

**CITY OF SNOHOMISH
Snohomish, Washington**

ORDINANCE NO. 2328

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON, GRANTING TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES, A DELAWARE CORPORATION, A FRANCHISE FOR TELECOMMUNICATIONS SERVICES PROVIDING THE AUTHORITY TO INSTALL A TELECOMMUNICATIONS SYSTEM WITHIN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF SNOHOMISH, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, PROVIDING FOR SEVERABILITY, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services (“Franchisee”) has applied to the City of Snohomish, Washington (“City”) for a non-exclusive Franchise for the right of entry, use, and occupation of the public rights-of-way within the City, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its transmission facilities in, on, over, under, along and/or across those rights-of-way for the purpose of selling, renting or leasing Franchisee Services and Franchisee’s Facilities (as such terms are defined below); and

WHEREAS, Franchisee has informed the City that through this Franchise Franchisee is not seeking to provide personal wireless services, as such term is defined in RCW 80.365.375, or install equipment associated with providing personal wireless services, pursuant to RCW 80.36.375; and

WHEREAS, the City Council has the authority pursuant to general laws of the State of Washington and Snohomish Municipal Code to grant the rights requested subject to certain terms and conditions; and

WHEREAS, the City and the Franchisee desire to enter into an agreement authorizing the Franchisee to use certain designated public rights-of-way of the City, and specifying the terms and conditions under which said use may be made; and

WHEREAS, following proper notice and other processing requirements of Chapter 5.06 Snohomish Municipal Code, the City Council held a public hearing on Franchisee’s request for a Franchise, at which time representatives of Franchisee and interested citizens were heard in a full public proceeding affording opportunity for comment by any and all persons desiring to be heard; and

WHEREAS, from information presented at such public hearing, and from facts and circumstances developed or discovered through independent study and investigation, the City Council now deems it appropriate and in the best interest of the City and its inhabitants that the franchise be granted to Franchisee,

WHEREAS this Ordinance was introduced on June 6, 2017 and more than five days have elapsed since introduction,

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SNOHOMISH, WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Grant of Right to Use Franchise Area

- A. Subject to the terms and conditions stated herein, the City hereby grants to the Franchisee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right privilege and authority to enter, use, and occupy the open public rights-of-way in the City as defined in RCW 35.99.010(5) within the legal boundaries of the City, as specified in Exhibit "A", attached hereto (collectively, the "Franchise Area").
- B. Franchisee is authorized to install, remove, construct, erect, operate, maintain, relocate and repair the types of facilities specified in Exhibit "B", attached hereto and incorporated by reference, and all necessary appurtenances thereto, ("Franchisee Facilities") for provision of those services set forth in Exhibit "C" ("Franchisee Services") in, along, above, under and across the Franchise Area.
- C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Franchisee Facilities and Franchisee Services, and it extends no rights or privilege relative to any facilities or services of any type, including Franchisee Facilities and Franchisee Services, on public or private property elsewhere within City. In addition, this Franchise does not authorize Franchisee to provide personal wireless services, as such term is defined in RCW 80.365.375, or install equipment associated with providing personal wireless services, pursuant to RCW 80.36.375.
- D. Except as explicitly set forth herein, this Franchise does not waive any rights that City has or may hereafter acquire with respect to the Franchise Area or any other City roads, rights-of-way, property, or any portions thereof. This Franchise shall be subject to the power of eminent domain, and in any proceeding under eminent domain, the Franchisee acknowledges its use of the Franchise Area shall have no value.
- E. City reserves the right to change, regrade, relocate, abandon, or vacate any right-of-way within the Franchise Area. If, at any time during the term of this Franchise, City vacates any portion of the Franchise Area containing Franchisee Facilities, City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Franchisee may continue to operate any existing Franchisee Facilities under the terms of this Franchise for the remaining period set forth under Section 3.
- F. The Franchisee agrees that its use of the Franchise Area shall at all times be subordinated to and subject to City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 2. Authority Limited to Occupation of Public Rights-of-way

Except as provided herein, the authority granted by this Ordinance is a limited authorization to occupy and use a specific portion of the public ways of the City for the purpose of providing Franchisee services. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the City to the Franchisee or to permit any other Franchisee facilities in the public way of the City.

Section 3. Non-Exclusive Grant.

This Ordinance shall not in any manner prevent the City from entering into other similar agreements or franchises in, under, on, across, over, through, along or below any public ways of the City. Further, this Ordinance shall in no way prevent or prohibit the City from using any of

its public ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways.

Section 4. Notice

A. Written notices to the parties shall be sent by certified mail to the following addresses, unless a different address shall be designated in writing and delivered to the other party.

City: City of Snohomish
c/o Planning Director
116 Union Ave.
Snohomish, WA 98290-2943
Telephone: (360) 282-3173
Fax: (360) 568-1375

with a copy to: City Clerk
City of Snohomish
116 Union Ave.
Snohomish, WA 98290-2943
Telephone: (360)282-3155
Fax: (360) 568-1375

Franchisee: MCImetro Access Transmission Services Corp. d/b/a Verizon Access
Transmission Services
Attn: Franchise Manager
600 Hidden Ridge
Irving, TX 75038

with a copy to: Verizon Business Network Services
(except for invoices) 1320 North Courthouse Road, Suite 900
Arlington, VA USA 22201
Attn: Vice President and Deputy General Counsel, Network Operations

- B. Any changes to the above-stated Franchisee information shall be sent to City's Planning & Community Development Department, with copies to City Clerk, referencing the title of this agreement.
- C. The above-stated Franchisee voice and fax telephone numbers shall be staffed at least during normal business hours, Pacific time zone. City may contact Franchisee at the following number for emergency or other needs outside of normal business hours of the Franchisees: (1-800-MCI-WORK).
- D. Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 5. Term of Agreement

A. This Franchise shall run for a period of ten (10) years, from the date of execution specified in Section 6, unless terminated sooner.

- B. This Franchise shall automatically renew for an additional five (5) year term. Provided, however, that either party may notify the other of its desire to renegotiate any of the terms set forth herein or of its desire to add to or delete any such terms not later than 180 days prior to expiration of the initial term hereof or any subsequent renewal terms. If either party makes such a request, this Franchise shall not renew unless and until the City and Franchisee reach agreement on said modification, addition, and/or deletion, and said agreement is approved by ordinance of the City Council and accepted by the Franchisee as provided in Section 37. In the event that agreement cannot be reached, this Franchise shall terminate at the end of the then current term. Nothing in this Section prevents the parties from reaching agreement on renewal earlier than the time periods indicated.
- C. Failure to Renew Franchise – Automatic Extension. If the parties fail to formally renew this Franchise prior to the expiration of its term or any extension thereof, the Franchise automatically continues month to month until renewed by agreement or either party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise and at the expiration of said notice this Franchise shall expire and terminate.

Section 6. Acceptance of Franchise

- A. Within thirty (30) days after the passage and approval of this Ordinance, the Franchisee may accept the rights and obligations conferred hereby by filing with the City Clerk: (1) an unconditional Statement of Acceptance, attached hereto as Exhibit “D,” and incorporated by reference; (2) all verifications of insurance coverage specified under Section 23; (3) the financial guarantees specified in Section 24; and (4) fully paying the City's administrative, legal, and other costs incurred in drafting and processing this Franchise and all work related thereto. These four items shall collectively be the “Franchise Acceptance”. The date that such Franchise Acceptance is filed with City Clerk shall be the date of execution of this Franchise.
- B. Should Franchisee fail to file the Franchise Acceptance with City Clerk within thirty (30) days after the effective date of the ordinance approving the Franchise, City’s grant of the Franchise will be null and void.

Section 7. Construction and Maintenance

- A. Franchisee shall apply for, pay fees for, obtain, and comply with the terms of all permits required under applicable law for any work done within City. Franchisee shall comply with all applicable City, state, and federal laws and regulations, and validly issued orders in undertaking such work, which shall be done in a professional and workmanlike manner.
- B. Franchisee agrees to coordinate its activities with City and all other utilities located within the Franchise Area within which Franchisee is under taking its activity.
- C. City expressly reserves the right to prescribe how and where Franchisee Facilities shall be installed within the Franchise Area and may from time to time, pursuant to the applicable sections of this Franchise and WAC 468-34-320, require the removal, relocation and/or replacement thereof in the public interest and safety, including but not limited to the installation of a city utility, at the expense of Franchisee. Nothing in this Franchise precludes Franchisee from seeking reimbursement for removal, relocation or replacement of Franchisee’s Facilities as set forth in RCW 35.99.060.
- D. Before commencing any work within the Franchise Area, Franchisee shall comply with the One Number Locator provisions of RCW 19.122 to identify existing utility infrastructure.

- E. Tree Trimming. Upon prior written approval of City and in accordance with City ordinances, and where applicable with the consent of the tree owner, Franchisee shall have the authority at its expense to reasonably trim trees upon and overhanging streets, public rights-of-way, and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with Franchisee Facilities. Franchisee shall be responsible for debris removal from such activities. If such debris is not removed within twenty-four (24) hours of completion of the trimming, City may, at its sole discretion, remove such debris and charge Franchisee for the cost thereof. This section does not, in any instance, grant automatic authority to clear vegetation for purposes of providing a clear path for radio signals. Any such general vegetation clearing will require a land clearing permit.
- F. Access to Open Trenches. Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with City's placement of utilities or increase the cost to City thereby. Franchisee shall pay to City the actual cost incurred by City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs directly attributable to Franchisee associated with the delay of the completion of a public works project. City shall use reasonable efforts to include Franchisee in any platting process within the Franchise Area, to exercise reasonable efforts to include as a condition of issuing a permit for open trenching to any utility or developer that (a) the utility or developer give Franchisee at least ten (10) business days' advance written notice of the availability of the open trench, and (b) that the utility or developer provide Franchisee with reasonable access to the open trench and allow placement within the trench.

Section 8. Work in the Public Ways

- A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. The provisions of this Section shall survive the expiration of this Franchise during such time as Franchisee continues to have Facilities in the rights-of-way.
- B. Whenever the Franchisee shall commence any work within a public way, regardless of whether excavation is required, it shall apply to the City for a Right-of-Way Permit to do so as provided in Chapter 12.12 SMC and, in addition, shall give the City at least ten (10) working days prior notice of its intent to commence work in the rights-of-way. The Franchisee shall file plans or maps with the City showing the proposed location of its Facilities and pay all duly established permit and inspection fees associated with the processing of the Permit. In no case shall any work commence within any public way without said Permit, except as otherwise provided in this Ordinance or Chapter 12.12 SMC. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the public ways, and all work by the Franchisee in any area covered by this Franchise and as described in this Section shall be performed in accordance with applicable City standards and specifications as they exist or are

hereafter amended and warranted for a period of two (2) years, normal wear and tear excepted.

- C. Franchisee shall be required to comply with all Americans with Disabilities Act (ADA) requirements, including but not limited to, construction of ADA-compliant ramps.
- D. If the City has plans to improve any public way to which this Ordinance applies within two (2) years of the Franchisee's application for a Right-of-Way Permit to locate its Facilities in such public way, the Franchisee may be allowed to install its Facilities above ground, to the extent feasible, until such time as the City's improvements occur, at which time the Franchisee shall underground its Facilities concurrent with the City's improvement project at Franchisee's expense.

Additionally, if either the City or Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

1. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
2. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and
3. Either party may deny such request for safety reasons.

Section 9. Noticing

Except for emergency situations, Franchisee shall give at least seven (7) days prior notice of intended construction to residents in the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed; a door hanger is permissible. At least twenty-four (24) hours prior to entering streets or public easements adjacent to or on private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed; a door hanger is permissible. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law. If notice is accomplished using temporary signs, the bottom of the signs shall be at least two (2) feet above ground, the signs shall be no smaller than three (3) feet wide and two (2) feet wide, and the signs shall be placed across the affected area so that they are no further apart than fifty (50) feet.

Section 10. Repair after Construction

The Franchisee shall, after installation, construction, relocation, maintenance, removal, or repair of its Facilities within the public ways, repair the surface of said public ways and any other City-owned property which may be disturbed by the work, to at least the same condition the public way was in immediately prior to any such installation, construction, relocation, maintenance, or repair. The Public Works Director shall have final approval in a reasonable manner of the condition of such public ways after repair. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications. The Franchisee agrees to promptly complete all repair work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the Construction Permit issued by the City. The provisions of this Section shall survive the expiration, revocation, or termination by other means of the rights conferred by this Ordinance. All work by the Franchisee pursuant to

this Section shall be performed in accordance with applicable City standards and warranted for a period of two (2) years, normal wear and tear excepted.

If conditions (e.g. weather) make the complete restoration required impracticable, Franchisee shall stabilize, protect, and temporarily restore the affected right-of-way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when the conditions no longer make such permanent restoration impracticable.

In the event Franchisee does not restore a right-of-way or an improvement in or to a right-of-way within the time agreed to by the Public Works Director or designee, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the cost recovery provisions of this Franchise. In addition, and pursuant to the cost recovery provisions of this Franchise, the City may bill Franchisee for expenses associated with the inspection of such restoration work.

The provisions of this Section shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the rights-of-way and has not completed all restoration to the City's standards.

Section 11. Emergency Work – Permit Waiver

In the event of any emergency in which any of the Franchisee's Facilities located in, above, or under any public way breaks, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a Right-of-Way Permit as required by this Ordinance and applicable City codes. In the event of an emergency, the Franchisee may commence such repair and emergency response work as required under the circumstances, provided that the Franchisee shall notify the City by telephone immediately upon learning of the emergency (during normal business hours at 360-568-3115 and during non-business hours at 360-563-2012 or 911) before such repair or emergency work commences. Such notification shall include the Franchisee's emergency contact phone number for the corresponding response activity. Not later than the second succeeding day during which the City's Public Works Department is open for business the Franchisee shall apply for all required permits. The City retains the right and privilege to cut or move any Franchisee Facilities located in the City's right-of-way as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall notify Franchisee by telephone or email as promptly as possible upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Franchisee's operations. Franchisee shall not be entitled to any cost recovery from City.

Section 12. Dangerous Conditions, Authority for City to Abate

Whenever construction, installation, or excavation of Facilities authorized by this Ordinance has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, street utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and public ways. Such action may include compliance within a prescribed time.

In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to comply with such directions, or if emergency conditions exist which require

immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination of the rights conferred by this Ordinance.

Section 13. Recovery of Costs

Franchisee shall pay for the City's administrative, legal, and other costs incurred in drafting and processing this Franchise and all work related thereto. No construction permits shall be issued for the installation of Facilities authorized hereby until such time as the City has received payment of the fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of this Section.

In addition to the above, Franchisee shall promptly reimburse the City in accordance with the provisions of this Section for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency situation is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency.

Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the rights-of-way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the rights-of-way as the result of the presence of Franchisee's Facilities in the rights-of-way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14. Location Preference

A. Any structure, equipment, appurtenance or tangible property of a utility, other than Franchisee's, which was installed, constructed, completed or in place prior in time to Franchisee's application for a permit to construct or repair Franchisee Facilities under this Franchise shall have preference as to positioning and location with respect to Franchisee Facilities. However, to the extent that Franchisee Facilities are completed and installed prior to another utility's submittal of a permit for new or additional structures, equipment, appurtenances or tangible property, and to the extent not prohibited by prior agreement, then

Franchisee Facilities shall have priority. These rules governing preference shall continue in the event of the necessity of relocating or changing the grade of any City road or right-of-way. A relocating utility shall not necessitate the relocation of another utility that otherwise would not require relocation. This Section shall not apply to any City facilities or utilities that may in the future require the relocation of Franchisee Facilities. Such relocations shall be governed by Section 16.

- B. Franchisee shall, where practicable, maintain a minimum underground horizontal separation of ten (10) feet from City water, sanitary sewer and storm sewer facilities and ten (10) feet from above-ground City water facilities; provided, that for development of new areas, City, in consultation with Franchisee and other utility purveyors or authorized users of the Public Way, will develop guidelines and procedures for determining specific utility locations.

Section 15. Franchisee Information

- A. Franchisee agrees to supply, at no cost to City, any available information reasonably requested by City to coordinate municipal functions with Franchisee's activities and fulfill any municipal obligations under state law. Franchisee shall keep City informed of its long-range plans for coordination with City's long-range plans.
- B. The parties understand that Washington State law limits the ability of City to shield from public disclosure any information given to City. Accordingly, City agrees to notify Franchisee of requests for public records related to Franchisee, and, pursuant to the Washington State Public Records Act, RCW 42.56, give Franchisee a reasonable amount of time to file an exemption to disclosure under any applicable federal or state freedom of information or open public records law and/or obtain an injunction to prohibit City's release of records.

Franchisee shall indemnify and hold harmless City for any loss or liability for fines, penalties, and costs (including reasonable attorneys' fees) imposed on City because of non-disclosures requested of records of Franchisee under Washington State's Public Records Act, provided City has notified Franchisee of the pending request as set forth in this Section 15.

Section 16. Relocation of Franchisee Facilities

- A. Except as otherwise so required by law, Franchisee agrees and covenants, pursuant to WAC 468-34-320, to protect, support temporarily disconnect, relocate, remove from any public right-of-way, or reroute any of its facilities when so ordered and upon reasonable advance notice by the City Engineer by reason of traffic conditions and public safety, dedications of new public ways and the establishment and improvement thereof, widening and improvement of existing public ways, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; provided, that the Franchisee shall in all such cases have the privilege to temporarily bypass, at a location approved by the City Engineer, any section or portion of its Facilities required to be temporarily disconnected or removed. Except as otherwise provided by law, the costs and expenses associated with relocation ordered pursuant to this Section shall be borne by Franchisee at no expense or liability to City. Nothing contained herein shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

Upon reasonable advance request of the City Engineer and in order to facilitate the design of City street and right-of-way improvements, the Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its underground Facilities, if any, for inspection so that the location of the same may

be taken into account in the improvement design. The decision as to whether said Facilities need to be relocated in order to accommodate the City's improvements shall be made in a reasonable manner by the City Engineer upon review of the location and construction of the Franchisee's Facilities.

B. If the City Engineer determines that the project necessitates relocation of the Franchisee's Facilities, the City shall:

1. Notify the Franchisee of the need for relocation as soon as practicable once the need for relocation arises and fix a reasonable date for completion of the relocation based upon a consultation with the Franchisee and a consideration of the extent of the facilities to be relocated, the service requirements of the facilities, and the construction sequence necessary for the City's project; and
2. Provide the Franchisee with copies of pertinent information for such improvement project and a proposed location for the Franchisee's Facilities so that the Franchisee may relocate its Facilities in other public rights-of-way in order to accommodate such improvement project.
3. After receipt of such notice and such pertinent information, but absent an emergency situation, the Franchisee shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City, except as otherwise provided by law.

C. The Franchisee may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing as soon as practicable if one or more of the alternatives is suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, the Franchisee shall submit at its sole cost and expense additional relevant information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the Franchisee shall relocate its Facilities as otherwise provided in this Section.

D. Except as otherwise provided by applicable law, including RCW 35.99.060, which lists circumstances under which the City shall bear relocation costs, Franchisee shall be solely responsible for the cost and expense of complying with the requirement of this Section. The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, where the Facilities to be constructed by said person or entity are not or will not become city-owned, operated or maintained Facilities provided that such arrangements do not unduly delay a City construction project. The Franchisee will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of the Franchisee to relocate its Facilities in a time period that Franchisee agrees is reasonable and feasible; provided, that the Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of the Franchisee or the negligence, willful misconduct, or unreasonable delay of the City.

Section 17. Abandonment and/or Removal of Franchisee Facilities

- A. Upon the expiration, termination, or revocation of the rights granted under this Ordinance, the Franchisee shall remove all of its Facilities from the public ways within thirty (30) days of receiving notice from the Public Works Director. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Provided, however, that the City may permit the Franchisee's improvements to be abandoned and placed in such a manner as the City may prescribe. Upon permanent abandonment and Franchisee's agreement to transfer ownership of the Facilities to the City, the Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City. Any such Facilities which are not permitted to be abandoned in place which are not removed within ninety (90) days of receipt of said notice shall automatically become the property of the City. Provided, however, that nothing contained within this Section shall prevent the City from compelling the Franchisee to remove any such Facilities through judicial action when the City has not permitted the Franchisee to abandon said Facilities in place.
- B. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

Section 18. Undergrounding

- A. The parties agree that this Franchise does not limit City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities.
- B. The undergrounding requirements of this Section shall apply where the Franchisee's Facilities are located within the public rights-of-way and consist of cable or any other facilities which are capable of being placed underground. Further, the Franchisee shall be subject to any existing or future ordinances adopted by the City which require undergrounding of utility and/or telecommunication facilities. This Section shall not apply to facilities which are required to remain above ground in order to be functional.
- C. In any area of the City in which there are no aerial facilities other than antennas or other facilities required to remain above ground in order to be functional, or in any public way in which all telephone, electric power wires and cables capable of undergrounding have been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables or other facilities thereon, but shall lay such wires, cables or other facilities underground in the manner required by the City. The Franchisee acknowledges and agrees that if the City does not require the undergrounding of its facilities at the time of initial installation, the City may, at any time in the future, require the conversion of the Franchisee's above-ground and/or aerial facilities to underground installation at the Franchisee's expense.
- D. Whenever City requires the undergrounding of aerial utilities in the Franchise Area, Franchisee shall underground Franchisee Facilities in the manner specified by the City Engineer at no expense or liability to City, except as may be provided in RCW 35.99.060. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee Facilities. Common costs shall include necessary costs for common trenching and utility vaults. Fair share shall be determined in comparison to the total number and size of all other utility facilities being undergrounded.
- E. Whenever the City requires the undergrounding of above-ground and/or aerial utilities in any area of the City which the City has the legal authority to require to underground without the

payment of costs under any tariff, the Franchisee shall underground its above-ground and/or aerial Facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. The Franchisee shall underground its Facilities at its own expense, but the Franchisee is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are borne fairly and proportionately by all the utilities involved in the underground project. The provisions of this Section shall survive the expiration, revocation, or termination of this Agreement. Nothing in this paragraph shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

- F. Within forty-eight (48) hours (excluding weekends and City-recognized holidays) following a request from the City, Franchisee shall locate underground Facilities by marking the location on the ground. The location of the underground Facilities shall be identified using the paint color required for "markings" pursuant to RCW 19.122.020, unless otherwise specified by the City, and within twenty-four inches of the outside dimensions of both sides of the underground facility.
- G. Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.
- H. Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-way along the extension of cable to be removed, except:
 - 1. Franchisee may remove any underground cable from the right-of-way that has been installed in such a manner that it can be removed without trenching or other opening of the along the extension of cable to be removed, or if otherwise permitted by the City.
 - 2. Franchisee may remove any underground cable from the Rights-of-way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5.

When the City determines, in the City's reasonable discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.B, prior to any such removal of underground cable or conduit from the Right-of-way and must provide as-built plans and maps pursuant to Section 19.

- I. The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-way. Except as set forth in RCW 35.99.060, nothing in this Section shall be construed as requiring the City to pay any costs of undergrounding any of Franchisee's Facilities.

Section 19. Franchisee Maps and Records

After construction is complete, the Franchisee shall provide the City with accurate copies of as built plans which depict the location of the Facilities within the public rights-of-way. These plans shall be provided at no cost to the City, and shall include hard copies and digital files in

AutoCAD or other industry standard readable formats, which are acceptable to the City and delivered electronically. Franchisee shall provide such maps within ten (10) days following a written or electronic request from the City. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to the City.

Section 20. City-owned Poles

In the event that Franchisee desires to locate its Facilities upon City-owned poles, a separate pole attachment agreement establishing compensation therefore and the terms and conditions under which such attachments shall be negotiated and entered into between Franchisee and the City. No such attachments shall be permitted in the absence of such an agreement.

Section 21. Site Specific Charge

Except as otherwise set forth therein, RCW 35.21.860 does not presently permit a city or town to impose a franchise fee or any other fee or charge of whatever nature on a telephone business as such term is defined in RCW 82.16.010 or a service provider for use of the City's right-of-way. In the event Washington State law is revised to permit such fees or charges, then upon adoption by the city of an ordinance consistent with federal and state law, the City may generally impose such fees or charges on franchisees.

Section 22. Indemnification

- A. Franchisee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, for injury or death of any person or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers or employees in the performance of this Franchise, and any rights granted hereunder.
- B. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section. These indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation, provided Franchisee is provided with the opportunity to control the defense of such claim.
- C. The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and

defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

- D. The parties acknowledge that this Franchise is subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's liability shall be only to the extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.
- E. Notwithstanding any other provisions of this Section, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from the negligence, willful misconduct, tortious or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Except as otherwise set forth in this Ordinance, Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the negligence, willful misconduct, tortious or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

The provisions of this Section shall survive the expiration, revocation, or termination of this Franchise.

Section 23. Insurance

- A. Franchisee shall procure and maintain for the duration of this Franchise, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by Franchisee, its agents, representatives, or employees in the amounts and types set forth below:
1. Commercial Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a minimum combined single limit for bodily injury and property

damage of \$2,000,000.00 each accident including contractual liability. Coverage shall be written on Insurance Services Office (ISO) form or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance with limits no less than \$3,000,000.00 each occurrence for bodily injury and property damage and \$5,000,000.00 general aggregate including \$5,000,000.00 products-completed operations aggregate limit including premises-operations, independent contractors, products/completed operations. Coverage shall be written on ISO occurrence form or a substitute form providing equivalent coverage and shall cover liability arising from premises-operations, independent contractors, products-completed operations, personal and advertising injury, contractual liability and explosion, collapse and underground hazards. City shall be included as an additional insured as their interest may appear under the Franchisee's Commercial General Liability insurance policy with respect to the work performed.
 3. Professional Liability insurance with limits no less than \$1,000,000.00 per claim and aggregate covering the negligent acts, errors and/or omissions of Franchisee in the performance of professional services under this Agreement.
 4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington within statutory limits and employer's liability with a limit of \$1,000,000 each accident/disease/policy limit.
- B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability, and Commercial General Liability insurance:
1. Franchisee's insurance coverage shall be primary insurance as respects City. Any insurance, self-insurance, or insurance pool coverage maintained by City shall be in excess of Franchisee's insurance and shall not contribute with it.
- C. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-:VII.
- D. Verification of Coverage. Franchisee shall furnish City with certificates of insurance and a blanket additional insured endorsements evidencing the insurance requirements of Franchisee before commencement of the work.
- E. Franchisee shall have the right to self-insure any or all of the above-required insurance.
- F. Franchisee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit City's recourse to any remedy to which City is otherwise entitled at law or in equity.
- G. The liability insurance coverage required by this Section shall be maintained by the Franchisee throughout the term of this authorization, and such other period of time during which the Franchisee is operating without authorization to maintain or locate its Facilities within the public ways, or is engaged in the removal of its Facilities. The Franchisee shall provide an insurance certificate evidencing that, the City, and its elected and appointed officers, officials, agents, employees, representatives, and volunteers have been included as additional insureds as their interest may appear under the required commercial general and commercial automobile liability, and excess liability policies, to the City prior to the commencement of any work or installation of any facilities pursuant to this Ordinance.

The City's additional insured status shall (i) be limited to bodily injury, property damage or personal and advertising injury caused, in whole or in part, by Franchisee, its employees, agents or independent contractors; (ii) not extend to claims for punitive or exemplary damages arising out of the acts or omissions of the City, its employees, agents or independent contractors or where such coverage is prohibited by law or to claims arising out of the gross negligence of the City, its employees, agents or independent contractors; and, (iii) not exceed Franchisee's indemnification obligation under this Agreement, if any. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. To the extent afforded coverage thereunder, the Franchisee's required insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Either upon receipt of notice from its insurer(s) or upon Franchisee's determination to no longer be self-insured, Franchisee shall provide the City with thirty (30) days prior written notice of any cancellation of any insurance policy required pursuant to this Section. Franchisee shall obtain and furnish to the City certificates of insurance for the replacement policies meeting the requirements of this Section. Failure to provide the insurance cancellation notice and to furnish to the City certificates of insurance for the replacement insurance policies meeting the requirements of this Section shall be considered a material breach of this Franchise and subject to the City's election of remedies described in this Franchise.

Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) Franchisee or its parent company shall maintain throughout the term of this Agreement a net worth of at least \$250,000,000; (ii) Franchisee shall provide the City, upon written request, a copy of its most recent audited financial statement; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 24. Performance Security for Work in the Right-of-Way

Franchisee shall furnish a performance bond, written by a corporate surety or financial institution acceptable to the City as security for the faithful performance of all of the requirements of this Franchise, in the amount of \$1,000 or one hundred and fifty percent (150%) of the estimated cost of constructing the Franchisee's telecommunications facilities within the public ways of the City and all associated work including surface restoration, whichever is greater, prior to commencement of any such work. Prior to submitting the bond the Franchisee shall provide the City a cost estimate for its review and approval. The bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the facilities as specified by the City; (4) repair of the public ways and other properties affected by the construction; (5) submission of as-built drawings after completion of construction; (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property; and (7) warrant the work to be free of defects for two years after completion, normal wear and tear excepted. Said bond shall be required to remain in full force until expiration of the warranty period.

Section 25. Successors and Assignees

- A. All the provisions, conditions, regulations and requirements herein contained shall be binding upon the successors, assigns of, and independent contractors of Franchisee, and all rights and privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Franchisee is mentioned.
- B. This Franchise shall not be leased, assigned or otherwise alienated without the express prior consent of City by ordinance, which consent shall not be unreasonably withheld, conditioned, or delayed.
- C. Franchisee and any proposed assignee or transferee shall provide and certify the following to City not less than sixty (60) days prior to the proposed date of transfer: (a) Complete information setting forth the nature, term and conditions of the proposed assignment or transfer; (b) All information required by City of an applicant for a Franchise with respect to the proposed assignee or transferee; and, (c) An application fee which shall be set by City, plus any other costs actually and reasonably incurred by City in processing, and investigating the proposed assignment or transfer.
- D. Prior to City's consideration of a request by Franchisee to consent to a Franchise assignment or transfer, the proposed Assignee or Transferee shall file with City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

Section 26. Dispute Resolution

- A. In the event of a dispute between City and Franchisee arising by reason of this Agreement, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Franchisee to have oversight over the administration of this Agreement. The officers or representatives shall meet within thirty (30) calendar days of either party's request for a meeting, whichever request is first, and the parties shall make a good faith effort to achieve a resolution of the dispute.
- B. If the parties fail to achieve a resolution of the dispute in this manner, either party may then pursue any available judicial remedies. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. The parties agree to venue and jurisdiction in the Superior Court of the State of Washington for Snohomish County.

Section 27. Franchise Bond; Breach and Damages

- A. Franchisee shall furnish a franchise bond, written by a corporate surety or financial institution acceptable to the City as security for the faithful performance of all of the requirements of this Franchise, excluding work in the right of way in the amount of \$25,000. The bond shall guarantee Franchisee substantially complies with all other provisions of this Franchise. Said bond shall be required to remain in full force for as long as this Franchise is in effect.
- B. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise or any permits issued by the City for the construction in the right-of-way, following written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the franchise bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material

and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. City shall give Franchisee written notice of any withdrawal under this section. Franchisee specifically agrees that its failure to comply with the terms of this Section shall constitute a material breach of this Franchise, subject to the notice and cure provisions of this Franchise. Franchisee further agrees to replenish the Franchise Bond provided for in Section A above within seven (7) days after written notice from the City, that there is a deficiency in the amount of the Franchise Bond. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 28. Remedies to Enforce Compliance

The City reserves the right to pursue any remedy to compel or force the Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided that the City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling the Franchisee to comply with the provisions of this Ordinance and to recover damages and costs incurred by the City by reason of the Franchisee's failure to comply.

Section 29. Compliance with Laws and Regulations

- A. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions hereof, any ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations the location, elevation, manner of construction and maintenance of any Facilities by the Franchisee, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law.
- B. City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City Ordinance enacted pursuant to such federal or state statute or regulation upon providing Franchisee with thirty (30) days prior written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written call for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, City may enact the proposed amendment, by incorporating Franchisee's concerns to the maximum extent City deems possible.
- C. City may terminate this Franchise upon thirty (30) days written notice to Franchisee, if Franchisee fails to comply with such amendment or modification.

Section 30. License, Tax and Other Charges

This Franchise shall not exempt Franchisee from any license, tax, or charge which City has or may hereinafter adopt pursuant to authority granted to it under federal and state law for revenue or as reimbursement for use and occupancy of the Franchise Area or for permitting. However, nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities pursuant to applicable law."

No more than once per calendar year, City may arrange with Franchisee for an independent audit, on a non-contingent fee basis, of Franchisee's books and records to verify the accuracy of any payments made to City under this Franchise. Any additional identified amount due to City shall be paid within thirty (30) calendar days of City submitting an undisputed invoice for such sum, and if such sum shall exceed five percent (5%) of the total payment which the audit determines should have been paid for any calendar year, Franchisee shall pay City's reasonable out of pocket costs of the audit.

Section 31. Damages Limitation

Notwithstanding any other provision of this Agreement, in no event shall either party be liable for any special, incidental, indirect, punitive, reliance, consequential or similar damages.

Section 32. Non-Severability

Each term and condition hereof is an integral part of the consideration given by each party and as such, the terms and conditions hereof are not severable. If any Section, sentence, clause or phrase hereof should be held to be invalid or unconstitutional by a court of competent jurisdiction, rights granted hereunder shall terminate unless the parties can agree to suitable replacement terms.

Section 33. Titles

The section titles used herein are for reference only and should not be used for the purpose of interpreting this Franchise.

Section 34. Implementation

The Mayor or designee is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 35. Force Majeure

In the event that Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason(s) beyond the reasonable control of Franchisee, then Franchisee's performance shall be excused during the Force Majeure occurrence. Upon removal or termination of the Force Majeure occurrence Franchisee shall promptly perform the affected obligations in an orderly and expedited manner under this Franchise or procure a substitute for such obligation or performance that is satisfactory to City. Franchisee shall not be excused by mere economic hardship or by misfeasance or malfeasance of its directors, officers or employees. Events beyond Franchisee's reasonable control include, but are not limited to, Acts of God, war, acts of domestic terrorism or violence, civil commotion, labor disputes, strikes, earthquakes, fire, flood or other casualty, shortages of labor or materials, government regulations or restrictions and extreme weather conditions. Franchisee shall use all commercially reasonable efforts to eliminate or minimize any delay caused by a Force Majeure event.

Section 36. Reservation of Rights

The parties agree that this Franchise agreement is intended to satisfy the requirements of all applicable laws, regulations and ordinances. Accordingly, any provision of this agreement or any local ordinance, administrative guideline, rule or order that may conflict with or violate such applicable laws, regulations or ordinances shall be invalid and unenforceable, whether occurring before or after the execution of this agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this Agreement does not constitute a waiver of any rights or obligations by either party under the law.

In the event that City enters into a franchise agreement or other arrangement with a party similarly situated to Franchisee under terms more favorable than those in this franchise

agreement, City agrees to promptly notify Franchisee and amend this Agreement, effective as of the date of the agreement or arrangement with the other party, such that Franchisee is not competitively disadvantaged to such other party.

The City reserves its right to require that the Franchisee obtain a separate agreement for a change in use, which agreement may include provisions intended to regulate the Franchisee's operations, as allowed under applicable law. Nothing contained herein shall preclude Franchisee from challenging any such separate agreement under applicable Federal, State, or local laws.

Section 37. Modification

The City and the Franchisee hereby reserve the right to alter, amend or modify the terms and conditions of Franchisee's authorization hereunder upon written agreement of both parties to such alteration, amendment or modification.

Section 38. Entire Franchise

The terms and conditions set forth in this Franchise constitutes the entire terms, understanding, and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon acceptance of the rights granted hereunder to the Franchisee.

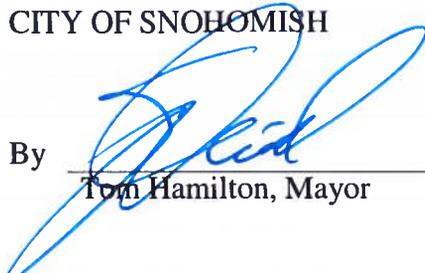
Section 39. Effective Date

This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title.

PASSED by the City Council and **APPROVED** by the Mayor this 20th day of June, 2017.

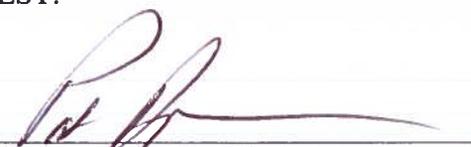
CITY OF SNOHOMISH

By


Tom Hamilton, Mayor

ATTEST:

By


Pat Adams, City Clerk

APPROVED AS TO FORM:

By

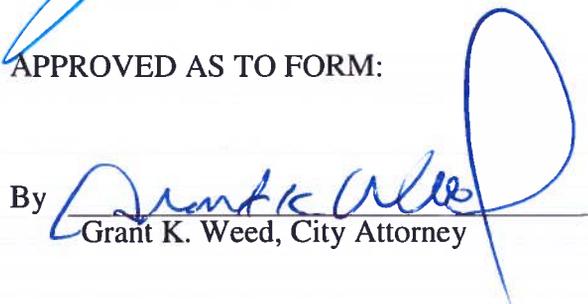

Grant K. Weed, City Attorney

EXHIBIT A

Franchise Area

The Franchise Area is the rights-of-way within the current boundaries of the City of Snohomish. The immediate proposed project will be in the Sinclair Avenue right-of-way from the City boundary south approximately 600 feet.

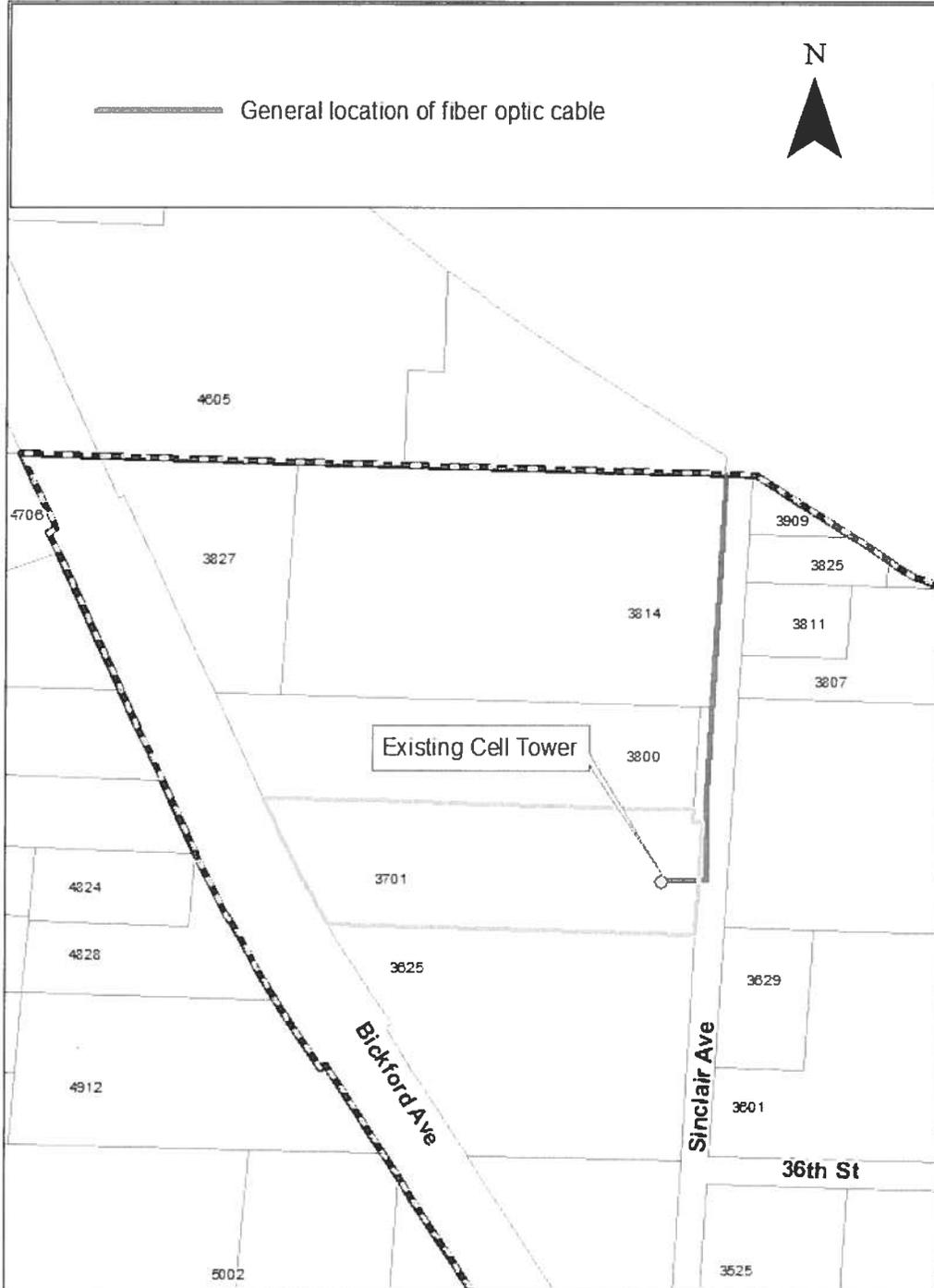


EXHIBIT B

Franchisee Facilities

Means, collectively or individually, any and all communications transmission and distribution systems, including but not limited to, poles, wires, lines, conduits, ducts, cables, braces, guys, anchors, vaults, switches, fixtures, and any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located across, above, along, below, in, over, through, or underground.

Franchisee's facilities do not include:

- Small cell facilities, including but not limited to antennas, radios, and batteries are not included in this agreement as part of the franchisee's facilities.
- Antennas of any kind.

EXHIBIT C

Franchisee Services

The offering of communications and communications related transmission services and transmission facilities for sale, rent and lease, but not including offering Cable Service or an Open Video System.

