

Community Development Committee Meeting

January 6, 2026
5:00 PM



<http://www.bonneylake.gov/>

AGENDA

Location: Bonney Lake Justice & Municipal Center, 9002 Main Street East, Bonney Lake, Washington.

The public is invited to attend Community Development Committee Meetings. Options for attending are provided below.

In-Person: Bonney Lake Justice & Municipal Center at 9002 Main Street East in Bonney Lake

By phone: 1-323-792-6234 (Meeting ID: 576 517 451#)

By internet: Chrome- [TEAMS Meeting Link](#) (Meeting ID: 272 334 403 013 80)

All public online cameras and microphones will be disabled except during citizen comments. Only staff and presenters will be visible and unmuted during the entire meeting.

I. Call to Order

II. Roll Call

A. Roll Call

Councilmember Gwendolyn Fullerton, Councilmember Kelly McClimans, and Councilmember Brittany Rock.

III. Approval of Corrected Minutes

IV. Department Reports/Presentations

V. Items for Discussion/Action

- A. - An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Section 13.12.100.D Authorizing An Alternative Method For Calculating Sewer Residential Equivalent (RE) Units; Providing For Severability And Corrections; And Establishing An Effective Date.
- B. - A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing Award Of Contract With SCI Infrastructure, LLC For The 77th St Ct and 205th Ave Sewer Repairs Project.
- C. - A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing A Professional Services Agreement With Akana For Construction Management Services For The 77th St Ct and 205th Ave Sewer Repairs Project.
- D. - A Motion of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing the Mayor to sign the franchise agreement with AT&T doing business as Forged Fiber 37, LLC.

- E. - A Motion of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing the Mayor to sign the franchise agreement with Ezee Fiber.

VI. Open Committee Discussion

VII. Public Comments

Public comments can be made in-person, by phone or virtually during this portion of the meeting. Comments are limited to 5 minutes. All who comment will be asked to state their name for the meeting record.

VIII. Adjournment

Anything submitted at the Meeting will be added to the end of the packet the next day.

The City of Bonney Lake does not discriminate on the basis of disability, race, color, or national origin in its programs, services, or activities. If you need language assistance, translation, or an auxiliary aid, service, or policy modification to fully participate, please [email the City Clerk's Office](#) or call at 253-862-8062 (TTY 711) at least 5 business days before the event; later requests will be honored when feasible.

City of Bonney Lake, Washington
Community Development Committee Agenda Bill (AB)

**Agenda Bill Number &
Ordinance/Resolution/Motion Number:**

Agenda Item Type: Discussion

Presenter: Jason Sullivan, Public Services Director

City Strategic Goal Category:

Department/Division Submitting: Public Services Director

**Impacted Departments That Received
Notification:**

Agenda Subject: Alternative Method For Calculating Sewer Residential Equivalent (RE) Units

Full Title/Motion: An Ordinance Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Amending Section 13.12.100.D Authorizing An Alternative Method For Calculating Sewer Residential Equivalent (RE) Units; Providing For Severability And Corrections; And Establishing An Effective Date.

Short Background Summary:

On July 30, 2024 the City Council passed Resolution 3227 extending the WSU Development Agreement to June 30, 2026 and directing staff to negotiate a possible amendment to the original 2009 Development Agreement. During the negotiations, Tarragon requested that the water residential equivalent (RE) units be based on estimated water usage as provided for in BLMC 13.04.070.D.2.e. This option is not available in the sewer code. Tarragon has requested that City Council consider an amendment to allow the same provisions in the water code to be added to the sewer code. The provision would only apply in cases where the water RE units are based on estimated flows.

Budget

Budgeted Amount	Current Balance	Expenditure Amount Needed	Budgeted Balance Difference
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Budget Explanation:

Committee, Board, Commission, & Hearing Examiner Review

Name Of Committee/Commission/Examiner Meeting: Community Development Committee

Date of Committee/Commission/Examiner Meeting:

Date of Committee/Commission Public Hearing:

Committee/Commission/Examiner Meeting Decision:

Council Action

Date of Council Workshop

Date of Council Meeting

Date of Council Public Hearing

ORDINANCE NO. D25-XX

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONNEY LAKE, PIERCE COUNTY, WASHINGTON, AMENDING SECTION 13.12.100.D AUTHORIZING AN ALTERNATIVE METHOD FOR CALCULATING SEWER RESIDENTIAL EQUIVALENT (RE) UNITS; PROVIDING FOR SEVERABILITY AND CORRECTIONS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Bonney Lake Municipal Code currently provides an alternative method for calculating residential equivalent (RE) units based on estimated water usage to determine water system development charges (SDC); and

WHEREAS, this alternative method is not currently available for calculating sewer RE is for purposes of determining sewer SDC; and

WHEREAS, there is a correlation between water usage and sewer usage; and

WHEREAS, the Public Services Director, acting as the State Environmental Policy Act (SEPA) Responsible Official, determined that the proposed amendment is categorically exempt from threshold determination pursuant to BLMC 16.08.030.R.2; and

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

Section 1. Section 13.12.100.D of the Bonney Lake Municipal Code is hereby amended to read as follows:

D. Residential System Development Charges (SDC).

1. The SDC for a single-family residence (new construction) shall be the charge applicable to one residential equivalent (RE), \$11,927 effective July 1, 2023.
2. The SDC for an existing single-family residence served by an on-site septic disposal system shall be the charge applicable to one residential equivalent (RE), \$11,927 effective July 1, 2023.
3. The SDC for each unit of a duplex shall be the charge applicable to one residential equivalent (RE) unit, \$11,927 effective July 1, 2023.
4. In addition to the SDC provided in this subsection, there shall be a surcharge of \$2,568 for each residential equivalent (RE) connection to the

sewer system within the Fennel Creek sewer lift station service area, as shown on Exhibit "A" as previously codified in this section and on file in the office of the city clerk.

5. The SDC for multifamily residential buildings with more than two units shall be as follows, effective January 1, 2014:
 - a. Eighty percent of the SDC applicable to one residential equivalent (RE) per dwelling unit for three or more bed/bonus room units;
 - b. Seventy percent of the SDC applicable to one residential equivalent (RE) per dwelling unit for two bed/bonus room units;
 - c. Sixty percent of the SDC applicable to one residential equivalent (RE) per dwelling unit for one bed/bonus room unit;
 - d. Fifty percent of the SDC applicable to one residential equivalent (RE) per dwelling unit for studio/efficiency units
6. Alternative Assignment of Residential Equivalents (REs). To ensure that all new connections pay for an equitable share of system costs based on their demands and service characteristics, the city reserves the right to determine an alternative assignment of REs in instance when water REs have been based on estimated flows as provided in BLMC 13.04.070.D.2.e. When applicable, this assignment shall be determined by using the estimated water usage to determine estimated sewer usage and then converted to an RE.

Section 2. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be 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 Ordinance.

Section 3. Publication. This Ordinance shall be published by an approved summary consisting of the title.

Section 4. Corrections. Upon the approval of the city attorney, the city clerk, and/or the code publisher is authorized to make any necessary technical corrections to this ordinance, including but not limited to the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any reference thereto. Provided, however, that nothing in this section allows the city attorney, the city clerk, and/or the code publisher to change the intent of this Ordinance.

Section 5. Effective Date. This Ordinance shall be effective five days after publication as provided by law.

ADOPTED by the City Council of the City of Bonney Lake and attested by the City Clerk in authentication of such passage on this __ day of _____, 20__.

APPROVED by the Mayor this __ day of _____, 20__.

Terry Carter, Mayor

AUTHENTICATED:

Sadie A. Schaneman, MMC, City Clerk

AB ____
Passed:
Valid:
Published:
Effective Date:
This Ordinance totals ____ page(s)

City of Bonney Lake, Washington
Community Development Committee Agenda Bill (AB)

**Agenda Bill Number &
 Ordinance/Resolution/Motion Number:**

Agenda Item Type: Resolution
Presenter: Andrew Fonda, Assistant City Engineer
City Strategic Goal Category:
Department/Division Submitting: Public Services Staff

**Impacted Departments That Received
 Notification:**

Agenda Subject: Authorizing Award of Contract with SCI Infrastructure, LLC for the 77th St Ct and 205th Ave Sewer Repairs Project.

Full Title/Motion: A Resolution Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing Award Of Contract With SCI Infrastructure, LLC For The 77th St Ct and 205th Ave Sewer Repairs Project.

Short Background Summary:

In 2021, RH2 Engineering completed an analysis of the City sewer system to identify areas of the system that have high groundwater infiltration and inflow (I&I) issues. The analysis determined sewer repairs were needed at 77th St Ct and 205th Ave. RH2 completed the sewer repair design at these locations and the project was advertised in October 2025. Sixteen sealed bids were opened on December 4, 2025, with SCI Infrastructure, LLC submitting the lowest responsive bid in the amount of \$598,844.55. The City has included a 10% contingency in the amount of \$59,884.46 for a total construction approval request in the amount of \$658,729.01.

Budget

Budgeted Amount	Current Balance	Expenditure Amount Needed	Budgeted Balance Difference
\$4,000,000.00	\$3,804,616.00	\$658,729.01	\$3,145,887.00

Budget Explanation:

Bars # 402.925.035.594.35.63.05 I&I Reduction Program

Committee, Board, Commission, & Hearing Examiner Review

Name Of Committee/Commission/Examiner Meeting: Community Development Committee

Date of Committee/Commission/Examiner Meeting:

Date of Committee/Commission Public Hearing:

Committee/Commission/Examiner Meeting Decision:

Council Action

Date of Council Workshop

Date of Council Meeting

Date of Council Public Hearing

CITY OF BONNEY LAKE CONTRACTOR AGREEMENT

THIS AGREEMENT, is made and entered into in duplicate this 13th day of January, 2026 by and between the CITY OF BONNEY LAKE, a Washington municipal corporation, hereinafter referred to as the "CITY" and SCI Infrastructure Inc. hereinafter referred to as the "CONTRACTOR."

WITNESSETH:

WHEREAS, the CITY desires to have certain work, services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, the CONTRACTOR represents that the CONTRACTOR is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise, where required, to perform the work, services and/or tasks set forth in this Agreement.

NOW, THEREFORE, in consideration of the terms, conditions, covenants, and performance contained herein, the parties hereto agree as follows:

1. SCOPE OF WORK.

The CONTRACTOR shall perform such work and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as CONTRACTOR responsibilities throughout this Agreement and as detailed in **Exhibit "A"** attached hereto and incorporated herein (the "Project").

2. TERM.

The Project shall begin no earlier than [Date], and shall be completed no later than [Date], unless sooner extended or terminated according to the provisions herein.

3. COMPENSATION AND METHOD OF PAYMENT.

- A. Payments for work provided hereunder shall be made following the performance of such work, unless otherwise permitted by law and approved in writing by the CITY.
- B. No payment shall be made for any work rendered by the CONTRACTOR except for work identified and set forth in this Agreement.
- C. The CITY shall pay the CONTRACTOR for work performed under this Agreement pursuant to accepted bid proposal attached hereto as **Exhibit "A"** and by this reference incorporated herein.
- D. The CONTRACTOR shall submit to the CITY on approved forms, a voucher or invoice for services rendered during the pay period. The CITY shall initiate authorization for payment after receipt of said approved voucher or invoice and shall make payment to the CONTRACTOR within approximately thirty (30) days thereafter.

4. REPORTS AND INSPECTIONS.

- A. The CONTRACTOR at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement. All of the reports, information data, and other related materials, prepared or assembled by the CONTRACTOR under this Agreement and any information relating to personal, medical and financial data will be treated as confidential insofar as is allowed by Washington State laws regarding disclosure of public information, Chapter 42.17, R.C.W. Generally, Chapter 42.17, R.C.W. requires disclosure of all but the most personal and sensitive information in CITY hands.
- B. The CONTRACTOR shall at any time during normal business hours and as often as the CITY or State Examiner may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the CONTRACTOR'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the CONTRACTOR'S activities which relate, directly or indirectly, to this Agreement.

5. INDEPENDENT CONTRACTOR RELATIONSHIP.

- A. The parties intend that an independent CONTRACTOR/CITY relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of work and/or services will lie solely with the discretion of the CONTRACTOR. No agent, employee, servant or representative of the CONTRACTOR shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the CONTRACTOR are not entitled to any of the benefits the CITY provides for its employees. The CONTRACTOR will be solely and entirely responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.
- B. In the performance of the work herein contemplated the CONTRACTOR is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. CONTRACTOR EMPLOYEES/AGENTS

The CITY may in its sole discretion require the CONTRACTOR to remove an employee(s), agent(s) or servant(s) from employment on this Project. The CONTRACTOR may however employ that (those) individual(s) on other non-CITY related projects.

7. HOLD HARMLESS INDEMNIFICATION.

- A. The CONTRACTOR shall indemnify and hold the CITY and its agents, employees, and/or officers, harmless from and shall process and defend at its own expense any and all claims, demands, suits, at law or equity, actions, penalties, losses, damages, or costs, of whatsoever kind or nature, brought against the CITY arising out of, in connection with, or incident to the execution of this Agreement and/or the CONTRACTOR'S performance or failure to perform any aspect of this Agreement; provided, however, that if such claims are caused by or result from the concurrent negligence of the CITY, its agents, employees, and/or officers, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR; and provided further, that nothing herein shall require the CONTRACTOR to hold harmless or defend the CITY, its agents, employees and/or officers from any claims arising from the sole negligence of the CITY, its agents, employees, and/or officers. The CONTRACTOR expressly agrees that the indemnification provided herein constitutes the CONTRACTOR'S waiver of immunity under Title 51 RCW, for the purposes of this Agreement. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- B. No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. INSURANCE.

The CONTRACTOR shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the CONTRACTOR, their agents, representatives, employees or subcontractors.

The CONTRACTOR shall provide a Certificate of Insurance evidencing:

- A. Automobile Liability insurance with limits no less than \$1,000,000 combined single limit per accident for bodily injury and property damage.

- B. Commercial General Liability insurance written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage.

The CITY shall be named as an additional insured on the insurance policy, as respects work performed by or on behalf of the CONTRACTOR and a copy of the endorsement naming the CITY as additional insured shall be attached to the Certificate of Insurance. The CITY reserves the right to request certified copies of any required policies.

The CONTRACTOR'S insurance shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respects to the limits of the insurer's liability.

Any payment of deductible or self-insured retention shall be the sole responsibility of the CONTRACTOR.

The CONTRACTOR'S insurance shall be primary insurance as respects the CITY and the CITY shall be given thirty (30) days prior written notice of any cancellation, suspension or material change in coverage.

9. TREATMENT OF ASSETS.

Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the CONTRACTOR pursuant to this Agreement.

10. COMPLIANCE WITH LAWS.

- A. The CONTRACTOR, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- B. The CONTRACTOR specifically agrees to pay any applicable business and occupation (B & O) taxes which may be due on account of this Agreement.
- C. The CONTRACTOR shall fully satisfy, and shall require any subcontractors to fully satisfy, any obligation to make industrial insurance premium payments related to the Project and required under RCW 51.12.050 and/or RCW 51.12.070. Specified retainage relating to the Project will be withheld until receipt by the City of evidence that CONTRACTOR and all of its subcontractors have fully satisfied any obligation to make industrial insurance premium payments related to the Project and required under RCW 51.12.050 and/or RCW 51.12.070.

11. NONDISCRIMINATION.

- A. The CITY is an equal opportunity employer.
- B. Nondiscrimination in Employment. In the performance of this Agreement, the CONTRACTOR will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap; provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The CONTRACTOR shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers,

recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The CONTRACTOR shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.

- C. Nondiscrimination in Services. The CONTRACTOR will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap.
- D. If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The CONTRACTOR shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.
- E. The contractor represents and warrants that it is in compliance with and agrees that it will remain in compliance with the provisions of the Immigration Reform and Control Act of 1986, including but not limited to the provisions of the Act prohibiting the hiring and continued employment of unauthorized aliens and requiring verification and record keeping with respect to the status of each of its employees' eligibility for employment. The contractor shall include a provision substantially the same as this section in any and all contracts with subcontractors performing work required of the contractor under this contract. The contractor agrees to indemnify and hold the City harmless from any and all liability, including liability for interest and penalties, the City may incur as a result of the contractor failing to comply with any provisions of the Immigration Reform and Control Act of 1986. Contractor understands and agrees that if it violates this section, this Agreement may be terminated by the City, and that Contractor shall be barred from performing any services for the City in the future unless and until a showing is made satisfactory to the City that discriminatory practices have terminated and that recurrence of such action is unlikely.

12. ASSIGNMENT/SUBCONTRACTING.

- A. The CONTRACTOR shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the CONTRACTOR not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.
- B. Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.
- C. Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. CHANGES.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon the CITY unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

The CITY will have the right to make changes to the work provided for hereunder, within its general scope, and the contract time and for contract amount will be equitably adjusted to reflect the change. The CONTRACTOR will promptly commence and continue to perform the work as changed notwithstanding disagreement over the equitable adjustment owing therefore.

14. MAINTENANCE AND INSPECTION OF RECORDS.

- A. The CONTRACTOR shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.
- B. The CONTRACTOR shall retain all books, records, documents and other material relevant to this agreement, for six (6) years after its expiration. The CONTRACTOR agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. POLITICAL ACTIVITY PROHIBITED.

None of the funds, materials, property or services provided directly or indirectly under tile Agreement shall be used for any partisan political activity, or to further the election or defeat of any candidate for public office.

16. PROHIBITED INTEREST.

No member, officer, or employee of the CITY shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

17. RETAINAGE.

Notwithstanding any other provision of this Agreement, in accordance with Ch. 60.28 RCW, the CITY shall retain from the monies earned by CONTRACTOR hereunder, five percent as a trust fund for the protection and payment of any person or persons, mechanic, subcontractor or materialman who shall perform any labor or furnish any supplies related to the Project, and the state with respect to taxes imposed pursuant to Title 82 RCW which may be due from CONTRACTOR. Said retainage shall be reserved in a CITY fund until thirty days following final

acceptance of the Project as completed, and shall not be released to CONTRACTOR until the CITY has received certification from the Washington State Department of Revenue that all taxes, increases and penalties due from CONTRACTOR, and all taxes due and to become due with respect to the Project, have been paid in full or are readily collectible without recourse to the state's lien on the retainage, and until the requirements of section 10(C) have been satisfied.

18. PERFORMANCE BOND.

In accordance with Ch. 39.08 RCW, CONTRACTOR shall furnish to the CITY a bond, with a surety company licensed as a surety in Washington as surety, conditioned that CONTRACTOR shall faithfully perform all provisions of this Agreement and pay all laborers, mechanics, subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for carrying out the Project. Said bond shall be in the amount of the total amount of this Agreement. On contracts of one hundred fifty thousand dollars or less, at the option of the CONTRACTOR as defined in RCW 39.10.210, the CITY may, in lieu of the bond, retain ten percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue, the employment security department, and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later. For contracts of one hundred fifty thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties.

19. PREVAILING WAGE.

CONTRACTOR shall pay all laborers, workers, or mechanics performing work under this Agreement prevailing wages as required by Ch. 39.12 RCW, and shall satisfy all other requirements of that chapter, including without limitation requiring that all subcontractors performing work related to the project comply with the requirements of that chapter. The hourly minimum rate of wage which may be paid to laborers, workers, or mechanics for work related to the Project. Prior to the CITY making any payment to CONTRACTOR under this Agreement, CONTRACTOR and each subcontractor shall submit to the CITY a Statement of Intent to Pay Prevailing Wages approved by the industrial statistician of the Washington State Department of Labor and Industries and complying with the requirements of RCW 39.12.040. Prior to release of the sums retained pursuant to section 17 of this Agreement ["Retainage"], as required CONTRACTOR and each subcontractor shall submit to the City an Affidavit of Wages Paid approved by the industrial statistician of the Washington State Department of Labor and Industries and complying with the requirements of RCW 39.12.040.

20. TERMINATION.

- A. Termination for Convenience. The CITY may terminate this Agreement, in whole or in part, at any time, by written notice to the CONTRACTOR. In the event of termination for the convenience of the CITY, the CONTRACTOR shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The CONTRACTOR shall promptly submit a termination claim to the CITY. If the CONTRACTOR has any property in its possession belonging to the CITY, the

CONTRACTOR will account for the same, and dispose of it in the manner directed by the CITY.

- B. Termination for Cause. If the CONTRACTOR fails to perform in the manner called for in this Agreement, or if the CONTRACTOR fails to comply with any other provisions of the Agreement and fails to correct such noncompliance within five (5) days written notice thereof, the CITY may terminate this Agreement for cause. Termination shall be effected by serving a notice of termination on the CONTRACTOR setting forth the manner in which the CONTRACTOR is in default. The CONTRACTOR will only be paid for services performed in accordance with the manner of performance set forth in this Agreement.

21. NOTICE.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

22. ATTORNEYS FEES AND COSTS.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

23. JURISDICTION AND VENUE.

- A. This Agreement has been and shall be construed as having been made and delivered with the State of Washington, and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.
- B. Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof, shall be instituted and maintained only in any of the courts of competent jurisdiction in Pierce County, Washington.

24. SEVERABILITY.

- A. If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- B. If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

25. ENTIRE AGREEMENT.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute material breach of contract and cause for termination Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY OF BONNEY LAKE

CONSULTANT

By: _____
Terry Carter, Mayor

By: _____
Mark Scoccolo, Manager
Mark.Scoccolo@scibuilds.com

ATTESTED:

By: _____
Sadie A. Schaneman, MMC
City Clerk

EXHIBIT "A" - Project Work

PROPOSAL

Contractor: SCI INFRASTRUCTURE, LLC

City: SEATTLE, State: WASHINGTON

Date: DECEMBER 4TH, in the year of 2025

The Honorable City Council
City of Bonney Lake
9002 Main St East
Bonney Lake WA 98391

Pursuant to and in compliance with your invitation for bids and all other documents relating thereto, the undersigned bidder, having familiarized himself with the terms of the contract, the local conditions affecting the performance of the contract, the cost of the work at the place where the work is to be done, proposes and agrees to perform, within the time stipulated, the contract, if this project is accepted, including all its component parts and everything required to be performed, and to provide and furnish any and all labor, materials, tools, expendable equipment, an all utility and transportation services necessary to perform the contract, complete, in a workmanlike manner, of all the work covered by the contract in connection with the City of Bonney Lake's project designated as *77th Street Court East and 205th Avenue Sewer Repairs* and as required by and in strict conformance with the specifications, contract plans and the standard plans for the following unit prices.

Note: Unit prices of all items; all extensions and total amount of bid must be shown. Show unit prices in both words and figures and, where conflict occurs, the written or typed words prevail.

All bidders shall sign the proposal in the space provided.

The successful bidder shall execute and furnish the attached (no substitution allowed) performance bond and Agreement within twenty (20) calendar days after the date of award of contract unless a written extension is granted by City of Bonney Lake.

The contractor agrees to perform the complete contract work as specified, including corrections, finishing and cleanup within fifty (50) consecutive working days, beginning the date given in the notice to proceed by City of Bonney Lake.

The proposal, together with the Contract Documents, when endorsed by City of Bonney Lake shall become a contract binding on both parties thereto, whereby the contractor agrees to perform the complete contract work, as specified, and City of Bonney Lake agrees to make payment to the contractor, as specified, for said completed and accepted work.

Dated this 4TH day of DECEMBER, in the year of 2025.

Contractor SCI INFRASTRUCTURE, LLC

Address 2021 S 154TH ST
SEATAC, WA 98188

Telephone 206-242-0633 Washington State License No. SCIINLX993JA

By: [Signature]

Title: MANAGER

Attest: (If Corporation)

Witness: (If Individual or Partnership)

[Signature]

Acknowledgement of Receipt of Addenda:

No. <u>1</u>	Date <u>10/31/25</u>	Initials <u>[Signature]</u>
No. <u>2</u>	Date <u>11/24/25</u>	Initials <u>[Signature]</u>
No. _____	Date _____	Initials _____
No. _____	Date _____	Initials _____
No. _____	Date _____	Initials _____

SCHEDULE OF PRICES
77 Street Court East and 205th Avenue Sewer Repairs

Bid Item	Spec. Reference	Approx. Quantity	Description	Unit Price	Total Price
1.	1-04.4	1 FA	Minor Change Force Account \$ <u>Fifty thousand</u> (unit price in words)	\$ <u>50,000</u>	\$ <u>50,000</u>
2.	1-05.4	1 LS	Construction Surveying and Staking \$ <u>SEVEN thousand</u> (unit price in words)	\$ <u>7,000-</u>	\$ <u>7,000-</u>
3.	1-05.18	1 LS	Record Drawings \$ <u>two thousand Five Hundred.</u> (unit price in words)	\$ <u>2,500-</u>	\$ <u>2,500-</u>
4.	1-09.7	1 LS	Mobilization and Demobilization \$ <u>Fifty thousand</u> (unit price in words)	\$ <u>50,000-</u>	\$ <u>50,000-</u>
5.	1-10.4	1 LS	Project Temporary Traffic Control \$ <u>sixty-five thousand.</u> (unit price in words)	\$ <u>65,000-</u>	\$ <u>65,000-</u>
6.	2-02	1 LS	Removal of Structures and Obstructions \$ <u>thirty-one thousand.</u> (unit price in words)	\$ <u>31,000-</u>	\$ <u>31,000-</u>
7.	2-09	1 LS	Shoring or Extra Excavation Class B \$ <u>FIVE thousand.</u> (unit price in words)	\$ <u>5,000-</u>	\$ <u>5,000-</u>
8.	4-04	<u>1,890</u> <u>TON</u>	Crushed Surfacing Base Course \$ <u>Forty-six</u> (unit price in words)	\$ <u>46-</u>	\$ <u>86,940-</u>
9.	5-04	<u>310</u> <u>TON</u>	HMA Cl. 1/2" PG 64-22 \$ <u>one Hundred and sixty</u> (unit price in words)	\$ <u>160-</u>	\$ <u>49,600-</u>

SCHEDULE OF PRICES
77 Street Court East and 205th Avenue Sewer Repairs

Bid Item	Spec. Reference	Approx. Quantity	Description	Unit Price	Total Price
10.	7-05	<u>2 EA</u>	Manhole 48 In. Diam. Type 1 \$ <u>NINE THOUSAND THREE HUNDRED</u> (unit price in words)	\$ <u>9,300-</u>	\$ <u>18,600-</u>
11.	7-05	1 EA	Manhole 48 In. Diam. Type Saddle \$ <u>EIGHT THOUSAND EIGHT HUNDRED</u> (unit price in words)	\$ <u>8,800-</u>	\$ <u>8,800-</u>
12.	<u>7-05</u>	<u>1 EA</u>	<u>Manhole 60 In. Diam. Type 1</u> \$ <u>TEN THOUSAND</u> (unit price in words)	\$ <u>10,000-</u>	\$ <u>10,000-</u>
13.	7-05	<u>4 EA</u>	Adjust Manhole \$ <u>ONE THOUSAND</u> (unit price in words)	\$ <u>1,000-</u>	\$ <u>4,000-</u>
14.	7-05	<u>4 EA</u>	Adjust Catch Basin \$ <u>ONE THOUSAND</u> (unit price in words)	\$ <u>1,000-</u>	\$ <u>4,000-</u>
15.	7-08	18 EA	Pothole Existing Utility \$ <u>SEVEN HUNDRED</u> (unit price in words)	\$ <u>700-</u>	\$ <u>12,600-</u>
16.	7-15	150 LF	Service Line \$ <u>SIXTY-THREE</u> (unit price in words)	\$ <u>63-</u>	\$ <u>9,450-</u>
17.	7-16	1 LS	Temporary Bypass Pumping \$ <u>SIXTEEN THOUSAND.</u> (unit price in words)	\$ <u>16,000-</u>	\$ <u>16,000-</u>
18.	7-17.5	1 LS	Abandon Existing Sewer \$ <u>THREE THOUSAND SEVEN HUNDRED</u> (unit price in words)	\$ <u>3,700-</u>	\$ <u>3,700-</u>
19.	7-17.5	220 LF	PVC Sanitary Sewer Pipe 8 In. Diam. \$ <u>ONE HUNDRED SEVENTY-FIVE</u> (unit price in words)	\$ <u>175-</u>	\$ <u>38,500-</u>

SCHEDULE OF PRICES
77 Street Court East and 205th Avenue Sewer Repairs

Bid Item	Spec. Reference	Approx. Quantity	Description	Unit Price	Total Price
20.	7-17.5	16 LF	<u>CL. IV Reinf. Conc.</u> Sewer Pipe 30 In. Diam. \$ <u>FIVE HUNDRED</u> (unit price in words)	\$ <u>600-</u>	\$ <u>9,600-</u>
21.	7-17.5	3 EA	Connection To Existing Sewer \$ <u>THREE THOUSAND FIVE HUNDRED</u> (unit price in words)	\$ <u>3,500-</u>	\$ <u>10,500-</u>
22.	7-18	7 EA	Reconnect Existing Gravity Sewer Side Service \$ <u>ONE THOUSAND FIVE HUNDRED</u> (unit price in words)	\$ <u>1,500-</u>	\$ <u>10,500-</u>
23.	8-01	1 LS	Erosion and Water Pollution Prevention \$ <u>FIVE THOUSAND</u> (unit price in words)	\$ <u>5,000-</u>	\$ <u>5,000-</u>
24.	<u>8-02.5</u>	<u>380 SY</u>	<u>Roadside Restoration</u> \$ <u>twenty</u> (unit price in words)	\$ <u>20-</u>	\$ <u>7,600-</u>
25.	8-13	<u>4 EA</u>	Monument Case and Cover \$ <u>two thousand.</u> (unit price in words)	\$ <u>2,000-</u>	\$ <u>8,000-</u>
26.	8-19	2 EA	Decommission Monitoring Well \$ <u>four thousand.</u> (unit price in words)	\$ <u>4,000-</u>	\$ <u>8,000-</u>
27.	8-19	1 LS	Dewatering \$ <u>FIFTEEN THOUSAND</u> (unit price in words)	\$ <u>15,000-</u>	\$ <u>15,000-</u>
Subtotal – Base Bid (Items 1 –27)				\$ <u>546,890-</u>	
Washington State Sales Tax (9.5%)				\$ <u>51,954.55</u>	

SCHEDULE OF PRICES
77 Street Court East and 205th Avenue Sewer Repairs

Bid Item	Spec. Reference	Approx. Quantity	Description	Unit Price	Total Price
Total Bid Construction Cost				\$ <u>598,844.55</u>	

City of Bonney Lake, Washington
Community Development Committee Agenda Bill (AB)

**Agenda Bill Number &
 Ordinance/Resolution/Motion Number:**

Agenda Item Type: Motion

Presenter: Andrew Fonda, Assistant City Engineer

City Strategic Goal Category:

Department/Division Submitting: Public Services Staff

**Impacted Departments That Received
 Notification:**

Agenda Subject: Authorizing a Professional Services Agreement with Akana for Construction Management Services for the 77th St Ct and 205th Ave Sewer Repairs Project.

Full Title/Motion: A Motion Of The City Council Of The City Of Bonney Lake, Pierce County, Washington, Authorizing A Professional Services Agreement With Akana For Construction Management Services For The 77th St Ct and 205th Ave Sewer Repairs Project.

Short Background Summary:

City staff is requesting support from Akana to perform construction management services on the 77th St Ct and 205th Ave sewer repairs project to assist with daily inspection, documentation, and project close-out. Akana is a full-service construction management firm with extensive experience managing sanitary sewer improvement projects. The scope of work includes project management, field oversight, submittal and RFI management, and contract document organization for a total fee in the amount of \$69,560.

Budget

Budgeted Amount	Current Balance	Expenditure Amount Needed	Budgeted Balance Difference
\$4,000,000.00	\$3,145,887.00	\$69,560.00	\$3,076,327.00

Budget Explanation:

Bars # 402.925.035.594.35.63.05 I&I Reduction Program

Committee, Board, Commission, & Hearing Examiner Review

Name Of Committee/Commission/Examiner Meeting: Community Development Committee

Date of Committee/Commission/Examiner Meeting:

Date of Committee/Commission Public Hearing:

Committee/Commission/Examiner Meeting Decision:

Council Action

Date of Council Workshop

Date of Council Meeting

Date of Council Public Hearing

**PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF BONNEY LAKE AND AKANA**

THIS PROFESSIONAL SERVICES AGREEMENT is entered into by and between the City of Bonney Lake, Washington, a municipal corporation (“**City**”) and Akana, organized under the laws of the State of Washington, located and doing business at 50-116 Avenue Southeast, Bellevue, Washington 98004 (hereinafter the “**Consultant**”).

RECITALS:

WHEREAS, the City desires to have Construction Management Services performed; and

WHEREAS, the City has selected the Consultant to perform such services pursuant to certain terms and conditions; and

WHEREAS, the City complied with the requirements for hiring Consultant contained in Chapter 39.80 RCW;

NOW, THEREFORE, in consideration of the mutual benefits and conditions set forth below, the Parties agree as follows:

AGREEMENT:

1. Scope of Services to be Performed by Consultant.

The Consultant shall perform those services described on Exhibit “A,” which is attached hereto and incorporated herein by this reference as if set forth in full. In performing such services, the Consultant shall at all times comply with all federal, state, and local statutes, rules and ordinances applicable to the performance of such services and the handling of any funds used in connection therewith. The Consultant shall perform the services diligently and completely and in accordance with professional standards of conduct and performance. The Consultant shall request and obtain prior written approval from the City if the scope or schedule is to be modified in any way.

2. Compensation and Method of Payment.

The City shall pay the Consultant for services rendered a sum not to exceed Sixty-Nine Thousand Five Hundred Sixty Dollars (\$69,560) for the work set forth in Exhibit “A”. The City shall pay the Consultant monthly for the hours performed completing the scope of work and with the rates listed in Exhibit B, provided that the Consultant is making steady progress on the work and meeting its deadlines. Such installments shall be paid for by the City’s check processing schedule with the final installment being paid after delivery of completed project. The City reserves the right to direct the Consultant's compensated services before reaching the maximum amount.

3. Duration of Agreement. This Agreement shall be in full force and effect for a period commencing on the date the last Party executes this Agreement and ending December 31, 2026 unless sooner terminated under the provisions of this Agreement or extended by mutual agreement of the Parties. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

4. Ownership and Use of Documents.

A. *Ownership.* Any records, files, documents, drawings, specifications, data, or information, regardless of form or format, and all other materials produced by the Consultant in connection with the services provided to the City, shall be the property of the City whether the project for which they were created is executed or not. Reuse of materials produced by the Consultant other than as contemplated by this Agreement shall be without liability to the Consultant.

B. *Records preservation.* Consultant understands that this Agreement is with a government agency and thus all records created or used in the course of Consultant's work for the City are considered "public records" and may be subject to disclosure by the City under the Public Records Act, Chapter 42.56 RCW ("the Act"). Consultant agrees to safeguard and preserve records in accordance with the Act. The City may be required, upon request, to disclose the Agreement, and the documents and records submitted to the City by Consultant, unless an exemption under the Public Records Act applies. If the City receives a public records request and asks Consultant to search its files for responsive records, Consultant agrees to make a prompt and thorough search through its files for responsive records and to promptly turn over any responsive records to the City's public records officer at no cost to the City.

5. Independent Consultant. The Parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or sub-consultants of the Consultant. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Consultant, or any employee of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives, and sub-consultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

6. Indemnification. Consultant shall defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorneys' fees, to the extent arising out of or resulting from the negligent acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, 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 the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability, including the duty and cost to defend, hereunder shall be only to the extent of the Consultant's negligence.

It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

The provisions of this section shall survive the expiration or termination of this Agreement.

7. Insurance. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

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

- i. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- ii. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Consultants and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City.
- iii. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- iv. Professional Liability insurance appropriate to the Consultant's profession.

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

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

- ii. Commercial General Liability insurance shall be written with limits no less than \$2,000,000 each occurrence, \$2,000,000 general aggregate.
- iii. Professional Liability insurance shall be written with limits no less than \$2,000,000 per claim and \$2,000,000 policy aggregate limit.

C. *Other Insurance Provision.* The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

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

E. *Verification of Coverage.* The Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

F. *Notice of Cancellation.* The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.

G. *Failure to Maintain Insurance.* Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days' notice to the Consultant to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

H. *No Limitation.* Consultant's maintenance of insurance as required by the agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

8. Record Keeping and Reporting.

A. The Consultant shall maintain accounts and records, including personnel, property, financial, and programmatic records, which sufficiently and properly reflect all direct and indirect costs of any nature expended and services performed pursuant to this Agreement. The Consultant shall also maintain such other records as may be deemed necessary by the City to ensure proper accounting of all funds contributed by the City to the performance of this Agreement.

B. The foregoing records shall be maintained for a period of seven (7) years after termination of this Agreement unless permission to destroy them is granted by the Office of the Archivist in accordance with Chapter 40.14 RCW and by the City.

9. City's Right of Inspection and Audit.

A. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

B. The records and documents with respect to all matters covered by this Agreement shall be subject at all times to inspection, review or audit by the City during the performance of this Agreement. All work products, data, studies, worksheets, models, reports, and other materials in support of the performance of the service, work products, or outcomes fulfilling the contractual obligations are the products of the City.

10. Consultant to Maintain Records to Support Independent Contractor Status. On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the Parties which is subject to RCW Title 51, Industrial Insurance.

11. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and sub-consultants in the performance of the work hereunder and shall utilize all protection reasonably necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

12. Termination.

A. The City reserves the right to terminate or suspend this Agreement at any time, with or without cause, upon seven (7) days' prior written notice. In the event of termination or suspension, all finished or unfinished documents, data, studies, worksheets, models, reports, or other materials prepared by the Consultant pursuant to this Agreement

shall promptly be submitted to the City.

B. In the event this Agreement is terminated or suspended, the Consultant shall be entitled to payment for all services performed and reimbursable expenses incurred to the date of termination.

C. This Agreement may be canceled immediately if the Consultant's insurance coverage is canceled for any reason, or if the Consultant is unable to perform the services called for by this Agreement.

D. The Consultant reserves the right to terminate this Agreement with not less than fourteen (14) days written notice, or in the event that outstanding invoices are not paid within sixty (60) days.

E. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement.

13. Force Majeure. Notwithstanding anything to the contrary in this Agreement, any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, acts of war, terrorist acts, inability to obtain services, labor, or materials or reasonable substitutes therefor, governmental actions, governmental laws, regulations or restrictions, civil commotions, Casualty, actual or threatened public health emergency (including, without limitation, epidemic, pandemic, famine, disease, plague, quarantine, and other significant public health risk), governmental edicts, actions, declarations or quarantines by a governmental entity or health organization, breaches in cybersecurity, and other causes beyond the reasonable control of the Party obligated to perform, regardless of whether such other causes are (i) foreseeable or unforeseeable or (ii) related to the specifically enumerated events in this paragraph (collectively, a "**Force Majeure**"), shall excuse the performance of such Party for a period equal to any such prevention, delay or stoppage. To the extent this Agreement specifies a time period for performance of an obligation of either Party, that time period shall be extended by the period of any delay in such Party's performance caused by a Force Majeure. Provided however, that the current COVID-19 pandemic shall not be considered a Force Majeure unless constraints on a Party's performance that result from the pandemic become substantially more onerous after the effective date of this Agreement. In order to claim Force Majeure, the Party claiming must provide notice to the other Party within fourteen (14) days of the event which constitutes Force Majeure or such claim shall be waived for any period in which notice was due.

14. Discrimination Prohibited. The Consultant shall not discriminate against any employee, applicant for employment, or any person seeking the services of the Consultant under this Agreement, on the basis of race, color, religion, creed, sex, sexual orientation, age, national origin, marital status, presence of any sensory, mental or physical disability, or other circumstance prohibited by federal, State or local law or ordinance, except for a bona fide occupational qualification.

15. Assignment and Subcontract. The Consultant shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

Any assignment made without the prior approval of the City is void.

16. Conflict of Interest. The Consultant represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit “A.” In the event that the Consultant is asked to perform services for a project with which it may have a conflict, Consultant will immediately disclose such conflict to the City.

17. Confidentiality. All information regarding the City obtained by the Consultant in performance of this Agreement shall be considered confidential. Consultant shall not disclose any such information to any third parties without (1) the prior written consent of the City or (2) legal process requiring disclosure, provided advance notice is provided to the City. Breach of confidentiality by the Consultant shall be grounds for immediate termination.

18. Non-Appropriation of Funds. If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will so notify the Consultant and shall not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. This Agreement will terminate upon the completion of all remaining services for which funds are allocated. No penalty or expense shall accrue to the City in the event that the terms of the provision are effectuated.

19. Employment of State Retirees. The City is a “DRS-covered employer” which is an organization that employs one or more members of any retirement system administered by the Washington State Department of Retirement Systems (DRS). Pursuant to RCW 41.50.139(1) and WAC 415-02-325(1), the City is required to elicit on a written form if any of the Consultant’s employees providing services to the City retired using the 2008 Early Retirement Factors (ERFs), or if the Consultant is owned by an individual who retired using the 2008 ERFs, and whether the nature of the service and compensation would result in a retirement benefit being suspended. Failure to make this determination exposes the City to significant liability for pension overpayments. As a result, before commencing work under this Agreement, Consultant shall determine whether any of its employees providing services to the City or any of the Consultant’s owners retired using the 2008 ERFs, and shall immediately notify the City and shall promptly complete the form provided by the City after this notification is made. This notification to DRS could impact the payment of retirement benefits to employees and owners of Consultant. Consultant shall indemnify, defend, and hold harmless the City from any and all claims, damages, or other liability, including attorneys’ fees and costs, relating to a claim by DRS of a pension overpayment caused by or resulting from Consultant’s failure to comply with the terms of this provision. This provision shall survive termination of this Agreement.

20. Entire Agreement. This Agreement contains the entire agreement between the Parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the Parties. If there is a conflict between the terms and conditions of this Agreement and the attached exhibit, then the terms and conditions of this Agreement shall prevail over the exhibit. Either Party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

21. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered, in which case the notice or communication shall be deemed given on the date of receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, in which case the notice or communication shall be deemed given three (3) business days after the date of deposit in the United States mail; or (c) sent by overnight delivery using a nationally recognized overnight courier service, in which case the notice or communication shall be deemed given one business day after the date of deposit with such courier. In addition, all notices shall also be emailed, however, email does not substitute for an official notice. Notices shall be sent to the following addresses:

Notices to the City of Bonney Lake shall be sent to the following address:

City Clerk
City of Bonney Lake
9002 Main Street E.
Bonney Lake WA 98391

Notices to the Consultant shall be sent to the following address:

Jeff Faunce
50-116 Ave SE, Suite 211
Bellevue WA 98004
Jeff.Faunce@akana.us

22. Applicable Law; Venue; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. In the event any suit, arbitration or other proceeding is instituted to enforce any term of this Agreement, the Parties specifically understand and agree that venue shall be exclusively in Pierce County, Washington. The prevailing party in any such action shall be entitled to its reasonable attorneys' fees and costs of suit, which shall be fixed by the judge hearing the case and such fee shall be included in the judgment.

23. Compliance with Laws. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of those operations.

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall constitute an original, and all of which will together constitute this one Agreement.

25. Severability. Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Consultant, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

IN WITNESS WHEREOF, the City and the Consultant have executed this Agreement as of the dates listed below.

CITY OF BONNEY LAKE

CONSULTANT

Name: Terry Carter

Name: Jeff Faunce

Title: Mayor

Title: Construction Managment Practice Leader/VP

Date: _____

Date: _____

ATTEST

By: _____

Sadie A. Schaneman, MMC
City Clerk

APPROVED AS TO FORM

Jennifer S. Robertson, City Attorney

EXHIBIT A

Scope of Services to be Provided by Consultant. The Scope of Services is described in the attached Proposal dated September 2, 2025, which is attached hereto and incorporated herein.

EXHIBIT B

Rates of Services to be Provided by Consultant. The Rates of Services is described in the attached Proposal dated September 2, 2025, which is attached hereto and incorporated herein.

EXHIBIT A

Construction Management Services

Scope of Work

September 2, 2025

City of Bonney Lake

77TH STREET AND 205TH AVE SEWER REPAIR

This scope of work outlines the construction management services to be provided for the completion of the 77th Street and 205th Ave Sewer Repair Project which includes replacement of approximately 203 linear feet of 8" PVC sewer main on 77th Street Court East, reconnecting of side sewers, water service replacement and surface restoration; as well as repairs of a damaged 8" PVC sewer main on 205th Avenue by replacing approximately 14 linear feet of the sewer main and reconnecting a 6" sewer side service. The Consultant will deliver services to support the City through construction, documentation, and close-out, in accordance with the Contract Documents and applicable local, state, and federal standards.

I. INTRODUCTION

This scope and the associated fee estimate are based on the following assumptions:

General Assumptions:

- Services are based on a construction duration of 54 working days, (2 - 16-hour days for 12 weeks with an additional 16 hours for startup and 16 hours for closeout).
- The Consultant team includes a part-time Project Manager/Resident Engineer, and part-time Documentation Specialist. Subconsultants will be engaged for material testing services as needed.
 - City shall provide one qualified inspector for onsite monitoring and documentation of daily construction activities. City inspector shall provide all required documentation to Consultant staff as required by project specifications.
- The Consultant will utilize and manage the Record of Materials (ROM) and will coordinate all associated material testing per contract requirements.
- The Consultant will coordinate with the City of Bonney Lake as needed, including during audits and for traffic control review related to project impacts.
- The Consultant will support community outreach by coordinating with the Contractor on phasing and public impacts. The Contractor is responsible for direct communications regarding schedule and construction activities.
- City-designated engineers will remain available during construction for technical support, including RAM, shop drawing, and RFI review.

EXHIBIT A

- All work will be performed in compliance with the approved Plans, Specifications, and the City’s engineering standards.
-

II. SCOPE OF WORK

The purpose of this Agreement is to ensure the successful construction and documentation of the Project in accordance with the Plans and Specifications, with the goal of receiving final approval by the City of Bonney Lake upon project completion.

TASK 1 – MANAGEMENT / COORDINATION / ADMINISTRATION

- Provide overall project management and coordination.
- Submit monthly progress reports and invoices.
- Monitor scope, budget, and schedule performance.

Deliverables:

- Monthly invoices and progress reports.
-

TASK 2 – PRECONSTRUCTION SERVICES

2.1 Preconstruction Conference. The Consultant shall prepare an agenda, distribute notices of the conference, and will conduct a preconstruction conference in the Owner’s offices. The Consultant’s project manager/resident engineer, principal for QA/QC procedures, and documentation specialist will attend the preconstruction conference. The documentation specialist will prepare a written record of the meeting. The consultant shall also distribute copies of the minutes to all attendees, affected agencies and others as appropriate.

2.2 Provide Record of Materials, ROM, development if necessary

Deliverables:

- Meeting agenda and minutes.
 - Record of Materials
-

TASK 3 – FIELD CONSTRUCTION SERVICES – Provided by the Owner

3.1 The Owner will provide the services of a full-time inspector for pipe, roadway, and other items, as needed, on the project site who will observe the technical conduct of the construction, including providing day-to-day contact with the Contractor and the City. By providing such

EXHIBIT A

assistance, the Consultant shall assume no responsibility for proper construction techniques and job site safety. The presence of the Consultant's personnel at the construction site is for the purpose of providing to the City a greater degree of confidence that the completed work will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the construction contractor(s). The Consultant's personnel shall act in accordance with Section 1-05.1 and 1-05.2 of the current WSDOT Standard Specifications. The Consultant will endeavor to protect all parties against defects and deficiencies in the work of the Contractor(s) but cannot guarantee the Contractors' performance and shall not be responsible for construction means, methods, techniques, sequences of procedures, or for safety precautions and programs in connection with the work performed by the construction contractor(s) and any subcontractors.

- 3.2 The Owner will Prepare daily construction reports, utilizing report forms approved by the City, detailing the contractors operations performed for each day the Contractor is on site; measure the quantities of materials installed, log equipment used, workers on site and other items.
- 3.3 Decide questions which may arise as to the quality and acceptability of material furnished, work performed, and rate of progress of work performed by the Contractor, including response to related questions from adjacent property owners and the general public.
- 3.4 Prepare field records and documents to help ensure the project is administered in accordance with funding requirements.
- 3.5 The city will provide periodic photographs during the course of construction. Photographs to be attached to daily reports date taken and subject matter.
- 3.6 Coordinate with the contractor provided surveying.
- 3.7 Coordinate with subconsultant(s) to conduct materials tests/laboratory tests.
- 3.8 Punchlist. Upon substantial completion of work, coordinate with the City and other affected agencies, to perform a project inspection and develop a comprehensive list of deficiencies or 'punch list' of items to be completed. This will be issued with the Certificate of Substantial Completion, which will be issued by the Consultant.

Assumptions:

- Contractor will work a standard 40-hour schedule (which may be night shifts).
- One shift per calendar day is assumed unless Contractor performs both day and night shifts.
- Owner provided inspector will report directly to the Consultant on a daily basis for all project documentation required from the field.

TASK 4 – OFFICE CONSTRUCTION SERVICES

- Maintain official contract documentation per City standards.

EXHIBIT A

- Coordinate with the City and Contractor on schedule reviews, RFIs, certified payroll, working day statements, and pay estimates.

Subtasks Include:

- **Document Control:** Maintain original records, project correspondence, ROM, final materials certification, wage compliance, and subcontractor documentation.
- **Schedule and Payment Oversight:** Review and evaluate Contractor's CPM schedules, pay applications, lump sum breakdowns, and provide monthly schedule analysis.
- **Compliance and Audit Support:** Ensure certified payroll, UDBE/EEO tracking, and other WSDOT/FHWA reporting. Participate in audits and conduct a QA/QC document review.
- **Project Closeout:** Prepare physical completion letter, assist with final record drawings, and transfer documents to City.

Deliverables:

- Meeting agendas and minutes.
- Final pay estimates.
- Certified payroll logs.
- Record drawings.
- Project closeout documents.

Assumptions:

- City inspector will provide all field documents relating to processing project documentation. Also provide preconstruction Photos.

TASK 5 – SUBMITTAL & RFI MANAGEMENT

- Coordinate review process for shop drawings, samples, traffic control plans, test reports, and other data submitted by the Contractor for compliance with the information required by the contract documents. Log, route, and track submittals and RFIs.
- Coordinate review with City-designated personnel.
- Maintain and update the ROM based on Special Provisions and field activities.

Deliverables:

- Submittal log.
- RFI log.

EXHIBIT A

- Final Record of Materials.

Assumptions:

- No off-site fabrication inspections will be performed unless requested, through separate City agreement.
-

TASK 6 – CHANGE MANAGEMENT

- Track and manage changes via a case log including RFPs, Field Work Directives, and executed Change Orders.
- Provide independent cost estimates and time impact analysis as needed.
- Monitor force account work and maintain documentation.

Deliverables:

- Case management log.
 - Change Orders and backup.
 - Minor Change Orders.
-

TASK 7 – SUBSTANTIAL COMPLETION

7.1 Substantial Completion Coordination

- Coordinate punchlist inspections and generate Certificate of Substantial Completion.

Deliverables:

- Punch list and Certificate of Substantial Completion.
-

TASK 8 – ADDITIONAL SERVICES

Additional services may be provided upon written authorization by the City. These services may include public meetings, outreach events, claims review, survey support, extended inspection due to Contractor-caused delays, or project shutdowns. This scope of work does not account for contractor non-working or suspension days.

9/2/2025

**Exhibit B
77th Street and 205th Ave Sewer
Repair Project
Cost Computation
Akana**



This cost computation is based 54 working days, 2 - 16 hour days for 12 weeks for construction with an additional 16-hours for startup and 16 hours for closeout totaling the 54 days.

Akana Staff Category	Hours	Rate	Cost
Senior Construction Manager	2	\$ 125.00	\$ 250.00
Sr. Project Manager / Resident Engineer	192	\$ 89.25	\$ 17,136.00
Sr. Construction Inspector- city supplied	0	\$ 67.28	\$ -
Documentation Specialist	192	\$ 41.61	\$ 7,989.00
Akana Accounting/PC Coordinator	4	\$ 41.61	\$ 166.00
Total Hours	390		\$ 25,541.00

Direct Labor Cost		\$ 25,541.00
Overhead Rate @ 136.12% of Direct Labor		\$ 34,766.41
Fee @ 30% *(Direct Labor)		\$ 7,662.30
	Total	\$ 67,969.71
Direct Salary Cost		\$ 67,970.00

Direct Expenses	Unit	Cost	Total
Vehicle	1	750	750
Mileage	1200	0.7	840

Sub-Total Direct Expenses \$ -

Subconsultants		
Material Testing	\$	-
Total	\$	-

Sub-Total Subconsultants \$ -

Sub-Total Project Cost Computation \$ 69,560.00

Management Reserve () 0

Total Fee \$ 69,560.00

City of Bonney Lake, Washington
Community Development Committee Agenda Bill (AB)

**Agenda Bill Number &
 Ordinance/Resolution/Motion Number:**

Agenda Item Type: Motion

Presenter: Jason Sullivan, Public Services Director

City Strategic Goal Category:

Department/Division Submitting: Public Services Director

**Impacted Departments That Received
 Notification:**

Agenda Subject: AT&T Franchise Agreement

Full Title/Motion: A Motion of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing the Mayor to sign the franchise agreement with AT&T doing business as Forged Fiber 37, LLC.

Short Background Summary:

AT&T, doing business as Forged Fiber 37, LLC., has signed an agreement to purchase a portion of the fiber business of Lumen Technologies, Inc. and its affiliates (“Lumen”), which includes fiber assets and associated facilities that may be located within the rights-of-way of the City of Bonney Lake. Forged Fiber 37 has requested a new franchise agreement to own, operate and construct fiber optic facilities in the City’s rights-of-way. Forged Fiber 37 intends to build fiber optic cable facilities throughout the City and is therefore asking for city-wide rights under the proposed franchise agreement. Forged Fiber 37 will provide wholesale service only; resellers will provide services to the general public, including residential customers and small businesses. Forged Fiber does not have a scope or schedule for future construction projects at this time.

Consistent with City Council direction, the proposed franchise agreement is only for an initial 5-year term. Under the proposed franchise agreement, Forged Fiber can request that the Mayor approve a renewal of the franchise agreement up to a maximum of two additional 5-year terms.

Budget

Budgeted Amount	Current Balance	Expenditure Amount Needed	Budgeted Balance Difference
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Budget Explanation:

Committee, Board, Commission, & Hearing Examiner Review

Name Of Committee/Commission/Examiner Meeting: Community Development Committee

Date of Committee/Commission/Examiner Meeting:

Date of Committee/Commission Public Hearing:

Committee/Commission/Examiner Meeting Decision:

Council Action

Date of Council Workshop

Date of Council Meeting

Date of Council Public Hearing

**NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE
WITH FORGED FIBER 37, LLC**

THIS TELECOMMUNICATIONS FRANCHISE (this “**Franchise**”) is entered into on _____, 2025, by and between the City of Bonney Lake, a municipal corporation (“**City**”) and Forged Fiber 37, LLC, a Delaware limited liability company, and wholly owned subsidiary of AT&T, Inc. (“**Franchisee**”).

Section 1. – Definitions. In addition to terms otherwise defined herein, the following definitions shall apply generally to the provisions of this Franchise.

- 1.1 “**Affiliate**” means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee.
- 1.2 “**Applicable Laws**” means any local, federal, or state statute, law, regulation, or other legal authority governing any of the matters addressed in this Franchise, as all now exist or as later amended or superseded.
- 1.3 “**City**” means the City of Bonney Lake, Washington, a Washington municipal corporation.
- 1.4 “**Control**” means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of 50% or more of the voting power to elect directors thereof; or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than 50%, the maximum amount allowed by Applicable Laws; and (iii) any other Person, 50% or more ownership interest in this Person, or the power to direct the management of such Person.
- 1.5 “**Emergency Situation**” means a condition posing an imminent threat to property, life, health, or safety of any Person or entity.
- 1.6 “**Facilities**” or “**Network**” means one or more elements of Franchisee’s fiber network, with all necessary underground fiber optic cables, lines, wires, or strands and associated appurtenances; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities.
- 1.7 “**Force Majeure Event**” means natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Franchisee’s ability to provide Services in the City and which was not caused and could not have been avoided by the Franchisee which used its best efforts in its operations to avoid such results.
- 1.8 “**Franchisee**” means Forged Fiber 37, LLC, a Delaware limited liability company.
- 1.9 “**Hazardous Substances**” means any substance or material that is regulated by any current or future federal, state, or local statutes, regulations, ordinances, and rules relating to: the emission, discharge, release, or threatened release of any hazardous substance into the air, surface water, groundwater, or land; the manufacturing, processing, use, generation, treatment, storage, disposal,

transportation, handling, removal, remediation, or investigation of a hazardous material; and the protection of human health, safety, or the indoor or outdoor environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq.; all applicable environmental statutes of the State of Washington; and all other federal, state, or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders, or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect.

1.10 **“Mayor”** means the Mayor or Mayor’s designee.

1.11 **“Parties”** (singular **“Party”**) refers to both the City and Franchisee.

1.12 **“Person”** means any natural person, or public or private legal entity of any kind.

1.13 **“Public Improvement”** means the establishment and improvement of new Rights-of-Way, widening or improvement of existing Rights-of-Way or both, freeway construction, change or establishment of street grade, the modification, relocation, or removal of City electrical infrastructure, including utility poles, or the construction of any public infrastructure by any governmental agency acting in a governmental capacity as approved by the City, or as otherwise necessary for the operations of the City or other governmental entity.

1.14 **“Rights-of-Way”** (singular **“Right-of-Way”**) as used in this Franchise, means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, pathways, spaces, or other public right-of-way, and over which the City has authority to grant permits, licenses, or franchises for use thereof, or has regulatory authority thereover. Right-of-Way does not include railroad right-of-way, airports, harbor areas, buildings, parks, poles, conduits, open spaces, nature trails, poles, dedicated but un-opened right-of-way, environmentally sensitive areas and any land, facilities, or property owned, maintained, or leased by the City in its governmental capacity, proprietary capacity, or as an operator of a utility.

1.15 **“Services”** (singular **“Service”**) means wholesale fiber transport services, with Franchisee operating as a service provider or telecommunications service as defined in RCW 35.99.010. Services do not include cable services as defined in 47 U.S.C. § 522(6) or wireless communication services.

Section 2. – Franchise Granted.

2.1 **Franchise and Term.** Pursuant to RCW 35A.47.040, the City hereby grants to Franchisee, its successors, legal representatives, and assigns, subject to the terms and conditions set forth herein, a non-exclusive Franchise for a period of five (5) years, beginning on the effective date of the ordinance authorizing this Franchise (the “Effective Date”).

2.1.1. **Renewal Option of Term.** The Franchisee may renew this Franchise for two (2)

additional five (5) year periods upon submission and approval of the application for such renewal. The application shall be reviewed for approval by the Mayor. Approval of any materials submitted by the Franchisee for a previous application may be considered by the City in reviewing a current application, and the Franchisee shall only submit those materials deemed necessary by the City to address changes in the Franchisee's Facilities or Services, or to reflect specific reporting periods mandated by the City Code.

2.1.2. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any renewal thereof, the Franchise automatically continues month-to-month until renewed or either Party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

2.2 Franchise Purpose. This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, restore, upgrade, remove, excavate, acquire, sell, lease, and use all necessary Facilities for a fiber optic infrastructure network in, under, on, across, over, through, along, or below the public Rights-of-Way located in the City, and any other areas designated herein or added to the corporate limits of the City during the term of this Franchise (the “Franchise Area”) for the purpose of providing the Services.

2.3 Limited Authorization.

2.3.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City’s Rights-of-Way and does not authorize Franchisee to use any property other than the Rights-of-Way as agreed herein. Nothing 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 Services. Franchisee’s use of any other City property, including City-owned or leased property, or poles, and conduits, must be governed under a separate agreement.

2.3.2 This Franchise shall not prevent the City from granting other franchises within its Rights-of-Way, nor shall it prevent or prohibit the City from using any Rights-of-Way, or affect its jurisdiction over any Rights-of-Way or any part of a Right-of-Way. The City retains power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of Rights-of-Way as it deems fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description.

2.3.3 The City also reserves the right to amend this Franchise to conform to any hereafter enacted, amended, or adopted Applicable Laws relating to the public health, safety, and welfare, or relating to roadway regulation, upon providing Franchisee with thirty (30) days’ written notice of its action setting forth the full text of the amendment and identifying the Applicable Laws. This amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee requests in writing to negotiate the terms of the amendment. If the Parties do not reach agreement as to the amendment terms within thirty (30) days of the request to negotiate, the City may enact the proposed amendment by incorporating Franchisee’s concerns to the maximum extent that the City, in its sole discretion, deems

reasonable.

2.4 Authorized Services.

2.4.1 Franchisee represents that it intends to provide the following services within the City: telecommunications services as defined in RCW 35.99.010, including wholesale fiber transport services, to residents and businesses within the City (the “Customers”). Franchisee may not offer cable services as that term is defined in 47 U.S.C. § 522(6). This Franchise does not authorize any wireless communications services.

2.4.2 Franchisee is authorized without prior City approval to offer or provide capacity or bandwidth, leased fiber or leased conduits, or any other Services set forth in this Section 2.4 to its Customers consistent with this Franchise provided:

- a. Franchisee at all times retains exclusive control over its Facilities and Services; remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise; and is solely responsible for providing and maintaining Services to its Customers;
- 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 will not be construed to be a third-party beneficiary under this Franchise; and
- d. No Customer or lessee that accesses Franchisee’s Facilities within the City limits may use the Facilities or Services for any purpose not authorized by this Franchise unless that Customer has a franchise with the City. Then, the Customer may use Franchisee’s Facilities or Services consistent with the terms of its franchise.

2.5 Termination.

2.5.1 Termination by City. The City may terminate this Franchise if Franchisee is in material breach of the Franchise and has failed to cure the breach within the applicable notice and cure period as specified in Section 17. No termination under this subsection will be effective until the applicable notice and cure period has expired. Additionally, if Franchisee fails to apply for any permits to install Facilities within two (2) years of the Effective Date of this Franchise, the City may terminate this Franchise after providing Franchisee with written notice ninety (90) days in advance of termination.

2.5.2 Termination by Franchisee. Franchisee may terminate this Agreement for convenience upon written notice provided to the City at least one hundred and eighty (180) days in advance of termination.

Section 3. – Work in the Rights-of-Way.

3.1 Location of Facilities. Franchisee may locate its Facilities within the Franchise Area consistent with the City’s Design and Construction Standards and subject to the City’s applicable permit requirements.

3.2 Permits Required. Franchisee shall not commence any work within any Rights-of-Way without first obtaining all necessary permits as required by Applicable Laws. Franchisee shall pay the standard permit fee, and all lawful processing, field marking, engineering, and inspection fees associated with the issuance of permits by the City.

3.3 Work Requirements. 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 and only after obtaining permits or other authorization pursuant to Section 3.2 and this Section 3.3. Franchisee shall 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 traffic control to warn and direct the road users, consistent with the requirements of Applicable Laws. Traffic control devices include but are not limited to barricades, traffic cones, traffic drums, tubular markers, flags, certified flaggers, lights, flares, and other measures as required for the safety of all members of the general public. Franchisee shall also comply with all applicable safety regulations during such period of construction as required by all Applicable Laws, including, without limitation, RCW 39.04.180 for the requirement of trench safety systems for trench excavations.

3.4 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with Applicable Laws. Work by contractors and subcontractors is 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 Laws.

3.5 Maintenance of Facilities. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services.

3.6 Shared Excavation. If either the City or Franchisee plans to make excavations in any area covered by this Franchise and as described in this Section 3.6, the Party planning the excavation shall endeavor to afford the other an opportunity to share the excavation, PROVIDED THAT:

- a. The joint use shall not unreasonably delay the work of the Party causing the excavation to be made;
- b. The joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties; and
- c. The initiating Party may deny a request for constructability and/or safety reasons.

3.7 Coordination of Construction.

3.7.1 Except for Emergency Situations, Franchisee shall give advance written notice of intended construction to property owners and/or residents within one hundred (100) feet of the construction area as follows: if construction is ground disturbing, at least seven (7) days' notice

shall be required; otherwise, forty-eight (48) hours' notice shall be required. The notice shall contain the dates, contact number, nature, and location of the work to be performed; a door hanger is permissible. At least twenty-four (24) hours before entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed; a door hanger is permissible. Nothing in this Franchise gives the Franchisee the right to enter onto private property without the permission of the private property owner.

3.7.2 Franchisee shall make a good faith effort to comply with the private property owner/resident's preferences, if any, on location or placement of underground installations, consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to 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 reasonable satisfaction of the property owner/resident.

3.7.3 Upon prior written notice from the City, Franchisee shall meet with the City and other franchise holders to schedule and coordinate construction in the Rights-of-Way and on City property where authorized. To minimize public inconvenience, disruption or damage, the Franchisee shall coordinate all construction locations, activities, and schedules as directed by the City.

3.8 One Call Locator Service. Before 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 Laws regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Neither the City nor its contractors shall 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 accurately 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.

3.9 Restoration and Repair of Rights-of Way.

3.9.1 Franchisee shall repair any damage to the Rights-of-Way, and the property of the City or any third party, after installation, construction, relocation, maintenance, or repair of its Facilities or after abandonment approved pursuant to Section 15, within thirty (30) days following the date of any of these activities, at Franchisee's sole cost and expense. Franchisee shall restore the Rights-of-Way and the surface of the Rights-of-Way to the same or better condition as it was immediately prior to any installation, construction, relocation, maintenance, or repair by Franchisee. Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee.

3.9.2 Franchisee agrees to complete all restoration 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 or other agreement. Franchisee also agrees to repair any

damage caused by work to the Franchise Area within fourteen (14) days unless otherwise approved by the Mayor. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and shall be warranted. The warranty for Franchisee's work in a specified location will end if the (1) City completes a Public Improvement modifying or altering the pavement surface, including, but not limited to overlays, slurry seals, and chip seals; or (2) the pavement surface has reached the end of the industry recognized useful life of the type of pavement surface installed by Franchisee.

3.9.3 If conditions (e.g., weather) make the complete restoration required under this Section 3 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property at its sole cost and expense to the City's satisfaction. Franchisee shall promptly undertake and complete the required permanent restoration as soon as conditions no longer make permanent restoration impracticable.

3.9.4 If Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time prescribed by this Section 3, the City may repair the damage and shall be reimbursed its actual costs within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 11. The City may also bill Franchisee for any expenses associated with the inspection of this repair work and for costs incurred by the City for delays impacting Public Improvements.

3.10 Survey Monuments. No survey monument may be removed (or replaced) without a professional land surveyor obtaining a permit in advance from the Washington State Department of Natural Resources and submitting a copy of the approved permit to the City. Franchisee shall restore all concrete encased monuments that will be disturbed or displaced by such work to City standards and specifications. The Mayor shall have final approval of the condition of the Rights-of-Way after repair or restoration by the Franchisee.

3.11 Graffiti Removal. Franchisee shall remove all graffiti on any of its Facilities no later than fourteen (14) days from the date Franchisee receives written notice from the City or is otherwise made aware of the graffiti. Facilities installed above ground, such as cabinets, shall have their exterior surface wrapped with an anti-graffiti gloss overlaminates.

Section 4. – Relocation of Facilities.

4.1 Relocation Requirement.

4.1.1 Franchisee agrees to protect, support, temporarily disconnect and then reconnect, relocate, or remove from any Rights-of-Way any of its Facilities when required by the City, in its sole discretion, for Public Improvement.

4.1.2 If the City's request for relocation arises from a Public Improvement, in which Facilities must be either replaced, relocated, or removed, then Franchisee shall promptly relocate or remove its Facilities at its sole cost and expense, subject to the procedure in Section 4.3. Franchisee acknowledges and agrees that the placement of Facilities on third party-owned or City owned structures does not convey an ownership interest in these structures.

4.2 Design Locates. To facilitate the design of City street and Right-of-Way improvements,

upon written request of the City, or a third party performing work in the Right-of-Way, Franchisee shall, at its sole cost and expense, locate, and if determined necessary by the City, excavate, and/or survey its Facilities so that as the Facilities' location may be taken into account in the design of the improvements. The decision as to whether any Facilities need to be relocated to accommodate the Public Improvement shall be made by the City, in its sole discretion. The Franchisee shall respond to the City's request for excavation and/or survey within thirty (30) days.

4.3 Notice and Relocation Procedure. If the City determines a Public Improvement necessitates the relocation of Franchisee's existing Facilities, the City shall:

a. At least ninety (90) days before commencing the Public Improvement, provide Franchisee with written notice requiring such relocation and a date by which relocation must be complete; except that in the event of an Emergency Situation, the City shall give Franchisee written notice as soon as practicable; and

b. At least ninety (90) days before commencing the Public Improvement, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

c. After receipt of this notice and such plans and specifications, Franchisee shall complete relocation of its Facilities by the date established in accordance with this Section 4.3 at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the Public Improvement.

4.4 Alternative Arrangements. The Franchisee may make its own appropriate arrangements in response to a request for relocation of its Facilities from a Person or entity other than the City, so long as any improvements being constructed are not or will not become City-owned, operated or maintained; except that any such arrangements shall not delay a Public Improvement.

4.5 Public Improvement Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Improvement 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 vendors and contractors shall not be considered unrelated third parties). The 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 reasonable attorneys' fees incurred by the City to the extent directly attributable to Franchisee's caused delay in the Public Improvement. In addition to recovery of the City's actual costs, the failure of Franchisee to timely remove its facilities by the deadline provided by the City shall result in liquidated damages in the amount of \$250 per day as set forth in Section 17.2. Franchisee shall pay all liquidated damages due no later than thirty (30) days after the date that the City invoices the same. Liquidated damages hereunder are in addition to any other penalties that may be imposed under other agreements between the Parties.

4.6 Moving of Buildings or Other Objects. Franchisee shall, on the request of any private

individual or private entity holding a valid permit issued by a governmental authority, temporarily remove, raise, or lower its Facilities to permit the moving of buildings or other

objects. The expense of the temporary removal, raising, or lowering of Facilities shall be at the expense of the requestor if the requester is not performing a Public Improvement, which is determined by the City in its sole discretion.

4.7 City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in this Section 4, the City may perform this work or cause it to be done, and the Franchisee shall pay the City's costs in accordance with Section 11.

Section 5. – Undergrounding of Facilities.

5.1 Installation. Franchisee's Facilities shall be installed underground, including in those areas where existing fiber, telephone, cable, or electric services are underground at the time of Network construction. Franchisee shall also underground its Facilities in all new developments and subdivisions and in any development or subdivision where utilities are currently underground.

5.2 Utility Trench Access. Franchisee may be provided reasonable access to open utility trenches constructed as part of a Public Improvement, so long as this access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay the City's actual costs of 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 the project. Franchisee shall reimburse the City in accordance with the provisions of Section 11.

5.3 Removal of Fiber. 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 without a permit as may be required by Applicable Laws.

Section 6. – Information, Inventory, and Records.

6.1 Information Request.

6.1.1 Franchisee shall supply and maintain, at no cost to the City, any information reasonably requested by the City to coordinate its functions with the Franchisee's activities and fulfill any municipal functions under Applicable Laws. This required information may include, but is not limited to, any installation inventory, location of existing or planned Facilities, maps, plans, operational data, and as-built drawings of Franchisee's Facilities in the City. Franchisee shall warrant the accuracy of all information provided to the City.

6.1.2 Within thirty (30) days of a written request from the Mayor, but no more than once annually, the Franchisee shall furnish the City with information sufficient to demonstrate: 1) that the Franchisee has complied with all applicable requirements of this Franchise; and 2) that all utility taxes due to the City in connection with the Franchisee's Services and Facilities have been properly collected and paid by the Franchisee.

6.2 Current Inventory. Franchisee shall maintain a current inventory of Facilities throughout

the Term of this Franchise. Franchisee shall provide a copy of the inventory report within sixty (60) days of a reasonable request by the City. The inventory report shall include a route map of those basic portions of the fiber system that are located within the Right-of-Way and be in a digital format and the location of the Facilities, including the depth below the finished surface. Franchisee shall cooperate with the City to furnish this information in an electronic mapping format compatible with the current City electronic mapping format.

6.3 Inspection. 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; except that nothing in this Section 6.3 shall be construed to require Franchisee to violate Applicable Laws regarding customer privacy, nor shall this Section 6.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by Applicable Laws, nothing in this Section 6.3 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; except that 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.

6.4 Public Records Act. Franchisee acknowledges that information submitted to the City is subject to the Washington Public Records Act, Chapter 42.56 RCW, and is open to public inspection, subject to any exceptions permitted by Applicable Laws.

6.4.1 Franchisee may identify documents submitted to the City that Franchisee believes are non-disclosable, such as trade secrets. 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 the information is confidential and how it may be treated as such under Applicable Laws.

6.4.2 If the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of the documents or any part of the documents Franchisee has designated as confidential, trade secret, or proprietary, the City shall provide Franchisee with written notice of the request, including a copy of the request before disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 6.4 prohibits the City from complying with Chapter 42.56 RCW or any other Applicable Laws 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 will not assert an exemption from disclosure or production on Franchisee's behalf.

6.4.3 The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records. If a higher court overturns an injunction or court order and the 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 these records within forty-five (45) days of a request from the City, unless additional time is reasonably necessary under the circumstances and is agreed to by the Parties.

6.5 Annual Audit. On an annual basis, upon thirty (30) days' 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, in accordance with generally accepted accounting practices and any standards adopted by the Governmental Accounting Standards Board. If the audit shows that tax or fee payments have been underpaid by 3% or more, Franchisee shall pay the total cost of the audit.

Section 7. – Unauthorized Facilities.

7.1 Any Facilities installed in the City Right-of-Way that are not authorized under this Franchise or other required City Approval (“Unauthorized Facilities”) will be subject to the payment of an Unauthorized Facilities charge by Franchisee. City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall have thirty (30) days thereafter in which to establish that this installation was authorized or obtain the applicable permit. Failure to establish that the installation is authorized will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand Dollars (\$1,000.00) per Unauthorized Facility per day starting on the thirty-first (31st) day following notice. Franchisee may submit an application to the City under this Franchise for approval of the Unauthorized Facilities. If the application for the Unauthorized Facilities is denied, Franchisee shall remove the Unauthorized Facilities from the City’s Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. The City shall not refund any Unauthorized Facilities charges unless Franchisee is successful in an appeal. This Franchise remedy is in addition to any other remedy available to the City at law or equity.

Section 8. – Safety Requirements.

8.1 Safe Conditions. Franchisee shall at all times, at its own expense, maintain its Facilities in, over, under, and upon the Rights-of-Way in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are being maintained in a safe condition. If an unsafe condition or a violation of this Section 8.1 becomes known to the City, the City agrees to give Franchisee written notice of the condition and afford Franchisee a reasonable opportunity to repair the condition. If Franchisee fails to start to make the necessary repairs and alterations within a reasonable time frame specified in the notice (and pursue the cure to completion), then the City may make the repairs or contract for them to be made. All costs, including but not limited to administrative costs, consultant costs, and attorneys’ fees, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City.

8.2 Additional Safety Standards. Additional safety standards include:

- a. Franchisee shall maintain all equipment lines and Facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.
- 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. The Franchisee shall protect any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations with adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible at night.

8.3 Hazardous Substances. Franchisee shall not introduce or use any Hazardous Substances in violation of any Applicable Laws, 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 claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by 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. Franchisee shall have only that responsibility or liability for managing, monitoring, or abating a hazardous condition that it may have under state or federal law and this Franchise shall not be interpreted to expand Franchisee's legal obligations relating to any pre-existing Hazardous Substances undisturbed by Franchisee.

Section 9. – Provision of Conduit.

9.1 Except in Emergency Situations, Franchisee shall provide the Mayor with at least thirty (30) days' advance written notice of any construction, relocation, or placement of ducts or conduits in the Rights-of-Way and provide the City 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, in one or more of the locations where Franchisee constructs, installs, or relocates Facilities underground. If so requested, the conduit shall be provided at Franchisee's incremental cost and per the terms of a separate agreement. Franchisee shall install a locator wire and cap off all conduit ends. Conduit ends shall be marked on any as-built plans and maps requested pursuant to Section 6. Any conduit delivered to the City pursuant to this Section 9 will become property of the City, and Franchisee will have no ongoing maintenance, liability, or other obligations to the City or any third party with respect to the conduit. The City shall make any request for conduit per this Section 9 request in writing before issuance of the applicable permit to Franchisee.

Section 10. – Emergency Situations.

10.1 Immediate Action Required. In the event of any Emergency Situation in which any of Franchisee's Facilities located in or under any street endangers the property, life, health, or safety of any Person, entity, or the City, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any Person, entity, or the City, Franchisee shall immediately repair its Facilities and cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any Person, entity or the City,

without first applying for and obtaining a permit as required by this Franchise. The Franchisee shall apply for any necessary permits on the next day Bonney Lake City Hall is open for business.

10.2 Lateral Support. 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, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively “Endangered Property”) or endangers the public, the Mayor may direct Franchisee, at Franchisee’s own expense, to take reasonable action to protect the Endangered Property or the public within a prescribed time. If Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with the directions, or if an Emergency Situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Section 11.

10.3 Reimbursement. Franchisee shall promptly reimburse the City in accordance with the provisions of Section 11 for any and all costs the City reasonably incurs in response to any Emergency Situation involving Franchisee’s Facilities, to the extent this emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any other franchisee or permit holder who caused or contributed to the Emergency Situation.

Section 11. – Recovery of Costs.

11.1 Administrative and Other Costs. Franchisee shall be subject to a \$5,000 administrative fee as a fee deposit for the payment of costs associated with the preparation, processing, and approval of this Franchise Agreement, including wages, benefits, overhead expenses, meetings, negotiations, and other functions related to the approval. In addition, the Franchisee shall be responsible for reimbursement of all of the City’s attorney’s fees for this Agreement. The Franchisee shall also pay the cost of publication for this Franchise. To the extent that the fee deposit is not otherwise exhausted, the attorney’s fees shall be reimbursed from the fee deposit. However, to the extent that the City’s costs, including but not limited to attorney’s fees, exceeds the fee deposit, Franchisee agrees to pay any additional costs as set forth in this section. The fee deposit excludes normal permit fees required for work in the Right-of-Way. Payment of all the City’s expenses as set forth in this Section shall be made in full prior to Franchise approval. No construction permits shall be issued for the installation of Facilities authorized until the City has received the reimbursements as required by this Section.

11.2 Additional Costs. 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 these costs and expenses directly to the City in accordance with the provisions of Section 11.4.

11.3 City Project Costs. Franchisee shall reimburse the City for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. These costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. These 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.

11.4 Payment of Costs. 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 the billing. Franchisee shall reimburse the City within thirty (30) days of submittal by the City of an itemized billing for costs incurred under this Section 11.

Section 12. – City's Reservation of Rights.

12.1 Franchise Fees. The City is not seeking to impose any franchise fee or similar compensation for the benefits and privileges granted under this Franchise and in consideration of the permission to use the City's Rights-of-Way as of the effective date of this Franchise. However, the City reserves the right to impose a franchise fee upon one hundred and twenty (120) days' notice to Franchisee, if it believes it is consistent with Applicable Laws. Franchisee reserves the right to challenge the imposition of any such compensation if it believes it is inconsistent with Applicable Laws. Payment of a franchise fee under this Franchise shall not exempt Franchisee from the payment of any generally applicable fee, tax, or charge on the business, occupation, property, or income of Franchisee that may be imposed by the City. The City also reserves the right to require Franchisee to obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee's operations as allowed under Applicable Law. Nothing contained within this Franchise shall preclude Franchisee from challenging any fee, this Franchise, or separate agreement under Applicable Laws.

12.2 Utility Taxes. Franchisee acknowledges that certain of its operations within the City may constitute a telephone business and may be subject to utility taxes permitted under Applicable Laws. Franchisee agrees it shall be responsible for the payment of any applicable utility taxes, including, without limitation, any utility taxes enacted by the City after the Effective Date of this Franchise. Franchisee's obligation to pay such taxes shall not be considered a franchise fee or in lieu of any other costs payable to the City as provided herein. Nothing in this Section 12.2 is intended to alter, amend, modify, or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Franchise under Applicable Laws.

Section 13. – Indemnification; Liability.

13.1 General Indemnification. Franchisee shall indemnify, defend, and hold the City, its

officers, officials, boards, commissions, agents, volunteers, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Franchisee, its agents, or its employees, or by reason of any neglect or omission of Franchisee. Franchisee shall consult and cooperate with the City while conducting its defense of the City under this Franchise. Franchisee shall not be obligated to indemnify the City for injuries or damages caused by the negligence or willful misconduct of the City.

13.2 Indemnification for Relocation. Franchisee shall defend, indemnify, and hold the City harmless for any damages, claims, additional costs or expenses and attorneys' fees, including contractor construction delay damages, assessed against or payable by the City contributing to Franchisee's failure to remove, adjust, or relocate any of its Facilities in the Rights-of-Way in accordance with any relocation required by the City, provided that Franchisee shall not be liable under this section if Franchisee's failure to remove, adjust, or relocate any of its Facilities is the result of a Force Majeure Event.

13.3 Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly notify Franchisee of such claim or action and tender the defense of the claim or action to Franchisee, which defense shall be at Franchisee's expense. The City's failure to notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. The City may participate in the defense of a claim, but if Franchisee provides a defense at Franchisee's expense, then Franchisee shall not be liable for any attorneys' fees, expenses, or other costs the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is necessary. Then, the provisions of Section 13.5 shall govern Franchisee's responsibility for City's attorney's fees, expenses, or other costs. In any event, Franchisee may not agree to any settlement of claims affecting the City without the City's consent, which will not be unreasonably withheld or delayed.

13.4 Avoidance. 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 13. Whether Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duty of defense and indemnification under this subsection.

13.5 Expenses. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the City and counsel selected by Franchisee to represent the City, Franchisee shall pay, from the date such separate representation is required forward, all expenses incurred by the City in defending itself with regard to any action, suit, or proceeding subject to indemnification by Franchisee. Except that, if separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires Franchisee to pay those expenses, then the City shall be required to obtain Franchisee's consent to the engagement of such counsel, experts, or consultants, such consent not

to be unreasonably withheld or delayed. The City's expenses shall include all out-of-pocket costs and expenses, such as consultants' fees and court costs, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee, except in the event of a conflict of interest where such duplication may be required. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any claim or action.

13.6 RCW 4.24.115. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, 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 expressly understood that the indemnification provided herein constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

Section 14. – Insurance.

14.1 Policies. Franchisee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

- a. Commercial General Liability insurance with limits of no less than \$5,000,000 per occurrence and \$5,000,000 general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials, and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials, and employees. Coverage shall apply as to claims between insureds on the policy, if applicable. Coverage may take the form of a primary layer and a secondary or umbrella layer, but the combination of layers must equal \$5,000,000 at a minimum.
- b. Commercial Automobile Liability insurance with minimum combined single limits of \$5,000,000.00 each occurrence with respect to each of Franchisee's owned, hired, and non-owned vehicles assigned to or used in the operation of the Facilities in the City. The policy shall contain a severability of interests provision.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability with a limit of \$5,000,000 each accident/disease/policy limit.
- d. Contractors Pollution Liability insurance shall be in effect throughout the entire Franchise Agreement covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims. Franchisee may self-insure this coverage.

- e. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.
- f. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000. Franchisee may self-insure this coverage.
- g. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

14.2 Deductibles. Any deductible related to the insurance policies in Section 14.1 shall not in any way limit Franchisee's liability to the City.

14.3 Requirements. All policies shall contain, or shall be endorsed so that:

- a. The City, its officers, officials, boards, commissions, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Franchisee under this Franchise or Applicable Laws, or in the construction, operation or repair, or ownership of the Network;
- b. Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, volunteers, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute to it; and
- c. Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

14.4 Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Best's rating of no less than "A VII."

14.5 Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy shall be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy shall be on forms that are consistent with standard industry practices.

14.6 Maintenance of Insurance. Franchisee's maintenance of insurance as required by this Section 14 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 15. – Abandonment of Franchisee's Telecommunications Network.

15.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving written notice from the Mayor. 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 Mayor, and all necessary permits must be obtained before this work. The plan for abandonment shall include a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of the City's notice may be removed by the City and the area restored at Franchisee's cost. Franchisee shall pay these costs to the City within thirty (30) days of receiving an invoice. If Franchisee fails to pay the City within this timeframe, the City may avail itself of any remedy available at law or equity.

Section 16. – Bonds.

16.1 Construction Guarantee. As a condition of performing work in the Right-of-Way, the timely, complete, and faithful performance of all construction work in the Right-of-Way shall be guaranteed in an amount equal to 130% of the cost estimate (prepared by a licensed contractor, professional engineer, or architect) of the construction work, by either the Franchisee or the Franchisee's contractor performing the actual construction work. The guarantee shall be by performance bond. If Franchisee, in the sole judgment of the City, has a history of corrections or default, Franchisee must provide the full guarantee by assignment of funds. These funds 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) repair and restoration of any damage to public or private property caused by the construction; (6) submission of as-built drawings after completion of construction; and (7) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work that could be asserted against the City or City property. The guarantee must remain in full force until the completion of construction and/or any necessary repairs, 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 16.2. Compliance with the performance guarantee requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section.

16.2 Maintenance Guarantee. Maintenance and the successful operation of the Right-of-Way improvements shall be bonded for a period of at least two (2) years (or other period as required by Bonney Lake Municipal Code, as may be amended) from the date of final construction approval. The bond shall be in an amount to be determined by the City. The minimum maintenance guarantee shall be Five Thousand Dollars (\$5,000.00) or 30% of the original performance

construction guarantee as described in Section 16.1, whichever is greater. Franchisee will have thirty (30) days to correct any deficiencies identified by the City. The satisfactory correction of the work may commence a new two-year maintenance period for the improvements as corrected, as determined by the City. The City will initiate collection against the financial guarantee if deficiencies are not satisfactorily addressed by the end of the thirty (30) day response period. Compliance with the maintenance guarantee requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 16.2. Original financial guarantee amounts described in Section 16.1 and this Section 16.2 may be reduced one time only before the maintenance period, at the discretion of the City. If an extension to any associated permits are granted, the financial guarantees may be increased based on an updated engineer's cost estimate or as determined by the City. Financial guarantees will be fully released only after all final punch list items are accomplished, final construction approval, and the lapse of the two (2) year maintenance guarantee period with all corrective actions complete and accepted by the City.

16.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, following written 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. Franchisee specifically agrees that its failure to comply with the terms of this Section 16.3 will constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 17.2. Franchisee further agrees to replenish the Franchise Bond within thirty (30) days after written notice from the City that the amount of the Franchise Bond is deficient. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

16.4 Form of Bonds. All bonds provided to the City under this Section 16 shall be on forms provided by the City and with sureties registered with the Washington State Insurance Commissioner or other financial institutions acceptable to the City.

Section 17. – Remedies to Enforce Compliance.

17.1 Reservation of Rights.

17.1.1 In addition to the remedies provided in this Franchise, each Party reserves the right to pursue any remedy available at law or in equity to compel or require the other Party and/or its successors and assigns to comply with the terms of this Franchise. The pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions of this Franchise.

17.1.2 All rights and remedies provided in this Franchise shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee.

These rights and remedies are not exclusive, and the exercise of one or more rights or remedies may not be deemed a waiver of the right to exercise any other right or remedy at any time. Neither Party intends to waive any other rights, remedies, or obligations as provided by law, equity, or otherwise, and nothing contained in this Franchise shall be construed to effect any such waiver.

17.2 Procedure upon Breach. If either Party violates or fails to comply with any of the provisions of this Franchise or a permit issued as required by Section 3.2, or fails to heed or comply with any notice given under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of the breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure the breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’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 the Defaulting Party does not comply with the specified conditions, the Non-Defaulting Party may pursue any available remedy at law or in equity. In the event Franchisee is the Defaulting Party, if Franchisee has failed to timely cure any breach, the City, at its sole discretion, may elect to: (1) terminate this Franchise pursuant to Section 2.5; (2) claim liquidated damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary) as an estimate for damages that the Parties understand will be difficult to calculate in the event of a default; or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required.

Section 18. – Non-Waiver.

18.1 The failure of either Party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option 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 19. – Police Powers and City Regulations.

19.1 Nothing within this Franchise may 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, 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 by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate Applicable Laws. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. 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, the other

ordinances(s) shall take precedence over this Franchise.

Section 20. – Acceptance.

20.1 This Franchise may be accepted by Franchisee by its filing with the City Clerk of an unconditional written acceptance, within sixty (60) days from the City's execution of this Franchise, in the form attached as *Exhibit A*. Failure of Franchisee to so accept this Franchise will constitute a rejection by Franchisee and the rights and privileges granted shall cease. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 14, any construction guarantees and bonds, if applicable, as described in Section 16.

Section 21. – Survival.

21.1 All of the provisions, conditions, and requirements in Sections 3, 4, 5, and 13 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 this Franchise, and any renewals or extensions, to the extent provided. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the 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 successors and assigns equally as if they were specifically mentioned where Franchisee is named.

Section 22. – Assignment and Changes of Ownership or Control.

22.1 Written Consent. Except as set forth below, neither Party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other Party which shall not be unreasonably withheld, conditioned, or delayed. Any agreed upon assignee will take the place of the assigning Party, and the assigning Party will be released from all of its rights and obligations upon such assignment.

22.1.1 Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Franchise or any or all of its rights and obligations under this Franchise:

- (a) to any Affiliate of Franchisee;
- (b) to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Franchise; or
- (c) to any purchaser of all or substantially all of Franchisee's Facilities in the City if Franchisee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Franchise.

The written notice required by this Section shall be at least thirty (30) days prior to the closing of the transaction under subsection (a), and ninety (90) days before the closing of any transaction under subsections (b) and (c). In connection with any proposed transaction under subsections (b) and (c), Franchisee shall cooperate with any requests from the City for any information related to

the legal, technical, and/or financial ability of a proposed purchaser or successor in interest to comply with the terms of this Franchise.

22.2 Franchisee Responsibility. Following any assignment of this Franchise to an Affiliate pursuant to Section 22.1.1(a), Franchisee will remain responsible for the Affiliate's performance under the terms of this Franchise.

Section 23. – Eminent Domain.

23.1 The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with Applicable Laws, all or a portion of Franchisee's Facilities for the fair market value. In determining the value of Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 24. – Vacation.

24.1 If at any time the City, by ordinance and in accordance with Applicable Laws, 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 the vacation. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City will, if practicable, reserve an easement for Franchisee's Facilities under the same terms and conditions as this Franchise at the location vacated by City, and if not practicable, the City may, after sixty (60) days' written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 25. – Notice.

25.1 Any notice or information required or permitted to be given to the Parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

City: City of Bonney Lake
Attn: Jason Sullivan
21719 96th St. E
Buckley, WA 98321

With a copy to: Inslee Best Doezie & Ryder, P.S.
Attn: Jennifer Robertson
10900 NE 4th Street, Suite 1500
Bellevue, WA 98004

Franchisee: Forged Fiber 37, LLC
208 S. Akard St
Dallas, TX 75202-4206

With a copy to: Carly Nations

Section 26. – Compliance with all Applicable Laws.

26.1 Each Party agrees to comply with all Applicable Laws. This Franchise is subject to ordinances of general applicability enacted pursuant to the City’s police powers. Franchisee acknowledges that it shall be solely responsible for compliance with any applicable law or regulation of the Federal Communications Commission (“FCC”) to engage in business associated with use of the Rights-of-Way.

Section 27. – Attorney’s Fees.

27.1 If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each Party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; except that nothing in this section shall be construed to limit the City’s right to indemnification under Section 13 of this Franchise.

Section 28. – Licenses, Fees, and Taxes.

28.1 Before constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City, if so required. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise. However, nothing in this Franchise is intended to alter, amend, modify, or expand the taxes and fees that may lawfully be assessed on Franchisee’s business activities under Applicable Laws.

Section 29. – Miscellaneous.

29.1 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, will be binding upon the Parties upon execution of this Franchise.

29.2 Severability. If any section, sentence, clause, or phrase of this Franchise is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will 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, in which event either Party may request renegotiation of those remaining terms of this Franchise materially affected by the court’s ruling.

29.3 Authorized Signatories. The City and Franchisee respectively represent that their respective signatories are duly authorized and have full right, power, and authority to execute this Franchise on such Party’s behalf.

29.4 Venue. This Franchise is governed by the laws of the State of Washington. The United

States District Court for the Western District of Washington, and Pierce County Superior Court have proper venue for any dispute related to this Franchise.

29.5 Section Headings. Section headings are intended solely to facilitate the reading of this Franchise and may not affect the meaning or interpretation of the text within this Franchise.

29.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.

29.7 Enforcement. This Franchise may be enforced at both law and in equity.

[Signatures on Following Page]

DRAFT

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Bonney Lake, Washington this ____ day of _____, 2025.

CITY OF BONNEY LAKE, WASHINGTON

Terry Carter, Mayor

ATTEST:

Sadie Schaneman, City Clerk

APPROVED AS TO FORM:

Jennifer S. Robertson, City Attorney

DRAFT

EXHIBIT A

STATEMENT OF ACCEPTANCE

FORGED FIBER 37, LLC, for itself, its successors and assigns, accepts, and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Forged Fiber 37, LLC, declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Forged Fiber 37, LLC, has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

FORGED FIBER 37, LLC

By: _____

Date: _____

Name: _____

Title: _____



Jason Sullivan
Public Services Director
City of Bonney Lake
21719 96th St. E.
Buckley, WA 98321

RE: Forged Fiber 37, LLC Franchise Application for City of Bonney Lake

Greetings,

Our client, AT&T, has signed a purchase agreement to purchase a portion of the fiber business of Lumen Technologies, Inc. and its affiliates (“Lumen”), which includes fiber assets and associated facilities that may be located within the rights-of-way of the City of Bonney Lake. The proposed transaction was announced on May 21, 2025, and is proceeding with the relevant federal regulatory approvals. In advance of transfer of any assets, AT&T seeks to obtain all necessary rights to own and construct facilities within the rights-of-way in the City of Bonney Lake (the “City”) under the legal entity, Forged Fiber 37, LLC. Forged Fiber 37, LLC is a Delaware limited liability company, with addresses at 208 S. Akard St, Dallas, TX 75202-4206. It is a wholly owned subsidiary of AT&T, Inc.

This is a request for a new Franchise Agreement. Forged Fiber 37, LLC seeks NEW rights to own, operate and construct facilities in the public rights-of-way. Forged Fiber 37 will provide wholesale service only; resellers will provide services to the general public, including residential customers and small businesses. The applicant intends to build fiber optic cable facilities in the City after the acquisition has been completed and is therefore asking for city-wide rights under the agreement. The Applicant does not have a scope or schedule for future construction projects at this time.

The applicant is requesting a city-wide Franchise to install, operate, maintain, repair, replace, and upgrade conduit, fiber optic cables, mule tape, buffer tubes, vaults, splice cases (aerial and buried), poles, and related facilities in the rights of way. At this time, the applicant does not have a map for the location of the facilities it will acquire from Lumen. Initially, the applicant will acquire the F2+ fiber optic cables and facilities currently in the public rights of way in or around Bonney Lake. Lumen will continue to own the F1 fiber optic cables and associated facilities. Lumen will also retain its copper and enterprise fiber.

Thank you very much for your time and consideration. Included with this cover letter is a Letter of Authorization to discuss this request on behalf of the applicant, as well as the review deposit.

I will serve as primary contact for this Franchise Application. Wireless Policy Group LLC is performing this work in association with our sister company, Busch Law Firm PLLC.

Our goal is to have the franchise agreement in place at the time the sale between Forged Fiber 37, LLC /AT&T and Lumen closes so that the authorization for ownership of the fiber assets is properly in place. Please contact me at (206) 484-2646 or carly.nations@wirelesspolicy.com if you have any questions regarding this request.

Sincerely,



Carly Nations

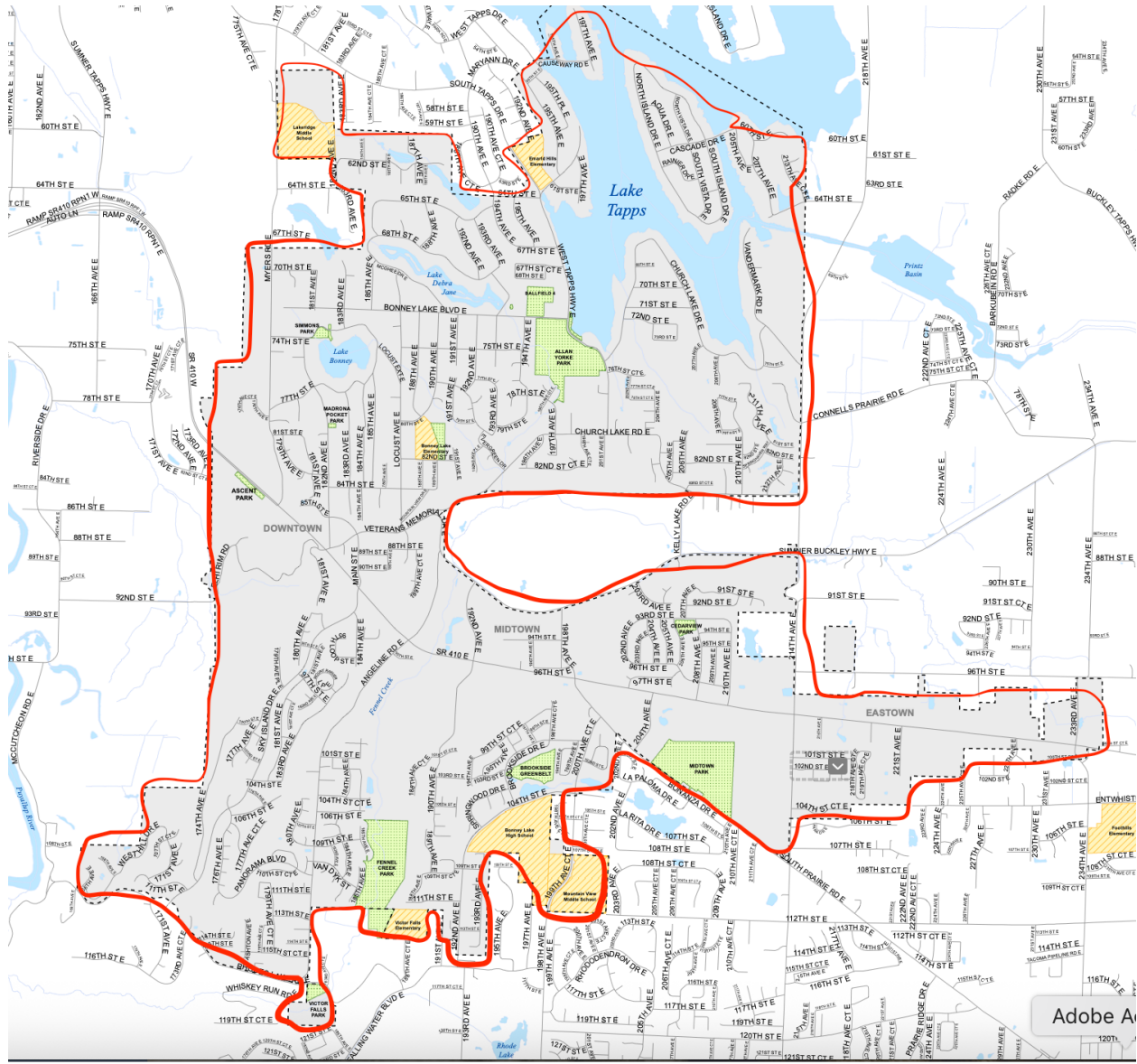
Director of Land Use & Entitlements

Wireless Policy Group, LLC

(206) 484-2646

carly.nations@wirelesspolicy.com

Service Area Map
City-wide Franchise Request



City of Bonney Lake, Washington
Community Development Committee Agenda Bill (AB)

**Agenda Bill Number &
Ordinance/Resolution/Motion Number:**

Agenda Item Type: Motion

Presenter: Jason Sullivan, Public Services Director

City Strategic Goal Category:

Department/Division Submitting: Public Services Director

**Impacted Departments That Received
Notification:**

Agenda Subject: Ezee Fiber Franchise Agreement

Full Title/Motion: A Motion of the City Council of the City of Bonney Lake, Pierce County, Washington, authorizing the Mayor to sign the franchise agreement with Ezee Fiber.

Short Background Summary:

Ezee Fiber is currently expanding into the Washington State market and submitted a request for a new franchise agreement to install and maintain fiber optic cable within the City's right-of-way. Ezee Fiber intends to build a 10Gbps+ speeds fiber optic network across the entire City of Bonney Lake for all residents, businesses, schools, government buildings, healthcare facilities, and bandwidth-intensive businesses for both point-to-point connectivity and Internet connectivity. Accordingly, Ezee Fiber requests that the authorized franchise area encompasses the entire jurisdiction of the City.

Ezee Fiber will utilize underground construction methods, installing new fiber in newly placed conduits. The proposed installation consists solely of fiber optic cable infrastructure and related equipment housed within ground-level cabinets. Design maps will be completed by Ezee Fiber's engineering and design firm and sent to the City upon completion, typically 3-4 months after the Franchise Agreement is approved and prior to the preferred construction start date.

Consistent with City Council direction, the proposed franchise agreement is only for an initial 5-year term. Under the proposed franchise agreement, Ezee Fiber can request that the Mayor approve a renewal of the franchise agreement up to a maximum of two additional 5-year terms.

Budget

Budgeted Amount	Current Balance	Expenditure Amount Needed	Budgeted Balance Difference
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Budget Explanation:

Committee, Board, Commission, & Hearing Examiner Review

Name Of Committee/Commission/Examiner Meeting: Community Development Committee

Date of Committee/Commission/Examiner Meeting:

Date of Committee/Commission Public Hearing:

Committee/Commission/Examiner Meeting Decision:

Council Action

Date of Council Workshop

Date of Council Meeting

Date of Council Public Hearing

**NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE
WITH EZEE FIBER TEXAS, LLC**

THIS TELECOMMUNICATIONS FRANCHISE (this “**Franchise**”) is entered into on _____, 2025, by and between the City of Bonney Lake, a municipal corporation (“**City**”) and EZEE FIBER TEXAS, LLC, a Delaware limited liability company, and wholly owned subsidiary of AT&T, Inc. (“**Franchisee**”).

Section 1. – Definitions. In addition to terms otherwise defined herein, the following definitions shall apply generally to the provisions of this Franchise.

- 1.1 “**Affiliate**” means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee.
- 1.2 “**Applicable Laws**” means any local, federal, or state statute, law, regulation, or other legal authority governing any of the matters addressed in this Franchise, as all now exist or as later amended or superseded.
- 1.3 “**City**” means the City of Bonney Lake, Washington, a Washington municipal corporation.
- 1.4 “**Control**” means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of 50% or more of the voting power to elect directors thereof; or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than 50%, the maximum amount allowed by Applicable Laws; and (iii) any other Person, 50% or more ownership interest in this Person, or the power to direct the management of such Person.
- 1.5 “**Emergency Situation**” means a condition posing an imminent threat to property, life, health, or safety of any Person or entity.
- 1.6 “**Facilities**” or “**Network**” means one or more elements of Franchisee’s fiber network, with all necessary underground fiber optic cables, lines, wires, or strands and associated appurtenances; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities.
- 1.7 “**Force Majeure Event**” means natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Franchisee’s ability to provide Services in the City and which was not caused and could not have been avoided by the Franchisee which used its best efforts in its operations to avoid such results.
- 1.8 “**Franchisee**” means Ezee Fiber Texas, LLC, a Delaware limited liability company.
- 1.9 “**Hazardous Substances**” means any substance or material that is regulated by any current or future federal, state, or local statutes, regulations, ordinances, and rules relating to: the emission, discharge, release, or threatened release of any hazardous substance into the air, surface water, groundwater, or land; the manufacturing, processing, use, generation, treatment, storage, disposal,

transportation, handling, removal, remediation, or investigation of a hazardous material; and the protection of human health, safety, or the indoor or outdoor environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq.; all applicable environmental statutes of the State of Washington; and all other federal, state, or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders, or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect.

1.10 **“Mayor”** means the Mayor or Mayor’s designee.

1.11 **“Parties”** (singular **“Party”**) refers to both the City and Franchisee.

1.12 **“Person”** means any natural person, or public or private legal entity of any kind.

1.13 **“Public Improvement”** means the establishment and improvement of new Rights-of-Way, widening or improvement of existing Rights-of-Way or both, freeway construction, change or establishment of street grade, the modification, relocation, or removal of City electrical infrastructure, including utility poles, or the construction of any public infrastructure by any governmental agency acting in a governmental capacity as approved by the City, or as otherwise necessary for the operations of the City or other governmental entity.

1.14 **“Rights-of-Way”** (singular **“Right-of-Way”**) as used in this Franchise, means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, pathways, spaces, or other public right-of-way, and over which the City has authority to grant permits, licenses, or franchises for use thereof, or has regulatory authority thereover. Right-of-Way does not include railroad right-of-way, airports, harbor areas, buildings, parks, poles, conduits, open spaces, nature trails, poles, dedicated but un-opened right-of-way, environmentally sensitive areas and any land, facilities, or property owned, maintained, or leased by the City in its governmental capacity, proprietary capacity, or as an operator of a utility.

1.15 **“Services”** (singular **“Service”**) means telecommunications services, including internet access services as defined in RCW 82.04.297. Services do not include cable services as defined in 47 U.S.C. § 522(6), wireless communication services, or multi-channel video programming services.

Section 2. – Franchise Granted.

2.1 **Franchise and Term.** Pursuant to RCW 35A.47.040, the City hereby grants to Franchisee, its successors, legal representatives, and assigns, subject to the terms and conditions set forth herein, a non-exclusive Franchise for a period of five (5) years, beginning on the effective date of the ordinance authorizing this Franchise (the “Effective Date”).

2.1.1. **Renewal Option of Term.** The Franchisee may renew this Franchise for two (2)

additional five (5) year periods upon submission and approval of the application for such renewal. The application shall be reviewed for approval by the Mayor. Approval of any materials submitted by the Franchisee for a previous application may be considered by the City in reviewing a current application, and the Franchisee shall only submit those materials deemed necessary by the City to address changes in the Franchisee's Facilities or Services, or to reflect specific reporting periods mandated by the City Code.

2.1.2. Failure to Renew Franchise – Automatic Extension. If the Parties fail to formally renew this Franchise prior to the expiration of its term or any renewal thereof, the Franchise automatically continues month-to-month until renewed or either Party gives written notice at least one hundred and eighty (180) days in advance of intent not to renew the Franchise.

2.2 Franchise Purpose. This Franchise grants Franchisee the right, privilege, and authority to construct, operate, maintain, replace, relocate, restore, upgrade, remove, excavate, acquire, sell, lease, and use all necessary Facilities for a fiber optic infrastructure network in, under, on, across, over, through, along, or below the public Rights-of-Way located in the City, and any other areas designated herein or added to the corporate limits of the City during the term of this Franchise (the “Franchise Area”) for the purpose of providing the Services.

2.3 Limited Authorization.

2.3.1 The authority granted by this Franchise is a limited, non-exclusive authorization to occupy and use the City’s Rights-of-Way and does not authorize Franchisee to use any property other than the Rights-of-Way as agreed herein. Nothing 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 Services. Franchisee’s use of any other City property, including City-owned or leased property, or poles, and conduits, must be governed under a separate agreement.

2.3.2 This Franchise shall not prevent the City from granting other franchises within its Rights-of-Way, nor shall it prevent or prohibit the City from using any Rights-of-Way, or affect its jurisdiction over any Rights-of-Way or any part of a Right-of-Way. The City retains power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of Rights-of-Way as it deems fit, including the dedication, establishment, maintenance, and improvement of all new Rights-of-Way, thoroughfares, and other public properties of every type and description.

2.3.3 The City also reserves the right to amend this Franchise to conform to any hereafter enacted, amended, or adopted Applicable Laws relating to the public health, safety, and welfare, or relating to roadway regulation, upon providing Franchisee with thirty (30) days’ written notice of its action setting forth the full text of the amendment and identifying the Applicable Laws. This amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee requests in writing to negotiate the terms of the amendment. If the Parties do not reach agreement as to the amendment terms within thirty (30) days of the request to negotiate, the City may enact the proposed amendment by incorporating Franchisee’s concerns to the maximum extent that the City, in its sole discretion, deems

reasonable.

2.4 Authorized Services.

2.4.1 Franchisee represents that it intends to provide the following services within the City: telecommunications services, including internet access services as defined in RCW 82.04.297 but excluding multi-channel video programming services, to residents, businesses, and governmental and educational entities within the City (the “Customers”). Franchisee may not offer cable services as that term is defined in 47 U.S.C. § 522(6). This Franchise does not authorize any wireless communications services.

2.4.2 Franchisee is authorized without prior City approval to offer or provide capacity or bandwidth, leased fiber or leased conduits, or any other Services set forth in this Section 2.4 to its Customers consistent with this Franchise provided:

- a. Franchisee at all times retains exclusive control over its Facilities and Services; remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise; and is solely responsible for providing and maintaining Services to its Customers;
- b. Franchisee may not grant rights to any Customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;
- c. Franchisee may not grant rights to any Customer or lessee allowing access or connection to the fiber optic connection points described in Section 2.4.2 above.
- d. Such Customer or lessee will not be construed to be a third-party beneficiary under this Franchise; and
- e. No Customer or lessee that accesses Franchisee’s Facilities within the City limits may use the Facilities or Services for any purpose not authorized by this Franchise unless that Customer has a franchise with the City. Then, the Customer may use Franchisee’s Facilities or Services consistent with the terms of its franchise.

2.5 Termination.

2.5.1 Termination by City. The City may terminate this Franchise if Franchisee is in material breach of the Franchise and has failed to cure the breach within the applicable notice and cure period as specified in Section 17. No termination under this subsection will be effective until the applicable notice and cure period has expired. Additionally, if Franchisee fails to apply for any permits to install Facilities within two (2) years of the Effective Date of this Franchise, the City may terminate this Franchise after providing Franchisee with written notice ninety (90) days in advance of termination.

2.5.2 Termination by Franchisee. Franchisee may terminate this Agreement for convenience upon written notice provided to the City at least one hundred and eighty (180) days in advance of termination.

Section 3. – Work in the Rights-of-Way.

3.1 Location of Facilities. Franchisee may locate its Facilities within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable permit requirements.

3.2 Permits Required. Franchisee shall not commence any work within any Rights-of-Way without first obtaining all necessary permits as required by Applicable Laws. Franchisee shall pay the standard permit fee, and all lawful processing, field marking, engineering, and inspection fees associated with the issuance of permits by the City.

3.3 Work Requirements. 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 and only after obtaining permits or other authorization pursuant to Section 3.2 and this Section 3.3. Franchisee shall 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 traffic control to warn and direct the road users, consistent with the requirements of Applicable Laws. Traffic control devices include but are not limited to barricades, traffic cones, traffic drums, tubular markers, flags, certified flaggers, lights, flares, and other measures as required for the safety of all members of the general public. Franchisee shall also comply with all applicable safety regulations during such period of construction as required by all Applicable Laws, including, without limitation, RCW 39.04.180 for the requirement of trench safety systems for trench excavations.

3.4 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with Applicable Laws. Work by contractors and subcontractors is 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 Laws.

3.5 Maintenance of Facilities. Franchisee shall, at its own expense, maintain its Facilities in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services.

3.6 Shared Excavation. If either the City or Franchisee plans to make excavations in any area covered by this Franchise and as described in this Section 3.6, the Party planning the excavation shall endeavor to afford the other an opportunity to share the excavation, PROVIDED THAT:

- a. The joint use shall not unreasonably delay the work of the Party causing the excavation to be made;
- b. The joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties; and
- c. The initiating Party may deny a request for constructability and/or safety reasons.

3.7 Coordination of Construction.

3.7.1 Except for Emergency Situations, Franchisee shall give advance written notice of intended construction to property owners and/or residents within one hundred (100) feet of the construction area as follows: if construction is ground disturbing, at least seven (7) days' notice shall be required; otherwise, forty-eight (48) hours' notice shall be required. The notice shall contain the dates, contact number, nature, and location of the work to be performed; a door hanger is permissible. At least twenty-four (24) hours before entering private property or streets or public easements adjacent to or on such private property, Franchisee shall physically post a notice on the property indicating the nature and location of the work to be performed; a door hanger is permissible. Nothing in this Franchise gives the Franchisee the right to enter onto private property without the permission of the private property owner.

3.7.2 Franchisee shall make a good faith effort to comply with the private property owner/resident's preferences, if any, on location or placement of underground installations, consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to 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 reasonable satisfaction of the property owner/resident.

3.7.3 Upon prior written notice from the City, Franchisee shall meet with the City and other franchise holders to schedule and coordinate construction in the Rights-of-Way and on City property where authorized. To minimize public inconvenience, disruption or damage, the Franchisee shall coordinate all construction locations, activities, and schedules as directed by the City.

3.8 One Call Locator Service. Before 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 Laws regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Neither the City nor its contractors shall 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 accurately 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.

3.9 Restoration and Repair of Rights-of Way.

3.9.1 Franchisee shall repair any damage to the Rights-of-Way, and the property of the City or any third party, after installation, construction, relocation, maintenance, or repair of its Facilities or after abandonment approved pursuant to Section 15, within thirty (30) days following the date of any of these activities, at Franchisee's sole cost and expense. Franchisee shall restore the Rights-of-Way and the surface of the Rights-of-Way to the same or better condition as it was immediately prior to any installation, construction, relocation, maintenance, or repair by Franchisee. Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee.

3.9.2 Franchisee agrees to complete all restoration 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 or other agreement. Franchisee also agrees to repair any damage caused by work to the Franchise Area within fourteen (14) days unless otherwise approved by the Mayor. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable City standards and shall be warranted. The warranty for Franchisee's work in a specified location will end if the (1) City completes a Public Improvement modifying or altering the pavement surface, including, but not limited to overlays, slurry seals, and chip seals; or (2) the pavement surface has reached the end of the industry recognized useful life of the type of pavement surface installed by Franchisee.

3.9.3 If conditions (*e.g.*, weather) make the complete restoration required under this Section 3 impracticable, Franchisee shall temporarily restore the affected Right-of-Way or property at its sole cost and expense to the City's satisfaction. Franchisee shall promptly undertake and complete the required permanent restoration as soon as conditions no longer make permanent restoration impracticable.

3.9.4 If Franchisee does not repair a Right-of-Way or an improvement in or to a Right-of-Way within the time prescribed by this Section 3, the City may repair the damage and shall be reimbursed its actual costs within sixty (60) days of submitting an itemized invoice to Franchisee in accordance with the provisions of Section 11. The City may also bill Franchisee for any expenses associated with the inspection of this repair work and for costs incurred by the City for delays impacting Public Improvements.

3.10 Survey Monuments. No survey monument may be removed (or replaced) without a professional land surveyor obtaining a permit in advance from the Washington State Department of Natural Resources and submitting a copy of the approved permit to the City. Franchisee shall restore all concrete encased monuments that will be disturbed or displaced by such work to City standards and specifications. The Mayor shall have final approval of the condition of the Rights-of-Way after repair or restoration by the Franchisee.

3.11 Graffiti Removal. Franchisee shall remove all graffiti on any of its Facilities no later than fourteen (14) days from the date Franchisee receives written notice from the City or is otherwise made aware of the graffiti. Facilities installed above ground, such as cabinets, shall have their exterior surface wrapped with an anti-graffiti gloss overlamine.

Section 4. – Relocation of Facilities.

4.1 Relocation Requirement.

4.1.1 Franchisee agrees to protect, support, temporarily disconnect and then reconnect, relocate, or remove from any Rights-of-Way any of its Facilities when required by the City, in its sole discretion, for Public Improvement.

4.1.2 If the City's request for relocation arises from a Public Improvement, in which Facilities must be either replaced, relocated, or removed, then Franchisee shall promptly relocate or remove its Facilities at its sole cost and expense, subject to the procedure in Section 4.3.

Franchisee acknowledges and agrees that the placement of Facilities on third party-owned or City owned structures does not convey an ownership interest in these structures.

4.2 Design Locates. To facilitate the design of City street and Right-of-Way improvements, upon written request of the City, or a third party performing work in the Right-of-Way, Franchisee shall, at its sole cost and expense, locate, and if determined necessary by the City, excavate, and/or survey its Facilities so that as the Facilities' location may be taken into account in the design of the improvements. The decision as to whether any Facilities need to be relocated to accommodate the Public Improvement shall be made by the City, in its sole discretion. The Franchisee shall respond to the City's request for excavation and/or survey within thirty (30) days.

4.3 Notice and Relocation Procedure. If the City determines a Public Improvement necessitates the relocation of Franchisee's existing Facilities, the City shall:

a. At least ninety (90) days before commencing the Public Improvement, provide Franchisee with written notice requiring such relocation and a date by which relocation must be complete; except that in the event of an Emergency Situation, the City shall give Franchisee written notice as soon as practicable; and

b. At least ninety (90) days before commencing the Public Improvement, provide Franchisee with copies of pertinent portions of the plans and specifications for the improvement project and a proposed location for Franchisee's Facilities so that Franchisee may relocate its Facilities in other City Rights-of-Way in order to accommodate such improvement project; and

c. After receipt of this notice and such plans and specifications, Franchisee shall complete relocation of its Facilities by the date established in accordance with this Section 4.3 at no charge or expense to the City, except as otherwise provided by law. Relocation shall be accomplished in such a manner as to accommodate the Public Improvement.

4.4 Alternative Arrangements. The Franchisee may make its own appropriate arrangements in response to a request for relocation of its Facilities from a Person or entity other than the City, so long as any improvements being constructed are not or will not become City-owned, operated or maintained; except that any such arrangements shall not delay a Public Improvement.

4.5 Public Improvement Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Improvement 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 vendors and contractors shall not be considered unrelated third parties). The 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 reasonable attorneys' fees incurred by the City to the extent directly attributable to Franchisee's caused delay in the Public Improvement. In addition to recovery of the City's actual costs, the failure of Franchisee to timely remove its facilities by the deadline provided by the City shall result in liquidated damages in the amount of \$250 per day as

set forth in Section 17.2. Franchisee shall pay all liquidated damages due no later than thirty (30) days after the date that the City invoices the same. Liquidated damages hereunder are in addition to any other penalties that may be imposed under other agreements between the Parties.

4.6 Moving of Buildings or Other Objects. Franchisee shall, on the request of any private individual or private entity holding a valid permit issued by a governmental authority, temporarily remove, raise, or lower its Facilities to permit the moving of buildings or other

objects. The expense of the temporary removal, raising, or lowering of Facilities shall be at the expense of the requestor if the requestor is not performing a Public Improvement, which is determined by the City in its sole discretion.

4.7 City's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City following the procedures outlined in this Section 4, the City may perform this work or cause it to be done, and the Franchisee shall pay the City's costs in accordance with Section 11.

Section 5. – Undergrounding of Facilities.

5.1 Installation. Franchisee's Facilities shall be installed underground, including in those areas where existing fiber, telephone, cable, or electric services are underground at the time of Network construction. Franchisee shall also underground its Facilities in all new developments and subdivisions and in any development or subdivision where utilities are currently underground.

5.2 Utility Trench Access. Franchisee may be provided reasonable access to open utility trenches constructed as part of a Public Improvement, so long as this access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay the City's actual costs of 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 the project. Franchisee shall reimburse the City in accordance with the provisions of Section 11.

5.3 Removal of Fiber. 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 without a permit as may be required by Applicable Laws.

Section 6. – Information, Inventory, and Records.

6.1 Information Request.

6.1.1 Franchisee shall supply and maintain, at no cost to the City, any information reasonably requested by the City to coordinate its functions with the Franchisee's activities and fulfill any municipal functions under Applicable Laws. This required information may include, but is not limited to, any installation inventory, location of existing or planned Facilities, maps, plans, operational data, and as-built drawings of Franchisee's Facilities in the City. Franchisee shall warrant the accuracy of all information provided to the City.

6.1.2 Within thirty (30) days of a written request from the Mayor, but no more than once annually, the Franchisee shall furnish the City with information sufficient to demonstrate: 1) that

the Franchisee has complied with all applicable requirements of this Franchise; and 2) that all utility taxes due to the City in connection with the Franchisee's Services and Facilities have been properly collected and paid by the Franchisee.

6.2 Current Inventory. Franchisee shall maintain a current inventory of Facilities throughout the Term of this Franchise. Franchisee shall provide a copy of the inventory report within sixty (60) days of a reasonable request by the City. The inventory report shall include a route map of those basic portions of the fiber system that are located within the Right-of-Way and be in a digital format and the location of the Facilities, including the depth below the finished surface. Franchisee shall cooperate with the City to furnish this information in an electronic mapping format compatible with the current City electronic mapping format.

6.3 Inspection. 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; except that nothing in this Section 6.3 shall be construed to require Franchisee to violate Applicable Laws regarding customer privacy, nor shall this Section 6.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by Applicable Laws, nothing in this Section 6.3 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; except that 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.

6.4 Public Records Act. Franchisee acknowledges that information submitted to the City is subject to the Washington Public Records Act, Chapter 42.56 RCW, and is open to public inspection, subject to any exceptions permitted by Applicable Laws.

6.4.1 Franchisee may identify documents submitted to the City that Franchisee believes are non-disclosable, such as trade secrets. 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 the information is confidential and how it may be treated as such under Applicable Laws.

6.4.2 If the City receives a public records request under Chapter 42.56 RCW or similar law for the disclosure of the documents or any part of the documents Franchisee has designated as confidential, trade secret, or proprietary, the City shall provide Franchisee with written notice of the request, including a copy of the request before disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section 6.4 prohibits the City from complying with Chapter 42.56 RCW or any other Applicable Laws 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 will not assert an exemption from disclosure or production on Franchisee's behalf.

6.4.3 The City shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records. If a higher court overturns an injunction

or court order and the 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 these records within forty-five (45) days of a request from the City, unless additional time is reasonably necessary under the circumstances and is agreed to by the Parties.

6.5 Annual Audit. On an annual basis, upon thirty (30) days' 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, in accordance with generally accepted accounting practices and any standards adopted by the Governmental Accounting Standards Board. If the audit shows that tax or fee payments have been underpaid by 3% or more, Franchisee shall pay the total cost of the audit.

Section 7. – Unauthorized Facilities.

7.1 Any Facilities installed in the City Right-of-Way that are not authorized under this Franchise or other required City Approval (“Unauthorized Facilities”) will be subject to the payment of an Unauthorized Facilities charge by Franchisee. City shall provide written notice to Franchisee of any Unauthorized Facilities identified by City staff and Franchisee shall have thirty (30) days thereafter in which to establish that this installation was authorized or obtain the applicable permit. Failure to establish that the installation is authorized will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand Dollars (\$1,000.00) per Unauthorized Facility per day starting on the thirty-first (31st) day following notice. Franchisee may submit an application to the City under this Franchise for approval of the Unauthorized Facilities. If the application for the Unauthorized Facilities is denied, Franchisee shall remove the Unauthorized Facilities from the City’s Right-of-Way within thirty (30) days after the expiration of all appeal periods for such denial. The City shall not refund any Unauthorized Facilities charges unless Franchisee is successful in an appeal. This Franchise remedy is in addition to any other remedy available to the City at law or equity.

Section 8. – Safety Requirements.

8.1 Safe Conditions. Franchisee shall at all times, at its own expense, maintain its Facilities in, over, under, and upon the Rights-of-Way in a safe condition, in good repair, and in a manner suitable to the City. Additionally, Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a hazard or undue vibration, heat, noise, or any interference with City services. Upon reasonable notice to Franchisee, the City reserves the general right to inspect the Facilities to evaluate if they are being maintained in a safe condition. If an unsafe condition or a violation of this Section 8.1 becomes known to the City, the City agrees to give Franchisee written notice of the condition and afford Franchisee a reasonable opportunity to repair the condition. If Franchisee fails to start to make the necessary repairs and alterations within a reasonable time frame specified in the notice (and pursue the cure to completion), then the City may make the repairs or contract for them to be made. All costs, including but not limited to administrative costs, consultant costs, and attorneys’ fees, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to the City.

8.2 Additional Safety Standards. Additional safety standards include:

- a. Franchisee shall maintain all equipment lines and Facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.
- 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. The Franchisee shall protect any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations with adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible at night.

8.3 Hazardous Substances. Franchisee shall not introduce or use any Hazardous Substances in violation of any Applicable Laws, 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 claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by 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. Franchisee shall have only that responsibility or liability for managing, monitoring, or abating a hazardous condition that it may have under state or federal law and this Franchise shall not be interpreted to expand Franchisee's legal obligations relating to any pre-existing Hazardous Substances undisturbed by Franchisee.

Section 9. – Provision of Conduit.

9.1 Except in Emergency Situations, Franchisee shall provide the Mayor with at least thirty (30) days' advance written notice of any construction, relocation, or placement of ducts or conduits in the Rights-of-Way and provide the City 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, in one or more of the locations where Franchisee constructs, installs, or relocates Facilities underground. If so requested, the conduit shall be provided at Franchisee's incremental cost and per the terms of a separate agreement. Franchisee shall install a locator wire and cap off all conduit ends. Conduit ends shall be marked on any as-built plans and maps requested pursuant to Section 6. Any conduit delivered to the City pursuant to this Section 9 will become property of the City, and Franchisee will have no ongoing maintenance, liability, or other obligations to the City or any third party with respect to the conduit. The City shall make any request for conduit per this Section 9 request in writing before issuance of the applicable permit to Franchisee.

Section 10. – Emergency Situations.

10.1 Immediate Action Required. In the event of any Emergency Situation in which any of

Franchisee's Facilities located in or under any street endangers the property, life, health, or safety of any Person, entity, or the City, or if Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any Person, entity, or the City, Franchisee shall immediately repair its Facilities and cure or remedy the dangerous conditions for the protection of property, life, health, or safety of any Person, entity or the City, without first applying for and obtaining a permit as required by this Franchise. The Franchisee shall apply for any necessary permits on the next day Bonney Lake City Hall is open for business.

10.2 Lateral Support. 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, an adjoining public place, street utilities, City property, Rights-of-Way, or private property (collectively "Endangered Property") or endangers the public, the Mayor may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the Endangered Property or the public within a prescribed time. If Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with the directions, or if an Emergency Situation exists that requires immediate action before the City can timely contact Franchisee to request Franchisee effect the immediate repair, the City may enter upon the Endangered Property and take such reasonable actions as are necessary to protect the Endangered Property or the public. Franchisee shall be liable to the City for the costs of any such repairs in accordance with the provisions of Section 11.

10.3 Reimbursement. Franchisee shall promptly reimburse the City in accordance with the provisions of Section 11 for any and all costs the City reasonably incurs in response to any Emergency Situation involving Franchisee's Facilities, to the extent this emergency is not the fault of the City. The City agrees to simultaneously seek reimbursement from any other franchisee or permit holder who caused or contributed to the Emergency Situation.

Section 11. – Recovery of Costs.

11.1 Administrative and Other Costs. Franchisee shall be subject to a \$5,000 administrative fee as a fee deposit for the payment of costs associated with the preparation, processing, and approval of this Franchise Agreement, including wages, benefits, overhead expenses, meetings, negotiations, and other functions related to the approval. In addition, the Franchisee shall be responsible for reimbursement of all of the City's attorney's fees for this Agreement. The Franchisee shall also pay the cost of publication for this Franchise. To the extent that the fee deposit is not otherwise exhausted, the attorney's fees shall be reimbursed from the fee deposit. However, to the extent that the City's costs, including but not limited to attorney's fees, exceeds the fee deposit, Franchisee agrees to pay any additional costs as set forth in this section. The fee deposit excludes normal permit fees required for work in the Right-of-Way. Payment of all the City's expenses as set forth in this Section shall be made in full prior to Franchise approval. No construction permits shall be issued for the installation of Facilities authorized until the City has received the reimbursements as required by this Section.

11.2 Additional Costs. 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 these costs and expenses directly to the City in accordance with the provisions of Section 11.4.

11.3 City Project Costs. Franchisee shall reimburse the City for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. These costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. These 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.

11.4 Payment of Costs. 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 the billing. Franchisee shall reimburse the City within thirty (30) days of submittal by the City of an itemized billing for costs incurred under this Section 11.

Section 12. – City's Reservation of Rights.

12.1 Franchise Fees. The City is not seeking to impose any franchise fee or similar compensation for the benefits and privileges granted under this Franchise and in consideration of the permission to use the City's Rights-of-Way as of the effective date of this Franchise. However, the City reserves the right to impose a franchise fee upon one hundred and twenty (120) days' notice to Franchisee, if it believes it is consistent with Applicable Laws. Franchisee reserves the right to challenge the imposition of any such compensation if it believes it is inconsistent with Applicable Laws. Payment of a franchise fee under this Franchise shall not exempt Franchisee from the payment of any generally applicable fee, tax, or charge on the business, occupation, property, or income of Franchisee that may be imposed by the City. The City also reserves the right to require Franchisee to obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee's operations as allowed under Applicable Law. Nothing contained within this Franchise shall preclude Franchisee from challenging any fee, this Franchise, or separate agreement under Applicable Laws.

12.2 Utility Taxes. Franchisee acknowledges that certain of its operations within the City may constitute a telephone business and may be subject to utility taxes permitted under Applicable Laws. Franchisee agrees it shall be responsible for the payment of any applicable utility taxes, including, without limitation, any utility taxes enacted by the City after the Effective Date of this Franchise. Franchisee's obligation to pay such taxes shall not be considered a franchise fee or in

lieu of any other costs payable to the City as provided herein. Nothing in this Section 12.2 is intended to alter, amend, modify, or expand the taxes and fees that may lawfully be assessed on Franchisee's business activities under this Franchise under Applicable Laws.

Section 13. – Indemnification; Liability.

13.1 General Indemnification. Franchisee shall indemnify, defend, and hold the City, its officers, officials, boards, commissions, agents, volunteers, and employees, harmless from any action or claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorneys' fees or expenses, arising from any casualty or accident to Person or property, including, without limitation, damages in any way arising out of, or by reason of, any construction, excavation, operation, maintenance, reconstruction, or any other act done under this Franchise, by or for Franchisee, its agents, or its employees, or by reason of any neglect or omission of Franchisee. Franchisee shall consult and cooperate with the City while conducting its defense of the City under this Franchise. Franchisee shall not be obligated to indemnify the City for injuries or damages caused by the negligence or willful misconduct of the City.

13.2 Indemnification for Relocation. Franchisee shall defend, indemnify, and hold the City harmless for any damages, claims, additional costs or expenses and attorneys' fees, including contractor construction delay damages, assessed against or payable by the City contributing to Franchisee's failure to remove, adjust, or relocate any of its Facilities in the Rights-of-Way in accordance with any relocation required by the City, provided that Franchisee shall not be liable under this section if Franchisee's failure to remove, adjust, or relocate any of its Facilities is the result of a Force Majeure Event.

13.3 Procedures and Defense. If a claim or action arises, the City or any other indemnified party shall promptly notify Franchisee of such claim or action and tender the defense of the claim or action to Franchisee, which defense shall be at Franchisee's expense. The City's failure to notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. The City may participate in the defense of a claim, but if Franchisee provides a defense at Franchisee's expense, then Franchisee shall not be liable for any attorneys' fees, expenses, or other costs the City may incur if it chooses to participate in the defense of a claim, unless and until separate representation is necessary. Then, the provisions of Section 13.5 shall govern Franchisee's responsibility for City's attorney's fees, expenses, or other costs. In any event, Franchisee may not agree to any settlement of claims affecting the City without the City's consent, which will not be unreasonably withheld or delayed.

13.4 Avoidance. 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 13. Whether Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duty of defense and indemnification under this subsection.

13.5 Expenses. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the City and counsel selected by

Franchisee to represent the City, Franchisee shall pay, from the date such separate representation is required forward, all expenses incurred by the City in defending itself with regard to any action, suit, or proceeding subject to indemnification by Franchisee. Except that, if separate representation is or becomes necessary, and the City desires to hire counsel or any other outside experts or consultants and desires Franchisee to pay those expenses, then the City shall be required to obtain Franchisee's consent to the engagement of such counsel, experts, or consultants, such consent not to be unreasonably withheld or delayed. The City's expenses shall include all out-of-pocket costs and expenses, such as consultants' fees and court costs, but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Franchisee, except in the event of a conflict of interest where such duplication may be required. Each Party agrees to cooperate and to cause its employees and agents to cooperate with the other Party in the defense of any claim or action.

13.6 RCW 4.24.115. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, 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 expressly understood that the indemnification provided herein constitutes Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

Section 14. – Insurance.

14.1 Policies. Franchisee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

- a. Commercial General Liability insurance with limits of no less than \$5,000,000 per occurrence and \$5,000,000 general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials, and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials, and employees. Coverage shall apply as to claims between insureds on the policy, if applicable. Coverage may take the form of a primary layer and a secondary or umbrella layer, but the combination of layers must equal \$5,000,000 at a minimum.
- b. Commercial Automobile Liability insurance with minimum combined single limits of \$5,000,000.00 each occurrence with respect to each of Franchisee's owned, hired, and non-owned vehicles assigned to or used in the operation of the Facilities in the City. The policy shall contain a severability of interests provision.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability with a limit of \$5,000,000 each accident/disease/policy limit.
- d. Contractors Pollution Liability insurance shall be in effect throughout the entire

Franchise Agreement covering losses caused by pollution conditions that arise from the operations of the Franchisee. Contractors Pollution Liability shall cover bodily injury, property damage, cleanup costs and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

- e. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.
- f. Contractors Pollution Liability insurance shall be written in an amount of at least \$2,000,000 per loss, with an annual aggregate of at least \$2,000,000.
- g. Excess or Umbrella Liability insurance shall be written with limits of not less than \$5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

If the Franchisee maintains broader coverage and/or higher limits than the minimums within this Section 14.1, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Franchisee. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

14.2 Deductibles. Any deductible related to the insurance policies in Section 14.1 shall not in any way limit Franchisee's liability to the City.

14.3 Requirements. All policies shall contain, or shall be endorsed so that:

- a. The City, its officers, officials, boards, commissions, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Franchisee under this Franchise or Applicable Laws, or in the construction, operation or repair, or ownership of the Network;
- b. Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, volunteers, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute to it; and
- c. Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

14.4 Acceptability of Insurers. The insurance obtained by Franchisee shall be placed with insurers with a Best's rating of no less than "A VII."

14.5 Verification of Coverage. The Franchisee shall furnish the City with certificates of insurance and endorsements or a copy of the page of the policy reflecting blanket additional insured status. The certificates and endorsements for each insurance policy shall be signed by a Person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements for each insurance policy shall be on forms that are consistent with standard industry practices.

14.6 Maintenance of Insurance. Franchisee's maintenance of insurance as required by this Section 14 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 15. – Abandonment of Franchisee's Telecommunications Network.

15.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving written notice from the Mayor. 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 Mayor, and all necessary permits must be obtained before this work. The plan for abandonment shall include a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of the City's notice may be removed by the City and the area restored at Franchisee's cost. Franchisee shall pay these costs to the City within thirty (30) days of receiving an invoice. If Franchisee fails to pay the City within this timeframe, the City may avail itself of any remedy available at law or equity.

Section 16. – Bonds.

16.1 Construction Guarantee. As a condition of performing work in the Right-of-Way, the timely, complete, and faithful performance of all construction work in the Right-of-Way shall be guaranteed in an amount equal to 130% of the cost estimate (prepared by a licensed contractor, professional engineer, or architect) of the construction work, by either the Franchisee or the Franchisee's contractor performing the actual construction work. The guarantee shall be by performance bond. If Franchisee, in the sole judgment of the City, has a history of corrections or default, Franchisee must provide the full guarantee by assignment of funds. These funds 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) repair and restoration of any damage to public or private property caused by the construction; (6) submission of as-built drawings after completion of construction; and (7) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work that could be asserted against the City or City property. The guarantee must remain in full force until the completion of construction and/or any necessary repairs, 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 16.2. Compliance with the performance guarantee requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section.

16.2 Maintenance Guarantee. Maintenance and the successful operation of the Right-of-Way improvements shall be bonded for a period of at least two (2) years (or other period as required by Bonney Lake Municipal Code, as may be amended) from the date of final construction approval. The bond shall be in an amount to be determined by the City. The minimum maintenance guarantee shall be Five Thousand Dollars (\$5,000.00) or 30% of the original performance construction guarantee as described in Section 16.1, whichever is greater. Franchisee will have thirty (30) days to correct any deficiencies identified by the City. The satisfactory correction of the work may commence a new two-year maintenance period for the improvements as corrected, as determined by the City. The City will initiate collection against the financial guarantee if deficiencies are not satisfactorily addressed by the end of the thirty (30) day response period. Compliance with the maintenance guarantee requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 16.2. Original financial guarantee amounts described in Section 16.1 and this Section 16.2 may be reduced one time only before the maintenance period, at the discretion of the City. If an extension to any associated permits are granted, the financial guarantees may be increased based on an updated engineer's cost estimate or as determined by the City. Financial guarantees will be fully released only after all final punch list items are accomplished, final construction approval, and the lapse of the two (2) year maintenance guarantee period with all corrective actions complete and accepted by the City.

16.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, following written 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. Franchisee specifically agrees that its failure to comply with the terms of this Section 16.3 will constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 17.2. Franchisee further agrees to replenish the Franchise Bond within thirty (30) days after written notice from the City that the amount of the Franchise Bond is deficient. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

16.4 Form of Bonds. All bonds provided to the City under this Section 16 shall be on forms provided by the City and with sureties registered with the Washington State Insurance Commissioner or other financial institutions acceptable to the City.

Section 17. – Remedies to Enforce Compliance.

17.1 Reservation of Rights.

17.1.1 In addition to the remedies provided in this Franchise, each Party reserves the right

to pursue any remedy available at law or in equity to compel or require the other Party and/or its successors and assigns to comply with the terms of this Franchise. The pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation for breach of the conditions of this Franchise.

17.1.2 All rights and remedies provided in this Franchise shall be in addition to and cumulative with any and all other rights and remedies available to either the City or Franchisee. These rights and remedies are not exclusive, and the exercise of one or more rights or remedies may not be deemed a waiver of the right to exercise any other right or remedy at any time. Neither Party intends to waive any other rights, remedies, or obligations as provided by law, equity, or otherwise, and nothing contained in this Franchise shall be construed to effect any such waiver.

17.2 Procedure upon Breach. If either Party violates or fails to comply with any of the provisions of this Franchise or a permit issued as required by Section 3.2, or fails to heed or comply with any notice given under the provisions of this Franchise (the “Defaulting Party”), the other Party (the “Non-defaulting Party”) shall provide the Defaulting Party with written notice specifying with reasonable particularity the nature of the breach and the Defaulting Party shall undertake all commercially reasonable efforts to cure the breach within thirty (30) days of receipt of notification. If the Non-defaulting Party reasonably determines the breach cannot be cured within thirty (30) days, the Non-defaulting Party may specify a longer cure period, and condition the extension of time on the Defaulting Party’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 the Defaulting Party does not comply with the specified conditions, the Non-Defaulting Party may pursue any available remedy at law or in equity. In the event Franchisee is the Defaulting Party, if Franchisee has failed to timely cure any breach, the City, at its sole discretion, may elect to: (1) terminate this Franchise pursuant to Section 2.5; (2) claim liquidated damages of Two Hundred Fifty Dollars (\$250.00) per day against Franchisee (and collect from the Franchise Bond if necessary) as an estimate for damages that the Parties understand will be difficult to calculate in the event of a default; or (3) extend the time to cure the breach if under the circumstances additional time is reasonably required.

Section 18. – Non-Waiver.

18.1 The failure of either Party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option 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 19. – Police Powers and City Regulations.

19.1 Nothing within this Franchise may 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, 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 by appropriate regulations, consistent with 47 U.S.C. § 253, the

location, elevation, manner of construction, and maintenance of any Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate Applicable Laws. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. 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, the other ordinances(s) shall take precedence over this Franchise.

Section 20. – Acceptance.

20.1 This Franchise may be accepted by Franchisee by its filing with the City Clerk of an unconditional written acceptance, within sixty (60) days from the City's execution of this Franchise, in the form attached as ***Exhibit A***. Failure of Franchisee to so accept this Franchise will constitute a rejection by Franchisee and the rights and privileges granted shall cease. In addition, Franchisee shall file the certificate of insurance and the additional insured endorsements obtained pursuant to Section 14, any construction guarantees and bonds, if applicable, as described in Section 16.

Section 21. – Survival.

21.1 All of the provisions, conditions, and requirements in Sections 3, 4, 5, and 13 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 this Franchise, and any renewals or extensions, to the extent provided. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the 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 successors and assigns equally as if they were specifically mentioned where Franchisee is named.

Section 22. – Assignment and Changes of Ownership or Control.

22.1 **Written Consent.** Except as set forth below, neither Party may assign or transfer its rights or obligations under this Agreement, in whole or part, to a third party, without the written consent of the other Party which shall not be unreasonably withheld, conditioned, or delayed. Any agreed upon assignee will take the place of the assigning Party, and the assigning Party will be released from all of its rights and obligations upon such assignment.

22.1.1 Notwithstanding the foregoing, Franchisee may at any time, on written notice to the City, assign this Franchise or any or all of its rights and obligations under this Franchise:

- (a) to any Affiliate of Franchisee;
- (b) to any successor in interest of Franchisee's business operations in the City in connection with any merger, acquisition, or similar transaction if Franchisee determines after a reasonable investigation that the successor in interest has the resources and ability to fulfill the obligations of this Franchise; or
- (c) to any purchaser of all or substantially all of Franchisee's Facilities in the City if

Franchisee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Franchise.

The written notice required by this Section shall be at least thirty (30) days prior to the closing of the transaction under subsection (a), and ninety (90) days before the closing of any transaction under subsections (b) and (c). In connection with any proposed transaction under subsections (b) and (c), Franchisee shall cooperate with any requests from the City for any information related to the legal, technical, and/or financial ability of a proposed purchaser or successor in interest to comply with the terms of this Franchise.

22.2 Franchisee Responsibility. Following any assignment of this Franchise to an Affiliate pursuant to Section 22.1.1(a), Franchisee will remain responsible for the Affiliate's performance under the terms of this Franchise.

Section 23. – Eminent Domain.

23.1 The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with Applicable Laws, all or a portion of Franchisee's Facilities for the fair market value. In determining the value of Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 24. – Vacation.

24.1 If at any time the City, by ordinance and in accordance with Applicable Laws, 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 the vacation. The City shall notify Franchisee in writing not less than sixty (60) days before vacating all or any portion of any such area. The City will, if practicable, reserve an easement for Franchisee's Facilities under the same terms and conditions as this Franchise at the location vacated by City, and if not practicable, the City may, after sixty (60) days' written notice to Franchisee, terminate this Franchise with respect to such vacated area.

Section 25. – Notice.

25.1 Any notice or information required or permitted to be given to the Parties under this Franchise shall be sent to the following addresses unless otherwise specified by personal delivery, overnight mail by a nationally recognized courier, or by U.S. certified mail, return receipt requested and shall be effective upon receipt or refusal of delivery:

City: City of Bonney Lake
Attn: Jason Sullivan
21719 96th St. E
Buckley, WA 98321

With a copy to: Inslee Best Doezie & Ryder, P.S.
Attn: Jennifer Robertson
10900 NE 4th Street, Suite 1500
Bellevue, WA 98004

Franchisee: Ezee Fiber Texas, LLC

Telecommunications Franchise – Ezee Fiber Texas, LLC

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11115325.3 - 370563 - 0047

5959 Corporate Dr.
Houston, TX 77036

With a copy to: Carly Nations
Wireless Policy Group, LLC
carly.nations@wirelesspolicy.com

Section 26. – Compliance with all Applicable Laws.

26.1 Each Party agrees to comply with all Applicable Laws. This Franchise is subject to ordinances of general applicability enacted pursuant to the City’s police powers. Franchisee acknowledges that it shall be solely responsible for compliance with any applicable law or regulation of the Federal Communications Commission (“FCC”) to engage in business associated with use of the Rights-of-Way.

Section 27. – Attorney’s Fees.

27.1 If a suit or other action is instituted in connection with any controversy arising out of this Franchise, each Party shall pay all its legal costs and attorney fees incurred in defending or bringing such claim or lawsuit, including all appeals, in addition to any other recovery or award provided by law; except that nothing in this section shall be construed to limit the City’s right to indemnification under Section 13 of this Franchise.

Section 28. – Licenses, Fees, and Taxes.

28.1 Before constructing any Facilities or providing Services within the City, Franchisee shall obtain a business or utility license from the City, if so required. Franchisee shall pay all applicable taxes on personal property and Facilities owned or placed by Franchisee in the Rights-of-Way and shall pay all applicable license fees, permit fees, and any applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees properly imposed by the City under this Franchise. However, nothing in this Franchise is intended to alter, amend, modify, or expand the taxes and fees that may lawfully be assessed on Franchisee’s business activities under Applicable Laws.

Section 29. – Miscellaneous.

29.1 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, will be binding upon the Parties upon execution of this Franchise.

29.2 Severability. If any section, sentence, clause, or phrase of this Franchise is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality will 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, in which event either Party may request renegotiation of those remaining terms of this Franchise materially affected by the court’s ruling.

29.3 Authorized Signatories. The City and Franchisee respectively represent that their

respective signatories are duly authorized and have full right, power, and authority to execute this Franchise on such Party's behalf.

29.4 Venue. This Franchise is governed by the laws of the State of Washington. The United States District Court for the Western District of Washington, and Pierce County Superior Court have proper venue for any dispute related to this Franchise.

29.5 Section Headings. Section headings are intended solely to facilitate the reading of this Franchise and may not affect the meaning or interpretation of the text within this Franchise.

29.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Franchise.

29.7 Enforcement. This Franchise may be enforced at both law and in equity.

[Signatures on Following Page]

DRAFT

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Bonney Lake, Washington this ____ day of _____, 2025.

CITY OF BONNEY LAKE, WASHINGTON

Terry Carter, Mayor

ATTEST:

Sadie Schaneman, City Clerk

APPROVED AS TO FORM:

Jennifer S. Robertson, City Attorney

DRAFT

Accepted and approved this ____ day of _____, 2025.

EZEE FIBER TEXAS, LLC

Name/Title: _____

STATE OF _____)
) ss.
County of _____)

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the _____ of Ezee Fiber Texas, LLC, to be free and voluntary acts of such party for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, 2025.

Notary Public in and for the State of _____
residing at _____
My commission expires _____

EXHIBIT A

STATEMENT OF ACCEPTANCE

EZEE FIBER TEXAS, LLC, for itself, its successors and assigns, accepts, and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached and incorporated by this reference. Ezee Fiber Texas, LLC, declares that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of the Franchise and agrees to abide by such terms and conditions. Ezee Fiber Texas, LLC, has relied upon its own investigation of all relevant facts and it has not been induced to accept this Franchise and it accepts all reasonable risks related to the interpretation of this Franchise.

EZEE FIBER TEXAS, LLC

By: _____

Date: _____

Name: _____

Title: _____



5959 Corporate Dr.
Houston, TX 77036
ezeefiber.com

JULY 25, 2025

Submitted To:
City of Bonney Lake
Jason Sullivan – Public Services Director
21719 96th Street East
Buckley, WA 98321

Re: Ezee Fiber Obtaining a Telecommunications Franchise in the City of Bonney Lake

Dear Mr. Sullivan:

I am writing on behalf of Ezee Fiber Texas, LLC ("Ezee Fiber") to formally submit an application for a franchise agreement to provide telecommunications services within the City of Bonney Lake (the "City"). Ezee Fiber is seeking a franchise to install a new, entirely fiber optic network in portions of the City's rights-of-way.

Description of Proposed Installation: Ezee Fiber proposes to install and maintain 144 to 288 count fiber optic cable within the City's right-of-way. We will utilize underground construction methods, installing new fiber in newly placed conduits. The proposed installation consists solely of fiber optic cable infrastructure and related equipment housed within ground-level cabinets. Our cabinets are typically dimensioned as 62"×59"×34". Core routes connecting cabinets to our backhaul are typically constructed with 2×1.25" HDPE duct with one 288ct SMF28 fiber cable. Branches going deeper into residential streets feeding 1x4 splitters can be 144 or 96 count cables. Cable vaults, typically dimensioned as 24"×36"×36" or smaller, will be used for splice closures and cable slack along core routes. Routes along residential streets for distribution typically use a 1.25" HDPE duct or a 0.75" HDPE duct and one micro 48ct fiber cable that branches out to single fiber cables to connect each house. These drop cables are typically accessible by 10" round boxes buried at every other property line servicing two locations. Ezee Fiber does not plan to install overhead facilities or small wireless deployment devices.

Services to Be Provided: Ezee Fiber will offer symmetrical 10Gbps+ speeds to homes, businesses, governmental and educational entities for both point-to-point connectivity and Internet connectivity. Our consumer internet plans include:

- 2 Gigs - eero Pro 6E Wi-Fi Router; \$89 a month
- 5 Gigs - eero Max 7 Wi-Fi Router; \$99 a month
- 8 Gigs - eero Max 7 Wi-Fi Router; \$119 a month

All plans include equipment and taxes, with no term contract or data caps. Ezee Fiber does not provide cable service or other multi-channel video programming services.



5959 Corporate Dr.
Houston, TX 77036
ezeefiber.com

Service Area: Ezee Fiber intends to build a fiber optic network across the entire City of Bonney Lake for all residents, businesses, schools, government buildings, healthcare facilities, and bandwidth-intensive businesses. Accordingly, we request that the authorized franchise area encompass the entire jurisdiction of the City.

Ezee Fiber looks forward to working with the City's permitting department to finalize construction details. High and low-level design maps will be completed by our engineering and design firm and sent to the City upon completion, typically 3-4 months after the Franchise Agreement is approved and prior to the preferred construction start date. Below is a preliminary map of our build area and routes we intend to build.

If you have any questions or would like any additional information, please do not hesitate to contact us.

We thank you for your assistance and look forward to working with you on this project.

Sincerely,

Garner Duncan
SVP, Government Affairs
Ezee Fiber

