ORDINANCE NO. 3101

AN ORDINANCE of the City of Kent, Washington, granting unto Heath Techna, Inc., a Delaware corporation, its successors and assigns, the right, privilege, authority and franchise for ten years, to construct, attach, maintain, repair, replace, operate and use communication line duct bank facilities under and across South 200th Street within the City of Kent.

THE CITY COUNCIL OF THE CITY OF KENT, WASHINGTON DOES HEREBY ORDAIN AS FOLLOWS:

Section 1. Franchise Granted

1.1 Pursuant to the laws of the State of Washington (including, but not limited to, RCW 35A.47.040 and RCW 80.32.010), the City of Kent, a Washington municipal corporation ("City"), hereby grants to Heath Techna Corporation, a Delaware corporation ("Heath Techna"), subject to the terms and conditions set forth hereinafter, a franchise for a period of ten years, commencing on the effective date of this ordinance.

1.2 This Franchise grants Heath Techna the right, privilege and authority to install a casing pipe as reflected in the attached map, attached hereto and incorporated herein as Exhibit A, for the specific purpose to insert a communication and data transmission wire under, across and through a portion of South 200 St. in the City of Kent (the "Franchise Area"), which Franchise
Area is legally described in Exhibit B, attached hereto and incorporated herein by this reference, and which shall serve to link two properties owned or controlled by Heath Techna, which properties are described in Exhibits C and D, attached hereto and incorporated herein by this reference.

Section 2. Nonexclusive Franchise Grant

2.1 This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises which do not interfere with Heath Techna's rights under this Franchise. This Franchise shall in no way prevent or prohibit the City from using the Franchise Area in a manner consistent with this Franchise or affect its jurisdiction over the Franchise Area. The City shall retain power to make all necessary changes, relocations, repairs, maintenance, and improvements in, of or to South 200th Street, including the Franchise Area, as the City may deem fit.

Section 3. Relocation of Heath Techna's Facilities

3.1 Whenever the City undertakes (or causes to be undertaken at City expense) public improvements (e.g., improvements to City streets and/or City utilities) and such public improvements require the relocation of Heath Techna's then existing facilities within the Franchise Area, the City shall:

3.1.1 provide Heath Techna, at least thirty (30) days prior to the City's commencement of activities requiring such relocation, written notice requesting such relocation; and
3.1.2 provide Heath Techna with copies of pertinent portions of the City's plans and specifications for such public improvements and a proposed location for Heath Techna's facilities so that Heath Techna may relocate its facilities to another location in order to accommodate the City's project.

After receipt of such notice and such other information, Heath Techna shall relocate such facilities within the Franchise Area at no charge to the City. Heath Techna shall make every reasonable effort, subject to matters beyond its control, to complete the relocation of such Facilities so as not to delay the City's public improvement project.

3.2 In connection with the relocation of Heath Techna's Facilities in accordance with subsection 3.1 above, Heath Techna may, after receipt of written notice requesting a relocation of its Facilities within the Franchise Area, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise Heath Techna in writing if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. In the event the City ultimately determines that there is no other reasonable alternative, Heath Techna shall relocate its Facilities within the Franchise Area as otherwise provided in subsection 3.1.

3.3 Any condition or requirement imposed by the City upon any person or entity other than Heath Techna (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development) that requires the relocation of Heath Techna's Facilities shall be deemed to be a relocation within the purview of this subsection 3.3.
Section 4. Placement of Facilities, Permits, Coordination of Activities, Excavations

4.1 Heath Techna shall at all times maintain its Facilities within the Franchise Area so as not to unreasonably interfere with the free passage of traffic or the use and enjoyment of adjoining property. Heath Techna shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington.

4.2 Heath Techna shall, in carrying out any authorized activities within the Franchise Area, comply with all applicable City ordinances, codes, regulations, standards and procedures as now or hereafter amended, and shall obtain all necessary permits or approvals; provided, however, that if any term or condition of this Franchise and any term or condition of such ordinances, codes, regulations, standards, procedures, permits or approvals are in conflict, the term or condition of this Franchise shall govern and control.

4.3 Heath Techna and the City shall each exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole.

4.4 If, at any time or from time to time, either Heath Techna or the City shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so, an opportunity to use such excavation, provided that: (a) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (b) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.
Section 5. Restoration after Construction

Whenever it shall be necessary for Heath Techna, in the exercise of its rights under this Franchise, to disturb the surface of the Franchise Area, Heath Techna shall restore the surface of the Franchise Area to at least a condition the same as it was in immediately prior to any such disturbance. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state and local standards and specifications. Heath Techna agrees to promptly complete all such restoration work at its sole cost and expense.

Section 6. Lateral Support

6.1 Whenever construction, installation or excavation of Facilities within the Franchise Area have caused or contribute to a condition that appears to substantially impair the lateral support of the Franchise Area, the Public Works Director may direct Heath Techna, at Heath Techna's own expense, to take such actions with respect to its Facilities within the Franchise Area so as not to impair the lateral support thereof.

Section 7. Indemnification

7.1 Heath Techna shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the performance of this Franchise agreement, except for injuries and damages caused by the sole negligence of the City.
7.2 The City's inspection or acceptance of any of Heath Techna's work when completed shall not be grounds to avoid any of these covenants of indemnification.

7.3 Should a court of competent jurisdiction determine that this Franchise agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Heath Techna and the City, its officers, officials, employees, agents and volunteers, Heath Techna's liability hereunder shall be only to the extent of Heath Techna's negligence.

7.4 IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES HEATH TECHNA'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

7.5 The provisions of this section shall survive the expiration or termination of this Agreement.

Section 8. Insurance

8.1 Heath Techna shall procure and maintain for the duration of this Franchise agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Heath Techna, its agents, representatives, employees, subconsultants or subcontractors.

8.2 Prior to the adoption of this Franchise ordinance, Heath Techna shall provide a Certificate of Insurance evidencing:
8.2.1 Automobile Liability insurance with limits no less than $1,000,000 combined single limit per accident for bodily injury and property damage; and

8.2.2 Commercial General Liability insurance written on an occurrence basis with limits no less than $1,000,000 combined single limit per occurrence and $2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations/broad form property damage; explosion, collapse and underground (XCU) if applicable; and employer's liability.

8.3 Any payment of deductible or self insured retention shall be the sole responsibility of Heath Techna.

8.4 The City, its officers, officials, employees, agents and volunteers shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of Heath Techna and a copy of the endorsement naming the City as additional insured shall be attached to the Certificate of Insurance.

8.5 Heath Techna's insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

8.6 Heath Techna's insurance shall be primary insurance as respects the City, and the City shall be given thirty (30) calendar days prior written notice by certified mail, return receipt requested, of any cancellation, suspension or material change in coverage.
Section 9. Abandonment of Heath Techna's Facilities

9.1 Any plan for abandonment or removal of Heath Techna's Facilities within the Franchise Area must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 10. Modification

10.1 This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington. Without limiting the generality of the foregoing, this Franchise (including, without limitation, subsection 4.2 above) shall govern and supersede any permit, approval, license, agreement or other document required by or obtained from the City in conjunction with the exercise (or failure to exercise) by Heath Techna of any and all rights, benefits, privileges, obligations or duties in and under this Franchise, unless such permit, approval, license, agreement or other document specifically:

10.1.1 references this Franchise; and

10.1.2 states that it supersedes this Franchise to the extent it contains terms and conditions which change, modify, delete, add to, supplement or otherwise amend the terms and conditions of this Franchise.

In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any such permit, approval, license, agreement or other document, the provisions of this Franchise shall control.
Section 11. Forfeiture and Other Remedies

11.1 If Heath Techna willfully violates or fails to comply with any of the provisions of this Franchise, or through willful or unreasonable negligence fails to heed or comply with any notice given Heath Techna by the City under the provisions of this Franchise, then Heath Techna shall, at the election of the Kent City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon reasonable notice to Heath Techna.

11.2 The right of the City to declare a forfeiture pursuant to subsection 12.1 is a remedy in addition to, and is not a limitation of, the rights, remedies or actions available to either party by reason of the other party's noncompliance with the terms and conditions of this Franchise.

Section 12. City Ordinances and Regulations

12.1 Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any reasonable ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public.

Section 13. Publication, Plan Review and Inspection Costs

13.1 The cost of the publication of this Ordinance shall be borne by Heath Techna. Additionally, all the City's plan review and inspection costs arising from or connected with the construction of the facilities contemplated to be built as a result of this franchise shall be borne by Heath Techna.
Section 14. Acceptance

14.1 After the passage and approval of this ordinance and within sixty (60) days after such approval, this Franchise shall, if accepted by Heath Techna, be accepted by Heath Techna by its filing with the City Clerk an unconditional written acceptance thereof. Failure of Heath Techna to so accept this franchise within said period of time shall be deemed a rejection thereof by Heath Techna, and the rights and privileges herein granted shall, after the expiration of the sixty-day period, absolutely cease, unless the time period is extended by ordinance duly passed for that purpose.

Section 15. Survival

15.1 With respect only to matters arising during the period of time this Franchise is in effect, the parties intend that any term or condition applicable to such matters shall survive the expiration or termination of this Franchise to the extent such survival can be reasonably inferred under the circumstances presented and to the extent such an inference is necessary to prevent substantial injustice to an injured party.

15.2 The terms and conditions of this Franchise shall be binding upon the parties' respective successors and assigns.

Section 16. Severability

16.1 If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise.
Section 17. Assignment

17.1 Heath Techna may not assign or transfer this Franchise without the written consent of the City Council of the City, which consent shall not be unreasonably withheld.

Section 18. Notice

18.1 Any notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

City of Kent
Director of Public Works
300 West Gowe
Kent, WA 98032

Heath Techna Corp.
Attn: Richard Klug, Vice-President of Finance
Heath Tecna Aerospace Co.
19819 84th Avenue South
Kent, Washington 98032

Section 25. Effective Date

This Ordinance shall take effect thirty (30) days after its execution; having first been submitted to the Kent City Attorney for approval; after one introduction by the City Council at a regular meeting; after having been published at least once in a newspaper of general circulation in the City of Kent; and finally, having been granted an approving vote of at least a majority of the City Council at a regular meeting.
DAN KELLEHER, MAYOR

ATTEST:

BRENDA JACOBER, CITY CLERK

APPROVED AS TO FORM:

ROGER A. LUBOVICH, CITY ATTOORNEY

PASSED the 20 day of April, 1993.
APPROVED the 21 day of April, 1993.
PUBLISHED the 23 day of April, 1993.

I hereby certify that this is a true copy of Ordinance No. 3101, passed by the City Council of the City of Kent, Washington, and approved by the Mayor of the City of Kent as hereon indicated.

BRENDA JACOBER, CITY CLERK
HEATH TECNA AEROSPACE COMPANY

COMMUNICATIONS LINES CROSSING ACROSS SOUTH 200th STREET
BETWEEN PLANT No.1 and PLANT No. 3

Three 4-inch conduits located in a strip of land 3.0 feet wide and 1.5 feet on either side of the following described line:

A line perpendicular to the center line of South 200th Street, extending 30 feet each side of center line and being 280.68 feet west of the East one quarter-corner of Section 1, Township 22 North, Range 4 East, Willamette Meridian, City of Kent, Washington, containing 180 square feet, more or less.
Legal Description of Heath Tecna Property
after Lot Line Adjustment

THAT PORTION OF THE SOUTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 1,
TOWNSHIP 22 NORTH, RANGE 4 EAST, WILLIAMETTE MERIDIAN, IN KING COUNTY, WASHINGTON,
LYING SOUTH OF THE SOUTHERLY MARGIN OF SOUTH 196TH STREET AND EASTERY OF THE
EAST MARGIN OF 81ST AVENUE SOUTH AS THEY WERE ESTABLISHED BY THAT DEED RECORDED
UNDER RECORDING NUMBER 5345763;
EXCEPT THE SOUTH 280 FEET OF THE WEST 263.19 FEET THEREOF;
EXCEPT THE SOUTH 30 FEET THEREOF;
EXCEPT THOSE PORTIONS LYING WITHIN PRIMARY STATE HIGHWAY NUMBER 5;
EXCEPT THOSE PORTIONS DEEDED TO THE CITY OF KENT BY DEEDS, RECORDED UNDER
RECORDING NUMBERS 781220012, 7905290355 AND 8808150073; AND
EXCEPT THAT PORTION DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE WEST MARGIN OF PRIMARY STATE HIGHWAY NUMBER 5, SAID
POINT BEING 179.06 FEET SOUTH OF THE NORTH LINE OF SAID SOUTHEAST QUARTER OF THE
NORTHEAST QUARTER OF SECTION 1;
THENCE WEST ALONG THE SOUTHERLY MARGIN OF SOUTH 196TH STREET TO A POINT WHICH IS
411.11 FEET EAST OF THE EASTERY MARGIN OF 81ST AVENUE SOUTH;
THENCE SOUTH PARALLEL TO SAID EASTERY MARGIN 365 FEET;
THENCE EAST PARALLEL TO SAID SOUTHERLY MARGIN TO THE WESTERY MARGIN OF SAID
STATE HIGHWAY;
THENCE NORTH ALONG SAID WESTERY MARGIN TO THE POINT OF BEGINNING.

EXHIBIT C
LEGAL DESCRIPTION

Parcel A:

That portion of the North half of the Northeast quarter of the Southeast quarter of Section 1, Township 22 North, Range 4 East, W.M., in King County, Washington described as follows:
Beginning at the Northeast corner of said subdivision;
Thence South along the East line of said subdivision 219.82 feet;
Thence North 89° 24' 44" West 990.05 feet;
Thence North parallel to the East line of said subdivision to the North line of said subdivision;
Thence Easterly along said North line 990.11 feet, more or less, to the point of beginning;
EXCEPT those portions conveyed to King County and to the City of Kent for streets by deeds recorded under King County Recording Nos. 749615, 5999070, 7305070013, 7903090116 and 790309113.

Parcel B:

That portion of the North half of the Northeast quarter of the Southeast quarter, Section 1, Township 22 North, Range 4 East, W.M. in King County, Washington described as follows:
Commencing at the Northeast corner of said subdivision:
Thence South along the East line of said subdivision 219.82 feet to the true point of beginning:
Thence North 89° 24' 44" West 990.05 feet;
Thence South parallel to the East line of said subdivision 224.18 feet;
Thence South 89° 39' 52" East 990.02 feet to East line of said subdivision;
Thence North along said East line 219.32 feet to the True Point of Beginning:
EXCEPT those portions conveyed to King County and the City of Kent for streets by deeds recorded under King County recording Nos. 749615, 7901290124, and 7901290125.

EXHIBIT D