



KING COUNTY

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

Signature Report

April 30, 2002

Ordinance 14349

Proposed No. 2001-0387.2

Sponsors Irons

1 AN ORDINANCE approving a franchise for the City of
2 Tacoma Department of Public Utilities Water Division to
3 construct, operate and maintain a water transmission pipeline
4 in council districts 7, 9, and 12 authorizing the executive to
5 execute the franchise agreement.

6

7

8 **STATEMENT OF FACTS:**

- 9 1. City of Tacoma Department of Public Utilities Water Division
10 (dba Tacoma Water) has filed an application for a franchise in
11 council districts 7, 9 and 12 to construct, operate and maintain a
12 portion of its water transmission pipeline to allow for more
13 flexibility and reliability, and provide a major supply line for the
14 transmission of water to south King County water purveyors in
15 accordance with RCW 36.55.010 and K.C.C. chapter 6.27.
- 16 2. King County council Ordinance 9193 approved the Tacoma
17 Comprehensive Water System Plan on October 30, 1989. On March

18 29, 1993, the council approved the Comprehensive Mitigation Plan
19 for the City of Tacoma's Second Supply Pipeline (Pipeline No. 5)
20 by Ordinance 10776. The council on October 10, 1994, under
21 Ordinance 11549 amended this plan to address alternative
22 construction technique to further minimize the impacts of the
23 construction of the water transmission line on the environment.

24 3. The application has been reviewed by the relevant county
25 departments.

26 4. The King County executive has recommended approval of the
27 franchise.

28 BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

29 SECTION 1. The granting of a franchise to the Tacoma Water to
30 construct, operate and maintain a water transmission system within King County
31 is hereby approved. The King County executive is authorized to enter into and
32 execute the water transmission system franchise, which by this reference is fully
33 incorporated herein. Said franchise shall include all of the general and special
34 conditions required by the county and the terms and conditions of the
35 Comprehensive Mitigation Plan for Tacoma's Second Supply Pipeline (Pipeline
36 No. 5), approved by the King County Council by Ordinance No. 10776.

37 SECTION 2. If within thirty days after the granting of this franchise, the
38 applicant shall have failed to sign the written acceptance incorporated herein, then

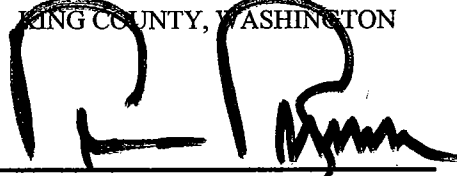
Ordinance 14349

39 the rights and privileges granted herein shall be forfeited and said franchise shall
40 be null and void.
41

Ordinance 14349 was introduced on 7/30/2001 and passed by the Metropolitan King
County Council on 4/29/2002, by the following vote:

Yes: 12 - Ms. Sullivan, Ms. Edmonds, Mr. von Reichbauer, Ms. Lambert, Mr.
Phillips, Mr. Pelz, Mr. McKenna, Mr. Constantine, Mr. Pullen, Mr. Gossett,
Mr. Irons and Ms. Patterson
No: 0
Excused: 1 - Ms. Hague

KING COUNTY COUNCIL
KING COUNTY, WASHINGTON



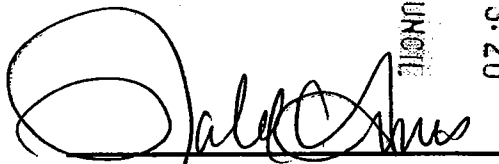
For Cynthia Sullivan, Chair

ATTEST:



Anne Noris, Clerk of the Council

APPROVED this 13 day of May, 2002.



Ron Sims, County Executive

RECEIVED
2002 MAY 13 PM 3:20
KING COUNTY COUNCIL
CLERK

Attachments A. Franchise Agreement, March 26, 2002 , B. Vicinity Map

FRANCHISE NO. 14349

In the matter of the application for a franchise to operate, maintain, repair, and construct water transmission pipeline in, over, along, and under County roads and rights-of-way in King County, Washington.

The application of the CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION (dba Tacoma Water) for a franchise to operate, maintain, repair and construct transmission pipeline in, over, along, and under County roads and rights-of-way located within the area described in attached Exhibit "A" has been heard on this 29th day of April, 2002. All of the property described in Exhibit "A" lies outside the limits of any incorporated Town or City.

Legal notice of the franchise application and of the hearing has been given as is required by law.

The King County Council, having considered the interests proposed and advanced, and finding that the granting of this franchise is in the public interest, ORDERS that a water transmission pipeline franchise be granted to the CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES, WATER DIVISION (dba Tacoma Water) the Grantee, subject to the conditions set forth in Exhibit "B" attached hereto, the comprehensive mitigation plan for Tacoma's Second Supply Pipeline approved by the King County Council by Ordinance No. 10776, this franchise and Ordinance. This franchise grants the right, privilege, authority and franchise to operate, maintain, repair and construct water transmission pipeline as a part of its transmission pipeline in, over, along, and under County roads and rights-of-way located within the area described in Exhibit "A".

This franchise is granted subject to all of the terms and conditions contained herein, within Ordinance No. 14349 and Exhibit "B", and the comprehensive mitigation plan for Tacoma's Second Supply Pipeline approved by the King County Council by Ordinance No. 10776 and shall expire in twenty-five years on May 25, 2021.

Dated this 13 day of May, 2002.

KING COUNTY, WASHINGTON

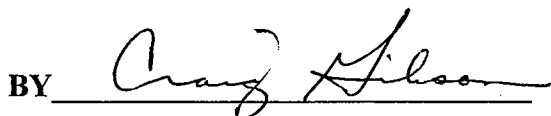
BY 

TITLE King County Executive

The undersigned accepts all the rights, privileges, and duties of this franchise subject to all terms, conditions, stipulations, and obligations contained herein, within Ordinance 14349, and Exhibit "B", and the comprehensive mitigation plan for Tacoma's Second Supply Pipeline approved by the King County Council by Ordinance No. 10776.

CITY OF TACOMA

GRANTEE

BY 

TITLE PROJECT MANAGER

Dated this 4th day of June, 2002.

EXHIBIT "A"

Section	Township (North)	Range East, W.M.)	
SW 10	21	4	Military Road South
SE 10	21	4	44 th Avenue South
NE 10	21	4	South 308 th Street, 51 st Avenue South
SW 2	21	4	51 st Avenue South
SW 2 venue	21	4	South 304 th Street from 51 st A South to 52 nd Avenue South
NE 5	21	5	112 th Avenue SE
NW 4	21	5	118 th Avenue SE
4	21	5	124 th Avenue SE
3	21	5	132 nd Avenue SE
NE 3	21	5	SE 296 th Street from 142 nd Avenue SE to 144 th Avenue SE
NE 2	21	5	SE 296 th Street from 145 th Avenue SE to 148 th Avenue SE
			154 th Avenue SE Se 296 th Street from 156 th Avenue SE to 160 th Avenue SE

160th Avenue SE
SE Kent Black Diamond Rd

SW 6	21	6	Thomas Road 188 th Avenue SE
NW 8	21	6	SE 304 th Street from 196 th Avenue SE to 204 th Avenue SE 200 th Avenue SE 204 th Avenue SE
SW 10	21	6	Lake Sawyer Road
NE 12	21	6	270 th Way SE
SE 7	21	7	290 th Avenue SE
NW 8 NE 7	21	7	SE 312 th Way
NE 10	21	7	SE 309 th Street 335 th Avenue SE
SE 10	21	7	Cumberland Kanaskat Rd SE SE Hudson Road

EXHIBIT "B"

TERMS AND CONDITIONS APPLICABLE TO UTILITY FRANCHISES
GRANTED BY KING COUNTY

THIS FRANCHISE is subject to the following terms and conditions:

1. **DEFINITIONS** References to any County official or office also refers to any office that succeeds to any or all of the responsibilities of the named office or official. References to laws or "applicable laws" include federal, state, and local laws and regulations adopted pursuant to those laws; unless otherwise stated, references to laws include laws now in effect, as the same may be amended from time to time during the operation of this franchise. In addition, the following definitions shall apply:

Cable Services. The term "Cable Services" is used as defined in 47 United States Code 522 (5), as amended.

Cable System. The term "Cable System" is used as defined in 47 United States Code 522 (6), and King County Code 6.a.010 (J) as amended.

County Road Rights-of-Way. The term "County Road Rights-of-Way" includes any road, street, avenue, or alley located within the area described in the attached Exhibit "A", it does not include recreational or nature trails except where the trails intersect or are within roads, streets, avenues or alleys.

Director. The term "Director" refers to the chief executive of the King County Department of Transportation.

Grantee. The term "Grantee" refers to the CITY OF TACOMA DEPARTMENT OF PUBLIC UTILITIES WATER DIVISION (dba Tacoma Water) its successors and those assignees approved pursuant to paragraph 16 herein.

Utility. The term "utility" refers either to the Grantee or, depending on the context, to any other person, firm, or corporation, public or private, which may hold a franchise to maintain and operate similar facilities in, under, over, across, and along any of the County property described in Exhibit "A".

Council. The term "Council" refers to the King County Council, acting in its official capacity.

Other Governing Body. The term "Other Governing Body" refers to any public official or other public board or body as may have the power and jurisdiction to permit or regulate the installation and maintenance of utilities and other facilities in, under, over, across, and along any of the county property described in Exhibit "A".

2. ACCEPTANCE BY GRANTEES OF TERMS AND CONDITIONS

The full acceptance of this franchise and all of its terms and conditions shall be filed with the Clerk of the Council within forty-five (45) days from _____, 20____, by the Grantee. Full acceptance of this franchise is a condition precedent to its taking effect, and unless this franchise is accepted within the time specified, this grant will be null and void and have no force or effect.

3. NON-EXCLUSIVE FRANCHISE

This franchise is not exclusive. It does not prohibit King County from granting franchises for other public or private utilities, in, under, over, across, and along any County property, including County road rights-of-way.

This franchise does not prevent or prohibit King County from constructing, altering, maintaining or using any County road rights-of-way covered by this franchise. King County retains full power to make all changes, relocations, repair, maintenance, etc. as it may deem fit.

4. JURISDICTION

This franchise is intended to convey limited rights and interest only as to those roads and rights-of-way in which King County has an actual interest. It is not a warranty of title or of interest in County road rights-of-way.

Whenever any of the County road rights-of-way as designated in this franchise, by reason of the subsequent incorporation of any Town or City or extension of the limits of any Town or City, shall later fall within the City or Town limits, this franchise shall continue in force and effect until such time as the incorporation and/or annexation is complete according to applicable State law, after which time the County will no longer have any responsibility for maintenance of any County roads,

rights-of-way or other County property within the area of annexation/incorporation.

None of the rights granted to the Grantee shall affect the jurisdiction of King County over County road rights-of-way or the County's power to perform work upon its roadways, rights-of-way or appurtenant drainage facilities including by constructing, altering, renewing, paving, widening, grading, blasting or excavating.

All of the rights herein granted shall be subject to and governed by this franchise; provided, however, that nothing in this franchise may be construed in any way as limiting King County's rights to adopt ordinances which are necessary to protect the health, safety and welfare of the general public.

5. REGULATION OF USE AND CONTROL

This franchise does not deprive King County of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the County road rights-of-way covered by this franchise. This franchise authorizes the use of County rights-of-way solely for the delivery by the Grantee of transmission of water to its customers and any communication line and equipment associated with the operation and maintenance of the pipeline. Additional uses of County rights-of-way by the Grantee, including for cable communication services, shall first require a separate franchise from King County, which conforms to the requirements of K.C.C. 6.27 as amended, or K.C.C. 6.27A as amended and other applicable law.

Any use of the Grantee's equipment or facilities in County rights-of-way by others, including for telecommunication or cable communication services, is prohibited unless separately authorized and approved in writing by King County. The Grantee agrees that prior to authorizing any person to use the Grantee's equipment or facilities located in County rights-of-way, the Grantee will require the user to provide the Grantee with an affidavit that it has obtained the necessary franchise or other approval from the County to operate and provide the proposed service in County rights-of-way. At least thirty (30) days prior to executing any agreement with a potential user for the use of the Grantee's equipment or facilities, the Grantee shall fax the affidavit to the King County Office of Cable Communication at 206-296-0842.

Neither the granting of this nor any language, term or condition within this franchise deprives King County of any powers, rights or privileges it now has or may later acquire to regulate the use of and to control county rights-of-way covered by this franchise.

6. ENFORCEMENT

Failure of King County, on one or more occasions to exercise a right or to require compliance or performance under this franchise or any applicable law, shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance, unless such right has been specifically

waived in writing. Failure of King County to enforce or exercise its rights under any provision of this franchise or applicable law does not constitute a waiver of its rights to enforce or exercise a right in any other provision of this franchise or applicable law.

7. INDEMNITY AND HOLD HARMLESS

The Grantee agrees to indemnify and hold harmless King County as provided herein to the maximum extent possible under law. Accordingly, the Grantee agrees for itself, its successors, and assigns to defend, indemnify and hold harmless King County, its appointed and elected officials, and employees from and against liability for all claims, demands, suits, and judgments, including costs of defense thereof, for injury to persons, death, or property damage which is caused by, arises out of, or is incidental to Grantee's exercise of rights and privileges granted by this franchise. The Grantee's obligations under this section shall include:

- (a) Indemnification for such claims whether or not they arise from the sole negligence of the Grantee, the concurrent negligence of both parties, or the negligence of one or more third parties.
- (b) The duty to promptly accept tender of defense and provide defense to the County at the Grantee's own expense.
- (c) Indemnification of claims made by the Grantee's own employees or agents.
- (d) Waiver of the Grantee's immunity under the industrial insurance provisions of Title 51 RCW, which waiver has been mutually negotiated by the parties.

The Grantee shall have no obligation under this section to indemnify and hold harmless King County for claims arising from the sole negligence or willful misconduct of King County, its appointed and elected officials and employees.

In the event it is necessary for the County to incur attorney's fees, legal expenses, or other costs to enforce the provisions of this section, all such fees, expenses and costs shall be recoverable from the Grantee.

In the event it is determined that RCW 4.24.115 applies to this franchise agreement, the Grantee agrees to defend, hold harmless and indemnify King County to the maximum extent permitted thereunder, and specifically for its negligence concurrent with that of King County to the full extent of Grantee's negligence. Grantee agrees to defend, indemnify and hold harmless the County for claims by Grantee's employees and agrees to waiver of its immunity under Title 51 RCW, which waiver has been mutually negotiated by the parties.

King County shall give the Grantee timely written notice of the making of any claim or of the commencement of any such action, suit, or other proceeding covered by the indemnity in this section. In the event any such claim arises, the County or any other indemnified party shall tender the defense thereof to the Grantee and the Grantee shall have the duty to defend, settle, or compromise any claims arising hereunder and the County shall cooperate fully therein.

Notwithstanding the above, the County shall have no obligation to tender a defense as a condition of

the indemnity where there is a material conflict between the interests of the Grantee and King County.

8. VACATION

If at any time King County vacates any County road rights-of-way covered by this franchise, King County will not be held liable for any damages or loss to the Grantee by reason of such vacation. King County may, after giving ninety (90) days written notice to the Grantee, terminate this franchise with respect to any County road rights-of-way vacated. Upon receiving the notice the Grantee will use its best efforts to secure a continuing easement or remove its facilities from the proposed vacation area. Alternatively, if the Grantee is unable to secure an easement or remove its facilities and so notifies King County, the King County Council may in its vacation proceedings reserve an easement for the Grantee.

9. REPAIR, REMOVAL OR RELOCATION

The Grantee hereby covenants, at its own expense, to repair, remove, or relocate existing facilities including all appurtenant facilities and service line connecting its system to users, within King County road right-of-way if such repair, removal, or relocation shall not be unreasonably required.

The grantee, at no expense to the County, will adjust, remove or relocate existing facilities within County road rights-of-way, including all appurtenant facilities and service lines connecting its system to users, if the County determines such adjustment, removal or relocation is reasonably necessary to allow for an improvement or alteration planned by the County in such road right-of-way. The County shall give the Grantee written notice of such requirement as soon as practicable, at the beginning of the pre-design stage for projects that are part of the County's capital improvement program, including such available information as is reasonably necessary for the Grantee to plan for such adjustment, removal or relocation.

For projects that are part of the County's capital improvement program, in addition to any other notice given to the Grantee, the County shall provide a vertical and horizontal profile of the roadway and drainage facilities within it, both existing and as proposed by the County, and the proposed construction schedule; notwithstanding any permit conditions that may later be applied to the County project, this initial design information shall be given at least 180 days before construction is scheduled to begin, except in cases of urgent construction or emergencies. The Grantee shall respond to this notice, and to any later notices of revised designs based on permit conditions, within no more than thirty (30) days by providing to the County the best available information as to the location of all of the Grantee's facilities, including all appurtenant facilities and service lines connecting its system to users and all facilities that it has abandoned, within the area proposed for the public works project.

The County shall offer the Grantee the opportunity to participate in the preparation of bid documents for the selection of a contractor to perform the public works project as well as all required adjustments, removals or relocations of the Grantee's facilities. Such bid documents shall provide for an appropriate cost allocation between the parties. The County shall have sole authority to choose the contractor to perform such work. The Grantee and the County may negotiate an agreement for the Grantee to pay the County for its allocation of costs, but neither party shall be bound to enter into such an agreement. Under such an agreement, in addition to the Grantee's allocation of contractor's costs, the Grantee shall reimburse the County for costs, such as for inspections or soils testing, related to the Grantee's work and reasonably incurred by the County in the administration of such joint construction contracts. Such costs shall be calculated as the direct salary cost of the time of County professional and technical personnel spent productively engaged in such work, plus overhead costs at the standard rate charged by the county on other similar projects, including joint projects with other County agencies.

10. REQUIREMENT OF CONSTRUCTION PERMITS

The Grantee, its successors or assigns, has the right, privilege, and authority to enter the County road rights-of-way for the purpose of operating, maintaining, repairing or construction its transmission and service lines and appurtenances on the condition that it obtains permits approved by the Director and Property Services Division and, when applicable, by the Department of Development and Environmental Services. Applications for work permits shall be presented to the Property Services Division, which may require copies of plans, blueprints, cross-sections, or further detailing of work to be done. In the event of an emergency, the Grantee may immediately commence the necessary work and shall apply the next business day for the work permit. Any work done, whether by Grantee, its contractors, or third parties will include necessary paving, patching, grading and any other reasonably necessary repair or restoration to the County road rights-of-way. All work shall be done to the satisfaction of the Director.

All equipment, lines and appurtenances which are used in the operation, maintenance, repair or construction of the Grantee's service and which are located within the County road rights-of-way shall be considered to be part of the Grantee's system and shall be the responsibility of the Grantee.

All permits for the operation, maintenance, repair or construction of said system shall be applied for and given in the name of the Grantee, who will be responsible for all work done under the permit. The Grantee remains responsible whether the work is done by the Grantee, its contractors, or by third parties.

The Grantee shall, at no expense to the County, assume the following obligations with respect to the facilities connected to its system that are within County road rights-of-way and which it does not own, including appurtenant facilities and service lines connecting its system to users:

- (a) The Grantee shall apply for, upon request and on behalf of the owner of the facilities, a County right-of-way construction permit for any repairs required for such facilities; provided such owner agrees to reimburse the Grantee for all costs incurred by the Grantee and any other reasonable conditions the Grantee requires as a precondition to applying for the permit. All work to be performed in the County right-of-way shall comply with all conditions of the County permit and all applicable County requirements. The Grantee may at its option perform any part of the repair with its own forces or require the owner to employ a contractor for that purpose, provided such contractor is approved by the County;
- (b) In the event that the County determines emergency repair of such facilities is necessary to halt or prevent significant damage to County road rights-of-way or significant threats to the health, safety and welfare of parties other than the owner or the occupants of the building served by such facilities, the Grantee shall take prompt remedial action to correct the emergency to the County's approval, which the County shall not unreasonably withhold;
- (c) When the County or its contractor provides notice to the Grantee, pursuant to RCW 19.122, of its intent to excavate within County road rights-of-way, the Grantee shall provide to the County or its contractor the best information available from the Grantee's records or, where reasonable, from the use of locating equipment as to the location of such facilities, including surface markings where these would reasonably be of use in the excavation. If the Grantee fails to make good faith efforts to provide the above information within the deadlines provided by RCW 19.122, the Grantee shall hold the County harmless for all reasonable costs that result from damage to such facilities if such damage occurs as a result of the failure to provide such information. Nothing in this subsection is intended or shall be construed to create any rights in any third party or to form the basis for any obligation or liability on the part of the County or the Grantee toward any third party, nor is anything in this subsection intended to be construed to alter the rights and responsibilities of the parties under RCW 19.122, as amended.

11. RESTORATION OF COUNTY ROAD RIGHTS-OF-WAY

After work on, under or adjacent to County road rights-of-way, the Grantee is responsible for and will leave all County road rights-of-way in as good a condition as they were in before any work was done. In the event that the Grantee, its contractors, or third parties working under permit should fail to restore County road rights-of-way to the satisfaction of the Director, King County may make such repairs or restorations as are necessary to return the County road rights-of-way to its pre-work

condition. Upon presentation of an itemized bill for repairs or restorations, including the costs of labor and equipment, the Grantee will pay the bill within thirty (30) days. If suit is brought upon the Grantee's failure to pay for repair and restoration, and if judgment in such a suit is entered in favor of King County, then the Grantee shall pay all of the actual costs, including interest from the date the bill was presented, disbursements, and attorney's fees and litigation related costs incurred.

12. PERFORMANCE OF WORK

The Grantee covenants that in consideration for the rights and privileges granted by this franchise, all work performed by the Grantee on County road rights-of-way shall conform to all County requirements including, but not limited to, the requirements of the current edition of the County Road Standards in force when the work is performed and all traffic control shall also conform to the current edition of the Manual of Uniform Traffic Control Devices in force when the work is performed.

13. BLASTING REQUIREMENTS

The right to operate, maintain, repair and construct Grantee's transmission and service lines and appurtenances granted by this franchise does not preclude King County, its agents or contractors from blasting, grading, or doing other road work to the Grantee's lines and appurtenances. Except in the case of an emergency, the Grantee will be given ten (10) business days written notice of any blasting so that the Grantee may protect its lines and appurtenances. If the Grantee notifies the County within ten (10) business days that the facilities will have to be relocated to protect them from blasting, the County will defer the blasting for up to one (1) year from the date of the original notice. In no event will the Grantee be given less than two (2) business days written notice of any blasting, unless unforeseen natural disaster that would warrant immediate action. Notification of any excavation shall be provided through the One-Call System as provided by RCW 19.122, as hereinafter amended.

14. SURVEY MARKERS AND MONUMENTS

It shall be the responsibility of the Grantee performing any construction work in the County road rights-of-way to restore any survey markers or monuments disturbed by such construction in accordance with RCW 58.09.130, and as hereinafter amended.

15. ASSIGNMENT

The Grantee shall not have the right to assign this franchise without the consent of the Metropolitan King County Council given by Ordinance. No assignment shall be effective unless an acceptance by the assignee of all rights, conditions, terms, provisions, and responsibilities contained within the franchise, as well as surety bonds which the Council deems necessary to be posted are received. Council approval of the assignment may be made subject to the assignee's acceptance of new or modified terms of the franchise.

16. EXPIRATION AND RENEWAL

To the extent described in Exhibit "A", all rights granted by this franchise to County road rights-of-way outside incorporated Towns and Cities apply to all existing County road rights-of-Way improved and unimproved and to all County road rights-of-way acquired by King County during the term of this franchise.

If the Grantee has initiated a renewal of this franchise before it expires, the County may, at its sole discretion, extend the term of the franchise on a month to month basis for up to one year. Should the County elect to extend the franchise, written notice shall be provided to the Grantee before the franchise expiration date.

If the Grantee has not applied for a renewal of this franchise before it expires, King County has the right to remove or relocate any lines and appurtenances of the Grantee as is reasonably necessary for the public's health, welfare, safety, or convenience including, but not limited to, the safe operation of County roads, franchise holders, or for the construction, renewing, altering, or improving of any County road right-of-way, or for the installation of lines and/or facilities of other franchise holders. Grantee shall be liable for the costs incurred in any removal or relocation of its lines and appurtenances under this section. Costs include the expense of labor and equipment.

Upon expiration of this franchise, the Grantee shall continue to be responsible for the operation and maintenance of existing facilities in the County road rights-of-way until removed, assigned to another franchised utility or abandoned; however, the Grantee shall not have the right to provide additional services or construct new facilities. King County will issue permits required for the repair and maintenance of the existing facilities in accordance with K.C.C. 14.44.055 as amended and Section 11 of this franchise. This section and sections 8, 10-13 and 15 of this franchise shall continue in force until such time as the lines are removed from County road rights-of-way, assigned to another franchised utility, or abandoned in place with the approval of the Manager of the Department of Transportation, Road Services Division.

17. RESERVATION OF RIGHTS

King County specifically reserves for itself the right to impose a utility tax on the Grantee if such taxing authority is granted by State of Washington and the local option is exercised by the King County Council.

King County also specifically reserves the right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of its property, pursuant to an ordinance. If King County elects to exercise such authority, the fair market compensation requirement for Grantee shall be imposed by ordinance not less than one hundred eighty (180) days after written notice ("Compensation Notice") is delivered to the Grantee, said Compensation Notice identifying with specificity the definition, terms and/or formula to be used in determining such fair market compensation. Acceptance of King County's definition terms and/or formula identified in the Compensation Notice will occur if the Grantee accepts in writing within thirty (30) days of receipt of the Compensation Notice; or, if Grantee takes no action in writing within thirty (30) days of receipt of the Compensation Notice; in which case the applicable ordinance that the King County Council passes will be determinative.

Nothing in this section shall be construed as an agreement by the Grantee of King County's right to exercise authority it has or may acquire in the future to secure and receive fair market compensation for the use of property. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the legality of such right.

Grantee's rejection of the definition, terms, and/or formula identified in the Compensation Notice will only occur if such rejection is in written form, identifying with specificity the grounds for such rejection, and delivered to King County within thirty (30) days after receipt of the Compensation Notice, in which case the below identified arbitration terms will apply:

- (a) The Grantee and King County will select one arbitrator each, and the two selected arbitrators will select a third arbitrator. If the two arbitrators have not selected a third arbitrator within thirty (30) days after the selection of the last selection of the two, either the Grantee or King County may apply to the presiding judge of the King County Superior Court for the appointment of a third arbitrator. The three arbitrators will determine the method for determining the fair market compensation for the County property used by the Grantee. The arbitration procedure employed shall be consistent with the rules and procedures of the American Arbitration Association. The decision of a majority of the arbitrators will bind both the Grantee and King County. At the conclusion of the arbitration, the arbitrators will submit written reports to the Grantee and King County which shall contain all pertinent evidence that led to their conclusion together with an explanation of their reasoning for such conclusion.
- (b) The fees of the arbitrators selected by each party shall be paid by that party and the fees of the third arbitrator shall be paid one-half by the County and the Grantee. The other costs of

the proceeding shall be shared equally by the County and the Grantee.

- (c) In event that the question of fair market compensation is not resolved prior to the effective date specified by the ordinance authorizing said compensation, the arbitration decision will be applied retroactively to the effective date in the ordinance. If the Grantee has refused to pay the disputed amount, the Grantee will pay the retroactive sum plus interest in the amount of twelve percent (12%) per annum. If the Grantee has paid the disputed amount under protest, however, then any over payment shall be returned to the Grantee plus interest in the amount of twelve percent (12%) per annum.
- (d) In the event the Grantee for any reason finds the amount of payment required by King County for the use of its property unacceptable (whether or not any protest is lodged and whether or not the Grantee avails itself of the arbitration provision), the Grantee has the option at any time after the imposition of such required payment to provide King County with three years notice to terminate the franchise and withdraw from the area covered by this franchise at the conclusion of the three year notice period.

Nothing in this franchise may be construed to limit the exercise of authority now or later possessed by the County or any other governing body having competent jurisdiction to fix just, reasonable and compensatory rates or other requirements for services under this franchise. Nothing in this section shall be construed to prohibit the Grantee from challenging, in King County Superior Court or a court of competent jurisdiction, the authority of the County or any other governing body to fix rates or other requirements for services.

18. COMPLIANCE WITH LAWS

Grantee shall conform to all applicable federal, state and local laws and regulations including, but not limited to, the State Environmental Policy Act and King County environmental standards and ordinances, and the comprehensive mitigation plan for Tacoma's Second Supply Pipeline approved by the King County Council by Ordinance No. 10776.

19. NON-DISCRIMINATION CLAUSE

In all hiring or employment made possible or resulting from this franchise agreement, there shall be no discrimination against any employee or applicant for employment because of sex, sexual orientation, age, race, color, creed, national origin, marital status or the presence of any sensory, mental, or physical handicap, unless based upon a bona fide occupational qualification, and this requirement shall apply to but not be limited to the following: employment, advertising, lay-off or

termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

No person shall be denied, or subjected to discrimination in receipt of the benefit of any services or activities made possible by or resulting from this agreement on the grounds of sex, sexual orientation, race, color, creed, national origin, age except minimum age and retirement provisions, marital status, or the presence of any sensory, mental or physical handicap.

Any violation of this provision shall be considered a violation of a material provision of this agreement and shall be grounds for cancellation, termination or suspension in whole or in part, of the agreement by the County and may result in ineligibility for further County agreements.

The Grantee shall make the best efforts to make opportunities for employment and/or contracting services available to women and minority persons. The Grantee recognizes that King County has a policy of promoting affirmative action, equal opportunity and has resources available to assist Grantee in these efforts.

20. PENALTY FOR VIOLATION OF CONDITIONS

If the Grantee shall violate or fail to comply with any of the material terms, conditions, or responsibilities of this franchise through neglect or failure to obey or comply with any notice given the Grantee under the provisions of this franchise or if the Grantee abandons its franchise, the Council may revoke this franchise. King County shall give written notice of its intent to revoke this franchise. A public hearing shall be scheduled within forty-five (45) days following the notification. The decision to revoke this franchise will become effective ninety (90) days following the public hearing if the County, by ordinance, finds:

- (a) That the Grantee has not substantially cured the violation or failure to comply which was the basis of the notice; or
- (b) that the violation or failure to comply which was the basis of the notice is incapable of cure; or
- (c) that the Grantee has repeatedly violated or failed to comply with any of the material terms, conditions, or responsibilities of the franchise, even though the individual violations have been cured; and
- (d) that the revocation of the franchise is in the public interest.

During the forty-five (45) days following the notification, the Grantee shall have the opportunity to remedy the failure to comply.

21. RIGHT OF APPEAL

Decisions, requirements, or approvals of the Director are binding on the parties to this document. Appeals from the Director's determinations will be made by filing a complaint with the King County Superior Court.

22. SEVERANCE

This franchise gives effect to purposes and uses, which are consistent with economical and efficient services rendered in the public interest. If any provision of this franchise, or its application is determined to be invalid by a court of law, then the remaining provisions of this franchise shall continue and remain valid unless the dominant purpose of the franchise would be prevented or the public interest is no longer served.

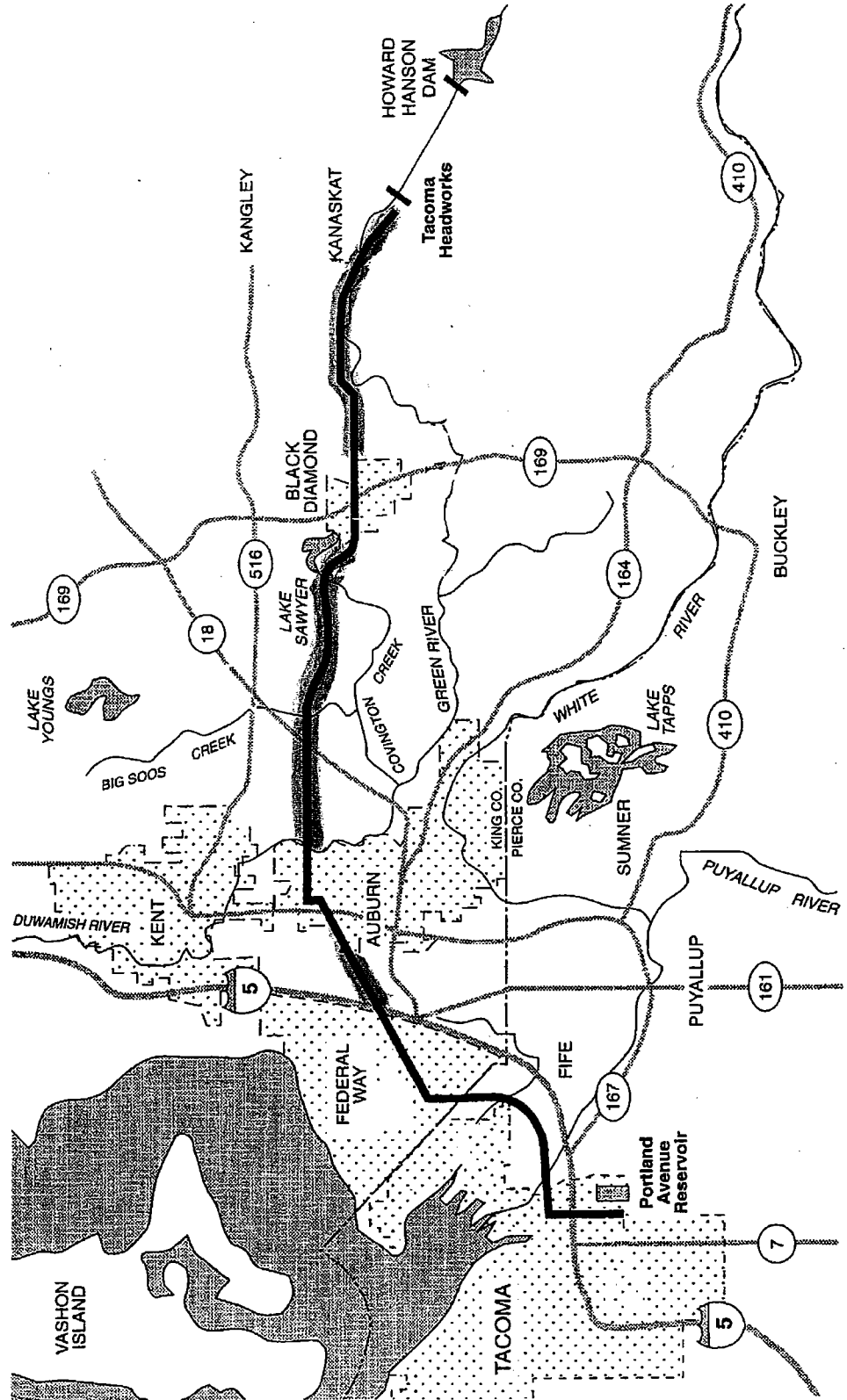
Revised 03/25/02

SECOND SUPPLY PIPELINE VICINITY MAP

14349

2001 387

Attachment B



King County Jurisdiction