

ORDINANCE NO. 01-2019

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON GRANTING A NON-EXCLUSIVE FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS SYSTEM IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF COVINGTON, WASHINGTON, FOR A TEN YEAR TERM.

WHEREAS, MCImetro Access Transmission Services Corp. d/b/a/ Verizon Access Transmission Services (“Franchisee”), is a telecommunications company that provides voice and data services to customers; and

WHEREAS, Franchisee’s desired route through the City of Covington (the “City”), requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a telecommunications system; and

WHEREAS, the City Council has determined that the use of portions of the City’s rights-of-way for installation of telecommunications systems benefits local businesses and the region as a result of such services; and

WHEREAS, a franchise for use of public rights-of-way allows for the construction of amenities necessary to serve the future needs of the citizens of Covington, and the coordination, planning, and management of the City’s rights-of-way is necessary to ensure that the burden of costs relating to use of the public rights-of-way are fairly allocated; and

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way and RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchise agreements; and

WHEREAS, the City determines to exercise its authority, consistent with state and federal law, to grant a nonexclusive franchise to Franchisee in accordance with the provisions of the Franchise;

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

Section 1 Franchise Granted.

Section 1.1 The City hereby grants to Franchisee, subject to the conditions prescribed in this Ordinance, the franchise rights and authority (the “Franchise”) to construct, install, replace,

repair, monitor, maintain, use, and operate the equipment and facilities necessary for a telecommunications system in, under, on, across, over, and through the City-owned rights-of-way throughout the rights-of-way of the City (the "Franchise Area"). The scope of this grant extends only to the telecommunications facilities owned by Franchisee in the Franchise Area to provide telephone service (as such term is defined in RCW 82.16.010), internet access, private line, cell network front- and backhaul and leasing of its Facilities to third parties (the "Authorized Activities"). Facilities include all wire, lines, cables, conduit, equipment, switches, and supporting structures located in the City's right-of-way and utilized by Franchisee in the operation of Authorized Activities by this Ordinance (the "Facilities"). Equipment enclosures with air conditioning or other noise generating equipment are excluded from "Facilities," to the extent such equipment is located in zoned residential areas of the City. For the purposes of this Franchise the term Facilities also excludes "microcell" facilities, "minor facilities," "small cell facilities," all as defined by RCW 80.36.375, and "macrocell" facilities, including towers and new base stations and other similar facilities (except for fiber optic cables) used for the provision of "personal wireless services" as defined by RCW 80.36.375 (collectively "Personal Wireless Services").

Section 1.2 This Franchise grant is subject to all applicable laws and ordinances of the City of Covington and the State of Washington in existence at the time of this franchise grant or hereafter enacted or amended. In the event that Franchisee intends to provide services other than the Authorized Activities, Franchisee shall be required to obtain an additional or amended franchise from the City to the extent required by the City and law.

Section 1.3 This Franchise shall be for ten (10) years, beginning on the effective date of this Ordinance, set forth in Section 40.

Section 1.4 "Rights-of-Way" or "Right-of-Way" means land acquired or dedicated for public roads and streets, but does not include: (a) State highways; (b) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (c) structures, including poles and conduits, located within the right-of-way; (d) federally granted trust lands or forest board trust lands; (e) lands owned or managed by the state parks and

recreation commission; or (f) federally granted railroad rights-of-way acquired under 43 U.S.C. Sec. 912 and related provisions of federal law that are not open for motor vehicle use.

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

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the Franchise Area. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to the Franchisee other than for the purpose of providing telecommunications services. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any City, public or privately owned utility poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of the City to Franchisee other than for the purpose of providing the Authorized Activities, nor to subordinate the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Authorized Activities provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service; provided, however, that Franchisee may not offer Cable Services as defined in 47 U.S.C. § 522(6) or Personal Wireless Services, without obtaining a new franchise or an amendment to this Franchise approved by the City Council.

Section 2.2 Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive ownership over its telecommunications system, Facilities and control over its Authorized Activities and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Authorized Activities for any purpose not authorized by this Franchise, unless such rights are otherwise granted by the City to the customer or lessee.

Section 2.3 The City's Community Development Director is hereby granted the authority to administer and enforce the terms and provisions of this Franchise and may develop such lawful and reasonable rules, policies, and procedures as he/she deems necessary to carry out the provisions contained herein. Any time the term "Community Development Director" is used herein it shall include his/her designee.

Section 3 Non-Exclusive Franchise Grant. This Franchise is non-exclusive and is granted upon the express condition that it shall not in any manner prevent the City from granting other or further Franchises in, along, over, through, under, below, or across any said Rights-of-Way. Such Franchise shall in no way prevent or prohibit the City from using any of said roads, streets, or other public properties or affect the City's jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, vacation, dedication of same as the City may deem fit and consistent with applicable law, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4 Location of Telecommunications Network Facilities.

Section 4.1 Franchisee is maintaining a telecommunications network, consisting of Facilities within the City. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with the City's generally applicable Design and Construction Standards and subject to the City's applicable permit requirements. The City reserves the right, consistent with applicable law, to prescribe the location of Franchisee's Facilities within the Franchise Area and the time and manner of Franchisee's activities through the permitting process. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Authorized Activities beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system (“State Highways”), and for which the City issues permits, and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (“WSDOT”) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations and, Franchisee specifically agrees that:

(a) any pavement trenching and restoration performed by 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.

Section 5 Relocation of Telecommunications Network Facilities.

Section 5.1 Improvement Projects.

(a) The City may require Franchisee, and Franchisee covenants and agrees, to protect, support, temporarily disconnect, relocate, or remove its Facilities within the Right-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of and for public welfare, health, or safety. These projects may include but are not limited to, improving the Rights-of-Way for traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, regardless of the type

of entity (public or private) performing the project. Collectively all such projects described in this Section 5.1(a) shall be considered an "Improvement Project".

- (b) Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to Section 5.1 shall be borne by Franchisee. Nothing contained within this Franchise shall limit Franchisee's ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.
- (c) The City may require the relocation of Franchisee's Facilities at Franchisee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health or welfare.
- (d) Franchisee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Rights-of-Way any Facilities required to be temporarily disconnected or removed upon approval by the City, which approval shall not unreasonably be withheld or delayed.

Section 5.2 Upon request of the City and in order to facilitate the design of City street and Right-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of Franchisee's Facilities. The City shall provide Franchisee at least fourteen (14) days' written notice prior to any excavation or exposure of Facilities.

Section 5.3 If the City determines that the project necessitates the relocation of Franchisee's existing Facilities, the following process shall apply:

- (a) The City shall consult with the Franchisee in the predesign phase of any Improvement Project in order to coordinate the project's design with Franchisee's Facilities within such project's area.
- (b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the

Improvement Project, or (ii) until the City provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

- (c) Franchisee shall, during the predesign phase evaluate and provide comments to the City related to any alternatives to possible relocations. The City agrees to give any alternatives proposed by the Franchisee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City's sole discretion.
- (d) The City shall provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, but in no event less than ninety (90) days prior to the commencement of the construction of such Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in this Section 5.3, the City shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.
- (e) After receipt of such written notice, Franchisee shall relocate such Facilities to accommodate the Improvement Project consistent with the timeline provided by the City, but subject to a Force Majeure event. Such timeline may be extended by a mutual agreement.
- (f) In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe financial consequences to the City, which necessitates the relocation of Franchisee's Facilities, Franchisee shall relocate its Facilities within the time period specified by the City.

Section 5.4 In the event the City ultimately determines that there is no other reasonable or feasible alternative, Franchisee shall relocate its Facilities as otherwise provided in this Section 5. Further, upon a notification of a delay due to Franchisee, Franchisee agrees to work cooperatively with the City, other franchisees and utilities, and the City's third party contractor to resolve such issues.

Section 5.5 If during the construction, repair, or maintenance of the City's Improvement Project an unexpected conflict occurs with Franchisee's Facilities, Franchisee shall respond and

commence efforts to resolve the conflict within twenty-four (24) hours of notification from the City.

Section 5.6 Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in an Improvement Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee. Franchisee's vendors and contractors shall not be considered unrelated third parties). Such out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and attorneys' fees incurred by the City to the extent directly attributable to such Franchisee's caused delay in the Improvement Project.

Section 5.7 Franchisee will indemnify, defend, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities in a timely manner; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the negligence, willful misconduct, or unreasonable delay of the City or any unrelated third party.

Section 5.8 Whenever any person shall have obtained permission from the City to use any Right-of-Way for the purpose of moving any building, Franchisee, upon thirty (30) days' written notice from the City, shall raise, remove, or relocate to another part of the Right-of-Way, at the expense of the person desiring to move the building, any of Franchisee's Facilities that may obstruct the removal of such building.

Section 5.9 If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in Section 5.1 through Section 5.4 the City may perform such work or cause it to be done, and the City's costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4.

Section 5.10 The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6 Undergrounding of Facilities.

Section 6.1 All Facilities shall be installed underground in all areas of the City where all other telecommunications and cable facilities are located underground unless otherwise exempted from this requirement, in writing, by the City's Community Development Director. In instances when the undergrounding of Facilities is not required, Franchisee shall install Facilities only on existing utility poles and otherwise utilize only existing aerial telecommunication facilities. This Franchise does not permit Franchisee to erect new poles within the Franchise Area.

Section 6.2 Franchisee acknowledges and agrees that if the City does not require the undergrounding of its Facilities at the time of permit application, the City may, at any time in the future, require the conversion of Franchisee's aerial facilities to underground installation at Franchisee's expense. Unless otherwise permitted by the City, Franchisee shall underground its Facilities in all new developments and subdivisions, and any development or subdivision where utilities, other than electrical utilities, are currently underground.

Section 6.3 Whenever the City may require the undergrounding of the aerial utilities in any area of the City, Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's own Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of Franchisee's Facilities being undergrounded in comparison to the total number and size of all other utility facilities being undergrounded.

Section 6.4 To the extent Franchisee is providing services to Personal Wireless Services facilities, Franchisee shall adhere to the design standards for such Personal Wireless Services facilities, and shall underground its Facilities and/or place its Facilities within the pole as may be required by such design standards. For the purposes of clarity, this Section 6.4 does not require undergrounding or interior placement of Facilities within the pole to the extent that the Personal Wireless Services facilities are located on utility poles that have pre-existing aerial telecommunications facilities and provided such construction of Franchisee's Facilities continue to comply with Section 6.1 or Section 6.3.

Section 6.5 Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 6.5. Franchisee may remove any underground cable from the Right-of-Way that has been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or pursuant to Section 5. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground cable or conduit from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.6 Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay to the City the actual cost to the City resulting from providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

Section 6.7 The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7 Maps and Records.

Section 7.1 Franchisee shall maintain accurate engineering plans and details of all installed Facilities within the Franchise Area and shall provide such information in both paper and electronic form using the most current AutoCAD version (or such other format as may be in general use in the telecommunications industry and reasonably acceptable to the City and Franchisee) prior to close-out of any permit issued by the City and any work undertaken by Franchisee pursuant to this Franchise. The City shall reasonably determine consistent with general telecommunications industry practice the acceptability of any as-built submittals provided under this Section.

Section 7.2 Within thirty (30) days of a written request from the Community Development Director, Franchisee shall furnish the City with information sufficient to demonstrate: 1) that Franchisee has complied with all applicable requirements of this Franchise; and 2) that all taxes, including but not limited to sales, utility and/or telecommunications taxes, due the City in connection with the Franchisee's services and Facilities provided by the Franchisee have been properly collected and paid by the Franchisee or are under a timely filed protest and are being contested under the applicable procedures provided by law.

Section 7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise prohibited by state or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security

Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information necessary to comply with a utility tax audit, in the event the City is permitted to charge fees as further described in Section 15.1, or as otherwise required in this Franchise. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 7.4 prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Franchisee shall reimburse the City for any fines or penalties imposed for failure to disclose such records as required hereunder within sixty (60) days of a request from the City.

Section 7.5 On an annual basis, upon thirty (30) days' prior written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise and the collection of utility taxes, in accordance with GAAP. If the audit shows that tax payments have been underpaid by five percent (5%) or more, Franchisee shall pay the total cost of the audit.

Section 8 Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike

manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise.

Section 8.2 Whenever Franchisee shall commence work in any public Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to the City for a permit to do so and, in addition to receiving the permit, shall give the City prior notice (except in the case of an emergency) of its intent to commence work in the Rights-of-Way consistent with the notice requirements of the permit. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable City Design and Construction Standards and warranted for a period of two (2) years, normal wear and tear excepted. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 8.3 The City reserves the right to limit or exclude Franchisee's access to a specific route, public Right-of-Way or other location when, in the judgment of the City Community Development Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium consistent with CMC 12.115, unnecessary damage to public property, public expense, inconsistency with the City's comprehensive plan as approved by the City Council, or interference with City utilities.

Section 8.4 Except for emergency situations, Franchisee shall give at least seven (7) days' prior notice of intended construction to residents immediately adjacent to the Right-of-Way. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to City generally applicable standards in effect at the time of construction except for any change in

condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the condition of such landscaping, fencing or other improvement prior to Franchisee's work. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.5 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 8.5 shall only apply to the extent necessary to protect above ground Facilities. Franchisee's tree trimming activities shall protect the appearance, integrity, and health of the trees to the extent reasonably possible. All trimming should be accomplished equivalent to the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300). 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 and approval of the City, which approval shall not be unreasonably withheld or delayed, and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive City approval prior to commencing such trimming, which approval shall not be unreasonably withheld or delayed. 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 Community Development Director.

Section 8.6 Franchisee shall comply with the requirements of CMC 12.65.070.

Section 8.7 The Community Development Department shall also coordinate the approval of Right-of-Way construction permits with City street improvements and maintenance and may delay the commencement date for the Franchisee's right-of-way construction for 90 days or less, except in the case of emergencies, if it finds that such delay will reduce the inconvenience to road users from construction activities, if it finds that such delay will not create undue economic hardship on the applicant, or if it finds that such delay will allow the City to install conduit for future installation of fiber optic cable.

Section 8.8 Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone to meet the City's Design and Construction Standards. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Section 8.9 Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request from a third party or the City, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

Section 9 City Requested Facilities.

Section 9.1 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section 9.1, the Franchisee shall afford the City, upon receipt of a written request to do so, an opportunity to share such excavation, PROVIDED THAT:

(a) Such joint use shall not unreasonably delay the work of the Franchisee causing the excavation to be made;

(b) Such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and

(c) Franchisee may deny such request for safety reasons.

Section 9.2 Franchisee shall inform the City with at least thirty (30) days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide the City with an opportunity to request that Franchisee provide the City with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9.3 At any time, Franchisee places fiber in the City's public Rights-of-Way, at the time of Right-of-Way permit approval for said work either the City or Franchisee may request a meeting to cooperatively discuss and negotiate in good faith mutually beneficial opportunities associated with said work. Any such arrangements to which the parties agree shall be formalized in a separate agreement between the City and Franchisee.

Section 10 Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, Federal Communications Commission ("FCC") regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 Whenever the Community Development Director determines that any condition on any Right-of-Way is in violation of, or any Right-of-Way is being used contrary to, any provision of this Franchise or other applicable codes or standards, or without a Right-of-Way use permit, the Community Development Director may order the correction or discontinuance of such condition or any activity causing such condition. The Community Development Director is authorized to order correction or discontinuance of any such condition or activities following the methods specified herein. The Community Development Director shall also have all powers and remedies which may be available under State law and the CMC for securing the correction or discontinuance of any condition specified in this section.

Section 10.3 The Community Development Director is authorized to use any or all of the following methods in correction or discontinuance of any such conditions, or activities as the Community Development Director determines appropriate.

(a) Serving of oral or written directives to the permittee or other responsible person requesting immediate correction or discontinuance of the specified condition; provided that if the Community Development Director or his/her designee issues an oral directive, that he/she provides written documentation to Franchisee of the contents of such oral notice within three (3) business days, and provided further that Franchisee cannot restart any work which it was ordered to stop without consent from the Community Development Director, his/her designee or other authorized party.

(b) Service of a written notice of violation, ordering correction or discontinuance of a specific condition or activity within five days of notice, or such other reasonable period as the Community Development Director may determine;

(c) Revocation of previously granted permits where the permittee or other responsible person has failed or refused to comply with requirements imposed by the City related to such permits;

(d) Issuance of an order to immediately stop work until authorization is received from the City to proceed with such work;

(e) Service of a summons and complaint certified by the City attorney or a citation and notice to appear by an arresting peace officer upon the permittee or other responsible person who is in violation of this Franchise or other City ordinances.

Section 10.4 Any object or thing which shall occupy any Right-of-Way without a permit is a nuisance. The Community Development Director may attach a notice to any such object or thing, or may contact Franchisee, stating that if it is not removed from the Right-of-Way within 24 hours of the date and time stated on the notice, the City may declare Franchisee in breach of this Franchise pursuant to Section 22.2 of this Agreement. The notice shall provide an address and phone number where additional information may be obtained.

Section 10.5 If an unsafe condition or a violation of Section 10.1 is found to exist, and becomes known to the City, the City agrees to give Franchisee written notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified in such notice (and pursue such cure to completion), then the City may make such repairs or contract for them to be made. The City shall also have all powers and remedies which may be available under law or this Franchise for securing the correction or discontinuance of any conditions specified by the City. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City pursuant to Section 14.3 and Section 14.4.

Section 10.6 Additional standards include:

(a) Franchisee shall endeavor to maintain all equipment lines and facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities. If permitted pursuant to a permit, Franchisee may maintain a bundle of unused cable on an aerial facility to be used as slack for relocation or repairs.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, State, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 11 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with State law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors 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 Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12 Restoration after Construction.

Section 12.1 Franchisee shall, after installation, construction, relocation, maintenance, or repair of its Facilities, or after abandonment approved pursuant to Section 18, promptly remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to applicable City standards in effect at the time of installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee. The Community Development Director shall have final approval of the condition of such Rights-of-Way after restoration consistent with such applicable City standards. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by the City. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City Design and Construction Standards and warranted for a period of two (2) years, normal wear and tear excepted, and for undiscovered defects as is standard and customary for this type of work.

Section 12.3 If conditions (e.g., weather) make the complete restoration required under Section 12 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee

shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 In the event Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time reasonably directed by the Community Development Director in order to maintain the public welfare, health or safety, the City may repair the damage and shall be reimbursed its actual cost within sixty (60) days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, the City may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by the City including the imposition of damages consistent with Section 22.2.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to the City's standards.

Section 13 Emergency Work/Dangerous Conditions.

Section 13.1 In the event of any emergency in which any of Franchisee's Facilities located in or under any street breaks, becomes damaged, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Covington City Hall is open for business. The City retains the right and privilege to cut or move any Facilities located within the Rights-of-Way of the City in response to any public health or safety emergency.

Section 13.2 The City shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements,

construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of the City, except to the extent directly and proximately caused by the sole negligence or willful misconduct of the City, its employees, contractors, or agents. The City shall further not be liable to Franchisee 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 13 except to the extent caused by the sole negligence or willful misconduct of the City, its employees, contractors, or agents.

Section 13.3 Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Community Development Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and 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, before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the property and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to the City for the costs thereof.

Section 14 Recovery of Costs.

Section 14.1 Franchisee shall pay a one-time fee for the actual administrative expenses incurred by the City that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise, which shall not exceed \$7,000. No construction permits shall be issued for the installation of Facilities authorized until such time as the City has received payment of this fee; further, this Franchise will not be deemed accepted without the payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where

the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse the City in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs the City reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Consistent with state law, Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Right-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. At the City's option, the billing may be on an annual basis, but the City shall provide the Franchisee with the City's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 15 City's Reservation of Rights.

Section 15.1 Franchisee hereby represents that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a Franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a Franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Franchisee obtain a separate Franchise for its change in use, which Franchise may include provisions intended to regulate Franchisee's operations, as allowed under applicable law. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

Section 15.2 Franchisee acknowledges that its operation with the City constitutes a telecommunication business subject to the utility tax imposed pursuant to the Covington Municipal Code Chapter 3.70. Franchisee stipulates and agrees that certain of its business activities may be subject to taxation as a telecommunication business and that Franchisee shall pay to the City the rate applicable to such taxable services under Covington Municipal Code Chapter 3.70, and consistent with state and federal law. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Covington Municipal Code Chapter 3.70 as may be permitted by law. Nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may be lawfully assessed on Franchisee's Authorized Activities under applicable law. Nothing in this Franchise is intended to alter, amend, modify or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under applicable law.

Section 16 Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person or entity, for injury or death of

any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, servants, officers, or employees in the performance of this Franchise and any rights granted within this Franchise.

Section 16.2 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.3 The City shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify the City. Franchisee may choose counsel to defend the City subject to this Section 16.3. City's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Franchisee, Franchisee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Franchisee to represent the City, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are

unnecessarily duplicative of services provided the City by Franchisee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

Section 16.4 The parties acknowledge that this Franchise may be subject to RCW 4.24.115. Accordingly, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee's liability shall be only to the extent of Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Right-of-Way and upon City-owned property from activities conducted by the City, its officers, agents, employees, volunteers, elected and appointed officials, and contractors, except to the extent any such damage or destruction is caused by or arises from any sole negligence, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors. Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from any sole negligence, willful misconduct, or criminal actions on the part of the City, its officers, agents, employees, volunteers, or elected or appointed officials, or contractors.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17 Insurance.

Section 17.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Right-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee, its agents representatives or employees. Franchisee shall require that every contractor and subcontractor maintain substantially the same insurance coverage with substantially the same limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to the City for its inspection at the time of or prior to acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits no less than \$2,000,000 combined single limit per occurrence for bodily injury and property damage. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form that provides equivalent liability coverage.

(b) Commercial General Liability insurance, written on an occurrence basis with limits no less than \$3,000,000 per occurrence and \$5,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability. Commercial General Liability insurance shall be written on Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover products liability. The City shall be named as an additional insured under Grantee's Commercial General Liability insurance policy using ISO Additional Insured-State or Political Subdivisions-Permits CG 20 12 or a substitute endorsement providing equivalent coverage;

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington. No deductible is presently required for this insurance; and

(d) Umbrella liability policy with limits not less than \$1,000,000 per occurrence and \$5,000,000 in the aggregate.

Section 17.2 Any deductibles or self-insured retentions must be declared to and approved by the City. Such approval shall not be unreasonably withheld or delayed. The City acknowledges that Franchisee's current deductibles are subject to change based on business needs and the commercial insurance market. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Additionally, Franchisee shall pay all premiums for the insurance on a timely basis. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies.

Section 17.3 The insurance policies, with the exception of Workers' Compensation obtained by Franchisee shall include the City, its officers, officials, employees, and volunteers ("Additional Insureds"), as an additional insured with regard to activities performed by or on behalf of Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the Additional Insureds. In addition, the insurance policy shall contain a clause stating that 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. Franchisee shall provide to the City prior to or upon acceptance either (1) a true copy of the blanket additional insured endorsement for the commercial general liability, commercial automobile liability and excess/umbrella insurance policies required in this Section 17 and providing that such insurance shall apply as primary insurance on behalf of the Additional Insureds or (2) a true copy of the blanket additional insured clause from the policies. Receipt by the City of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's insurance shall be primary insurance with respect to the Additional Insureds, and the endorsement should specifically state that the insurance is the primary insurance. Any insurance maintained by the Additional Insureds shall be in excess of Franchisee's insurance and shall not contribute with it.

Section 17.4 Upon receipt of notice from its insurer(s) Franchisee shall use all commercially reasonable efforts to provide the City with thirty (30) days' prior written notice of any such cancellation. Within fifteen (15) days' prior to said cancellation or intent not to renew, Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to the City's election of remedies described in Section 22 below. Notwithstanding the cure period described in Section 22.2, the City may pursue its remedies immediately upon a failure to furnish replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 As of the effective date of this Franchise, Franchisee is not self-insured. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee must provide the City with thirty (30) days' advanced written notice of its intent to self-insure. In order to self-insure, Franchisee shall comply with the following: (i) provide a written attestation that Franchisee possesses the necessary amount of unencumbered financial assets to support the financial exposure of self-insurance, as evidenced by an outside auditor's review of Franchisee's financial statements; (ii) the City, upon request, may review Franchisee's financial statements; (iii) Franchisee is responsible for all payments within the self-insured retention; and (iv) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise. These requirements may be modified by written amendment executed by both parties.

Section 18 Abandonment of Franchisee's Telecommunications Fiber Optic Cable Network.

Section 18.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Right-of-Way within thirty

(30) days of receiving written notice from the Community Development Director. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Community Development Director, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Right-of-Way to the City standards in effect at the time of any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Right-of-Way not caused by Franchisee or any person doing work for Franchisee. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.2 Notwithstanding Section 18.1 above, the City may permit Franchisee's improvements to be abandoned in place in such a manner as the City may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to the City, Franchisee shall submit to the City a proposal and instruments for transferring ownership to the City.

Section 18.3 Any Facilities which are not removed within one hundred (120) days of either the date of termination or revocation or the date the City issued a permit authorizing removal, whichever is later, shall automatically become the property of the City. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place. The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise.

Section 18.4 If Franchisee leases a pole in the Right-of-Way from a landlord and such landlord builds a replacement pole for the existing pole, and the landlord provides notice to the Franchisee to remove its facilities from such pole, then Franchisee shall remove or relocate its Facilities within ninety (90) days of such notification from the landlord or as soon as practicable thereafter, provided Franchisee is using good faith efforts to complete such work and provided further, that utilities above Franchisee's Facilities have been removed (if such prior removal is required for Franchisee to technically remove its Facilities).

Section 18.5 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19 Bonds.

Section 19.1 If required by the Community Development Director, Franchisee shall furnish a performance guarantee ("Performance Guarantee") written by a corporate surety reasonably acceptable to the City in such sum as may be set and approved by the City as sufficient to ensure performance of Franchisee's obligations related to such construction project. Such Performance Guarantee may take the form of a bond, letter of credit or cash deposit. The Performance Guarantee shall be consistent with the requirements of CMC 14.105. The Performance Guarantee shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Guarantee as described in Section 19.2.

Section 19.2 Franchisee shall furnish a two (2) year Maintenance Guarantee ("Maintenance Guarantee"), at the time of final acceptance of construction work on Facilities within the Rights-of-Way. Such Maintenance Guarantee may take the form of a bond, letter of credit or cash deposit. The Maintenance Guarantee shall be consistent with the requirements of CMC 14.105. The Maintenance Guarantee in this Section 19.2 must be in place prior to City's release of the Performance Guarantee required by Section 19.1.

Section 19.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this

Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

Section 20 Modification. The City and Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this Franchise upon written agreement of both parties to such alteration, amendment or modification.

Section 21 Forfeiture and Revocation. If Franchisee willfully violates or fails to comply with any of the provisions of this Franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given Franchisee by the City under the provisions of this Franchise, then Franchisee shall, at the election of the Covington City Council, forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Council after a hearing held upon notice to Franchisee.

Section 22 Remedies to Enforce Compliance.

Section 22.1 The City may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein. In addition to any other remedy provided in this Franchise, Franchisee reserves the right to pursue any remedy available at law or in equity to compel or require the City, its officers, employees, volunteers, contractors and other agents and representatives, to comply with the terms of this Franchise. Further, all rights and remedies

provided herein shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. Provided, further, that by entering into this Franchise, it is not the intention of the City or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

Section 22.2 If Franchisee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Franchisee under the provisions of this Franchise, the City shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, City may, at its discretion, (1) commence revocation proceedings, pursuant to Section 21, (2) refuse to grant additional permits, or (3) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchise Bond set forth in Section 19.3, or (4) pursue other remedies as described in Section 22.1 above.

Section 23 Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 24 City Ordinances and Regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the

performance of the conditions of this Franchise consistent with applicable law, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control consistent with applicable law and by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 25 Cost of Publication. The cost of publication of this Franchise shall be borne by Franchisee.

Section 26 Acceptance. Franchisee shall execute and return to the City its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any applicable construction Performance Guarantee pursuant to Section 19.1 and the Franchise Bond required pursuant to Section 19.3. The administrative fee pursuant to Section 14.1 is due within thirty days of receipt of the invoice from the City.

Section 27 Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 17, Section 19, Section 27, Section 29, and Section 39.2 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive the City's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, 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 where Franchisee is named herein.

Section 28 Assignment.

Section 28.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Franchisee, by operation of law or otherwise, unless prompt written notice is provided to the City within sixty (60) days following the assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 28 no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 28.2 Any transactions which singularly or collectively result in a change of 50% or more of the (i) ownership or working control (for example, management of Franchisee or its Telecommunications facilities) of the Franchisee; or (ii) ownership or working control of the Franchisee's Telecommunications facilities within the City; or (iii) control of the capacity or bandwidth of the Franchisee's Telecommunication facilities within the City, shall be considered an assignment or transfer requiring notice to the City pursuant to this Franchise. Such transactions between affiliated entities are not exempt from notice requirements. A Franchisee shall notify the City of any proposed change in, or transfer of, or acquisition by any other party of control of a Franchisee within sixty (60) days following the closing of the transaction.

Section 29 Extension. If this Franchise expires without renewal or is otherwise lawfully terminated or revoked, the City may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) The City may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 30 Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or

understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 31 Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 32 Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Franchisee by reason of such vacation. The City shall notify the Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area, in which Franchisee is located. The City may, after sixty (60) days' written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 33 Notice. Any Notice or information required or permitted to be given to the parties under this Franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF COVINGTON
City Manager
16720 SE 271st Street, Suite 100
Covington, WA 9042-4964

MCImetro Access Transmission Services
Corp.
Attn: Franchise Manager
600 Hidden Ridge
Mailcode: HQE02E102
Irving, TX 75038

with a copy to (except for invoices):

Verizon Business Services
1320 N. Courthouse Road, Suite 900
Arlington, VA 22201
Attn: General Counsel Network and
Technology

Invoices:

Verizon
Attn: Contract Admin
6929 N. Lakewood Ave, MD. 5.3-4009
Tulsa, OK 74117

Section 34 Severability. If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise unless such invalidity or unconstitutionality materially alters the rights, privileges, duties, or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such court's ruling.

Section 35 Compliance with All Applicable Laws. Each party agrees to comply with all 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. Franchisee further agrees to remove all liens and encumbrances arising as a result of said use or work. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair and in a manner reasonably suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation 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 over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, either party may pursue any available remedies at law or in equity.

Section 36 Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its

costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 37 Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors or other persons acting under Franchisee's control, whether or not intentional.

Section 38 Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from the City. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City. Nothing in this Franchise is intended to alter, modify or expand upon the fees, taxes and other surcharges the City may assess Franchisee under applicable federal or state laws or regulations.

Section 39 Miscellaneous.

Section 39.1 City and Franchisee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

Section 39.2 This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

Section 39.3 Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 39.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 39.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Franchisee by any person or entity.

Section 39.6 This Franchise may be enforced at both law and equity.

Section 39.7 Franchisee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold the City harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or the City be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's expense.

Section 39.8 This Franchise is subject to all current and future applicable federal, State and local laws, regulations and orders of governmental agencies as amended, including but not limited to the Communications Act of 1934, as amended, the Telecommunications Act of 1996, as amended and the Rules and Regulations of the FCC. Neither the City nor Franchisee waive any rights they may have under any such laws, rules or regulations.

Section 39.9 There are no third party beneficiaries to this Franchise.

Section 39.10 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, and any other similar act of God event.

Section 40 Ordinance Effective Date. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED:



Mayor Jeff Wagner

ATTEST/AUTHENTICATED:



SHARON SCOTT
CITY CLERK

APPROVED AS TO FORM:



KATHRYN HARDY
CITY ATTORNEY

FILED WITH THE CITY CLERK: February 26, 2019
PASSED BY THE CITY COUNCIL: February 26, 2019
PUBLISHED: March 1, 2019
EFFECTIVE DATE: March 6, 2019
ORDINANCE NO.: 01-2019

SUMMARY OF ORDINANCE NO. 01-2019

City of Covington, Washington

On the 26th day of February 2019, the City Council of the City of Covington passed Ordinance No. 01-2019. A summary of the content of said Ordinance, consisting of the title, is provided as follows:

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF COVINGTON, KING COUNTY, WASHINGTON GRANTING A NON-EXCLUSIVE FRANCHISE TO MCIMETRO ACCESS TRANSMISSION SERVICES CORP. D/B/A VERIZON ACCESS TRANSMISSION SERVICES, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS SYSTEM IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF COVINGTON, WASHINGTON, FOR A TEN YEAR TERM.

The full text of this Ordinance will be mailed upon request.



SHARON SCOTT
CITY CLERK

FILED WITH THE CITY CLERK: February 26, 2019
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