

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made and entered into by and between the City of Hillsboro, an Oregon municipal corporation, (“City”) and _____, a _____ corporation (“Franchisee”):

RECITALS

1. Pursuant to Federal law, State statutes, and City Charter and local ordinances, the City is authorized to grant non-exclusive franchises to occupy “public rights-of-way” as defined by Hillsboro Municipal Code (“HMC”) 5.72.060, in order to construct, operate, and maintain a telecommunication systems within the municipal boundaries of the City of Hillsboro (“Franchise Area”);
2. The City has found that franchisee meets all lawful requirements to obtain a franchise, and therefore approves the application.
3. Both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

AGREEMENT

1. GRANT OF AUTHORITY

The City grants Franchisee the non-exclusive right and franchise to occupy City rights-of-way and appropriate utility easements for the purpose of construction, use, operation, and maintenance of a telecommunication system for a five (5) years from and after the Effective Date of this Agreement (the “Term”), except as set forth below.

2. AUTHORITY NOT EXCLUSIVE

This Franchise and the grant of authority conferred herein are not exclusive. The City reserves the right to grant rights to others to use the Franchise Area during the Franchise Term. The City may also do any work the City finds desirable on, over or under any street, alley, utility easement or other right-of-way. The Franchisee shall respect the rights and property of the City and other authorized users of easements and rights-of-way. This Agreement does not confer on Franchisee any right, title or interest in any public right-of-way beyond that expressly conferred herein or confer any right or privilege to use or occupy any other property of the City or any other entity. This grant of authority shall not be construed as a limitation on the City in constructing, installing, maintaining or operating facilities for the

provision of telecommunications services. Except as otherwise required by applicable law, disputes between Franchisee and parties other than the City of Hillsboro over the use, pursuant to this Agreement, of the easements and rights-of-way shall be submitted to the City for resolution. Decisions rendered by the City shall be final and binding.

3. PERFORMANCE

During the term of this Agreement, the Franchisee agrees to comply with all lawful terms and conditions of HMC Chapter 5.76, the provisions of which are incorporated herein as though fully set forth. Franchisee reserves the right to challenge any of the terms and conditions of Chapter 5.76 under applicable federal and state law in the future.

4. CHANGE OF LAW; AMENDMENT OF FRANCHISE AGREEMENT

4.1. It is the intent of the parties that this Agreement may be amended from time to time to conform to any changes in the controlling federal or state law or other changes material to this agreement. Each party agrees to bargain in good faith with the other party concerning such proposed amendments. This Agreement may be amended or terminated by the mutual consent of the parties and their successors-in-interest.

4.2. To the extent any lawful City rule, ordinance or regulation, including any amendment to the provisions of HMC Chapter 5.76, including any change to HMC 5.76.143, is adopted on a jurisdiction-wide basis and is generally imposed on similarly situated persons or entities, the rule, ordinance or regulation shall apply without need for amendment of this Agreement. City shall provide Franchisee notice of any such change in law prior to its adoption. Such change in law will not affect Franchisee's reserved right of challenge set forth in Section 3.

5. TREE TRIMMING

5.1. Upon the express written permission of the City, Franchisee may trim trees or other vegetation owned by the City or encroaching upon the public right-of-way to prevent branches or leaves from touching or otherwise interfering with Franchisee's facilities. All trimming or pruning shall be at the sole cost of Franchisee and under the supervision of the City.

5.2. The Franchisee may contract for said trimming or pruning services with any person approved by the City.

6. REPORTS

6.1. Within thirty (30) days of receipt, Franchisee shall submit to City copies of all decisions, orders, and judgments by any federal, state and local court, regulatory agency and other government body in which Franchisee is a party, substantially and materially affecting Franchisee's obligations under this Franchise.

6.2. Franchisee shall make available to City, upon reasonable advance written notice, such information or reports pertinent to enforcing the terms of the Franchise in such form and at such times as the City of Hillsboro may request. Subject to the Oregon Public Records law, any information that is provided to the City which is marked proprietary and confidential shall not be disclosed or used for any purpose, other than verifying compliance with the terms of this Franchise, and shall be returned to Franchisee.

6.3. Concurrently with the remittance of franchise fees as required by this Franchise and HMC 5.76, Franchisee shall submit a report of gross receipts utilized to compute such franchise fees. Payment of franchise fees shall be made quarterly, within fifteen (15) days of the end of the quarter just concluded.

7. TAXES

Nothing contained in this Agreement shall be construed to exempt the Franchisee from any license, occupation, franchise or excise tax or assessment which is or may be hereafter lawfully imposed on all entities engaged in the same business as the Franchisee.

8. INSURANCE

Franchisee attaches and incorporates the following exhibits:

8.1. Performance Bond consistent with the requirements of HMC 5.76.132.

8.2. Certificate of insurance that names the City as an additional insured and is otherwise consistent with the requirements of HMC 5.76.145.

9. SEVERABILITY CLAUSE

If any clause, sentence, or any other portion of this Agreement becomes illegal, null or void or any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. If any material portion of the Agreement becomes illegal, null or void so that the intent of the Agreement is frustrated, the parties agree to negotiate replacement provisions to fulfill the intent of the Agreement consistent with applicable law.

10. REMEDIES

10.1. Subject to the reservation of rights in Section 3, if Franchisee fails to comply with any material provision of this Agreement, or if grounds for revocation of this agreement exist under HMC 5.76.117, Franchisee will forfeit all rights and privileges granted by this Agreement. That forfeiture and revocation of the franchise will not occur until the City complies with the requirements for revocation of the franchise set out in HMC 5.76.117.

10.2. Notwithstanding the above, failure or default or violation by Franchisee shall not constitute grounds for the forfeiture of this franchise if due materially, substantially and reasonably to an act of God, fire, flood, storm or other element or casualty, theft, war, disaster, strike, lock-out, boycott, prevailing war or war preparation, or bona fide legal proceedings, beyond the control of Franchisee, or matter unrelated to the Franchisee's use of the public right-of-way.

10.3. All remedies under this Agreement, including revocation of the franchise, are cumulative and not exclusive, and the recovery or enforcement by one available remedy is not a bar to recover or enforcement by any other such remedy. The City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Agreement shall not be a waiver of any other, or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

10.4. The right is hereby preserved to the City to adopt, in addition to the reservations contained herein and existing applicable ordinances, such additional regulations as it shall find necessary for the regulation of the public right-of-way, provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted. Franchisee shall, at all times during the life of this Agreement, be subject to all lawful exercise of the police power by the City, and to such reasonable regulations as the City may hereafter by resolution or ordinance provide. The City hereby reserves the right to exercise, with regard to this franchise, all authority now or hereafter granted to the City by state statute or City charter, except where such authority may be modified or superseded by the Constitution of the State of Oregon or the Constitution of the United States.

10.5. In the event of a suit, action, arbitration, or other proceeding of any nature whatsoever is instituted to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants, and other experts fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Oregon law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law.

11. ASSIGNMENT

All rights and privileges granted and duties imposed by this Agreement upon Franchisee shall extend to and be binding upon Franchisee's successors, legal representatives and assigns. Franchisee shall notify the City of any sale or transfer of its entire plant or system, or majority control of its plant or system, at least sixty (60) days before any such sale or transfer occurs and additionally notify the City within sixty (60) days after any such sale or transfer occurs. No assignment shall be recognized for purposes of this Agreement until the assignee has obtained and filed with the City the performance bond and insurance certificate required by Paragraph 8 of this Agreement, and has agreed to the terms and conditions of this agreement.

12. NOTICE

Unless specifically provided otherwise herein, all notices shall be mailed, postage prepaid, to the following addresses or to such other addresses as Franchisee or the City may designate in writing:

If to Franchisee:

If to City: City of Hillsboro
 Attention: City Manager
 123 West Main Street
 Hillsboro, Oregon 97123

13. GOVERNING LAW

The law of the State of Oregon governs the validity of this Agreement, and its interpretation, performance and enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Washington County, or the United States District Court for the District of Oregon.

14. EFFECTIVE DATE

The effective date of this franchise is the ____ day of _____, 2001.

CITY OF HILLSBORO

FRANCHISEE

By: _____
Mayor

By: _____
Title: _____

Attest: _____
City Recorder