

1 Sponsored by: Councilmember Roger Bush  
2 Requested by: County Executive/Public Works & Utilities  
3 Department

File No. 81

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5  
6 ORDINANCE NO. 2007-88  
7

8  
9 **An Ordinance of the Pierce County Council Granting a Nonexclusive**  
10 **Franchise to the Town of Eatonville for Location of**  
11 **Waterlines on Certain County-Owned Rights-of-Way; and**  
12 **Authorizing the County Executive to Execute Said Franchise.**  
13

14 **Whereas**, the Town of Eatonville of Pierce County, Washington, has applied for  
15 a nonexclusive Franchise to construct, operate, and maintain a waterline system under  
16 and along Pierce County roads, highways, and other County property(ies) in Pierce  
17 County, Washington, as hereinafter set forth; and  
18

19 **Whereas**, said application for Franchise came on regularly for hearing before the  
20 Pierce County Council on the date set forth below under the provisions of Chapter  
21 36.55, Revised Code of Washington; and  
22

23 **Whereas**, it appears to the Council that notice of said hearing has been duly  
24 given to the public and those interested in providing the same service applied for by the  
25 applicant as required by law and that it is in the public interest to grant the Franchise;  
26

27 **Now Therefore,**

28 **BE IT ORDAINED by the Council of Pierce County:**  
29

30 Section 1. A nonexclusive Franchise, a copy of which is attached hereto and  
31 identified as Exhibit A, is hereby given and granted to the Town of Eatonville of Pierce  
32 County, Washington, hereinafter referred to as the Grantee, for a period of 15 years,  
33 from and after the date of filing of the Franchise to be granted with the Clerk of the  
34 Pierce County Council.  
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Section 2. The Executive of Pierce County is hereby authorized to execute said Franchise.

**PASSED** this \_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

**PIERCE COUNTY COUNCIL**  
Pierce County, Washington

\_\_\_\_\_  
**Denise D. Johnson**  
Clerk of the Council

\_\_\_\_\_  
**Terry Lee**  
Council Chair

\_\_\_\_\_  
**John W. Ladenburg**  
Pierce County Executive  
Approved \_\_\_\_ Vetoed \_\_\_\_\_, this  
\_\_\_\_\_ day of \_\_\_\_\_, 2007.

Date of Publication of  
Notice of Public Hearing: \_\_\_\_\_

Effective Date of Ordinance: \_\_\_\_\_



1 Exhibit A to Ordinance No. 2007-88

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5 In the Matter of the Application of )  
6 the Town of Eatonville, of )  
7 Pierce County, State of Washington, )  
8 for a Franchise to construct, operate, )  
9 and maintain pipelines for a Water )  
10 System under and along certain Public )  
11 Roads and Highways in Pierce County, )  
12 Washington )

F R A N C H I S E

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

23

24 NOW, THEREFORE, IT IS ORDERED, that a Franchise be, and the same is, hereby  
25 given and granted to the Town of Eatonville, of Pierce County, Washington, hereinafter  
26 called "Grantee" for a term of 15 years from and after the date of filing this Franchise  
27 with the Clerk of the Pierce County Council. This Franchise is a license for the  
28 privilege, and authority to construct, maintain, and operate for the said period of time, a  
29 water pipeline with appurtenances for a water system under and along public roads,  
30 highways, and other County property in Pierce County, Washington, as follows:

31

32 Section 22, Township 16 North, Range 4 East, W.M.

33 All Pierce County roads in the north half of said section.

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35 Section 13, Township 16 North, Range 4 East, W.M.

36 All Pierce County roads in the west half of said section.

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38 Section 14, Township 16 North, Range 4 East, W.M.

39 All Pierce County roads in north half of said section.

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41 Section 15, Township 16 North, Range 4 East, W.M.

42 All Pierce County roads in said section.

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44 Section 10, Township 16 North, Range 4 East, W.M.

45 All Pierce County roads in the southeast quarter of said section.

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

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

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

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10 I  
11 In the construction and installation of water system appurtenances and the excavation  
12 of trenches on County roads for the purposes of laying relaying, connecting,  
13 disconnecting, and repairing mains and pipes and making connections between the  
14 same to dwellings and other buildings of the consumers, Grantee shall be governed by  
15 and conform to the general rules adopted by Pierce County Public Works and Utilities -  
16 Transportation Services, it is understood and agreed that Grantee is fully responsible for  
17 all such water system appurtenances within the limits of Pierce County right-of-way; and  
18 Grantee, at no expense to the County, shall complete all such work and shall repair the  
19 County roads and leave the same in as good condition as before the work was  
20 commenced;

21  
22 PROVIDED, HOWEVER, that no such work shall be done prior to obtaining permits  
23 therefore issued by the Pierce County Engineer (hereinafter "Engineer"), which permits  
24 shall set forth conditions pertaining to the work to be done and specifications for the  
25 restoration of the roads to the same condition as they were prior to such work; and

26  
27 PROVIDED FURTHER, the Engineer, in his or her discretion, may require a bond in a  
28 sum sufficient to guarantee to Pierce County that such roads shall be restored to the  
29 same condition as existed prior to such work. If Grantee does not repair County roads  
30 to the satisfaction of the Engineer, Pierce County Public Works and Utilities -  
31 Transportation Services may, at its sole discretion, repair such County roads, or cause  
32 them to be repaired, and Grantee hereby agrees to reimburse the County of Pierce for  
33 the cost of such work, including overhead costs.

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



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

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4 **II**

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

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11 **III**

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

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26 **IV**

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

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35 **V**

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

LIMITS OF LIABILITY

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

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 Engineer, Pierce County Public Works and Utilities - Transportation Services, 2702 South 42nd Street, Suite 201, 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.

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 with respect to 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 Grantee's liability beyond the amount or amounts for which Grantee would have been liable had only one Insured been named.

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

Grantee agrees to defend, indemnify, and save harmless Pierce County, its appointed and elected officials and employees, from and against all loss or expense, including but not limited to, judgments, settlements, attorney's fees, and costs by reasons of any and all claims and demands upon the County, its elected or appointed officials or employees



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

8  
9 If the claim, suit, or action for injuries, death, or damages as provided for in this  
10 Franchise agreement is caused by or results from the concurrent negligence of (a)  
11 Pierce County or Pierce County's agents or employees; or (b) Grantee, or Grantee's  
12 agents or employees, the indemnity provisions provided for in this Franchise shall be  
13 valid and enforceable only to the extent of Grantee's negligence.

14  
15 Grantee specifically and expressly waives any immunity under Industrial Insurance Title  
16 51 RCW, and acknowledges that this waiver was mutually agreed upon by the parties  
17 herein.

18  
19 VI

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

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27 VII

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



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

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

7  
8 2. Pierce County shall provide to Grantee two sets of preliminary plans for individual  
9 projects as soon as such plans are developed to a state of reasonable certainty, and  
10 shall advise Grantee of the anticipated date of start of work on such projects.

11  
12 3. Grantee shall, when requested by Pierce County in writing, locate its facilities in  
13 the field, show those locations on one set of preliminary plans provided, and return that  
14 set to Pierce County Public Works and Utilities - Transportation Services within four  
15 weeks of receiving the written request.

16  
17 4. Pierce County shall provide to Grantee final plans for such projects as soon as  
18 such plans are available and shall confirm or correct the anticipated date of start of work  
19 on such projects.

20  
21 5. Pierce County shall assist Grantee in determining how its facilities shall be  
22 relocated. Such assistance by Pierce County shall include, at a minimum, copies of  
23 plans (as required above) and specifications for such County Projects, and information  
24 known to Pierce County as to existing survey control available for location of such  
25 County Projects. Such assistance shall not subject Pierce County to any liability for the  
26 costs of relocating the subject facilities a second time if Grantee incorrectly relocated its  
27 facilities the first time.

28  
29 6. When requested, Pierce County and Grantee shall meet to discuss how County  
30 Projects and utility relocations can be accomplished with the least impact on the other.  
31 Pierce County's decision shall be final in such matters, but shall not be unreasonable.

32  
33 7. Relocation of Grantee's facilities shall be completed in a timely manner defined  
34 as follows:

35  
36 Relocation of Grantee's facilities shall normally be accomplished in advance of County  
37 Projects. In the event relocation of Grantee's facilities is done concurrently with such  
38 Projects, Pierce County shall be so notified and agree to a written schedule for  
39 relocation. Compliance with such a written schedule shall be Grantee's duty. In no  
40 event shall relocation of Grantee's facilities interfere with County Projects.



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

9  
10 9. Grantee hereby indemnifies and holds harmless Pierce County, its officers,  
11 officials, and employees, from damages that may arise from Grantee's failure to relocate  
12 its facilities in accordance with the dates for completion of relocation of facilities set forth  
13 above, or any other act 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 damages  
17 as a result of exercising its rights as set forth in Item 8 above, and compensation for  
18 such damages will be difficult to ascertain, and therefore, Grantee shall compensate  
19 Pierce County for such damages in the amount of twice the amount of the cost of such  
20 relocation of Grantee's facilities by Pierce County.

21  
22 11. The exercise of its rights, as set forth in Item 8 above, by Pierce County in no  
23 way relieves Grantee of completing and/or finalizing the relocation of its facilities at no  
24 expense to Pierce County, if the relocation work done by Pierce County is incomplete.

25  
26 12. In the event a lawsuit is brought by Pierce County against Grantee to collect  
27 damages presumed under Item 10 above for the exercise by Pierce County of its rights  
28 under Item 8 above, Grantee hereby agrees the only issue will be the actual cost to  
29 Pierce County for relocating Grantee's facilities. The party prevailing in such an action  
30 shall be allowed its legal fees and costs.

31  
32 VIII

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

36  
37 IX

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



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

12  
13 Grantee agrees to and shall provide available financial information to the County upon  
14 reasonable request. Grantee agrees to and shall during regular business allow agents  
15 of Pierce County access for inspection and reproduction of all of Grantee's business  
16 records, gross revenue reports, or rules and regulations relevant to a determination of  
17 the gross revenues received by Grantee from the area served by the facilities permitted  
18 by this Franchise.

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20 X

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

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30 XI

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

35  
36 XII

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

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43 XIII

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

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47 XIV



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Grantee shall provide full acceptance of this Franchise and all its terms and conditions by filing a signed copy of the Franchise with the Clerk of the Pierce County Council within 60 days from \_\_\_\_\_, 2007. This requirement shall be a condition precedent to the Franchise taking effect. If Grantee does not provide a signed copy of the Franchise as set forth in this Section, 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007.

John W. Ladenburg  
Pierce County Executive

Town of Eatonville of Pierce County, Washington, accepts and agrees to comply with all terms and conditions of this Franchise.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Company,            Corporate

Name, or Individual

\_\_\_\_\_  
Date

