other conduits now or hereafter laid by the City or any authorized company or corporation in said streets.

Except as to emergency repairs, Grantee shall, prior to installing, repairing, or relocating any pipe, main, conduit, or service line, file with the Public Works Department, or such other person designated by the City, plans and specifications thereof showing the work to be done, the location and

nature of the installation to be made, repaired or maintained, and a schedule showing the time of beginning and completion, and shall secure the approval of the City before proceeding with any such work, and shall obtain all necessary permits prior to proceeding with such work. Any subsequent changes in the plans, specifications, or schedules shall require the approval of the City.

Section IV

REPAIR

The Grantee shall, at its own cost and expense, promptly repair all streets and other public places in any way disturbed by the Grantee, its agents, employees, or contractors, and shall restore the same to as good a condition as the same were prior to doing any work therein. Whenever Grantee's construction, maintenance, and repair of the storm water line and outfall require trenching in the improved roadway, Grantee shall design and install a 0.12 foot depth asphalt pavement overlay over the entire roadway where Grantee has cut trenches into the improved roadway.

Section V

RELOCATION

Nothing in this Ordinance shall be deemed or construed to limit the power of the proper authorities of the City of Camas to prosecute and maintain public or local improvements. Whenever in the prosecution or maintenance of such improvements it becomes necessary or convenient to remove, readjust, relocate, or change the location of Grantee's storm water line and outfall and appurtenances thereto, the same shall be done by and at the sole expense of the Grantee. Grantees shall remove, readjust, relocate or change location of Grantee's storm water line within 90 days of written notification from the City unless otherwise agreed to by City. In the event Grantee fails to do so, then City may, at Grantee's sole expense, have the storm water line and out fill relocated by City's contractor. In such event, Grantee shall pay the cost of relocation within 30 days of submission of an invoice by City.

Section VI

INDEMNIFICATION AND INSURANCE

The Grantee shall defend, indemnify and hold the City, its officers, officials, employees, and volunteers harmless from any and all claims, injuries, damages, losses, or suits, including attorneys fees, arising out of or in connection with negligent activities or operations performed by the Grantee or on the Grantee's behalf, out of the issuance of this franchise, except for injuries and damages caused by the sole negligence of the City.

The Grantee shall procure and maintain, for the duration of this franchise, insurance against claims for injuries to persons or damage to property, which may arise from or in connection with the operations or activities performed by or on the Grantee's behalf with the issuance of this franchise. Grantee's maintenance of insurance as required shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

Grantee shall maintain insurance of the type described as follows:

1. Throughout the term of this franchise, Grantee shall maintain General Liability, Auto, and Workers' Compensation insurance and shall furnish the City with Certificates of Insurance in a form acceptable to the City, with the following limits and coverages:
 - a) General liability insurance covering bodily injury, property damage, and personal injury for at least two million dollars (\$2,000,000) combined single limit per occurrence and at least two million dollars (\$2,000,000) in the aggregate.
 - b) Automobile liability for owned, non-owned, and hired vehicles with combined single limit coverage of not less than one million dollars (\$1,000,000) per accident for bodily injury and property damages.
 - c) Workers' compensation coverage at a minimum consistent with state law and employer's liability insurance with limits of not less than one million dollars (\$1,000,000).
2. The insurance policies may provide for self-retention or deductibles in reasonable amounts. The limits of the insurance shall be subject to statutory changes as to increases in the maximum limits of liability imposed on municipalities of the State of Washington during the term of this Franchise.
3. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City, its elected and appointed officials, its officers, agents, employees, and volunteers. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this subsection shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must

apply as to claims between insureds on the policy.

4. The Grantee shall provide that the insurance shall not be canceled or materially altered without thirty (30) days' prior written notice first being given to the City. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms as required by this Franchise. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this Franchise.

5. As an alternative to the coverage listed in this section, the Grantee may provide proof of and keep in force self-insurance or a self-insured retention plus insurance, equivalent to the coverage required above.

6. Grantee's general liability, automobile, and workers' compensation insurance shall be primary insurance as respects the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance, and shall not contribute with it.

Grantee shall furnish the City with original certificates and a copy of the amendatory endorsements, including the additional insured endorsement, evidencing the insurance requirements of the Grantee before issuance of the franchise.

Grantee shall provide City with written notice of any policy cancellation, within two business days of receipt of such notice. Failure of the Grantee to maintain insurance as required shall constitute a material breach of the franchise agreement, upon which the City may, after giving five business days' notice to the Grantee to correct the breach, immediately terminate the franchise, or, at its discretion, procure or renew such insurance, and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

Section VII

NON-EXCLUSIVE FRANCHISE

Nothing in this ordinance shall be construed as granting an exclusive franchise or privilege for the use of the real property described in Exhibit A, provided however, that any grantee of similar rights and privileges shall not in the exercise thereof unreasonably interfere with the exercise of the rights and privileges hereunder granted.

Section VIII

FORFEITURE

Grantee shall forfeit and shall be deemed to have forfeited and abandoned all rights, privileges and authority hereby conferred, unless within thirty (30) days after the effective date of this ordinance, it shall file in the office of the City Clerk, written acceptance of the rights and privileges conferred hereby, which acceptance shall contain an express understanding by the Grantee, for itself and its successors and assigns, to faithfully comply with and abide and be bound by the terms of this ordinance and all of the requirements hereof, and to faithfully and timely keep and perform each and every term, covenant, agreement, obligation and condition required of, or imposed upon it or them by this ordinance.

Section IX

TERMINATION

In case of the failure on the part of the Grantee to comply with any of the provisions of this ordinance, or if Grantee does or causes to be done any act or thing prohibited by or in violation of the terms of this ordinance, the City may declare a forfeiture of all rights and privileges granted by this ordinance and all rights thereunder shall cease; provided however, that such forfeiture shall not occur or take effect until the City serves by certified mail, return receipt requested, a written notice upon the local manager of Grantee setting forth clearly and in detail the failure or violation complained of, and Grantee shall thereafter have thirty (30) days from the date of mailing said notice in which to comply with the conditions of this right and privilege. If such failure or violation continues beyond said thirty (30) days, then the City may terminate this right and privilege by ordinance.

Section X

REMEDIES

In addition to other remedies provided herein, the City reserves and shall have the right to pursue any remedy to compel or enforce the Grantee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture for any reasons herein stated, after giving the notice required hereby, nor shall the delay of the City in declaring a forfeiture preclude it from thereafter doing so.

Section XI

ASSIGNMENT

This franchise and the rights herein granted may be assigned only with the consent of the City,

but no such assignment shall be of any force or effect until a copy thereof, certified as such by the property officials of the Grantee, shall have been filed in the office of the City Clerk, nor until the City Council of the City shall have consented to such assignment. Any such successor or assignee of the Grantee must file with the City Clerk written acceptance of the rights and privileges conferred hereby and such successor's or assignee's agreement to fully comply with and abide by and be bound by the terms of this ordinance and all the requirements hereof, and to faithfully and timely keep and perform each and every term, covenant, agreement, obligation and condition required of or imposed upon the Grantee hereunder.

Section XII

COMPENSATION

As compensation for the franchise granted by this ordinance, Grantee shall pay to the City a one time franchise fee of \$2,000.00. Said franchise fee shall be payable within 30 days of adoption of this Ordinance by City.

The Grantee shall also be required to pay all license fees and taxes which it may be required to pay by any other ordinance now in effect or hereinafter enacted, including a business or occupation tax or public utility tax on persons engaged in the business carried on by Grantee.

Section XIII

PUBLICATION EXPENSE

In addition to the annual license fee, Grantee shall reimburse the City for the cost of publication of this ordinance.

Section XIV

EFFECTIVE DATE

This ordinance shall take effect and be in force five (5) days from and after its passage and publication and after acceptance by the Grantee as above required.

PASSED by the Council and APPROVED by the Mayor this 4th day of September, 2012.

SIGNED: [Signature]
Mayor

ATTEST: [Signature]
Clerk

APPROVED as to form:
[Signature]
City Attorney

The rights and privileges conferred by the foregoing franchise ordinance are hereby accepted this 12 day of September, 2012, by Washington State Department of Transportation, and said Grantee agrees to fully comply with and abide with and be bound by the terms of this ordinance and all the requirements hereof, and to faithfully and timely keep and perform each and every term, covenant, agreement, obligation and condition required of or imposed upon the Grantee by this ordinance.

WASHINGTON STATE DEPARTMENT OF
TRANSPORTATION

By: RJ M

Date: 9/12/12

Above acceptance received by the City of Camas this 12 day of September, 2012.

By: John M Augin

EXHIBIT "A"

A Franchise for a storm water conveyance system owned by the Washington State Department of Transportation located in the City of Camas Right-of-Way for SE 11th Avenue, SE Polk Street, and SE 12th Avenue, in the SW Quarter of Section 12, and the NW Quarter of Section 13, T1N, R3E, W.M., the limits of which are more particularly described as follows:

Beginning at the NW corner of Lot 1 of River's Walk Subdivision, Book 310, Page 787 of the records of Clark County, Washington; Thence northerly 60' +/- to the north right-of-way line of SE 11th Avenue; Thence westerly along said northerly right-of-way line, and the extension thereof, to the westerly right-of-way line of SE Polk Street; Thence southerly along said westerly right-of-way line, and the extension thereof to the southerly right-of-way line of SE 12th Avenue; Thence easterly to the intersection of said southerly right-of-way line with the easterly right-of-way line of SE Polk Avenue; Thence northerly along said easterly right-of-way line to the intersection of the southerly right-of-way line of SE 11th Avenue; Thence easterly along said southern right-of-way line to the point of beginning.