

ORDINANCE NO. 314

AN ORDINANCE OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, GRANTING THE CITY OF FIRCREST, WASHINGTON,
A NONEXCLUSIVE FRANCHISE TO MAINTAIN AND OPERATE A
SANITARY SEWER SYSTEM IN CERTAIN PORTIONS OF
UNIVERSITY PLACE, WASHINGTON

WHEREAS, Fircrest operates a sanitary sewer utility in and around the City of Fircrest, including within portions of what is now the City of University Place; and

WHEREAS, both Cities intend that Fircrest continue to provide sanitary sewer service to all residents within University Place who are currently receiving such service; and

WHEREAS, prior to the incorporation of University Place on August 31, 1995, Fircrest provided sanitary sewer service to portions of unincorporated Pierce County under the authority of a non-exclusive franchise granted in Pierce County Ordinance No. 90-89; and

WHEREAS, upon the incorporation of University Place, the franchise granted to Fircrest by the terms of Ordinance No. 90-89 was cancelled, and then immediately extended for five years, through August 31, 2000, pursuant to RCW 35.02.160; and

WHEREAS, upon annexation of the area known as the West End Addition into University Place, effective January 26, 1997, a five year extension pursuant to RCW 35.02.160 is effective for the West End Addition, through January 26, 2002.

WHEREAS, upon annexation of the area known as Fircrest Acres into University Place effective April 25, 1999 a seven year extension pursuant to RCW 35.02.160 is in effect for the Fircrest Acres area through April 25, 2006.

WHEREAS, the City Council has extended the term of the original franchise granted to Fircrest by Ordinance No. 90-89 through December 31, 2000, and now desires further to extend and to modify the franchise provisions for all customers within University Place;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF UNIVERSITY PLACE,
WASHINGTON, DOES ORDAIN AS FOLLOWS:**

Section 1. Grant of Franchise. Pursuant to RCW 35A.47.040, the City of University Place hereby grants to the City of Fircrest or its successors a nonexclusive franchise for the maintenance and operation of a sanitary sewer system, upon the same terms and conditions as those set forth in Pierce County Ordinance No. 90-89, a copy of which is attached as Exhibit A and incorporated fully herein.

Section 2. Interpretation and Acceptance. For the purposes of this agreement, all references in Pierce County Ordinance No. 90-89 to Pierce County, Pierce County Council, Pierce County Public Works Director and Pierce County Code shall be considered to refer to City of University Place, City Council of University Place, City of University Place Public Works Director and City of University Place Municipal Code, respectively. This franchise must be accepted in writing by the City of Fircrest within sixty (60) days of the effective date of the ordinance.

Section 3. Additional Franchise Provisions. In addition to the franchise terms set out in Pierce County Ordinance No. 90-89, the franchise granted to Fircrest shall also include the following provision:

University Place may design and construct such sanitary sewer mains, lines, and appurtenances as it deems necessary or convenient to the provision of sanitary sewer service to its residents. Pursuant to Fircrest's approval, University Place shall be entitled to connect any such facilities to any of Fircrest's facilities located in the franchise area specified in Pierce County Ordinance No. 90-89.

At all times thereafter, any such facilities constructed by University Place shall remain the property of University Place. By this Franchise, however, and after review and approval by University Place, University Place licenses and permits Fircrest to use for sewage conveyance any such facilities constructed and paid for by University Place.

The Cities agree to continue current customer service by Fircrest and any new mutual customers served by Fircrest on City of University Place owned lines as Fircrest customers, with system maintenance and utility operations by Fircrest. Both Cities, as parties to the franchise, agree to an outside the City of Fircrest service surcharge not to exceed the current \$5.00 (five dollar) per month per customer charge on the Fircrest sewer rate structure.

If the City of Fircrest adopts any fee for City of University Place residents in excess of \$5.00 (five dollars) per month above that paid by Fircrest residents, the term of this franchise shall be automatically reduced to one year from the date of such action unless further amended by mutual agreement.

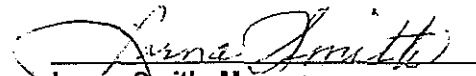
Section 4. Sewer Operation. All activities related to the construction, operation and maintenance of Fircrest sewer facilities located within rights-of-way owned by University Place shall be in compliance with UPMC Title 13.

Section 5. Term of Franchise Extension. The franchise granted herein shall continue in force for a period of 10 years, through May 31, 2011.

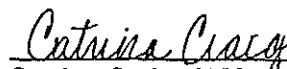
Section 6. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 7. Publication and Effective Date. This ordinance shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

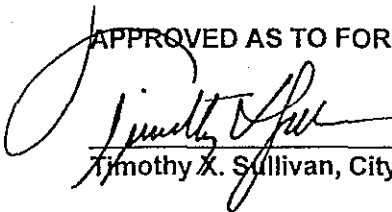
ADOPTED BY THE UNIVERSITY PLACE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 4TH DAY OF JUNE, 2001.


Lorna Smith, Mayor

ATTEST:


Catrina Craig, CMC, City Clerk

APPROVED AS TO FORM:

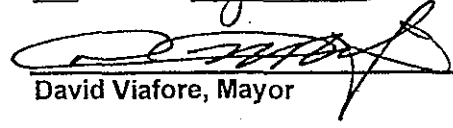


Timothy X. Sullivan, City Attorney

Date of Publication: June 6, 2001
Effective Date: June 11, 2001

Accepted

~~ADOPTED~~ BY THE CITY OF FIRCREST, ON THE
12 DAY OF June, 2001.



David Viafore, Mayor

ATTEST:



Rick Rosenblatt, City Clerk

1
2 FILE NO. 85

PROPOSAL NO. 90-89

3 Sponsored By: Councilmember Paul Cyr
4 Requested By: PIERCE COUNTY EXECUTIVE (Public Works)

5 ORDINANCE NO. 90-89

6 AN ORDINANCE of the Pierce County Council granting a franchise to the
7 TOWN OF FIRCREST, a municipal corporation, for locations
8 of sanitary sewer pipeline on certain Rights-of-Way.

9 WHEREAS, TOWN OF FIRCREST, a municipal corporation, of the State
10 of Washington, has applied for a nonexclusive franchise to construct,
11 operate and maintain sanitary sewer pipeline in, over, along, upon,
12 across and under certain County roads, highways and other County
13 property in Pierce County, Washington, as hereinafter set forth; and

14 WHEREAS, said application came on regularly for hearing before
15 the Pierce County Council on the date set forth below under the
16 provisions of R.C.W. Chapter 36.55; and

17 WHEREAS, it appears to the Council that the bid process has been
18 completed and notice of said hearing has been duly given to the
19 public and those interested in providing the same service applied for
20 by the applicant as required by law and that it is in the public
21 interest to grant the franchise; NOW THEREFORE,


22 BE IT ORDAINED by the Council of Pierce County:

23 Section 1. The franchise, a copy of which is attached hereto
24 and identified as Exhibit "A", is hereby given and granted to the
25 TOWN OF FIRCREST, a municipal corporation, of the State of
26 Washington, hereinafter referred to as the Grantee, for a period of
27 of twenty-five (25) years, from and after the date of entry of this
28 Ordinance to construct, operate and maintain a sanitary sewer
pipeline system for the transportation and disposition of sewage in,
upon, under, across, along and over those certain County roads,
highways and County property in Pierce County, Washington, described
on said franchise.

Section 3. The Executive of Pierce County is hereby authorized
to execute said franchise.

PASSED this 18th day of September, 1990.

PIERCE COUNTY COUNCIL
Pierce County, Washington


Council Chair

PC/FIRCST1

1 of 2

ATTEST:

Hein Penwater
Clerk of the Council

PIERCE COUNTY EXECUTIVE

Joe Stojini
APPROVED VETOED
this 26th day of September
1990.

Approved as to Form Only:

[Signature]
Deputy Prosecuting Attorney

Approved as to Bond and Insurance
Requirements Only:

[Signature]
Risk Management

[Signature]
Utilities Director

FILE NO. 85

1 In the Matter of the Application of)
 2 the TOWN OF FIRCREST, a municipal)
 3 corporation, organized and existing) EXHIBIT "A"
 4 under and by virtue of the laws)
 5 of the State of Washington, for)
 6 a Franchise to construct, operate)
 and maintain a sanitary sewer)
 line system in, under, along, over,)
 across and upon certain Public Highways)
 in Pierce County, Washington)

7 Application of the TOWN OF FIRCREST, a municipal corporation,
 8 organized and existing under and by virtue of the Laws of the State
 9 of Washington, for a Franchise to construct, operate and maintain a
 10 sanitary sewer pipeline system for disposal of sewerage in, under,
 11 along, upon, across, and over certain public roads and highways in
 12 Pierce County, Washington, as hereinafter set forth, having come on
 13 regularly for hearing before the County Council of Pierce County,
 14 Washington, under the provisions of R.C.W. Chapter 36.55, and the
 15 provisions of R.C.W. 36.93.100, and it appearing to the Council that
 16 notice of said hearing has been duly given as required by law, and
 17 that it is in the public interest to grant the Franchise herein
 18 granted;

19 NOW, THEREFORE, IT IS ORDERED that a franchise be, and the same
 20 is hereby given and granted to the TOWN OF FIRCREST, a municipal
 21 corporation of the State of Washington, hereinafter called the
 22 "Grantee" for a term of twenty-five (25) years from and after the
 23 date of the entry of this order, the right, privilege, and authority
 24 to construct, maintain, and operate for the said period of time, a
 25 sanitary sewer pipeline, and appurtenances for a sanitary sewer
 26 system, in, under, along, upon, across, and over the public roads and
 27
 28

Shyllie S. Council

SP

1 highways in Pierce County, Washington, to-wit:

2 Section 14, Township 20 North, Range 2 East, W.M.,

3 All Pierce County Roads in the Northwest Quarter of the
4 Northwest Quarter of the said section. Including both sides
5 of 35th Street West excluding 67th Avenue West of the said
6 Section.

7 Shoshone Street and Kootnai Street - From the Limits of the
8 Town of Fircrest South to 40th Street West.

9 40th Street West - North and South sides between the
10 Westerly half of Orchard Street (5100 Block of 40th Street
11 West) and the Easterly Town of Fircrest limits at Alameda
12 Avenue (5900 Block of 40th Street West).

13 Alameda Avenue - From the Town of Fircrest Limits, South to
14 48th Street West.

15 44th Street West - From Alameda Avenue, West to 63rd
16 Avenue West.

17 60th Avenue Court West - From 44th Steet West, North to
18 Town of Fircrest Limits

19 All Pierce County Roads in the Montane Addition Divisions 1
20 through 5 of the said Section.

21 Section 23, Township 20 North, Range 2 East, W.M.

22 63rd Avenue West in Montane Addition Division 3 of the said
23 Section.

24 PROVIDED FURTHER, that this franchise is granted subject to the
25 following terms and conditions, to-wit:

26 I

27 That in the working of breaking the soil of the said County
28 roads and highways for the purpose of laying, relaying, connecting,
disconnecting, and repairing said mains and pipes and making
connections between the same to the dwellings and other buildings of
the consumers, the said Grantee, its successors and assigns, shall be
governed by and conform to the general rules adopted by the officers
charged with the supervision and care of such County roads and
highways in said Pierce County, Washington, as in this franchise
granted; and the said Grantee, its successors and assigns, at its and

1 their expense, with all convenient speed shall complete the work for
2 which the soil has been broken, and forthwith replace the work and
3 make good the said County roads and highways and leave the same in as
4 good condition as before the work was commenced; PROVIDED, HOWEVER,
5 that no such breaking of the soil of said County roads and highways
6 shall be done prior to the obtaining of a permit therefor issued by
7 the Pierce County Public Works Director, which permit shall contain
8 specifications for the restoration of said roads to the same
9 condition as they were prior to such breaking; and PROVIDED FURTHER,
10 that said Pierce County Public Works Director may in his discretion
11 require a bond in a sum sufficient to guarantee to Pierce County that
12 such road shall be restored to the same condition as it was prior to
13 such breaking.

II

14
15 The sanitary sewer mains, pipes and appurtenant structures shall
16 be laid as directed by the County Public Works Director, or his
17 designee, at the time of application for a construction permit. The
18 depth, alignment or other conditions will be determined by said
19 Director at that time and upon review of the plans and specifications
20 of the sanitary sewer facilities to be installed. The issuance of a
21 construction permit will be evidence of written approval of said
22 plans and specifications and will embody any special conditions or
23 requirements which may be deemed necessary and in the best interest
24 of Pierce County.

III

25
26 All work done under this franchise shall be done in a thorough
27 and workmanlike manner, that in the laying of sewer pipes and the
28 digging of ditches therefor, the Grantee herein, its successors and

1 assigns, shall leave such ditches in such a way as to interfere as
2 little as possible with public travel and shall take all due and
3 necessary precautions to guard the same that damage or injury, shall
4 not occur or arise by reason of such work; and that where any of such
5 ditches or trenches are left open at night, the Grantee shall place
6 at all crossings suitable lights in such a position to guard against
7 danger, and that the Grantee, its successors and assigns, shall be
8 liable for all damage which may be caused by reason of any injury
9 sustained through its carelessness or neglect, or by reason of any
10 person, animal or property being injured herein through any failing
11 or neglect of the Grantee, herein, its successors and assigns, or by
12 reason of any damage caused through the neglect to properly guard any
13 ditches or trenches dug or maintained by the Grantee herein, its
14 successors and assigns.

15 IV

16 That the County of Pierce, in the granting of this franchise
17 does not waive any rights which it now holds or may hereafter acquire
18 including the right of eminent domain, and this order shall not be
19 construed so as to deprive the County of Pierce of any powers,
20 rights, or privileges which it now has or may hereafter acquire, to
21 regulate the use and control of the County roads and highways covered
22 by this franchise, or to go upon any and all County roads and
23 highways for the purpose of constructing and improving the same in
24 such a manner as the County of Pierce, or its representatives may
25 elect; and the Grantee herein, its successors and assigns, shall
26 place such sanitary sewer pipes in the ground at depth and manner as
27 shall be satisfactory to the Pierce County Director of Public Works.
28 Any extension or connection to said sanitary sewer system including

1 the installation of side sewers from the sanitary sewer mains to the
2 property lines of the consumers, shall be made only by contractors
3 registered by the State of Washington.

4 v

5 Grantee, its successors and assigns, agrees to defend, indemnify
6 and save harmless Pierce County, its appointed and elective officers
7 and employees from and against any and all liability, loss, cost,
8 damage, and expense, including costs and attorney fees in defense
9 thereof, because of actions, claims, or lawsuits against the County,
10 its elected or appointed officials or employees for damages because
11 of personal or bodily injury, including death at any time resulting
12 therefrom, sustained or alleged to have been sustained by any person
13 or persons and on account of damage to property including loss of use
14 thereof, asserted or arising or alleged to have arisen out of or in
15 consequence of the construction, installation, operation or
16 maintenance of any equipment or facilities, inclusive of
17 appurtenances thereto, under the franchise, and on account of damages
18 to Grantee's equipment and facilities involved in the exercise of
19 this franchise agreement, inclusive of appurtenances thereto,
20 including loss of use thereof, asserted or arising or alleged to have
21 arisen out of or in consequence of the construction, maintenance or
22 alteration of County roadways, sewer lines, storm drain lines, grades
23 and alignments of roads named in this franchise, whether such
24 injuries to persons or damage to property is due to the negligence of
25 the Grantee, its successor and assigns, or Pierce County, its
26 appointed and elective officers, employees, or their agents; and
27 further Grantee shall indemnify Pierce County against damages or
28 losses, if any, that may result arising out of the construction,

1 installation, maintenance, condition, or operation of equipment and
2 facilities, inclusive of appurtenances thereto, under this franchise.
3 The Grantee, its successors and assigns, shall constantly maintain in
4 full force and effect liability insurance for bodily injury and
5 property damage, with such carriers and in such amounts as are
6 approved by Pierce County, to the end that Pierce County, its
7 appointed and elective officers and employees, shall not have to
8 defend or pay any claims brought as a result of activities pursued,
9 conditions created, or conditions existing under this franchise. A
10 Certificate of Insurance with Pierce County named as an additional
11 named insured on a form provided by Pierce County must be delivered
12 to the Pierce County Council prior to any construction or the
13 issuance of any construction permits. There shall be an endorsement
14 to the policy to the effect that Pierce County has no obligation to
15 report losses or to pay premiums, and the insurer must agree to give
16 Pierce County thirty (30) days written notice of any material change
17 in coverage, non-renewal, or termination of the policy. In the event
18 of the Grantee's failure to fully defend, indemnify and hold harmless
19 Pierce County, its appointed and elective officers and employees, as
20 undertaken herein, Pierce County may terminate this franchise without
21 notice, and shall have a lien upon all equipment and materials
22 erected or placed under this franchise, which lien may be enforced to
23 reimburse Pierce County for any reasonable expenses and payments
24 incurred in defending and/or satisfying any claims brought or
25 judgments entered against Pierce County as a result of conditions
26 created under this franchise or acts or omissions of the Grantee or
27 its agents while performing or attempting to perform any operation
28 allowed by this franchise. This remedy shall not be exclusive and

1 Pierce County may pursue any lawful actions to recover from Grantee,
2 its successors and assigns, any reasonable expenses and payments
3 incurred in defending and/or satisfying any claims brought or
4 judgments entered against Pierce County, its officers or employees.

VI

6 Any and all damage or injury caused said highways or any portion
7 thereof in the construction, operation, maintenance or repair of said
8 sanitary sewer lines shall be immediately repaired and reconstructed
9 under the supervision and to the satisfaction of the Public Works
10 Director; and in the event the Grantee shall fail, neglect or refuse
11 to immediately repair and reconstruct said damage or injury to said
12 highways, the same may be done by the County and the expense and cost
13 thereof shall be immediately repaid by the Grantee to the County.

VII

15 If, at any time, the said County of Pierce shall change its
16 graded right of way along the said County roads and highways, or
17 shall change the grade of any said County roads or highways, or shall
18 construct drainage facilities, or shall construct, modify, or extend
19 drainage facilities or appurtenances, and where the installation of
20 the sanitary sewer pipe as granted in this franchise may interfere
21 with any of the changes, extensions, modifications or construction of
22 drainage or other facilities or roadway as herein stated, then the
23 said Grantee, herein its successors and assigns, at its or their
24 expense, shall upon notice, change the location or readjust the
25 elevation of such pipes or appurtenances, so that the same shall not
26 interfere with the grading or regrading of said County roads or
27 highways, extension, modification, or change of drainage or other
28 facilities and/or appurtenances nor impede any use of or travel

1 thereon.

2 VIII

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

11 IX

12 The laying, construction, operation and maintenance of the
13 Grantee's sanitary sewer lines and facilities authorized by this
14 franchise shall not preclude Pierce County, its agents or its
15 contractors from blasting, grading, excavating, or doing other
16 necessary work contiguous to the said sanitary sewer lines and
17 facilities of the Grantee, provided that the Grantee shall be given
18 forty-eight (48) hours notice of said blasting or other work in order
19 that the Grantee may protect its lines and facilities.

20 X

21 Whenever any of the County roads, right of way or other County
22 property as designated in this franchise, by reason of transfer to
23 another governmental agency or the subsequent incorporation of any
24 town or city, or the extension of the limits of any town or city,
25 shall fall within the city or town limits, this franchise shall
26 continue in force as to all County roads, rights of way or other
27 County property not so included in the transfer or city or town
28 limits.

1
2 XI

3 The said Grantee, its successors and assigns, shall not sell,
4 transfer, or assign this franchise without first notifying the Pierce
5 County Council of its intention to do so, and until consent is given
6 by said Council by duly adopted resolution to so assign and transfer
7 said franchise.

8 XII

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

20 Pierce County reserves for itself the right at any time upon
21 ninety (90) days written notice to the grantee, to so change, amend,
22 modify or amplify this franchise to conform to any state statute,
23 order of the Washington Utilities and Transportation Commission or
24 county regulation, ordinance or right-of-way regulation, as may
25 hereafter be enacted, adopted or promulgated and this franchise may
26 be terminated at any time if the grantee fails to comply with such
27 change, amendment, modification or amplification.

28 XIII

Any failure to render adequate service to the patrons of said

1 sanitary sewer system, or the discontinuance of such sewer service
2 without fault on the part of the patron or patrons involved, for a
3 period of thirty (30) days, shall work a forfeiture of this
4 franchise, at the discretion of the Pierce County Council unless the
5 failure should result from causes beyond human control.

6 XIV

7 If the Grantee shall willfully violate or fail, through willful
8 or unreasonable neglect, to comply with any of the provisions of this
9 franchise for thirty (30) days after receipt of written notice from
10 the Pierce County Council, then said Council shall have the right to
11 declare forfeiture of all rights hereunder and to declare this
12 franchise terminated and of no force or effect thereafter.

13 XV

14 Grantee acknowledges that Pierce County Charter Section 9.20
15 Franchises provides in part:

16 "All franchises shall be subject to . . . the right of the
17 Council, or the people acting for themselves through referendum, to
18 repeal for cause, amend, or modify the franchise in the interest of
19 the public" and agrees to said condition.

20 XVI

21 If any term, provision, condition or portion of this franchise
22 shall be held to be invalid, such invalidity shall not affect the
23 validity of the remaining portions of this franchise which shall
24 continue in full force and effect.

25 The full acceptance of this franchise and all its terms and
26 conditions within thirty (30) days from the effective date of the
27 attached ordinance, by the TOWN OF FIRCREST, a municipal corporation
28 of Pierce County, of the State of Washington, organized and existing

1 under and by virtue of the Laws of the State of Washington, in
2 writing, is to be filed with the Clerk of the Pierce County Council
3 and shall be a condition precedent to its taking effect, and unless
4 the Franchise is accepted within such time, this Franchise shall be
5 null and void.

6
7 Pursuant to RCW 36.55.080, a copy of this franchise shall be
8 recorded in the Office of the Pierce County Auditor.

9
10 DATED at Tacoma, Washington, this 26th day of
11 September, 1990.

12
13 Joe Stortini
14 JOE STORTINI
Pierce County Executive

15
16 We hereby accept and agree to comply with all the terms and
17 conditions of this Franchise.

18 [Signature]
Name

19 City Manager
20 Title




21 City of Fircrest
22 Company or Corporate Name

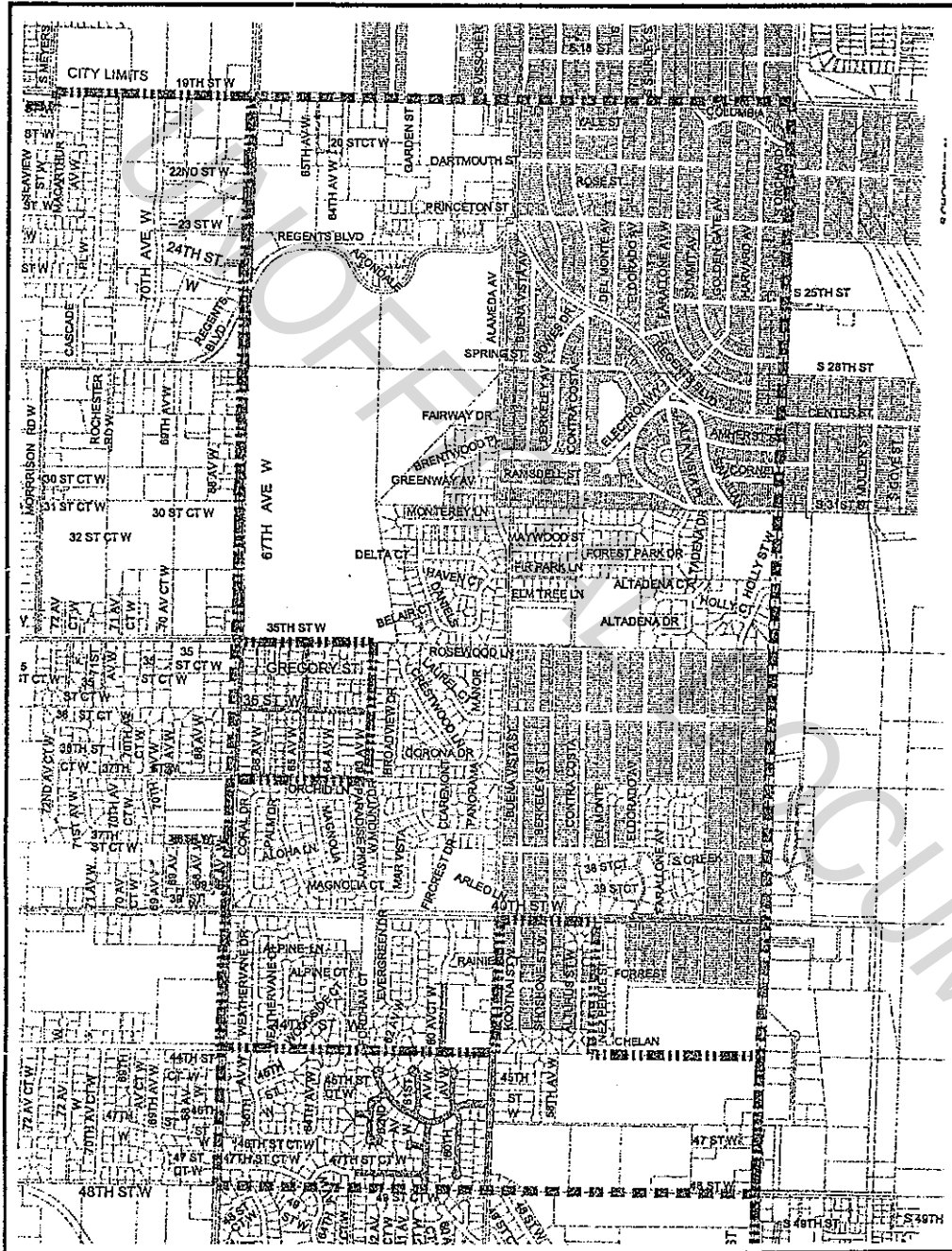
23 October 5, 1990
24 Date

25
26
27 **RES 90-89**



LEGEND

-  CITY OF FIRCREST SEWER SERVICE AREA
-  CITY OF UNIVERSITY PLACE CORPORATE LIMITS
-  SEWER FRANCHISE AREA GRANTED TO FIRCREST UNDER PER PIERCE COUNTY ORDINANCE 90-89



**THE CITY OF UNIVERSITY PLACE
FIRCREST SEWER FRANCHISE AREA
IN UNIVERSITY PLACE
PLOT DATE: 6/01/01**