

1 EXHIBIT "A" TO ORDINANCE NO. 2005-77

2 In the Matter of the Application of )  
3 The City of Fife, a Municipal )  
4 Corporation of Pierce County, State ) EXHIBIT "A"  
5 of Washington, for a Franchise to )  
6 construct, operate, and maintain ) F R A N C H I S E  
7 pipelines for a Water System under )  
8 and along certain Public Roads and )  
9 Highways in Pierce County, Washington )

8 Application of The City of Fife, a Municipal Corporation of  
9 Pierce County, Washington, for a nonexclusive Franchise to  
10 construct and maintain water pipelines with appurtenances for a  
11 water system under and along certain public roads, highways, and  
12 other County property in Pierce County, Washington, as hereinafter  
13 set forth, having come on regularly for hearing before the County  
14 Council of Pierce County, Washington, under the provisions of  
15 Chapter 36.55, Revised Code of Washington (RCW), and it appearing  
16 to the Council that notice of said hearing has been duly given as  
17 required by law, and that it is in the public interest to grant the  
18 Franchise herein requested;

19  
20 NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the  
21 same is, hereby given and granted to The City of Fife, a Municipal  
22 Corporation of Pierce County, Washington, hereinafter called  
23 "Grantee" for a term of 15 years from and after the date of filing  
24 this Franchise with the Clerk of the Pierce County Council. This  
25 Franchise is a license for the privilege, and authority to  
26 construct, maintain, and operate for the said period of time, a  
27 water pipeline with appurtenances for a water system under and

1 along public roads, highways, and other County property in Pierce  
2 County, Washington, as follows:

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4 Section 6, Township 20 North, Range 4 East, W.M. All County  
5 roads in said Section.

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7 Section 7, Township 20 North, Range 4 East, W.M. All County  
8 roads in the Northeast quarter of said Section.

9  
10 Section 17, Township 20 North, Range 4 East, W.M. All County  
11 roads in the Southeast quarter of said Section.

12  
13 Section 20, Township 20 North, Range 4 East, W.M. All County  
14 roads in the Northeast quarter of said Section.

15  
16 I

17 In the construction and installation of water system  
18 appurtenances and the excavation of trenches on County roads for  
19 the purposes of laying, relaying, connecting, disconnecting, and  
20 repairing mains and pipes and making connections between the same  
21 to the dwellings and other buildings of the consumers, Grantee  
22 shall be governed by and conform to the general rules adopted by  
23 Pierce County Public Works and Utilities - Transportation Services  
24 of Pierce County, Washington; and Grantee, at no expense to the  
25 County, shall complete all such work and shall repair the County  
26 roads and leave the same in as a good condition as before the work  
27 was commenced;

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

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

Before any work is performed under this Franchise, which may affect any existing monuments or markers of any nature relating to section subdivisions, plats, roads, and all other surveys, Grantee shall reference all such monuments and markers in accordance with RCW 58.09.130. The reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. The replacement of all such monuments or markers disturbed during

1 construction shall be made as expeditiously as conditions permit,  
2 and as directed by the County Engineer. The cost of monuments or  
3 other markers lost, destroyed, or disturbed, and the expense of  
4 replacement with approved monuments shall be borne by Grantee.

5  
6 A complete set of reference notes for monuments and other ties  
7 shall be filed with Pierce County Public Works and Utilities -  
8 Transportation Services.

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10 II

11 The water mains and pipes shall be laid down as directed by  
12 the Engineer at a depth of not less than 36 inches below the  
13 surface of the ground under and along the County roads, and in such  
14 a manner as not to interfere unnecessarily with the construction of  
15 sewers and drains, nor with the grading of County roads. All  
16 surface appurtenances to the water system shall be installed or  
17 constructed as approved by the Engineer.

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19 III

20 All work done under this Franchise shall be done in a thorough  
21 and professional manner. In the laying of water pipes and conduits  
22 and the digging of ditches therefore, Grantee shall leave ditches  
23 in such a way as to interfere as little as possible with public  
24 travel and shall take all due and necessary precautions to ensure  
25 that damage or injury shall not occur or arise by reason of such  
26 work; and that where any ditches or trenches are left open at  
27 night, Grantee shall place at all crossings suitable lights in such

1 a position to guard against danger, and Grantee shall be liable for  
2 all property damage or personal injury that may be caused by reason  
3 of any injury sustained through Grantee's negligence by reason of  
4 any person, animal or property being injured through any negligence  
5 of Grantee, or by reason of any damage caused through the neglect  
6 to properly guard any ditches or trenches dug or maintained by  
7 Grantee. The Engineer may specify actions to be taken to ensure  
8 the safety of the public and Grantee shall comply with such  
9 specifications.

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11 IV

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

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22 V

23 Grantee shall provide a certificate of insurance showing  
24 evidence of commercial general liability and property damage  
25 liability insurance that includes but is not limited to the  
26 operations of Grantee, Grantee's protective liability, products  
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1 completed operation's coverage, broad form blanket contractual  
2 liability:

<u>COVERAGES</u>	<u>LIMITS OF LIABILITY</u>
Commercial General Liability Insurance Bodily Injury Liability	\$2,000,000 Each Occurrence
Property Damage Liability	\$250,000 Each Occurrence
or	
COMBINED SINGLE LIMIT COVERAGE OF \$2,000,000	

11  
12 The general requirements of the policy shall contain:

13  
14 Pierce County is named as an additional insured in this  
15 Franchise, to applicable coverage.

16  
17 In the event of nonrenewal, cancellation, or material change  
18 in the coverage provided, 30 days' written notice will be  
19 furnished to the County prior to the date of nonrenewal,  
20 cancellation, or change. Such notice shall be sent to the  
21 Engineer, Pierce County Public Works and Utilities -  
22 Transportation Services, 2401 South 35th Street, Room 150,  
23 Tacoma, WA 98409.

24  
25 Pierce County has no obligation to report occurrences to the  
26 insurance companies unless a claim is filed with the County;  
27 and Pierce County has no obligations to pay premiums.

1  
2 Grantee's insurance policies shall contain a "cross-liability"  
3 endorsement substantially as follows:  
4

5 The inclusion of more than one Insured under this policy  
6 shall not affect the rights of any Insured with respect  
7 to any claim, suit, or judgment made or brought by or for  
8 any other insured or by or for any employee of any other  
9 Insured. This policy shall protect each Insured in the  
10 same manner as though a separate policy has been issued  
11 to each, except that nothing herein shall operate to  
12 increase Grantee's liability beyond the amount or amounts  
13 for which Grantee would have been liable had only one  
14 Insured been named.  
15

16 Grantee's insurance is primary over any insurance that  
17 may be carried by Pierce County. Grantee agrees to  
18 provide proof of insurance each year to Pierce County.  
19

20 Grantee agrees to defend, indemnify, and save harmless  
21 Pierce County, its appointed and elected officials and  
22 employees, from and against all loss or expense,  
23 including but not limited to, judgments, settlements,  
24 attorney's fees, and costs by reasons of any and all  
25 claims and demands upon the County, its elected or  
26 appointed officials or employees for damages because of  
27 personal or bodily injury including death at any time

1 resulting therefrom, sustained by any person or persons,  
2 and on account of damage to property including loss of  
3 use thereof, whether such injury to persons or damage to  
4 property is due to the negligence of Grantee, its  
5 contractors, its or their employees or agents, Pierce  
6 County, its appointed or elected officers, or its  
7 employees or agents, except only such injury or damage as  
8 shall have been occasioned by the sole negligence of  
9 Pierce County, its appointed or elected officials or  
10 employees.

11  
12 If the claim, suit, or action for injuries, death, or  
13 damages as provided for in this Franchise agreement is  
14 caused by or results from the concurrent negligence of  
15 (a) Pierce County or Pierce County's agents or employees;  
16 or (b) Grantee, or Grantee's agents or employees, the  
17 indemnity provisions provided for in this Franchise shall  
18 be valid and enforceable only to the extent of Grantee's  
19 negligence.

20  
21 Grantee specifically and expressly waives any immunity  
22 under Industrial Insurance Title 51 RCW, and acknowledges  
23 that this waiver was mutually agreed upon by the parties  
24 herein.

1 VI

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

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11 VII

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

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

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4           1.    Pierce County shall make available to Grantee a list of  
5                anticipated projects for each new budget period as soon  
6                as is reasonably possible.

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8           2.    Pierce County shall provide to Grantee two sets of  
9                preliminary plans for individual projects as soon as such  
10              plans are developed to a state of reasonable certainty,  
11              and shall advise Grantee of the anticipated date of start  
12              of work on such projects.

13  
14          3.    Grantee shall, when requested by Pierce County in  
15                writing, locate its facilities in the field, show those  
16                locations on one set of preliminary plans provided, and  
17                return that set to Pierce County Public Works and  
18                Utilities - Transportation Services within four weeks of  
19                receiving the written request.

20  
21          4.    Pierce County shall provide to Grantee final plans for  
22                such projects as soon as such plans are available and  
23                shall confirm or correct the anticipated date of start of  
24                work on such projects.

25  
26          5.    Pierce County shall assist Grantee in determining how its  
27                facilities shall be relocated.  Such assistance by Pierce

1 County shall include, at a minimum, copies of plans (as  
2 required above) and specifications for such County  
3 Projects, and information known to Pierce County as to  
4 existing survey control available for location of such  
5 County Projects. Such assistance shall not subject  
6 Pierce County to any liability for the costs of  
7 relocating the subject facilities a second time if  
8 Grantee incorrectly relocated its facilities the first  
9 time.

10  
11 6. When requested, Pierce County and Grantee shall meet to  
12 discuss how County Projects and utility relocations can  
13 be accomplished with the least impact on the other.  
14 Pierce County's decision shall be final in such matters,  
15 but shall not be unreasonable.

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17 7. Relocation of Grantee's facilities shall be completed in  
18 a timely manner defined as follows:

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20 Relocation of Grantee's facilities shall normally  
21 be accomplished in advance of County Projects. In  
22 the event relocation of Grantee's facilities is  
23 done concurrently with such Projects, Pierce County  
24 shall be so notified and agree to a written  
25 schedule for relocation. Compliance with such a  
26 written schedule shall be Grantee's duty. In no  
27

1 event shall relocation of Grantee's facilities  
2 interfere with County Projects.  
3

4 8. If Grantee does not relocate its facilities in a timely  
5 manner as required above, Pierce County may relocate, or  
6 cause to be relocated, such facilities of Grantee as  
7 Pierce County deems necessary, and in the manner Pierce  
8 County deems necessary, in its sole discretion. Grantee  
9 hereby indemnifies and holds Pierce County, its  
10 employees, officers, officials, and agents totally free  
11 and harmless from all and any liability which may arise  
12 from damages caused by the relocation by Pierce County of  
13 the facilities of Grantee, even if such damages and  
14 liability arise from the negligence of Pierce County, its  
15 employees, officers, officials, and agents.  
16

17 9. Grantee hereby indemnifies and holds harmless Pierce  
18 County, its officers, officials, and employees, from  
19 damages that may arise from Grantee's failure to relocate  
20 its facilities in accordance with the dates for  
21 completion of relocation of facilities set forth above,  
22 or any other act or omission by Grantee, its  
23 contractor(s), agents, officers, or employees related to  
24 the provisions of this Franchise.  
25

26 10. It shall be conclusively presumed that Pierce County will  
27 have suffered damages as a result of exercising its

1 rights as set forth in Item 8 above, and compensation for  
2 such damages will be difficult to ascertain, and  
3 therefore, Grantee shall compensate Pierce County for  
4 such damages in the amount of twice the amount of the  
5 cost of such relocation of Grantee's facilities by Pierce  
6 County.

7  
8 11. The exercise of its rights, as set forth in Item 8 above,  
9 by Pierce County in no way relieves Grantee of completing  
10 and/or finalizing the relocation of its facilities at no  
11 expense to Pierce County, if the relocation work done by  
12 Pierce County is incomplete.

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

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22 VIII

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

IX

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2 This Franchise is granted upon the further express condition  
3 that it shall not be an exclusive Franchise and shall not, in any  
4 manner, prohibit the County of Pierce from granting any other  
5 Franchise under and along any of the said County roads of any kind  
6 and character or territories that may be deemed proper by the  
7 Pierce County Council, and this Franchise shall not in any way  
8 prevent the County of Pierce from using the County rights-of-way,  
9 or affect the jurisdiction over them, and every part of them by the  
10 County of Pierce with full power to make the necessary repairs,  
11 changes and alterations in the same and like manner as though this  
12 Franchise had never been granted.

13  
14 Pierce County reserves for itself the right to so change,  
15 amend, modify, or amplify this Franchise to conform to any State  
16 statute, order of the Washington Utilities and Transportation  
17 Commission, or County regulation, ordinance, or right-of-way  
18 regulation, as may hereafter be enacted, adopted, or promulgated.  
19 This Franchise may be terminated at any time upon 90 days written  
20 notice to Grantee to terminate this Franchise if Grantee fails to  
21 comply with its terms and conditions, or if Grantee fails to comply  
22 with such changes, amendments, modifications, or amplifications and  
23 upon termination Pierce County shall have a lien upon all equipment  
24 and materials erected or placed under this Franchise, which lien  
25 may be enforced to reimburse Pierce County for any reasonable  
26 expenses and payments incurred in terminating this Franchise, and  
27 to cure defaults by Grantee.

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

X

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

XI

Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in part: All Franchises shall be subject to the right of the Council, or the people acting for themselves through referendum, to repeal for cause, amend, or modify the

1 Franchise in the interest of the public, and agrees to said  
2 condition.

3  
4 XII

5 Any failure to render adequate service to the patrons of said  
6 water system, or the discontinuance of such water services without  
7 fault on the part of the patron or patrons involved, for a period  
8 of 30 days, shall work a forfeiture of this Franchise, at the  
9 discretion of the Pierce County Council, unless the failure should  
10 result from causes beyond human control.

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12 XIII

13 Venue and jurisdiction for any controversy arising from the  
14 Franchise shall be in Pierce County, Washington.

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16 XIV

17 Grantee shall provide full acceptance of this Franchise and  
18 all its terms and conditions by filing a signed copy of the  
19 Franchise with the Clerk of the Pierce County Council within 60  
20 days from \_\_\_\_\_, 2005. This requirement  
21 shall be a condition precedent to the Franchise taking effect. If  
22 Grantee does not provide a signed copy of the Franchise as set  
23 forth in this Section, this Franchise shall be null and void.

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

3  
4 DATED at Tacoma, Washington, this \_\_\_\_\_ day of  
5 \_\_\_\_\_, 2005.

6  
7 PIERCE COUNTY EXECUTIVE

8  
9 \_\_\_\_\_  
10 John W. Ladenburg

11 The City of Fife accepts and agrees to comply with all terms  
12 and conditions of this Franchise.

13  
14 \_\_\_\_\_  
15 Name

16  
17 \_\_\_\_\_  
18 Title

19  
20 \_\_\_\_\_  
21 Company, Corporate Name, or  
22 Individual

23  
24 \_\_\_\_\_  
25 Date

1 FILE NO. 81

PROPOSAL NO. 2005-77

2 Sponsored by: Councilmember Terry Lee

3 Requested by: County Executive/Public Works & Utilities Department

4  
5  
6 **ORDINANCE NO. 2005-77**

7  
8 **AN ORDINANCE OF THE PIERCE COUNTY COUNCIL GRANTING A**  
9 **NONEXCLUSIVE FRANCHISE TO THE CITY OF FIFE, A**  
10 **MUNICIPAL CORPORATION OF PIERCE COUNTY, WASHINGTON,**  
11 **FOR LOCATION OF WATERLINES ON CERTAIN COUNTY OWNED**  
12 **RIGHTS-OF-WAY; AND AUTHORIZING THE COUNTY EXECUTIVE**  
13 **TO EXECUTE SAID FRANCHISE.**

14  
15 WHEREAS, The City of Fife, a Municipal Corporation, has  
16 applied for a nonexclusive Franchise to construct, operate, and  
17 maintain a waterline system under and along certain County  
18 roads, highways, and other County property in Pierce County,  
19 Washington, as hereinafter set forth; and

20  
21 WHEREAS, An application for Franchise came on regularly for  
22 hearing before the Pierce County Council on the date set forth  
23 below under the provisions of Chapter 36.55, Revised Code of  
24 Washington; and

1           WHEREAS, It appears to the Council that notice of said  
2 hearing has been duly given to the public and those interested  
3 in providing the same service applied for by the applicant as  
4 required by law and that it is in the public interest to grant  
5 the Franchise; NOW, THEREFORE,

6  
7           BE IT ORDAINED by the Council of Pierce County:

8  
9           Section 1. A nonexclusive Franchise, a copy of which is  
10 attached hereto and identified as Exhibit "A," is hereby given  
11 and granted to The City of Fife, a Municipal Corporation of  
12 Pierce County, Washington, hereinafter referred to as the  
13 Grantee, for a period of 15 years, from and after the date of  
14 filing of the Franchise to be granted with the Clerk of the  
15 Pierce County Council.

