



**CITY OF EDGEWOOD
REGULAR COUNCIL MEETING AGENDA**

Tues., July 25, 2017 – 7:00 pm. ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Pledge of Allegiance, Roll Call, Additions/Deletions

2. AUDIENCE COMMENT

3. MAYOR'S REPORT

4. CONSENT AGENDA *(pg. 2): The consent agenda includes items that are routine in nature and are adopted by one motion. Should Council wish to discuss a consent agenda item, the item would be removed from the consent agenda and discussed under Council Business.*

The following items are presented for Council approval:

A. Regular City Council Meeting Minutes of July 11, 2017,

B. Study Session Meeting Minutes of July 18, 2017.

C. AB 17-031, a motion approving July 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems; Dept. of Labor & Industries; Employment Security Department and Payroll Direct Deposit in the amount of \$58,154.02; and Vendor Check Numbers 22839-22850 with EFT Payments in the amount of \$31,223.00. Total distributions submitted for review & authorization in the amount of \$89,377.02

5. COUNCIL BUSINESS

A. AB 17-0503 *(pg. 15)*, a motion to accept second reading and adoption of Ordinance No. 17-0503, granting a nonexclusive franchise to MCIMetro Access Transmission Services Corp. D/B/A/ Verizon Access Transmission Services, to construct and operate a private telecommunications system within certain public rights of way; providing for severability; and establishing an effective date

6. COUNCIL COMMENTS

7. EXECUTIVE SESSION

8. ADJOURN



**CITY OF EDGEWOOD
REGULAR COUNCIL MEETING SUMMARY**

Tues., July 11, 2017 – 7:00 p.m. ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Mayor Eidinger called the meeting to order at 7:00pm. Councilmember Lowry led the attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Mark Creley, Councilmember Luke Meyers, Deputy Mayor Tyron Christopherson, Councilmember Donna O’Ravez, Councilmember Rosanne Tomyn, Councilmember Nate Lowry. Excused: Councilmember Stephanie Shook.

Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Senior Engineer, Jeremy Metzler, Police Chief Micah Lundborg, Carol Morris, City Attorney.

Additions/Deletions to the Agenda

There were no additions or deletions to the agenda.

2. AUDIENCE COMMENT

Betty Savage – thanked the City for cleaning up the pond; requested that the trees around the fencing come down, and gravel put around the front of her house on the street; she also requested streetlights on 32nd.

Linda Howard – noted the importance of the development code that needed to be changed she comments on the construction of Edgewood Heights along Meridian- trees being cut down, from her property; she noted the development code and the work hours during the weekend needing to be updated and changed.

City Attorney Morris noted that any conditions that the Council wants to set could be done through the Hearing Examiner under his conditions of approval.

3. MAYOR’S REPORT

Mayor Eidinger spoke about the following:

- Installing of flag on the barn by Coots on Scoots;
- Site development has started on site North of City Hall;
- Water leak on 24th St. in front of Northwood;
- Painting project completed;
- Staff interviewing CDD position; with recommendation soon after.

ACA Nix updated Council on code work regarding construction standards, and other code modifications; he noted once the Community Development Director in place, which will help Mr. Nix be able to focus on the public works side of the city.

Chief Lundborg briefed on the following:

- Crime incidents;
- Pets and Pedestrians and Community Academy;
- National Night Out in August

- July 23 law change regarding distracted driving;
- New Officer, Jeff Laughner has started.

4. CONSENT AGENDA

The consent agenda includes items that are routine in nature and are adopted by one motion. Should Council wish to discuss a consent agenda item, the item would be removed from the consent agenda and discussed under Council Business.

The following items are presented for Council approval:

- A. Regular City Council Meeting Minutes of June 27, 2017,
- B. **AB17-030**, a motion approving July 2017 Budgeted Expenditures as follows: AWC Employee Benefit Trust; IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems and Payroll Direct Deposit in the amount of \$73,566.42; and Vendor Check Numbers 22813-22838 with EFT Payments in the amount of \$218,069.43. Total distributions submitted for review & authorization in the amount of \$291,635.85
- C. **AB17-0379**, a motion adopting Resolution No. 17-0379, authorizing the Mayor to execute an on-call contract for services with Akana

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Mark Creley, **Seconded by** Deputy Mayor Tyron Christopherson. **Motion passed unanimously (6-0).**

5. COUNCIL BUSINESS

- A. **AB17-0380**, a motion to adopt Resolution No. 17-0380, conditionally approving the application for a Planned Residential Development for Domus Homes (File No. 16-5633), for one (1) commercial lot and 55 townhomes located East of Meridian Ave. E. at 10413 11th Street E. in Edgewood, adopting Findings and Conclusions in support

Assistant City Administrator Nix briefed on the agenda item-noted the key issues that were addressed from the closed record hearing.

Motion: As Read, **Action:** Approve, **Moved by** Councilmember Donna O'Ravez, **Seconded by** Councilmember Mark Creley. **Motion passed (5-1, Meyers)**

- B. **AB17-0503**, a motion to accept the first reading of Ordinance No. 17-0503, granting a nonexclusive franchise to MCIMetro Access Transmission Services Corp. D/B/A/ Verizon Access Transmission Services, to construct and operate a private telecommunications system within certain public rights of way; providing for severability; and establishing an effective date

Assistant City Administrator Nix briefed on the agenda item.

Councilmember Meyers noted that in the future with these franchises, and with fiber and communications running through the city, he would like to see something added for additional benefit for the citizens and residents of the city.

Motion: Approve First Reading, **Action:** Approve, **Moved by** Deputy Mayor Tyron Christopherson, **Seconded by** Councilmember Luke Meyers. **Motion passed unanimously (6-0).**

6. COUNCIL COMMENTS

Deputy Mayor Christopherson stated with the fire, and tree down that took out the cable services throughout portions of Pierce County- his concern there is no provided back up service in the case of emergencies; he noted he is also concerned about not having construction standards – he noted he would like to be notified of when projects start.

City Attorney Morris wanted to note again, that any conditions that the Council wants to set could be done through the Hearing Examiner under his conditions of approval.

Councilmember Meyers stated he would like to see on the study session agenda the top 5-10 projects and their status.

7. EXECUTIVE SESSION

Mayor Eidinger asked City Attorney Carol Morris if there was an executive session.

City Attorney Morris stated there would be an Executive Session pursuant to RCW 42.30.110(1)(i), the City Council will now convene an executive session for the purpose of discussing potential litigation with legal counsel. The Executive Session will last approximately 15 minutes.

Mayor Eidinger recessed the meeting to Executive Session at 7:52pm for 15 minutes.

Mayor Eidinger extended the Executive Session at 8:07pm for 5 minutes.

Mayor Eidinger extended the Executive Session at 8:12pm for 5 minutes.

Mayor Eidinger called the meeting back to order at 8:17pm.

Mayor Eidinger asked for a motion to adopt Ordinance No. 15-0504, adopting an immediate, six-month moratorium on the acceptance of applications for Planned Residential Developments (PRD's) under EMC 18.50.095, for the purpose of allowing the city to evaluate the existing regulations for consistency with law and the city's Comprehensive Plan, such moratorium to be in effect while the city performs the necessary infrastructure analysis, legal review and follows the processes for any needed code amendments, and setting the date for the required public hearing, pursuant to RCW 36.70a.390.

Motion: , Action: Approve, Moved by Deputy Mayor Tyron Christopherson, Seconded by Councilmember Mark Creley. Motion passed unanimously (6-0).

Mayor Eidinger noted a public hearing is set for August 8, 2017 on this Ordinance.

8. ADJOURN

Mayor Eidinger adjourned the meeting at 8:17 pm.

Rachel Pitzel, City Clerk

Daryl Eidinger, Mayor



**CITY OF EDGEWOOD
COUNCIL STUDY SESSION SUMMARY**

Tues., July 18, 2017 – 7:00 PM ♦ City Hall – 2224 104th Avenue East ♦ Edgewood, WA

1. CALL TO ORDER

Mayor Eidinger called the meeting to order at 7:00pm and led attendees in the Pledge of Allegiance.

ROLL CALL

Present: Mayor Daryl Eidinger (Not voting), Councilmember Donna O'Ravez, Councilmember Mark Creley, Deputy Mayor Tyron Christopherson, Councilmember Stephanie Shook, Councilmember Rosanne Tomin, Councilmember Nate Lowry. **Excused:** Councilmember Luke Meyers.

Staff Present: Assistant City Administrator Dave Gray, Assistant City Administrator Aaron Nix, City Clerk Rachel Pitzel, Senior Engineer Jeremy Metzler, Police Chief Micah Lundborg.

2. COUNCIL BUSINESS

A. Review/Discussion - Conservation Futures Grant Opportunity Update

Senior Engineer/Stormwater Manager Metzler briefed Council on this agenda item and noted staff encourages Council to reach out the County Council with letters or memorandums of support as they consider the proposed ranking and funding prioritization.

B. Review/Discussion - Comp. Plan and Code Amendments

Assistant City Administrator Nix briefed Council on this agenda item, and noted this is something that has been in the works for a time. With the recommendation of legal counsel, the updates of the regulations are needed as shown on the Draft Ordinance regarding legislative actions of the Comprehensive Plan and the Land Use Map Amendments as well as Development Regulation updates. The code updates clarify, and simplify the process for undertaking these actions.

C. Review/Discussion - Noise Pollution Ordinance

Assistant City Administrator Aaron Nix briefed Council on this agenda item and noted he wanted to bring this forward to give Council a chance to look at it in advance, it will have some changes from the Attorney after her review. He stated when it came to the decibel levels, it was an “out of the box” thought when dealing with noise. Discussion took place regarding classes and allowances.

D. Discussion (no material) - School Zone Cameras

Chief Lundborg discussed he needed direction and noted what he has been hearing from citizens and their wants. He noted that with the school zone cameras there is a possibility of getting some much needed revenue but an ordinance would need to be generated that stipulates what the money could be used for. He discussed this being a great opportunity that would not impact the city. He also discussed staff and the city's needs and what he has learned and seen in the last 6 months of being on board, he noted what hard working staff the City has and how they need help, and any revenue source that the city can get, should be looked at to benefit the City and its needs. Mayor Eidinger noted that from what he gathered from the discussion, that Council would be okay with this moving forward.

E. Discussion (no material) - Budget Retreat Dates

Assistant City Administrator Gray noted it is time to look at the calendar and select a date for the Budget Retreat. He noted that there is not a significant change in the budget with no new sources of income, so

technically an all-day meeting is not necessary unless Council wishes to discuss other revenue sources. Council selected Saturday, September 16 from 11:30am – 4:00pm for the retreat.

- F. Discussion (no material)** - Council Highlight article for Fall edition of Edgewood Magazine
City Clerk Pitzel noted that Council would see this item has been added to the Future Agendas List (FAL) in order to allow Councilmembers to discuss who will be writing the next article in the Edgewood Magazine as well as discuss what topic. It was determined that Councilmember Shook would like to write the fall editions article and focus on children and public safety. Discussion also took place regarding which Councilmembers would like to do the next few Connect over Coffee dates- volunteers were selected; discussion pursued regarding a location change to Starbucks. City Clerk Pitzel also noted, that when available, the next few Council movie dates and titles are needed for the fall edition of the magazine as well.

3. OTHER COUNCIL ISSUES

None.

4. ADJOURN

Mayor Eidinger adjourned the meeting at 8:26pm.

Rachel Pitzel, City Clerk

Daryl Eidinger, Mayor



**CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-031**

Date Action Requested: July 25, 2017

Title: AB 17-0xx, a motion approving July 2017 Budgeted Expenditures as follows: IRS 941 ACHs; Deferred Compensations Program; Dept. of Retirement Systems; Dept. of Labor & Industries; Employment Security Department and Payroll Direct Deposit in the amount of \$58,154.02; and Vendor Check Numbers 22839-22850 with EFT Payments in the amount of \$31,223.00. Total distributions submitted for review & authorization in the amount of \$89,377.02

Attachments: Payment Distribution Review & Authorization, Voucher Directory

Submitted By: Dave Gray, Assistant City Administrator, Finance

Approved For Agenda By: Mayor Daryl Eiding

Prepared For Agenda By: Rachel Pitzel, City Clerk

Recommendation: Move to Approve AB17-031

Discussion: Approval of Claims and Payroll Expenditures

Alternatives: 1) Do not approve. 2) Refer to Council Study Session for Further Review.

Fiscal Impact: An increase in the sum of \$89,377.02 to authorized Budgeted Expenditures.

City of Edgewood 2017

July 25th 2017 Council Meeting Check & EFT Payment Distribution Review & Authorization

Number	Name	Print Date	Amount
US Bank PAYROLL ACCOUNT DISTRIBUTION			
10606 Last Number Issued Previous Authorization			
<u>Q2 2017 L&I EFT</u>	Dept of Labor & Industry	6/30/2017	\$3,833.53
<u>UI Q2 2017 EFT</u>	Employment Security Department	6/30/2017	\$3,566.50
<u>DCP EFT 7/14/17</u>	Deferred Compensation Program	7/14/2017	\$4,526.87
<u>Direct Deposit Run -</u>	Payroll Vendor	7/14/2017	\$33,740.45
<u>DRS EFT 7/14/17</u>	Dept of Retirement Systems	7/14/2017	\$7,067.51
<u>IRS 941 EFT 7/14/17</u>	IRS 941	7/14/2017	\$5,419.16
Total			\$58,154.02

Number	Name	Print Date	Amount
CLAIM VOUCHER ACCOUNT DISTRIBUTION			
22838 Last Number Issued Previous Authorization			
<u>22839</u>	City of Sumner	7/25/2017	\$1,247.00
<u>22840</u>	East Pierce Fire & Rescue	7/25/2017	\$6,241.30
<u>22841</u>	ESRI	7/25/2017	\$879.20
<u>22842</u>	Lakehaven Water & Sewer District	7/25/2017	\$64.46
<u>22843</u>	Landau Associates	7/25/2017	\$846.50
<u>22844</u>	McCarthy & Causseaux	7/25/2017	\$976.07
<u>22845</u>	Morris Law PC	7/25/2017	\$7,383.00
<u>22846</u>	Northwest Landscape Services	7/25/2017	\$826.74
<u>22847</u>	Office Depot	7/25/2017	\$436.58
<u>22848</u>	Smarsh, Inc.	7/25/2017	\$199.65
<u>22849</u>	Transpo Group	7/25/2017	\$4,996.25
<u>22850</u>	WA State Treasurer	7/25/2017	\$288.00
<u>EFT Payment 7/14/2017</u>	Puget Sound Energy	7/25/2017	\$3,765.26
<u>EFT Payment 7/14/2017</u>	Shell	7/25/2017	\$520.13
<u>EFT Payment 7/14/2017</u>	US Bank Corporate Payment System	7/25/2017	\$2,068.76
<u>EFT Payment 7/14/2017</u>	Wells Fargo Financial Leasing	7/25/2017	\$85.93
<u>EFT Payment 7/14/2017</u>	Wells Fargo Vendor Fin Serv	7/25/2017	\$368.17
<u>USBank EFT 7/7/17</u>	US Bank ACH/EFT	7/25/2017	\$30.00
Grand Total			\$31,223.00

Total Claims Voucher Distribution	\$31,223.00
Total Distribution Submitted for Review & Authorization	\$89,377.02

Authorization Adjustments:

Total Distribution Net of Prior Authorized Adjustments **\$89,377.02**

Claims Voucher Approval: I, the undersigned, do hereby certify under penalty of perjury that the materials have been furnished, the services rendered or the labor performed

Mayor, Daryl Eiding

Council Member



Voucher Directory

Vendor	Number	Reference	Account Number	Description	Amount
City of Sumner	22839			2017 - July - 2nd Council Meeting	
		063017-COS			
			2nd Qtr 2017 Animal License Fees		
			650-000-000-586-10-00-05	Animal Licenses	\$1,247.00
				2nd Qtr 2017 License Fees	
		Total 063017-COS			\$1,247.00
Total 22839					\$1,247.00
Total City of Sumner					\$1,247.00
East Pierce Fire & Rescue	22840			2017 - July - 2nd Council Meeting	
		063017-EPF			
			2nd Qtr 2017 Fire Plan Review Fees		
			650-000-000-586-10-00-06	Fire Plan Review	\$6,241.30
				2nd Qtr 2017 Fire Plan Review Fees	
		Total 063017-EPF			\$6,241.30
Total 22840					\$6,241.30
Total East Pierce Fire & Rescue					\$6,241.30
ESRI	22841			2017 - July - 2nd Council Meeting	
		93311752			
			10/1/17-9/30/18 ArcGIS Maintenance		
			001-018-000-518-85-48-03	Computer Maintenance-Permitting SW	\$879.20
		Total 93311752			\$879.20
Total 22841					\$879.20
Total ESRI					\$879.20
Lakehaven Water & Sewer District	22842			2017 - July - 2nd Council Meeting	
		3574701 4/3-6/6/17			
			4/3/17-6/6/17 Services		
			001-018-000-518-30-47-04	Sewer Charges	\$64.46
				City Hall	
		Total 3574701 4/3-6/6/17			\$64.46
Total 22842					\$64.46
Total Lakehaven Water & Sewer District					\$64.46

Vendor	Number	Reference	Account Number	Description	Amount
Landau Associates					
	22843			2017 - July - 2nd Council Meeting	
		0039506			
			June Svcs-Prj 0495098.010		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$846.50
				Reimer Residence	
		Total 0039506			\$846.50
	Total 22843				\$846.50
Total Landau Associates					
McCarthy & Causseaux					
	22844			2017 - July - 2nd Council Meeting	
		188			
			June Services		
			001-015-000-515-32-41-14	Hearing Examiner Legal Fees	\$976.07
				Volente	
		Total 188			\$976.07
	Total 22844				\$976.07
Total McCarthy & Causseaux					
Morris Law PC					
	22845			2017 - July - 2nd Council Meeting	
		070517-MOR			
			June Services		
			001-015-000-515-32-41-01	Legal Services	\$7,383.00
		Total 070517-MOR			\$7,383.00
	Total 22845				\$7,383.00
Total Morris Law PC					
Northwest Landscape Services					
	22846			2017 - July - 2nd Council Meeting	
		RC000027625			
			July Maintenance		
			101-000-000-542-70-48-04	Road Maint ROW Veg Maint Contractor	\$826.74
		Total RC000027625			\$826.74
	Total 22846				\$826.74
Total Northwest Landscape Services					
Office Depot					
	22847			2017 - July - 2nd Council Meeting	
		938617651001			
			June Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$141.80
				Pens, Tape, Sharpies	
		Total 938617651001			\$141.80

Vendor	Number	Reference	Account Number	Description	Amount
		940895563001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$120.51
				Laser Address Labels	
		Total 940895563001			\$120.51
		940895583001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$21.52
				Key Tags	
		Total 940895583001			\$21.52
		941501323001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$65.93
				Accordion File Folders	
		Total 941501323001			\$65.93
		941501375001			
			July Purchases		
			001-018-000-518-20-31-01	Office & Operational Supplies	\$86.82
				Copy Paper	
		Total 941501375001			\$86.82
	Total 22847				\$436.58
Total Office Depot					\$436.58
Puget Sound Energy					
		EFT Payment 7/14/2017 4:31:58 PM - 1		2017 - July - 2nd Council Meeting	
		300000011233 June 2017			
			June 2017 Statement		
			001-018-000-518-20-47-01	Electricity	\$3,765.26
		Total 300000011233 June 2017			\$3,765.26
		Total EFT Payment 7/14/2017 4:31:58 PM - 1			\$3,765.26
Total Puget Sound Energy					\$3,765.26
Shell					
		EFT Payment 7/14/2017 4:31:58 PM - 2		2017 - July - 2nd Council Meeting	
		8000093974707			
			June Statement		
			001-018-000-518-30-32-01	Fuel	\$520.13
		Total 8000093974707			\$520.13
		Total EFT Payment 7/14/2017 4:31:58 PM - 2			\$520.13
Total Shell					\$520.13

Vendor	Number	Reference	Account Number	Description	Amount
Smarsh, Inc.					
	22848			2017 - July - 2nd Council Meeting	
		INV00244588			
			June Services		
			001-014-000-518-80-49-03	Computer Subscriptions	\$199.65
		Total INV00244588			\$199.65
	Total 22848				\$199.65
Total Smarsh, Inc.					\$199.65
Transpo Group					
	22849			2017 - July - 2nd Council Meeting	
		20540			
			June Svcs-Prj 0.13312.00		
			340-000-000-595-10-41-02	CIP Transportation Engineering	\$4,996.25
				24th St/122nd Ave Traffic Control Analysis	
		Total 20540			\$4,996.25
	Total 22849				\$4,996.25
Total Transpo Group					\$4,996.25
US Bank ACH/EFT					
	USBANK EFT 7/7/17			2017 - July - 2nd Council Meeting	
		070717-USBank			
			June Safekeeping Fees		
			001-014-000-514-20-42-05	Bank & Bond Fees	\$30.00
		Total 070717-USBank			\$30.00
	Total USBANK EFT 7/7/17				\$30.00
Total US Bank ACH/EFT					\$30.00
US Bank Corporate Payment System					
	EFT Payment 7/14/2017 4:31:58 PM - 3			2017 - July - 2nd Council Meeting	
		062617-USBank			
			June 2017 Statement		
			001-013-000-513-10-43-02	Lodging Charges	\$330.44
				D.Eidinger-Hilton-Hotel-AWC Conference	
			001-014-000-514-20-31-05	Meeting Meals Expense	\$327.66
				J.Herrera-Taco Del Mar-Kevin Stender Luncheon	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$17.44
				J.Herrera-Amazon-TP	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$47.47
				D.Eidinger-Lowes-Misc Supplies	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$5.34
				J.Herrera-Safeway-Gift Card Activation-K.Stender	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$31.99
				J.Herrera-Fred Meyer-Mayors Bday Cake	
			001-018-000-518-20-31-01	Office & Operational Supplies	\$38.88
				J.Herrera-Amazon-Binders	

Vendor	Number	Reference	Account Number	Description	Amount
			001-018-000-518-20-31-01	Office & Operational Supplies	\$99.54
			A.Nix-DS Services-City Hall Water Delivery		
			001-058-000-558-50-31-01	Office & Operational Supplies	\$82.48
			J.Herrera-Amazon-Yellow Door Hangers-Bldg Dept		
			001-058-000-558-50-43-01	Training/Travel Costs	\$17.14
			B.Centen-Whistle Stop-Training-Lunch		
			001-058-000-558-50-49-01	Memberships	\$15.00
			D.Mundy-IAPMO Membership		
			001-058-000-558-60-41-01	Reim.Engineering - Prof. Serv	\$23.75
			A.Nix-USPS-Postage Pass Thru Exp-North Edgewood Apt		
			001-076-000-576-80-31-01	Operational Supplies	\$87.91
			H.Bowers-Lowes-Headset		
			001-076-000-576-80-31-01	Operational Supplies	\$26.99
			A.Nix-Autozone-Vehicle Maint Supplies		
			001-076-000-576-80-32-01	Fuel	\$99.58
			D.Eidinger-Star Ice & Fuel-Mower Propane		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	\$109.00
			J.Herrera-Amazon-Headphones-Howard		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	\$19.14
			D.Eidinger-Lowes-Parks Supplies		
			001-076-000-576-80-35-01	Small Tools/Minor Equipment	\$17.58
			D.Eidinger-Lowes-Locks for Parks		
			101-000-000-542-30-31-01	Operational Supplies	\$139.99
			R.Pederson-Experimac-Cell Phone Repair		
			101-000-000-542-30-31-01	Operational Supplies	\$39.92
			A.Nix-Amazon-Cell Phone Supplies		
			410-000-000-531-38-35-05	Equipment - Surface Water	\$351.13
			J.Metzler-Amazon-Weather Station		
			410-000-000-531-38-43-01	Training/Travel Costs	\$20.00
			J.Metzler-AWC-Seminar		
			410-000-000-531-38-43-02	Professional Licenses & Certification	\$116.00
			J.Metzler-DOL-PE License Renewal		
			650-000-000-586-10-00-09	Suspense	\$4.39
			J.Herrera-Error-Pers Exp-repaid rec #3583		
			Total 062617-USBank		\$2,068.76
			Total EFT Payment 7/14/2017 4:31:58 PM - 3		\$2,068.76
			Total US Bank Corporate Payment System		\$2,068.76
			WA State Treasurer		
			22850		
			2017 - July - 2nd Council Meeting		
			Q2 2017-WA State Treasurer		
			2nd Qtr 2017 Building Code Fees		
			650-000-000-586-10-00-04	State Bldg Code Fee	\$288.00

Vendor	Number	Reference	Account Number	Description	Amount
				Q2 2017 Fees	
		Total Q2 2017-WA State Treasurer			\$288.00
	Total 22850				\$288.00
Total WA State Treasurer					\$288.00
Wells Fargo Financial Leasing					
	EFT Payment 7/14/2017 4:31:58 PM - 4		2017 - July - 2nd Council Meeting		
	5004084358				
		8/4/17-9/3/17 Lease			
		001-018-000-518-30-45-06	Copier Lease		\$85.93
			Lexmark Printers		
	Total 5004084358				\$85.93
	Total EFT Payment 7/14/2017 4:31:58 PM - 4				\$85.93
Total Wells Fargo Financial Leasing					\$85.93
Wells Fargo Vendor Fin Serv					
	EFT Payment 7/14/2017 4:31:58 PM - 5		2017 - July - 2nd Council Meeting		
	67162260				
		August Lease			
		001-018-000-518-30-45-06	Copier Lease		\$368.17
			Kyocera Copier		
	Total 67162260				\$368.17
	Total EFT Payment 7/14/2017 4:31:58 PM - 5				\$368.17
Total Wells Fargo Vendor Fin Serv					\$368.17
Grand Total		Vendor Count	18		\$31,223.00



CITY OF EDGEWOOD
REQUEST FOR COUNCIL ACTION
Agenda Bill No.: 17-0503

Date: July 25, 2017

Title: Verizon Franchise Agreement (MCI Metro)

Attachments: Franchise Agreement with Verizon Ordinance No. 17-0503

Submitted By: Aaron C. Nix, ACA Municipal Services – Acting Public Works Director

Approved For Agenda By: Daryl Eiding, Mayor

Prepared For Agenda By: Aaron C. Nix, ACA Municipal Services – PW/Interim CD Director

Recommendation: Move to adopt Ordinance No. 17-0503, granting a non-exclusive franchise to MCIMetro Access Transmission Services Corp., DBA, Verizon Access Transmission Services, to construct and operate a private telecommunications system within certain public rights of way; providing for severability; and establishing an effective date.

Discussion: Staff and the City Attorney have been working with Verizon (i.e. MCI Metro) in establishing a Franchise Agreement with this working arm of the telecommunications company in order to allow them the ability to work within the City's right of way, as dictated by Edgewood Municipal Code. MCI Metro provides transmissions infrastructure for Verizon as it pertains to telecommunications for Verizon. Based on previous discussion with the City Council, the franchise term has been extended to 10 years, as requested by Verizon. Additional details have been worked out by Staff and the service provider and we are ready to move forward with the adoption of the attached Ordinance for the Council's consideration.

Alternatives: 1) Do not adopt. 2) Forward to Study Session for further review

Fiscal Impact: N/A

TELECOMMUNICATIONS FRANCHISE AGREEMENT

ORDINANCE NO. 17-0503

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF EDGEWOOD, WASHINGTON, GRANTING A NONEXCLUSIVE FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A/ VERIZON ACCESS TRANSMISSION SERVICES, TO CONSTRUCT AND OPERATE A PRIVATE TELECOMMUNICATIONS SYSTEM WITHIN CERTAIN PUBLIC RIGHTS OF WAY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Public Rights-of-Way within the 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, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services has made application to the City of Edgewood for a telecommunications franchise to construct, install, maintain, repair and operate a Private Telecommunications System to provide telecommunications (data transport services) using specified portions of the Public Rights-of-Way; and

WHEREAS, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services represents that it is a telecommunications company and that all or a portion of its services may be subject to Title 80 RCW and that it may provide competitive telecommunications services within the meaning of Title 80 RCW; and

WHEREAS, based on representations and information provided by MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services 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, is consistent with the public interest; and

WHEREAS, the City is authorized by applicable law to grant such nonexclusive franchise within the boundaries of the City;

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

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 relevant sections of the Edgewood Municipal Code. Words not defined herein or in the Edgewood Municipal Code, shall have the meaning given pursuant to such state and federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee now existing or hereafter amended, including without limitation the definitions and word usages set forth in the Communications Act (as hereafter defined). 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 Franchisee.

“Mayor” means and refers to the City of Edgewood Mayor or his or her designee.

“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 Edgewood, a municipal corporation organized as a non-charter code city, operating under the laws of the state of Washington.

“Communications Act” shall mean the Communications Act of 1934, 47 U.S.C. 151, et seq., as amended by the Cable Communications Policy Act of 1984, the Cable Consumer Protection and Competition Act of 1992, the Telecommunications Act of 1996, and as it may be amended from time to time.

“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.

“Design Document(s)” shall mean the plans and specifications, in electronic form and in a file format requested by the City, 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, design specifications or standards, 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, in electronic form and in a file format requested by the City, 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 in EMC 18.20.070(D).

"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, the Model Toxics Control Act, and any similar or comparable state or local law.

"Facility" 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 non-exclusive grant, once accepted, giving general permission to the Franchisee to enter into and upon the Public Rights-of-Way, as authorized pursuant to a Regulatory Permit, 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 MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services and any of its Affiliates.

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

“Franchise Area” shall mean collectively or individually the Public Rights-of-Way located within the specific project area described in and pursuant to this Franchise, as depicted and described in Exhibit A.

"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” 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, dependent upon the context.

“Telecommunications System” means a telecommunications system controlled by a person or entity for the sole and exclusive use of such person, entity, or affiliate thereof, including the provision of private shared telecommunications services by such person or entity. “Telecommunications System” does not include “cable services” as that term is defined in 47 U.S.C. § 522(6).

“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, but 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.

“Record Drawings” shall mean the “**As Built**” plans and specifications, in electronic form and in a file format requested by the City, showing the construction of the facilities illustrating and describing the refinement of the design of the Utility System Facilities as Constructed, establishing the final scope, relationship, forms, size and appearance of the Facilities by means of plans, design specifications or standards, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. In addition, the As Built Documents shall include plans that identify other utilities, major material and systems, Public Right-of-Way improvements and restoration and repair locations.

“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 Right-of-Way permit, construction permit, building permit, street utility cut permit, and clearing and grading permit.

“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 it’s 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.

“Telecommunications” shall have the same meaning as given under Section 3 of the Communications Act, 47 U.S.C. §153(43).

“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 (the “Transferee”). 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.

“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.

“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 Facilities in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Franchise Area and authorized pursuant to a Regulatory Permit.

2.2 Authorized Services. The grant given herein expressly authorizes Franchisee to use the Public Rights-of-Way to construct, install, maintain, repair and operate a Telecommunications System to provide Telecommunications, which may include one or more of the following services: competitive telephone and data services, internet access, private line services, front-haul and back-haul for wireless communications (but not including provisions of personal wireless services). Franchisee may provide competitive telephone service and/or network telephone service as such terms are defined in RCW 82.16.010 and act as a service provider as such term is defined in RCW 35.99.010(6). Franchisee may lease or provide an indefeasible right of use for all or part of its Telecommunications System, provided that Franchisee retains ownership of all of its Telecommunications System. 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, as permitted under applicable law for use of the Public Rights-of-Way, should Franchisee provide Service other than Service specifically authorized herein.

2.3 No rights shall pass to Franchisee by Implication. No rights shall pass to 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 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 utility 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, including Regulatory Permits, or other authorizations that may be required under the zoning and 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.

Franchisee 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.

2.5 Condition of Franchise Area. Franchisee represents that it has inspected or will inspect the Franchise Area, and enters upon such Franchise Area with knowledge of its physical condition and the danger inherent in operations conducted in, on or near the 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 representations or warranties, expressed 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 neither 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. The City hereby disclaims any representations or warranty, whether expressed or implied, as to the design or condition of the franchise area, its merchantability or fitness for any particular purpose, the quality of the materials or workmanship of the Public Right-of-Way, or the conformity of any part of the Public Right-of-Way to its intended uses. The 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 are, 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. Further, this Franchise shall in no way prevent or prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the city may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways.

2.7 Transfer. Franchisee may Transfer this Franchise after receipt from the City’s Transferee of Exhibit A, or a form substantially similar to Exhibit A-1, agreeing 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 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 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 all obligations under this Franchise, including but not limited to 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. In the event of a vacation, the City, where practicable, will reserve an easement for Franchisee's continued use of the portion of the area vacated where its Facilities are located.

2.9 Reservation of City Use of Public Right-of-Way. Nothing in this Franchise shall prevent the City from constructing sanitary or storm 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, Franchisee shall comply fully 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, and shall fully indemnify, protect, defend and hold harmless the City, its officials, officers and employees from and against any and all claims, losses, suits, penalties, costs and causes of action arising from any failure by Franchisee to so comply.

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 expressly 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.

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, which the City hereby expressly reserves in full.

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 Franchisee. Nothing in this

Franchise 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. Nothing in this Franchise shall abrogate the City's right to perform any public works or public improvements of any description.

3.5 Subsequent Action. 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 except as expressly provided by applicable Laws.

3.7 Order of Precedence.

3.7.1 In the event of a conflict between a provision, term, condition, or requirement of the Edgewood Municipal Code or City ordinances 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 ordinances 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 ordinances 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 ordinances shall control, to the extent of the conflict, subject to Sections 3.3 and 3.4 of this Franchise.

3.8 WSDOT Requirements. To the extent that some Public Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) requirements in addition to local ordinances and other regulations, the provisions of this subsection 3.8 shall apply, and Franchisee agrees that:

(a) Any pavement trenching and restoration performed by or on behalf of Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;

(b) Any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and

(c) Without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within sixty (60) 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 the Exhibits hereto, 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 sixtieth (60th) day falls on a Saturday, Sunday or legal holiday during which the City is closed for business, the filing date shall fall on the first business day following 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 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 (one month) 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 ten (10) 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 ten (10) year term upon the same terms and conditions as provided herein.

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

4.4.1 Accepts and agrees to comply with and abide by all of the 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 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, and after consulting with counsel;

4.4.5 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 was not induced to accept this Franchise; and, that this Franchise represents the entire agreement between Franchisee and the City.

4.4.6 Warrants that Franchisee has full right and authority to enter into and accept this Franchise 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.

4.4.7 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, at Franchisee's sole expense: (1) remove its structures or property from the Public Rights-of-Ways and restore the Public Right-of-Way to such condition as the City may reasonably require; (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 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 from Franchisee.

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 fully protect, release, indemnify, defend, and hold harmless the City and 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, reasonable attorney's 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 utility;

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 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

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 negligence or intentional misconduct of an indemnitee or the 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, 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.

This covenant of indemnification shall specifically include, without limitation, claims for delay, damages, costs and/or time asserted by any contractor performing public work for or on behalf of the City to the extent such matters are caused by or result from the acts or omissions of Franchisee under this Franchise.

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 to assume liability for and/or save and hold harmless any Indemnitee. City's failure to notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. 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. 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 Compliance with all Applicable Laws. Each party agrees to comply with all applicable present and future federal, state, and local laws, ordinances, rules, and regulations. This Franchise is subject to ordinances of general applicability enacted pursuant to the City's police powers. The City reserves the right at any time to amend this Franchise to conform to any enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation, when such statute, regulation, or ordinance necessitates this Franchise be amended in order to remain in compliance with applicable laws, but only upon providing Franchisee with thirty (30) days' written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or

ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations regarding the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

5.3 Insurance Requirements. See Attached Exhibit “D”.

5.4 Financial Security. See Attached Exhibit “E”.

5.5 Contractors/Subcontractors. Franchisee’s contractors and subcontractors performing Work in the Public Rights-of-Way shall comply fully 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, Franchisee’s contractors and subcontractors shall comply with the requirements set forth in attached Exhibit “G”.

5.6 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 thirty (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 ten (10) 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.

5.7 Financial Conditions.

5.7.1 Franchise Fees. 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.

5.7.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Franchisee shall, to the extent allowable by law, fully reimburse the City for the City’s reasonable Direct Costs (including attorney’s fees) relating to the issuance, renewal, amendment (if requested by or for the benefit of the Franchisee) and administration of this Franchise.

5.7.3 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 or an Administrative Permit. Therefore, Franchisee shall fully reimburse to the City, its reasonable 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.

5.7.4 Reimbursement of Direct Costs of altering Public Rights-of-Way. Franchisee shall fully reimburse the City for the reasonable 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 Franchisee, 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.

5.7.5 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.

5.7.6 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 reasonable Direct Costs to the City of performing such work.

5.7.7 Costs to be Borne by Franchisee. Franchisee shall fully 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.

5.7.8 Taxes and Fees. Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any lawful 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 or imposed on Franchisee. Any lawful fees, charges and/or fines provided for in the Edgewood 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.

5.7.9 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 City for each project for which the City claims reimbursement.

5.7.10 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.

5.7.11 Overdue Payments. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at the rate set forth in RCW 19.52.020, which as of the Effective Date is twelve (12%) percent per annum from the date that such payment is due.

5.7.12 Contesting charges. Franchisee may contest all or parts of amounts owed within thirty (30) days of receipt of any invoice. 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 owing 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 Franchisee of its obligation to pay amounts due under the resubmitted invoice.

5.7.13 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.

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 may, at the mutual discretion of the Parties, be referred to mediation. 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 thereupon mutually agree 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 (7) 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. Nothing herein shall be construed as requiring mediation as a prerequisite to litigation or other method of Dispute Resolution.

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.

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 or Breach 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 or Breach 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 or Breach 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 or Breach and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

6.2.4 Damages. Except as otherwise provided or limited herein, (i) seek equitable relief, and/or (ii) commence an action at law for monetary damages or impose liquidated damages as set forth below. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party 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 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 and rescind all rights and privileges associated with this Franchise 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 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 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 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 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. If the City Council has designated another hearing body/officer to conduct the public hearing, such hearing body/officer 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 after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Franchise 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 based upon the Material Breach:

6.5.3.1 The history of non-compliance by Franchisee with material terms and conditions of this Franchise;

6.5.3.2 Whether other remedies will achieve compliance with this Franchise;

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

6.5.3.6 The economic risk the City is exposed to as a result of the Material Breach;

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

6.5.3.8 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 Franchisee's Facilities within 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 Franchisee's Breach of those provisions of this Franchise set forth as Section 6.6.7 herein, and not as a penalty. 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 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 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 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 provisions of Section 6.1.

6.6.6 The liquidated damages amount shall be automatically adjusted every five years from the date of execution of this Franchise, to reflect the extent of 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 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 Permits.

7.1.1 Regulatory Permit and Administrative Permit. If Franchisee has submitted an application for a Regulatory Permit, Utility Right-of-Way Permit, or Administrative Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable and consistent with applicable Laws, consider such application contemporaneously with the design review requirements hereunder.

7.1.2 Development Permit(s). In the event that, as a condition of applying for a Development Permit or a variance for Work within the Public Right of Way, Franchisee must have authorization from the City (as the owner/manager of the property to be developed) to apply for such Development Permit, the general franchise grant given herein shall, as to the proposed Franchise Area, constitute any such consent or authorization of the City that is necessary for such application. This authorization is not intended to and does not operate to waive the requirement for Franchisee to apply for and obtain all applicable Regulatory Permits or Administrative Permits prior to commencement of Work within the Franchise Area nor shall such consent or authorization be deemed to be consent to or approval of the governmental action being sought. This authorization/consent is intended solely to allow Franchisee to

seek any required Development Permit(s), approvals, or variance prior to or contemporaneous with its application for a Regulatory Permit or Administrative Permit.

7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit or Administrative 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 proposed 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 proposed 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 submitted by Franchisee. 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 including temporary erosion control measures and stormwater compliance; and

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

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”);

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. City of Edgewood Municipal Code, Ordinances and regulations adopted by the City Council authorize a designated City official to establish 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, type of 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 Edgewood Municipal Code, ordinance or rule. Franchisee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits and Administrative Permits.

7.4.2 Compliance with Franchise. Franchisee shall be and remain 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 Regulatory 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's 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, 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 Capital Improvement Program/Plan, a comprehensive utility plan, a transportation improvement plan, the City's Comprehensive Plan, or other written construction or planning schedule.

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 the Utility Franchise, 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, 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 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 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 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 Tree Trimming. Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 7.5.6 shall only apply to the extent necessary to protect above ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after the explicit prior written notification of the City and at the expense of Franchisee. Nothing herein grants Franchisee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency situation, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, unless otherwise approved by the Public Works Director or his/her designee.

7.5.7 Emergency Permits. In the event that Emergency repairs are necessary, Franchisee shall immediately notify the Mayor 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, a Franchisee may perform Emergency Work in the Public Rights-of-Way without first securing a Regulatory Permit for such Emergency Work, provided that: (1) 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) Franchisee applies for a Regulatory Permit on the first business day following commencement of such Work; and (3) 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.

7.5.8 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 in 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.

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 Franchisee 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 Regulatory Permit 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 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. 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 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 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 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 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, 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, 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 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 necessary in the City's sole discretion 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. 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 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 Franchisee full and fair consideration, subject to RCW 35.99.060, 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 promptly relocate its Facilities as otherwise provided in this Section at Franchisee's sole expense. 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 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 thirty (30) days, or such longer period as mutually agreed to

by the parties. 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 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, delay claims. 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 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, 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 Franchisee to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Franchisee shall not be responsible for damages due to delays caused solely by the City.

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 RCW 35.99.060.

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 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 Franchisee.

7.9.2 Temporary Changes for Other Franchisees. At the request of any Person holding a valid permit and upon reasonable advance notice, Franchisee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit 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 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 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 immediate 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 an industry-standard, generally available 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 and in accordance with all Regulatory Permit conditions.

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, Franchisee shall promptly notify the property owner and adjacent property owners 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 Mayor.

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 Mayor 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 Franchisee, the City may, after prior notice to 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 Franchisee. Within thirty (30) days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, 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 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, 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.

7.15 Aerial and Underground Construction. If all of the distribution lines of all of the wireline service providers, including without limitation telecommunications service providers, as defined in RCW 35.99.010, a utility service provider or a cable operator (collectively “Service Providers”) in any portion of the Franchise Area are underground, with the exception of power company lines, Franchisee shall similarly place its Facilities underground within that area; provided that such underground locations are actually capable of accommodating Franchisee’s Facilities without unreasonable technical degradation of transmission quality. In any portion(s) of the Franchise Area where the distribution lines of any of the respective Service Providers are both aerial and underground, Franchisee shall have the discretion to construct, operate, and maintain its Facilities, or any part thereof, aerially or underground to the extent consistent with applicable regulations and this Franchise. In areas where a Service Provider’s wiring is aerial, Franchisee may install aerial Facilities, except when a property owner or resident requests underground installation and agrees to bear the additional cost in excess of aerial installation. If funds exist, are set aside for such purpose, or provided by a third party, Franchisee may seek reimbursement for its share of funds to offset the cost of placing its facilities underground. Franchisee shall utilize existing conduit wherever possible.

The City shall not be required to obtain any easements or other property rights for Franchisee. Franchisee shall, to the extent economically feasible, participate with other Service Providers in joint trench projects to relocate its overhead Facilities underground and remove its overhead Facilities in areas where utilities are being converted to underground.

In the event of a City-driven facilities relocation project that requires conversion of overhead facilities to underground for purposes of health, safety or public welfare and provided such requirement is equally applicable to all entities with overhead facilities at such location(s), Franchisee agrees to bear the costs of converting Franchisee's Facilities from an overhead system to an underground system as follows:

A. Utility Trench and Vault/Pedestal Engineering: To ensure proper space and availability in the supplied joint trench, Franchisee shall only pay for the work hours necessary to complete Facility-related engineering coordination with the other utilities involved in the project.

B. Conduit and Vaults/Pedestals Placement: Franchisee shall only pay for the direct cost of labor and materials it takes to place its conduits and vaults/pedestals in the supplied joint trench and/or solo trench as follows:

1. If a City contractor is completing this task, Franchisee shall pay the direct costs in accordance with Franchisee's approved labor and materials exhibits at the time of the project.

2. If the direct costs of Franchisee's approved labor and materials exhibits are not agreeable to the City or its contractor, Franchisee shall have the option to hire its own contractor(s) to complete the work in accordance with Franchisee's approved labor and materials exhibits at the time of the project.

3. If Franchisee chooses to hire its own contractor(s), the City and its contractor(s) are responsible to coordinate with Franchisee's contractor(s) to provide reasonable notice and time to complete the placement of Franchisee's Facilities in the supplied joint trench.

C. Within the conversion area, Franchisee shall not be responsible for any on-site coordination and performance of traffic control, trenching, backfill, and restoration, unless it is work related to solo trench.

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 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 determined 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, 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 Mayor or duly authorized 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 Franchisee; and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever 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, or 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 to be posted or otherwise displayed by Franchisee within the Franchise Area except as may be allowed 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: **MCImetro Access Transmission Services Corp.**
 d/b/a Verizon Access Transmission Services
 Attn: Franchise Manager
 600 Hidden Ridge
 Mailcode: HQE02G295
 Irving, TX 75038

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

The City's Address: **City of Edgewood Washington**
 Attn: Mayor
 2224 104th Avenue
 Edgewood, Washington 98372-1513

And to: **Carol Morris, City Attorney**
 Morris Law, P.C.
 3304 Rosedale St. N.W.
 Gig Harbor, WA 98335

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, Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, 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 Franchisee's Utility System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, unless 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 or availability of materials 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 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, 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 Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with Franchise without unduly endangering the health, safety, and integrity of 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 Pierce County Superior Court. Removal to federal court shall be to the Federal Court of the Western 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.

8.19 Preemption. In the event that federal or state law preempts a provision or limits the enforceability of a provision of this Franchise, the provision shall be read to be preempted to the extent required by law. In the event such federal or State law is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee.

8.20 Regulatory Authority Reserved. Nothing herein shall be construed as a waiver, abridgment or limitation of the City's regulatory authority and police power, which the City hereby expressly reserves in full.

Presented to Council for First Reading on July 11, 2017
Presented to Council for Second Reading on July 25, 2017
ADOPTED BY THE CITY COUNCIL ON JULY 25, 2017

Mayor

ATTEST/AUTHENTICATED:

Rachel Pitzel, City Clerk

APPROVED AS TO FORM:

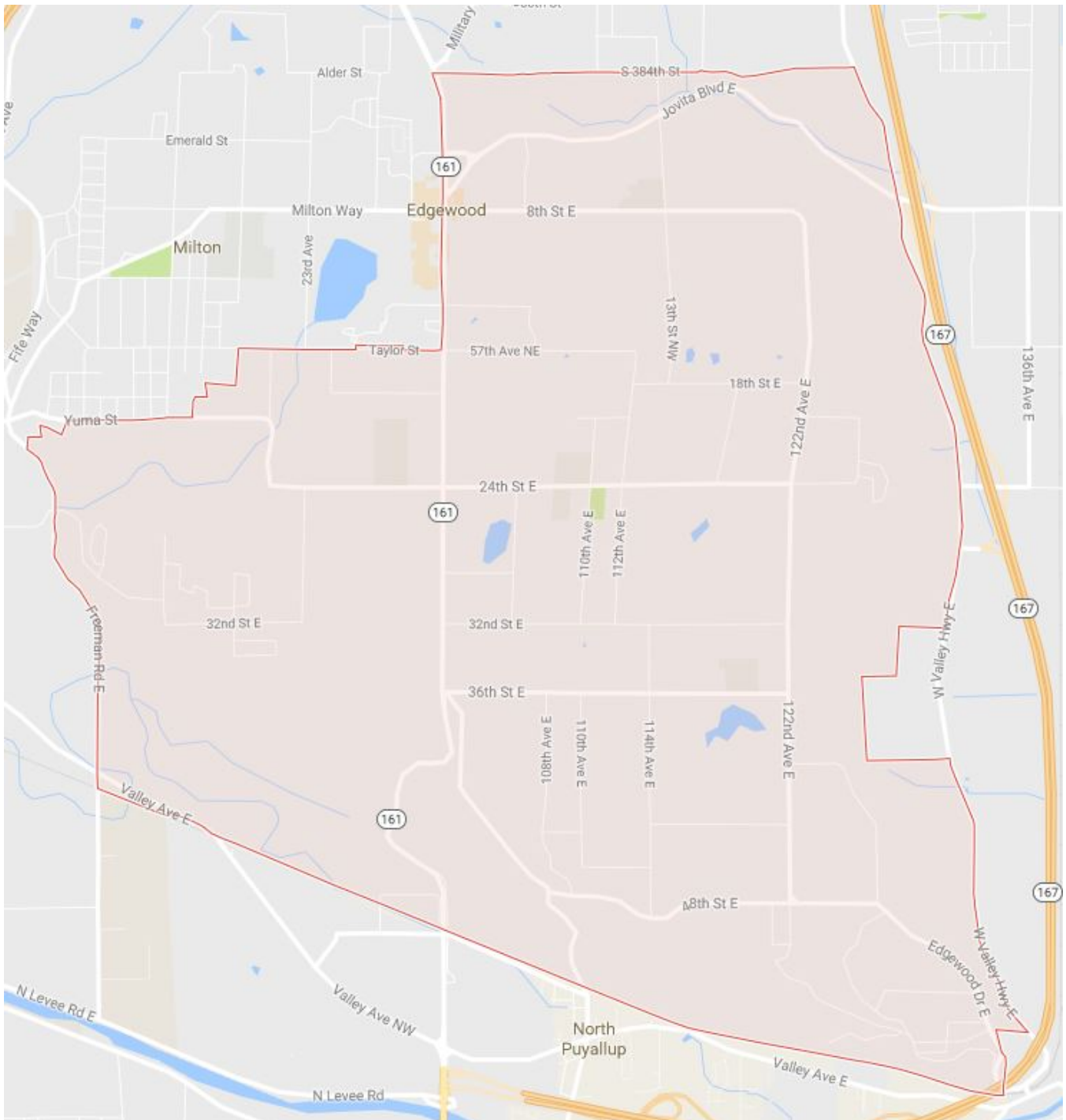
Carol Morris, City Attorney

Date of Publication: **July 27, 2017**
Effective Date: **August 1, 2017**

CITY OF EDGEWOOD

Exhibit A-1

(Franchise Area)



TRANSFER EXHIBIT A

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 guarantees performance of all such terms and
conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID#

STATE OF TEXAS

CITY OF IRVING

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 _____

EXHIBIT "B"

(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No.17-0503.

I, Robert McGee, am the Executive Director-Ntwk Eng&Ops, and (am the authorized representative to) accept the above-referenced Franchise on behalf of MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services. I certify that this Franchise and all terms and conditions thereof are accepted by MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services, without qualification or reservation and that MCI metro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services unconditionally guarantees performance of all such terms and conditions.

DATED this ____ day of _____, 20__.

By Robert McGee
Its Executive Director-Ntwk Eng&Ops

Tax Payer ID# 52-2102063

STATE OF TEXAS

ss.

CITY OF IRVING

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 “D”

(Insurance Requirements)

1 General Requirement. Commencing upon issuance of the first Site Specific Permit under this Franchise, Franchisee must have adequate insurance at all times while Franchisee owns or operates Facilities in the Public Rights-of-Way, to protect the City against claims for death or injuries to Persons or damages to property or equipment which in any way relate to, arise from or are connected with this Franchise or Site Specific Permit, or involve the Facilities, Franchisee, its agents, representatives, contractors, subcontractors and their employees. In addition, Franchisee’s contractors/subcontractors shall carry comparable insurance as set forth below when such contractors/subcontractors are doing work on behalf of Franchisee in the Public Rights-of-Way.

2 Minimum Insurance Limits. The Franchisee shall maintain the following minimum insurance coverages and limits:

2.1 Commercial General Liability: insurance to cover liability, bodily injury, and property damage. The Commercial General Liability insurance shall be written on an occurrence basis, with an aggregate and shall provide coverage for losses and damages resulting from bodily injury (including death), property damage, products liability and completed operations. Such insurance shall include broad form and blanket contractual coverage. Coverage must be written with the following limits of liability:

\$2,000,000 per occurrence,
\$4,000,000 general aggregate and
\$1,000,000 products/completed operations aggregate.

2.2 Commercial Automobile Liability: covering all owned, hired, and non-owned vehicles with a combined single limit of \$3,000,000 for bodily injury and property damage.

2.3 Workers Compensation Insurance: in compliance with the statutory requirements of the state of operation and Employer’s liability with a limit of \$1,000,000 each accident/disease/policy limit shall be maintained during the life of this Franchise to comply with statutory limits for all employees, and in the case any work is sublet, the Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the employees.

2.4 Excess or Umbrella Liability: \$1,000,000 each occurrence and aggregate

2.5 Pollution Legal Liability Insurance: (At the option of the City) \$5,000,000 per occurrence and \$50,000,000 in the aggregate.

3 Endorsements. Franchisee Commercial General Liability insurance policies shall contain, the following:

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

3.2 Franchisee shall waive its rights of subrogation against the City for all claims and suits.

3.3 That the coverage shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

3.4 The Franchisee's insurance excluding workers compensation and employer's liability shall include the City as an additional insured as their interest may appear under this Agreement, from and against Liabilities arising out of work performed in the Public Rights-of-Way under a grant of authority of the City.

3.5 The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted.

3.6 Upon receipt of notice from its insurer(s) Licensee shall provide the City with thirty (30) days prior written notice of cancellation. It is hereby understood and agreed that this policy may not be canceled nor the intention not to renew be stated until ninety (90) days after receipt by the City, by registered mail, of a written notice addressed to the Mayor of such intent to cancel or not to renew.

3.7 If the insurance is canceled or reduced in coverage, Franchisee shall provide a replacement policy.

4 Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "VII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending upon the changed risks or availability of other suitable and reliable rating guides.

5 Verification of Coverage. The Franchisee shall furnish the City with signed certificates of insurance and a blanket additional insured endorsement, evidencing the Automobile Liability, Commercial General Liability and Umbrella or Excess insurance of the Franchisee upon acceptance of this Franchise. The certificate for each insurance policy is to be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificate for each insurance policy must be on standard forms or on such forms as are consistent with standard industry practices. The Franchisee hereby warrants that its insurance policies satisfy the requirements of this Franchise.

6 Deductible. Commercial General Liability Insurance policies and coverage required herein may include a reasonable deductible not to exceed 10% of the minimum per occurrence commercial general liability policy limits; provided, however, that if Franchisee elects to include any deductible, Franchisee shall itself directly cover, in lieu of insurance, any and all City Liabilities that

would otherwise in accordance with the provisions of this Franchise be covered by Franchisee insurance if Franchisee elected not to include a deductible. Such direct coverage by Franchisee shall be in an amount equal to the amount of Franchisee's actual deductible.

7 No Limitation. Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee or limit the liability of Franchisee to the coverage provided in the insurance policies, or otherwise limit the City's recourse to any other remedy available at law or in equity.

8 Modifications of Coverages and Limits. The City reserves the right, during the term of the Franchise, to require any other insurance coverage or adjust the policy limits as it deems reasonably necessary utilizing sound risk management practices and principals based upon the loss exposures. Prior to imposing such additional coverage or adjusting existing required coverages or limits, 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.

EXHIBIT “E”

(Financial Security)

1. Performance Bond.

1.1 In connection with individual projects, the City may require performance bonds to ensure that the Franchisee constructs certain improvements in connection with individual projects, that such improvements are constructed in full compliance with City standards, and that the project conforms to the submitted plans and specifications. The performance bond shall remain in effect until the obligations secured have been fully performed. These bonds shall expire according to the terms and conditions set forth in the bond document.

1.2 The 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 restoration 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.

1.5 Franchisee'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 restoration 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 restoration 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 one hundred percent (100%) 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 restoration Bond or cash deposit/letter of credit is not sufficient to protect the interests of the City for Permitted Work.

3.2 The restoration bond shall remain in force until 60 days after substantial completion of the work, as determined by the city engineer or designee, including restoration of all rights-of-way and other property affected by the construction.

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.

4. Performance Agreement. The performance agreement secured by the bond or cash deposit/letter of credit described in Section 1 and 2, and as secured by the restoration bond described in Section 3 of this Exhibit E, shall guarantee, to the satisfaction of the City:

4.1 Timely completion of construction;

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

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

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 one (1) year;

4.5 The submission of “record” drawings after completion of the Work; and;

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