

Proposed by:	Public Works Committee
Attorney Review:	05/26/2023
First Reading:	06/15/2023
Second Reading:	07/06/2023

MUNICIPALITY OF SKAGWAY, ALASKA

ORDINANCE NO. 23-15

AN ORDINANCE OF THE MUNICIPALITY OF SKAGWAY, ALASKA GRANTING A NON-EXCLUSIVE FRANCHISE PERMIT TO ALASKA POWER AND TELEPHONE, INC. PERMITTING USE OF THE MUNICIPALITY'S STREETS, ALLEYS, AND PUBLIC THOROUGHFARES FOR THE PURPOSE OF PROVIDING ELECTRIC UTILITY SERVICES.

WHEREAS, Alaska Power and Telephone, Inc. (AP&T) has held a non-exclusive municipal franchise permit to provide electric utility services since 1983, and this permit expires on June 30, 2023; and

WHEREAS, the Municipality of Skagway desires to continue to allow the use of its streets, alleys, and public thoroughfares for the provision of electric utility services for the community; and

WHEREAS, pursuant to AS 29.35.060, the Assembly may grant a franchise to a utility to permit the use of streets and other public places by the franchise holder under regulations prescribed by ordinance; and

WHEREAS, SMC 3.01.080 requires an ordinance to grant, renew, or extend a franchise; and

WHEREAS, the Municipality of Skagway requires the permit Grantee to comply with certain terms and conditions;

NOW THEREFORE BE IT ORDAINED AND ENACTED BY THE MUNICIPALITY OF SKAGWAY, ALASKA AS FOLLOWS:

Section 1. Classification. Section 3 of this ordinance is not of a general and permanent nature and shall not become a part of the Skagway Municipal Code.

Section 2. Purpose. To grant a non-exclusive franchise permit to Alaska Power and Telephone, Inc. permitting use of the Municipality's streets, alleys, and public thoroughfares for the purpose of providing electric utility services.

Section 3. Franchise Permit. A non-exclusive franchise permit is granted to Alaska Power and Telephone, Inc. with the following general terms:

- A. The term of the non-exclusive franchise permit is for a period of twenty (20) years and six (6) months commencing July 1, 2023 and ending on December 31, 2044, or until the permit is abandoned by the Grantee, or rescinded or revoked by the Municipality because of a breach by Grantee of the terms and conditions of the permit.

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- B. The Grantee is permitted to construct, operate, maintain, repair, replace, and enlarge electric transmission and/or distribution lines over and/or under the streets, alleys, and public thoroughfares in the Municipality of Skagway Borough for the purpose of providing electric utility services.
- C. The Grantee may install the lines in such places as it deems necessary or advisable on the condition that the lines installed and maintained do not interfere with the free and unobstructed public travel over, or the public use of, the Municipality's streets, alleys, or public thoroughfares, and that they are in compliance with any applicable federal, state, and local laws.
- D. Whenever it becomes necessary for the Grantee to break up, dig into, disturb, or in any manner interfere with any public street, alley, sidewalk or thoroughfare, or any part thereof, for the construction, reconstruction, or repair of such lines, the Grantee shall provide Grantor with written notice at least 10 days before such work, except in cases of emergency, and, at its expense, without unnecessary delay, put such street, alley, thoroughfare, or sidewalk in as good condition as it was before broken up, dug into, disturbed, or interfered with, and, at its own expense, shall remove all surplus sand, earth, rubbish, or other excess material from such street, alley, sidewalk or thoroughfare.
- E. None of the lines described above shall be constructed or maintained by the Grantee in such a manner as to prevent the Grantor from planking, grading, paving, repairing, widening, or otherwise altering any of the streets, alleys, sidewalks, or thoroughfares of the Municipality or from constructing, operating, modifying, or maintaining water, sewer, or other public utility facilities.
- F. In the event Grantor's planned construction, alteration, or repair of Grantor's streets, sidewalks, thoroughfares, or facilities, including but not limited to repair or reconstruction of Main Street, requires (in the opinion of the Grantor) the relocation of any of the Grantee's lines permitted herein, then upon reasonable notice by Grantor, Grantee shall, at Grantee's expense and without unnecessary delay, perform such reasonable relocations as Grantor may require.
- G. In consideration of the privileges granted to the Grantee herein, the Grantee shall pay to the Grantor during the life of this permit the sum of \$100.00 upon the execution of this agreement and the further sum of \$100.00 within thirty (30) days after the first day of each calendar year hereafter for the duration of this permit.
- H. The Grantee agrees to furnish, at its own cost and expense, the following to the Grantor:
 - a. The use of the poles and towers of the Grantee for such fire alarm circuits, street light fixtures, street light circuits, water facility control circuits and circuits for

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conducting radio transmission as the Grantor shall cause to be installed on the poles and towers of the Grantee. The electricity used in these circuits and fixtures shall be paid for by the Grantor to the Grantee under the tariffs of the Grantee.

- b. Reasonable and necessary repair and maintenance services required to install, maintain, and repair the fixtures and circuits mentioned in subparagraph (a) above. All materials required for the work described in this subparagraph shall either be furnished by the Grantor at its expense or, at the election of the Grantor, the same will be furnished by the Grantee, in which event the Grantor will pay the Grantee the landed costs of such materials to the Grantee.
- c. Any code violations by Grantor's facilities in sub paragraph (a) above which are the result of improper installation by Grantor shall be corrected at Grantor's sole expense. Any code violations by Grantor's facilities which are the result of improper or inadequate maintenance by Grantee shall be corrected at Grantee's sole expense.
- d. Grantor and Grantee will coordinate the use of the poles and towers of the Grantee for other purposes, including Grantor emergency communications, as agreed to in writing by both parties.
- e. Grantee will provide, at no cost to the Grantor, electrical service for ambient air quality monitoring, or other similar public health monitoring projects. Subsequent power usage fees will apply to the Grantor.
- I. The Grantee shall at all times during the term of this permit defend and indemnify the Grantor against any and all suits, administrative proceedings, claims, and demands whatsoever, of any kind and any nature, including death and including attorney fees and costs arising out of or related in any way to this Agreement or arising out of or related in any way to the Grantee's performance under this Agreement, , brought against the Grantor or any of its officers, agents, or employees by any person, firm, corporation, or state or federal agency arising out of any act or omission by or on the part of the Grantee or arising out of any failure to comply with any state or federal law or regulation, by Grantee's officers, agents, or employees either: a) in the maintenance, operation, construction, reconstruction, or repair of any of the Grantee's facilities; or b) any part thereof, or in the maintenance or repair of Grantor's facilities.
- J. Grantee shall provide to the Municipality of Skagway a certificate of insurance showing that the Grantee has obtained at least two million dollars (\$2,000,000.00) general liability insurance, which covers the Grantee's operations on the premises. Grantee shall provide the Certificate of Insurance, naming the Municipality as an additional insured, at the time of the effective date of the permit.

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- K. In the event of a breach by the Grantee of any of the terms or conditions of this permit, the Grantor may give the Grantee thirty (30) days written notice thereof, and if such default is not corrected within such thirty days, then the Grantor may terminate this permit by notice of termination delivered to the Grantee. By failing to give notice of breach, Grantor does not waive its right to give notice of any subsequent breach and to terminate this agreement.

- L. All of the provisions of this permit shall inure to the benefit of, and shall be binding upon, the Grantee. The benefits granted under this permit may be exercised by Grantee as long as the utility is certified to provide service by the Regulatory Commission of Alaska.

Section 4. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 5. Effective Date. This ordinance shall become effective immediately upon adoption.

PASSED AND APPROVED by a duly constituted quorum of the Borough Assembly of the Municipality of Skagway this ___ day of _____, 2023.

Andrew Cremata, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)