

1 Sponsored by: Councilmember Terry Lee
2 Requested by: County Executive/Public Works & Utilities
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5
6 **ORDINANCE NO. 2009-78**
7

8
9 **An Ordinance of the Pierce County Council Granting a Non-Exclusive**
10 **Franchise to the Shore Acres Water Company, for Location**
11 **of Waterlines on Certain County-Owned Rights-of-Way; and**
12 **Authorizing the County Executive to Execute Said Franchise.**
13

14 **Whereas**, Shore Acres Water Company of Pierce County, Washington, has
15 applied for a non-exclusive Franchise to construct, operate, and maintain a waterline
16 system under and along Pierce County roads, highways, and other County properties in
17 Pierce County, Washington, as hereinafter set forth; and
18

19 **Whereas**, the proposed franchise is non-exclusive and does not establish a right,
20 either expressly or implied, to the water purveyor to provide water service to properties
21 located outside of their approved water service area. Furthermore, the request for this
22 franchise is consistent with the Pierce County Coordinated Water System Plan (CWSP)
23 provided that no extension of water service occurs without following the service area
24 adjustment provisions outlined in the CWSP.
25

26 **Whereas**, said application for Franchise came on regularly for hearing before the
27 Pierce County Council on the date set forth below under the provisions of Chapter 36.55
28 Revised Code of Washington; and
29

30 **Whereas**, it appears to the Council that notice of said hearing has been duly
31 given to the public and those interested in providing the same service applied for by the
32 applicant as required by law and that it is in the public interest to grant the Franchise;
33 **Now Therefore**,

34
35 **BE IT ORDAINED by the Council of Pierce County:**
36

37 Section 1. A non-exclusive Franchise, a copy of which is attached hereto and
38 identified as Exhibit A, is hereby given and granted to Shore Acres Water Company, of
39 Pierce County, Washington, hereinafter referred to as the Grantee, for a period of 15
40 years from and after the date of filing of the Franchise to be granted with the Clerk of
41 the Pierce County Council.



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

4
5 **PASSED** this 27th day of October, 2009.

6
7 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

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

Roger Bush
Roger Bush
Council Chair

13
14
15 Pat McCarthy
16 **Pat McCarthy**
17 Pierce County Executive
18 Approved Vetoed , this
19 2 day of November, 2009.

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22 Dates of Publication of
23 Notice of Public Hearing: September 30 + October 7, 2009
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25 Effective Date of Ordinance: November 12, 2009



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In the Matter of the Application of)
Shore Acres Water Company, of)
Pierce County, State of Washington,)
for a Franchise to construct, operate,)
and maintain pipelines for a Water)
System under and along certain Public)
Roads and Highways in Pierce County,)
Washington)

FRANCHISE

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

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

All Pierce County roads in the southeast quarter of Section 8 and the northeast quarter of Section 17, in Township 21 North, Range 2 East, W.M.

I

In the construction and installation of water system appurtenances and the excavation of trenches on County roads for the purposes of laying relaying, connecting, disconnecting, and repairing mains and pipes and making connections between the same to dwellings and other buildings of the consumers, Grantee shall be governed by and conform to the general rules adopted by Pierce County Public Works and Utilities, it is understood and agreed that Grantee is fully responsible for all such water system appurtenances within the limits of Pierce County right of way (inclusive of any lines or appurtances conveying water from the Grantee); and Grantee, at no expense to the County, shall complete all such work and shall repair the County roads and leave the same in as good condition as before the work was commenced;



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

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

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

26 A complete set of reference notes for monuments and other ties shall be filed
27 with Pierce County Public Works and Utilities.

28 II

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

36 III

37 All work done under this Franchise shall be done in a thorough and professional
38 manner. In the laying of water pipes and conduits and the digging of ditches therefore,
39 Grantee shall leave ditches in such a way as to interfere as little as possible with public
40 travel and shall take all due and necessary precautions to ensure that damage or injury
41 shall not occur or arise by reason of such work; and that where any ditches or trenches
42 are left open at night, Grantee shall place at all crossings suitable lights in such a
43 position to guard against danger, and Grantee shall be liable for all property damage or
44 personal injury that may be caused by reason of any injury sustained through Grantee's
45 negligence by reason of any person, animal or property being injured through any



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

5 IV

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

13 V

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

18 COVERAGES

LIMITS OF LIABILITY

19		
20	Commercial General Liability Insurance	\$2,000,000 Each
21	Bodily Injury Liability	Occurrence
22		
23	Property Damage Liability	\$250,000 Each
24		Occurrence

25 or
26 COMBINED SINGLE
27 LIMIT COVERAGE OF
28 \$2,000,000

29
30 The general requirements of the policy shall contain:

31
32 Pierce County is named as an additional insured in this Franchise, to applicable
33 coverage.

34
35 In the event of nonrenewal, cancellation, or material change in the coverage
36 provided, 30 days' written notice will be furnished to the County prior to the date
37 of nonrenewal, cancellation, or change. Such notice shall be sent to the
38 Engineer, Pierce County Public Works and Utilities, 2702 South 42nd Street,
39 Suite 201, Tacoma, Washington 98409.

40
41 Pierce County has no obligation to report occurrences to the insurance
42 companies unless a claim is filed with the County; and Pierce County has no
43 obligations to pay premiums.
44



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

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

13
14 Grantee's insurance is primary over any insurance that may be carried by
15 Pierce County. Grantee agrees to provide proof of insurance each year to
16 Pierce County.

17
18 Grantee agrees to defend, indemnify, and save harmless Pierce County,
19 its appointed and elected officials and employees, from and against all
20 loss or expense, including but not limited to, judgments, settlements,
21 attorney's fees, and costs by reasons of any and all claims and demands
22 upon the County, its elected or appointed officials or employees for
23 damages because of personal or bodily injury including death at any time
24 resulting therefrom, sustained by any person or persons, and on account
25 of damage to property including loss of use thereof, whether such injury to
26 persons or damage to property is due to the negligence of Grantee, its
27 contractors, its or their employees or agents, Pierce County, its appointed
28 or elected officers, or its employees or agents, except only such injury or
29 damage as shall have been occasioned by the sole negligence of Pierce
30 County, its appointed or elected officials or employees.

31
32 If the claim, suit, or action for injuries, death, or damages as provided for
33 in this Franchise agreement is caused by or results from the concurrent
34 negligence of (a) Pierce County or Pierce County's agents or employees;
35 or (b) Grantee, or Grantee's agents or employees, the indemnity
36 provisions provided for in this Franchise shall be valid and enforceable
37 only to the extent of Grantee's negligence.

38
39 Grantee specifically and expressly waives any immunity under Industrial
40 Insurance Title 51 RCW, and acknowledges that this waiver was mutually
41 agreed upon by the parties herein.
42
43



VI

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

VII

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

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

1. Pierce County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably possible.
2. Pierce County shall provide to Grantee two sets of preliminary plans for individual projects as soon as such plans are developed to a state of reasonable certainty, and shall advise Grantee of the anticipated date of start of work on such projects.
3. Grantee shall, when requested by Pierce County in writing, locate its facilities in the field, show those locations on one set of preliminary plans provided, and return that set to Pierce County Public Works and Utilities within four weeks of receiving the written request.
4. Pierce County shall provide to Grantee final plans for such projects as soon as such plans are available and shall confirm or correct the anticipated date of start of work on such projects.
5. Pierce County shall assist Grantee in determining how its facilities shall be relocated. Such assistance by Pierce County shall include, at a minimum, copies of plans (as required above) and specifications for such County Projects, and information known to Pierce County as to existing survey control available for location of such County Projects. Such assistance shall not subject Pierce County to any liability for the costs of relocating the subject facilities a second time if Grantee incorrectly relocated its facilities the first time.



- 1 6. When requested, Pierce County and Grantee shall meet to discuss how
2 County Projects and utility relocations can be accomplished with the least
3 impact on the other. Pierce County's decision shall be final in such
4 matters, but shall not be unreasonable.
5
- 6 7. Relocation of Grantee's facilities shall be completed in a timely manner
7 defined as follows:
8
- 9 Relocation of Grantee's facilities shall normally be accomplished in
10 advance of County Projects. In the event relocation of Grantee's
11 facilities is done concurrently with such Projects, Pierce County
12 shall be so notified and agree to a written schedule for relocation.
13 Compliance with such a written schedule shall be Grantee's duty.
14 In no event shall relocation of Grantee's facilities interfere with
15 County Projects.
16
- 17 8. If Grantee does not relocate its facilities in a timely manner as required
18 above, Pierce County may relocate, or cause to be relocated, such
19 facilities of Grantee as Pierce County deems necessary, and in the
20 manner Pierce County deems necessary, in its sole discretion. Grantee
21 hereby indemnifies and holds Pierce County, its employees, officers,
22 officials, and agents totally free and harmless from all and any liability
23 which may arise from damages caused by the relocation by Pierce County
24 of the facilities of Grantee, even if such damages and liability arise from
25 the negligence of Pierce County, its employees, officers, officials, and
26 agents.
27
- 28 9. Grantee hereby indemnifies and holds harmless Pierce County, its
29 officers, officials, and employees, from damages that may arise from
30 Grantee's failure to relocate its facilities in accordance with the dates for
31 completion of relocation of facilities set forth above, or any other act or
32 omission by Grantee, its contractor(s), agents, officers, or employees
33 related to the provisions of this Franchise.
34
- 35 10. It shall be conclusively presumed that Pierce County will have suffered
36 damages as a result of exercising its rights as set forth in Item 8 above,
37 and compensation for such damages will be difficult to ascertain, and
38 therefore, Grantee shall compensate Pierce County for such damages in
39 the amount of twice the amount of the cost of such relocation of Grantee's
40 facilities by Pierce County.
41
42



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

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

12
13 VIII

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

17
18 IX

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

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

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

46
47 Furthermore, all Grantees shall, within 30 days after written demand thereof on
48 the anniversary of said grant, modification, amendment, renewal, or transfer of any



1 franchise, reimburse Pierce County for all direct and indirect costs and expenses
2 incurred by the County in the preceding 12 months in connection with any said
3 franchise. Any and all costs associated with providing service to County customers that
4 has been approved by Pierce County for invoicing shall be presented to the County on
5 the anniversary of the franchise.
6

7 X

8 In the event that the territory covered by this Franchise shall at any time during
9 the Franchise period be included within the limits of any incorporated city or town, the
10 authorities of said city or town shall have the right, to be exercised at their discretion, to
11 acquire by purchase or condemnation, any part of such pipes, conduits, and water
12 system other than transmission lines at a price to be based upon the reasonable value
13 of the same at the time, without any additional value for the Franchise or any unexpired
14 period thereof, and upon such acquirement, this grant and Franchise shall immediately
15 terminate, only that portion to be incorporated.
16

17 XI

18 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises
19 provides in part: All Franchises shall be subject to the right of the Council, or the people
20 acting for themselves through referendum, to repeal for cause, amend, or modify the
21 Franchise in the interest of the public, and agrees to said condition.
22

23 XII

24 Any failure to render adequate service to the patrons of said water system, or the
25 discontinuance of such water services without fault on the part of the patron or patrons
26 involved, for a period of 30 days, shall work a forfeiture of this Franchise, at the
27 discretion of the Pierce County Council, unless the failure should result from causes
28 beyond human control.
29

30 XIII

31 Venue and jurisdiction for any controversy arising from the Franchise shall be in
32 Pierce County, Washington.
33

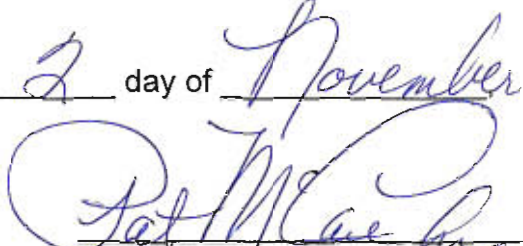
34 XIV

35 Grantee shall provide full acceptance of this Franchise and all its terms and
36 conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County
37 Council within 60 days from November 2, 2009. This requirement
38 shall be a condition precedent to the Franchise taking effect. If Grantee does not
39 provide a signed copy of the Franchise as set forth in this Section, this Franchise shall
40 be null and void.
41
42



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

3
4 DATED at Tacoma, Washington, this 2 day of November
5 2009.

6
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8
9 
10 Pat McCarthy
11 Pierce County Executive

12
13 Shore Acres Water Company accepts and agrees to comply with all terms and
14 conditions of this Franchise.

15
16 SCOTT WAGNER 
17 Name

18
19
20 PRESIDENT
21 Title

22
23
24 SHORE ACRES WATER COMPANY
25 Company, Corporate Name, or Individual

26
27
28 12/3/09
29 Date

30

