NON-EXCLUSIVE TELECOMMUNICATIONS FRANCHISE WITH EZEE FIBER WASHINGTON ASSETS, LLC

THIS TELECOMMUNICATIONS FRANCHISE (this "**Franchise**") is entered into on ___________, 2026, by and between the City of Medina, a municipal corporation ("**City**") and EZEE FIBER WASHINGTON ASSETS, LLC, a Delaware limited liability company. ("**Franchisee**").

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

1.1 **"Affiliate"** means any Person that now or in the future, directly or indirectly controls, is controlled with or by, or is under common control with Franchisee.

1.2 **"Applicable Laws"** means any local, federal, or state statute, law, regulation, or other legal authority governing any of the matters addressed in this Franchise, as all now exist or as later amended or superseded.

1.3 **"City"** means the City of Medina, Washington, a Washington municipal corporation.

1.4 "**City Manager**" means the City Manager or it's designee.

1.5 **"Control"** means, with respect to: (i) a U.S. corporation, the ownership, directly or indirectly, of 50% or more of the voting power to elect directors thereof; or (ii) a non-U.S. corporation, if the voting power to elect directors thereof is less than 50%, the maximum amount allowed by Applicable Laws; and (iii) any other Person, 50% or more ownership interest in this Person, or the power to direct the management of such Person.

1.6 **"Emergency Situation"** means a condition posing an imminent threat to property, life, health, or safety of any Person or entity.

1.7 **"Facilities"** or **"Network"** means one or more elements of Franchisee's fiber network, with all necessary underground fiber optic cables, lines, wires, or strands and associated appurtenances; underground conduits, vaults, access manholes and handholes; electronic equipment; power generators; batteries; pedestals; boxes; cabinets; vaults; and other similar facilities.

1.8 **"Force Majeure Event"** means natural disasters, civil disturbances, work stoppages or labor disputes, power outages, telephone network outages, and severe or unusual weather conditions which have a direct and substantial impact on the Franchisee's ability to provide Services in the City and which was not caused and could not have been avoided by the Franchisee which used its best efforts in its operations to avoid such results.

1.9 **"Franchisee"** means Ezee Fiber Washington Assets, LLC, a Delaware limited liability company.

1.10 **"Hazardous Substances"** means any substance or material that is regulated by any current or future federal, state, or local statutes, regulations, ordinances, and rules relating to: the emission, discharge, release, or threatened release of any hazardous substance into the air, surface water, groundwater, or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation, or investigation of a hazardous material; and the protection of human health, safety, or the indoor or outdoor environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq.; the Clean Water Act, 33 U.S.C. §§ 1251, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Occupational Safety and Health Act, 29 U.S.C. §§ 651, et seq.; all applicable environmental statutes of the State of Washington; and all other federal, state, or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders, or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic, or dangerous waste, substance, or material, as now or at any time hereafter in effect.

1.11 **"Mayor"** means the Mayor or Mayor's designee.

1.12 **"Parties"** (singular **"Party"**) refers to both the City and Franchisee.

1.13 **"Person"** means any natural person, or public or private legal entity of any kind.

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

1.15 "**Public Works Director**" means the Public Works Director or it's designee.

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

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

<u>Section 2</u>. – <u>Franchise Granted</u>.

2.1 <u>Franchise and Term</u>. Pursuant to RCW 35A.47.040, the City hereby grants to Franchisee, its successors, legal representatives, and assigns, subject to the terms and conditions set forth herein, a non-exclusive Franchise for a period of ten (10) years, beginning on the effective date of the ordinance authorizing this Franchise (the “Effective Date”).

2.1.1. Renewal Option of Term. The Franchisee may renew this Franchise for two (2) additional five (5) year periods upon submission and approval of the application for such renewal. The application shall be reviewed for approval by the City Manager. Approval of any materials submitted by the Franchisee for a previous application may be considered by the City in reviewing a current application, and the Franchisee shall only submit those materials deemed necessary by the City to address changes in the Franchisee's Facilities or Services, or to reflect specific reporting periods mandated by the City Code.

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

2.1.3 Midterm Review. On the fifth (5th) anniversary of this Franchise, if either Party identifies one or more specific issues that the Party believes may require a reevaluation of one or more of the material terms of this Franchise, the Parties agree to discuss such issues diligently and in good faith. Notwithstanding the foregoing, either Party may at any time during the term of this Franchise, request a clarification of a term, or seek an amendment to this Franchise.

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

2.3 Limited Authorization.

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

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

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

2.4 Authorized Services.

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

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

a. Franchisee at all times retains exclusive control over its Facilities and Services; remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise; and is solely responsible for providing and maintaining Services to its Customers;

b. Franchisee may not grant rights to any Customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise;

c. Franchisee may not grant rights to any Customer or lessee allowing access or connection to the fiber optic connection points described in Section 2.4.2 above.

d. Such Customer or lessee will not be construed to be a third-party beneficiary under this Franchise; and

e. No Customer or lessee that accesses Franchisee's Facilities within the City limits may use the Facilities or Services for any purpose not authorized by this Franchise unless that Customer has a franchise with the City. Then, the Customer may use Franchisee's Facilities or Services consistent with the terms of its franchise.

2.5 Termination.

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

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

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

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

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

3.3 Work Requirements. During any period of relocation, construction, or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner and only after obtaining permits or other authorization pursuant to Section 3.2 and this Section 3.3. Franchisee shall minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper traffic control to warn and direct the road users, consistent with the requirements of Applicable Laws. Traffic control devices include but are not limited to barricades, traffic cones, traffic drums, tubular markers, flags, certified flaggers, lights, flares, and other measures as required for the safety of all members of the general public. Franchisee shall also comply with all applicable safety regulations during such period of construction as required by all Applicable Laws, including, without limitation, RCW 39.04.180 for the requirement of trench safety systems for trench excavations.

3.4 Work of Contractors and Subcontractors. Franchisee's contractors and subcontractors shall be licensed and bonded in accordance with Applicable Laws. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and Applicable Laws.

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

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

a. The joint use shall not unreasonably delay the work of the Party causing the excavation to be made;

b. The joint use shall be arranged and accomplished on terms and conditions satisfactory to both Parties; and

c. The initiating Party may deny a request for constructability and/or safety reasons.

3.7 Coordination of Construction.

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

3.7.2 Franchisee shall make a good faith effort to comply with the private property owner/resident's preferences, if any, on location or placement of underground installations, consistent with sound engineering practices. Following performance of the work, Franchisee shall restore the private property as nearly as possible to its condition prior to construction, except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident.

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

3.8 One Call Locator Service. Before doing any work in the Rights-of-Way, the Franchisee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all Applicable Laws regarding the One Call Locator Service pursuant to Chapter 19.122 RCW. Neither the City nor its contractors shall be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's Customers that are a direct result of Franchisee's failure to accurately locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

3.9 Restoration and Repair of Rights-of Way.

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

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

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

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

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

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

Section 4. – Relocation of Facilities.

4.1 Relocation Requirement.

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

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

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

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

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

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

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

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

4.5 Public Improvement Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by the City for delays in a Public Improvement to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation (other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of the City or any third party unrelated to Franchisee; Franchisee vendors and contractors shall not be considered unrelated third parties). The out-of-pocket costs may include, but are not limited to, payment to the City's contractors and/or consultants for increased costs and associated court costs, interest, and reasonable attorneys' fees incurred by the City to the extent directly attributable to Franchisee's caused delay in the Public Improvement. In addition to recovery of the City's actual costs, the failure of Franchisee to timely remove its facilities by the deadline provided by the City shall result in liquidated damages in the amount of $250 per day as set forth in Section 17.2. Franchisee shall pay all liquidated damages due no later than thirty (30) days after the date that the City invoices the same. Liquidated damages hereunder are in addition to any other penalties that may be imposed under other agreements between the Parties.

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

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

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

Section 5. – Undergrounding of Facilities.

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

5.2 Utility Trench Access. Franchisee may be provided reasonable access to open utility trenches constructed as part of a Public Improvement, so long as this access does not interfere with the City's placement of utilities or increase the City's costs. Franchisee shall pay the City's actual costs of providing Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of the project. Franchisee shall reimburse the City in accordance with the provisions of Section 11.

5.3 Removal of Fiber. Franchisee shall not remove any underground cable or conduit that requires trenching or other opening of the Rights-of-Way along the extension of cable to be removed without a permit as may be required by Applicable Laws.

Section 6. – Information, Inventory, and Records.

6.1 Information Request.

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

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

6.2 Current Inventory. Franchisee shall maintain a current inventory of Facilities throughout the Term of this Franchise. Franchisee shall provide a copy of the inventory report within sixty (60) days of a reasonable request by the City. The inventory report shall include a route map of

those basic portions of the fiber system that are located within the Right-of-Way and be in a digital format and the location of the Facilities, including the depth below the finished surface. Franchisee shall cooperate with the City to furnish this information in an electronic mapping format compatible with the current City electronic mapping format.

6.3 Inspection. All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by the City at reasonable times and intervals; except that nothing in this Section 6.3 shall be construed to require Franchisee to violate Applicable Laws regarding customer privacy, nor shall this Section 6.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by Applicable Laws, nothing in this Section 6.3 shall be construed as permission to withhold relevant customer data from the City that the City requests in conjunction with a tax audit or review; except that Franchisee may redact identifying information such as names, street addresses (excluding City and zip code), Social Security Numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

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

6.4.1 Franchisee may identify documents submitted to the City that Franchisee believes are non-disclosable, such as trade secrets. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary and shall provide a brief written explanation as to why the information is confidential and how it may be treated as such under Applicable Laws.

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

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

6.5 Annual Audit. On an annual basis, upon thirty (30) days' written notice, the City shall have the right to conduct an independent audit of Franchisee's records reasonably related to the administration or enforcement of this Franchise, in accordance with generally accepted accounting practices and any standards adopted by the Governmental Accounting Standards Board. If the audit shows that tax or fee payments have been underpaid by 3% or more, Franchisee shall pay the total cost of the audit.

Section 7. – Unauthorized Facilities.

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

Section 8. – Safety Requirements.

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

8.2 Additional Safety Standards. Additional safety standards include:

a. Franchisee shall maintain all equipment lines and Facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable.

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

c. The Franchisee shall protect any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations with adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible at night.

8.3 Hazardous Substances. Franchisee shall not introduce or use any Hazardous Substances in violation of any Applicable Laws, nor shall Franchisee allow any of its agents, contractors, or any Person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify, and hold the City, its officers, officials, employees, agents, and volunteers harmless from and against any claims, costs, and liabilities including reasonable attorney fees and costs, arising out of or in connection with the cleanup or restoration of the property to the extent caused by Franchisee's use, storage, or disposal of Hazardous Substances, whether or not intentional, and the use, storage, or disposal of such substances by Franchisee's agents, contractors, or other Persons acting under Franchisee's control, whether or not intentional. Franchisee shall have only that responsibility or liability for managing, monitoring, or abating a hazardous condition that it may have under state or federal law and this Franchise shall not be interpreted to expand Franchisee's legal obligations relating to any pre-existing Hazardous Substances undisturbed by Franchisee.

Section 9.* – *Provision of Conduit.

9.1 Except in Emergency Situations, Franchisee shall provide the Public Works Director with at least thirty (30) days' advance written notice of any construction, relocation, or placement of ducts or conduits in the Rights-of-Way and provide the City an opportunity to request that Franchisee provide the City with additional duct or conduit, and related structures necessary to access the conduit, pursuant to RCW 35.99.070, in one or more of the locations where Franchisee constructs, installs, or relocates Facilities underground. If so requested, the conduit shall be provided at Franchisee's incremental cost and per the terms of a separate agreement. Franchise shall install a locator wire and cap off all conduit ends. Conduit ends shall be marked on any as-built plans and maps requested pursuant to Section 6. Any conduit delivered to the City pursuant to this Section 9 will become property of the City, and Franchisee will have no ongoing maintenance, liability, or other obligations to the City or any third party with respect to the conduit. The City shall make any request for conduit per this Section 9 request in writing before issuance of the applicable permit to Franchisee.

Section 10.* – *Emergency Situations.

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

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

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

Section 11.* – *Recovery of Costs.

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

11.2 Additional Costs. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City Staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay these costs and expenses directly to the City in accordance with the provisions of Section 11.4.

11.3 City Project Costs. Franchisee shall reimburse the City for Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. These costs and expenses shall include but not be limited to Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. These costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

11.4 Payment of Costs. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in the billing. Franchisee shall reimburse the City within thirty (30) days of submittal by the City of an itemized billing for costs incurred under this Section 11.

Section 12. – City's Reservation of Rights.

12.1 Franchise Fees. The City is not seeking to impose any franchise fee or similar compensation for the benefits and privileges granted under this Franchise and in consideration of the permission to use the City's Rights-of-Way as of the effective date of this Franchise. However, the City reserves the right to impose a franchise fee upon one hundred and twenty (120) days' notice to Franchisee, if it believes it is consistent with Applicable Laws. Franchisee reserves the right to challenge the imposition of any such compensation if it believes it is inconsistent with Applicable Laws. Payment of a franchise fee under this Franchise shall not exempt Franchisee from the payment of any generally applicable fee, tax, or charge on the business, occupation, property, or income of Franchisee that may be imposed by the City. The City also reserves the right to require Franchisee to obtain a separate franchise for a change in use, which franchise may include provisions intended to regulate Franchisee's operations as allowed under Applicable Law.

Nothing contained within this Franchise shall preclude Franchisee from challenging any fee, this Franchise, or separate agreement under Applicable Laws.

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

Section 13. – Indemnification; Liability.

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

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

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

13.4 Avoidance. Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 13. Whether Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duty of defense and indemnification under this subsection.

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

13.6 RCW 4.24.115. Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to Persons or damages to property caused by or resulting from the concurrent negligence of Franchisee and the City, its officers, officials, employees, and volunteers, Franchisee’s liability shall be only to the extent of Franchisee’s negligence. It is expressly understood that the indemnification provided herein constitutes Franchisee’s waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the Parties.

Section 14. – Insurance.

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

a. Commercial General Liability insurance with limits of no less than $5,000,000 per occurrence and $5,000,000 general aggregate. Coverage shall be at least as broad as that provided by ISO CG 00 01 1/96 or its equivalent and include severability of interests. Such insurance shall name the City, its officers, officials, and employees as additional insureds per ISO CG 2026 or its equivalent. There shall be a waiver of subrogation and rights of recovery against the City, its officers, officials, and employees. Coverage shall apply as to claims between insureds on the policy, if applicable. Coverage may take the form of a primary layer and a secondary or umbrella layer, but the combination of layers must equal $5,000,000 at a minimum.

b. Commercial Automobile Liability insurance with minimum combined single limits of $5,000,000.00 each occurrence with respect to each of Franchisee's owned, hired, and non-owned vehicles assigned to or used in the operation of the Facilities in the City. The policy shall contain a severability of interests provision.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and employer's liability with a limit of $5,000,000 each accident/disease/policy limit.

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

e. Excess or Umbrella Liability insurance shall be excess over and at least as broad in coverage as the Franchisee's Commercial General Liability and Automobile Liability insurance. The City shall be named as an additional insured on the Franchisee's Excess or Umbrella Liability insurance policy.

f. Contractors Pollution Liability insurance shall be written in an amount of at least $2,000,000 per loss, with an annual aggregate of at least $2,000,000.

g. Excess or Umbrella Liability insurance shall be written with limits of not less than $5,000,000 per occurrence and annual aggregate. The Excess or Umbrella Liability requirement and limits may be satisfied instead through Franchisee's Commercial General Liability and Automobile Liability insurance, or any combination thereof that achieves the overall required limits.

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

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

14.3 <u>Requirements</u>. All policies shall contain, or shall be endorsed so that:

a. The City, its officers, officials, boards, commissions, employees, and agents are to be covered as, and have the rights of, additional insureds with respect to liability arising out of activities performed by, or on behalf of, Franchisee under this Franchise or Applicable Laws, or in the construction, operation or repair, or ownership of the Network;

b. Franchisee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, boards, commissions, employees, volunteers, and agents. Any insurance or self-insurance maintained by the City, its officers, officials, boards, commissions, employees, and agents shall be in excess of the Franchisee's insurance and shall not contribute to it; and

c. Franchisee's insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought, except with respect to the limits of the insurer's liability.

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

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

14.6 Maintenance of Insurance. Franchisee's maintenance of insurance as required by this Section 14 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 15. – Abandonment of Franchisee's Telecommunications Network.

15.1 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within thirty (30) days of receiving written notice from the City Manager. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by the City. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director, and all necessary permits must be obtained before this work. The plan for abandonment shall include a proposal and instruments for transferring ownership to the City. Any Facilities that are not permitted to be abandoned in place and that are not removed within thirty (30) days of receipt of the City's notice may be removed by the City and the area restored at Franchisee's cost. Franchisee shall pay these costs to the City within thirty (30) days of receiving an invoice. If Franchisee fails to pay the City within this timeframe, the City may avail itself of any remedy available at law or equity.

Section 16. – Bonds.

16.1 Construction Guarantee. As a condition of performing work in the Right-of-Way, the timely, complete, and faithful performance of all construction work in the Right-of-Way shall be guaranteed in an amount equal to 130% of the cost estimate (prepared by a licensed contractor, professional engineer, or architect) of the construction work, by either the Franchisee or the Franchisee's contractor performing the actual construction work. The guarantee shall be by performance bond. If Franchisee, in the sole judgment of the City, has a history of corrections or default, Franchisee must provide the full guarantee by assignment of funds. These funds shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the

Facilities as specified by the City; (4) restoration of the Rights-of-Way and other City properties affected by the construction; (5) repair and restoration of any damage to public or private property caused by the construction; (6) submission of as-built drawings after completion of construction; and (7) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work that could be asserted against the City or City property. The guarantee must remain in full force until the completion of construction and/or any necessary repairs, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a maintenance guarantee as described in Section 16.2. Compliance with the performance guarantee requirement of the City's current Design and Construction Standards shall satisfy the provisions of this Section.

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

16.3 Franchise Bond. Franchisee shall provide City with a bond in the amount of Fifty Thousand Dollars ($50,000.00) ("Franchise Bond") running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to City. If Franchisee fails to substantially comply with any one or more of the provisions of this Franchise, following written notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by City as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of Facilities. Franchisee specifically agrees that its failure to comply with the terms of this Section 16.3 will constitute a material breach of this Franchise, subject to the notice and cure provisions of Section 17.2. Franchisee further agrees to replenish the Franchise Bond within thirty (30) days after written notice from the City that the amount of the Franchise Bond is deficient. The amount of the Franchise Bond shall not be construed to limit Franchisee's liability or to limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

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

Section 17. – Remedies to Enforce Compliance.

17.1 Reservation of Rights.

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

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

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

Section 18. – Non-Waiver.

18.1 The failure of either Party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option conferred in any one or more instances shall not be construed to be a waiver or relinquishment of any such covenants, agreements, or option or any other covenants, agreements, or option.

<u>Section 19.</u>* – *<u>Police Powers and City Regulations.</u>

19.1 Nothing within this Franchise may be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations, consistent with 47 U.S.C. § 253, the location, elevation, manner of construction, and maintenance of any Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate Applicable Laws. The City reserves the right to promulgate any additional regulations of general applicability as it may find necessary in the exercise of its lawful police powers consistent with 47 U.S.C. § 253. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, the other ordinances(s) shall take precedence over this Franchise.

<u>Section 20.</u>* – *<u>Acceptance.</u>

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

<u>Section 21</u>. – <u>Survival</u>.

21.1 All of the provisions, conditions, and requirements in Sections 3, 4, 5, and 13 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to the City at common law, by statute, or by contract, and shall survive this Franchise, and any renewals or extensions, to the extent provided. All of the provisions, conditions, regulations, and requirements contained in this Franchise shall further be binding upon the successors, executors, administrators, legal representatives, and assigns of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned where Franchisee is named.

<u>Section 22.</u>* – *<u>Assignment and Changes of Ownership or Control.</u>

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

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

(a) to any Affiliate of Franchisee;

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

(c) to any purchaser of all or substantially all of Franchisee's Facilities in the City if Franchisee determines after a reasonable investigation that the purchaser has the resources and ability to fulfill the obligations of this Franchise.

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

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

Section 23. – Eminent Domain.

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

Section 24. – Vacation.

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

Section 25. – Notice.

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

City:

City of Medina
Attn: City Manager
501 Evergreen Point Road
Medina, WA 98039

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

Franchisee: Ezee Fiber Washington Assets, LLC
5959 Corporate Dr.
Houston, TX 77036

With a copy to: _______________
____
____

Section 26.* – *Compliance with all Applicable Laws.

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

Section 27.* – *Attorney's Fees.

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

Section 28.* – *Licenses, Fees, and Taxes.

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

Section 29.* – *Miscellaneous.

29.1 Entire Agreement. This Franchise constitutes the entire understanding and agreement between the Parties as to the subject matter herein and no other agreements or understandings, written or otherwise, will be binding upon the Parties upon execution of this Franchise.

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

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

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

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

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

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

[Signatures on Following Page]

IN WITNESS WHEREOF, this Franchise is signed in the name of the City of Medina, Washington this ____ day of ___________, 2026.

CITY OF MEDINA, WASHINGTON

____

Jeff Swanson, City Manager

ATTEST:

____

Dawn Nations, City Clerk

APPROVED AS TO FORM:

____

Jennifer S. Robertson, City Attorney

Accepted and approved this ____ day of _________, 2026.

EZEE FIBER WASHINGTON ASSETS, LLC

____

Name/Title:_________________________________

STATE OF ______________)
) ss.
County of ______________)

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

Dated this ______ day of __________, 2026.

____

Notary Public in and for the State of _____________
residing at _______________________________

My commission expires _______________________

EXHIBIT A

STATEMENT OF ACCEPTANCE

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

EZEE FIBER WASHINGTON ASSETS, LLC

By:________________________________ Date:___________________

Name: _____________________________

Title: _____________________________