

RESOLUTION 2023-EE

**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 sanitary sewer 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 2023-16 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 2023-16, 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 14th day of August 2023.

David Baublits, Mayor

ATTEST:

Miranda Doll, Town Clerk

RESOLUTION 2023-EE

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

ORDINANCE NO. 2023-16

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

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

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

Whereas, it appears to the Council that notice of said hearing has been duly given to the public as required by law and that it is in the public's interest to grant the Franchise; **Now Therefore**,

BE IT ORDAINED by the Council of Pierce County:



1 Section 1. The Franchise, a copy of which is attached hereto and identified
2 by reference as Exhibit A, is hereby given and granted to the Town of Eatonville, a
3 Municipal Corporation of Pierce County, its approved successors and assigns,
4 hereinafter referred to as the "Grantee", for a period of five years, from and after
5 the effective date of this Ordinance to construct, operate, and maintain a sanitary
6 sewer pipeline, for the transportation of sewage in, along, and under those certain
7 public roads, highways, and other County property in Pierce County, Washington,
8 described within said Franchise.

9
10 Section 2. The Town of Eatonville, a Municipal Corporation of Pierce
11 County, must indicate their full acceptance of this Franchise and all its terms and
12 conditions within 60 days from the effective date of the Ordinance. Said
13 acceptance is to be in writing and filed with the Clerk to the Pierce County Council
14 and shall be a condition precedent to the validity of said Franchise, and unless the
15 Franchise is accepted within such time, this grant of permission shall be null and
16 void.



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

3
4 PASSED this 27th day of June, 2023.

7 ATTEST:

PIERCE COUNTY COUNCIL

Pierce County, Washington

9
10 Denise D. Johnson
11 **Denise D. Johnson**
12 Clerk to the Council

Ryan N. Mello
Ryan N. Mello
Council Chair

13
14 Bruce F. Dammeier
15 **Bruce F. Dammeier**
16 Pierce County Executive
17 Approved X Vetoed _____, this
18 6th day of July, 2023.

21 Dates of Publication of

22 Notice of Public Hearing: May 31, 2023 and June 7, 2023

23
24 Effective Date of Ordinance: July 14, 2023

25
26 Recording Number: _____

27
28 Date Recorded: _____



Exhibit A to Ordinance No. 2023-16

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In the Matter of the Application of)
the Town of Eatonville, a Municipal)
Corporation of Pierce County, for a nonexclusive)
franchise to construct, operate, and maintain) FRANCHISE
a sanitary sewer pipeline system)
in, along, across, under, and)
along certain Public Roads and)
Highways in Pierce County, Washington)

Application of the Town of Eatonville, a Municipal Corporation of Pierce
County, for a nonexclusive Franchise to construct and maintain a sanitary sewer
pipeline system in, along, across, and under certain public roads and highways 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, 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 granted;

NOW, THEREFORE, IT IS ORDERED, that a Franchise be and the same is
hereby given and granted to the Town of Eatonville, a Municipal Corporation of
Pierce County, hereinafter referred to as "Grantee," for a period of five (5) years
from and after the date of filing of 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 sanitary sewer
pipeline with appurtenances for a sanitary sewer pipeline system in, along, across,
and under the public roads and highways in Pierce County, Washington, to wit:

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

Section 15, Township 16 North, Range 4 East, W.M.
All Pierce County roads in the South half of said section.

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



1 In the construction and installations of sanitary sewer pipeline
2 appurtenances and the excavation of trenches on County roads for the purposes
3 of laying, relaying, connecting, disconnecting, and repairing mains and pipes and
4 making connections between the same to the dwellings and other buildings of the
5 consumers, the Grantee shall be governed by and conform to the general rules
6 adopted by Pierce County Planning and Public Works of Pierce County,
7 Washington; it is understood and agreed that Grantee is fully responsible for all
8 such sewer system appurtenances within the limits of Pierce County right-of-way
9 (inclusive of any lines or appurtenances conveying sewer from the property
10 owner), and the Grantee, at no expense to the County, shall complete all such
11 work and shall repair the County roads and leave the same in as good condition
12 as before the work was commenced;

13
14 PROVIDED, HOWEVER, that no such work shall be done prior to the
15 obtaining of a permit therefore issued by the Pierce County Engineer (hereinafter
16 "Engineer"), which permit shall set forth conditions pertaining to the work to be
17 done and specifications for the restoration of the roads to the same condition as
18 they were prior to such work; and

19
20 PROVIDED FURTHER, the Engineer may in his or her discretion require a
21 bond in a sum sufficient to guarantee to Pierce County that such roads shall be
22 restored to the same condition as existed prior to such work. If the Grantee does
23 not repair the County roads to the satisfaction of the Engineer, Pierce County
24 Planning and Public Works may, at its sole discretion, repair such County roads,
25 or cause them to be repaired, and the Grantee hereby agrees to reimburse the
26 County of Pierce for the cost of such work, including overhead costs.

27
28 Before any work is performed under this Franchise that may affect any
29 existing monuments or markers of any nature relating to section subdivisions,
30 plats, roads, and all other surveys, Grantee shall reference all such monuments
31 and markers in accordance with RCW 58.09.130. The reference points shall be so
32 located that they will not be disturbed during Grantee's operations under this
33 Franchise. The method of referencing these monuments or other points to be
34 referenced shall be approved by the County Engineer. The replacement of all
35 such monuments or markers disturbed during construction shall be made as
36 expeditiously as conditions permit, and as directed by the County Engineer. The
37 cost of monuments or other markers lost, destroyed, or disturbed, and the
38 expense of replacement by approved monuments shall be borne by Grantee.

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

The sanitary sewer mains and pipes shall be laid down as directed by the Engineer or his designee at a depth to be determined at the time of permit application, and in such a manner as not to interfere unnecessarily with the construction of utilities and drains, or with the grading of the County roads. All surface appurtenances to the sanitary sewer system shall be installed or constructed as approved by the Engineer.

III

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

IV

The County of Pierce, in the granting of this Franchise, does not waive any rights that it now holds or may hereafter acquire and this Franchise shall not be construed so as 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 the use and control of the 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 the Grantee, the Grantee's protective liability, products-completed operations 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 as respects this Franchise and such insurance as is carried by the Grantee for the operation of its facility.

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 Engineer, 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 Pierce County Council; and Pierce County has no obligations to pay premiums.

The Grantee's insurance policies shall contain a "cross-liability" endorsement substantially as follows:

The inclusion of more than one Insured under this policy shall not affect the rights of any Insured as respects any claim, suit, or judgment made or brought by or for any other Insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy has been issued to each, except that nothing herein shall operate to increase the company's liability beyond the amount or amounts for which the company would have been liable had only one Insured been named.



1
2 The Grantee's insurance is primary over any insurance that may be carried
3 by Pierce County. Grantee agrees to provide proof of insurance each year
4 to Pierce County.

5
6 Grantee agrees to defend, indemnify, and hold harmless Pierce County, its
7 appointed and elected officials, its agents, and its employees, from and
8 against all loss or expense arising out of any act, error or omission, or the
9 exercise of any of the rights and privileges granted under this Franchise,
10 including but not limited to, judgments, settlements, attorney's fees and
11 costs, and any and all claims and demands upon the County, its elected or
12 appointed officials, its agents, or its employees. Additionally, for damages
13 because of personal or bodily injury including death at any time resulting
14 therefrom, sustained by any person or persons, and for damages on
15 account of damage to property, including loss of use thereof, where such
16 injury to persons or damage to property is due to the negligence of Grantee,
17 its contractors, its or their employees or agents, Grantee agrees to defend,
18 indemnify, and hold harmless Pierce County, its appointed or elected
19 officers, or its employees, or its agents, except only such injury or damage
20 as shall have been occasioned by the sole negligence of Pierce County, its
21 appointed or elected officials, or its agents, or its employees; and the
22 Grantee expressly waives its immunity under Title 51 of the Revised Code
23 of Washington, the Industrial Insurance Act, and this waiver has been
24 mutually negotiated by the parties to this Franchise.

25
26 If the claim, suit, or action for injuries, death, or damages as provided for in
27 the preceding paragraph of this Franchise agreement is caused by or
28 results from the concurrent negligence of (a) Pierce County or Pierce
29 County's agents or employees, and (b) the Grantee, or the Grantee's
30 agents or employees, the indemnity provisions provided for in the preceding
31 paragraph of this Franchise shall be valid and enforceable only to the extent
32 of the Grantee's negligence.

33
34 Grantee specifically and expressly waives any immunity under Industrial
35 Insurance Title 51 RCW and acknowledges that this waiver was mutually
36 agreed upon by the parties herein.

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38 VI

39 If, at any time, the County of Pierce shall vacate any public street, road, or
40 alley that is subject to rights granted by this Franchise, the Pierce County Council
41 may, at their option, and by giving 30 days written notice to the Grantee, its
42 successors, and assigns, terminate this Franchise with reference to such County



road, street, or alley so acquired and the County of Pierce shall not be liable for any damages or loss to the Grantee by reason of such termination.

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 right-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 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 practicable.
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 their facilities in the field, show those locations on one set of the 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



1 liability for the costs of relocating the subject facilities a second time
2 if Grantee incorrectly relocated its facilities the first time.

- 3
4 6. When requested, Pierce County and Grantee shall meet to discuss
5 how County projects and utility relocations can be accomplished with
6 the least impact on the other. Pierce County's decision shall be final
7 in such matters but shall not be unreasonable.

- 8
9 7. Relocation of Grantee's facilities shall be completed in a timely
10 manner defined as follows:

11
12 Relocation of Grantee's facilities shall normally be
13 accomplished in advance of County projects. In the event
14 relocation of Grantee's facilities shall be done concurrently
15 with such projects, Pierce County shall be so notified and
16 agree to a written schedule for relocation. Compliance
17 with such a written schedule shall be Grantee's duty. In no
18 event shall relocation of Grantee's facilities interfere with
19 the prosecution of County projects.

- 20
21 8. If Grantee should not relocate its facilities in a timely manner as
22 required above, Pierce County may relocate, or cause to be
23 relocated, such facilities of Grantee as Pierce County deem
24 necessary, and in the manner Pierce County deems necessary, in its
25 sole discretion. Grantee hereby indemnifies and holds Pierce
26 County, its employees, officers, officials, and agents totally free and
27 harmless from all and any liability that may arise from damages
28 caused by the relocation by Pierce County of the facilities of
29 Grantee, even if such damages and liability arise from the
30 negligence of Pierce County, its employees, officers, officials, and
31 agents.

- 32
33 9. Grantee hereby indemnifies and hold harmless Pierce County, its
34 officers, officials, and employees, from damages that may arise from
35 Grantee's failure to relocate its facilities in accordance with the dates
36 for completion of relocation of facilities set forth above, or any other
37 act or omission by Grantee, its contractor(s), agents, officers, or
38 employees related to the provisions of this Franchise.

- 39
40 10. It shall be conclusively presumed that Pierce County will have
41 suffered damages as a result of exercising its rights as set forth in
42 Item 8 above, and compensation for such damages will be difficult to



ascertain, and, therefore, Grantee shall compensate Pierce County for such damages in the amount of twice the amount of the cost of such relocation of Grantee's facilities by Pierce County.

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

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

VIII

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

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 in, along, and under 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 roads and highways, 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. And this Franchise may be terminated at any time upon 90 days written notice to the Grantee if the Grantee fails to comply with the terms and conditions of this Franchise, or if the 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,



1 which lien may be enforced to reimburse Pierce County for any reasonable
2 expenses and payments incurred in terminating this Franchise and to cure defaults
3 by the Grantee.

4
5 Grantee agrees to and shall provide publicly available financial information
6 to the County upon reasonable request. Grantee agrees to and shall during
7 regular business hours and at its office located in Pierce County, Washington,
8 allow agents of Pierce County access for inspection and reproduction of all of
9 Grantee's publicly available business records and financial statements to
10 determine the financial capability of the Grantee to adequately install and maintain
11 facilities in the right-of-way.

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14 In the event that the territory covered by this Franchise, or any portion
15 thereof, shall at any time during the Franchise period be included within the limits
16 of any incorporated city or town, the authorities of said city or town shall have the
17 right, to be exercised at their discretion, to acquire by purchase or condemnation,
18 any part of such pipes, conduits and sanitary sewer systems existing within the
19 corporate limits of said city or town, other than transmission lines, at a price to be
20 based upon the reasonable value of the same at the time, without any additional
21 value for the Franchise or any unexpired period thereof, and upon such
22 acquirement, this grant and Franchise of those public roads and limits of said
23 incorporated city or town shall immediately terminate.

24
25 XI

26 Grantee acknowledges that Pierce County Charter Section 9.20 Franchises
27 provides in part: "All Franchises shall be subject to the right of the County, or the
28 people acting for themselves through referendum, to repeal for cause, amend, or
29 modify the Franchise in the interest of the public" and agrees to said condition.

30
31 XII

32 Any failure to render adequate service to the patrons of said sanitary sewer
33 system, or the discontinuance of such sanitary sewer services without fault on the
34 part of the patron or patrons involved, for a period of 30 days, shall work a
35 forfeiture of this Franchise, at the discretion of the Pierce County Council unless
36 the failure should result from causes beyond human control.

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39 XIII

40 Venue and jurisdiction for any controversy arising from this Franchise shall
41 be in Pierce County, Washington.

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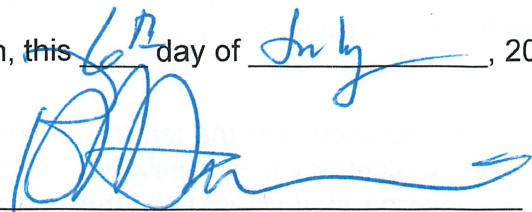


XIV

The full acceptance of this Franchise and all its terms and conditions within 60 days from July 16, 2023, by the Town of Eatonville, a Municipal Corporation of Pierce County, in writing, is to be filed with the Clerk to the Pierce County Council and shall be a condition precedent to its taking effect, and unless the Franchise is accepted within such time, this franchise shall be null and void.

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

DATED at Tacoma, Washington, this 16 day of July, 2023.


Bruce F. Dammeier
Pierce County Executive

The Town of Eatonville, a Municipal Corporation of Pierce County, accepts and agrees to comply with all terms and conditions of this Franchise.

Name

Title

Town of Eatonville,
a Municipal Corporation of Pierce County

Date

