

1 EXHIBIT "A" TO ORDINANCE NO. 2005-77

2 In the Matter of the Application of)
3 The City of Fife, a Municipal)
4 Corporation of Pierce County, State) EXHIBIT "A"
5 of Washington, for a Franchise to)
6 construct, operate, and maintain) F R A N C H I S E
7 pipelines for a Water System under)
8 and along certain Public Roads and)
9 Highways in Pierce County, Washington)

8 Application of The City of Fife, a Municipal Corporation of
9 Pierce County, Washington, for a nonexclusive Franchise to
10 construct and maintain water pipelines with appurtenances for a
11 water system under and along certain public roads, highways, and
12 other County property in Pierce County, Washington, as hereinafter
13 set forth, having come on regularly for hearing before the County
14 Council of Pierce County, Washington, under the provisions of
15 Chapter 36.55, Revised Code of Washington (RCW), and it appearing
16 to the Council that notice of said hearing has been duly given as
17 required by law, and that it is in the public interest to grant the
18 Franchise herein requested;

19
20 NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the
21 same is, hereby given and granted to The City of Fife, a Municipal
22 Corporation of Pierce County, Washington, hereinafter called
23 "Grantee" for a term of 15 years from and after the date of filing
24 this Franchise with the Clerk of the Pierce County Council. This
25 Franchise is a license for the privilege, and authority to
26 construct, maintain, and operate for the said period of time, a
27 water pipeline with appurtenances for a water system under and

1 along public roads, highways, and other County property in Pierce
2 County, Washington, as follows:

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4 Section 6, Township 20 North, Range 4 East, W.M. All County
5 roads in said Section.

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7 Section 7, Township 20 North, Range 4 East, W.M. All County
8 roads in the Northeast quarter of said Section.

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10 Section 17, Township 20 North, Range 4 East, W.M. All County
11 roads in the Southeast quarter of said Section.

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13 Section 20, Township 20 North, Range 4 East, W.M. All County
14 roads in the Northeast quarter of said Section.

15
16 I

17 In the construction and installation of water system
18 appurtenances and the excavation of trenches on County roads for
19 the purposes of laying, relaying, connecting, disconnecting, and
20 repairing mains and pipes and making connections between the same
21 to the dwellings and other buildings of the consumers, Grantee
22 shall be governed by and conform to the general rules adopted by
23 Pierce County Public Works and Utilities - Transportation Services
24 of Pierce County, Washington; and Grantee, at no expense to the
25 County, shall complete all such work and shall repair the County
26 roads and leave the same in as a good condition as before the work
27 was commenced;

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PROVIDED, HOWEVER, that no such work shall be done prior to obtaining permits therefore issued by the Pierce County Engineer (hereinafter "Engineer"), which permits shall set forth conditions pertaining to the work to be done and specifications for the restoration of the roads to the same condition as they were prior to such work; and

PROVIDED FURTHER, the Engineer, in his or her discretion, may require a bond in a sum sufficient to guarantee to Pierce County that such roads shall be restored to the same condition as existed prior to such work. If Grantee does not repair County roads to the satisfaction of the Engineer, Pierce County Public Works and Utilities - Transportation Services may, at its sole discretion, repair such County roads, or cause them to be repaired, and Grantee hereby agrees to reimburse the County of Pierce for the cost of such work, including overhead costs.

Before any work is performed under this Franchise, which may affect any existing monuments or markers of any nature relating to section subdivisions, plats, roads, and all other surveys, Grantee shall reference all such monuments and markers in accordance with RCW 58.09.130. The reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

1 construction shall be made as expeditiously as conditions permit,
2 and as directed by the County Engineer. The cost of monuments or
3 other markers lost, destroyed, or disturbed, and the expense of
4 replacement with approved monuments shall be borne by Grantee.

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6 A complete set of reference notes for monuments and other ties
7 shall be filed with Pierce County Public Works and Utilities -
8 Transportation Services.

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10 II

11 The water mains and pipes shall be laid down as directed by
12 the Engineer at a depth of not less than 36 inches below the
13 surface of the ground under and along the County roads, and in such
14 a manner as not to interfere unnecessarily with the construction of
15 sewers and drains, nor with the grading of County roads. All
16 surface appurtenances to the water system shall be installed or
17 constructed as approved by the Engineer.

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19 III

20 All work done under this Franchise shall be done in a thorough
21 and professional manner. In the laying of water pipes and conduits
22 and the digging of ditches therefore, Grantee shall leave ditches
23 in such a way as to interfere as little as possible with public
24 travel and shall take all due and necessary precautions to ensure
25 that damage or injury shall not occur or arise by reason of such
26 work; and that where any ditches or trenches are left open at
27 night, Grantee shall place at all crossings suitable lights in such

1 a position to guard against danger, and Grantee shall be liable for
2 all property damage or personal injury that may be caused by reason
3 of any injury sustained through Grantee's negligence by reason of
4 any person, animal or property being injured through any negligence
5 of Grantee, or by reason of any damage caused through the neglect
6 to properly guard any ditches or trenches dug or maintained by
7 Grantee. The Engineer may specify actions to be taken to ensure
8 the safety of the public and Grantee shall comply with such
9 specifications.

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11 IV

12 The County of Pierce, in granting this Franchise does not
13 waive any rights that it now holds or may hereafter acquire and
14 shall not be construed to deprive the County of Pierce of any
15 powers, rights, or privileges that it now has or may hereafter
16 acquire, including the right of eminent domain to regulate use and
17 control of County roads covered by this Franchise, or to go upon
18 any and all County roads and highways for the purpose of
19 constructing and improving the same in such a manner as the County
20 of Pierce, or its representatives may elect.

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22 V

23 Grantee shall provide a certificate of insurance showing
24 evidence of commercial general liability and property damage
25 liability insurance that includes but is not limited to the
26 operations of Grantee, Grantee's protective liability, products
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1 completed operation's coverage, broad form blanket contractual
2 liability:

<u>COVERAGES</u>	<u>LIMITS OF LIABILITY</u>
Commercial General Liability Insurance Bodily Injury Liability	\$2,000,000 Each Occurrence
Property Damage Liability	\$250,000 Each Occurrence
or	
COMBINED SINGLE LIMIT COVERAGE OF \$2,000,000	

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12 The general requirements of the policy shall contain:

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14 Pierce County is named as an additional insured in this
15 Franchise, to applicable coverage.

16
17 In the event of nonrenewal, cancellation, or material change
18 in the coverage provided, 30 days' written notice will be
19 furnished to the County prior to the date of nonrenewal,
20 cancellation, or change. Such notice shall be sent to the
21 Engineer, Pierce County Public Works and Utilities -
22 Transportation Services, 2401 South 35th Street, Room 150,
23 Tacoma, WA 98409.

24
25 Pierce County has no obligation to report occurrences to the
26 insurance companies unless a claim is filed with the County;
27 and Pierce County has no obligations to pay premiums.

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2 Grantee's insurance policies shall contain a "cross-liability"
3 endorsement substantially as follows:
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5 The inclusion of more than one Insured under this policy
6 shall not affect the rights of any Insured with respect
7 to any claim, suit, or judgment made or brought by or for
8 any other insured or by or for any employee of any other
9 Insured. This policy shall protect each Insured in the
10 same manner as though a separate policy has been issued
11 to each, except that nothing herein shall operate to
12 increase Grantee's liability beyond the amount or amounts
13 for which Grantee would have been liable had only one
14 Insured been named.
15

16 Grantee's insurance is primary over any insurance that
17 may be carried by Pierce County. Grantee agrees to
18 provide proof of insurance each year to Pierce County.
19

20 Grantee agrees to defend, indemnify, and save harmless
21 Pierce County, its appointed and elected officials and
22 employees, from and against all loss or expense,
23 including but not limited to, judgments, settlements,
24 attorney's fees, and costs by reasons of any and all
25 claims and demands upon the County, its elected or
26 appointed officials or employees for damages because of
27 personal or bodily injury including death at any time

1 resulting therefrom, sustained by any person or persons,
2 and on account of damage to property including loss of
3 use thereof, whether such injury to persons or damage to
4 property is due to the negligence of Grantee, its
5 contractors, its or their employees or agents, Pierce
6 County, its appointed or elected officers, or its
7 employees or agents, except only such injury or damage as
8 shall have been occasioned by the sole negligence of
9 Pierce County, its appointed or elected officials or
10 employees.

11
12 If the claim, suit, or action for injuries, death, or
13 damages as provided for in this Franchise agreement is
14 caused by or results from the concurrent negligence of
15 (a) Pierce County or Pierce County's agents or employees;
16 or (b) Grantee, or Grantee's agents or employees, the
17 indemnity provisions provided for in this Franchise shall
18 be valid and enforceable only to the extent of Grantee's
19 negligence.

20
21 Grantee specifically and expressly waives any immunity
22 under Industrial Insurance Title 51 RCW, and acknowledges
23 that this waiver was mutually agreed upon by the parties
24 herein.

1 VI

2 If, at any time, the County of Pierce shall vacate any County
3 street, road or alley that is subject to rights granted by this
4 Franchise, the Pierce County Council may, at its option, and by
5 giving 30 days written notice to Grantee, its successors and
6 assigns, terminate this Franchise with reference to such County
7 road, street, or alley so vacated and the County of Pierce shall
8 not be liable for any damages or loss to Grantee by reason of such
9 termination.

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11 VII

12 If, at any time, a new County road is created or established,
13 and constructed, or an existing County road is reconstructed,
14 realigned, or its grade is changed, or if sewer or drainage
15 facilities, or any other facilities within future or existing
16 County road rights-of-way are constructed, reconstructed,
17 maintained, or relocated (all such work to be called "County
18 Projects" hereinafter) and if the installation of the facilities as
19 allowed in this Franchise, and all supplements and changes thereto,
20 should interfere in any manner with any such County Projects then
21 Grantee at no expense to Pierce County shall, upon notice, change
22 the location or adjust the elevation of its facilities so that such
23 facilities shall not interfere with such County Projects.

1 When relocation of Grantee's facilities are required by such
2 County Projects, the following procedures shall be followed:

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4 1. Pierce County shall make available to Grantee a list of
5 anticipated projects for each new budget period as soon
6 as is reasonably possible.

7
8 2. Pierce County shall provide to Grantee two sets of
9 preliminary plans for individual projects as soon as such
10 plans are developed to a state of reasonable certainty,
11 and shall advise Grantee of the anticipated date of start
12 of work on such projects.

13
14 3. Grantee shall, when requested by Pierce County in
15 writing, locate its facilities in the field, show those
16 locations on one set of preliminary plans provided, and
17 return that set to Pierce County Public Works and
18 Utilities - Transportation Services within four weeks of
19 receiving the written request.

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21 4. Pierce County shall provide to Grantee final plans for
22 such projects as soon as such plans are available and
23 shall confirm or correct the anticipated date of start of
24 work on such projects.

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26 5. Pierce County shall assist Grantee in determining how its
27 facilities shall be relocated. Such assistance by Pierce

1 County shall include, at a minimum, copies of plans (as
2 required above) and specifications for such County
3 Projects, and information known to Pierce County as to
4 existing survey control available for location of such
5 County Projects. Such assistance shall not subject
6 Pierce County to any liability for the costs of
7 relocating the subject facilities a second time if
8 Grantee incorrectly relocated its facilities the first
9 time.

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11 6. When requested, Pierce County and Grantee shall meet to
12 discuss how County Projects and utility relocations can
13 be accomplished with the least impact on the other.
14 Pierce County's decision shall be final in such matters,
15 but shall not be unreasonable.

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17 7. Relocation of Grantee's facilities shall be completed in
18 a timely manner defined as follows:

19
20 Relocation of Grantee's facilities shall normally
21 be accomplished in advance of County Projects. In
22 the event relocation of Grantee's facilities is
23 done concurrently with such Projects, Pierce County
24 shall be so notified and agree to a written
25 schedule for relocation. Compliance with such a
26 written schedule shall be Grantee's duty. In no
27

1 event shall relocation of Grantee's facilities
2 interfere with County Projects.
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4 8. If Grantee does not relocate its facilities in a timely
5 manner as required above, Pierce County may relocate, or
6 cause to be relocated, such facilities of Grantee as
7 Pierce County deems necessary, and in the manner Pierce
8 County deems necessary, in its sole discretion. Grantee
9 hereby indemnifies and holds Pierce County, its
10 employees, officers, officials, and agents totally free
11 and harmless from all and any liability which may arise
12 from damages caused by the relocation by Pierce County of
13 the facilities of Grantee, even if such damages and
14 liability arise from the negligence of Pierce County, its
15 employees, officers, officials, and agents.
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17 9. Grantee hereby indemnifies and holds harmless Pierce
18 County, its officers, officials, and employees, from
19 damages that may arise from Grantee's failure to relocate
20 its facilities in accordance with the dates for
21 completion of relocation of facilities set forth above,
22 or any other act or omission by Grantee, its
23 contractor(s), agents, officers, or employees related to
24 the provisions of this Franchise.
25

26 10. It shall be conclusively presumed that Pierce County will
27 have suffered damages as a result of exercising its

1 rights as set forth in Item 8 above, and compensation for
2 such damages will be difficult to ascertain, and
3 therefore, Grantee shall compensate Pierce County for
4 such damages in the amount of twice the amount of the
5 cost of such relocation of Grantee's facilities by Pierce
6 County.

7
8 11. The exercise of its rights, as set forth in Item 8 above,
9 by Pierce County in no way relieves Grantee of completing
10 and/or finalizing the relocation of its facilities at no
11 expense to Pierce County, if the relocation work done by
12 Pierce County is incomplete.

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14 12. In the event a lawsuit is brought by Pierce County
15 against Grantee to collect damages presumed under Item 10
16 above for the exercise by Pierce County of its rights
17 under Item 8 above, Grantee hereby agrees the only issue
18 will be the actual cost to Pierce County for relocating
19 Grantee's facilities. The party prevailing in such an
20 action shall be allowed its legal fees and costs.

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22 VIII

23 Grantee shall not sell, transfer, or assign this Franchise
24 without first notifying the Pierce County Council. The terms and
25 conditions set forth herein shall be binding on Grantee's
26 successors and assigns unless amended by the Council of Pierce
27 County.

IX

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2 This Franchise is granted upon the further express condition
3 that it shall not be an exclusive Franchise and shall not, in any
4 manner, prohibit the County of Pierce from granting any other
5 Franchise under and along any of the said County roads of any kind
6 and character or territories that may be deemed proper by the
7 Pierce County Council, and this Franchise shall not in any way
8 prevent the County of Pierce from using the County rights-of-way,
9 or affect the jurisdiction over them, and every part of them by the
10 County of Pierce with full power to make the necessary repairs,
11 changes and alterations in the same and like manner as though this
12 Franchise had never been granted.

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14 Pierce County reserves for itself the right to so change,
15 amend, modify, or amplify this Franchise to conform to any State
16 statute, order of the Washington Utilities and Transportation
17 Commission, or County regulation, ordinance, or right-of-way
18 regulation, as may hereafter be enacted, adopted, or promulgated.
19 This Franchise may be terminated at any time upon 90 days written
20 notice to Grantee to terminate this Franchise if Grantee fails to
21 comply with its terms and conditions, or if Grantee fails to comply
22 with such changes, amendments, modifications, or amplifications and
23 upon termination Pierce County shall have a lien upon all equipment
24 and materials erected or placed under this Franchise, which lien
25 may be enforced to reimburse Pierce County for any reasonable
26 expenses and payments incurred in terminating this Franchise, and
27 to cure defaults by Grantee.

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Grantee agrees to and shall provide available financial information to the County upon reasonable request. Grantee agrees to and shall during regular business allow agents of Pierce County access for inspection and reproduction of all of Grantee's business records, gross revenue reports, or rules and regulations relevant to a determination of the gross revenues received by Grantee from the area served by the facilities permitted by this Franchise.

X

In the event that the territory covered by this Franchise shall at any time during the Franchise period be included within the limits of any incorporated city or town, the authorities of said city or town shall have the right, to be exercised at their discretion, to acquire by purchase or condemnation, any part of such pipes, conduits, and water system other than transmission lines at a price to be based upon the reasonable value of the same at the time, without any additional value for the Franchise or any unexpired period thereof, and upon such acquirement, this grant and Franchise shall immediately terminate, only that portion to be incorporated.

XI

Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in part: All Franchises shall be subject to the right of the Council, or the people acting for themselves through referendum, to repeal for cause, amend, or modify the

1 Franchise in the interest of the public, and agrees to said
2 condition.

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4 XII

5 Any failure to render adequate service to the patrons of said
6 water system, or the discontinuance of such water services without
7 fault on the part of the patron or patrons involved, for a period
8 of 30 days, shall work a forfeiture of this Franchise, at the
9 discretion of the Pierce County Council, unless the failure should
10 result from causes beyond human control.

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12 XIII

13 Venue and jurisdiction for any controversy arising from the
14 Franchise shall be in Pierce County, Washington.

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16 XIV

17 Grantee shall provide full acceptance of this Franchise and
18 all its terms and conditions by filing a signed copy of the
19 Franchise with the Clerk of the Pierce County Council within 60
20 days from _____, 2005. This requirement
21 shall be a condition precedent to the Franchise taking effect. If
22 Grantee does not provide a signed copy of the Franchise as set
23 forth in this Section, this Franchise shall be null and void.

1 Pursuant to RCW 36.55.080, a copy of this Franchise shall be
2 recorded in the Office of the Pierce County Auditor.

3
4 DATED at Tacoma, Washington, this _____ day of
5 _____, 2005.

6
7 PIERCE COUNTY EXECUTIVE

8
9 _____
10 John W. Ladenburg

11 The City of Fife accepts and agrees to comply with all terms
12 and conditions of this Franchise.

13
14 _____
15 Name

16
17 _____
18 Title

19
20 _____
21 Company, Corporate Name, or
22 Individual

23
24 _____
25 Date

1 FILE NO. 81

PROPOSAL NO. 2005-77

2 Sponsored by: Councilmember Terry Lee

3 Requested by: County Executive/Public Works & Utilities Department

4
5
6 **ORDINANCE NO. 2005-77**

7
8 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL GRANTING A**
9 **NONEXCLUSIVE FRANCHISE TO THE CITY OF FIFE, A**
10 **MUNICIPAL CORPORATION OF PIERCE COUNTY, WASHINGTON,**
11 **FOR LOCATION OF WATERLINES ON CERTAIN COUNTY OWNED**
12 **RIGHTS-OF-WAY; AND AUTHORIZING THE COUNTY EXECUTIVE**
13 **TO EXECUTE SAID FRANCHISE.**

14
15 WHEREAS, The City of Fife, a Municipal Corporation, has
16 applied for a nonexclusive Franchise to construct, operate, and
17 maintain a waterline system under and along certain County
18 roads, highways, and other County property in Pierce County,
19 Washington, as hereinafter set forth; and

20
21 WHEREAS, An application for Franchise came on regularly for
22 hearing before the Pierce County Council on the date set forth
23 below under the provisions of Chapter 36.55, Revised Code of
24 Washington; and

1 WHEREAS, It appears to the Council that notice of said
2 hearing has been duly given to the public and those interested
3 in providing the same service applied for by the applicant as
4 required by law and that it is in the public interest to grant
5 the Franchise; NOW, THEREFORE,

6
7 BE IT ORDAINED by the Council of Pierce County:

8
9 Section 1. A nonexclusive Franchise, a copy of which is
10 attached hereto and identified as Exhibit "A," is hereby given
11 and granted to The City of Fife, a Municipal Corporation of
12 Pierce County, Washington, hereinafter referred to as the
13 Grantee, for a period of 15 years, from and after the date of
14 filing of the Franchise to be granted with the Clerk of the
15 Pierce County Council.

