SULTAN CITY COUNCIL
AGENDA ITEM COVER SHEET

ITEM NO: PH-2

DATE: January 22, 2009

SUBJECT: Public Hearing - Franchise Agreement with Iron Goat Networks LLC.

CONTACT PERSON: Deborah Knight, City Administrator

ISSUE:

The issue before the City Council is to continue the public hearing noticed for December 11, 2008 to consider granting a non-exclusive franchise to Iron Goat Networks LLC (Iron Goat) to use City streets and public rights-of-way for operating and maintaining a dark fiber network. The proposal and application documents are provided in Attachment A.

In conducting the public hearing, the City Council may consider:

A. That the public will be benefited by granting a franchise agreement to Iron Goat Networks.
B. That Iron Goat Networks has the requisite financial and technical resources and capabilities to build, operate and maintain a dark fiber network in the area;
C. That Iron Goat Networks has no conflicting interested, either financial or commercial which will be contrary to the interests of the City;
D. That Iron Goat Networks is capable of complying with all relevant federal, state, and local regulations pertaining to the construction, operation and maintenance of the facilities and systems incorporated in its application for a franchise.

STAFF RECOMMENDATION:

Hold a public hearing to take citizen comment on granting a five-year (5-year) non-exclusive franchise agreement to Iron Goat Networks to use City streets and public rights-of-way for operating and maintaining a dark fiber network.

Following the public hearing, Staff will schedule an action item for February 12, 2009 for Council consideration.

DISUCSSION:

Iron Goat Networks submitted its application for a franchise in January 2008. Through a series of City staff errors and miscommunications, it has taken much longer than necessary to process the application. City staff apologize to Iron Goat Networks for the delay in processing their application.

The draft franchise submitted with the request to set the public hearing on November 13, 2008 was based on a template agreement between Iron Goat and Snohomish County.

After carefully reviewing the proposed Snohomish County template, city staff and the city attorney realized the Snohomish County template was not as rigorous as the City's franchise with Comcast. This could potentially create some difficulties with Comcast under Section 2.5 (Competitive Equity) of the City's recently negotiated franchise with Comcast.

Following the November 13, 2008 Council meeting, City staff returned to Iron Goat to discuss using the Comcast franchise as the template. The public hearing was set and noticed for December 11, 2008. The public hearing was opened and by a motion of the Council continued until city staff and Iron Goat could continue negotiations.

The franchise currently under consideration is a "dark fiber" franchise template provided by the City attorney and is not based on the Comcast template. Modifications to the template are outlined in Attachment B.

Following the public hearing, City staff will work with Iron Goat to resolve remaining issues.

FISCAL IMPACT:

In return for allowing Iron Goat Networks to utilize public right-of-way to operate a dark fiber network, the City will collect, as general compensation during each year of this Franchise, a franchise fee consisting of five-percent (5%) of Iron Goat Networks' gross revenue for services rendered to customers within the areas of the city roads covered by this franchise (the "Franchise area").

The City Council has the authority to modify, by ordinance, the five percent (5%) of gross revenue fee at any time that the City Council chooses to do so during the life of this franchise.

The actual franchise fees that may be paid to the City are unknown until the system is constructed. Franchise fees are due annually.

ALTERNATIVES:

Continue the public hearing to consider granting a 5-year non-exclusive franchise to Iron Goat Networks LLC (Iron Goat Networks) to use City streets and public rights-of-way for operating and maintaining a dark fiber network.

This alternative introduces the proposed franchise agreement and moves the agreement forward for public consideration and Council action. City staff and Iron Goat Networks have worked together since January 2, 2008 to develop a franchise agreement acceptable to both parties.

RECOMMENDED ACTION:

Hold a public hearing to take citizen comment on granting a five-year non-exclusive franchise agreement to Iron Goat Networks to use City streets and public rights-of-way for operating and maintaining a dark fiber system.

ATTACHMENTS:

A. Proposal and application documentation
B. Proposed Modifications to franchise template
C. Ordinance No. xxx-08 Granting a Franchise to Iron Goat Networks

Attachment A

Iron Goat Networks, llc
P.O. Box 1232
Sultan, WA 98294
360-799-0552

January 2, 2008

City of Sultan
PO Box 1199
Sultan, WA 98294

Re Franchise Application

Ms. Knight

The contents of this letter provide the City of Sultan with information commonly needed for a franchise agreement. It is our understanding there is currently no franchise application for the City of Sultan. In lieu of an application we are submitting this letter.

Application for Franchise for the City of Sultan

This is an application for a franchise covering public rights-of-way within the current limits of the City of Sultan, and any future expansion.

This franchise is for a broadband distribution system constructed via copper and fiber. The nature of the work proposed in the city right of way consists of installation of overhead and underground cable as appropriate, and normal maintenance and repair of this system as well as future expansion in other areas as growth dictates. Work in the city right of way will be that of installation and normal maintenance and repair.

Initial system installation would take place within six to nine months and future expansion as demand dictates.

Iron Goat Networks, llc, is a small limited liability company based in Sultan, formed in March of 2005 in the State of Washington. Iron Goat Networks is focused on serving the IT and broadband needs of rural communities and small businesses. We currently provide wireless broadband to large portions of Snohomish County, WA via wireless and aerial cabling.

Our company began operations in March of 2005 with two people working part time installing the broadband infrastructure and maintaining office networks. We currently target rural residential and commercial customers who do not have access to traditional telco provided broadband. Our customer base also includes small businesses who are unable to afford or do not have the need for a full time IT employee. We offer an in demand service previously unavailable to a large portion of our local population. There are currently many areas we are looking to expand to in the short-term to increase our potential customer base.

Iron Goat Networks, llc
P.O. Box 1232
Sultan, WA 98294
360-799-0552

We currently maintain the following licenses, certifications, and registrations:

- Pole Attachment Agreement with Snohomish County PUD Number 1
- Master Business License UBI number 602482036
- City of Index Franchise Agreement

We will provide cable services or open video services as defined in the federal Communications Act, 47 USC § 151, et seq., within the Sultan City limits using facilities proposed to be located within public road rights-of-way.

We currently carry $2,000,000 in liability insurance through Hartford Insurance Company. A copy of our insurance declaration can be provided upon request.

Please let us know if further information is needed. We look forward to your timely attention to this matter.

Sincerely,

Caroline and Ryan Spott
Owners
Iron Goat Networks, llc

City of Sultan

April 14, 2008

Caroline Spott
Iron Goat Networks, LLC
PO Box 1232
Sultan, WA 98294

RE: Iron Goat Franchise Application Additional Information Request

Dear Ms. Spott:

The City has completed an initial review and is at this time requesting additional information before the next phase of the review can be completed.

The type of Franchise Agreement that you are seeking to enter into with the City of Sultan is dependent on the type of service provided.

At this time, the City is requesting additional information from Iron Goat on the type of service that will be provided. This includes the following questions:

1) Will any voice, video or data services be provided by Iron Goat?
2) Will Iron Goat be providing only the fiber, which will have transmissions or connections provided by other users?
3) Is Iron Goat currently licensed by the Washington Utilities and Telecommunications Commission? If so, any documentation on that licensing should be submitted to the City.
4) Will services be provided to the general public for a fee?

We look forward to your quick response to this request. If you have any questions, please call me at (360) 793-2231.

Sincerely,

Erin Martindale
Planner

cc: Project File
Deborah Knight, City Administrator

319 Main Street, Suite 200 – PO Box 1199 – Sultan, WA 98294-1199
City Hall (360) 793.2231 – Fax (360) 793.3344
www.ci.sultan.wa.us

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Iron Goat Networks, llc
P.O. Box 1232
Sultan, WA 98294
360-799-0552

April 14, 2008

Erin Martindale
Cc: Deborah Knight
PO Box 1199
Sulltan, WA 98294

Dear Ms. Martindale,

Thank you for your response to our application. Please see the response to your questions below.

1. *Will any voice, video or data service be provided by Iron Goat?*

   No. We will be providing dark fiber. Any content distribution will be the responsibility of the customer.

2. *Will Iron Goat be providing only the fiber, which will have transmissions or connections provided by other users?*

   Yes, We will be providing unlit dark fiber; all transmissions and the equipment necessary for the transmission of content, will be provided by the user.

3. *Is Iron Goat currently licensed by the Washington Utilities and Telecommunications Commission? If so, any documentation on that licensing should be submitted to the City.*

   Iron Goat Networks, llc will not be providing services regulated services by the Washington Utilities and Telecommunications Commission

4. *Will services be provided to the general public for a fee?*

   Yes. For a fee, access to unlit dark fiber will be provided to the general public per the franchise agreement between the City of Sultan and Iron Goat Networks, llc. Please refer to our application dated February 12, 2008 for more information.

Please let us know if you need any additional information. As with any business proposals, time is of the essence and we appreciate your prompt attention to this matter.

Sincerely,
Caroline and Ryan Spott
Owners, Iron Goat Networks, llc

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Sno co
questionnaire

SNOHOMISH COUNTY FRANCHISE APPLICATION
COVER SHEET & QUESTIONNAIRE

FRANCHISE APPLICANT'S NAME:	**Iron Goat Networks, llc**
MAILING ADDRESS:	**PO Box 1232** **Sultan, WA 98294-1232**
CONTACT NAME:	**Caroline R Spott**
PHONE NUMBER:	**360-799-0552**
FAX NUMBER:	**N/A**
E-MAIL ADDRESS:	**info@irongoat.net**

1. Attach vicinity map identifying the county roads and/or the area of the proposed franchise. Submit on plain sheet not smaller than 8_ inches by 14 inches or larger than 24 inches by 26 inches using a scale appropriate for plan sheet size. Please include the section, township and range numbers covering the county road rights-of-way to be included in the franchise area.

This franchise covers public rights-of-way in the unincorporated areas of Snohomish County located within the unincorporated area of the county legally described in RCW 36.04.310 and including portions of all 36 sections and government lots of Townships 27, 28, 29, 30, 31 and 32 North, in Ranges 3, 4, 5, 6, 7, 8, 9 and 10 East, Willamette Meridian (W.M..).

2. Describe generally the type of system shown on the map, explaining the type of distribution system and the nature of the work proposed in the county road right-of-way. Explain the type of activities or services to be provided, the nature of the facilities proposed to be located in the public road rights-of-way, and the general methods and manner of construction and work within the right-of-way. Describe the proposed route within public rights-of-way for the facilities and/or system.

The system shown on the map is a 450Mhz cableTV distribution system. The nature and of the work proposed in the county right of way consists of normal maintenance and repair of this system as well as future expansion in other markets as growth dictates. Work in the county right of way will be that of normal maintenance and repair.

3. Describe the proposed time schedule of events for construction/installation of the system.

There is currently a system in place. We do not have plans for expansion in the immediate future but would like to reserve the right to expand services and the supporting cable plant as needed.

4. Explain the nature of the franchise applicant's business or the status of the municipal corporation or special purpose district or the type of business entity. Identify the state of incorporation or organization for the franchise applicant.

Iron Goat Networks, llc, is a small limited liability company formed in March of 2005 in the State of Washington focused on serving the IT needs of rural communities and small businesses. We provide wireless broadband to portions of Sultan, Monroe and Goldbar, WA. Offering cable television service

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9. Provide the name and address of the franchise applicant and emergency contact to be inserted in the Notice and Emergency Contact section of the franchise ordinance.

Caroline Spott
721 Depot Lane
Sultan, WA 98294
360-799-0979

Durward Ryan Spott
721 Depot Lane
Sultan, WA 98294
425-280-3078

10. Provide the address and phone number of the business office located in Snohomish County and the name, address and phone number of the local contact for franchise processing.

721 Depot Lane
Sultan, WA 98294
360-799-0979

PO Box 1232
Sultan, WA 98294
360-799-0552

11. The applicant agrees to the terms and conditions of the form franchise ordinance and requests that the county prepare, based on the information contained in this franchise application and questionnaire, the franchise ordinance, Engineer's Report, and other documents necessary for County Council approval.

Cost not to exceed $1500.00. Please notify applicant if cost will exceed $1500.00.

_____ _____

Caroline Spott *Date*
Owner Iron Goat Networks, llc

_____ _____

Durward Ryan Spott *Date*
Owner Iron Goat Networks, llc

to the citizens of Index continues our effort to provide technology to underserved areas of Snohomish County.

Our company began operations March of 2005 with two people working part time installing the broadband infrastructure and maintaining office networks. Our first broadband customer signed their contract in September of 2005. As of November 2005 we have far exceeded our initial growth expectations.

We currently target rural residential and commercial customers who do not have access to traditional telco provided broadband. Our customer base also includes small businesses who are unable to afford or do not have the need for a full time IT employee.

We offer an in demand service previously unavailable to a large portion of our local population. There are currently many areas we are looking to expand to in the short-term to increase our potential customer base. We have two points of presence (POP) in the planning stages; both are in areas with a confirmed demand and return on investment. Long-term goals include pre-installation of Internet infrastructure in new subdivisions, wire line based DSL service and the acquisition of neighboring ISPs.

5. Identify any Federal Communication Commission (FCC) and/or Washington Utilities and Transportation Commission (WUTC) licenses, certifications, or registrations, and any Washington State Secretary of State business registrations of the franchise applicant relevant to the facilities proposed to be located in public rights-of-way.

Pole Attachment Agreement with Snohomish County PUD Number 1
Master Business License UBI number 602482036
City of Index Franchise Agreement

6. Will the franchisee provide cable services or open video services as defined in the federal Communications Act, 47 USC § 151, et seq., within Snohomish County using facilities proposed to be located within public road rights-of-way?

Yes, we will provide cable services.

7. Provide information about the agency/company background and history of other utility/business operation inside and outside of Snohomish County.

Iron Goat Networks, llc has operated within Snohomish County since its inception March 15, 2005. We operate a Wireless Internet Service Provider serving parts of Sultan, Monroe, Start-up and Gold Bar. Iron Goat Networks, llc is a small, family-owned business focused on serving the IT needs of rural communities.

8. Explain the agency/company financial status for purposes of meeting the indemnity, bonding and insurance requirements for franchise approval and right-of-way use permits. Proof of ability to comply with Snohomish County insurance requirements of SCC 13.10.100 and the franchise ordinance is required.

We currently carry $2,000,000 in liability insurance through Hartford Insurance Company. Please see the attached copy of our insurance declaration page and certificate of insurance.

Attachment B - Proposed Modifications to Franchise Template

Section	Staff Recommendation	Iron Goat
2.2 Services	Iron Goat will define services as set forth in the 2008 application (Attachment A)	Support staff recommendation
4.3.2 Term The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of five (5) years, unless sooner terminated, revoked or rendered void. No more than 180 days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional two (2) year term upon the same terms and conditions as provided herein. The City Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.	Provides for a five-year term with an additional two-year term upon the same terms and conditions without future action or approval by the Council	Support staff recommendation
5.2 Environmental Indemnity Exhibit C to the Franchise	As negotiated by the Parties to provide adequate coverage for the Grantee and the City for any risks that be encountered.	Support staff recommendation
5.3 Insurance Requirements Exhibit D to the Franchise	Minimum standard contract requirements for public works projects	Reviewing recommendations at time of agenda cover publication

Attachment B - Proposed Modifications to Franchise Template

Section	Staff Recommendation	Iron Goat
5.4 Financial Security – Exhibit E to the Franchise Performance Bond. The Grantee shall provide a performance bond to ensure Grantee's faithful performance of any and all of the terms and conditions of this Franchise. The Franchise performance bond shall be in the amount of twenty-five thousand dollars ($25,000). The following issues are under discussion with Iron Goat and may or may not be included in the final agreement: Cash Security/ Letter of Credit Restoration Bond Security Fund	The performance bond is to ensure the Grantee's faithful performance of <u>all of the terms and conditions of the franchise.</u> While Iron Goat's bonds with PUD cover pole attachments, there are other provisions of the franchise between the City and Iron Goat such as payment of franchise fees and meeting FCC standards which are not covered by Iron Goat's bond with PUD. City staff recommend a separate bond between the City and Iron Goat.	Previous comment We currently have an outstanding bond with the PUD #1 of Snohomish County covering any and all attachments to PUD owned poles. We feel that this bond and any additional bonding that PUD requires of us should cover any irregularity that may crop up. Because we are not going underground, and PUD is VERY strict with placement on their poles, the City is well protected.
5.8.1 Franchise Fees In return for allowing Iron Goat Networks to utilize public right-of-way and provide cable service to citizens, the City will collect, as general compensation during each year of this Franchise, a franchise fee consisting of five-percent (5%) of Iron Goat Networks' gross revenue for services rendered to customers within the areas of the city roads covered by this franchise (the "Franchise area").	5% franchise fees on gross revenues for services rendered to customers.	Support staff recommendation

Attachment B - Proposed Modifications to Franchise Template

Section	Staff Recommendation	Iron Goat
5.8.11 Overdue Payments	City agrees to match the current interest charged by Iron Goat to the City of Sultan as an Iron Goat customer.	Support recommendation
6.1.3 Mediation	The parties agree to use Snohomish County Dispute Resolution Center to mediate unresolved disputes. Mediation will commence as soon as possible.	Support recommendation

Attachment C – Draft Franchise Agreement

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CITY OF SULTAN, WASHINGTON

ORDINANCE NO. ___

AN ORDINANCE OF THE CITY OF SULTAN, WASHINGTON, GRANTING A NONEXCLUSIVE DARK FIBER FRANCHISE TO IRON GOAT NETWORKS, LLC; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS the Public Rights-of-Way within the City of Sultan ("City") belong to the public and are built and maintained at public expense for the use of the general public, the primary purpose of which is public travel, and must be managed and controlled consistent with that intent, and

WHEREAS the use of Public Rights-of-Way for uses unrelated to public travel, such as water mains, gas pipes, pipelines, dark fiber and cable facilities, is secondary and subordinate to the primary use for travel; such secondary use is permissible only when not inconsistent with the primary purpose of the establishment of such Public Rights-of-Way; and, such use as a place of private business or as a main instrumentality of private business is accorded in most instances as a mere privilege under state law and there is no inherent right in a private individual to conduct private business in the public streets, and

WHEREAS the City supports efforts to establish an open, competitive marketplace for Telecommunications and dark fiber services and promotes and encourages competition for voice, data, and video programming services that make the latest and best technology available and keep service prices affordable for all City residents and businesses; and

WHEREAS the requirement of a performance bond or security fund ensures that work done in the Public Rights-of-Way complies with or can be made to comply with requirements that ensure public safety and limit liability of the City, and

WHEREAS Insurance and indemnity requirements protect the City from monetary loss in the event of City liability due to acts of the secondary users of the Public Rights-of-Way; the City should not be exposed to liability of any kind as a result of the presence in the Public Rights-of-Way of the facilities of secondary users because the secondary user controls the design, construction, and installation of those facilities, profits from use of those facilities, is better suited and positioned to protect against such harms, and, but for the existence of those facilities, no injury would have occurred, and

WHEREAS the City has a substantial government interest in knowing the identity of those persons with facilities in its Public Rights-of-Way so that it may, among other things, provide notice of hazardous or defective conditions, violations of regulatory or contractual requirements, joint trenching opportunities, relocation requirements for public or private improvements, identify locations of facilities, or identify the proper Parties in the event of litigation, and

WHEREAS the City has a substantial government interest in requiring notice and approval of a transfer of the rights, duties, and obligations of those persons Franchised to be in the Public Rights-of-Way to ensure that the City does not lose any legal rights or protection as a result of the transfer, to ensure that such persons are aware of and agree to comply with all rights, duties, and obligations previously agreed to, to ensure that companies do not simply transfer agreements to avoid complying with regulatory or contractual requirements, and to ensure that the City has accurate contact information for the operator of the facilities in the Public Rights-of-Way in the event of an emergency, and

WHEREAS the increasing demand for use of Public Rights-of-Way is causing, and will continue to cause, local governments to expand management services and responsibilities which includes more frequent inspections, repairs, and re-paving, sophisticated mapping technologies and systems and increased personnel, and

WHEREAS the Recovery of administrative costs incurred by the City in preparing, considering, awarding authorization to use or construct or install facilities within the Public Rights-of-Way is a cost of regulation and management of the Public Rights-of-Way and is authorized under state and federal law, and

WHEREAS Iron Goat Networks ("Iron Goat") has made application to the City of Sultan for a telecommunications franchise to provide dark fiber services using the Public Rights-of-Way, and

WHEREAS, based on representations and information provided by Iron Goat, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, are consistent with the public interest; and

WHEREAS, the Revised Code of Washington (RCW) authorizes the City to grant and regulate nonexclusive franchises, for the use of public streets, right-of-ways and other public property;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SULTAN; WASHINGTON, DO ORDAIN AS FOLLOWS:

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C. Environmental Indemnity
D. Insurance Requirements
E. Financial Security
F. Parental Guarantee
G. Contractor/Subcontractor Insurance Requirements

ARTICLE 1. DEFINITIONS

Except as provided at Section 3.7 herein (order of precedence), for the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in Title 5 of the Sultan Municipal Code. Words not defined herein or in Title 5 of the Sultan Municipal Code, shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. 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. The word "shall" is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

"Affiliate" when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Grantee.

"Breach" shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

"City" shall mean the City of Sultan a Code City, operating under the laws of the state of Washington.

"Construct" shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, remove, or support.

"Corrective Action" shall mean a Party undertaking action as provided in this Franchise to perform a duty or obligation that the other Party is obligated to but has failed to perform.

"Dark Fiber" or unlit fiber shall mean an optical fiber network that is not actively used (i.e.; without Franchisee providing any optical or electronic signaling in the fiber path) but is available as extra capacity. The customer is responsible for adding the necessary components of a transmission system at both ends to make the fiber functional.

"Design Document(s)" shall mean the plans and specifications for the Construction of the Facilities illustrating and describing the refinement of the design of the Utility System Facilities to be

Constructed, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

"100% Design Submittal" means a Design Document upon which Franchisee's contractors will rely in constructing the Utility System Facilities.

"Direct Costs" shall mean and include all costs and expenses to the City directly related to a particular activity or activities, including by way of example:

i. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;

ii. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees performing work for the activity and determined in accordance with the City's ordinary governmental accounting procedures; and,

iii. All costs and expenses to the city for any work by consultants or contractors to the extent performing work for a particular activity or activities, including by way of example and not limitation, engineering and legal services.

"Development Permit" shall mean and refer to a project permit as that term is defined at RCW 36.70B.020.

"Dispute" shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

"Effective Date" shall mean and refer to that term as it is defined at Section 4.3 herein.

"Emergency" shall mean and refer to a sudden condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee's ability to continue to provide services if immediate action is not taken, or (b) presents an imminent threat of harm to persons or property if immediate action is not taken.

"Environmental Law(s)" means any federal, state or local statute, regulation, code, rule, ordinance, order, judgment, decree, injunction or common law pertaining in any way to the protection of human health or the environment, including without limitation, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Toxic Substances Control Act, and any similar or comparable state or local law.

“Facility” or “Facilities” means any part or all of the facilities, equipment and appurtenances of Franchisee whether underground or overhead and located within the Public Right-of-Way as part of the Franchisee’s Utility System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, towers, anchors, transmitters, receivers, antennas, and signage.

“Franchise” shall mean the grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way and to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions of the Franchise Ordinance.

“Franchisee” shall mean ** and any of its Affiliates.

“Franchise Ordinance” shall mean this Ordinance setting forth the terms and conditions upon which the Franchisee shall be granted a Franchise.

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the City limits of Sultan as exist upon acceptance of this franchise.

"Hazardous Substance" means any hazardous, toxic, radioactive or infectious substance, material or waste as defined, listed or regulated under any Environmental Law, and any element, compound, mixture, solution, particle, or substance, which presents danger or potential danger for damage or injury to health, welfare, or to the environment, including, but not limited to: those substances which are inherently or potentially radioactive, explosive, ignitable, corrosive, reactive, carcinogenic, or toxic; those substances which have been recognized as dangerous or potentially dangerous to health, welfare, or to the environment by any federal, municipal, state, City, or other governmental or quasi-governmental authority, and/or any department or agency thereof; those substances which use, or have its a component thereof or therein, asbestos or lead-based paint; and petroleum oil and any of its fractions.

“Law(s)” shall mean all present and future applicable laws, ordinances, rules, regulations, resolutions, Franchises, authorizations, environmental standards, orders, decrees and requirements of all federal, state, City and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Facilities, including the City acting in its governmental capacity, or other requirements. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended.

“Legal action” for purposes of this Franchise shall mean filing a lawsuit or invoking the right to Arbitration.

“Material Breach” shall mean any of the following circumstances:

- Breach of a Party's obligation to defend or indemnify the other Party;
- If a Party attempts to evade any material provision of this Franchise or engages in any fraud or deceit upon the other Party;
- If Franchisee becomes insolvent, or if there is an assignment for the benefit of Franchisee's creditors;
- If Franchisee fails to provide or maintain the insurance, bonds, cash deposit or other security required by this Franchise;
- A bad faith Breach;
- A Transfer in violation of Section 2.7 (Transfer);
- Breach of Section 3.5 (Subsequent Action);
- Breach of Section 6.1 (Dispute Avoidance);
- Breach of Section 7.14 (Abandonment);
- Any Breach that cannot practicably be cured; or
- Any non-material breach that is not cured as required pursuant to Section 6.3 herein.

"Non-Material Breach" means any breach that does not constitute a Material Breach.

"Noticed Party" shall mean the Party in receipt of notice that it is in Breach. "Person" means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

"Party(ies)" shall mean either the City or the Franchisee or both.

"Public Rights-of-Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other public right-of-way, including, any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses or franchises for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

"Public Works Director" means and refers to the Public Works Director for the City or his or her designee or such officer or person who has been assigned the duties of public works director or his or her designee.

"Remedy", "Remediate" and "Remedial Action" shall have the same meaning as these are given under the Model Toxics Control Act (Chapter 70.105D RCW) and its implementing regulations at Chapter 173-340 WAC.

"Service" shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

"Transfer" shall mean any transaction in which all or a portion of the Utility System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the Utility System from the Public Rights-of-Way); or the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of an operator shall not constitute a transfer as long as the same person continues to hold the Franchise both before and after the transfer of control.

"Regulatory Permit" means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes by way of example and not limitation, a work order permit, a construction permit, building permit, street cut permit, a barricade permit, a street closure permit, an excavation permit, and clearing and grading permit.

"Utility System" shall mean collectively the Facilities that together with other facilities, appurtenances and equipment of Franchisee or other Persons are used to provide a service or services whether or not such service is provided to the public. Service shall include the provisioning of Dark Fiber.

"Work" shall mean any and all activities of the Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

ARTICLE 2. FRANCHISE GRANT

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Franchise, the City hereby grants to Franchisee a nonexclusive Franchise authorizing the Franchisee to Construct and operate its Utility System in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to provide a dark fiber network by installing overhead and underground copper and fiber cable as appropriate.

This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use its Facilities or the Public Rights-of-Way to provide services not specifically authorized therein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Franchisee provide service other than service specifically authorized herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein.

2.3 No rights shall pass to Franchisee by implication. No rights shall pass to the Franchisee by implication. Without limiting the foregoing and by way of example, this Franchise shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be awfully required by the Laws of the City;

2.3.2 Any agreement or authorization required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, a regulatory permit; or

2.3.3 Any licenses, leases, easements or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Franchise including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.3.4 Any permits or other authorizations that may be required under the land use code and development regulations of the City for the construction of Facilities within a particular zoning district in the City, including by way of example and not limitation, a conditional use permit or a variance.

2.4 Interest in the Public Right-of-Way. This Franchise shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interest, or other right to control the use of such Public Right-of-Way, is sufficient to grant its use for such purposes. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee.

Franchisee acknowledges that, where City has an ownership interest in a Franchise Area, that ownership interest may be a determinable fee, a public right of way dedication, or a right of way easement, which may terminate when City either: (i) ceases to use that Public Right-of-Way for Public Right-of-Way purposes; or (ii) uses such Public Right-of-Way for purposes found to be inconsistent with use of the Public Right-of-Way for Public Right-of-Way purposes, and that in such circumstances, City's right to franchise or grant the use of any such public right-of-way, or rights under any franchise of any such Public Right-of-Way, may be subject to termination as of the date the circumstances set forth in either (i) or (ii) above, first arise (unless Franchisee improves the quality of title to the applicable Franchise Area, or acquiring additional property interests from other Persons).

Franchisee also acknowledges that, where City has ownership rights, those ownership rights may terminate for other reasons, such as a street vacation. Franchisee further acknowledges that Franchisee's rights under this Franchise as to any Franchise Area, are subject and subordinate to all outstanding rights and encumbrances on City's Public Rights-of-Way, and any easements, other Franchise Agreements, licenses, permits or agreements in effect on or before the Effective Date; City therefore grants to Franchisee no more right, title and interest in any Public Right-of-Way than the City holds in such Public Rights-of-Way at the time of grant, and Franchisee hereby releases City from any and all liability, cost, loss, damage or expense in connection with any claims that City lacked sufficient legal title or other authority to convey the rights described herein. In case of eviction of Franchisee or Franchisee's contractors by anyone owning or claiming title to, or any interest in the Franchise Area, City shall not be liable to Franchisee or Franchisee's Contractors for any costs, losses or damages of any Party.

CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO DEFEND FRANCHISEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

2.5 Condition of Franchise Area. Franchisee has inspected or will inspect each applicable Franchise Area, and enters upon each such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near any Franchise Area. FRANCHISEE ACCEPTS THE FRANCHISE AREA IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE FRANCHISE AREA, including, but not limited to the physical condition of the Franchise Area; zoning status; presence and location of existing utilities; operating history; compliance by the Franchise Area with Environmental Laws or other Laws and other requirements applicable to the Franchise Area; the presence of any Hazardous Substances or wetlands, asbestos, or other environmental conditions in, on, under, or in proximity to the Franchise Area; the condition or existence of any of the above ground or underground structures or improvements, including tanks and transformers in, on or under the Franchise Area; the condition of title to the Franchise Area, and the leases, easements, Franchises, orders, licensees, or other agreements, affecting the Franchise Area (collectively, the "**Condition of the Franchise Area**").

Franchisee represents and warrants to the City that nether the Franchisee nor its contractors or subcontractors have relied and will not rely on, and the City is not liable for or bound by, any warranties, guaranties, statements, representations or information pertaining to the Condition of the Franchise Area or relating thereto made or furnished by the City, or any agent representing or purporting to represent the City, to whomever made or given, directly or indirectly, orally or in writing. CITY HEREBY DISCLAIMS ANY REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, ITS MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-OF-WAY TO ITS INTENDED USES. CITY SHALL NOT BE RESPONSIBLE TO FRANCHISEE OR ANY OF FRANCHISEE'S CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN, CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES.

2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive. Subject to the terms and conditions herein, the City may at any time grant authorization to others to use the Public Rights-of-Way for any lawful purpose.

2.7 Transfer. Franchisee may Transfer this Franchise after prior written notice to the City and Transferee's written commitment, in substantially the form of the agreement attached hereto as Exhibit "A", delivered to the City, that transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise and guaranteeing performance under the terms and conditions of the Franchise and that transferees will be bound by all the conditions of the Franchise and will assume all the obligations of its predecessor. Such a Transfer shall relieve the Franchisee of any further obligations under the Franchise, including any obligations not fulfilled by Franchisee's Transferee; provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be Transferred without filing or

establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this franchise and paying all Direct Costs to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of Franchisee's interest in the Franchise in order to secure indebtedness.

Franchisee may, without the prior written notice to the City: (i) lease the Utility System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Utility System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Utility System to another Person; provided that, Franchisee at all times retains exclusive control over it Utility System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, Franchisee may grant no rights to any such Person that are greater than any rights Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-Party beneficiary hereunder; and, no such Person may use the Utility System for any purpose not authorized herein.

2.8 Street Vacation. If any Public Right-of-Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue its Facilities in the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City.

2.9 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sewers; grading, changing grade, paving, repairing or altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

3.1 Compliance with Laws. Except as provided herein pursuant to Section 3.3, the Franchisee agrees to comply with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdiction over Franchisee and its Facilities, or over the City and the Public Rights-of-Way.

3.2 Police Powers. Franchisee acknowledges that its rights hereunder are subject to those powers expressly reserved by the City and further are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety and welfare of the public. Franchisee agrees to comply with all lawful and applicable general ordinances now or hereafter enacted by the City pursuant to such power. Such powers include but are not limited to, the right to adopt and enforce applicable zoning, building, permitting and safety ordinances and regulations, the right to adopt and enforce ordinances and regulations relating to equal employment opportunities, and the right to adopt and enforce ordinances and regulations governing work performed in the Public Right-of-Way. However, this Section 3.2 shall not be read or interpreted as a waiver of any vested rights Franchisee may have or a waiver of any rights Franchisee may have for a Facility that qualifies as a nonconforming use.

3.3 Alteration of Material Terms and Conditions. Subject to federal and State preemption, the material rights, benefits, obligations or duties as specified in this Franchise may not be unilaterally altered

by the City through subsequent amendments to any ordinance, regulation, resolution or other enactment of the City, except within the lawful exercise of the City's police power.

3.4 Reservation of Rights/Wavier. The City shall be vested with the power and right to administer and enforce the requirements of this Franchise and the regulations and requirements of applicable Law, or to delegate that power and right, or any part thereof, to the extent permitted under Law, to any agent in the sole discretion of the City. The City expressly reserves all of its rights, authority and control arising from any relevant provisions of federal, State or local Laws granting the City rights, authority or control over the Public Rights-of-way or the activities of the Franchisee. Nothing in this Franchise Agreement shall be deemed to waive the requirements of the various codes and ordinances of the City regarding Franchises, fees to be paid or manner of Construction. Nothing in this Franchise shall be deemed to waive and Franchisee specifically reserves the right to challenge any City ordinance, regulation or resolution that conflicts with its rights under this Franchise.

3.5 Subsequent Action. In the event that after this Franchise becomes effective, (a) there is a change in or clarification of the Law which changes, broadens or clarifies the authority or obligations of the City or the Franchisee with respect to any act permitted or authorized under this Franchise, or (b) the State of Washington or any agency thereof or any agency of the Federal government require Franchisee or the City to act in a manner which is inconsistent with any provisions of this Franchise, or (c) any term, article, section, subsection, paragraph, provision, condition, clause, sentence, or other portion of this Franchise, or its application to any person or circumstance, shall be held to be illegal, invalid or unconstitutional for any reason by any court or agency of competent jurisdiction, or (d) because of a change in circumstances, the City or the Franchisee believe that amendments to this Franchise are necessary or appropriate, then the City and the Franchisee agree to enter into good faith negotiations to amend this Franchise so as to enable the City and Franchisee to address, in a manner reasonably acceptable to the City and Franchisee, such change or other development which formed the basis for the negotiations. The City and Franchisee recognize that the purpose of the negotiations would be to preserve, to the maximum extent consistent with Law, the intent, scope and purpose of this Franchise.

If the terms of this Franchise are materially altered due to changes in or clarifications governing Law or due to agency rule making or other action, then the Parties shall negotiate in good faith to reconstitute this Franchise in a way consistent with then-applicable Law in a form that, to the maximum extent possible, is consistent with the original scope, intent and purpose of the City and Franchisee and preserves the benefits bargained for by each Party.

3.6 Change in Form of Government. Any change in the form of government of the City shall not affect the validity of this Franchise. Any governmental unit succeeding the City shall, without the consent of Franchisee, succeed to all of the rights and obligations of the City provided in this Franchise.

3.7 Order of Precedence.

3.7.1 In the event of a conflict between a provision, term, condition, or requirement of the Municipal Code or City ordinance in effect upon the Effective Date and a provision, term, condition, or requirement of this Franchise, the provision, term, condition, or requirement of the Municipal Code or City ordinance shall control to the extent of such conflict.

3.7.2 In the event of a conflict between a provision, term, condition, or requirement of the Municipal Code or City ordinance enacted subsequent to the Effective Date and a provision, term,

condition, or requirement of this Franchise, the provision, term, condition, or requirement of the Municipal Code or City ordinance shall control, to the extent of the conflict, subject to Sections 3.3 and 3.4 of this Franchise.

Subject to Sections 3.3 and 3.4 of this Franchise, a provision, term, condition, or requirement of this Franchise shall not be considered to be in conflict with a provision, term, condition, or requirement of the Municipal Code or City ordinance solely on the basis that it is more restrictive or burdensome than a provision, term, condition, or requirement of the Municipal Code or City ordinance.

ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Franchise by the City Council, this Franchise shall be accepted by Franchisee by filing with the City Clerk during regular business hours, or such other person as may be designated by the City, three originals of this Franchise with its original signed and notarized written acceptance of all of the terms, provisions and conditions of this Franchise in conformance with Exhibit "B", together with the following, if required herein:

4.1.1 Payment in readily available funds of the administrative costs for issuance of the Franchise in conformance with the requirements of Section 5.8 herein.

4.1.2 Submission of proof of financial security in accordance with Section 5.4 herein.

4.1.3 Payment of the costs of publication of this Franchise Ordinance in conformance with the requirements of Sections 5.8 and 8.18 herein.

4.1.4 Parental Guarantee, if required, in conformance with the requirements of Section 5.5 herein.

In the event that the thirtieth day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the last business day before such Saturday, Sunday or legal holiday.

4.2 Failure to Timely File Acceptance. Except as provided in this Section 4.2 below, the failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void. In the event that Franchisee timely files its written acceptance but fails to timely comply with the applicable requirements of sections 4.1.1 through 4.1.4, this Franchise shall be voidable in the sole discretion of the Mayor without further action required by the City Council or the consent of the Franchisee. The Franchise shall be voidable until such time as Franchisee complies with all of the applicable requirements of sections 4.1.1 through 4.1.4. No opportunity to cure or public hearing is required to void the Franchise pursuant to this Section 4.2 by giving written notice of the Same to Franchisee.

4.3 Effective Date; Term.

4.3.1 Effective Date. Except as provided pursuant to Section 4.2 of this Franchise, the Effective Date of this Ordinance and franchise shall be 12:01 a.m. on the 31st day following passage

and approval of this Franchise by the City Council. This Franchise and the rights, privileges, and authority granted hereunder and the contractual relationship established hereby shall take effect and be in force from and after the Effective Date of this Ordinance for the term hereof.

4.3.2 Term. The term of this Franchise shall commence on the Effective Date and shall continue in full force and effect for a period of five (5) years, unless sooner terminated, revoked or rendered void. No more than 180 days prior to expiration, the Parties may mutually agree in writing to extend the term of this Franchise for an additional two (2) year term upon the same terms and conditions as provided herein. The City Mayor is authorized to execute such an extension on behalf of the City without further action or approval by the City Council.

4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

4.4.1 Accepts and agrees to comply with and abide by all of the lawful terms and conditions of this Franchise;

4.4.2 Acknowledges and accepts the City's legal right to grant this Franchise;

4.4.3 Agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable Law and that it will not raise any claim to the contrary.

4.4.4 Agrees that no provision, condition or term of the Franchise at the time of the Effective Date was unlawful, unreasonable or arbitrary, void or unenforceable;

4.4.5 Agrees that it enters into this Franchise freely and voluntarily, without any duress or coercion, after free and full negotiations, after carefully reviewing all of the provisions, conditions and terms of this Franchise Agreement, and after consulting with counsel;

4.4.6 Acknowledges and agrees that; it has carefully read the terms and conditions of this Franchise; it unconditionally accepts all of the terms and conditions of this Franchise; it

unconditionally agrees to abide by the same; it has relied upon its own investigation of all relevant facts; it has had the assistance of counsel; it was not induced to accept a Franchise; and, that this Franchise represents the entire agreement between the Franchisee and the City.

4.4.7 Guarantees, as a condition of accepting this Grant and exercising the privileges granted by this Franchise, that any Affiliate of the Franchisee offering Service in the Franchise Area, or directly involved in the management or operation of the Facilities in the Franchise Area, will comply with the terms and conditions of this Franchise.

4.4.8 Warrants that Franchisee has full right and authority to enter into and accept this Franchisee in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject.

4.4.9 Warrants that acceptance of this Franchise by Franchisee has been duly authorized by all requisite Board action, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.

4.5 Effect of Expiration/Termination. Upon expiration or termination of the Franchise without renewal or other authorization, Franchisee shall no longer be authorized to operate the Facilities within the Franchise Area and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Franchisee shall: (1) remove its Facilities from the Public Rights-of-Ways and restore the Public Right-of-Way to such condition as the City may reasonably require all at Franchisee's expense; (2) sell its Facilities to another entity authorized to operate Facilities within the Franchise Area (which may include the City) upon City approval, to the extent the City may lawfully require its approval; or (3) abandon any Facilities in place in the Public Rights-of-Way upon written notice to the City of Franchisee’s intent to so do. If, within ninety (90) days of the City’s receipt of Franchisee’s notice of abandonment, the City determines that the safety, appearance, or use of the Public Rights-of-Way would be adversely affected, the Facilities specified by the City, and if not specified, all such Facilities must be removed by the Franchisee by a date reasonably specified by the City in light of the amount of work to be performed. In the event of failure by Franchisee properly to perform such work, then the City may, after thirty (30) days written notice to Franchisee, perform the work and collect the actual and reasonable costs thereof.

ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

5.1 Limitation of Liability

5.1.1 INDEMNITY/RELEASE/DEFENSE. EXCEPT AS MAY BE OTHERWISE PROVIDED PURSUANT TO SECTION 5.2 OF THIS FRANCHISE WITH RESPECT TO ENVIRONMENTAL LIABILITY, TO THE FULLEST EXTENT PERMITTED BY LAW, FRANCHISEE SHALL RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS (COLLECTIVELY, "**INDEMNITEES**") FOR, FROM, AND AGAINST ANY AND ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES, LOSSES, LIENS, CAUSES OF ACTION, SUITS, DEMANDS, JUDGMENTS, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS, ATTORNEYS' FEES, AND COSTS OF INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY "**LIABILITIES**") OF ANY NATURE, KIND, OR DESCRIPTION, OF ANY PERSON OR ENTITY, DIRECTLY OR INDIRECTLY, ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):

5.1.1.1 THIS FRANCHISE;

5.1.1.2 ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS FRANCHISE;

5.1.1.3 FRANCHISEE'S OCCUPATION AND USE OF THE PUBLIC RIGHT-OF-WAY;

5.1.1.4 FRANCHISEE'S OPERATION OF THE UTLITY SYSTEM;

5.1.1.5 THE PRESENCE OF THE UTILITY SYSTEM WITHIN THE PUBLIC RIGHT-OF-WAY;

5.1.1.6 THE ENVIRONMENTAL CONDITION AND STATUS OF THE PUBLIC RIGHT-OF-WAY CAUSED BY, AGGRAVATED BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY FRANCHISEE OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS;

5.1.1.7 ANY ACT OR OMISSION OF FRANCHISEE OR FRANCHISEE'S CONTRACTORS, SUBCONTRACTORS, AGENTS AND SERVANTS, OFFICERS OR EMPLOYEES IN CONNECTION WITH WORK IN THE PUBLIC RIGHT OF WAY; OR

5.1.1.8 THE CITY'S PERMITTING FRANCHISEE'S USE OF THE CITY'S PUBLIC RIGHTS-OF-WAY OR OTHER PUBLIC PROPERTY,

(EVEN IF SUCH LIABILITIES ARISE FROM OR ARE ATTRIBUTED TO, IN WHOLE OR IN PART, ANY NEGLIGENCE OF ANY INDEMNITEE. THE ONLY LIABILITIES WITH RESPECT TO WHICH FRANCHISEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES NOT APPLY ARE LIABILITIES TO THE EXTENT PROXIMATELY CAUSED BY THE SOLE

NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN INDEMNITEE OR FOR LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED FOR.)

This covenant of indemnification shall include, but not be limited by this reference, to Liabilities arising, (1) as a result of the acts or omissions of Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public Right-of-Way or other public place in performance of work or services Permitted under this authorization or lease; (2) solely by virtue of the City's ownership or control of the Public Rights-of-Way or other public properties; and (3) solely by virtue of the City's inspection or lack of inspection of Work in the Public Right-of-Way.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section 5.1

5.1.2 Tender of Defense. Upon written notice from the City, Franchisee agrees to assume the defense of any lawsuit, claim or other proceeding brought against any Indemnitee by any entity, relating to any matter covered by this Franchise for which Franchisee has an obligation assume liability for and/or save and hold harmless any Indemnitee. Franchisee shall pay all costs incident to such defense, including, but not limited to, attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments. Further, said indemnification obligations shall extend to claims that are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend and may participate in the defense of a claim and, in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written approval which shall not be unreasonably withheld. 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, Franchisee shall select additional counsel with no conflict with the City.

5.1.3 Refusal to Accept Tender. In the event Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses 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, then Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

5.1.5 Inspection. 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 of any of these covenants of indemnification.

5.2 Environmental Liability. See attached Exhibit "C".

5.3 Insurance Requirements. See Attached Exhibit "D".

5.4 Financial Security. See Attached Exhibit "E".

5.5 Parental Guarantee. If the Franchise is wholly owned or is controlled by another Person, the City may require Franchisee to cause such Person to provide, upon acceptance of this Franchise, a guarantee by such Person of performance by the Franchisee of Franchisee's rights, duties and obligations herein, in substantially the form of the parental guarantee attached hereto as Exhibit "F". "Control" shall mean de jure or de facto control over the Franchisee and does not necessarily imply a majority ownership of Franchisee by such Person. If Franchisee is a partnership or limited liability company or similar entity, the City may require a guarantee from the principal partners/members of the partnership, limited liability company or similar entity.

5.6 Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee contractors and subcontractors shall comply with the requirements set forth in attached Exhibit "D".

5.7 Liens. In the event that any City property becomes subject to any claims for mechanics', artisans', or materialmen's liens, or other encumbrances chargeable to or through Franchisee which Franchisee does not contest in good faith, Franchisee shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys' fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of Franchisee after first giving Franchisee five business days' advance notice of its intention to do so. Nothing herein shall preclude Franchisee's or the City's contest of a claim for lien or other encumbrance chargeable to or through Franchisee or the City, or of a contract or action upon which the same arose.

5.8 Financial Conditions.

5.8.1 Franchise Fees. Franchise fees imposed, if any, shall be as set forth as follows:

In return for allowing Iron Goat Networks to utilize public right-of-way and install dark fiber network, the City will collect, as general compensation during each year of this Franchise, a franchise fee consisting of five-percent (5%) of Iron Goat Networks' gross revenue for services rendered to customers within the areas of the city roads covered by this franchise (the "Franchise area").

During the term of this Franchise, should federal and/or state Law change or the statutory prohibition or limitation upon assessment of Franchise fees be invalidated, amended, or modified allowing revenues derived by Franchisee from any Services provided by Franchisee using the Franchise Area to be subject to a Franchise fee or other fee in lieu of a Franchise fee that was otherwise prohibited or limited on the Effective Date, the City and Franchisee shall negotiate a reasonable Franchise fee or other fee in lieu of a Franchise fee, consistent with federal and/or state Law. The fee shall be comparable to fees received by the City from other users of the rights of way that pay franchise fees to the City or comparable municipalities.

~~5.8.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall reimburse the City for the City's Direct Costs relating to the issuance, renewal, amendment (if requested by or for the benefit of the Franchisee) and administration of this Franchise.~~

5.8.3 Reimbursement of Direct Costs of Design Review and Inspection. City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of the road Public Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. ~~Therefore, Franchisee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with the Regulatory Permit. Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with Standards and 100% Design Submittal.~~

5.8.4 Reimbursement of Direct Costs of altering Public Rights-of-Way. Franchisee shall reimburse the City for the Direct Costs incurred by the City in planning, designing, constructing, installing, repairing or altering any City infrastructure, structure, or facility as the result of the actual or proposed presence in the Public Right-of-Way of Franchisee's Facilities. Such costs and expenses shall include, but not be limited to, the Direct Costs of City personnel and contractors utilized to oversee or engage in any work in the Public Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way, and any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any public utilities or Public Rights-of-Way so as not to interfere with Franchisee's Facilities. Upon request as a condition of payment by Franchise, all billing will be itemized so as to specifically identify the Direct Costs and expenses for each

project for which the City claims reimbursement. A reasonable charge for the actual cost incurred in preparing the billing may also be included in said billing.

5.8.5 Franchisee Responsibility for Costs. Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.

5.8.6 Franchisee Work Performed by the City. Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City of performing such work.

~~5.8.7 Costs to be Borne by Franchisee. Franchisee shall reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.~~

5.8.8 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the City Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, ~~whether pecuniary or in kind,~~ are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.

5.8.9 Itemized Invoice. Upon request and as a condition of payment by the Franchisee of Direct Costs payable by Franchisee under this Franchise, City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the for each project for which the City claims reimbursement. A charge for the actual cost incurred in preparing the billing may also be included in said billing.

5.8.10 Time for Payment. All non-contested amounts owing shall be due and paid within thirty (30) days of receipt of invoice; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within (30) days of receipt of the itemized invoice.

5.8.11 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at a rate of ~~twelve~~ _____(~~12%~~_____) percent per annum.

5.8.12 Contesting charges**.** Franchisee may contest all or parts of amounts owed within thirty (30) days of receipt of any invoice in accordance with the following process. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owning as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. However, Franchisee does not waive its rights to further dispute resolution processes pursuant to

Section 6.1 of this Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1 does not relieve the Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.8.13 Receivables. Either Party hereto may assign any monetary receivables due them under this Franchise; provided, however, such transfer shall not relieve the assignor of any of its rights or obligations under this Franchise.

ARTICLE 6. ENFORCEMENT AND REMEDIES.

6.1 Dispute Avoidance/Mediation.

6.1.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will, as a condition precedent to taking Legal Action, attempt to resolve any such Disputes through discussions between representatives of each Party as set forth in this Section 6.1.

6.1.2 Representatives. If a Dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the Dispute. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.

6.1.3 Mediation. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties hereby agree that the matter shall be referred to ~~mediation~~Snohomish County Dispute Resolution Center. Either Party may request mediation upon a determination by that Party that the Parties are unable to resolve the Dispute pursuant to Section 6.1.2 herein. The Parties shall mutually agree to commence mediation as soon as possible. ~~upon a mediator to assist them in resolving their differences. If the Parties are unable to agree upon a mediator, the Parties shall jointly obtain a list of seven (6) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a Party fails to notify the other Party of which mediator it has stricken within two (2) business days, the other Party shall have the option of selecting the mediator from those mediators remaining on the list. Unless the Parties agree otherwise, mediation shall commence in no case later than thirty (30) days after a mediator is selected. Any expenses incidental to mediation shall be borne equally by the Parties~~.

6.1.4 Intent. The obligations of this Section 6.1 are not intended and shall not be construed to prevent a Party from, assessing liquidated damages, issuing an order to cure an alleged Non-Material Breach, or taking Corrective Action. The intent of the Parties is to require compliance with this Section 6.1 before either party may commence a Legal Action in a court of proper jurisdiction.

6.2 Remedies. The Parties have the right to seek any and all of the following remedies, singly or in combination, in the event of Material Breach:

6.2.1 Specific Performance. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Permit without any requirement to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that either Party would not have an adequate remedy at law for the commission of an Event of Default hereunder.

6.2.2 Injunction. Each Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of an Event of Default and to obtain a judgment or order specifically prohibiting a violation or breach of this Franchise without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that the other Party would not have an adequate remedy at law for the commission of an Event of Default hereunder.

6.2.3 Alternative Remedies. Except as otherwise provided herein, neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the either Party to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, bring a Legal Action for damages Commence an action at law for monetary damages or impose liquidated damages as set forth below or seek other equitable relief.

Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar the City from seeking appropriate judicial relief. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or any other remedy at law or in equity. The City specifically does not, by any provision of this Franchise, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

6.3 Right to Cure Breach.

6.3.1 Notice. If a Party believes that the other Party is in Non-Material Breach, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged non-material Breach. The Noticed Party shall have thirty (30) days, or such lesser or greater time as specified in the notice, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Breach has occurred, and request a meeting in accordance with Section 6.1; or

6.3.1.2 Cure the Breach; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the Breach within the time provided in the notice, because of the nature of the Breach. In the event the Breach cannot be

cured within time provided in the notice, the Noticed Party shall promptly take all reasonable steps to cure the Breach and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Communication. If the Noticed Party does not cure the alleged Non-Material Breach within the cure period stated above, or denies the alleged Non-Material Breach the Parties shall meet in accordance with Section 6.1 to attempt to resolve the Dispute.

6.3.3 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Breach, the nature and scope of the work required to cure the Breach, whether the Breach has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implement a cure will result in a violation of Law or breach of contract.

6.3.4 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Non-Material Breach to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Breach, then the Non-Material Breach shall become a Material Breach.

6.4 Material Breach. In the event of a Material Breach, no opportunity to cure shall be required. If the Material Breach has arisen as a result of a failure to cure a non-material Breach, and the Parties have previously mediated the Dispute pursuant to Section 6.1 herein, the Parties are not obligated to further utilize the Dispute resolution process set forth at Section 6.1 before taking Legal Action to remedy the Material Breach created as a result of the failure to cure.

6.5 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Franchise, upon a Material Breach, the City may revoke this Franchise or a Site Specific Permit and rescind all rights and privileges associated with this Franchise or Site Specific Permit in accordance with the following:

6.5.1 Notice. Prior to termination of the Franchise, the City shall give written notice to the Franchisee of its intent to revoke the Franchise or Site Specific Permit and request a meeting and commence dispute resolution pursuant to Section 6.1 of this Franchise. The notice shall set forth the exact nature of the Material Breach. If Franchisee objects to such termination, Franchisee shall object in writing and state its reasons for such objection and provide any explanation. If the Material Breach has arisen as a result of a failure to cure a non-material Breach, and the Parties have previously mediated the Dispute pursuant to Section 6.1 herein, the Parties are not obligated to utilize the Dispute resolution process before proceeding to a public hearing as provided as 6.5.2 herein.

6.5.2 Hearing. In the event the City is unable to resolve the Dispute as to the Material Breach to the satisfaction of the City pursuant to Section 6.1 herein, the City may then seek a termination/revocation of the Franchise or Site Specific Permit in accordance with this Subsection.

6.5.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Franchise or Site Specific Permit is warranted.

6.5.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing ~~Body/Officer~~examiner shall hear any Persons interested therein; and provide that the Franchisee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses.

6.5.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Franchise or Site Specific Permit. If the City Council has designated another hearing ~~body/officer~~examiner to conduct the public hearing, such hearing ~~body/officer~~examiner shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing ~~Body/Officer~~examiner after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing ~~Body/Officer~~examiner. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise or Site Specific Permit is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made.

6.5.3 Decision to Terminate. The City may consider the following when determining whether or not to terminate/revoke the Franchise or a Site Specific Permit based upon the Material Breach:

6.5.3.1 The history of non-compliance by Franchisee with material terms and conditions of this Franchise or a Site Specific Permit;

6.5.3.2 Whether other remedies will achieve compliance with this Franchise or Site Specific Permit;

6.5.3.3 Whether the Franchisee has acted in good faith;

6.5.3.4 Whether the acts or omissions that gave rise to the Material Breach were willful or indifferent to the requirements that gave rise to the Material Breach;

6.5.3.5 Whether the type of services provided by the Franchisee will be available to the general public through other providers;

6.5.3.6 Whether services provided by the Franchisee are essential public services or regulated utilities;

6.5.3.7 The impact or potential impact of the Material Breach upon the public health, safety and welfare;

6.5.3.8 The economic risk the City is exposed to as a result of the Material breach;

6.5.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering

the Franchisee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.5.3.10 Such other facts and circumstances that are relevant to the controversy that gave rise to the Material Breach and/or to whether or not the continued presence and operation of the Franchisee Facilities with the Franchise Area will be harmful to the public health, safety or welfare.

6.6 Assessment of Liquidated Damages.

6.6.1 Because it may be difficult to ascertain or quantify the harm to the City in the event of a Breach of this Franchise by Franchisee, the Parties agree to liquidated damages as a reasonable estimation of the actual economic losses resulting from a Breach of those provisions of this Franchise set forth at Section 6.6.7 herein. To the extent that the City elects to assess liquidated damages as provided in this Franchise, such damages shall be the City's sole and exclusive remedy for recovery of compensatory damages resulting from such Breach and shall not exceed a time period of one hundred eighty (180) days. Nothing in this subsection is intended to preclude the City from exercising any other right or remedy with respect to a Breach that continues past the time the City stops assessing liquidated damages for such breach.

6.6.2 Prior to assessing any liquidated damages, the City shall follow the procedures set forth in this Franchise that provide the Franchisee proper notice and a right to cure when applicable.

6.6.3 With the exception of failure to comply with a stop work order pursuant to Section 7.5.7 herein, the City shall not assess any liquidated damages if the Franchisee has cured or commenced to and completes the cure under the enforcement provisions of Article 6 of this Franchise. In the event Franchisee fails to cure, the City may assess liquidated damages and shall inform Franchisee in writing of the assessment. Franchisee shall have thirty (30) days to pay the damages. The City may immediately begin assessing liquidated damages upon issuance of a stop work order in the event that the Franchisee, or its contractors or subcontractors, fails to comply with such stop work order.

6.6.4 The first day for which liquidated damages may be assessed, if there has been no cure after the end of the applicable cure period, shall be the day that the Franchisee received the notice of Breach.

6.6.5 Franchisee may appeal (by pursuing Legal Action) any assessment of liquidated damages upon paying the assessment and shall not be required to comply with the requirements of Section 6.1.

6.6.6 The liquidated damages amount may be adjusted by the City every five years from the date of execution of this Franchise, to take into account cumulative inflation.

6.6.7 Pursuant to the requirements outlined herein, liquidated damages shall not exceed the following amounts: one hundred dollars ($100.00) per day for failure to comply with the requirements of the following Sections: 4.5 (Expiration/Termination), 5.3 (Insurance), 5.4 (Financial Security), 5.5 (Parental Guarantee); 7.5.3 (Work Subject to Inspection); 7.7.2 (Facilities Subject to Inspection); five hundred dollars ($500) per day for the first two days for failure to comply with the requirements of 7.5.7 (Stop Work Order), and one thousand dollars ($1,000) per day for each day thereafter; and one hundred dollars ($100.00) per day for any material breaches or defaults not previously listed.

6.6.8 It is not the City's intention to subject the Franchisee to liquidated or monetary damages, fines, forfeitures or termination of the Franchise for violations of the Franchise where the violation was a good faith error that resulted in no or minimal negative impact to the City, or where strict performance would result in practical difficulties and hardship to the Franchisee which outweighs the benefit to be derived by the City. The City may not collect both liquidated damages and actual damages for the same violation.

Franchisee shall not be: (1) obligated to pay these liquidated damages; or (2) held to violation if the noncompliance is "beyond the control" of Franchisee as that term is defined in Section 8.15 herein.

6.7 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.7.1 The receivership or trusteeship is timely vacated; or

6.7.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Franchise.

ARTICLE 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY

7.1 Regulatory Permit. If Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

7.1.2 Design Review.

7.1.3 Approval. Design Review shall not commence until such time as the above required information has been received by the City and the City has received complete 100% Design Documents for its review and approval.

The Regulatory Permit shall not be approved until such time as the City has completed its review and approval pursuant to this Section 7.1 and its design review and approval pursuant to Section 7.2 herein. The City will take action to approve, approve with conditions or deny the application with thirty (30) days of receipt of a complete application.

7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Franchisee seeks to alter or change the location the Facilities in a Franchise Area, Franchisee shall provide the City with 100% Design submittal for review and approval of any Utility System Construction, alteration or change of location within the Franchise Area.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to a the Franchise Area and may deny access if Franchisee is not willing to comply with such requirements; and, may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. Work May not commence without prior approval by the City of the 100% Design Submittal of submitted by the Franchisee. Such design review by the City is for the purpose of protecting the City's interest in the Public Rights-of-Way. The City may review and approve the Franchisee's 100% Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals, traffic control signs, intersections, or other facilities and structures in the Public Right-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards and codes; and

7.2.3.7 Compliance and compatibility with the City's six-year transportation plan, capital improvements plan, and with the regional transportation improvement plans.

7.2.4 The Public Works Director may further review the application and submittals, including 100% Design Submittal, to determine and ensure, (1) compatibility of the proposed use with the primary use of the Public Rights-of-Way for transportation, (2) that the proposed use will not present a danger to or interfere with public travel upon the Public Rights-of-Way, (3) that the Public Rights-of-Way are protected and preserved, (4) that there exists sufficient capacity within the Public Rights-of-Way to accommodate the proposed Facilities, (5) that the proposed Facilities will not impair present or planned future operation or construction of sanitary sewer, storm sewer, water, cable and telecommunication utility systems, (6) that the proposed Facilities will not impair present or planned future improvements within the Franchise Area or present or planned future transportation needs, and (7) compliance the requirements of the Standards/Codes set forth at Section 7.3.

The Public Works Director may include special conditions as are necessary for the protection, preservation and management of the Public Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any improvements, equipment and devices in such Public Rights-of-Way, and for providing for the proper restoration of such Public Rights-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic; provided that, the City is prohibited from imposing conditions for the purpose of regulating the business activities or operations of the Franchisee.

It is not the purpose of the design review to determine compliance with the City land use code or development regulations applicable to the development of land.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now or may be hereafter revised, updated, amended or re-adopted:

7.3.1 Road and Bridge Standards. The current and any subsequent edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA"); the most current version of the APWA Amendments to Division One, and the most current version of the City of ** Amendments thereto.

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

7.3.3 Special Conditions. Requirements and standards set forth as special conditions;

7.3.4 City Regulations. Regulations adopted by the City Engineer or Public Works Director establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way. This shall also include any road design standards that the City shall deem necessary to provide adequate protection to the Public Rights-of-Way, its safe operation, appearance and maintenance;

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Franchisee Facilities;

7.3.6 Industry Standards. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, materials and operation of Franchisee Facilities;

7.3.7 Safety Codes and Regulations. Franchisee Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Franchisee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Franchisee Facilities and Work shall comply with all applicable City building codes.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Franchisee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Prior to performing any Work in the Public Right-of-Way requiring a regulatory permit, Franchisee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Franchise. Franchisee shall be in material compliance with the Franchise, including by way of example and not limitation, payment of fees invoiced to Franchisee for City reimbursable costs and expenses related to review and approval of the Site Specific Permit, proof of insurance and proof of financial security.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-of-Way. Franchisee Facilities shall be designed, located, aligned and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, Franchisees, franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are Interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date. Franchisee's Facilities shall be designed, located, aligned and Constructed in such a manner as not to interfere with any planned utilities. For purposes of this Section, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the current and approved, capital investment program plan, capital facilities plan, comprehensive utility plan, transportation improvement plan, Comprehensive Plan, or other written construction or planning schedule approved by the City.

7.5.2 Prevent Injury/Safety. All Construction Work shall be performed in a manner consistent with high industry standards.

7.5.3 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with this Franchise, applicable Law, the applicable approved 100% Design Submittal, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Publicizing Work.

7.5.4.1 Notice to Private Property Owners. Except in the case of an Emergency, Franchisee shall give reasonable advance notice to private property owners and tenants of Construction Work on or adjacent to such private property if the City or Franchisee reasonably anticipates such Work will materially disturb or disrupt the use of such private property.

7.5.4.2 Notice to the Public. Except in the case of an Emergency, the Franchisee shall notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.4.3 Additional Requirements. Work shall be publicized as the City may direct, from time to time, in accordance with written procedures established by the City Manager and on file with the City Clerk. The publication of Work may be used to notify the public and operators of other Utility Systems of the impending work, in order to minimize inconvenience and disruption to the public. The cost of publication shall be borne by the Franchisee.

7.5.5 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Right-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other Persons performing work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them.

7.5.6 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Public Works Director of the need for such repairs. Franchisee may initiate such Emergency repairs, and shall apply for appropriate Utility Permits within forty-eight (48) hours after discovery of the Emergency. In the event of an Emergency, the Franchisee may perform Emergency Work in the Public Rights-of-Way without first securing a Regulatory Permit for such Emergency Work, provided that: (1) the Franchisee notifies the City in advance of the Emergency requiring the performance of such Emergency Work and the type and location of such Work; (2) the Franchisee applies for a Regulatory Permit on the first business day following commencement of such Work; and (3) the Franchisee, at its sole cost and expense, makes its Work performed in the Public Rights-of-Way available for inspection to determine compliance with Laws and Standards.

7.5.7 Stop Work. On notice from the City that any Work does not comply with the Franchise, the approved 100% Design Documents for the Work, the Standards, or other applicable Law, or is being performed an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be, in writing, given to the Person doing the work and be posted on the work site, indicate the nature of the alleged violation or unsafe condition; and Establish conditions under which work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes. The City has the right to inspect, repair and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee 38

7.5.8 Dedication of City Utilities/Public Improvements. Upon substantial completion of Construction of the Facilities and any related restoration of or improvements to or within the Public Rights-of-Way, including without limitation, curbs, gutters, sidewalks, underlayment, roadway surface, pipe, connectors, catch basins, or any part thereof that will be dedicated to City ownership (collectively "Dedicated Improvements"), and upon satisfaction of other applicable conditions of the City and this Franchise, Franchisee shall submit a written request to the City for a final inspection and acceptance of dedication of all Dedicated Improvements. The written request shall certify that the Work is substantially complete. The Work will be deemed to be "substantially complete" when:

7. 5.8.1 Complete record drawings are provided to the City;

7. 5.8.2 Franchisee has completely and accurately identified within the record drawings the Dedicated Improvements;

7. 5.8.3 The Dedicated Improvements are functioning to the satisfaction of the City, and when appropriate, operationally tested;

7. 5.8.4 Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Documents approved by the City; except for punch list items which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

7. 5.8.5 No other acts are necessary to assign ownership of any and all Dedicated Improvements to the City free and clear of all liens and encumbrances;

7. 5.8.6 Franchisee has assigned to the City any and all manufacturer warranties of the Dedicated Improvements, if any; and

7. 5.8.7 Franchisee, or its contractors or subcontractors, warrant the Dedicated Improvements to be free from defects in design, manufacture and construction for a period of one year from the date that such Dedicated Improvements are accepted by the City. This warranty shall not operate to waive, alter or diminish any rights the City may otherwise have under this Franchise, at law, or in equity.

Upon receipt of Franchisee's request for final inspection and dedication, the City shall within twenty (20) business days thereafter arrange for a final inspection. If the City determines that the Work with regard to the Dedicated Improvements is not substantially complete, it shall promptly provide Franchise with a written statement indicating in adequate detail in what respects Franchisee has failed to substantially complete the Work or any component thereof or is otherwise in default and what measures or acts will be necessary, in the opinion of the City, for Franchisee to take or perform in order to substantially complete such Work. Upon receipt of such detailed statement from the City, Franchisee shall undertake to complete the Work, cure the alleged default in a manner responsive to the stated reasons for disapproval, or Franchisee may submit to dispute resolution pursuant to Section 6.1 herein, the issue of whether the City has unreasonably withheld its acceptance.

When the City is satisfied that the Work related to the Dedicated Improvements is substantially complete, it will by ordinance, resolution or other lawful means accept ownership of such Dedicated Improvements and thereafter become responsible for maintenance, repair, and replacement of the same.

7.6 Alterations. Except as may be shown in the 100% Design Submittal approved by City or the record drawings, or as may be necessary to respond to an Emergency, Franchisee, and Franchisee's contractors and subcontractors, may not make any material alterations to the Franchise Area, or permanently affix anything to the Franchise Area, without City's prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities or the addition of or change in configuration of an antenna. If Franchisee desires to change either the location of any Facilities or otherwise materially deviate from the approved design of any of the Facilities, Franchisee shall submit such change to City in writing for its approval pursuant to

Section 7.2 of this Franchise. Franchisee shall have no right to commence any such alteration change until after Franchisee has received City's approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Franchisee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Utility System.

7.7.2 Compliance Inspection. Franchisee's Facilities shall be subject to the City's right of periodic inspection upon at least twenty-four (24) hours notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Franchise or other applicable Law over which the City has jurisdiction. Franchisee shall respond to requests for information regarding its Utility System as the City may from time to time issue to determine compliance with this Franchise, including requests for information regarding the Franchisee's plans for Construction and the purposes for which the Facility is being Constructed.

7.7.3 One Call. If Franchisee places Facilities underground, Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 48 hours after notice from the City, Franchisee shall remove any graffiti on any part of its Utility System, including, by way of example and not limitation, equipment cabinets. If Franchisee fails to do so, the City may remove the graffiti and bill the Franchisee for the cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. 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 fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the reasonable costs thereof.

7.7.6 No Duty. Notwithstanding the right of City to inspect the Work, issue a stop work order, and order or make repairs or alterations, City has no duty or obligation to observe or inspect, or to halt work on, the applicable Facilities, it being solely Franchisee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Franchise, the approved 100% Design Submittal, the Standards, and applicable Law. Neither the exercise nor the failure by City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Franchise.

7.7.7 Roadside Hazard. All of Franchisee's Facilities shall be kept by Franchisee at all times in a safe and hazard-free condition. Franchisee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, or in the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, the Franchisee shall:

7.7.7.1 If the hazard results from disrepair, repair the Facility to a safe condition;
7.7.7.2 Relocate the Facility to another place within the Public Right-of-Way or underground;
7.7.7.3 Convert the Facility to a break-away design;
7.7.7.4 Crash-protect the Facility;
7.7.7.5 Relocate the Facility to another location off the Public Rights-of-Way; or
7.7.7.6 In the event that the Facility is screened from view (i.e., not readily visible from all directions by persons standing at ground level), remove or trim vegetation in and around the Facility.

Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Franchisee's agents or employees. Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days notice by the City and in order to facilitate the location, alignment and design of Public Improvements, the Franchisee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the improvement design, PROVIDED that, Franchisee shall not be required to excavate and expose its Facilities unless the Franchisee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Franchise are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.8 Facility Relocation at Request of the City.

7. 8.1 Public Project. The City may require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned

communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity.

7.8.2 Alternatives. If the City requires Franchisee to relocate its facilities located within the Public Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location within the Public Right-of-Way. 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 if one or more of the alternatives are suitable to accommodate the work which would otherwise necessitate relocation of the Facilities. If so requested by the City, Franchisee shall submit additional 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, in its sole discretion, that there is no other reasonable alternative, the Franchisee shall relocate its Facilities as otherwise provided in this Section. In the event that the City reasonably determines that it does not have available resources to evaluate Franchisee's proposal, the City shall not be obligated to further consider such proposal unless and until the Franchisee funds the additional costs to the City to complete its evaluation.

7.8.4 Notice. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified, unless the city, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.5 Coordination of Work. Franchisee acknowledges and understands that any delay by Franchisee in performing the work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Rights-of-Way, and result in damage to the City, including but not limited to, damages from delay. Franchisee shall cooperate with the City and its contractors and subcontractors to coordinate such Franchisee Work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

7.8.6 Failure to Comply. Should Franchisee fail to alter, adjust, protect in place or relocate any Facilities ordered by the City to be altered, adjusted, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the reasonable cost of the work to the

Franchisee, including all reasonable costs and expenses incurred by the City due to Franchisee's delay. In such event, the City shall not be liable for any damage to any portion of Franchisee's Utility System. In addition to any other indemnity set forth in this Franchise, the Franchisee will indemnify, hold harmless, and pay the costs of defending the City, from and against any and all claims, suits, actions, damages, or liabilities for delays on Public Improvement construction projects caused by or arising out of the failure of the Franchisee to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, the Franchisee shall not be responsible for damages due to delays caused by the City. The City's right to perform such work is not intended to be and shall not be construed as an obligation.

7.8.7 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Sections 7.8 or 7.10 of this Franchise to require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way. Franchisee acknowledges and consents to such an assignment(s)/transfer(s) and agrees that it is bound by all lawful orders issued by such assignee(s) of the City under color of authority of such assignment(s)/transfer(s) as though such orders had been issued by the City under the terms and conditions of this Franchise. Such assignment/transfer is an assignment/transfer of the City's contract rights under this Franchise and shall not in any way be interpreted or construed as an assignment, transfer, delegation or relinquishment of the City's rights under its police powers to require Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Right-of-Way.

7.8.8 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized in statute.

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Utility System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Franchisee shall, after at least ninety (90) days advance written notice, take action to effect the necessary changes requested by the responsible entity; provided that, (a) the Party requesting the same pays for the Franchisee's time and material costs associated with the requested work; (b) the alteration, adjustment, relocation or protection in place is reasonably necessary to accommodate such work; (c) the Person requesting the alteration, adjustment, relocation, or protection in place considers alternatives in the same manner as provided at Section 7.8.2; and (d) such alteration, adjustment, or relocation is not requested for the purpose of obtaining a competitive advantage over the Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid Franchise and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to Franchise the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the Franchise holder. Franchisee shall be given not less than seven (7) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have

the right to require Franchisee to shut down, relocate, remove, replace, modify, or disconnect Franchisee's Facilities located in the Public Rights-of-Way at the expense of the Franchisee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Utility System located within the Public Rights-of-Way, as the City may determine to be necessary, appropriate or useful in response to any public health or safety Emergency and charge the Franchisee for costs incurred.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Franchisee of such Emergency at a designated Emergency response contact number, to allow Franchisee the opportunity to respond and rectify the problem without disrupting utility service. If after providing notice, there is no prompt response, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Utility System located within the Public Rights-of-Way.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations

7.11.1 Map/Record Drawing of Utility System. Upon request by the City, Franchisee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content prescribed by the City reflecting the horizontal and vertical location and configuration of its Utility System within the Public Rights-of-Way and upon City property in a format acceptable to the City. Franchisee shall provide the City with updated record drawings and maps upon request. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Utility System is shown, such Utility System is shown in its approximate location.

7.11.2 Planned Improvements. Upon written request of the City, Franchisee shall provide the City with the most recent update available of any planned improvements to its Utility System to the extent such plans do not contain confidential or proprietary information or such information can be redacted; provided, however, any such plan submitted shall be for informational purposes only and shall not obligate Franchisee to undertake any specific improvements, nor shall such plan be construed as a proposal to undertake any specific improvements.

7.11.3 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Franchisee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all of located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format specified by the City. As to any such record drawings and maps so provided, Franchisee does not warrant the accuracy thereof and to the extent the location of the Utility System is shown, such Utility System is shown in its approximate location.

7.12 Restoration of Public Rights-of-Way, Public and Private Property

7.12.1 Restoration after Construction. Franchisee shall, after completion of Construction of any part of its Utility System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City.

7.12.2 Notice. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to the Public Right-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the satisfaction of the City to as good or better a condition as existed before the Work was undertaken, unless otherwise directed by the City. If the City determines that complete or satisfactory restoration is not obtainable, the City shall have the right to require compensation for the less than complete or satisfactory condition of the Public Right-of-Way or public property. Franchisee shall complete the restoration work within forty-eight (48) hours or as authorized by the City's Public Works Director.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Franchisee shall temporarily restore the affected Public Right-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any 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.

7.12.6 Approval. The Public Works Director shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Right-of-Way or on other public property for one (1) year, unless a longer period is required by the Municipal Code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, the Franchisee shall pay the City.

7.12.8 Restoration of Private Property. When Franchisee does any Work in the Public Right-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the satisfaction of the private property owner.

7.13 Approvals. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Design Documents or to ascertain whether Franchisee's proposed or actual Construction is adequate or sufficient or in conformance with the 100% Design Submittal reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Franchise shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Franchise or meets any particular Standard, code or requirement, or is in conformance with the approved 100% Design Submittal, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Utility System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. City is under no obligation or duty to supervise the design, Construction, or operation of the Utility System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City, which notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. However, if the City determines within 90 days of the receipt of notice of abandonment from the Franchisee, that the safety, appearance, functioning, or use of the Public Rights-of-Way and other facilities in the Public Rights-of-Way, including without limitation, utilities and related facilities, will be adversely affected, the operator must remove its abandoned Public Rights-of-Way Facilities by a date specified by the City and restore the Public Rights-of-Way to the same or better condition than existed immediately prior to removal. Within 60 days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances. Absent such request and conveyance, Franchisee shall be and remain responsible for any Facilities abandoned in the Public Rights-of-Way.

ARTICLE 8 MISCELLANEOUS

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2. Entire Agreement. This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

8.3 Incorporation of Exhibits. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

8.4 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determine as provided at Section 4.3 of this Franchise.

8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a Breach of this Franchise.

8.6 No Joint Venture. It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other. The Parties intend that the rights, obligations, and covenants in this Franchise and the collateral instruments shall be exclusively enforceable by the City and Franchisee, their successors, and assigns. No term or provision of this Franchise is intended to be, or shall be, for the benefit of any Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, the Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. Nothing in this Section 8.6 shall be construed to prevent an assignment as provided for at Section 7.8.7 of this Franchise.

8.7 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the ** (or its successor), or by the **'s designee.

8.8 Binding Effect upon Successors and Assigns. All of the provisions, conditions, and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives and assigns of the Franchisee; and all privileges, as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

8.9 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Breach thereof, shall constitute a waiver of any such Breach or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed or performed by either Party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the injured Party. No waiver of any Breach shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Breach thereof. No waiver of any default of the defaulting Party hereunder shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of a subsequent breach of the same covenant, term or conditions.

8.10 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Franchise shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder; provided, however, that if either Franchisee or the City prevails in any proceeding seeking a finding that any Term invalid, illegal or unconstitutional for any reason, this Franchise shall be declared terminated and all rights and obligations hereunder shall immediately cease and be of no force and effect except with regard to those provisions that survive termination of this Franchise pursuant to Section 8.14 herein. In the event that such Term shall be held or otherwise mutually agreed to by the City and Franchisee to be illegal, invalid, or unconstitutional, the Parties shall reform the Franchise pursuant to Section 3.5 herein.

8.11 Signs. No signs or advertising shall be Permitted in the Franchise Area except as may be required by Law or as may be required by the City for the protection of the public health, safety and welfare, to the extent it has authority to do so.

8.12 Discriminatory Practices Prohibited. Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable Law.

8.13 Notice. Any notice required or Permitted to be given hereunder shall be in writing, unless otherwise expressly Permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) or when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below, or (ii) on the third business day following its deposit with the United States Postal Service, first class and certified or registered mail, return receipt requested, postage prepaid, properly sealed and addressed as follows:

Franchisee's address:

Ryan and Caroline Spott
Iron Goat Networks LLC
PO BOX 1232
Sultan, WA 98294

The City's Address:

City Clerk
City of Sultan
PO BOX 1199
Sultan, WA 98294

And to the City Attorney

Kenyon Disend

11 Front Street South
Issaquah, WA 98027-3820

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two addresses, except by mutual agreement.

8.14 Survival of Terms. Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Utility System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, the Franchisee transfers ownership of all Facilities in the Franchise Area to a third-Party, or the Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its facilities, and to reimburse the City for its costs to perform Franchisee work.

8.15 Force Majeure. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Franchisee's employees, Franchisee shall not be deemed in Breach of provisions of this Franchise.

If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as reasonably required by the City to substantiate the Franchisee's claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation which is satisfactory to the City; provided that, the Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

8.16 Attorneys' Fees. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those

related to issues unique to bankruptcy law. This provision shall not apply to dispute resolution proceedings under section 6.1 of this Franchise and shall not apply to the extent that the suit, action, arbitration or other proceeding is brought to interpret any term, condition, provision, section, article or clause of this Franchise.

8.17 Venue/Choice of Law. This Franchise shall be governed and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of City in which the City is located, and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western/Eastern District of Washington.

8.18 Publication. This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force in accordance with Section 4.3 herein.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE _____ DAY OF _____, 20_____, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS _____ DAY OF _____, 20____.

CITY OF SULTAN

_____
Carolyn Eslick, Mayor

ATTEST/AUTHENTICATED:

_____
Laura Koenig, City Clerk

Approved as to form:

_____
Margaret King, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No.
Date of Publication:

EXHIBIT "A"

(*Form of Transfer Agreement*)

THIS TRANSFER AGREEMENT ("Agreement") is made this ___ day of _____, 20___, by and between:

1. PARTIES.

1.1 City of Sultan, a legal subdivision of the state of Washington ("City").

1.2 _____ ("Franchisee").

1.3 _____ ("Transferee").

RECITALS

WHEREAS the City has issued a single Franchise (the "Franchise") to Franchisee, which was authorized on the ____ day of _____, 20_____, pursuant to Ordinance No. _____, and

WHEREAS Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)* _____ _____ _____ with Transferee, to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)* _____ _____, and

WHEREAS Franchisee and Transferee have requested that the City approve a transfer of the Franchise from Franchisee to Transferee, and

WHEREAS, as a result of the transfer of the Franchise, Transferee will assume all rights, duties, and obligations that Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, will meet or exceed all applicable and lawful federal, state, and local requirements, and

WHEREAS, relying on the representations made by the Transferee and Franchisee, the City, on the ___ day of _____, 20___, has, pursuant to Resolution No. _____ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

2. TRANSFER. Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed acceptance of franchise and performance guarantee attached hereto as Exhibit B-1 together with all required certificates of insurance, security fund and performance bond.

2.2 Payment to the City of the Transfer fees.

2.3 The date of closing of the sale/conveyance of the property benefited by this franchise and/or the Facilities located in the franchise area or upon a date as mutually agreed to by the City, Franchisee and Transferee as follows:_____ _____.

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

3.1 The Franchisee and Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between Franchisee and Transferee nor the City's approval of this agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and Transferee embodied in the Franchise.

3.2 Transferee and Franchisee agree that neither the transfer nor the City's approval of this Agreement and the resulting transfer shall in any respect relieve Franchisee, or any of its successors in interest, of any obligation or liability arising from acts or omissions occurring prior to the transfer of the franchise, whether known or unknown, or the consequences thereof.

3.3 The transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the transfer.

3.4 Notwithstanding anything to the contrary herein, Transferee shall not be responsible for any of Franchisee's financial liabilities and obligations under the franchise or pursuant to the City code, rules, and regulations that accrued before the transfer of the Franchise.

3.5 The City waives none of its rights with respect to the Franchisee's or Transferee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise. The City's approval of the this agreement shall in no way be deemed a representation by the City that Franchisee is in compliance with all of Franchisee's obligations under the franchise.

3.6 Franchisee and Transferee acknowledge and agree that the City's approval and acceptance of this agreement and the resulting transfer is made in reliance upon the representations, documents, and information provided by the Franchisee and Transferee in connection with the request for transfer.

4. MISCELLANEOUS PROVISIONS.

4.1 Conditions Precedent. The Agreement shall be effective and binding upon the signatories once it has been signed by all signatories; provided that, within 30 days of execution of the Agreement by all of the signatories, Transferee has provided to the City the following: (1) all fees required for this transfer, (2) its acceptance of the franchise in substantially the form of the document attached hereto as Exhibit B-1; (3) its insurance certificate in conformance with the requirements of the Franchise; (4) a performance bond or cash deposit in conformance with the requirements of the Franchise.

4.2 Entire Agreement. The Agreement constitutes the entire agreement of the Parties with respect to the matters addressed herein. No statements, promises, or inducements inconsistent with the Agreement made by any Party shall be valid or binding, unless in writing and executed by all Parties.

4.3 Binding Acceptance. The Agreement shall bind and benefit the Parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors, and assigns, and the promises and obligations herein shall survive the expiration date hereof. Any purported transfer of the Agreement is void without the express written consent of the signatories.

4.4 Severability. In the event that the Agreement shall, to any extent, be held to be invalid, preempted, or unenforceable, the remainder hereof shall be valid in all other respects and continue to be effective.

4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

(Signatures on the following page)

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

CITY

_____

By: Mayor

FRANCHISEE

_____

By: _____

Title: _____

TRANSFEREE

_____

By: _____

Title: _____

TRANSFER EXHIBIT A-1

Acceptance of Franchise and Performance Guarantee

Franchise issued pursuant to Ordinance No. _____ and accepted _____, 20____; Transfer authorized pursuant to Resolution No. _____, effective _____, 20___.

I, _____, am the _____, and (am the authorized representative to) accept the above-referenced Franchise on behalf of _____. I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20___.

_____
By_____
Its _____

Tax Payer ID# _____

STATE OF _____ | ss.
CITY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____day of _____, _____.

(Signature of Notary)_____

_____
Print Name

Notary public in and for the state of
_____, residing at _____

My appointment expires _____

EXHIBIT "B"

(*Acceptance of Franchise*)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the _____, and (am the authorized representative to) accept the above-referenced Franchise on behalf of _____. I certify that this Franchise and all terms and conditions thereof are accepted by _____, without qualification or reservation and that _____ unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20___.

_____
By_____
Its _____

Tax Payer ID# _____

STATE OF _____ | ss.
CITY OF _____

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____day of _____, _____.

_____
(Signature of Notary)

_____
Print Name

Notary public in and for the state of
_____, residing at _____

My appointment expires _____

EXHIBIT "C"

(*Environmental Indemnity*)

1. Duty to Indemnify/Release/Defend. Franchisee assumes the risk that Hazardous Substances or other adverse matters may affect the Franchise Area that were not revealed by Franchisee inspection and indemnifies, holds harmless and hereby waives, releases and discharges forever the City and City's officers, employees and agents (collectively, "**Indemnitees**") from any and all present or future claims or demands, and any and all damages, losses, injuries, liabilities, causes of actions (including, without limitation, causes of action in tort) costs and expenses (including, without limitation fines, penalties and judgments, and attorneys' fees) of any and every kind or character, known or unknown, which Franchisee might have asserted or alleged against Indemnitees arising from or in any way related to the Condition of the Franchise Area or alleged presence, use, storage, generation, manufacture, transport, release, leak, spill, disposal or other handling of any Hazardous Substances in, on or under the Franchise Area (the "**Franchisee Losses**"). Franchisee Losses shall include without limitation (a) the cost of any investigation, removal, or Remedial Action (defined below) that is required by any Environmental Law, that is required by judicial order or by order of or agreement with any governmental authority, or that is necessary or otherwise is reasonable under the circumstances, (b) losses for injury or death of any person, and (c) losses arising under any Environmental Law enacted after the date hereof. Except as may be limited below, Franchisee Losses specifically include losses sustained by Franchisee as a result of any obligation of Franchisee to remove, close, Remediate, reimburse or take other actions requested or required by any governmental agency concerning any Hazardous Substances on the Franchise Area. Notwithstanding the above, Franchisee Losses waived, released, and discharged hereunder by Franchisee shall not include losses as a result of releases or contamination caused by the acts of the City after the Effective Date. The rights, duties and obligations of the city and franchisee pursuant Sections 2 and 3 herein apply to the duty to Indemnify and defend as provided in this Section 1.

2 Discovery Within Franchise Area. In the event that the Work of the Franchisee in, on, and upon the Franchise Area results in the discovery of the presence of Hazardous Substances ("**Discovered Matters**") in, on or upon the areas excavated or otherwise opened or exposed by Franchisee within the Franchise Area (the "**Excavated Areas**"), the Franchisee shall immediately notify the City and take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas. In the event that, as a result of such discovery, an agency with jurisdiction to address Hazardous Substances in, on or upon the Franchise Area ("**Environmental Authority**") orders, obtains a judgment or court order requiring, or otherwise exercises its authority to require Remedial Actions to be taken by the City or Franchisee, or Franchisee decides to undertake Remedial Actions independently or enter into a consent order or consent decree with an Environmental Authority, then in such event, Franchisee agrees to indemnify, defend, and hold the City harmless from and against the cost of all Remedial Actions which are required by the Environmental Authority within the Excavated Areas under the applicable Environmental Laws with respect to the Discovered Matters; provided, however, the City, subject to the provisions of Section 3 below, shall be solely responsible for all necessary Remedial Actions which are required by the Environmental Authority within other portions of the Franchise Area (outside the Excavated Areas) under the applicable Environmental Laws with respect to the Discovered Matters.

3 Release by Franchisee. In the event the Franchisee's Work, in, on or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the

Excavated Areas, but which after such activities by Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Franchisee's share of the liability for the release. Franchisee's liability for the release may, inter alia, be determined by Franchisee's admission of the same, or as determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Franchisee and the Environmental Authority.

EXHIBIT "D"

(Insurance Requirements)

The Franchisee shall procure and maintain for the duration of the Contract, 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 Franchisee, its agents, representatives or employees.

A. Minimum Scope of Insurance. Franchisee shall obtain insurance of the types described below:

1. *Automobile Liability* insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

2. *Commercial General Liability* insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury, and liability assumed under an insured contract. The Commercial General Liability insurance shall be endorsed to provide the Aggregate Per Project Endorsement ISO form CG 25 03 11 85. There shall be no endorsement or modification of the Commercial Liability insurance for liability arising from explosion, collapse or underground property damage. The City shall be named as an insured under the Franchisee's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional endorsement CG 20 10 10 01 and CG 20 37 10 01 or substitute endorsements providing equivalent coverage.

3. *Workers' Compensation* coverage as required by the Industrial Insurance laws of the State of Washington.

B. Minimum Amounts of Insurance. Franchisee shall maintain the following insurance limits:

1. *Automobile Liability* insurance with a minimum combined single limit for bodily injury and property damage of $1,000,000 per accident.

2. *Commercial General Liability* insurance shall be written with limits no less than $1,000,000 each occurrence, $2,000,000 general aggregate and $2,000,000 products-completed operations aggregate limit.

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

1. The Franchisee's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Franchisee's insurance and shall not contribute with it.

2. The Franchisee's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

E. Verification of Coverage. Franchisee shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the Automobile Liability and Commercial General Liability insurance of the Franchisee before commencement of the work.

F. Subcontractors. Franchisee shall include all subcontractors as insureds under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the same insurance requirements as stated herein for the Franchisee.

EXHIBIT "E"

(*Financial Security*)

1 Performance Bond.

1.1 Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of **$25,000** to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.

1.2The performance bond shall be in a form with terms and conditions acceptable to the City and reviewed and approved by the City Attorney.

1.3 The performance bond shall be with a surety with a rating no less than "A X" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding Franchisee compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

2 Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

Franchisee may, at its election or upon order by the City pursuant to Section 4 herein, substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise and all applicable Laws. This includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.

The City shall notify Franchisee in writing, by certified mail, of any default and shall give Franchisee thirty (30) days from the date of such notice to cure any such default. In the event that the Franchisee fails to cure such default to the satisfaction of the City, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.

In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.

3 Restoration Bond.

3.1 Unless otherwise provided in a Regulatory Permit issued by the City for work within the Public Right-of-Way, or by City ordinance, code, rule, regulation or Standards, the City may require Franchisee to enter into a performance agreement, secured by a restoration bond written by a corporate surety acceptable to the City equal to at least _____ percent (____%) of the estimated cost of restoring the Public Rights-of-Way to their pre-construction condition in accordance with Section 7.12 of the Franchise. Such restoration bond shall be deposited before construction is commenced. Such restoration bond may be required, when the City determines that the Performance and Payment Bond or cash deposit/letter of credit is not sufficient to protect the interests of the City for Permitted Work.

3.2 Said restoration bond, or a separate bond acceptable to the City, shall warrant all such restoration work for a period of ____ (__) years.

3.3 In the event that a bond issued to meet the requirements of this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, Franchisee shall, prior to expiration of said bond, be responsible for obtaining a replacement bond which complies with the terms of this Section.

3.4 The performance agreement shall guarantee, to the satisfaction of the City:

3.4.1 Timely completion of construction;

3.4.2 Construction in compliance with applicable approved plans, Utility Permits, technical codes, and Standards;

3.4.3 Proper location of the Facilities as approved by the City;

3.4.4 Restoration of the Public Rights-of-Way and other public or private property disrupted, damaged, or otherwise affected by the construction. The performance agreement shall warrant said restoration work for a period of _____ (___) years;

3.4.5 The submission of "record" drawings after completion of the Work; and

3.4.6 Timely payment and satisfaction of all claims, demands or liens for labor, material or services provided in connection with the work.

4 Security Fund.

4.1 If there is an Material Breach by Franchisee or a pattern of repeated Breaches, then Franchisee shall, upon written request of the City, establish and provide to the City a cash deposit or irrevocable letter of credit from a local financial institution satisfactory to the City, in a form and content approved by the City Attorney, and in the amount of $_____ ($ _____). Such Irrevocable letter of credit shall be established as security for the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example but not limited to, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, and to reimburse the City for its costs,

4.2 If a cash deposit or letter of credit is furnished pursuant to Section 2, the cash deposit or letter of credit shall then be maintained at that same amount throughout the remaining term of this Franchise.

4.3 Upon a Material Breach, the cash deposit/letter of credit may be drawn upon by the City for purposes including, but not limited to, the following:

4.3.1 Failure of Franchisee to pay the City sums due under the terms of this Franchise;

4.3.2 Reimbursement of costs and expenses borne by the City to correct Franchise violations not corrected by Franchisee; and

4.3.3 Monetary remedies or damages assessed against Franchisee as provided in this Franchise.

4.4 Within three (3) days of a withdrawal from the Security Fund, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.

4.5 Within thirty (30) days following notice that a withdrawal from the cash deposit/letter of credit has occurred, Franchisee shall restore the cash deposit/letter of credit to the full amount required by Section 4.1. If at the time of a withdrawal from the Security Fund by the City, the amounts available are insufficient to provide the total payment towards which the withdrawal is directed, the balance of such payment shall continue as the obligation of the Franchisee to the City until it is paid.

4.6 Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Franchisee within sixty (60) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

4.7 Failure to maintain or restore the security fund or letter of credit shall constitute a Breach of this Agreement.

4.8 In the event Franchisee believes that the letter of credit was drawn upon improperly, Franchisee shall give notice to the City and the City and Franchisee shall refer the Dispute to the Dispute Resolution process set forth at Section 6.1 of this Franchise.

4.9 The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by applicable Law, and no action, proceeding, or exercise of a right with respect to such Security Fund or letter of credit will affect any other right the City may have. Neither the filing of a letter of credit with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

EXHIBIT F

(*Form of Parental Guarantee*)

This Guaranty is made on the date set forth below by [NAME OF GUARANTOR] (hereinafter referred to as the "GUARANTOR").

RECITALS:

WHEREAS, ** (*Guarantor*) and the City of **, (the "CITY") have entered into a Franchise Agreement (the "Franchise") dated _____, 20___.

WHEREAS, The Franchise requires GUARANTOR to guaranty the observance, fulfillment and performance of Franchisee's obligations under the Franchise.

NOW, THEREFORE, in partial consideration of the City's grant of the Franchise Agreement to Franchisee and in addition to other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the GUARANTOR hereby agrees to the following:

TERMS:

1. GUARANTOR guarantees to the CITY the observance, fulfillment and performance by Franchisee of each and every obligation of Franchisee in the Franchise, except to the extent that any such provision or obligation is unenforceable under applicable law (the "Guaranty").

2. The Guaranty shall continue in full force and effect until the City releases the Guarantor from its obligations under this Guarantee or otherwise by operation of law or contract. In no event shall the Guaranty extend beyond the original term of the Franchise Agreement.

3. This Guaranty shall be governed by and construed in accordance with the laws of the State of Washington.

4. If any provision of this Guaranty is determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction, then such determination shall have no effect on the validity of any other provision of this Guaranty.

IN WITNESS WHEREOF, the GUARANTOR has caused the Guaranty to be executed by its duly authorized representative on the date set forth below.

BY:

NAME:

TITLE:

DATE:

STATE OF _____

CITY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____day of _____, _____.

_____
(Signature of Notary)

_____
Print Name

Notary public in and for the state of
_____, residing at _____

My appointment expires _____