

1 **NOT OFFICAL DOCUMENT**

2 FILE NO. 81

PROPOSAL NO. 2005-74

3 Sponsored by: Councilmember Terry Lee

4 Requested by: County Executive/Public Works & Utilities Dept.

5
6 **ORDINANCE NO. 2005-74**

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

13
14 WHEREAS, Jopp Water Company of Pierce County, Washington,
15 has applied for a nonexclusive Franchise to construct, operate,
16 and maintain a waterline system under and along certain county
17 roads, highways, and other county property in Pierce County,
18 Washington, as hereinafter set forth; and

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

24
25 WHEREAS, It appears to the Council that notice of said
26 hearing has been duly given to the public and those interested
27 in providing the same service applied for by the applicant as

1 required by law and that it is in the public interest to grant
2 the Franchise; NOW, THEREFORE,

3
4 BE IT ORDAINED by the Council of Pierce County:

5
6 Section 1. A nonexclusive Franchise, a copy of which is
7 attached hereto and identified as Exhibit "A," is hereby given
8 and granted to Jopp Water Company, of Pierce County, Washington,
9 hereinafter referred to as the Grantee, for a period of 15
10 years, from and after the date of filing of the Franchise to be
11 granted with the Clerk of the Pierce County Council.

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

PASSED this _____ day of _____, 2005.

ATTEST: PIERCE COUNTY COUNCIL
PIERCE COUNTY, Washington

Denise D. Johnson
Clerk of the Council

Shawn Bunney
Council Chair

PIERCE COUNTY EXECUTIVE

John W. Ladenburg
Approved _____ Vetoed _____
this _____ day of _____,
2005.

Dates of Publication of Notice of Public Hearing: _____

Effective Date of Ordinance: _____

1 EXHIBIT "A" TO ORDINANCE NO. 2005-74

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

8 Application of Jopp Water Company, of Pierce County,
9 Washington, for a nonexclusive Franchise to construct and
10 maintain water pipelines with appurtenances for a water system
11 under and along certain public roads, highways, and other County
12 property in Pierce County, Washington, as hereinafter set forth,
13 having come on regularly for hearing before the County Council
14 of Pierce County, Washington, under the provisions of Chapter
15 36.55, Revised Code of Washington (RCW), and it appearing to the
16 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
18 the Franchise herein requested;

19
20 NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the
21 same is, hereby given and granted to Jopp Water Company, of
22 Pierce County, Washington, hereinafter called "Grantee" for a
23 term of 15 years from and after the date of filing this
24 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
2 Pierce County, Washington, as follows:

3
4 Section 7, Township 20 North, Range 1 East, W.M. All
5 Pierce County roads in said section.

6
7 Section 12, Township 20 North, Range 1 East, W.M. All
8 Pierce County roads in the Northeast, Southeast, and
9 Southwest quarters of said section.

10
11 I

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

23
24 PROVIDED, HOWEVER, that no such work shall be done prior to
25 obtaining permits therefore issued by the Pierce County Engineer
26 (hereinafter "Engineer"), which permits shall set forth
27 conditions pertaining to the work to be done and specifications

1 for the restoration of the roads to the same condition as they
2 were prior to such work; and

3
4 PROVIDED FURTHER, the Engineer, in his or her discretion,
5 may require a bond in a sum sufficient to guarantee to Pierce
6 County that such roads shall be restored to the same condition
7 as existed prior to such work. If Grantee does not repair
8 County roads to the satisfaction of the Engineer, Pierce County
9 Public Works and Utilities - Transportation Services may, at its
10 sole discretion, repair such County roads, or cause them to be
11 repaired, and Grantee hereby agrees to reimburse the County of
12 Pierce for the cost of such work, including overhead costs.

13
14 Before any work is performed under this Franchise, which
15 may affect any existing monuments or markers of any nature
16 relating to section subdivisions, plats, roads, and all other
17 surveys, Grantee shall reference all such monuments and markers
18 in accordance with RCW 58.09.130. The reference points shall be
19 so located that they will not be disturbed during Grantee's
20 operations under this Franchise. The method of referencing
21 these monuments or other points to be referenced shall be
22 approved by the County Engineer. The replacement of all such
23 monuments or markers disturbed during construction shall be made
24 as expeditiously as conditions permit, and as directed by the
25 County Engineer. The cost of monuments or other markers lost,
26 destroyed, or disturbed, and the expense of replacement with
27 approved monuments shall be borne by Grantee.

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

4
5 II

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

13
14 III

15 All work done under this Franchise shall be done in a
16 thorough and professional manner. In the laying of water pipes
17 and conduits and the digging of ditches therefore, Grantee shall
18 leave ditches in such a way as to interfere as little as
19 possible with public travel and shall take all due and necessary
20 precautions to ensure that damage or injury shall not occur or
21 arise by reason of such work; and that where any ditches or
22 trenches are left open at night, Grantee shall place at all
23 crossings suitable lights in such a position to guard against
24 danger, and Grantee shall be liable for all property damage or
25 personal injury that may be caused by reason of any injury
26 sustained through Grantee's negligence by reason of any person,
27 animal or property being injured through any negligence of

1 Grantee, or by reason of any damage caused through the neglect
2 to properly guard any ditches or trenches dug or maintained by
3 Grantee. The Engineer may specify actions to be taken to ensure
4 the safety of the public and Grantee shall comply with such
5 specifications.

6
7 IV

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

17
18 V

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

The general requirements of the policy shall contain:

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

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

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

1 Grantee's insurance policies shall contain a
2 "cross-liability" endorsement substantially as follows:

3
4 The inclusion of more than one Insured under this
5 policy shall not affect the rights of any Insured with
6 respect to any claim, suit, or judgment made or
7 brought by or for any other insured or by or for any
8 employee of any other Insured. This policy shall
9 protect each Insured in the same manner as though a
10 separate policy has been issued to each, except that
11 nothing herein shall operate to increase Grantee's
12 liability beyond the amount or amounts for which
13 Grantee would have been liable had only one Insured
14 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
27 of personal or bodily injury including death at any

1 time resulting therefrom, sustained by any person or
2 persons, and on account of damage to property
3 including loss of use thereof, whether such injury to
4 persons or damage to property is due to the negligence
5 of Grantee, its contractors, its or their employees or
6 agents, Pierce County, its appointed or elected
7 officers, or its employees or agents, except only such
8 injury or damage as shall have been occasioned by the
9 sole negligence of Pierce County, its appointed or
10 elected officials or 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
16 employees; or (b) Grantee, or Grantee's agents or
17 employees, the indemnity provisions provided for in
18 this Franchise shall be valid and enforceable only to
19 the extent of Grantee's negligence.

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

1 VI

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

10
11 VII

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

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

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

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

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

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

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

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

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

21
22 Relocation of Grantee's facilities shall normally
23 be accomplished in advance of County Projects.
24 In the event relocation of Grantee's facilities
25 is done concurrently with such Projects, Pierce
26 County shall be so notified and agree to a
27 written schedule for relocation. Compliance with

1 such a written schedule shall be Grantee's duty.
2 In no event shall relocation of Grantee's
3 facilities interfere with County Projects.
4

5 8. If Grantee does not relocate its facilities in a
6 timely manner as required above, Pierce County may
7 relocate, or cause to be relocated, such facilities of
8 Grantee as Pierce County deems necessary, and in the
9 manner Pierce County deems necessary, in its sole
10 discretion. Grantee hereby indemnifies and holds
11 Pierce County, its employees, officers, officials, and
12 agents totally free and harmless from all and any
13 liability which may arise from damages caused by the
14 relocation by Pierce County of the facilities of
15 Grantee, even if such damages and liability arise from
16 the negligence of Pierce County, its employees,
17 officers, officials, and agents.
18

19 9. Grantee hereby indemnifies and holds harmless Pierce
20 County, its officers, officials, and employees, from
21 damages that may arise from Grantee's failure to
22 relocate its facilities in accordance with the dates
23 for completion of relocation of facilities set forth
24 above, or any other act or omission by Grantee, its
25 contractor(s), agents, officers, or employees related
26 to the provisions of this Franchise.
27

1 10. It shall be conclusively presumed that Pierce County
2 will have suffered damages as a result of exercising
3 its rights as set forth in Item 8 above, and
4 compensation for such damages will be difficult to
5 ascertain, and therefore, Grantee shall compensate
6 Pierce County for such damages in the amount of twice
7 the amount of the cost of such relocation of Grantee's
8 facilities by Pierce County.

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

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

24
25 VIII

26 Grantee shall not sell, transfer, or assign this Franchise
27 without first notifying the Pierce County Council. The terms

1 and conditions set forth herein shall be binding on Grantee's
2 successors and assigns unless amended by the Council of Pierce
3 County.

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5 IX

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

17
18 Pierce County reserves for itself the right to so change,
19 amend, modify, or amplify this Franchise to conform to any State
20 statute, order of the Washington Utilities and Transportation
21 Commission, or County regulation, ordinance, or right-of-way
22 regulation, as may hereafter be enacted, adopted, or
23 promulgated. This Franchise may be terminated at any time upon
24 90 days written notice to Grantee to terminate this Franchise if
25 Grantee fails to comply with its terms and conditions, or if
26 Grantee fails to comply with such changes, amendments,
27 modifications, or amplifications and upon termination Pierce

1 County shall have a lien upon all equipment and materials
2 erected or placed under this Franchise, which lien may be
3 enforced to reimburse Pierce County for any reasonable expenses
4 and payments incurred in terminating this Franchise, and to cure
5 defaults by Grantee.

6
7 Grantee agrees to and shall provide available financial
8 information to the County upon reasonable request. Grantee
9 agrees to and shall during regular business allow agents of
10 Pierce County access for inspection and reproduction of all of
11 Grantee's business records, gross revenue reports, or rules and
12 regulations relevant to a determination of the gross revenues
13 received by Grantee from the area served by the facilities
14 permitted by this Franchise.

15
16 X

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

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

XII

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

XIII

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

XIV

Grantee shall provide full acceptance of this Franchise and all its terms and conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County Council within 60 days from _____, 2005. This requirement shall be a condition precedent to the Franchise taking effect. If Grantee does not provide a signed copy of the Franchise as

1 set forth in this Section, this Franchise shall be null and
2 void.

3
4 Pursuant to RCW 36.55.080, a copy of this Franchise shall
5 be recorded in the Office of the Pierce County Auditor.

6
7 DATED at Tacoma, Washington, this _____ day of
8 _____, 2005.

9
10 PIERCE COUNTY EXECUTIVE
11
12 _____
13 John W. Ladenburg

14
15 Jopp Water Company accepts and agrees to comply with all
16 terms and conditions of this Franchise.

17
18 _____
19 Name

20 _____
21 Title

22 _____
23 Company, Corporate Name, or
24 Individual

25 _____
26 Date

27