

RESOLUTION 2023-M

**A RESOLUTION OF THE TOWN OF EATONVILLE, WASHINGTON,
AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE WITH
PIERCE COUNTY, WASHINGTON**

WHEREAS, the Town of Eatonville has applied to renew our nonexclusive Franchise to construct, operate and maintain a waterline system under and along Pierce County roads, highways and other County properties in Pierce County Washington; and

WHEREAS, the Pierce County Council approved Pierce County Ordinance 2022-68 granting the renewal of the nonexclusive franchise between Town of Eatonville and Pierce County; and

WHEREAS, the Town of Eatonville must indicate their full acceptance of this franchise to be filed with the Clerk of the Council; now, therefore,

**THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:**

THAT: The Town Council approves and the Mayor is authorized to execute on behalf of the Town, the Franchise, Exhibit A to Pierce County Ordinance 2022-68, attached hereto as Exhibit A.

PASSED by the Town Council of Town of Eatonville and attested by the Town Clerk in authentication of such passage this 13th day of February 2023.

David Baublits, Mayor

ATTEST:

Miranda Doll, Town Clerk

Sponsored by: Councilmember Amy Cruver
Requested by: County Executive/Planning and Public Works Department

ORDINANCE NO. 2022-68

An Ordinance of the Pierce County Council Granting a Nonexclusive Franchise to the Town of Eatonville for Location of Waterlines on Certain County-Owned Rights-of-Way; and Authorizing the County Executive to Execute Said Franchise.

Whereas, the Town of Eatonville of Pierce County, Washington, has applied for a nonexclusive Franchise to construct, operate, and maintain a waterline system under and along Pierce County roads, highways, and other County property(ies) in Pierce County, Washington, as hereinafter set forth; and

Whereas, the proposed franchise is nonexclusive and does not establish a right, either expressly or implied, to the water purveyor to provide water service to properties located outside of their approved water service area. Furthermore, the request for this franchise is consistent with the Pierce County Coordinated Water System Plan (CWSP) provided that no extension of water service occurs without following the service area adjustment provisions outlined in the CWSP; and

Whereas, said application for Franchise came on regularly for hearing before the Pierce County Council on the date set forth below under the provisions of Chapter 36.55, Revised Code of Washington; and

Whereas, it appears to the Council that notice of said hearing has been duly given to the public and those interested in providing the same service applied for by the applicant as required by law and that it is in the public interest to grant the Franchise; **Now Therefore**,

BE IT ORDAINED by the Council of Pierce County:

Section 1. A nonexclusive Franchise, a copy of which is attached hereto and identified as Exhibit A, is hereby given and granted to the Town of Eatonville of Pierce



County, Washington, hereinafter referred to as the Grantee, for a period of five years,
from and after the date of filing of the Franchise to be granted with the Clerk to the
Pierce County Council.

Section 2. The Town of Eatonville must indicate their full acceptance of this
Franchise and all its terms and conditions within 60 days from the effective date of the
Ordinance. Said acceptance is to be in writing and filed with the Clerk to the Pierce
County Council and shall be a condition precedent to the validity of said Franchise,
and unless the Franchise is accepted within such time, this grant of permission shall
be null and void.

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

PASSED this 13th day of December, 2022.

ATTEST:

Denise D. Johnson
Denise D. Johnson
Clerk to the Council

PIERCE COUNTY COUNCIL

Pierce County, Washington

Derek Young
Derek Young
Council Chair

Bruce F. Dammeier
Bruce F. Dammeier
Pierce County Executive
Approved X Vetoed _____, this
16th day of December, 2022.

Dates of Publication of
Notice of Public Hearing: November 9, 2022 and November 16, 2022

Effective Date of Ordinance: December 26, 2022

Recording Number: _____

Date Recorded: _____



Exhibit A to Ordinance No. 2022-68

In the Matter of the Application of)
the Town of Eatonville of)
Pierce County, State of Washington,)
for a Franchise to construct, operate,)
and maintain pipelines for a Water System)
under and along certain Public Roads and)
Highways in Pierce County, Washington)

FRANCHISE

Application of the Town of Eatonville of Pierce County, Washington, for a nonexclusive Franchise to construct and maintain water pipelines with appurtenances for a water system under and along certain public roads, highways, and other County property in Pierce County, Washington, as hereinafter set forth, having come on regularly for hearing before the County Council of Pierce County, Washington, under the provisions of Chapter 36.55, Revised Code of Washington (RCW), and it appearing to the Council that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the Franchise herein requested;

NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the same is, hereby given and granted the Town of Eatonville of Pierce County, Washington, hereinafter called "Grantee" for a term of 5 years from and after the date of filing this Franchise with the Clerk of the Pierce County Council. This Franchise is a license for the privilege, and authority to construct, maintain, and operate for the said period of time, a water pipeline with appurtenances for a water system under and along public roads, highways, and other County property in Pierce County, Washington, as follows:

All Pierce County roads and rights-of-way within the following:

Section 22, Township 16 North, Range 4 East, W.M.
All Pierce County roads in the north half of said section.

Section 13, Township 16 North, Range 4 East, W.M.
All Pierce County roads in the west half of said section.

Section 14, Township 16 North, Range 4 East, W.M.
All Pierce County roads in north half of said section.



1 Section 15, Township 16 North, Range 4 East, W.M.
2 All Pierce County roads in said section.

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4 Section 10, Township 16 North, Range 4 East, W.M.
5 All Pierce County roads in the southeast quarter of said section.

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7 Section 11, Township 16 North, Range 4 East, W.M.
8 All Pierce County roads in the south half of said section.

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10 Section 24, Township 16 North, Range 4 East, W.M.
11 All Pierce County roads in the northwest quarter of said section.

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13 Section 23, Township 16 North, Range 4 East, W.M.
14 All Pierce County roads in said section.

15
16 I

17 In the construction and installation of water system appurtenances and the
18 excavation of trenches on County roads for the purposes of laying relaying,
19 connecting, disconnecting, and repairing mains and pipes and making connections
20 between the same to dwellings and other buildings of the consumers, Grantee
21 shall be governed by and conform to the general rules adopted by Pierce County
22 Planning and Public Works, it is understood and agreed that Grantee is fully
23 responsible for all such water system appurtenances within the limits of Pierce
24 County right-of-way (inclusive of any lines or appurtenances conveying water from
25 the Grantee); and Grantee, at no expense to the County, shall complete all such
26 work and shall repair the County roads and leave the same in as good condition
27 as before the work was commenced;

28
29 PROVIDED, HOWEVER, that no such work shall be done prior to obtaining
30 permits therefore issued by the Pierce County Engineer (hereinafter "Engineer"),
31 which permits shall set forth conditions pertaining to the work to be done and
32 specifications for the restoration of the roads to the same condition as they were
33 prior to such work; and

34
35 PROVIDED FURTHER, the Engineer, in his or her discretion, may require a
36 bond in a sum sufficient to guarantee to Pierce County that such roads shall be
37 restored to the same condition as existed prior to such work. If Grantee does not
38 repair County roads to the satisfaction of the Engineer, Pierce County Planning
39 and Public Works may, at its sole discretion, repair such County roads, or cause
40 them to be repaired, and Grantee hereby agrees to reimburse the County of
41 Pierce for the cost of such work, including overhead costs.



1 Before any work is performed under this Franchise, which may affect any
2 existing monuments or markers of any nature relating to section subdivisions,
3 plats, roads, and all other surveys, Grantee shall reference all such monuments
4 and markers in accordance with RCW 58.09.130. The reference points shall be so
5 located that they will not be disturbed during Grantee's operations under this
6 Franchise. The method of referencing these monuments or other points to be
7 referenced shall be approved by the County Engineer. The replacement of all
8 such monuments or markers disturbed during construction shall be made as
9 expeditiously as conditions permit, and as directed by the County Engineer. The
10 cost of monuments or other markers lost, destroyed, or disturbed, and the
11 expense of replacement with approved monuments shall be borne by Grantee.

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13 A complete set of reference notes for monuments and other ties shall be
14 filed with Pierce County Planning and Public Works.

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16 II

17 The water mains and pipes shall be laid down as directed by the Engineer
18 at a depth of not less than 36 inches below the surface of the ground under and
19 along the County roads, and in such a manner as not to interfere unnecessarily
20 with the construction of sewers and drains, or with the grading of County roads.
21 All surface appurtenances to the water system shall be installed or constructed as
22 approved by the Engineer.

23
24 III

25 All work done under this Franchise shall be done in a thorough and
26 professional manner. In the laying of water pipes and conduits and the digging of
27 ditches therefore, Grantee shall leave ditches in such a way as to interfere as little
28 as possible with public travel and shall take all due and necessary precautions to
29 ensure that damage or injury shall not occur or arise by reason of such work; and
30 that where any ditches or trenches are left open at night, Grantee shall place at all
31 crossings suitable lights in such a position to guard against danger, and Grantee
32 shall be liable for all property damage or personal injury that may be caused by
33 reason of any injury sustained through Grantee's negligence by reason of any
34 person, animal or property being injured through any negligence of Grantee, or by
35 reason of any damage caused through the neglect to properly guard any ditches
36 or trenches dug or maintained by Grantee. The Engineer may specify actions to
37 be taken to ensure the safety of the public and Grantee shall comply with such
38 specifications.

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40 All abandoned underground utilities shall be removed from the right-of-way
41 within 90 days from abandonment. The underground utility shall be considered
42 abandoned upon completion of the permitted work. In the abandonment of



hazardous materials such as asbestos concrete pipe, the materials being removed will be in accordance with Chapter 296-65 of the Washington Administrative Code (WAC).

IV

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

V

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

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

or
COMBINED SINGLE
LIMIT COVERAGE OF
\$2,000,000

The general requirements of the policy shall contain:

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

In the event of nonrenewal, cancellation, or material change in the coverage provided, 30 days' written notice will be furnished to the County prior to the date of nonrenewal, cancellation, or change. Such notice shall be sent to the County Engineer, Pierce County Planning and Public Works, 2702 South 42nd Street, Suite 109, Tacoma, Washington 98409.

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



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

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

18 Grantee agrees to defend, indemnify, and hold harmless Pierce
19 County, its appointed and elected officials, its agents, and its
20 employees, from and against all loss or expense arising out of any
21 act, error or omission, or the exercise of any of the rights and
22 privileges granted under this Franchise, including but not limited to,
23 judgments, settlements, attorney's fees and costs, and any and all
24 claims and demands upon the County, its elected or appointed
25 officials, its agents, or its employees. Additionally, for damages
26 because of personal or bodily injury including death at any time
27 resulting therefrom, sustained by any person or persons, and for
28 damages on account of damage to property, including loss of use
29 thereof, where such injury to persons or damage to property is due to
30 the negligence of Grantee, its contractors, its or their employees or
31 agents, Grantee agrees to defend, indemnify, and hold harmless
32 Pierce County, its appointed or elected officers, or its employees, or
33 its agents, except only such injury or damage as shall have been
34 occasioned by the sole negligence of Pierce County, its appointed or
35 elected officials, or its agents, or its employees; and the Grantee
36 expressly waives its immunity under Title 51 of the Revised Code of
37 Washington, the Industrial Insurance Act, and this waiver has been
38 mutually negotiated by the parties to this Franchise.
39

40 If the claim, suit, or action for injuries, death, or damages as provided
41 for in this Franchise agreement is caused by or results from the
42 concurrent negligence of (a) Pierce County or Pierce County's



agents or employees; or (b) Grantee, or Grantee's agents or employees, the indemnity provisions provided for in this Franchise shall be valid and enforceable only to the extent of Grantee's negligence.

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

VI

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

If, during the term of this Franchise, Grantee acquires any rights to real property within the area of the Franchise as described herein, those rights shall be subordinate to the terms of this and any future Franchise agreements. The terms of this and future Franchises, including Section VII below, will govern the respective rights and obligations between Grantee and the County with respect to these newly acquired property rights, whether within existing or newly acquired right-of-way, regardless of the nature of the newly acquired rights.

VII

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

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

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



2. Pierce County shall provide to Grantee two sets of preliminary plans for individual projects as soon as such plans are developed to a state of reasonable certainty and shall advise Grantee of the anticipated date of start of work on such projects.
3. Grantee shall, when requested by Pierce County in writing, locate its facilities in the field, show those locations on one set of preliminary plans provided, and return that set to Pierce County Planning and Public Works within four weeks of receiving the written request.
4. Pierce County shall provide to Grantee final plans for such projects as soon as such plans are available and shall confirm or correct the anticipated date of start of work on such projects.
5. Pierce County shall assist Grantee in determining how its facilities shall be relocated. Such assistance by Pierce County shall include, at a minimum, copies of plans (as required above) and specifications for such County Projects, and information known to Pierce County as to existing survey control available for location of such County Projects. Such assistance shall not subject Pierce County to any liability for the costs of relocating the subject facilities a second time if Grantee incorrectly relocated its facilities the first time.
6. When requested, Pierce County and Grantee shall meet to discuss how County Projects and utility relocations can be accomplished with the least impact on the other. Pierce County's decision shall be final in such matters but shall not be unreasonable.
7. Relocation of Grantee's facilities shall be completed in a timely manner defined as follows:

Relocation of Grantee's facilities shall normally be accomplished in advance of County Projects. In the event relocation of Grantee's facilities is done concurrently with such Projects, Pierce County shall be so notified and agree to a written schedule for relocation. Compliance with such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with County Projects.
8. If Grantee does not relocate its facilities in a timely manner as required above, Pierce County may relocate, or cause to be relocated, such facilities of Grantee as Pierce County deem necessary, and in the



1 manner Pierce County deems necessary, in its sole discretion.
2 Grantee hereby indemnifies and holds Pierce County, its employees,
3 officers, officials, and agents totally free and harmless from all and any
4 liability which may arise from damages caused by the relocation by
5 Pierce County of the facilities of Grantee, even if such damages and
6 liability arise from the negligence of Pierce County, its employees,
7 officers, officials, and agents.
8

9 9. Grantee hereby indemnifies and holds harmless Pierce County, its
10 officers, officials, and employees, from damages that may arise from
11 Grantee's failure to relocate its facilities in accordance with the dates
12 for completion of relocation of facilities set forth above, or any other act
13 or omission by Grantee, its contractor(s), agents, officers, or
14 employees related to the provisions of this Franchise.
15

16 10. It shall be conclusively presumed that Pierce County will have suffered
17 damages as a result of exercising its rights as set forth in Item 8
18 above, and compensation for such damages will be difficult to
19 ascertain, and therefore, Grantee shall compensate Pierce County for
20 such damages in the amount of twice the amount of the cost of such
21 relocation of Grantee's facilities by Pierce County.
22

23 11. The exercise of its rights, as set forth in Item 8 above, by Pierce
24 County in no way relieves Grantee of completing and/or finalizing the
25 relocation of its facilities at no expense to Pierce County, if the
26 relocation work done by Pierce County is incomplete.
27

28 12. In the event a lawsuit is brought by Pierce County against Grantee to
29 collect damages presumed under Item 10 above for the exercise by
30 Pierce County of its rights under Item 8 above, Grantee hereby agrees
31 the only issue will be the actual cost to Pierce County for relocating
32 Grantee's facilities. The party prevailing in such an action shall be
33 allowed its legal fees and costs.
34

35 VIII

36 Grantee shall not sell, transfer, or assign this Franchise without first
37 notifying the Pierce County Council. The terms and conditions set forth herein
38 shall be binding on Grantee's successors and assigns unless amended by the
39 Council of Pierce County.
40



IX

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

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

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.

Furthermore, all Grantees shall, within 30 days after written demand thereof on the anniversary of said grant, modification, amendment, renewal, or transfer of any franchise, reimburse Pierce County for all direct and indirect costs and expenses incurred by the County in the preceding 12 months in connection with any said 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



1 upon the reasonable value of the same at the time, without any additional value for
2 the Franchise or any unexpired period thereof, and upon such acquirement, this
3 grant and Franchise shall immediately terminate, only that portion to be
4 incorporated.

5 XI

6 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises
7 provides in part: All Franchises shall be subject to the right of the Council, or the
8 people acting for them through referendum, to repeal for cause, amend, or modify
9 the Franchise in the interest of the public, and agrees to said condition.

10 XII

11
12 Any failure to render adequate service to the patrons of said water system,
13 or the discontinuance of such water services without fault on the part of the patron
14 or patrons involved, for a period of 30 days, shall work a forfeiture of this
15 Franchise, at the discretion of the Pierce County Council, unless the failure should
16 result from causes beyond human control.

17 XIII

18
19 Venue and jurisdiction for any controversy arising from the Franchise shall
20 be in Pierce County, Washington.

21 XIV

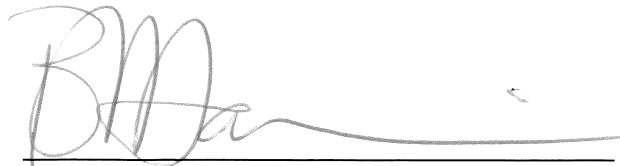
22
23 Grantee shall provide full acceptance of this Franchise and all its terms and
24 conditions by filing a signed copy of the Franchise with the Clerk to the Pierce
25 County Council within 60 days from December 24, 2022, 2022. This
26 requirement shall be a condition precedent to the Franchise taking effect. If
27 Grantee does not provide a signed copy of the Franchise as set forth in this
28 Section, this Franchise shall be null and void.

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



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DATED at Tacoma, Washington, this 16th day of December, 2022.



Bruce F. Dammeier
Pierce County Executive

The Town of Eatonville accepts and agrees to comply with all terms and conditions of this Franchise.

Name

Title

The Town of Eatonville

Date

**SIGN
HERE**

