

## ORDINANCE NO. 1675

AN ORDINANCE OF THE CITY OF CLARKSTON, WASHINGTON, GRANTING A FRANCHISE TO PUBLIC UTILITY DISTRICT NO. 1 OF ASOTIN COUNTY, WASHINGTON TO CONSTRUCT, OPERATE AND MAINTAIN A WATER DISTRIBUTION SYSTEM AND WASTEWATER COLLECTION SYSTEM IN, OVER AND ALONG CITY STREETS, ALLEYS, AND OTHER CITY PROPERTY IN ASOTIN COUNTY, WASHINGTON.

THE CITY COUNCIL OF THE CITY OF CLARKSTON AT A REGULAR MEETING ASSEMBLED DO ORDAIN AS FOLLOWS:

### I.

That a franchise be and the same is hereby given and Granted to Public Utility District No. 1 of Asotin County, Washington doing business in Asotin County, State of Washington, its successors and assigns for a period of thirty years from and after the adoption date to construct, operate and maintain a water distribution system and wastewater collection system in, under and along and over public streets, alleys, and other public property located within the City of Clarkston, Asotin County, Washington.

### II

Public Utility District No. 1 of Asotin County, Washington, its successors and assigns (hereinafter referred to as "District") shall have the right and authority to enter upon the City streets, roads, alleys, rights of way and other City property for the purpose of constructing and installing its water distribution system and wastewater collection system and all necessary facilities connected therewith (hereinafter referred to as the "utility systems") and for repairing, operating, maintaining, removing and replacing all or any portion of its utility systems.

### III

All construction and installation work where crossing City roads, streets, alleys or rights of way or other City property shall be submitted for the approval of the City Supervisor and /or Director of Public Works.

### IV

Prior to commencement of construction of any portion of said utility systems, the District shall first file with the City Supervisor and/or Director of Public Works its plans and specifications in duplicate showing the position, depth and location of all lines and facilities sought to be constructed, laid, installed or erected at that time, showing their relative position to existing City streets, roads, alleys, rights of way or other City property.

The utility systems shall be installed in conformity with said plans, except in instances in which deviation may be allowed thereafter in writing by the City Supervisor and/or Director of Public Works pursuant to application by District. The plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction, installation, back fill, erection of temporary structures, erection of permanent structures, traffic control, traffic turnouts and road obstructions, etc.

No construction shall be commenced without the District first securing a written permit from the City Supervisor and/or Director of Public Works, including approval endorsed on one set of plans and specifications returned to the District. All such work shall be done subject to the supervision of the City Supervisor and/or Director of Public Works.



## V

In any work which requires breaking of surface of the City's streets, roads, alleys, rights of way, or other City property subject to this franchise for the purpose of laying, relaying, connecting, disconnecting and repairing the said utility systems, and making connections between the same to structures and buildings of consumers or making connections to other facilities of the District now in existence or hereafter constructed, the District shall be governed by and conform to the general rules now existing or hereafter adopted by the officers charged with the supervision and care of such City streets, roads, alleys, rights of way and other City property; and the District at its own expense and with all convenient speed shall complete the work for which the surface has been broken and forthwith replace the work and make good the City street, road, alley, right of way, or City property and leave the same in as good condition as before the work was commenced; provided, however, that no such breaking of the surface of the City roads, streets, alleys, rights of way or other City property shall be done prior to the filing of its plans with the City Supervisor and/or Director of Public Works; provided, however, that in cases of emergency arising after office hours when an immediate excavation may be necessary for protection of private or public property the same shall be reported to the City Police. Plans for restoration of the City road, street, alley, right of way, or other City property to the same condition as it was prior to such breaking shall be filed with the City Supervisor and/or Director of Public Works. The City may upon notice to the District at any time order or have done any and all work that they consider necessary to restore to a safe condition any such City road, street, alley, right of way or other City property left by the District or its agents in a condition dangerous to life and/or property, and the District upon demand shall pay to the City all costs of such work.

## VI

All utility systems and facilities constructed, operated and maintained across City road, streets, alleys, rights of way or other City property as covered by this franchise shall be constructed, operated and maintained in compliance with the District's Standard Specifications and Details and the Washington State Department of Transportation Standard Specifications for Municipal Construction. All construction or installation of such utility systems and facilities, service repair or relocation of the same, performed along or under the City streets, rights of way or other county property subject to this franchise shall be done in such manner as not to interfere with the construction and maintenance of other utilities, public or private, drain, drainage ditches and structures, irrigation ditches and structures located therein, nor with the grading or improvement of such city streets, rights of way or other county property. All utilities, public or private, actually installed in such city streets, rights of way or other county property prior in time to the installation of the lines and facilities of the grantee shall have preference as to the positioning and location of such utilities so installed with respect to the grantee. Such preference shall continue in the event of necessity of relocation or changing the grade of any such city street or right of way.

## VII

All work done under this franchise shall be done in a thorough and workmanlike manner. In the construction of utility systems and other facilities and the opening of trenches, the tunneling under any City streets, roads, alleys, rights of way and other City property, the District shall leave the trenches, ditches and tunnels in such a way as to interfere as little as possible with public travel and shall take all due and necessary precautions to guard the same so that damage or injury shall not occur or arise by reason of such work, and where any such trenches, ditches or tunnels are left



open at night, the District shall place warning lights and barricades at such a position as to give adequate warning of such work. The District shall be liable for any injury to person or persons or damage to property sustained through its carelessness or neglect, or through any failure to properly guard or give warning of any trenches, ditches or tunnels dug by the District.

#### VIII

The City in granting this franchise does not waive any rights which it now has or may hereafter acquire with respect to City roads, streets, alleys, rights of way or other City property and this franchise shall not be construed to deprive the City of any powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City roads, streets, alleys, rights of way or other City property covered by this franchise.

#### IX

If, at any time, the City shall improve or change any City road, street, alley, right of way or other City property subject to this franchise by grading or regarding, planking or paving the same, changes of grade, altering, changing, repairing or relocating the same or by constructing drainage facilities, the District upon written notice from the City Supervisor and/or Director of Public Works shall, at its sole expense, with all convenient speed change the location or readjust the elevation of its utility systems and other facilities so that the same shall not interfere with such City work and so that such lines and facilities shall conform to such new grades or routes as may be established. The City shall in no way be held liable for any damages to said District that may occur by reason of any of the City's improvements, changes or works above enumerated, except for damage caused by negligence of the City's employees or agents.

#### X

The laying, construction, operation and maintenance of the District's utility systems authorized by this franchise shall not preclude the City, its agents, or its contractors from blasting, grading, excavating, or doing other necessary roadwork contiguous to the said lines and facilities of the District, providing that the District shall be given not less than fifteen (15) days' written notice of said blasting or other work in order that the District may protect its lines and facilities; provided further, that in the event of an emergency as determined by the City Supervisor and /or Director of Public Works, the District shall be given forty-eight (48) hours written notice.

#### XI

Before any work is performed under this franchise which may affect any existing monuments or markers of any nature relating to subdivision, plats, roads, and all other surveys, the District shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the District's operations under this franchise. The method of referencing these monuments or other points to be referenced shall be approved by the City Supervisor and/or Director of Public Works. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as the conditions permit, and as directed by the City Supervisor and/or Director of Public Works. The cost of monuments or other markers lost, destroyed or disturbed, and the expense of replacement by approved monuments shall be borne by the District. The District shall file a complete set of reference notes to monuments and other marker ties which have been re-established or disturbed.

#### XII



If, at any time, the City shall vacate any City road, street, alley, right of way or other City property which is subject to rights granted by this franchise and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, street, alley, right of way or other City property for the use of the City, either in its proprietary or governmental capacity, then the City may at its option and by giving thirty (30) days' written notice to the District, terminate the portion of this franchise directly related to such City road, street, alley, right of way or other City property so vacated and the City shall not be liable of any damage or loss to the District by reason of such termination; provided however that if the City can provide an alternate route across other City property, roads, streets, alleys or rights of way, the City shall do so within a reasonable time prior to such termination, it being understood and agreed that the District shall pay all costs of changing and re-routing its distribution system.

### XIII

The District hereby agrees to protect and save harmless the City of Clarkston from any and all claims, actions or damages of every kind and description which may be asserted against such City by reason of the District's acts in connection with the construction, operation and maintenance of said utility systems. In case that any claim, suit or action is brought against the City for damages arising out of or by reason of the above-mentioned causes, the District will upon notice of the commencement of said claim, suit or action defend the same at its sole cost and expense. In the event the District shall refuse the tender of such defense, then the District will, in addition to indemnifying City against any such claim or suit, the District shall indemnify and hold the City harmless from any liability and indemnify the Grantee from any and all expenses incurred by the City in defending such claim or suit including attorney fees, expert witness fees and any other costs incurred. In case a final judgment shall be rendered against the City in such suit or action, the District will fully satisfy said judgment within (90) days' after said suit or action shall have finally been determined by a trial court, or appellate court or courts if appeal be taken, if determined adversely to the City. Upon the District's failure to satisfy said final judgment within the ninety (90) day period, the City of Clarkston may upon due notice terminate this franchise. Acceptance by the City of any work performed by the grantee at the time of completion shall not be a ground for avoidance of this covenant.

### XIV

This franchise shall not be deemed to be an exclusive franchise. It shall in no manner prohibit the City from granting other franchises of a like nature or franchises for other public or private utilities under, along, across, over and upon any of the City roads, streets, alleys, rights of way or other City property subject to this franchise and shall in no way prevent or prohibit the City from constructing, altering, maintaining or using any of said roads, streets, alleys, rights of way, drainage structures or facilities, irrigation structures or facilities, or any other City property or affect its jurisdiction over them with full power to make all necessary changes, relocations, repairs, maintenance, etc., the same as the City may deem fit.

### XV

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



XVI

The franchise herein granted to the District may not be sold, transferred, or assigned by the District.

XVII

It is understood that, in the event any of the City roads, streets, alleys or rights of way as designated in this franchise which, by reason of the subsequent incorporation of any City or town, or extension of the limits, then the control of the City with respect to this franchise shall be at an end and shall terminate as to such roads, streets, alleys and rights of way so included within such City or town limits.

XVIII

If the District shall willfully violate or fail to comply with any of the provisions of this franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given the District under the provisions of this grant, then the said District shall forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the City; provided, however, that the City shall give thirty (30) days' written notice of its intention to revoke or annul the franchise during which period the District shall have the opportunity to remedy the situation.

XIX

Enforcement and Arbitration

Should a dispute arise as to the interpretation of the terms hereof, upon proper notice given under the laws of the State of Washington, the matter shall be submitted to arbitration. A list of five arbitrators shall be requested from the American Arbitration Association.


The parties shall thereupon alternate in striking a name from the panel until one name remains. The person whose name remains shall be the arbitrator. The arbitrator's decision shall be final and binding on all parties. The arbitrator shall confine him/herself to the precise issues submitted for arbitration and shall have no authority to determine any of the issues not so submitted.


The arbitrator shall have no authority to add to, subtract from, or otherwise change the franchise as they may apply to the specific facts of the issues in dispute. Each party shall bear one-half the fee of the arbitrator and any other expenses jointly incurred incident to the arbitration hearing. All other expenses shall be borne by the party incurring them. And neither party shall be responsible for expenses of witness called by the other party.

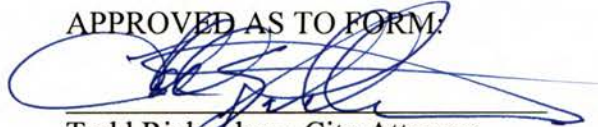
The full acceptance of this franchise and all of its terms and conditions within thirty (30) days' from the 27th day of March, 2023 by Public Utility District No 1 of Asotin County, Washington, in writing, is to be filed with the Clerk of the City of Clarkston and shall be a condition precedent to its taking effect, and unless the franchise is accepted within such time, this grant shall be null and void.

Dated this 27th day of March, 2023.

ATTEST TO:

  
Steve Austin, City Clerk

  
Monika Lawrence, Mayor

APPROVED AS TO FORM:  
  
Todd Richardson, City Attorney