



## King County

# Metropolitan King County Council

### STAFF REPORT

<b>Proposed No.:</b>	2020-0386	<b>Name:</b>	Andy Micklow
----------------------	-----------	--------------	--------------

### SUBJECT

Proposed Ordinance 2020-0386 would approve an application for renewal of a franchise with King County Water District 123 for use of certain road rights-of-way (ROW) in unincorporated King County for the construction and maintenance of water distribution system facilities.

### SUMMARY

King County Code 6.27 requires private or municipal corporations to obtain a franchise for the use of ROW by submitting an application to the Facilities Management Division and receiving approval from the Council. Each applicant pays a franchise application fee and reimburses the costs incurred by the County for reviewing and processing the application. Water and sewer districts are also required to have an approved comprehensive plan prior to application submittal.

Water District 123 serves the unincorporated town of Preston. The current 25-year franchise with King County Water District 123 (the District) will expire in 2023.<sup>1</sup> The Council approved the District's comprehensive water system plan in September 2020.<sup>2</sup>

The District and the County negotiated a tentative franchise agreement to expand the franchise area, update the franchise terms, and serve as a renewal of the current franchise. The nonexclusive Franchise Agreement is included as Attachment A to this proposed ordinance.

The duration of the Agreement would be ten years, with various opportunities for amendments<sup>3</sup> throughout the life of the Agreement as well as the option for the Facilities Management Division to grant an extension for up to an additional fifteen years.

---

<sup>1</sup> Ordinance 13288

<sup>2</sup> Ordinance 19158

<sup>3</sup> The Council would need to approve amendments to the Agreement with certain exceptions, which are described later in this staff report.

## **BACKGROUND**

King County has the authority through Revised Code of Washington (RCW) 36.55.010 to grant franchises for the use of the right-of-way of county roads for the construction and maintenance of utilities, including gas pipes, electric light lines, sewers and other facilities.<sup>4</sup>

King County Code (KCC) 6.27, as amended in 2016 through Ordinance 18403, requires private or municipal corporations to obtain a franchise for the use of the ROW, which must be consistent with the specific criteria laid out in that section of code. The application must be submitted to and negotiated with the Facilities Management Division (FMD) and approved by the Council. Water districts and distributors must also obtain approval of franchise applications from the utilities technical review committee prior to submittal to FMD.

KCC 4A.675, together with KCC 6.27.054, sets forth fees and charges to be paid for by the franchise applicant. These fees include:

1. A franchise application fee of \$2,500;
2. An advertising fee, which includes the full advertising costs associated with the application; and
3. A surcharge to recover the actual costs incurred by the County in reviewing and processing an application.

The fees described above include only those related to the franchise application. Throughout the life of the agreement, additional fees may be charged, including for permit applications for work in the ROW.

Ordinance 18403 also added a section to KCC requiring franchise agreements to include a requirement that the grantee of the franchise provide the County "reasonable compensation in return for the right to use the right-of-way for the purposes of constructing, operating, maintaining and repairing utility facilities."

In January 2018, King County filed an action for declaratory relief in King County Superior Court against various water and sewer districts in King County regarding the legality of this provision. In September 2018, the Superior Court ruled in favor of the water and sewer districts and dismissed King County's complaint with prejudice. King County appealed to the Washington state Supreme Court. In December 2019, the Washington state Supreme Court ruled that King County has the authority to impose a franchise compensation charge for the use of ROW by private and public utilities. The Court also ruled that water and sewer districts do not have a general right to use county ROW without a franchise.

The current 25-year Water District 123 franchise will expire on September 28, 2023.<sup>5</sup> The proposed Agreement would serve as an early renewal of the current franchise.

---

<sup>4</sup> <https://app.leg.wa.gov/RCW/default.aspx?cite=36.55.010>

<sup>5</sup> Ordinance 13288

## **ANALYSIS**

The proposed Ordinance approves the District's application to renew a nonexclusive franchise agreement in order to use ROW in unincorporated King County for the construction and maintenance of water distribution system facilities. The Agreement would last ten years from the date it is effectuated, with an option for the FMD Director to approve an extension for up to fifteen additional years.

The proposed Agreement could be transferred to another entity if the District chooses to do so. The transfer would require approval of the Council.

Per KCC 4A.675 and KCC 6.27.054, the District was required to pay a franchise application fee and to reimburse the County for actual costs incurred in reviewing and processing the application when costs exceed what is covered by the application fee. The costs related to processing the District's application did not exceed the \$2,500 application fee.

### **Franchise Compensation**

Section 15 of the proposed Agreement reserves the County's right to receive compensation from the District in return for its use of the ROW, as well as a reservation of the right to impose a utility tax. To amend the Agreement to include franchise compensation in the future, the County would provide notice to the District to begin negotiations. The County and the District would negotiate for a period of 60 days. The negotiation period may be extended by an additional 60 days.

If parties are not able to reach agreement, that would be a basis for default. Council approval is not required to amend the Agreement to include franchise compensation.<sup>6</sup>

### **Work in the ROW**

Under the terms of the proposed Agreement, the District would be required to receive ROW construction permits from the Real Estate Services Section (RES) and would have to restore the ROW to at least its previous condition. The exception to this is for emergency work, where the District or the County could take corrective actions without first obtaining a permit to correct a situation posing immediate danger. The need to take immediate corrective action, however, does not relieve the District from its obligation to obtain a ROW construction permit or any other permits necessary for the corrective actions.

---

<sup>6</sup> Amendments to the Agreement are described later in this staff report.

## **Amendments and Modifications**

### Amendments to the Agreement

Amendments to the Franchise would be able to occur under the terms of the proposed Agreement. Council approval is required for most amendments to the Franchise. The following exceptions are amendments that would not require Council approval:

- The Franchise Area could be amended;
- The Director of FMD could extend the term of the Agreement for up to fifteen years past the original expiration date;
- The County could exercise its authority to receive compensation for the use of County ROW by notifying the District. Negotiations on an amendment to the Agreement would begin within thirty days of that notice. If parties are not able to reach agreement, that would be a basis for default (see Section 15);
- The County Risk Manager could amend the “Insurance” section of the proposed Agreement at every amendment or at the end of every five years of the Agreement; and,
- Minor technical corrections or updates.

### Incorporation or Annexation

If any portion of the ROW is incorporated or annexed into a city during the term of the Agreement, the affected portions of the ROW would be removed from the Franchise Area.

### Road Vacation

The proposed Agreement would retain the Council’s right to vacate roadway, which removes the public interest in a ROW and relinquishes the property to adjacent property owners. KCC 14.40 lays out the requirements and processes for road vacations. According to that section of Code, roads are vacated when property owners of a majority of the frontage of a ROW file a petition to vacate to the clerk of the Council. After review and a public hearing by the County Road Engineer and Hearing Examiner respectively, the Council may choose to pass an ordinance vacating the roadway.

If the County does not retain a utility easement, the vacated portions of the ROW would be removed from the Franchise Area.

## **Default**

The County would be able to terminate the Agreement if the District defaults on any term of the Franchise. Section 23.2 would set up a default resolution process wherein the District would be required to address the default. The County would be able to suspend, withdraw, or decline to issue any ROW construction permits while the District is in default.

## **Dispute Resolution**

In the case of disputes that may arise throughout the duration of the proposed Agreement, Section 24.1 would set up a dispute resolution process wherein the District

and the County would be required to meet within thirty days to make a "good-faith effort" to achieve resolution. If resolution is not reached, the District and the County would enter into mediation at their own expense. If resolution is still not reached, the District or the County could either follow default procedures or seek other remedies laid out in statute.

### **Holdover Period**

Section 3.4 would provide the District with the opportunity to file an application for renewal of the Franchise Agreement if the County does not issue an extension past the initial ten-year term. Should the District and the County not reach agreement before the underlying Agreement expires, the District could still use the ROW under the terms of the expired Agreement in what is considered a "Holdover Period."

Note that the proposed Agreement does not detail what would lead the County to grant a holdover period instead of terminating the Agreement.

### **Roadside Management Program**

Section 10 of the proposed Agreement would require the District to submit a Roadside Management Program (RMP) within one hundred and twenty days after the Agreement is effectuated. The RMP would include a plan for bringing non-compliant franchisee facilities into compliance with the King County Road Design and Construction Standards.

The District would submit an annual Work Plan identifying specific remediation projects to be accomplished during the upcoming year, and an annual Work Report showing the progress of remediation projects accomplished during the preceding year. The District would submit annually until the facilities identified in the Plan are remediated and brought into compliance with the Road Standards.

The Council's legal counsel has reviewed the proposed Agreement and identified no issues.

### **INVITED**

- Anthony Wright, Division Director, Facilities Management Division
- Terri Hansen, Franchise Project Manager, Facilities Management Division

### **ATTACHMENTS**

1. Franchise Summary
2. Transmittal Letter
3. Fiscal Note

# Franchise Summary

<b>Franchisee</b>	King County Water District 123
<b>Type of Franchise</b>	Water distribution system
<b>Description</b>	Certain portions of Sections 32 and 33, Township 24 North, Range 7 East, W.M. in unincorporated King County, Washington
<b>Council Districts</b>	District Three (Kathy Lambert)
<b>Time Sensitive</b>	Companion legislation to Water District 123's comprehensive water system plan adopted by Council on September 2, 2020 (Ordinance #19158).
<b>Template Status:</b>	County template with negotiated items
<b>Hearing and Public Notice Required:</b>	Yes, per KCC 6.27.050 and RCW 36.55.010

## Project Information

A franchise agreement approved by the King County Council is required of all public and private utilities to construct, operate and maintain facilities within King County road rights-of-way.

The parties negotiated a tentative franchise agreement to expand the franchise area, update the franchise terms, and serve as an early renewal of the current franchise that was approved by Ordinance 13288 (a twenty-five year franchise which expires on September 28, 2023).

## Context

*Rationale for approval:* This franchise agreement meets the criteria for approval under K.C.C. 6.27.060.A. and prescribes the terms and conditions for Franchisee's use of rights-of-way in unincorporated King County.

*Policy considerations:* The tentative agreement meets the criteria for approval under K.C.C. 6.27.060.A.

This franchise includes provisions requiring the franchisee to indemnify, defend, and hold harmless the county against damages, including environmental damages caused by, arising out of, or incidental to the franchisee's exercise of rights and obligations set forth in the franchise agreement.

This franchise authorizes the County Risk Manager to review and adjust insurance requirements with each amendment and each five years.

This franchise also requires the franchisee to relocate its facilities, at no cost to the County, when required by the County for County construction, alteration, or improvement of the County right-of-way.

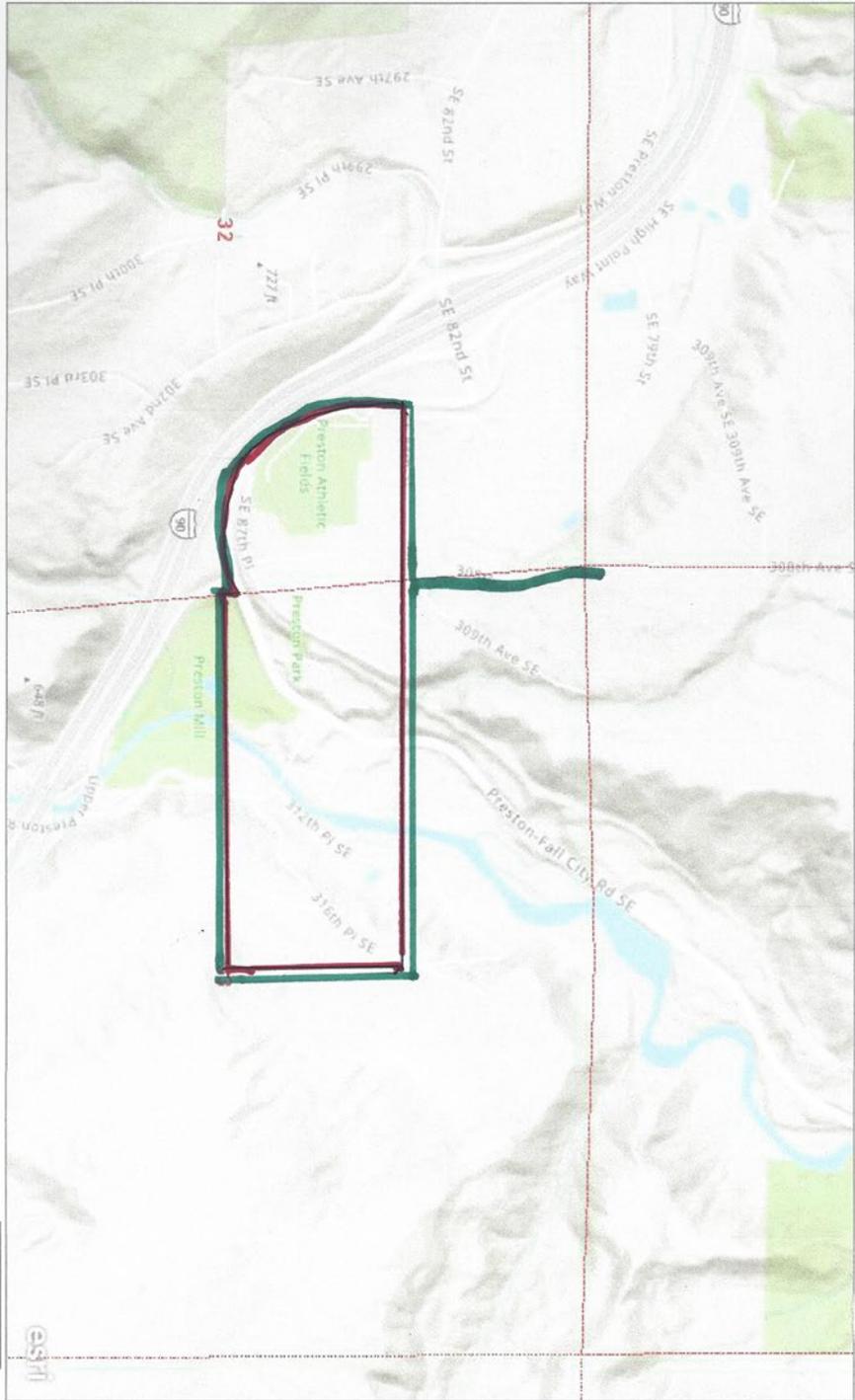
- Political considerations:* None.
- Community considerations:* Ensures continuing water service to the residents served by Franchisee.
- Other considerations:* The initial term of this franchise is 10 years. The FMD Director may approve an extension for up to 15 additional years, subject to franchisee maintaining substantial compliance with the franchise terms and conditions.
- Budget considerations:* The franchise application fee of \$2,500 is payable at the time of franchise issuance. K.C.C. 6.27.054.
- This franchise reserves the County's right to exercise authority it may have or may acquire in the future to receive compensation or other consideration from Franchisee in return for its use and occupation of the road rights-of-way, as well as a reservation of the right to impose a utility tax.
- CIP/operational impacts:* No impacts anticipated.
- Change in property use:* The Facilities Management Division Director may amend the franchise area to exclude road right-of-way in unincorporated King County that becomes vacated, incorporated, or annexed.
- KC Strategic Plan impact:* Furthers the King County Strategic Plan guiding principle of Financial Sustainability by managing the County's risk through insurance and bond requirements and reserving the County's right to require franchise compensation.
- Equity/Social Justice impact:* Not applicable.

# Franchise Area Maps

1/2020

## WSDOT - Township, Range & Section

ARCIS - WSDOT - Township, Range & Section



Township, Range & Section information for Washington State

Esri, NASA, NGA, USGS, FEMA | Esri Community Maps Contributors, King County, WA State Parks GIS, Esri, HERE, Garmin, SafeGraph, INCREMENT P, IAASA, USGS, Bureau of Land Management, EPA, NPS, US Census Bureau, USDA

- Existing Franchise Area
- Proposed Franchise Area

!://www.arcgis.com/home/webmap/print.html





**King County**

**Dow Constantine**

King County Executive

401 Fifth Avenue, Suite 800

Seattle, WA 98104-1818

**206-263-9600** Fax 206-296-0194

TTY Relay: 711

[www.kingcounty.gov](http://www.kingcounty.gov)

October 16, 2020

The Honorable Claudia Balducci

Chair, King County Council

Room 1200

C O U R T H O U S E

Dear Councilmember Balducci:

This letter transmits a proposed ordinance that would, if enacted, authorize King County to enter into a non-exclusive franchise agreement with King County Water District 123. The franchise agreement authorizes the placement and operation of its water distribution system facilities in certain road rights-of-way in unincorporated King County and sets forth negotiated terms, conditions, and limitations for such use. This legislation package is companion to the updated Water District 123 comprehensive plan approved by the King County Utilities Technical Review Committee (UTRC) and the King County Council (Ordinance #19158).

Approval of this right-of-way franchise furthers the King County Strategic Plan guiding principle of Financial Sustainability by managing the County's risk through insurance and bond requirements and reserving the County's right to require franchise compensation.

A draft press release and hearing notice are attached. Per KCC 6.27.050 (c) and RCW 36.55.040, the County shall set a time and a notice of a public hearing for each franchise permit application. A posted notice of such hearing is required in three public places fifteen days before the hearing and publish notice twice in some daily newspaper in the County not less than five days before the hearing.

The Honorable Claudia Balducci

October 16, 2020

Page 2

Thank you for your consideration of this proposed ordinance.

If your staff have any questions, please contact Anthony Wright, Director, Facilities Management Division at 206-477-9352.

Sincerely,

A handwritten signature in black ink, appearing to read "Dow Constantine".

Dow Constantine

King County Executive

Enclosure

cc: King County Councilmembers

ATTN: Carolyn Busch, Chief of Staff

Melani Pedroza, Clerk of the Council

Shannon Braddock, Deputy Chief of Staff, Office of the Executive

Karan Gill, Director, Council Relations, Office of the Executive

Caroline Whalen, County Administrative Officer, Department of Executive Services  
(DES)

Anthony Wright, Director, Facilities Management Division, DES

John Taylor, Director, Department of Local Services (DLS)

Rick Brater, Director, Roads Services Division, DLS

KING COUNTY FISCAL NOTE - Property Leases and Sales

GENERAL TRANSACTION INFORMATION

Ordinance/Motion:				Transaction Duration:	10 yrs
Title:	<b>Water Dist 123 Franchise</b>			Fair Market Value:	NA
Affected Agency/Agencies:	DES/Facilities Mgmt Real Estate Services			Legal Transaction Type:	Franchise Agreement
Note Prepared By:	Carolyn Mock / Terri Hansen	Date Prepared:	7/7/20	Fiscal Transaction Type:	Stand Alone
Note Reviewed By:	Sid Bender	Date Reviewed:	10/14/2020		
Description of Request:	Franchise Agreement with King County Water District 123				

FINANCIAL IMPACTS

Part 1 - Net Present Value Analysis Results

Net Present Value to King County (all impacts): ***	NA	Net Present Value to Primary Impacted Agency (customer of transaction): ***	NA
---	----	---	----

Part 2 - Revenue and Expenditure Impacts

As of the preparation date of this fiscal note, the impact of the above legislation on the financial affairs of King County is estimated to be as indicated below:

Revenue to: <sup>2,3,5</sup>

Appropriation Unit	Appr. Number	Department	Fund Number	Project Number	Revenue Account Code and Source/Description	Sum of Revenues Prior to 2019	2019 / 2020	2021 / 2022	2023 / 2024	Sum of Outyear Impacts <sup>2</sup>
FMD Real Estate Services - General Fund	A44000	DES	0010		32192 - Franchise Application Fee	\$ -	\$ 2,500	\$ -	\$ -	\$ -
FMD Real Estate Services - General Fund	A44000	DES	0010	0	32192 - Annual Franchise Compensation	\$ 5,468	\$ 11,000	\$ 11,000	\$ 11,000	\$ 33,000
FMD Real Estate Services - General Fund	A44000	DES	0010		32192 - Franchise Fees - Expense Reimbursement	\$ -	\$ -	\$ -	\$ -	\$ -
<b>TOTAL</b>						<b>\$ 5,468</b>	<b>\$ 13,500</b>	<b>\$ 11,000</b>	<b>\$ 11,000</b>	<b>\$ 33,000</b>

Expenditures from: <sup>2,3,4,5</sup>

Appropriation Unit/Expenditure Type	Appr. Number	Department	Fund Number	Project Number	Expenditure Notes	Sum of Expenditures Prior to 2019	2019 / 2020	2021 / 2022	2023 / 2024	Sum of Outyear Impacts <sup>2</sup>
FMD Real Estate Services - General Fund	A44000	DES	0010							
Real Estate Services Labor Costs					Negotiation, review and processing	\$ -	\$ -	\$ -	\$ -	\$ -
King County Project Management						\$ -	\$ -	\$ -	\$ -	\$ -
Lease Payments/Associated O&M						\$ -	\$ -	\$ -	\$ -	\$ -
Service Costs (Appraisal, Title, Move)						\$ -	\$ -	\$ -	\$ -	\$ -
Tenant and Other Improvements						\$ -	\$ -	\$ -	\$ -	\$ -
10% Art for General Fund Transactions						\$ -	\$ -	\$ -	\$ -	\$ -
Other Transaction Costs					PAO Review & GIS Mapping	\$ -	\$ -	\$ -	\$ -	\$ -
<b>SUBTOTAL</b>						<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
Real Estate Services Labor Costs						\$ -	\$ -	\$ -	\$ -	\$ -
King County Project Management						\$ -	\$ -	\$ -	\$ -	\$ -
Lease Payments/Associated O&M						\$ -	\$ -	\$ -	\$ -	\$ -
Service Costs (Appraisal, Title, Move)						\$ -	\$ -	\$ -	\$ -	\$ -
Tenant and Other Improvements						\$ -	\$ -	\$ -	\$ -	\$ -
10% Art for General Fund Transactions						\$ -	\$ -	\$ -	\$ -	\$ -
Other Transaction Costs						\$ -	\$ -	\$ -	\$ -	\$ -
<b>SUBTOTAL</b>						<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>
<b>TOTAL</b>						<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>

APPROPRIATION IMPACTS

As of the preparation date of this fiscal note, the impact of the above legislation on the budget appropriation of King County is estimated to be as indicated below: <sup>1</sup>

Appropriation Unit	Appr. Number	Department	Fund Number	Project Number	Appropriation Notes	2019 / 2020 Appropriation Change	Total 6-Year CIP Outyear Planning Level Costs
					The transaction was anticipated in the current budget; no supplemental appropriation is required.	\$ -	\$ -
						\$ -	\$ -
<b>TOTAL</b>						<b>\$ -</b>	<b>\$ -</b>

Assumption and Additional Notes:

\*\*\* An NPV analysis was not performed because a franchise approved by the King County Council is required to use County road rights-of-way (KCC 6.27.020).

- If the expenditure impact equals or exceeds five percent of the fund expenditures, a copy of the most recent applicable appropriation unit financial plan is attached to this transmittal.
- The sum of outyear impacts is provided for capital projects and agreements. This sum for revenue and expenditures includes all revenues/expenditures for the duration of the lease/other agreement or life of the capital investment.
- This transaction does not require the use of fund balance or reallocated grant funding.
- The transaction is backed by new revenue. The new revenue does not include grant revenue. The new revenue has not been received. The new revenue will be received by FMD upon franchise issuance.
- A detailed explanation of how the revenue/expenditure impacts were developed is provided below, including major assumptions made in developing the values presented in the fiscal note and other supporting data:  
The franchise includes a provision reserving the County's right to charge annual franchise compensation, which will be negotiated during the first quarter of 2021. The \$2500 application fee and actual costs of reviewing and processing the franchise application that are not covered by the application fee are both credited against any franchise compensation (KCC 6.27.054.F). Annual franchise compensation is subject to negotiation. Estimated annual franchise compensation is reflected above.