

**CITY OF FIRCREST
ORDINANCE NO. 1758**

AN ORDINANCE OF THE CITY OF FIRCREST, WASHINGTON, GRANTING TO EZEE FIBER WASHINGTON ASSETS, LLC AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS A NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A FIBER OPTIC TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC STREET RIGHTS-OF-WAY OF THE CITY OF FIRCREST, WASHINGTON; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Ezee Fiber Washington Assets, LLC (the “Franchisee” or “Grantee”) has requested that the City Council grant a nonexclusive franchise (this “Franchise”) for purposes of operating and maintaining a fiber optic telecommunications network; and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public ways and properties pursuant to RCW 35A.47.040 for, *inter alia*, conduits, wires, and appurtenances for transmission of signals and other methods of communications; and

WHEREAS, the City of Fircrest finds that it is in the public interest to grant such a franchise, which will specify the rights and duties of Ezee Fiber Washington Assets, LLC; and

WHEREAS, in granting such a nonexclusive franchise the City reserves such other powers and authorities granted to Washington code cities by general law and specifically reserves its right to adopt further regulations under its police powers.

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

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Section 1. Definitions.

Where used in this Franchise the following terms shall be defined as follows:

Section 1.1. “City” means the City of Fircrest, Washington, a municipal corporation of the State of Washington, and its respective successors and assigns.

Section 1.2. “Council” means the City of Fircrest Council acting in its official capacity.

Section 1.3. “Director” means the Public Works Director, or designee, of the City of Fircrest Public Works Department.

Section 1.4. “Facilities” means one or more elements of Franchisee’s telecommunications network, with all necessary cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary appurtenances; provided that new utility poles for overhead wires or cabling are specifically excluded unless otherwise specifically approved by the City. For the purposes of this Franchise the term Facilities excludes “microcell” facilities, “minor facilities,” “small cell facilities,” all as defined by RCW 80.36.375, and “macrocell” facilities, including towers and new base stations and other similar facilities used for the provision of “personal wireless services” as defined by RCW 80.36.375.

Section 1.5. “Franchise Area” means the rights-of-way of the City of Fircrest.

Section 1.6. “Franchisee” means Ezee Fiber Washington Assets, LLC and its respective successors and assigns if consented to by the City of Federal Way as provided in Section 24 herein.

Section 1.7. “FMC” means the Fircrest Municipal Code.

Section 1.8. “Services” means telephone service (as such term is defined in RCW 82.16.010), internet access, private line, cell network front- and backhaul and leasing of Franchisee’s telecommunications Facilities to third parties.

Section 2. Franchise Granted.

The following provisions establish the terms and conditions of the franchise granted herein:

Section 2.1. Pursuant to RCW 35A.47.040, the City of Fircrest, a Washington municipal corporation (hereinafter “Fircrest” or “Grantor”), hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions herein, a non-exclusive Franchise to enter, occupy, and use public street Right-of-Ways (as hereinafter defined) for constructing, installing, operating, maintaining, repairing, and removing wireline facilities necessary to provide telecommunications services and for operation of its Facilities on property located within the corporate boundaries of the City of Fircrest for a period of ten (10) years, unless terminated sooner as hereinafter provided or pursuant to other applicable law, beginning on the Effective Date of this ordinance subject to Acceptance within thirty (30) days of the effective date of this ordinance by Franchisee per Section 41 of this Franchise. The Franchisee agrees that its use of the Franchise Area shall, at all times, be subordinate and subject to the City and the public's need for municipal infrastructure, travel, and access to the Franchise Area, except as may be otherwise required by law.

Section 2.2. This Franchise ordinance permits the Franchisee to enter, occupy, and use public street Right-of-Ways to construct, operate, maintain, replace, relocate, upgrade, remove, excavate, acquire, restore, and use the public street Rights-of-Way located in the City of Fircrest, for operation of its Facilities subject to applicable provisions of the Fircrest Municipal Code (“FMC”) and permits issued pursuant to this Franchise. Public street “Rights-of-Way” (hereinafter “Rights-of-Way”) means land acquired or dedicated by the City of Fircrest for public roads, streets, alleys, courts, boulevards, sidewalks, lanes, public ways, circles, utility easements that may or may not contain utility poles and only to the extent such Rights-of-Way are opened, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally-granted trust lands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally-granted railroad rights-of-way acquired under 43 U.S.C. § 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: buildings, other Fircrest-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by Fircrest, or similar facilities or property owned by or leased to Fircrest. Franchisee is required to obtain a lease or similar agreement for the usage of any Fircrest or third-party-owned poles, conduit, fixtures, or structures. Except as expressly provided otherwise in this Franchise, Franchisee shall construct, install, operate, maintain, repair, and remove its facilities at its expense. If Franchisee desires to expand the services provided within the City, it shall provide written notification of the addition of such services prior to the addition of the service; provided, however, that Franchisee may not offer Cable Services as defined in 47 U.S.C. § 522(6) or wireless communications facilities, including but not limited to small cell facilities and other personal wireless services, without obtaining a new franchise or an amendment to this Franchise approved by the Council.

Section 2.3. Any rights, privileges, and authority granted to Franchisee under this Franchise are subject to the legitimate rights of the police power of the City to adopt and enforce general ordinances necessary to protect the safety and welfare of the public, and nothing in this Franchise excuses Franchisee from its obligation to comply with all applicable general laws enacted by the City pursuant to such power. Any conflict between the terms or conditions of this Franchise and any other present or future exercise of the City's police powers will be resolved in favor of the exercise of the City's police power.

Section 3. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 3.1. The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout the City of Fircrest (the “Franchise Area”) for the purposes specifically authorized by Section 2 of this Franchise. The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Fircrest Zoning Code, the Comprehensive Plan, the current Fircrest Road Design and Construction Standards, and applicable provisions of the FMC and any other applicable law, order, or rule. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of Fircrest to the Franchisee. Franchisee hereby warrants that it expects to provide telecommunications services within Fircrest, consistent with the authority granted to it by the Washington State Utilities and Transportation Commission as that term is defined by federal law (“Services”).

Section 3.2 This Franchise permits Franchisee the right to install and operate its Facilities. Any third-party provider that provides telecommunications services and which uses Franchisee's telecommunications network must have a separate franchise to use the Right-of-Way. This Franchise does not permit the Franchisee to offer cable internet services or Cable Service as that term is defined in 47 U.S.C. § 522(6) by wireline transmission.

Section 3.3. Franchisee may not install any facility, infrastructure, wires, lines, cables, or other equipment, on any Fircrest property other than a Right-of-Way, or upon private property without the owner's prior written consent, or upon any Fircrest public or privately-owned poles or conduits without Fircrest's prior written consent. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in Fircrest's Rights-of-Way to Franchisee other than permitting the Franchisee to provide the Services, and such permitted use shall be subordinate to the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within Fircrest, it shall request a written amendment to this Franchise. If Franchisee desires to use Fircrest-owned property, including utility facilities, poles, and structures within the Rights-of-Way, or to site new structures in the Rights-of-Way, it shall enter into a separate lease, site-specific agreement, or license agreement with the City of Fircrest.

Section 3.4. Franchisee may, without Fircrest's prior written approval, offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over and responsibility for its telecommunications system, Facilities, and related components and/or portions of its Facilities, and Services, and remains responsible for constructing, installing, and maintaining the same pursuant to the terms and conditions of this Franchise;

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

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

(d) No such customer or lessee may use the telecommunications system or Franchisee's Facilities for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to Fircrest citizens without all required business licenses, permits, franchise, or other form of state-wide approval.

Section 4. Non-Exclusive Franchise Grant.

This Franchise is granted upon the express condition that it shall not in any manner prevent Fircrest from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit Fircrest from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and Fircrest shall retain power to make all necessary changes, dedication, establishment, improvement, relocations, repairs, and maintenance of same as Fircrest may deem fit, including the dedication, establishment, improvement, and maintenance of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 5. Location of Facilities.

Section 5.1. Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to Fircrest's Design and Construction Standards and subject to Fircrest's applicable municipal code requirements to the extent consistent with applicable laws. Franchisee shall not be required to amend this Franchise to construct Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those specifically granted by this Franchise.

Section 5.2. Nothing in this Franchise shall be construed to create a duty upon the City to be responsible for the construction of facilities or to modify Public Ways to accommodate the Franchisee's Facilities. Franchisee will maintain a minimum underground horizontal separation of five (5) feet from City water, sanitary sewer, and storm sewer facilities and ten (10) feet from above-ground City water facilities; provided, that for development of new areas, the City, in consultation with Franchisee and other utility purveyors or authorized users of the public way, will develop guidelines and procedures for determining specific utility locations.

Section 5.3. To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by Fircrest, and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

- (a) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
- (b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and
- (c) without prejudice to any right or privilege of Fircrest, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 6. Relocation of Facilities.

Section 6.1. Relocation Requirement. Fircrest may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Rights-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of Fircrest or other governmental entity; provided that Franchisee may temporarily bypass in the authorized portion of the same Rights-of-Way upon Fircrest's prior written approval, which approval shall not unreasonably be withheld, conditioned, or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance

of doubt, such projects shall include any Right-of-Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Collectively, all such projects described in this Section 6.1 shall be considered a "Public Improvement Project." Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 6.1 shall be borne by Franchisee, and not by Fircrest. Franchisee shall complete the relocation of its Facilities at no charge or expense to Fircrest.

Section 6.2. Relocation - Third Party Structures. If the request for relocation from Fircrest originates due to a Public Improvement Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by Fircrest, and at no cost to Fircrest, subject to the procedure in Section 6.5.

Section 6.3. Locate. Upon Fircrest's request, or a third party performing work in the Right-of-Way, and in order to facilitate the design of street and Rights-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate by field markings or by locating on design drawings, and if reasonably determined necessary by Fircrest, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated to accommodate Fircrest's Public Improvement Projects shall be made by Fircrest upon review of the location and construction of Franchisee's Facilities. Fircrest shall provide Franchisee at least fourteen (14) calendar days' written notice prior to any excavation or exposure of Facilities.

Section 6.4. Notice and Relocation Process. If Fircrest determines that the project necessitates the relocation of Franchisee's existing Facilities, Fircrest shall provide Franchisee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). In calculating the Relocation Date, Fircrest shall consult with Franchisee and consider the extent of facilities to be relocated, the service requirements, and the construction sequence for the relocation, within Fircrest's overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless Fircrest or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, Fircrest will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of Fircrest that will result in severe consequences to Fircrest or the public:

(a) Fircrest will consult with the Franchisee in the predesign phase of any Public Improvement Project to coordinate the project's design with the Franchisee's Facilities within such project's area.

(b) Franchisee shall participate in predesign meetings until such time as (i) both parties mutually determine that Franchisee's Facilities will not be affected by the Public Improvement Project, or (ii) until Fircrest provides Franchisee with written notice regarding the relocation as provided in subsection (d) below.

(c) Franchisee shall, during the predesign phase, evaluate and provide comments to Fircrest related to any alternatives to possible relocations. Fircrest agrees to consider any alternatives

proposed by the Franchisee, but the final decision accepting or rejecting any specific alternative shall be within Fircrest's sole discretion.

(d) Fircrest will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible prior to the commencement of the construction of such Public Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 6.4, Fircrest shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.

(e) After receipt of such notice and plans and specifications, Franchisee shall complete the relocation of its Facilities to accommodate such Public Improvement Project, at no charge or expense to Fircrest, at least ten days prior to commencement of construction of such improvements, unless such other timeline is provided by Fircrest or if extended by a Force Majeure Event. Such timeline may be extended by a mutual agreement.

(f) Fircrest may require the relocation of the Facilities at Franchisee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare. Franchisee shall relocate its Facilities within the period specified by Fircrest.

Section 6.5. Alternative Arrangements. The provisions of this Section 6 shall in no manner preclude or restrict Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than Fircrest, where the facilities to be constructed by said person or entity are not or will not become Fircrest-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a Fircrest construction project.

Section 6.6. Contractor Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by Fircrest for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of Fircrest or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties. Such out-of-pocket costs may include, but are not limited to, payment to Fircrest's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by Fircrest to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 6.7. Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending Fircrest, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on Fircrest's construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided herein; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence or willful misconduct of Fircrest or any unrelated third party.

Section 6.8. Fircrest's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by Fircrest following the procedures outlined in Section 6.1 through Section 6.4., then upon at least ten (10) calendar days written notice to Franchisee, Fircrest may perform

such work (including removal) or cause it to be done, and Fircrest's costs shall be paid by Franchisee pursuant to Section 15.3 and Section 15.4, and Fircrest shall not be responsible for any damage to the Facilities.

Section 6.9. Survival. The provisions of this Section 6 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 7. Undergrounding of Facilities.

Section 7.1. To the degree reasonably feasible, and if consistent with Fircrest's design standards, Franchisee should underground as much of its facilities as feasible. Franchisee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate. If Fircrest requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above-ground, then Franchisee shall cooperate with Fircrest and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between Fircrest and Franchisee, at no cost to Fircrest.

Section 7.2. Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 7.2. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that they can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by Fircrest. When Fircrest determines, in Fircrest's reasonable discretion, that Franchisee's underground Facilities must be removed to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 9, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 8.1.

Section 7.3. The parties agree that this Franchise does not limit the City's under federal law, state law, or local ordinance, to require the undergrounding of utilities.

Section 7.4. The provisions of this Section 7 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 7 shall be construed as requiring Fircrest to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 8. Maps and Records.

Section 8.1. Franchisee shall provide to City upon request and at no cost, a copy of all as-built plans, maps, and records, including revealing the final location, depth below surface or ground or grade of a Right-of-Way, any related existing equipment to which the Facilities are connected, and condition of its Facilities within the Rights-of-Way. Such records shall be provided in a format acceptable to the City within thirty (30) days of the installation of the Facilities. Upon written request of the City, Franchisee shall update such map to reflect actual or anticipated improvements to the system. Any such map (or update thereof) so submitted shall be for informational purposes only and shall not obligate Franchisee to undertake any specific improvements, nor shall such map be construed as a proposal to undertake any specific improvements. With respect to excavations by Franchisee near any other facilities in the Rights-of-Way, Franchisee and the City shall each

comply with its respective obligations pursuant to Chapter 19.122 RCW and any other applicable State or local law.

Section 8.2. Within thirty (30) calendar days of a written request from the Public Works Director, the Franchisee shall furnish Fircrest with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 8.3. All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by Fircrest at reasonable times and intervals; provided, however, that nothing in this Section 8.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 8.3 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 State or federal law, nothing in this Section 8.3 shall be construed as permission to withhold relevant customer data from Fircrest that Fircrest requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding city and zip code), social security numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 8.4. Franchisee shall be responsible for clearly and conspicuously identifying work as confidential or proprietary and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. In the event that Fircrest receives a public records request under the Washington State Public Records Act, Chapter 42.56 RCW, or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, Fircrest shall advise Franchisee and provide within a reasonable time with a copy of any written request by the party demanding access to such information so that Franchisee may take appropriate steps to protect its interests. Failure of Franchisee to timely institute an action and obtain an injunction against disclosure of the information or records responsive to a public records request will be deemed as consent to disclosure. Franchisee shall defend, indemnify, and hold City harmless from any claim or judgment, including, but not limited to, any penalties or costs assessed under the Public Records Act or other Washington State or federal law.

Section 8.5. Nothing in Section 8.3 or Section 8.4 prohibits Fircrest from complying with the Washington state Public Records Act, Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and Fircrest shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. Fircrest shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records.

Section 8.6. On an annual basis, upon thirty (30) calendar days' prior written notice, Fircrest 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 GAAP.

Section 9. Work in the Rights-of-Way – Standards, Permits, Emergencies, Limitation, and Vegetation.

Section 9.1. During any period of relocation, construction, or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of Fircrest, including but not limited to the Fircrest Municipal Code or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems, and the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control Devices (MUTCD). The provisions of this Section 9 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights of Way.

Section 9.2. Emergency Exception to Permit Requirement. In the event of an emergency in which Franchisee's Facilities within the Franchise Area are in a condition as to immediately endanger the property, life, health, or safety of any individual, Franchisee may take action immediately to correct the dangerous condition without first obtaining any required permit so long as: (1) Franchisee informs the City of the nature and extent of the emergency, and the work to be performed, prior to commencing the work; and (2) such permit is obtained by Franchisee as soon as practicable following cessation of the emergency.

Section 9.3. No Removal of Underground Conduit. Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed, except as provided in this Section 9.3. Franchisee may remove any underground cable and other Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way along the extension of cable to be removed, or if otherwise permitted by the City. Franchisee may remove any underground cable from the Rights-of-Way where reasonably necessary to replace, upgrade, or enhance its Facilities, or per the provisions of this Franchise.

Section 9.4. Removal of Facilities due to Hazardous Conditions. When the City determines, in the City's sole discretion, that Franchisee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Franchisee shall remove the cable or conduit at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 9.5, prior to any such removal of underground cable, conduit, or other related facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 9.3.

Section 9.5. Permit Required. Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall first apply to and obtain from the City of Fircrest, consistent with the requirements of the Fircrest Municipal Code, for a Street Right-of-Way Use Permit to do so at Franchisee's sole cost and expense. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable Fircrest standards and

specifications. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 9.3. Limitations or Exclusion due to Insufficient Space. Fircrest reserves the right to limit or exclude Franchisee's access to a specific route, public street Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, interference with municipal utilities, or for any other reason determined by the Public Works Director consistent with applicable law.

Section 9.4. Backfilling Requirements. The Franchisee shall not excavate for a distance of more than one hundred feet (100') without immediately backfilling and compacting to surface grade and City standards. Backfilled trench areas within a driving lane must be patched, either temporarily or permanently, before the end of the work day in which they have been opened. Trench areas within the right-of-way, but not within a driving lane, must also be patched within the time limits specified by the City on the right-of-way use permit. Final surface restoration shall be completed within thirty (30) days and shall be equal to or better than the surface condition prior to permit issuance.

Section 9.5. Asphalt Overlay. Any asphalt overlay completed within the Franchise Area during the five (5) year-period immediately prior to the date of permit application shall not be open cut by Franchisee unless required by an emergency and subject to the provisions of Section 7.2 above and any other applicable provisions of this Franchise. Franchisee shall install new asphalt overlay on any street that is open cut, whether in an emergency or otherwise, for a minimum of one (1) block (approximately 500 feet) in length in both directions from the open cut, unless determined otherwise by the Director.

Section 9.6. If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford Fircrest, upon receipt of a written request to do so, an opportunity to share such excavation.

Section 9.7. As may be required by permit, depending on the impact of the usage of the Rights-of-Way, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature, and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to Fircrest standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the prior written permission of such private property owner, or as otherwise authorized by applicable law.

Section 9.8. Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of Fircrest to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 9.6 shall only apply

to the extent necessary to protect above-ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. In addition, prior to performing trimming adjacent to private property, Franchisee shall make reasonable efforts to provide advance notice to the adjacent property owner(s), as property owners remain responsible for maintaining vegetation adjacent to their property boundaries per Fircrest Municipal Code. Notification may be made via door hanger, email, or similar standard outreach method reasonably calculated to inform the affected property owner. Nothing in this section shall be construed to shift maintenance responsibility from the property owner to the City. Franchisee shall be responsible for all debris removal from such activities. All trimming, except in emergency situations, is to be done after obtaining a right-of-way use permit from Fircrest and at the expense of Franchisee. Franchisee may contract for such services; however, any firm or individual so retained must first receive a Fircrest-approved right-of-way use permit prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on Fircrest's behalf, to enter upon any private property, or to trim any tree or natural growth not owned by Fircrest. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend, and hold harmless Fircrest from third-party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate Fircrest or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 9.9. Franchisee shall meet with Fircrest and other franchise holders and users of the Rights-of-Way upon written notice as determined by Fircrest, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by Fircrest, to minimize public inconvenience, disruption, or damage.

Section 9.10. Franchisee shall inform Fircrest with at least thirty (30) calendar days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide Fircrest with an opportunity to request that Franchisee provide Fircrest with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 9.11. Franchisee shall maintain all above-ground improvements that it places on Fircrest's public street Rights-of-Way pursuant to this Franchise. To avoid interference with Fircrest's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone consistent with the Fircrest Road Design and Construction Standards. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Section 10. One Call Locator Service.

Prior to doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable

state statutes regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Further, upon request, by Fircrest or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. Fircrest shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service, regardless of whether Fircrest issued a permit.

Section 11. Safety Requirements.

Section 11.1. Franchisee shall, at all times, employ professional care and shall install, maintain, and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, state, and municipal safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. 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 municipal services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, Fircrest reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 11.2. The Public Works Director is authorized to order correction or discontinuance of any such condition or activities as further described in this Section 11 and in the FMC. The Public Works Director shall also have all powers and remedies which may be available under state law, the FMC, and this Franchise for securing the correction or discontinuance of any condition specified in this section.

Section 11.3. The following are methods the Public Works Director may use, any and all methods in ordering correction or discontinuance of any such unsafe conditions or activities as the Public Works Director determines appropriate, including but not necessarily limited to:

- (a) Serving of oral or written directives to Franchisee requesting immediate correction or discontinuance of the specified condition;
- (b) Service of a notice of civil violation pursuant to Chapter 22.95 FMC or any other applicable provision of the Fircrest Municipal Code, ordering the correction or discontinuance of a specific condition or activity within any reasonable period as the Public Works Director may determine;
- (c) Service of a civil infraction pursuant to Chapter 22.95 FMC or any other applicable provision of the Fircrest Municipal Code;
- (d) Revocation of previously granted permits where the Franchisee has failed or refused to comply with requirements imposed by Fircrest related to such permits;
- (e) Issuance of a stop work order to immediately stop work until authorization is received

from Fircrest to proceed with such work; and

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

Section 11.4. All costs, including administrative costs, incurred by Fircrest in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to Fircrest pursuant to Sections 15.3 and 15.4.

Section 11.5. Additional safety standards include:

(a) Franchisee shall endeavor to maintain all Facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

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

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

Section 12. Work of Contractors and Subcontractors.

Franchisee's contractors of any tier shall be licensed and bonded in accordance with state law and Fircrest's ordinances, regulations, and requirements. Work by contractors (of any tier) are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors (of any tier) and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 13. Restoration after Construction.

Section 13.1. Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or within sixty (60) calendar days after abandonment approved pursuant to Section 18, remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee nor for reasonable wear and tear. The Public Works Director or their designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 13.2. Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit issued by

Fircrest. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable Fircrest standards and warranted for at least two (2) years and for undiscovered defects, as is standard and customary for this type of work.

Section 13.3. If conditions (e.g., weather) make the complete restoration required under this Section 13 impracticable, Franchisee shall temporarily restore the affected Rights-of-Way or property. Such temporary restoration shall be at Franchisee's sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 13.4. If Franchisee does not repair or restore a Right-of-Way or an improvement in or to a Right-of-Way within the reasonable time agreed to by the Public Works Director, or his/her designee, upon ten (10) calendar days' notice to Franchisee, Fircrest may repair the damage and shall be reimbursed its actual cost within thirty (30) calendar days of submitting an invoice to Franchisee in accordance with the provisions of Section 15.3 and Section 15.4. In addition, and pursuant to Section 15.3 and Section 15.4, Fircrest may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by Fircrest, including the imposition of damages consistent with Section 21.

Section 13.5 The provisions of this Section 13 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of-Way and has not completed all restoration to Fircrest's standards.

Section 14. Emergency Work/Dangerous Conditions.

Section 14.1. If any emergency in which any of Franchisee's Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or if Franchisee's Facilities is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, entity, or Fircrest, Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health or safety of any person, entity, or Fircrest without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Fircrest City Hall is open for business. Fircrest retains the right and privilege to cut, move, or remove any Facilities located within Fircrest Rights-of-Way, as Fircrest may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 14.2. Fircrest shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of Fircrest, except to the extent directly caused by the sole negligence, intentional misconduct, or criminal actions of Fircrest, its agents, employees or contractors. Fircrest shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of Fircrest's actions under this Section 13, except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of Fircrest, its agents,

contractors, or employees.

Section 14.3. In the event Franchisee fails to comply with any applicable federal, state, or City laws, ordinances, rules, regulations, or standards or with any of the terms of this Franchise, or whenever the construction, installation, or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street, electrical or telecommunications utilities or Fircrest property, the Public Works Director may direct Franchisee, at Franchisee's own expense, to take reasonable action to protect the public, adjacent public places, Fircrest property or street utilities within ten (10) days of written notice by the City, or as may be otherwise agreed to in writing by the Parties. Such actions may include the obligation to repair, remove, or relocate Facilities pursuant to the terms of this Agreement. If Franchisee fails or refuses to promptly take the actions directed by Fircrest, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before Fircrest can timely contact Franchisee to request Franchisee effect the immediate repair, Fircrest may, but in no event is the City obligated to, access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Franchisee shall be liable to Fircrest for the costs thereof.

Section 15. Recovery of Costs, Taxes, and Fees.

Section 15.1. Franchisee shall pay a fee for the actual administrative expenses incurred by Fircrest that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with Fircrest's legal costs actually and reasonably incurred in drafting and processing this Franchise. No permits shall be issued for the installation of authorized Facilities until such time as Fircrest has received payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under Fircrest's laws. Where Fircrest incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, Fircrest staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to Fircrest in accordance with the provisions of Section 15.3.

Section 15.2. Franchisee shall promptly reimburse Fircrest in accordance with the provisions of Section 15 for any and all costs Fircrest reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not Fircrest's fault. Fircrest agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 15.3. Franchisee shall reimburse Fircrest within thirty (30) calendar days of submittal by Fircrest of an itemized billing for reasonably incurred costs, itemized by project and task, for Franchisee's proportionate share of all actual, identified expenses incurred by Fircrest in altering, constructing, installing, maintaining, planning, or repairing of any Fircrest facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include, but not be limited to, Franchisee's proportionate cost of Fircrest personnel assigned to

oversee or engage in any work in the Rights-of-Way as a result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 15.4. The time of Fircrest 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 and task for which Fircrest claims reimbursement. At Fircrest's option, the billing may be on an annual basis, but Fircrest shall provide the Franchisee with Fircrest's itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 15.5. Franchisee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, Fircrest will not impose a franchise fee under the terms of this Franchise, other than as described herein. Fircrest hereby reserves its right to impose a franchise fee on Franchisee if Franchisee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, Fircrest also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 15.6. Franchisee stipulates and agrees that if its business activities are subject to taxation as a telephone business, that Franchisee shall pay to Fircrest the rate applicable to such taxable services under Fircrest Municipal Code Chapter 5.24, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Fircrest Municipal Code Chapter 5.24 shall control. In that event, Fircrest may not enforce remedies under Section 21 or commence a forfeiture or revocation process pursuant to Section 20 until the dispute is finally resolved either consistent with Fircrest Municipal Code Chapter 5.24 or by judicial action, and then only if the Franchisee does not comply with such resolution. The parties agree, however, that nothing in this Franchise shall limit Fircrest's power of taxation as may exist now or as later imposed by Fircrest. This provision does not limit Fircrest's power to amend Fircrest Municipal Code Chapter 5.24 as may be permitted by law.

Section 16. Indemnification.

Section 16.1. Franchisee agrees to indemnify, defend, and hold harmless Fircrest, its agents, board and commission members (appointed or elected), counsel, directors, employees, officers, officials (elected and appointed), and representatives (collectively the "Indemnitees") from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, board of directors, contractor (of any tier), counsel, employees, management, officers, servants, representatives, or shareholders or any other person acting in the operation of its business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection

with, in performance of, or related to the performance of this Franchise and any rights granted within this Franchise. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation. Such indemnification will not extend to damages, claims, or demands that are caused by the gross negligence or intentional misconduct of the City, its employees, agents, or contractors or a third party.

Section 16.2. Inspection or acceptance by Fircrest of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

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

Section 16.4. Except to the extent that damage or injury arises from the negligence or willful misconduct of the Indemnitees, the obligations of Franchisee under the indemnification provisions of this Section 16 and any other indemnification provision herein shall apply. However, 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 personal or real property were caused or contributed to by the concurrent negligence of the Franchisee and the Indemnitees the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. Notwithstanding the preceding sentence, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. It is further specifically and expressly understood that the

indemnification provided herein constitutes Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by Fircrest directly against the Franchisee for claims made against Fircrest by Franchisee's employees. This waiver has been mutually negotiated by the parties.

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

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

Section 17. Insurance.

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

(a) Automobile Liability insurance with limits of not less than \$5,000,000 combined single limit per occurrence for bodily injury and property damage;

(b) Commercial General Liability insurance as per form ISO CG 00 01 or its equivalent, written on an occurrence basis with limits of not less than \$5,000,000 per occurrence for bodily injury and property damage and not less than \$5,000,000 general aggregate including personal and advertising injury, contractual liability; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU);

(c) Workers' Compensation coverage and Employer's Liability insurance in amounts sufficient pursuant to the laws of the State of Washington;

(d) Excess Umbrella liability policy with limits not less than \$5,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet the required total limits. If Franchisee maintains umbrella insurance (primary, excess, or a combination thereof) that exceed the above insurance amounts in this Section, such insurance shall constitute compliance with this Section.

Section 17.2. Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies or be at least as broad as such underlying policies.

Section 17.3. The required Commercial General Liability and Umbrella/Excess Liability insurance policies obtained by Franchisee shall include Fircrest, its agents, counsel, board and commission members, employees, officers, officials (appointed and elected), representatives, and volunteers ("Additional Insureds"), as an additional insured by blanket endorsement with regard to any work or operations performed under this Franchise or by or on behalf of the Franchisee and the required Commercial Auto Liability policy obtained by Franchisee shall include the Additional Insureds, as an additional insured by blanket endorsement with regard to the use of vehicles by or on behalf of Franchisee while in performance of this Franchise. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and except with respect to the rights and duties of Franchisee as the First Named insured. Franchisee shall provide to Fircrest a certificate of insurance and a copy of the blanket additional insured endorsements. Receipt by Fircrest of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's coverage shall be primary insurance with respect to Fircrest, its officers, officials, employees, agents, and volunteers. Any insurance, self-insurance, or insurance pool coverage maintained by Fircrest shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 17.4. Upon receipt of notice from its insurer(s), Franchisee shall provide Fircrest with thirty (30) calendar days' prior written notice of any cancellation or non-renewal of any insurance policy, required pursuant to this Section 17, that is not replaced. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to Fircrest replacement certificates of insurance meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to Fircrest's election of remedies described in Section 21 below. Notwithstanding the cure period described in Section 21.3, Fircrest may pursue its remedies immediately upon a failure to furnish evidence of replacement insurance.

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

Section 17.6. Fircrest may review all insurance limits once every three (3) calendar years during

the Term and may make reasonable adjustments in the limits in accordance with prudent risk management practices and insurance industry standards upon thirty (30) calendar days' prior written notice to Franchisee. Franchisee shall then provide an updated certificate of insurance to Fircrest showing compliance with these adjustments and shall furnish the required blanket additional insured endorsement.

Section 17.7. As of the Effective Date of this Franchise, Franchisee is not self-insured with respect to required insurance except for first-party (self-owned) property damage. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following:

- (1) Provide Fircrest, upon request, a copy of Franchisee's, or its parent company's, most recent annual report, if such financial statements are not otherwise publicly available;
- (2) Franchisee or its parent company is responsible for all payments within the self-insurance program; and
- (3) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 18. Abandonment of Franchisee's Facilities.

Section 18.1. Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall either abandon in place or remove all of its Facilities from the Rights-of-Way within ninety (90) days of receiving written notice from the Public Works Director or their designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by Fircrest. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance, or repair, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee, or reasonable wear and tear. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.2. In the event that the use of any part of the Facilities are discontinued for any reason for a continuous period of six (6) months or more, or in the event such system or property has been installed in any Right-of-Way or other public place without complying with the requirements of this Franchise or other City ordinances, Franchisee shall, upon being given thirty (30) days' notice, remove at its expense all such discontinued Facilities other than any which the City may permit to be abandoned in place. In the event of such removal, Franchisee shall promptly restore the Right-of-Way or other areas from which such property has been removed to a condition satisfactory to the City.

Section 18.3. Any property of Franchisee remaining in place ninety (90) days after such notice, termination or expiration of this Franchise shall be considered permanently abandoned. The City may extend such time not to exceed an additional ninety (90) days. Any costs incurred by the City in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent the City from compelling Franchisee to

remove any such Facilities through judicial action when the City has not permitted Franchisee to abandon said Facilities in place.

Section 18.4. Any property of Franchisee to be abandoned in place shall be abandoned in such manner as the City shall prescribe. Upon permanent abandonment of the property of Franchisee in place, the property shall become that of the City, and Franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

Section 18.5. The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise.

Section 19. Security.

Section 19.1. Assurance Device(s). At Fircrest's request, and consistent with the applicable permit, Franchisee shall furnish an assurance device(s) in a form and amount as required by the Public Works Director to cover the performance and maintenance of the required work, improvements, and restoration proposed by the Franchisee.

Section 19.2. Construction Performance Bond. Franchisee shall furnish a performance bond ("Performance Bond") written by a corporate surety reasonably acceptable to the City equal to at least 120% of the estimated cost of constructing Franchisee's Facilities within the Rights-of-Way of the City prior to commencement of any such work or such other amount as deemed appropriate by the Public Works Director. The Performance Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said bond must remain in full force until the completion of construction, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a Maintenance Bond as described in Section 19. Compliance with the Performance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.2.

Section 19.3. Maintenance Bond. Franchisee shall furnish a two (2) year maintenance bond ("Maintenance Bond"), or other surety acceptable to the City, at the time of final acceptance of construction work on Facilities within the Rights-of-Way. The Maintenance Bond amount will be equal to ten percent (10%) of the documented final cost of the construction work, but in no event shall a bond of more than \$250,000 be required. The Maintenance Bond in this Section 19.3 must be in place prior to City's release of the bond required by Section 19.2. Compliance with the Maintenance Bond requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section 19.3.

Section 19.4. Franchise Bond. Franchisee shall provide Fircrest 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 Fircrest. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by Fircrest as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee's liability or to limit Fircrest's recourse to any remedy to which Fircrest is otherwise entitled at law or in equity.

Section 20. Revocation.

If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods as set forth in Section 21, then at the election of the Fircrest City Council after at least thirty (30) calendar days written notice to Franchisee specifying the alleged violation or failure, Fircrest may revoke all rights conferred and this Franchise may be revoked by Fircrest City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public, and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) calendar days after the hearing, the Fircrest City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Fircrest City Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Fircrest City Council does not grant any additional period, the Fircrest City Council may, by resolution, declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 21. Remedies to Enforce Compliance.

Section 21.1. Fircrest may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by Fircrest by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, Fircrest reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by Fircrest shall not prevent Fircrest from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of Fircrest or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law, equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 21.2. Franchisee may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Fircrest to comply with the provisions of the Franchise and to recover damages and costs incurred by the Franchisee by reason of Fircrest's unreasonable failure to comply with such court order. In addition

to any other remedy provided herein, Franchisee reserves the right to pursue any remedy to compel or force Fircrest to comply with the terms hereof, and the pursuit of any right or remedy by the Franchisee shall not prevent the Franchisee from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law, equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver.

Section 21.3. If Franchisee violates, fails to comply with any of the provisions of this Franchise, or fails to heed or comply with any notice given to Franchisee under the provisions of this Franchise, Fircrest shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) calendar days of receipt of notification. If the parties reasonably determine the breach cannot be cured within thirty (30) calendar days, Fircrest may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) calendar day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, Fircrest may, at its discretion, (1) revoke this Franchise in accordance with Section 20, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchisee or the Franchise Bond set forth in Section 19 until the violation is cured, or (3) pursue other remedies as described in Section 21.1 above. Liquidated damages described in this Section 21.3 shall not be offset against any sums due to Fircrest as a tax or reimbursement pursuant to Section 15.

Section 21.4. If Fircrest shall violate or fail to comply with any of the provisions of this Franchise, the Franchisee shall provide Fircrest with written notice specifying with reasonable particularity the nature of any such breach, and Fircrest shall undertake all commercially reasonable efforts to cure such breach within thirty (30) calendar days of receipt of notification. If the parties reasonably determine that the breach cannot be cured within thirty (30) calendar days, the parties may agree to a longer cure period. If the breach is not cured within the specified time, or Fircrest does not comply with the specified conditions, the Franchisee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as described in Section 21.2 above.

Section 22. Non-Waiver.

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 herein conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or any other covenants, agreements, or option.

Section 23. Cost of Publication.

Franchisee shall pay the cost of publication of this Franchise.

Section 24. Acceptance.

This Franchise may be accepted by the Franchisee by its filing with the City Clerk the Statement

of Acceptance attached hereto as Exhibit “A” not later than thirty days after the effective date of this Franchise ordinance. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any assurance device(s), if applicable, pursuant to Section 19, and the Franchise Bond required pursuant to Section 19. The administrative fee pursuant to Section 15 is due within thirty (30) calendar days of receipt of the invoice from Fircrest. Franchisee shall have no rights under this Franchise, nor shall Franchisee be bound by the terms and conditions of this Franchise, unless Franchisee shall file its written acceptance of this Franchise within thirty (30) days after the effective date of this Franchise. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights, privileges, and authority herein granted shall, after the expiration of the 30-day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

Section 25. Survival.

All of the provisions, conditions, and requirements of Section 4, Section 5, Section 7, Section 13, Section 16, Section 17, Section 18, Section 26, Section 27, and Section 38 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to Fircrest at common law, by statute, or by contract, and shall survive Fircrest’s Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the administrators, assigns, executors, heirs, legal representatives, and successors, of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its assigns, heirs, and successors equally as if they were specifically mentioned where Franchisee is named herein.

Section 26. Assignment.

Section 26.1. This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless approved in writing by Fircrest, which approval shall not be unreasonably withheld, conditioned, or delayed. The above notwithstanding, Franchisee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to Fircrest of any such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee’s stock; provided, however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 26.2. Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee’s Facilities, shall be considered an assignment or transfer requiring Fircrest’s written approval. Transactions between affiliated entities are not exempt from Fircrest’s approval if there

is a change in control as described in the preceding sentence. Franchisee shall promptly notify Fircrest prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. Fircrest shall approve or deny such request for an assignment or transfer requiring Fircrest's consent within one-hundred twenty (120) calendar days of a completed application from Franchisee, unless a longer time is mutually agreed to by the parties or when a delay in the action taken by Fircrest is due to the schedule of Fircrest City Council and action cannot reasonably be obtained within the one hundred twenty (120) calendar day period. If Fircrest adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, Fircrest may revoke this Franchise, following the revocation procedure described in Section 20 above, or prior to any such revocation by Fircrest, Franchisee may revoke its request for consent to any such assignment, in which case, this Franchise shall continue in full force. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse Fircrest for all costs and expenses reasonably incurred by Fircrest in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 15, and shall pay the applicable application fee.

Section 26.3. Franchisee may, without prior consent from Fircrest: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise, and Franchisee shall furnish, upon request from Fircrest, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for city and zip code), social security numbers, Employer Identification Numbers, or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable FMC section. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 26.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 27. Extension.

If this Franchise expires without renewal, Fircrest may, subject to applicable law:

- (a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or
- (b) Fircrest may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 28. Entire Agreement.

This Franchise constitutes the Parties' entire understanding and agreement as to the subject matter herein, and no other agreements or understandings, written or otherwise, shall be binding upon the

Parties upon execution of this Franchise.

Section 29. Eminent Domain.

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

Section 30. Vacation.

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

Section 31. Notice.

Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand, or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand, or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand, or other communication is to be given. If such notice, demand, or other communication is given by mail, it shall be conclusively deemed given three (3) calendar days after it was deposited in the United States mail addressed to the party to whom such notice, demand, or other communication is to be given.

CITY OF FIRCREST

Attn: City Manager
115 Ramsdell Street
Fircrest, WA 98466

FRANCHISEE

Ezee Fiber Washington Assets, LLC
Attn: George Salimbis
Re: Franchise Agreement/City of Fircrest
5959 Corporate Drive
Houston, TX 77036
E-mail: George.salimbis@ezeefiber.com

Section 32. Compliance with All Applicable Laws.

Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules, and regulations. Nothing herein shall be deemed to restrict Fircrest'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. Fircrest shall have the authority at all times to reasonably control by appropriate regulations the location, manner of construction, and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, Fircrest may modify its FMC and such modifications shall apply to Franchisee's Facilities as applied to other users of the right-of-way, except to the extent prohibited by state and federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under Fircrest's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 33. Amendment.

Fircrest reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or relating to a Fircrest ordinance enacted pursuant to such federal or state statute or regulation; provided that Fircrest provide Franchisee with thirty (30) calendar days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Franchisee makes a written request for negotiations over the terms of the amendment. If the Parties do not reach an agreement as to the terms of the amendment within thirty (30) calendar days of the call for negotiations, the Parties may then submit the issue to a court of competent jurisdiction.

Section 34. Attorneys' Fees.

If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses, and attorneys' fees upon appeal of any judgment or ruling.

Section 35. Hazardous Substances.

Franchisee shall not introduce or use any hazardous substances (chemical or waste) in the Rights-of-Way, in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors (of any tier), or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold Fircrest, its agents, employees, officers,

and officials harmless from and against any and all claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with or 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.

Section 36. Licenses, Fees, and Taxes.

Section 36.1. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from Fircrest. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee and shall pay all license fees and public utility charges relating to the conduct of its business, shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to Fircrest and shall pay utility taxes and license fees imposed by Fircrest.

Section 36.2. Nothing in this Franchise shall be construed to limit taxing authority or other lawful authority to impose charges or fees, or to excuse Franchisee of any obligation to pay lawfully imposed taxes, charges, or fees.

Section 37. Miscellaneous.

Section 37.1. Authority. Fircrest and Franchisee respectively represent that its' signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 37.2. Actions of the City or Franchisee. In performing their respective obligations under this Franchise, the City and Franchisee will act in a reasonable, expeditious, and timely manner. Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a material breach of this Franchise and sufficient grounds for the City to invoke any relevant remedy.

Section 37.3 Governing Law and Venue. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or Pierce County Superior Court.

Section 37.4. Captions and Headings. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

Section 37.5. Plural and Singular. Where the context so requires, the singular shall include the plural and the plural shall include the singular.

Section 37.6. Franchisee Responsibility for Approvals. Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that Fircrest is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 37.7. Law and Equity. This Franchise may be enforced at both law and equity.

Section 37.8. Franchisee Responsible for FAA and FCC Requirements. Franchisee acknowledges that it, and not Fircrest, shall be solely responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold Fircrest harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or Fircrest be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, Fircrest may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's sole expense.

Section 37.9. Reasonable and Documented Costs. Any reference to Fircrest's costs that must be paid by Franchisee pursuant to the terms of this Franchise shall mean all actual, reasonable, and documented costs of Fircrest.

Section 37.10. Force Majeure. Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused, or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as Acts of God or similar event, delays, earthquakes, explosions, fire, floods, lockouts, insurrection, pandemic, riots, strikes of any kind, terrorism, storms, unusual transportation delays, war, washouts, weather (including inclement weather which prevents construction), and acts of the public enemy.

Section 37.11. No Joint Venture. Nothing herein will be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner that would indicate any such relationship with the other.

Section 37.12. Equal Employment and Nondiscrimination. Throughout the term of this Franchise, Franchisee will fully comply with all equal employment and nondiscrimination provisions and requirements of federal, state, and local laws, and in particular, FCC rules and regulations relating thereto.

Section 37.13. Title VI; Non-Discrimination

37.13.1. The parties acknowledge that: (1) the City's Department of Public Works receives certain Federal financial assistance from the United States Department of Transportation, which is distributed to the City by the Washington State Department of Transportation ("WSDOT"); and (ii) the City's Department of Public Works uses such Federal financial assistance to make certain road and transportation improvements to Right-of-Way within the City (collectively, "City Federal Financial Assistance").

37.13.2. If (1) because this Franchise does not obligate Franchisee to comply with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d et seq. ("Title VI"), the City receives a formal Title VI compliance letter, a formal Title VI audit finding, or another type of written formal

determination stating that the City is not in compliance with Title VI, from a state or federal agency with jurisdiction over City Federal Financial Assistance or responsibility for administrative enforcement of Title VI (each, a “Noncompliance Notice”); or (2) a court of competent jurisdiction determines that Franchisee’s use of the Franchise Area pursuant to this Franchise results in Franchisee being subject to Title VI because the City receives and uses City Federal Financial Assistance to make certain road and transportation improvements to Right-of-Way within the Franchise Area (a “Title VI Determination”), then the following shall apply:

A. If the City receives notice or reasonably believes that a Noncompliance Notice is or may be forthcoming, the City shall notify Franchisee of the same in writing and, if applicable, provide a copy of the notice that the City received, within ten (10) business days of receiving such notice;

B. If the City receives a Noncompliance Notice, the City shall notify Franchisee of the same in writing, and provide a copy of the notice that the City received, within ten (10) business days of receiving such Noncompliance Notice;

C. The City shall provide Franchisee with the opportunity to attend and participate in all meetings and other communications with representatives of the applicable state or federal agency or representative that relate to: (1) any actual or potential Noncompliance Notice, or (2) the issue of whether Franchisee’s use of the Franchise Area pursuant to this Franchise results in Franchisee being subject to Title VI because the City receives and uses City Federal Financial Assistance to make certain road and transportation improvements to Right-of-Way within the Franchise Area;

D. Either Party may submit a written request to the other Party that the Parties enter into good faith negotiations regarding potential amendments to the terms and conditions of this Franchise that are necessary to comply with Title VI and, following the receiving party’s receipt of such a written request, the parties shall enter into such negotiations.

37.13.3. Should the parties reach agreement regarding any amendments negotiated pursuant to Section 37.13.2.D, the parties shall memorialize such amendments and seek approval of the same. Such amendments shall not become effective unless and until approved by City ordinance and accepted in writing by Franchisee in accordance with applicable laws and this Franchise. If the parties are unable to reach agreement regarding any such amendments within ninety (90) days after the date on which negotiations pursuant to Section 37.13.2.D commenced, or such longer negotiation time period as may be agreed upon by the parties, then the City may terminate this Franchise.

37.13.4. Notwithstanding the foregoing or anything in this Franchise to the contrary, this Section 37.13 shall not, in any manner, limit or restrict Franchisee’s right to appeal or otherwise challenge any Noncompliance Notice, Title VI Determination, or other finding or determination that Franchisee is subject to Title VI. Any such appeal or challenge by Franchisee shall not limit, relieve, or delay Franchisee from entering into or participating

in any negotiations with the City pursuant to Section 37.13.2.D. If the Parties reach agreement regarding any amendment negotiated pursuant to Section 37.13.2.D prior to the conclusion of any appeal or other challenge by Franchisee as described in this subsection (“Executed Amendment”), then, following the conclusion of any such appeal or other challenge: (1) either Party may submit a written request to the other Party that the Parties, in good faith, review whether the rights and obligations of the parties under the Executed Amendment are consistent with the outcome of any such appeal or other challenge, including whether any obligations imposed on Franchisee under the Executed Amendment are not required by Title VI or other applicable federal laws, and enter negotiations regarding potential amendments to the Executed Amendment that may be desired or necessary given the outcome of any such appeal or other challenge; (2) following the receiving Party’s receipt of such a written request, the Parties shall enter into such review and negotiations; and (3) if the City has terminated this Franchise pursuant to Section 38.13.3 and the outcome of any such appeal or challenge by Franchisee determines that Franchisee is not subject to Title VI or that the City is not obligated to require Franchisee to comply with Title VI under this Franchise, the City shall promptly commence proceedings to reinstate this Franchise in the form it was in prior to the date on which negotiations pursuant to Section 37.13.2.D commenced, unless otherwise agreed by the Parties in writing.

Section 37.14. Mutual Negotiation. This Franchise was mutually negotiated by the Franchisee and the City and has been reviewed by the legal counsel for both parties. Neither party will be deemed to be the drafter of this Franchise.

Section 37.15. Risk. Franchisee acknowledges by acceptance of the grant that it has read the terms and conditions of this agreement carefully, and accepts all reasonable risks related to the possible interpretation of the provisions, terms, and conditions of this agreement.

Section 38. Severability.

If any section, subsection, sentence, clause, phrase, or word of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality thereof shall not affect the validity or constitutionality of any other section, subsection, sentence, clause, phrase, or word of this Ordinance.

Section 39. Publication of Summary Authorized.

The City Clerk is authorized and directed to publish a summary hereof in accordance with RCW 35A.13.200 and 35A.12.160.

Section 40. Corrections.

The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance, including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Section 41. Ordinance Effective Date.

This ordinance shall take effect five (5) calendar days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

PASSED BY THE CITY COUNCIL OF THE CITY OF FIRCREST, WASHINGTON, at a regular meeting thereof this 9th day of June, 2026.

APPROVED:



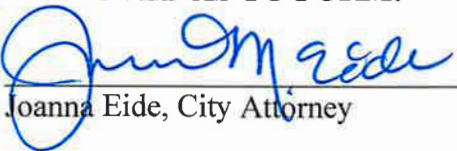
Nikki Bufford, Mayor

ATTEST:



Arlette Burkhardt, City Clerk

APPROVED AS TO FORM:



Joanna Eide, City Attorney

Publication Date:

Effective Date:

EXHIBIT "A"

STATEMENT OF ACCEPTANCE

Ezee Fiber Washington Assets, LLC for itself, its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions, and provisions of the Franchise attached hereto and incorporated herein by this reference.

Ezee Fiber Washington Assets, LLC

By : _____

Date: _____

Name: _____

Title: _____