

**ORDINANCE NO. 1143**  
**CITY OF MEDICAL LAKE**  
**SPOKANE COUNTY, WASHINGTON**

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MEDICAL LAKE WASHINGTON, GRANTING THE RIGHT OF FRANCHISE TO NFC Northwest, LLC, A STATE OF WASHINGTON CORPORATION, FOR THE OPERATION OF A TELECOMMUNICATIONS SYSTEM IN THE CITY OF MEDICAL LAKE.

WHEREAS, NFC Northwest, LLC, a Delaware limited liability company (“Grantee”) has applied to the City of Medical Lake (“City”) for a non-exclusive Franchise for the right of entry, use, and occupation of certain public right(s)-of-way within the City, expressly to install, construct, erect, operate, maintain, repair, relocate and remove its facilities in, on, over, under, along and/or across those right(s)-of-way; and

WHEREAS, following proper notice, the City Council held a public hearing on Grantee’s request for a Franchise, at which time representatives of Grantee 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 Grantee,

NOW, THEREFORE, FOR AND IN CONSIDERATION OF THE MUTUAL BENEFITS AND THE TERMS AND CONDITIONS OF THE BELOW FRANCHISE AGREEMENT, THE CITY COUNCIL OF THE CITY OF MEDICAL LAKE, WASHINGTON, DO ORDAIN as follows:

**Section 1. Definitions**

For the purpose of this Franchise, and all exhibits attached hereto (if any), the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

“City” means the City of Medical Lake, a code city of the State of Washington, and its successors and assigns.

“City Code” means the City of Medical Lake Municipal Code.

“Days” means calendar days.

“Emergency” means a condition of imminent danger to the health, safety and welfare of persons or property located within the City including, without limitation, damage to persons or property from natural consequences, such as storms, earthquakes, riots, acts of terrorism or wars.

“Facilities” means those facilities normally and regularly used in providing telecommunications services, including any and all wires, lines, conduits, cables, vaults, duct runs, and all necessary or convenient facilities and appurtenances thereto, whether the same is located over, above or underground.

“Franchise” means this Ordinance, which sets forth the terms and conditions of the Franchise.

“Franchise Area” means the Public Right of Way.

“Grantee” means NFC Northwest, LLC, a Delaware limited liability company.

“Parties” means the City and NFC Northwest, LLC, a Delaware limited liability company.

“Party” means the City or NFC Northwest, LLC, a Delaware limited liability company.

“Public Right of Way” means any, every and all of the roads, streets, avenues, alleys and highways of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved with the present limits of the City and as such limits may be hereafter extended.

“State” means the State of Washington.

## **Section 2. Grant of Right to Use Franchise Area**

A. Subject to the terms and conditions of this Franchise, the City grants to the Grantee the non-exclusive privilege to use the Public Right of Way to provide telecommunication services, and for no other purpose. Grantee accepts all areas in existing condition(s) and the City makes no express or implied assurances of suitability of any area for Grantee’s needs or purposes, whether now or hereafter.

B. The City hereby grants to Grantee the privilege to set, erect, lay, construct, extend, support, attach, connect and stretch wire cable between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along, across and through the Franchise Area for purposes of maintaining and operating a telecommunication network.

C. This Franchise does not authorize the use of the Franchise Area for any facilities or services other than Grantee Facilities, and it extends no rights or privilege relative to any Facilities or services of any type, including Grantee Facilities, on public or private property elsewhere within the City.

D. This Franchise is non-exclusive and does not prohibit the City from entering into other agreements, including franchises, impacting the Franchise Area, unless the City determines that entering into such agreements interferes with Grantee's right set forth herein. This Franchise shall also not prohibit or prevent the City from using the Franchise Area or affect the jurisdiction of the City over the same or any part thereof. Grantee shall be bound by all ordinances, resolutions, codes, rules, regulations or policies now or hereafter adopted regarding the City's Franchise Area.

By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee. Grantee shall, at its sole cost and expense, take all necessary and prudent steps to protect, support, and keep safe from harm, its Facilities, or any part thereof, when necessary to protect the public health and safety.

Further, this Franchise is only intended to convey a limited right and interest. It is not a warrant of title or interest in the Franchise Area or any other City-owned property. None of the rights granted herein shall affect the City's jurisdiction over its property, including but not limited to the Franchise Area.

Facilities in the Franchise Area that are incidental to the Franchise Area, or that have been, or are at any future time acquired, newly constructed, leased or utilized in any manner by Grantee shall be subject to all provisions of this Franchise.

Any subsequent additions or modifications of the boundaries of the City, whether by annexation, consolidation, or otherwise, shall be subject to the provisions of this Franchise as to all such areas.

E. Except as explicitly set forth herein, this Franchise does not waive any rights that the 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 Grantee acknowledges its use of the Franchise Area shall have no value.

F. Failure of the City to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the City shall have the right to declare any such breach or default at any time. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default. In addition, 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 therein.

F. The 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, the City vacates any portion of the Franchise Area containing Grantee Facilities, the City shall reserve an easement for public utilities within that vacated portion, pursuant to RCW 35.79.030, within which the Grantee may continue to operate any existing Grantee Facilities under the terms of this Franchise for the remaining term of this Franchise.

G. The Grantee agrees that its use of Franchise Area shall at all times be subordinated to and subject to the 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 3. 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 Administrator  
City of Medical Lake City Hall  
124 S. Lefevre  
Medical Lake, WA 99022

with a copy to: Sean P. Boutz  
Evans, Craven & Lackie, P.S.  
818 W. Riverside Ave., Suite 250  
Spokane, WA 99201  
sboutz@ech-law.com

Grantee: NFC Northwest, LLC  
c/o Ziplly Fiber Pacific, LLC  
135 Lake Street South, Suite 155  
Kirkland, Washington 98033  
legal@ziplly.com

B. Any changes to the above-stated Grantee information shall be sent to the City's City Administrator, with copies to the City Clerk, referencing the title of this Franchise.

#### **Section 4. Term of Agreement**

A. This Franchise shall run for a period of ten (10) years, from the Effective Date of this Franchise.

B. **Renewal Option of Term:** The Grantee may renew this Franchise for an additional ten (10) year period upon submission and approval of the application for such renewal, including approval by the City's City Council. Any materials submitted by the Grantee for a previous application may be considered by the City in reviewing a current application, and the Grantee shall only submit those materials deemed necessary by the City to address changes in the Grantee Facilities or Grantee Services, or to reflect specific reporting periods mandated by the City Code.

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 renewal thereof, the Franchise automatically continues month to month until renewed or either party gives written notice at least one hundred eighty (180) days in advance of intent not to renew the Franchise.

#### **Section 5. Acceptance of Franchise**

A. This Franchise, and any rights granted hereunder, shall not become effective for any purpose on the Effective Date unless and until Grantee accepts this Franchise and files with the City Clerk (1) all verifications of insurance coverage specified under Section 19, and (2) the financial guarantees specified in Section 20.

B. Should the Grantee fail to file the documents referenced in Section 5(A) with the City Clerk within thirty (30) days after the Effective Date of this Franchise, the City's grant of the Franchise will be null and void, and the City may take any and all actions required thereof to effectuate such nullity and voidness.

## **Section 6. Construction and Maintenance**

A. The Grantee shall apply for, obtain, and comply with the terms of all permits required under all ordinances and regulations of the City, and/or applicable City Code provisions for any work done upon Grantee Facilities. Grantee shall comply with all applicable City, State, and Federal codes, rules, regulations, and orders in undertaking such work, which shall be done in a thorough and proficient manner, including inspection(s) of any work performed within in the Public Right of Way or as provided for in any approved permit. In no case shall any such work commence within the Franchise Area without a permit, except as otherwise provided in this Franchise.

B. Grantee agrees to coordinate its activities with the City and all other utilities located within the Public Right of Way within which Grantee is undertaking its activity. Grantee also acknowledges that such activities required in arterial streets, especially during peak hours of operation, or during special civic events requires substantial coordination with the City prior to issuance of a permit. Grantee agrees to coordinate such activity prior to commencing such activity as necessary to minimize impacts to the public as required by the City.

Grantee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during any period of construction or maintenance activities within the Public Right of Way as required by City or State regulations, including RCW 39.04.180, for the construction of trench safety systems. Additionally, such activities or work identified in this Section or Franchise shall be performed with reasonable dispatch, in a workmanlike manner, and with as little interference or inconvenience to the rights of the public as may be reasonable.

C. The City expressly reserves the right to prescribe how and where Grantee Facilities shall be installed within the Public Right of Way and may from time to time, pursuant to the applicable sections of this Franchise, require the removal, relocation and/or replacement thereof in the public interest and safety at the expense of the Grantee.

In the event of any emergency where any Facilities located in the Franchise Area are broken or damaged, or if Grantee's work area within the Franchise Area is in such a condition as to endanger any person or property, Grantee shall immediately take any and all necessary emergency measures to repair or remove its Facilities or otherwise make its work area safe without first applying for and obtaining a permit as required by this Franchise. This provision shall not relieve Grantee from later obtaining any necessary permit for the emergency work. Grantee shall apply for the required permit the next business day following the emergency work or, in the case of an extended state of emergency, as soon thereafter as practical and comply with any mitigation requirements or other

conditions in the after-the-fact permit. The City shall not be responsible for any costs associated with such emergency action.

D. Before commencing any work within the public right-of-way, the Grantee shall comply with the One Number Locator provisions of RCW Chapter 19.122 to identify existing utility infrastructure.

E. Tree Trimming. Upon prior written approval of the City and in accordance with City ordinances, Grantee shall have the authority to reasonably trim trees upon and overhanging streets, Public Right of Way, and places in the Franchise Area so as to prevent the branches of such trees from coming in physical contact with the Grantee Facilities. Grantee 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, the City may, at its sole discretion, remove such debris and charge Grantee 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. Furthermore, this section does not grant authority to perform such work or activity on private property or non-Franchise Area property.

## **Section 7. Repair and Emergency Work**

In the event that Grantee's Facilities or operations cause or contribute to a condition that appears to endanger any person or substantially impair the lateral support of any portion of the Franchise Area, or other public or private property or create other risk of loss or liability to the City, the City may direct Grantee, at no charge or expense to the City, to promptly take such action as may be reasonably necessary to resolve such condition or to eliminate such endangerment. Such directive may include compliance within a prescribed period of time.

In the event Grantee fails to promptly take action as directed by the City, or fails to fully comply with such direction, the City may take action(s) as it reasonably believes are necessary to protect persons or property and in such event Grantee shall be responsible to reimburse the City for its costs incurred in so doing.

In the event of an emergency, the Grantee may commence such repair and emergency response work as required under the circumstances, provided that the Grantee shall notify the City in writing as promptly as possible, before such repair or emergency work commences, or as soon thereafter as possible, if advance notice is not practical. The City may act, at any time, without prior written notice in the case of emergency, but shall notify the Grantee in writing as promptly as possible under the circumstances.

**Section 8. Damages to City and Third-Party Property**

Grantee agrees that if any of its actions under this Franchise impairs or damages any City property, survey monument, or property owned by a third-party, Grantee will restore, at its own cost and expense, said property to a safe condition. Such repair work shall be performed and completed to the satisfaction of the City.

**Section 9. Location Preference**

Any structure, equipment, appurtenance, or tangible property of a utility, other than the Grantee's, which was installed, constructed, completed or in place prior in time to Grantee's application for a permit to construct or repair Grantee Facilities under this Franchise shall have preference as to positioning and location with respect to the Grantee Facilities. However, to the extent that the Grantee Facilities are completed and installed prior to another utility's submittal of a permit for new or additional structures, equipment, appurtenances, or tangible property, then the Grantee 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 Grantee Facilities. Such relocations shall be governed by Section 12.

**Section 10. Noninterference of Facilities**

Grantee's Facilities shall be located, constructed, installed, maintained and repaired within the Franchise Area in accordance with applicable safety standards, and so as not to unreasonably interfere with the free and safe passage of pedestrian and/or vehicle traffic therein or with the reasonable ingress or egress to properties abutting thereto and in accordance with the laws of the State. Grantee shall exercise its rights within the Franchise Area in accordance with applicable City codes and ordinances governing use and occupancy of the Franchise Area, including but not limited to those contained in Section 27; provided, however, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise, the codes and ordinances, as now or hereafter amended, shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Grantee by such City codes and ordinances.

In the event that the City reasonably determines, after providing, consistent with applicable City Code(s), written notice to Grantee and a reasonable opportunity for Grantee to respond to its concerns, that any one or more of its Facilities within the Franchise Area interferes with the free and safe passage of pedestrian and/or vehicular traffic therein or with the reasonable ingress or egress to properties abutting thereto, then Grantee shall promptly take such action as is reasonably necessary to eliminate such interference. In so doing, the City shall,

within reason, fully cooperate with Grantee. In the event such interference requires relocation of Grantee's Facilities within the Franchise Area, such relocation shall be accomplished in accordance with Section 12 below. Any such interference, resulting from new development, with ingress or egress to properties abutting the Franchise Area in proximity to Grantee's Facilities existing within the Franchise Area prior to the development shall be subject to Section 12.

All location, construction, installation, repair, replacement, relocation, or operation of Facilities and appurtenances performed by Grantee in the Franchise Area shall be done in such a manner as to not interfere with existing facilities of other utilities, public or private, including drains, drainage ditches and structures, irrigation ditches and structures located therein, nor with the final grading or improvement of the Franchise Area.

During the term of this Franchise and with respect to poles, if any, which are Facilities and which are wholly owned by Grantee and which are within the Franchise Area, the City may, subject to Grantee's prior written consent, which consent shall not be unreasonably withheld, install and maintain City-owned overhead wires upon such poles for traffic signal communications and to provide for communications to various City buildings such as City Hall, Public Works operation building(s), and other public buildings as they presently exist or may exist in the future. The foregoing rights of the City to install and maintain such wires are further subject to the following:

- a) Such installation and maintenance shall be done by the City at its sole risk and expense in accordance with all applicable laws (including, but not limited to, RCW 70.54.090), and subject to such reasonable requirements as Grantee may specify from time to time (including without limitation, requirements accommodating Grantee or the facilities of other parties having the right to use Grantee's Facilities); and
- b) Grantee shall have no obligation under Section 18 (or arising under the purview of Section 18) in connection with any City-owned wires so installed or maintained except for the negligence of Grantee's employees, agents, servants, or representatives.
- c) Grantee shall not charge the City a fee for the use of such poles as a means of deriving revenue therefrom; provided however, nothing herein shall require Grantee to bear any cost or expense in connection with such installation and maintenance by the City including Grantee's administrative review of and consent to City's request to make use of such poles or any relocation required of City-owned wires under Section 12 hereof.
- d) All installation of City-owned wires shall be done by a qualified

contractor with approval by the State electrical inspector and in accordance with all applicable regulations including but not limited to the National Electric Safety Code.

- e) If any work by City contractors or the City involving the installation and maintenance of City-owned wires shall cause Grantee to replace a utility pole, the City shall reimburse Grantee for the cost of such pole.

**Section 11. Grantee Information**

A. Grantee agrees to supply, at no cost to the City, any information reasonably requested by the City to coordinate municipal functions with Grantee's activities and fulfill any municipal obligations under state law. Said information shall include, at a minimum, as-built drawings of Grantee Facilities, installation inventory, and maps and plans showing the location of existing or planned facilities within the City. Said information may be requested either in hard copy or electronic format, as maintained in Grantee's data base system, as now or hereinafter existing. Grantee shall keep the City informed of its long-range plans for coordination with the City's long-range plans.

In addition, in the City's reasonable and prudent judgment that it is beneficial to both parties in connection with the design of new streets, intersections and/or municipally funded public works projects and major renovations of existing streets and intersections, Grantee shall verify the actual location of its underground Facilities within the Franchise Area by excavating, including pot holing. The cost of such work shall be at Grantee's expense.

Notwithstanding the foregoing, nothing in this Section 11 is intended (nor shall it be construed) to relieve either Party of their respective obligations arising under applicable law with respect to determining the location of utility facilities.

B. The Parties understand that Washington law limits the ability of the City to shield from public disclosure any information given to the City. Accordingly, the City agrees to notify the Grantee of requests for public records related to the Grantee, and to give the Grantee a reasonable amount of time to obtain an injunction to prohibit the City's release of records.

Grantee shall indemnify and hold harmless the City for any loss or liability for fines, penalties, and costs (including attorneys' fees) imposed on the City because of non-disclosures requested by Grantee under Washington's Public Records Act, RCW 42.56, provided the City has notified Grantee of the pending request.

**Section 12. Relocation of Grantee Facilities**

12.1 Whenever the City undertakes (or causes to be undertaken at City expense) the construction of any Public Works improvement within the Franchise Area, or the Public Works Director reasonably determines that Grantee's Facilities interfere with the free and safe passage of pedestrian and/or vehicular traffic pursuant to Section 10 above, and such Public Works improvement or interference necessitates the relocation of Grantee's Facilities then existing within the Franchise Area, the City shall:

- a. provide Grantee, within a reasonable time prior to the City's commencement of activities requiring such Public Works improvement, written notice requesting such relocation, not less than sixty (60) days; and
- b. provide Grantee with copies of relevant portions of the City's plans and specifications for such Public Works improvements.

After receipt of such notice and such plans and specifications, and consistent with RCW 35.99.060, Grantee shall relocate such Facilities within the Franchise Area at no charge to the City. If, during the construction of any such Public Works improvement, an emergency posing a threat to public safety or welfare, or a substantial risk of severe economic consequences to the City, arises requiring the relocation of Grantee's Facilities within the Franchise Area, the City shall give Grantee notice of the emergency as soon as reasonably practicable. Upon receipt of such notice from the City, Grantee shall endeavor to respond as soon as reasonably practicable to relocate the affected Facilities at no charge to the City.

In the event federal, state or other funds are available in whole or in part for utility relocating purposes, upon Grantee's request in writing, the City agrees to use reasonable efforts to apply for such funds, provided such funds do not interfere with the City's right to obtain the same or similar funds, or otherwise create any expense or detriment to the City. The City may recover all costs, including internal costs, associated with obtaining such funds.

12.2 The City shall act in good faith and shall use its best efforts to provide sufficient space within the Franchise Area for the safe and efficient installation, operation, repair and maintenance of the relocated and/or underground converted Facilities. Grantee shall act in good faith and shall use its best efforts to install relocated and/or underground converted Facilities in such space within the Franchise Area, consistent with prudent utility practice. If the City and Grantee agree that there is not sufficient space for the relocated and/or underground converted Facilities in the existing Franchise Area, then, unless otherwise mutually agreed by the City and Grantee, the City shall, as is reasonably practicable, provide sufficient space for the relocated and/or underground converted Facilities by obtaining additional right-of-way or other equivalent rights mutually agreeable

to the City and Grantee, which shall be Franchise Area, title of which shall be in the City's name.

12.3 Grantee may install relocated and/or underground converted Facilities on property outside of the Franchise Area, the rights for which shall be obtained by Grantee at no expense to the City. Notwithstanding the use of best efforts by the City and Grantee as outlined above, if the City and Grantee do not agree whether there is or will be sufficient space within the Franchise Area for the relocated and/or underground converted Facilities, or if the City and Grantee disagree whether underground converted Facilities within such space within the Franchise Area would be inconsistent with prudent utility practice, the City and Grantee shall each act in good faith and use their respective best efforts to mutually agree on the location of such relocated and/or underground converted Facilities outside of the Franchise Area. Absent such mutual agreement, nothing in this Section 12 shall limit the rights of the City or Grantee with respect to acquisition or use of property rights outside of the Franchise Area.

12.4 Grantee shall have the right as a condition of any relocation described in this Section 12.4 to require such person or entity other than the City to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities, but without expense or liability to the City, whenever:

- a. any person or entity, other than the City, requires the relocation of Grantee's Facilities to accommodate the work of such person or entity within the Franchise Area, including but not limited to, activities relating to development, roadway frontage improvements or mitigation of impacts; or
- b. the City requires any person or entity to undertake work (other than work undertaken at the City's cost and expense) within the Franchise Area and such work requires the relocation of Grantee's Facilities within the Franchise Area.
- c. Where the relocation of Grantee's Facilities is due in part to a person or entity other than the City, but also results in construction of a Public Works improvement, Grantee's costs and expenses of relocation shall be proportionally allocated between such person or entity and City, provided the City shall not be responsible for any costs or expenses for its proportionate share.

Unless agreed to specifically in writing between the City and Grantee, work funded by the creation of a local improvement district (LID) shall be considered the work of the City and Grantee shall not be entitled to recover costs and expenses

incurred by Grantee in the relocation of Grantee's Facilities as necessary to facilitate construction of improvements funded through an LID.

12.5 Any condition or requirement imposed by the City upon any other person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits obtained pursuant to any zoning, land use, construction or other development regulation) which requires the relocation of Grantee's Facilities within the Franchise Area shall be a condition or requirement causing relocation of Grantee's Facilities to occur subject to the provisions of Section 12.4 above; provided, however:

- a. in the event the City reasonably determines and notifies Grantee that the primary purpose of imposing such condition or requirement upon such person or entity is to cause the construction of a Public Works improvement within a segment of the Franchise Area on the City's behalf, and
- b. such Public Works improvement is otherwise reflected in the City's adopted Six-Year Transportation Improvement Program or Capital Facilities Program;

then only those costs and expenses incurred by Grantee in connecting such relocated Facilities with Grantee's other Facilities shall be paid to Grantee by such person or entity, and Grantee shall otherwise relocate its Facilities within such segment of the Franchise Area in accordance with Sections 12.1-12.3.

12.6 As to any relocation of Grantee's Facilities whereby any part of the cost and expense thereof is to be borne by Grantee in accordance with Sections 12.1-12.3, Grantee may, after receipt of written notice requesting such relocation, submit in writing to the City alternatives to relocation of its Facilities. Upon the City's receipt from Grantee of such written alternatives, the City shall evaluate such alternatives and shall advise Grantee in writing if one or more of such alternatives are suitable to accommodate the work which would otherwise necessitate relocation of Grantee's Facilities. In evaluating such alternatives, the City shall give each alternative proposed by Grantee full and fair consideration with due regard to all facts and circumstances which bear upon the practicality of relocation and alternatives to relocation. No alternatives proposed by Grantee shall be evaluated by the City in an arbitrary or capricious manner. In the event the City determines that such alternatives are not appropriate, Grantee shall relocate its Facilities as otherwise provided in Sections 12.1-12.3.

12.7 Nothing in this Section 12 shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities existing under benefit of easement or other prior rights not derived from this Franchise.

### **Section 13. Moving Buildings within the Franchise Area**

If any person or entity obtains permission from the City to use the Franchise Area for the moving or removal of any building or other object, the City shall, prior to granting such permission, require such person or entity to make any necessary arrangements with Grantee for the temporary adjustment of Grantee's wires and/or cable to accommodate the moving or removal of said building or other object. Such necessary arrangements with Grantee shall be made to Grantee's satisfaction, not less than thirty (30) days prior to the moving or removal of said building or other object. In such event Grantee shall at the expense of the person or entity desiring to move or remove such building or other object, adjust any of its wires and/or cables which may obstruct the moving or removal of such building or other object, provided that:

- a. The moving or removal of such building or other object which necessitates the adjustment of wires and/or cable shall be done at a reasonable time and in a reasonable manner so as not to unreasonably interfere with Grantee's business;
- b. Where more than one route is available for the moving or removal of such building or other object, such building or other object shall be moved or removed along the route approved by the City; and
- c. The person or entity obtaining such permission from the City to move or remove such building or other object shall be required to indemnify and save Grantee harmless from any and all claims and demands made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the moving or removal of such building or other object, to the extent such injury or damage is caused by the negligence or intentional misconduct of the person or entity moving or removing such building or other object or the negligence or intentional misconduct of the agents, servants or employees of the person or entity moving or removing such building or other object.

### **Section 14. Shared Use of Excavations**

Grantee and the City shall exercise best efforts to coordinate construction work either may undertake within the Franchise Area so as to promote the orderly and expeditious performance and completion of such work as a whole. Such efforts shall include, at a minimum, reasonable and diligent efforts to keep the other Party and other utilities within the Franchise Area(s) informed of its intent to undertake such construction work. Grantee and the City shall further exercise its best efforts to minimize any delay or hindrance to any construction work undertaken by themselves or other utilities within the Franchise Area.

If at any time either Grantee, the City, or another franchisee, shall cause excavations to be made within the Franchise Area, the party causing such excavation to be made shall afford the other party upon receipt of a written request to do so, an opportunity to use such excavation, provided that:

- a. Such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and
- b. Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. The parties shall each cooperate with other utilities in the Franchise Area to minimize hindrance or delay in construction.

The party causing the excavation to be made shall give the other parties a written notice at least ninety (90) days prior to the commencement of the project except in cases due to an emergency; provided, however, that Grantee shall be deemed to have met its obligation under this Section when it applies for a permit as required within Section 6. The City reserves the right to require Grantee to joint trench with other facilities if both parties are anticipating trenching within the same Franchise Area and provided that the terms of (a) and (b) above are met.

#### **Section 15. Abandonment and or Removal of Grantee Facilities**

A. In the event of Grantee's abandonment or permanent cessation of use of Grantee's Facilities, or any portion thereof, Grantee shall, within a reasonable period of time after such abandonment or cessation of use, but not more than one hundred eighty days (180), remove such Facilities from the Franchise Area.

The City may allow, in its sole discretion, applicable conduit and wires to remain underground after Grantee has abandoned or permanently ceased to use such conduit and wire within the Franchise Area, provided said conduit and wires shall become the sole property of the City.

B. The parties expressly agree that this Section shall survive the expiration, revocation or termination of this Franchise.

#### **Section 16. Undergrounding Installation of Facilities**

A. The Parties agree that this Franchise does not limit the City's authority under federal law, state law, or local ordinance, to require the undergrounding of utilities.

B. To the extent any applicable law(s) derived under Section 16(A) do not apply, this Section 16 shall govern all matters related to underground

installation of Grantee's Facilities within the Franchise Area subject to the required permit(s) set forth in Section 6 and restoration of the Franchise Area set forth in Section 17.

C. Grantee acknowledges that the City desires to promote a policy of underground installation of Facilities within the Franchise Area.

D. New extensions of Facilities constructed by Grantee within the Franchise Area during the term of this Franchise shall be located underground unless 1) existing above-ground installations are in place and City consents to placement above ground, or 2) such underground Facilities are not permissible given the location and/or topography of the proposed installation and with the consent of the City.

E. If, during the term of this Franchise, the City shall direct Grantee to replace (convert) its overhead Facilities then existing within the Franchise Area or portion thereof with underground Facilities, Grantee will cooperate and participate with the City and underground its Facilities within the Franchise Area including paying all costs thereof.

1. Public Works Improvements. If the City undertakes any Public Works improvement which would otherwise require relocation of Grantee's above-ground Facilities in accordance with Section 12.1, or if Section 12.5 applies, the City may, by written notice to Grantee, direct that Grantee convert any such Facilities to underground Facilities. All costs for such conversion shall be paid by Grantee.
2. Location of Equipment. All equipment to be installed within the Franchise Area shall be installed underground; provided, however, that such equipment or Facilities may be installed above ground if so, authorized by the City, such as splice boxes, which authorization shall not be unreasonably withheld or delayed, consistent with the provision of the City's Municipal Code and applicable development standards.
3. If any third party requests the underground installation or relocation of Grantee's above-ground Facilities to accommodate work of such third party within the Franchise Area or on other public grounds then Grantee shall have the right as a condition of any such underground installation or relocation to require payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee for the underground installation or relocation of its above-ground Facilities, as provided for by applicable law or regulation. Where the underground installation or relocation of Grantee's above-ground Facilities is due in part to development or improvement of a third party's property, which also results in construction of a Public Works

improvement project for the City pursuant to 16(E) above, Grantee's costs and expenses of underground installation or relocation shall be proportionally allocated between the third party and City, provided the City shall not be responsible for any costs or expenses for its proportionate share as set forth herein.

## **Section 17. Restoration**

A. Grantee shall, after any installation, construction, excavation, relocation, maintenance, or repair of Facilities within the Franchise Area, promptly restore the Franchise Area to at least the same condition as existed immediately prior to any such installation, construction, excavation, relocation, maintenance or repair in accordance with City standards, as now or hereafter amended, and at its sole cost and expense. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, State and City standards and specifications. The Public Works Director shall have final approval of the condition of the Franchise Area after restoration.

The City reserves the right to not allow open trenching for five (5) years following a street overlay or improvement project. Grantee shall be given written notice at least ninety (90) days prior to the commencement of the project. Required trenching due to an emergency, or in the case that no commercially viable alternative route exists, will not be subject to the five (5) year street trenching moratorium, however the respective pavement restoration in such instances shall include a trench patch meeting with the City, as well as City approval of asphalt overlay of the street itself. For trenches which cross the street pavement or portions thereof, the limits of the overlay shall extend one hundred (100) linear feet along said street as measured in both directions from the centerline of the trench patch. Further, prior to installing the overlay the existing pavement within the area to be overlaid shall first be ground down to the thickness of the anticipated overlay, including along any curbs if such curbs are present, such that the final driving surface with respect to ride and appearance shall be almost indistinguishable as reasonably determined by the City from the before condition. For trenches which parallel the roadway the overlay shall encompass the full roadway width and like crossings. The existing roadway pavement shall first be ground down to the thickness of the anticipated overlay including along any curbs, if such curbs are present, such that the final roadway driving surface with respect to ride and appearance shall be almost indistinguishable as reasonably determined by the City from the before condition. The limits of the full roadway width overlay shall extend one hundred (100) linear feet beyond the end or ends of the trench cut. Where the paralleling trench cut is limited to one side or the other of the road center line then subject to the approval of the City the grinding and asphalt overlay restoration work can be limited to the affected half street portion.

B. If it is determined by the City that Grantee has failed to restore the Franchise Area in accordance with Section 17, the City shall provide Grantee with written notice including a description of actions the City reasonably believes necessary to restore the Franchise Area. If the Franchise Area is not restored in accordance with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, or contractor, may restore the Franchise Area. Grantee shall be responsible for all costs and expenses incurred by the City in restoring the Franchise Area in accordance with this Section. The remedy granted to the City under this Section shall be in addition to those otherwise provided by this Franchise.

C. All work by Grantee pursuant to this Section 17 shall be performed in accordance with the permit issued by the City, together with the laws of the State, City Municipal Code and applicable regulations and standards of the City as the same now exists or as may be hereafter amended or superseded.

#### **Section 18. Indemnification and Hold Harmless**

A. The Grantee shall defend, indemnify, and hold the City and its officers, officials, agents, employees, and volunteers harmless from any and all costs, claims, injuries, damages, losses, suits, or liabilities of any nature including attorneys' fees and costs to the extent arising out of the Grantee's performance, including its agents, servants, or employees, under this Franchise, except to the extent such costs, claims, injuries, damages, losses, suits, or liabilities are caused by the negligence of the City.

Grantee's indemnification obligations pursuant to this Section shall include assuming liability for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such employees. It is expressly agreed and understood that this assumption of liability for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Grantee's exercise of the rights set forth in this Franchise. The obligations of Grantee under this Section have been mutually negotiated by the Parties hereto, and Grantee acknowledges that the City would not enter into this Franchise without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

B. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee Facilities caused by maintenance and/or construction work performed by, or on behalf of, the City within the Franchise Area or any other City road, right-of-way, or other property, except to the extent any such damage or loss is directly caused by the negligence of the City, or its agent performing such work.

C. The Grantee acknowledges that neither the City nor any other public agency with responsibility for fire fighting, emergency rescue, public safety or similar duties within the City has the capability to provide trench, close trench or confined space rescue. The Grantee, and its agents, assigns, successors, or contractors, shall make such arrangements as Grantee deems fit for the provision of such services. The Grantee shall hold the City harmless from any liability arising out of or in connection with any damage or loss to the Grantee for the City's failure or inability to provide such services, and, pursuant to the terms of Section 18(A), the Grantee shall indemnify the City against any and all third-party costs, claims, injuries, damages, losses, suits, or liabilities based on the City's failure or inability to provide such services.

D. Acceptance by the City of any work performed by the Grantee shall not be grounds for avoidance of this Section.

E. In the event any matter is presented to or filed with the City, the City shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such matter provided Grantee supplies the City with written acceptance of its indemnification obligations as contained in this Section. In the event any suit or action is commenced against the City based upon any such matter, the City shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election provided Grantee has agreed in writing to the full indemnification and defense of the City and its officers, elected officials, agents, representatives, engineers, consultants, employees and volunteers. In the event of a less than full written agreement to indemnify and defend, the City may select attorneys and bill the costs of the same to Grantee and Grantee shall pay the same.

## **Section 19. Insurance**

A. The Grantee 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 the Grantee, its officers, directors, agents, representatives, servants, volunteers, or employees in the amounts and types set forth below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles with a limit of \$2,000,000 for each person and \$2,000,000 for each accident.

2. Commercial General Liability insurance, written on an occurrence basis, with limits no less than \$2,000,000.00 for bodily injury or death

to each person and \$2,000,000.00 for property damage resulting from any one accident. Coverage shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, and personal injury and advertising injury and liability assumed under an insured contract. There shall be no endorsement or modification of the Commercial General Liability insurance for liability arising from explosion, collapse, or underground property damage. The City shall be named as an additional insured under the Grantee's Commercial General Liability insurance policy with respect to the work performed under this Franchise.

Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of Grantee. Such coverage shall continue to apply after termination, cancellation, or expiration of the Franchise as to all claims accruing during any hold-over period for a minimum of three (3) years, or longer if the Facilities remain in the ground.

3. Professional Liability insurance with limits no less than \$1,000,000.00 per claim for all professional(s) employed or retained by Grantee to perform services under this Franchise.

4. Workers' Compensation coverage as required by the Industrial Insurance laws of the State and employer's liability insurance with limits of not less than \$2,000,000.

B. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:

1. The Grantee's insurance coverage shall be primary insurance with respect to the City, its officers, elected officials, agents, employees, representatives, consultants, and volunteers. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be in excess of the Grantee's insurance and shall not contribute with it.

2. The Grantee's insurance shall not be cancelled by either party except after thirty (30) days' prior written notice has been given to the City. In the event such insurance is cancelled or otherwise not renewed during the term of this Franchise, Grantee shall promptly acquire replacement insurance to restore and maintain the amount of coverage required by this Section 19 and shall promptly provide to the City certificate(s) of insurance and all applicable policy endorsement as provided in this Section 19 as may be applicable.

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. Grantee shall furnish the City with certificates and required endorsements, evidencing the insurance requirements of this Section 19 before commencement of the work.

On or before sixty (60) days of the anniversary Effective Date of the Franchise, Grantee shall file with the City Clerk proof of continued insurance coverage, at least in the amounts required in this Section, through a Certificate of Insurance, indicating the coverage required herein.

E. Grantee shall have the right to self-insure any or all of the above-required insurance. Any such self insurance is subject to approval by the City.

F. Grantee's maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

## **Section 20. Performance Security**

A. Before undertaking any of the work authorized by this Franchise, Grantee shall furnish an ongoing performance bond executed by Grantee and a corporate surety authorized to do surety business in the State, in a sum to be set and approved by the Public Works Director as reasonably sufficient to ensure performance of Grantee's obligations under this Franchise. The bond shall be conditioned so that Grantee shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to restore or replace any defective work or materials discovered in the restoration of the Franchise Area within a period of two (2) years from the final City inspection date of any such restoration. Grantee may meet the obligations of this section with one (1) or more bonds issued by a surety with an A VII Best's rating or better. In the event that a bond furnished pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Grantee shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

B. With respect to undertaking any of the work authorized by this Franchise, in the event Grantee fails to perform its obligations under this Franchise and further fails to cure any deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by Grantee pursuant to Section 20(A) to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from Grantee of costs incurred by the City to cure such deficiency.

C. In the event the City makes use of such bond(s) furnished by Grantee pursuant to Section 20(B), the City shall promptly provide written notice of same to Grantee. Within thirty (30) days of receipt of such notice, Grantee shall replenish or replace such bond(s) as provided in Section 20(A).

D. The rights reserved to the City by this Section 20 are in addition to other rights of the City whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of right under this Section 20 shall constitute an election or waiver of any rights or other remedies the City may have.

## **Section 21. Forfeiture, Revocation and Remedies**

If Grantee shall fail to comply with any of the provisions of this Franchise, unless otherwise provided for herein, the City may serve upon Grantee a written notice to so comply within thirty (30) days from the date such notice is received by Grantee. If Grantee is not in compliance with this Franchise after expiration of said thirty (30) day period, the City may act to remedy the violation and may charge the costs and expenses of such action to Grantee, provided, however, if any failure to comply with this Franchise by Grantee cannot be corrected with due diligence within said thirty (30) day period (Grantee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee commences promptly and diligently to effect such compliance.

The City may act without the thirty (30) day notice in case of an emergency. In the event Grantee fails to substantially cure defaults on more than two (2) occasions, the City may in addition, by motion of City Council, declare an immediate forfeiture of this Franchise. No forbearance by the City shall constitute a waiver of the City's right to enforce any provision of this Franchise.

## **Section 22. Administrative Fees and Reimbursement of Costs**

A. As specifically provided by RCW 35.21.860, the City may not impose a franchise fee or any other fee or charge of whatever nature or description upon Grantee. However, as provided in RCW 35.21.860, the City may recover from Grantee actual administrative expenses incurred by the City that are directly related to: (i) receiving and approving a permit, license or this Franchise, (ii) inspecting plans and construction, or (iii) preparing a detailed statement pursuant to Chapter 43.21C RCW. Grantee agrees to pay the City \$2,000.00 as an administrative fee to cover the cost to the City of preparing this Franchise.

B. If, at some time, the restrictions of RCW 35.21.860, or related statute, should be removed, Grantee and the City shall negotiate a fair and reasonable franchise fee. Nothing in this Section shall preclude the City from collecting from

Grantee fees lawfully imposed by the City (related to this Franchise or otherwise) including fees for permits and inspections.

**Section 23. 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 the Grantee, and all rights and privileges, as well as all obligations and liabilities of the Grantee shall inure to its successors, assignees and contractors equally as if they were specifically mentioned herein wherever the Grantee is mentioned.

B. This Franchise shall not be assigned or otherwise alienated without the express prior consent of the City by ordinance. In the event such a transfer, assignment, or disposal of franchisee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer. Grantee will provide City with a copy of any such approval.

C. In the case of an assignment or transfer not subject to WUTC approval, Grantee and any proposed assignee or transferee shall provide and certify the following to the 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; and (b) all information required by the City of an applicant for a franchise with respect to the proposed assignee or transferee.

D. In the case of an assignment or transfer not subject to WUTC approval, prior to the City's consideration of a request by Grantee to consent to a Franchise assignment or transfer, the proposed assignee or transferee shall file with the City a written promise to unconditionally accept all terms of the Franchise, effective upon such transfer or assignment of the Franchise. The City is under no obligation to undertake any investigation of the transferor's state of compliance and failure of the City to insist on full compliance prior to transfer does not waive any right to insist on full compliance thereafter.

**Section 24. Alteration of Franchise**

A. The City and Grantee hereby reserve the right to alter, amend or modify the terms and conditions of this Franchise in accordance with the provisions of this Section.

B. At any time during the term of this Franchise, the City or Grantee may request, by written notice, that the other Party promptly participate in negotiations to alter, amend or modify the terms and conditions of this Franchise.

C. Within a reasonable time after receipt of the notice required by Section 24(B), the City and Grantee shall, at a mutually agreed-upon time and place, commence negotiations to alter, amend or modify the terms and conditions of this Franchise. The City and Grantee shall conduct such negotiations in good faith and with due regard to all pertinent facts and circumstances; provided, however, that neither the City nor Grantee shall be obligated to agree to any proposed alteration, amendment or modification. Further, no rights or privileges granted by this Franchise shall be prejudiced, impaired or otherwise affected by the failure of the City or Grantee to agree to any proposed alteration, amendment or modification.

D. Neither the City nor Grantee shall be obligated to continue negotiations after the expiration of ninety (90) days from the date they commence such negotiations; provided, however, the City and Grantee may agree to continue such negotiations for an additional period of time.

F. Any alteration, amendment or modification to which the City and Grantee agree shall be submitted to the legislative authority of the City as a proposed ordinance. The ordinance so proposed shall expressly provide that, unless Grantee properly files a written notice of acceptance within sixty (60) days of its effective date, the ordinance shall not be effective and this Franchise shall not be altered, amended or modified. To the extent permitted by law, the party proposing the alteration, amendment or modification shall bear all actual administrative costs directly related to approval thereof.

## **Section 25. Dispute Resolution**

A. Except in cases of forfeiture under Section 21, disputes between the City and Grantee arising by reason of this Franchise, shall first be referred to the operational officers or representatives designated by City and Grantee to have oversight over the administration of this Franchise. 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. In the event direct discussions do not result in resolution of the dispute, the Parties shall in good faith attempt resolution of the matter through mediation. The Parties shall select a mediator as soon as reasonably possible after the failure of direct discussions. Should the Parties not agree on mediator selection, either of them may request that one be appointed by the Seattle office of the American Arbitration Association. Once a mediator is appointed, the Parties shall abide by the rules and instructions of the mediator. A mediation session shall be held as soon as reasonably possible after appointment of the mediator, and decision makers with authority to resolve the dispute shall personally attend the mediation session.

Participation in direct discussions and mediation shall be conditions precedent to the commencement of any other form of dispute resolution. The Parties shall share the cost of mediation fees and expenses equally.

C. 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. In the event any suit, arbitration, or other proceeding is instituted to enforce any term of this Franchise, the Parties specifically understand and agree that venue shall be exclusively in Spokane County, Washington or the appropriate U.S. District Court. Each Party in any action arising out of the existence of this Franchise shall pay its attorneys' fees and costs of suit.

### **Section 26. Enforcement and Remedies**

A. If the Grantee shall willfully violate or fail to comply with any of the provisions of this Franchise through gross negligence, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, the City may, at its discretion, provide Grantee with written notice to cure the breach within thirty (30) days of notification. If the breach cannot be cured within thirty days, the Grantee will be provided a longer period, in the City's sole discretion, provided that Grantee commences work on the cure within the original thirty-day cure period, and makes reasonable efforts to complete the work. If Grantee does not comply with the specified conditions, the City may claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the performance bond in Section 20 for every day after the expiration of the cure period that the breach is not cured, up to a maximum claim of \$5,000.

B. Should the City determine that Grantee is acting beyond the scope of this Franchise, the City reserves the right require the Grantee to apply for, obtain, and comply with all applicable City permits, franchises, or other City permissions for such actions, and if the Grantee's actions are not allowed under applicable federal and State or City laws, to compel Grantee to cease such actions.

### **Section 27. Compliance with Laws and Regulations**

A. This Franchise is subject to, and the Grantee shall comply with all applicable federal and State or City laws, regulations and policies (including all applicable elements of the City's comprehensive plan), in conformance with federal laws and regulations, affecting performance under this Franchise, as of the Effective Date of this Franchise or that may be subsequently enacted by any governmental entity with jurisdiction over Grantee and/or the Facilities. These requirements also include applicable requirements of the City's Municipal Code. Furthermore, notwithstanding any other terms of this agreement appearing to the contrary, the Grantee shall be subject to the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the

general public in relation to the rights granted in the Franchise Area.

**Section 28. License, Tax and Other Charges**

This Franchise shall not exempt the Grantee from any future license, tax, or charge which the City may hereinafter adopt pursuant to authority granted to it under state or federal law for revenue or as reimbursement for use and occupancy of the Franchise Area.

**Section 29. Severability**

If any section, sentence, clause or phrase in this Franchise shall be held to be invalid, unenforceable, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity, enforceability, or the constitutionality of any other section, sentence, clause or phrase of this Franchise.

**Section 30. Titles**

The section titles used in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.


**Section 31. Implementation.**

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

**Section 32. Effective date.**

This Ordinance shall take effect and be in force five (5) days from and after its passage, approval and publication as provided by law, and unconditional acceptance by Grantee.

**ADOPTED** by the City Council of the City of Medical Lake this 7th day of April 2026.



Mayor Terri Cooper

ATTEST:



Koss Ronholt, City Clerk

APPROVED AS TO FORM:



Sean P. Boutz, City Attorney

Published: April 16, 2026

