

1 Sponsored by: Councilmember Roger Bush
2 Requested by: County Executive/Public Works & Utilities

File No. 81

3
4
5 **ORDINANCE NO. 2007-72**
6

7
8 **An Ordinance of the Pierce County Council Granting a Nonexclusive**
9 **Franchise to the Crystal River Ranch Association for**
10 **Location of Waterlines on Certain County-Owned**
11 **Rights-of-Way; and Authorizing the County Executive to**
12 **Execute Said Franchise.**
13

14 **Whereas**, Crystal River Ranch Association of Pierce County, Washington, has
15 applied for a nonexclusive Franchise to construct, operate, and maintain a waterline
16 system under and along certain County roads, highways, and other County
17 property(ies) in Pierce County, Washington, as hereinafter set forth; and
18

19 **Whereas**, said application for Franchise came on regularly for hearing before the
20 Pierce County Council on the date set forth below under the provisions of Chapter
21 36.55, Revised Code of Washington; and
22

23 **Whereas**, it appears to the Council that notice of said hearing has been duly
24 given to the public and those interested in providing the same service applied for by the
25 applicant as required by law and that it is in the public interest to grant the Franchise;
26

27 **Now Therefore,**

28 **BE IT ORDAINED by the Council of Pierce County:**
29

30 Section 1. A nonexclusive Franchise, a copy of which is attached hereto and
31 identified as Exhibit A, is hereby given and granted to Crystal River Ranch Association,
32 of Pierce County, Washington, hereinafter referred to as the Grantee, for a period of 15
33 years, from and after the date of filing of the Franchise to be granted with the Clerk of
34 the Pierce County Council.
35
36



1 Section 2. The Executive of Pierce County is hereby authorized to execute said
2 Franchise.

3
4 **PASSED** this _____ day of _____, 2007.

5
6 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

7
8
9
10 _____
11 **Denise D. Johnson**
12 Clerk of the Council

Terry Lee
Council Chair

13
14
15 _____
16 **John W. Ladenburg**
17 Pierce County Executive
18 Approved _____ Vetoed _____, this
19 _____ day of _____, 2007.

20
21 Date of Publication of
22 Notice of Public Hearing: _____

23
24 Effective Date of Ordinance: _____



1 Exhibit A to Ordinance No. 2007-72

2

3

4

5 In the Matter of the Application of)
6 Crystal River Ranch Association, of)
7 Pierce County, State of Washington,)
8 for a Franchise to construct, operate,)
9 and maintain pipelines for a Water)
10 System under and along certain Public)
11 Roads and Highways in Pierce County,)
12 Washington)

F R A N C H I S E

13

14

15 Application of Crystal River Ranch Association, of Pierce County, Washington, for a
16 nonexclusive Franchise to construct and maintain water pipelines with appurtenances
17 for a water system under and along certain public roads, highways, and other County
18 property in Pierce County, Washington, as hereinafter set forth, having come on
19 regularly for hearing before the County Council of Pierce County, Washington, under
20 the provisions of Chapter 36.55, Revised Code of Washington (RCW), and it appearing
21 to the Council that notice of said hearing has been duly given as required by law, and
22 that it is in the public interest to grant the Franchise herein requested;

23

24 NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the same is, hereby
25 given and granted to Crystal River Ranch Association, of Pierce County, Washington,
26 hereinafter called "Grantee" for a term of 15 years from and after the date of filing this
27 Franchise with the Clerk of the Pierce County Council. This Franchise is a license for
28 the privilege, and authority to construct, maintain, and operate for the said period of
29 time, a water pipeline with appurtenances for a water system under and along public
30 roads, highways, and other County property in Pierce County, Washington, as follows:

31

32 Section 24, Township 19 North, Range 9 East, W.M.

33

34 All County roads west of the White River in the southwest quarter of said section.

35

36 Section 25, Township 19 North, Range 9 East, W.M.

37

38 All County roads west of the White River in said section.

39

40 I

41 In the construction and installation of water system appurtenances and the excavation
42 of trenches on County roads for the purposes of laying relaying, connecting,
43 disconnecting, and repairing mains and pipes and making connections between the
44 same to dwellings and other buildings of the consumers, Grantee shall be governed by
45 and conform to the general rules adopted by Pierce County Public Works and Utilities -
46 Transportation Services, it is understood and agreed that Grantee is fully responsible for
47 all such water system appurtenances within the limits of Pierce County right-of-way; and



1 Grantee, at no expense to the County, shall complete all such work and shall repair the
2 County roads and leave the same in as good condition as before the work was
3 commenced;

4
5 PROVIDED, HOWEVER, that no such work shall be done prior to obtaining permits
6 therefore issued by the Pierce County Engineer (hereinafter "Engineer"), which permits
7 shall set forth conditions pertaining to the work to be done and specifications for the
8 restoration of the roads to the same condition as they were prior to such work; and

9
10 PROVIDED FURTHER, the Engineer, in his or her discretion, may require a bond in a
11 sum sufficient to guarantee to Pierce County that such roads shall be restored to the
12 same condition as existed prior to such work. If Grantee does not repair County roads
13 to the satisfaction of the Engineer, Pierce County Public Works and Utilities -
14 Transportation Services may, at its sole discretion, repair such County roads, or cause
15 them to be repaired, and Grantee hereby agrees to reimburse the County of Pierce for
16 the cost of such work, including overhead costs.

17
18 Before any work is performed under this Franchise, which may affect any existing
19 monuments or markers of any nature relating to section subdivisions, plats, roads, and
20 all other surveys, Grantee shall reference all such monuments and markers in
21 accordance with RCW 58.09.130. The reference points shall be so located that they will
22 not be disturbed during Grantee's operations under this Franchise. The method of
23 referencing these monuments or other points to be referenced shall be approved by the
24 County Engineer. The replacement of all such monuments or markers disturbed during
25 construction shall be made as expeditiously as conditions permit, and as directed by the
26 County Engineer. The cost of monuments or other markers lost, destroyed, or
27 disturbed, and the expense of replacement with approved monuments shall be borne by
28 Grantee.

29
30 A complete set of reference notes for monuments and other ties shall be filed with
31 Pierce County Public Works and Utilities - Transportation Services.

32
33 II

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



1 III

2 All work done under this Franchise shall be done in a thorough and professional
3 manner. In the laying of water pipes and conduits and the digging of ditches therefore,
4 Grantee shall leave ditches in such a way as to interfere as little as possible with public
5 travel and shall take all due and necessary precautions to ensure that damage or injury
6 shall not occur or arise by reason of such work; and that where any ditches or trenches
7 are left open at night, Grantee shall place at all crossings suitable lights in such a
8 position to guard against danger, and Grantee shall be liable for all property damage or
9 personal injury that may be caused by reason of any injury sustained through Grantee's
10 negligence by reason of any person, animal or property being injured through any
11 negligence of Grantee, or by reason of any damage caused through the neglect to
12 properly guard any ditches or trenches dug or maintained by Grantee. The Engineer
13 may specify actions to be taken to ensure the safety of the public and Grantee shall
14 comply with such specifications.

15

16 IV

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

24

25 V

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

30

31

COVERAGES

LIMITS OF LIABILITY

32

33 Commercial General Liability Insurance
34 Bodily Injury Liability

\$2,000,000 Each
Occurrence

35

36 Property Damage Liability

\$250,000 Each
Occurrence

37

38

39 or

40

COMBINED SINGLE
LIMIT COVERAGE OF
\$2,000,000

41

42

43

44



1 The general requirements of the policy shall contain:
2

3 Pierce County is named as an additional insured in this Franchise, to applicable
4 coverage.
5

6 In the event of nonrenewal, cancellation, or material change in the coverage provided,
7 30 days' written notice will be furnished to the County prior to the date of nonrenewal,
8 cancellation, or change. Such notice shall be sent to the Engineer, Pierce County
9 Public Works and Utilities - Transportation Services, 2702 South 42nd Street, Suite 201,
10 Tacoma, Washington 98409.
11

12 Pierce County has no obligation to report occurrences to the insurance companies
13 unless a claim is filed with the County; and Pierce County has no obligations to pay
14 premiums.
15

16 Grantee's insurance policies shall contain a "cross-liability" endorsement substantially
17 as follows:
18

19 The inclusion of more than one Insured under this policy shall not affect the rights of any
20 Insured with respect to any claim, suit, or judgment made or brought by or for any other
21 insured or by or for any employee of any other Insured. This policy shall protect each
22 Insured in the same manner as though a separate policy has been issued to each,
23 except that nothing herein shall operate to increase Grantee's liability beyond the
24 amount or amounts for which Grantee would have been liable had only one Insured
25 been named.
26

27 Grantee's insurance is primary over any insurance that may be carried by Pierce
28 County. Grantee agrees to provide proof of insurance each year to Pierce County.
29

30 Grantee agrees to defend, indemnify, and save harmless Pierce County, its appointed
31 and elected officials and employees, from and against all loss or expense, including but
32 not limited to, judgments, settlements, attorney's fees, and costs by reasons of any and
33 all claims and demands upon the County, its elected or appointed officials or employees
34 for damages because of personal or bodily injury including death at any time resulting
35 therefrom, sustained by any person or persons, and on account of damage to property
36 including loss of use thereof, whether such injury to persons or damage to property is
37 due to the negligence of Grantee, its contractors, its or their employees or agents,
38 Pierce County, its appointed or elected officers, or its employees or agents, except only
39 such injury or damage as shall have been occasioned by the sole negligence of Pierce
40 County, its appointed or elected officials or employees.
41

42 If the claim, suit, or action for injuries, death, or damages as provided for in this
43 Franchise agreement is caused by or results from the concurrent negligence of (a)
44 Pierce County or Pierce County's agents or employees; or (b) Grantee, or Grantee's
45 agents or employees, the indemnity provisions provided for in this Franchise shall be
46 valid and enforceable only to the extent of Grantee's negligence.
47



1 Grantee specifically and expressly waives any immunity under Industrial Insurance Title
2 51 RCW, and acknowledges that this waiver was mutually agreed upon by the parties
3 herein.

4
5 VI

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

12
13 VII

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

23
24 When relocation of Grantee's facilities are required by such County Projects, the
25 following procedures shall be followed:

26
27 1. Pierce County shall make
28 available to Grantee a list of anticipated projects for each new budget period as soon as
29 is reasonably possible.

30
31 2. Pierce County shall provide to Grantee two sets of preliminary plans for individual
32 projects as soon as such plans are developed to a state of reasonable certainty, and
33 shall advise Grantee of the anticipated date of start of work on such projects.

34
35 3. Grantee shall, when requested by Pierce County in writing, locate its facilities in
36 the field, show those locations on one set of preliminary plans provided, and return that
37 set to Pierce County Public Works and Utilities - Transportation Services within four
38 weeks of receiving the written request.



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

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

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

16
17 7. Relocation of Grantee's facilities shall be completed in a timely manner defined
18 as follows:

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

25
26 8. If Grantee does not relocate its facilities in a timely manner as required above,
27 Pierce County may relocate, or cause to be relocated, such facilities of Grantee as
28 Pierce County deems necessary, and in the manner Pierce County deems necessary,
29 in its sole discretion. Grantee hereby indemnifies and holds Pierce County, its
30 employees, officers, officials, and agents totally free and harmless from all and any
31 liability which may arise from damages caused by the relocation by Pierce County of the
32 facilities of Grantee, even if such damages and liability arise from the negligence of
33 Pierce County, its employees, officers, officials, and agents.

34
35 9. Grantee hereby indemnifies and holds harmless Pierce County, its officers,
36 officials, and employees, from damages that may arise from Grantee's failure to relocate
37 its facilities in accordance with the dates for completion of relocation of facilities set forth
38 above, or any other act or omission by Grantee, its contractor(s), agents, officers, or
39 employees related to the provisions of this Franchise.

40
41 10. It shall be conclusively presumed that Pierce County will have suffered damages
42 as a result of exercising its rights as set forth in Item 8 above, and compensation for
43 such damages will be difficult to ascertain, and therefore, Grantee shall compensate
44 Pierce County for such damages in the amount of twice the amount of the cost of such
45 relocation of Grantee's facilities by Pierce County.



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

4
5 12. In the event a lawsuit is brought by Pierce County against Grantee to collect
6 damages presumed under Item 10 above for the exercise by Pierce County of its rights
7 under Item 8 above, Grantee hereby agrees the only issue will be the actual cost to
8 Pierce County for relocating Grantee's facilities. The party prevailing in such an action
9 shall be allowed its legal fees and costs.

10
11 VIII

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

15
16 IX

17 This Franchise is granted upon the further express condition that it shall not be an
18 exclusive Franchise and shall not, in any manner, prohibit the County of Pierce from
19 granting any other Franchise under and along any of the said County roads of any kind
20 and character or territories that may be deemed proper by the Pierce County Council,
21 and this Franchise shall not in any way prevent the County of Pierce from using the
22 County rights-of-way, or affect the jurisdiction over them, and every part of them by the
23 County of Pierce with full power to make the necessary repairs, changes and alterations
24 in the same and like manner as though this Franchise had never been granted.

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

37
38 Grantee agrees to and shall provide available financial information to the County upon
39 reasonable request. Grantee agrees to and shall during regular business allow agents
40 of Pierce County access for inspection and reproduction of all of Grantee's business
41 records, gross revenue reports, or rules and regulations relevant to a determination of
42 the gross revenues received by Grantee from the area served by the facilities permitted
43 by this Franchise.

44
45 X

46 In the event that the territory covered by this Franchise shall at any time during the
47 Franchise period be included within the limits of any incorporated city or town, the



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

7
8 XI

9 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in
10 part: All Franchises shall be subject to the right of the Council, or the people acting for
11 themselves through referendum, to repeal for cause, amend, or modify the Franchise in
12 the interest of the public, and agrees to said condition.

13
14 XII

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

20
21 XIII

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

24
25 XIV

26 Grantee shall provide full acceptance of this Franchise and all its terms and conditions
27 by filing a signed copy of the Franchise with the Clerk of the Pierce County Council
28 within 60 days from _____, 2007. This requirement shall be
29 a condition precedent to the Franchise taking effect. If Grantee does not provide a
30 signed copy of the Franchise as set forth in this Section, this Franchise shall be null and
31 void.

Not Official Document

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

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

DATED at Tacoma, Washington, this _____ day of _____, 2007.

John W. Ladenburg
Pierce County Executive

Crystal River Ranch Association accepts and agrees to comply with all terms and conditions of this Franchise.

Name

Title

Company, Corporate

Name, or Individual

Date