

CITY OF FIFE, WASHINGTON

ORDINANCE NO. 1848

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON, AMENDING ORDINANCE NO. 1242 REGARDING THE GRANT OF A FRANCHISE TO McCHORD PIPELINE CO. FOR PLACEMENT OF PETROLEUM PRODUCTS PIPELINES AND ACCESSORIES WITHIN SPECIFIED RIGHTS-OF-WAY IN THE CITY OF FIFE

WHEREAS, on July 9, 1996, the City Council adopted Ordinance No. 1242 granting a franchise to McChord Pipeline Co. to lay, construct, maintain, repair, and replace petroleum products pipelines and accessories under, along and across certain public rights-of-way in the City of Fife; and

WHEREAS, on May 2, 2013, the City received a request from McChord Pipeline Co. to amend Ordinance No. 1242 to expand the franchise area to include sections of the pipeline that are currently within City rights-of-way but were not included in the description of the franchise area in Ordinance No. 1242; and

WHEREAS, the City Council has the authority under RCW 35A.47.040 to grant franchises for the use of its right of way; and

WHEREAS, the purpose of the pipeline for which the franchise is needed is to transport jet fuel from the Port of Tacoma to Joint Base Lewis McChord; and

WHEREAS, the City Council finds that it is appropriate to amend the franchise to include the area requested as set forth in this ordinance; now therefore

THE CITY COUNCIL OF THE CITY OF FIFE, PIERCE COUNTY, WASHINGTON DO ORDAIN AS FOLLOWS:

Section 1. Section 1 of Ordinance No. 1242 is hereby amended to read as follows:

Section 1. Grant of Franchise. The City of Fife hereby grants to McChord Pipeline Co. a Franchise, subject to the terms and conditions of this Ordinance, the right, privilege and authority to lay, construct, operate, maintain, alter, remove, repair or replace facilities under, within, along and through the Franchise Area. For the purpose of this Ordinance "Franchise Area" means the Port of Tacoma Road right-of-way from the northern municipal boundaries of the City of

Fife, south to the southerly boundary of the Pacific Highway East right-of-way; the Pacific Highway East right-of-way from the east side of its intersection with Port of Tacoma Road, west, to the intersection of Pacific Highway East and 29th Avenue East (fka Frederic Street); the 29th Avenue East right-of-way from the northern municipal boundaries of the City of Fife to the southern boundary of the Pacific Highway East right-of-way; the 20th Street East right-of-way from the southerly terminus of the Interstate 5 pipeline crossing to the northern boundary of the Ferguson Road right-of-way vacated per Ordinance No. 356; and the North Levee Road right-of-way at the intersection with the Ferguson Road right-of-way vacated per Ordinance No. 35, all within the City limits of the City of Fife, Pierce County, Washington.

Section 2. Section 4 of Ordinance No. 1242 is hereby amended to read as follows:

Section 4. Installation of Facilities.

4.1 All facilities shall be installed and maintained at such locations as approved by the City through the permit process so as to least interfere with existing and planned utilities and with free passage of traffic and in accordance with the laws of the State of Washington and the ordinances and standards of the City regulating such construction. McChord Pipeline Co. Shall obtain all permits and approvals otherwise required by the City unless expressly provided to the contrary herein.

4.2 All construction and installation work hereunder shall be under the supervision and pass the inspection of the Community Development Director and/or his designee. All construction and installation work shall meet the safety standards of all Federal, State and City regulations in effect at the time the work is commenced.

4.3 Markers demarcating the pipeline's location shall be placed by McChord Pipeline Co. on the surface, each within eyesight of the next adjacent marker, so as to provide clear warning of the presence of the pipeline but in a manner that does not interfere with trails or other public uses in that area. Additionally, McChord Pipeline Co. shall place continuous underground markers demarcating the pipeline's location each time it digs to the pipeline for any reason.

Section 3. A new Section 8A is hereby added to Ordinance No. 1242 to read as follows:

Section 8A. Leaks, Spills, Ruptures and Emergency Response.

8A.1 McChord Pipeline Co. shall have in place, at all times during the term of this Franchise, a system for remotely monitoring pressures and flows across the Franchise Area. The remote monitoring must be able to accurately detect pipeline ruptures.

8A.2 During the term of this Franchise, McChord Pipeline Co. shall have a written emergency response plan and procedure for locating leaks, spills, and ruptures and for shutting down valves as rapidly as possible.

8A.3 If requested by the City, McChord Pipeline Co. shall provide a copy of its emergency response plans and procedures, including, but not limited to, emergency response for spills or leaks.

8A.4 McChord Pipeline Co.'s emergency plans and procedures shall designate McChord Pipeline Co.'s responsible local emergency response officials and a direct 24-hour emergency contact number for control center operator. McChord Pipeline Co. shall, after being notified of an emergency, cooperate with the City and make every effort to respond as soon as possible to protect the public's health, safety and welfare.

8A.5 McChord Pipeline Co. shall be solely responsible for all necessary costs incurred by city, county, special district or state agencies in responding to any rupture, spill, or leak from McChord Pipeline Co.'s pipeline(s) and/or facilities, including, but not limited to, detection and removal of any contaminants from air, earth or water, and all actual remediation costs. This section shall not limit McChord Pipeline Co.'s rights or causes of action against any third party or parties who may be responsible for a leak, spill or other release of hazardous liquid from McChord Pipeline Co.'s pipeline, including such third party's insurers.

8A.6 In addition to the notification requirements in the emergency response plan, McChord Pipeline Co. shall notify the City of any uncontained leak, spill or rupture, outside of a vault or pump station, of petroleum product from its pipeline(s) and/or Facilities within or affecting the Franchise Area totaling one (1) barrel or more within one (1) business day of its observation or detection.

8A.7 If requested by Grantor in writing, McChord Pipeline Co. shall follow-up this notice within thirty (30) days with a written summary of the event, including, but not limited to, the leak, spill, or rupture's date, time, amount, location, response, remediation and other agencies McChord Pipeline Co. has notified.

8A.8 In the event of an uncontained leak, spill or rupture from McChord Pipeline Co.'s pipeline(s) and/or Facilities affecting the Franchise Area of ten (10) barrels or more, where the cause is not reasonably apparent, and where federal or state regulators do not investigate, the City may demand that the occurrence be investigated by an independent pipeline consultant selected by the City. McChord Pipeline Co. shall be solely responsible for paying all of the consultant's costs and expenses incurred in investigating the occurrence and reporting the findings. McChord Pipeline Co. shall meet and confer with the independent consultant following the consultant's investigation to address whether any modifications or additions to McChord Pipeline Co.'s pipeline(s) and/or facilities may be warranted. In cases where federal or state regulators do perform an investigation, McChord Pipeline Co. agrees to share the results of that investigation with the city within sixty (60) days.

8A.9 If the consultant recommends that McChord Pipeline Co. make modifications or additions to McChord Pipeline Co.'s pipeline(s) and/or facilities, McChord Pipeline Co. covenants to consider said recommendations in good faith. If McChord Pipeline Co. declines to follow the consultant's recommendations, McChord Pipeline Co. shall provide a written report to the City explaining its reasoning for not following said recommendations. The parties agree to comply with the dispute resolution provisions contained herein to resolve any dispute over the whether to follow the consultant's recommendations.

Section 4. Section 15 of Ordinance No. 1242 is hereby amended to read as follows:

Section 15. Recovery of Costs. Nothing herein shall preclude the City from recovering any administrative costs incurred by the City in the approval of permits or in the supervision, inspection or examination of all work by McChord Pipeline Co. in the Franchise Area as described in accordance with applicable ordinances or laws. McChord Pipeline Co. shall reimburse any actual costs reasonable incurred by the City in responding to emergencies involving McChord Pipeline Co.'s facilities. McChord Pipeline Co. shall also reimburse any actual costs reasonably incurred by the City's Police Department in responding to non-emergencies involving security or protection of McChord Pipeline Co.'s facilities, when the request to respond is initiated by McChord Pipeline Co. or Joint Base Lewis-McChord.

Section 5. A diagram of the Franchise Area as amended, is attached hereto as Exhibit A.

Section 6. The provisions of Ordinance No. 1242, as amended herein, remain in full force and effect.

Section 7. Ordinance Effective Date. This Ordinance shall be in full force and effect no sooner than five (5) days after publication as required by law; and after acceptance of the ordinance by Franchisee. A summary of this Ordinance may be published in lieu of the entire Ordinance, as authorized by State law.

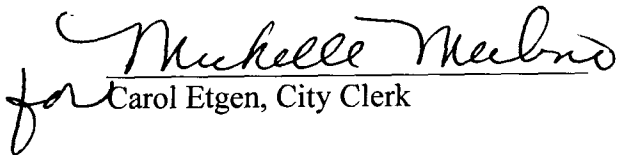
Section 8. Severability. Each and every provision of this Ordinance shall be deemed severable. In the event that any portion of this Ordinance is determined by final order of a court of competent jurisdiction to be void or unenforceable, such determination shall not affect the validity of the remaining provisions thereof provided the intent of this Ordinance can still be furthered without the invalid provision.

Introduced the 22nd day of Oct 2013.

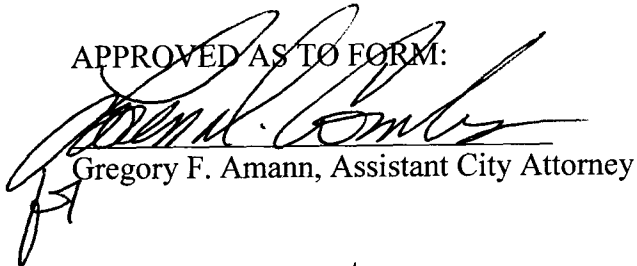
Passed by the City Council on the 17th day of November 2013.


David K. Zabel, City Manager

ATTEST:


for Michelle Meubius
Carol Etgen, City Clerk

APPROVED AS TO FORM:


Gregory F. Amann, Assistant City Attorney

Published: 11/14/13
Effective Date: Nov. 19, 2013

McChord Pipeline Co. accepts the terms and conditions of this Ordinance and approves and accepts the amendment to the Franchise as set forth herein.

Dated this _____ day of _____, 2013

McChord Pipeline Co.

By: _____

Its: _____

STATE OF _____)

County of _____)

ss.

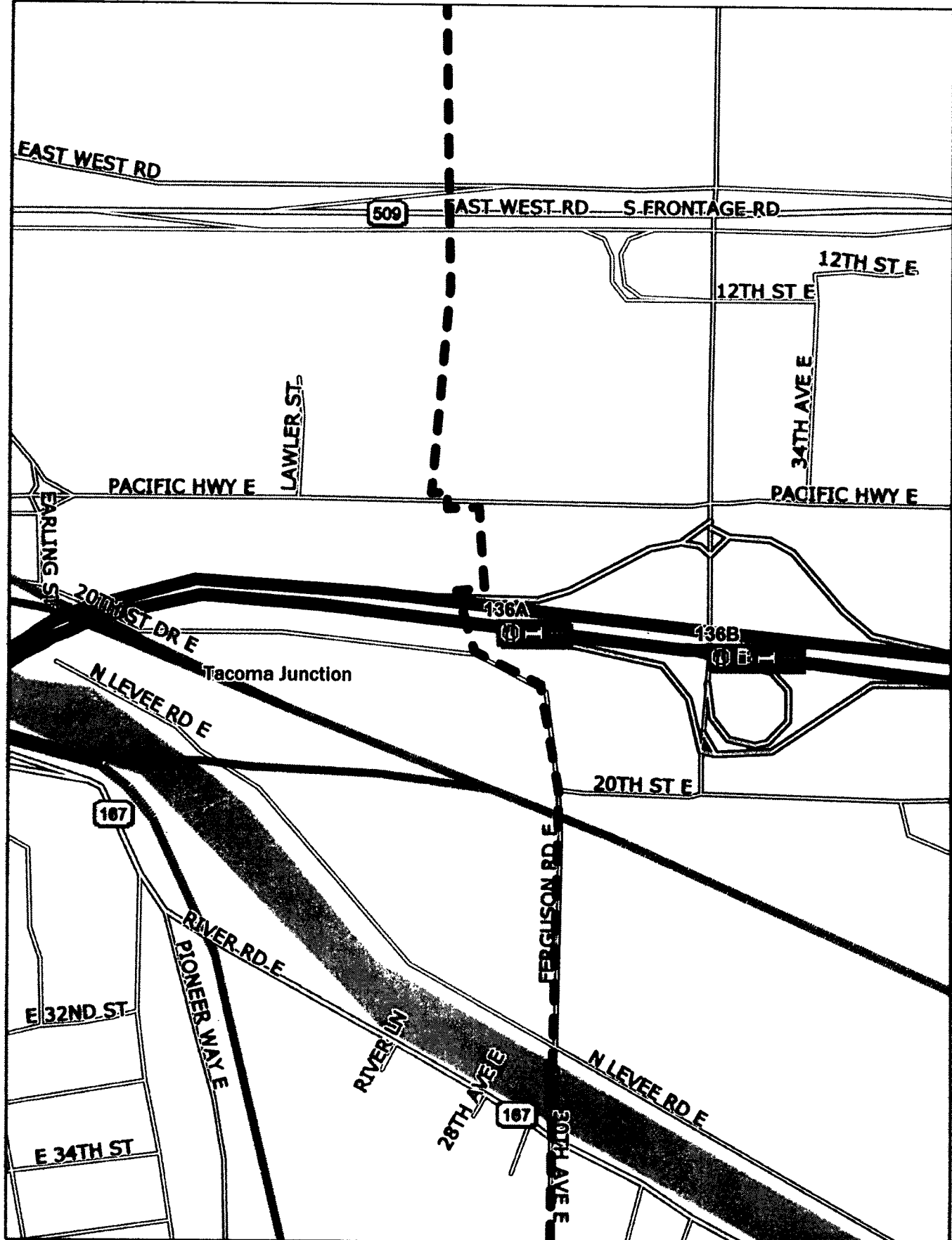
I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath, stated that he was authorized to execute the instrument and acknowledged it as the _____ of McChord Pipeline Co. be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____.

NOTARY PUBLIC

Print Name: _____

My appointment expires: _____



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