



ALBANY CITY COUNCIL AGENDA

Wednesday, October 23, 2024
6:00 p.m.

Council Chambers, City Hall
333 Broadalbin Street SW

Watch on YouTube: <https://www.youtube.com/user/cityofalbany>

Please help us get Albany's work done.

Be respectful and refer to the rules of conduct posted by the main door to the Chambers and on the website.

1. Call to order and pledge of allegiance
2. Roll call
3. Public hearing
 - Persons wanting to provide testimony during public hearings at city council meetings may:*
 - 1- *Email written comments to the staff contact, listed below, including your name and subject of the public hearing, before **noon on the day of the meeting**.*
 - 2- *To testify virtually during the public hearing, register by emailing the staff contact, listed below, before **noon on the day of the meeting**, with your name; phone number; and if you are speaking for, against, or neutral on the project/subject. The mayor will call upon those who have registered to speak.*
 - 3- *Appear in person at the meeting and register to speak using the sign-up sheet on the table.*
 - a. Proposed renaming of public street – Staci Belcastro [Pages 3-6] ORD NO. _____ p. 4
The staff contact for this public hearing is: staci.belcastro@albanyoregon.gov
4. Business from the public
5. Second reading of ordinances
 - a. Renewing franchise agreements – Jeanna Yeager [Pages 7-36]
 - 1) Lightspeed Networks, Inc, dba LS Networks ORD NO. _____ p. 7
 - 2) Astound Broadband, LLC ORD NO. _____ p. 22
6. First reading of ordinance
 - a. Renewing franchise agreement – Jeanna Yeager [37-52]
 - 1) AT&T ORD NO. _____ p. 38
7. Award of contract
 - a. Special procurement for monitoring equipment – Scott LaRoque [Pages 53-56] RES NO _____ p. 55



8. Adoption of consent agenda
 - a. Approval of minutes [Pages 57-62]
 - 1) September 25, 2024, meeting
 - 2) October 9, 2024, work session
 - b. Approval of agreement(s)
 - 1) IGA with City of Corvallis for shared equipment – Chris LaBelle [Pages 63-68]

MOTION: _____

9. Business from the council
10. City manager report
11. Next meeting dates
Monday, November 4, 2024; 4:00 p.m. work session
Wednesday, November 6, 2024; 6:00 p.m. meeting
12. Adjournment

This meeting is accessible to the public via video connection. The location for in-person attendance is accessible to people with disabilities. If you have a disability that requires accommodation, please notify city staff at least 48 hours in advance of the meeting at: cityclerk@albanyoregon.gov

Testimony provided at the meeting is part of the public record. Meetings are recorded, capturing both in-person and virtual participation, and are posted on the City website.



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager
Matthew Ruetters, Community Development Director
Chris Bailey, Public Works Director

FROM: Lora Ratcliff, Fire Marshal
Staci Belcastro, P.E., City Engineer

DATE: October 9, 2024, for the October 23, 2024, City Council Meeting

SUBJECT: Proposed Street Renaming
Relates to Strategic Plan theme: A Safe City

Action Requested:

Staff Recommends City Council consider input at a public hearing regarding renaming Thornton Place to Charming Place. Upon hearing public testimony, staff recommends council, by motion, approve the ordinance (Attachment A) changing the name of Thornton Place to Charming Place.

Discussion:

Naming Streets and applying street numbers are typically administrative functions completed by the Fire Department and Building Division. However, renaming streets that have been recorded on a filed plat are regulated by Oregon Revised Statute 227.120 (Attachment B). This statute states that a street may be renamed if the City Council determines it is in the best interest of the city, following a public hearing that has been published in a newspaper within the municipality.

Thornton Place intersects with NW West Thornton Lake Drive and is located in the Thornton Place Subdivision platted in April of this year (Attachment C). Following recording of the Thornton Place Subdivision Plat, Fire Marshal Lora Ratcliff was contacted by a concerned citizen noting that the street name was very close to NW Thornton Lake Place, also located off NW West Thornton Lake Drive just a short distance away. Confusion regarding addressing can create problems with prompt responses by emergency personnel, as well as for mail delivery. To avoid confusion that could impact emergency response, staff is recommending the street name change of Thornton Place to Charming Place. It is timely to make the change now because while homes are under construction in the new subdivision, none are occupied. Therefore, the name change will not impact property owners or tenants who would have to go through the process of changing their address if the homes were occupied.

Budget Impact:

None.

SLB:kc

Attachments (3)

c: Johnathan Balkema, Building Official Manager (via email)



ORDINANCE NO. _____

AN ORDINANCE DECLARING A STREET NAME CHANGE FOR A PUBLIC STREET DEDICATED AND NAMED ON THE THORNTON PLACE SUBDIVISION PLAT, IN BENTON COUNTY; AND DECLARING AN EMERGENCY

WHEREAS, public street right-of-way was dedicated as a result of Benton County Survey No. SP0013-036; and

WHEREAS, this Subdivision Plat identified the right-of-way as Thornton Place; and

WHEREAS, notices of public hearing were published in the Albany Democrat-Herald as required by Oregon Revised Statutes 227.120; and

WHEREAS, the Albany City Council held a public hearing on October 23, 2024, to hear testimony regarding the street name change; and

WHEREAS, the Albany City Council has determined that changing this street name is in the best interest of the City of Albany, as required by Oregon Revised Statutes 227.120.

NOW, THEREFORE, THE PEOPLE OF THE CITY OF ALBANY DO ORDAIN AS FOLLOWS:

The section of Thornton Place dedicated on the above-mentioned subdivision plat, and shown on Ordinance Exhibit A, is hereby changed to Charming Place.

Emergency Clause. In as much as this ordinance is necessary for the immediate preservation of the public peace, health, and safety of the city of Albany, or to facilitate the prompt and timely completion of important City business, an emergency is hereby declared to exist; and this ordinance shall take effect and be in full force and effect when signed by the Mayor.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

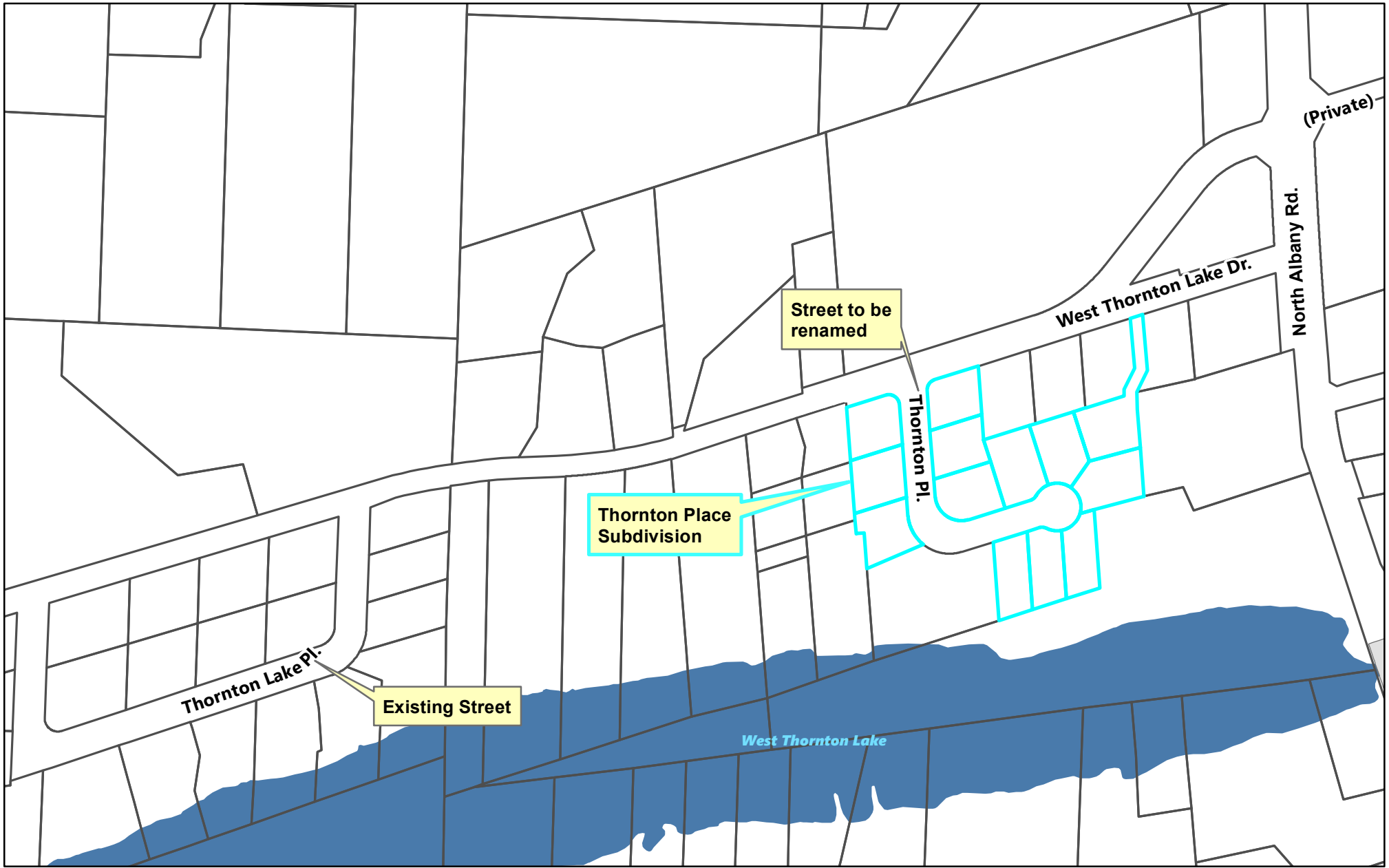
Mayor

ATTEST:

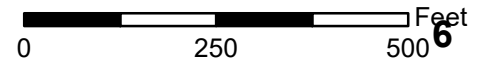
City Clerk

ATTACHMENT B
Oregon Revised Statute 227.120

227.120 Procedure and approval for renaming streets. Within six miles of the limits of any city, the commission, if there is one, or if no such commission legally exists, then the city engineer, shall recommend to the city council the renaming of any existing street, highway or road, other than a county road or state highway, if in the judgment of the commission, or if no such commission legally exists, then in the judgment of the city engineer, such renaming is in the best interest of the city and the six mile area. Upon receiving such recommendation the council shall afford persons particularly interested, and the general public, an opportunity to be heard, at a time and place to be specified in a notice of hearing published in a newspaper of general circulation within the municipality and the six mile area not less than once within the week prior to the week within which the hearing is to be held. After such opportunity for hearing has been afforded, the city council by ordinance shall rename the street or highway in accordance with the recommendation or by resolution shall reject the recommendation. A certified copy of each such ordinance shall be filed for record with the county clerk or recorder, and a like copy shall be filed with the county assessor and county surveyor. The county surveyor shall enter the new names of such streets and roads in red ink on the county surveyor's copy of any filed plat and tracing thereof which may be affected, together with appropriate notations concerning the same. The original plat may not be corrected or changed after it is recorded with the county clerk. [Amended by 2001 c.173 §4]



Attachment C





AN ORDINANCE AMENDING CHAPTER 3.70 OF THE ALBANY MUNICIPAL CODE (AMC) AND RENEWING A NON-EXCLUSIVE TELECOMMUNICATIONS SYSTEM FRANCHISE TO LIGHTSPEED NETWORKS, INC. FOR THE CONSTRUCTION AND OPERATION OF A TELECOMMUNICATON SYSTEM; AND FIXING TERMS, CONDITIONS, AND COMPENSATION OF SUCH FRANCHISE; AND REPEALING ORDINANCE NO. 5652 AND ORDINANCE NO. 5839

WHEREAS, pursuant to federal law and state statutes the City is authorized to grant non-exclusive franchises to occupy the City Rights-of-Way or other public property in order to construct, operate, use, and maintain telecommunications service, gas service, electricity, and other public utilities, within the municipal boundaries of the city of Albany; and

WHEREAS, the City of Albany has determined that the financial, legal, and technical ability of Lightspeed Networks, Inc. dba LS Networks is reasonably sufficient to continue to provide services, facilities, and equipment necessary to meet the future telecommunication needs of the community.

NOW, THEREFORE, the people of the City of Albany do ordain as follows.

Section 1. AMC Chapter 3.70.010 through 3.70.350 is established to read as follows:

3.70.010 Franchise granted.

The City of Albany, hereinafter referred to as “City”, hereby grants to Lightspeed Networks, Inc dba LS Networks, a Corporation authorized to conduct business in Oregon, hereinafter referred to as “Franchisee”, the non-exclusive right and privilege to occupy the City’s Rights-of-Way for the purpose of construction, use, operation, and maintenance of a Telecommunications System. Franchisee shall use its Telecommunications System solely to provide Telecommunications Services (as defined in ORS 759.005(8)), private telecommunication network (as defined in ORS 759. 005(4)) service, and internet access service (as defined in ORS 305. 822(1)(b)) within the City and to place, erect, lay, maintain, and operate in, upon, over and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City (collectively, “Public Ways”), poles, wires, conduits, cabinets, appurtenances, and other appliances and conductors (collectively, “Facilities”) for all communication purposes.

This Agreement and the grant of authority conferred herein are not exclusive. The City reserves the right to grant the authority to others to use the Franchise Area during the term of this Agreement. The Franchisee shall respect the rights and property of the City and other authorized users of the Rights-of-Way. This Agreement does not confer on Franchisee any right, title, or interest in any Right-of-Way beyond that expressly conferred herein. This Agreement does not confer any right or privilege to use or occupy any other property of the City or any other entity.

Nothing in this Agreement shall be construed to prevent the City from constructing sewers; from grading, paving, repairing, or altering any Right-of-Way, or from constructing, installing, repairing, or removing water mains or any other public work or improvement. If any of the Franchisee’s Telecommunications System interferes with the work described in this subsection, the Franchisee’s Telecommunications System shall be removed or replaced as set forth in AMC 3.70.040 of this Agreement.

3.70.020 Rules of construction; Definitions.

Throughout this Agreement, captions are intended solely to facilitate reading and reference and shall not affect the meaning and interpretation of this Agreement.

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” will always mean mandatory and not merely directory.

For the purpose of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise.

1. “City” means the City of Albany, Oregon and the area within its boundaries as extended in the future.
2. “Conduit” is an electrical raceway for the enclosure of electrical conductors and may consist of rigid conduit of electrical metallic tubing or plastic tubing.
3. “Council” means the legislative body of the City.
4. “Customer,” “user” or “subscriber” shall mean any person or entity lawfully receiving telecommunications service.
5. “Facility” means any tangible component of the Franchisee’s Telecommunications System including, but not limited to, fiber, wires, cables, pipes, mains, ducts, conduits, vaults, pedestals, poles, antennas, power boxes, cabinets, and electronic equipment.
6. “Franchise Administrator” means the City Manager or designee of the City of Albany.
7. “Franchisee” means Lightspeed Networks, Inc dba LS Networks, its successors, legal representatives, or assigns.
8. “Gross Revenues” means any and all revenue in whatever form, grant, subsidy, exchange, or otherwise directly or indirectly received by the Franchisee for Telecommunications Service provided to subscribers within the City of Albany subject to all applicable limitations imposed by federal and/or state law.
9. “Local” means Linn County, Oregon or Benton County, Oregon.
10. “May” is permissive.
11. “Minimum Annual Franchise Fee” means the minimum amount paid to the City of Albany under this Agreement.
12. “Person” includes an individual, corporation, association, firm, partnership, and joint stock company.
13. “Private Telecommunications Network” means a system for the provision of telecommunications service or any portion of telecommunications service, including the construction, maintenance, or operation of the system, by a person for the exclusive use of that person and not for resale, directly or indirectly.
14. “Public Place” includes any City-owned park, place, facility, or grounds within the City that is open to the public but does not include a street or bridge.
15. “Radio Common Carrier” means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.
16. “Rights-of-Way” means the surface of, and the space above and below, any street, road, alley, highway, sidewalk, utility easement, public square, public park, or other public place owned or otherwise held by the City.
17. “Service Area” means the legal boundaries of the City and including any areas annexed during the term of the franchise.
18. “Street” includes the surface, the air space above the surface, and the area below the surface of any public street, alley, avenue, road, boulevard, thoroughfare, or public highway, other public right-of-way, including public utility easements, but does not include a bridge or public place.
19. “Shall” is mandatory.

20. "Technical Facilities" or "Facilities" shall mean all real property, equipment, and fixtures used by Franchisee in the distribution of its services through its system and includes, but is not limited to, poles, conduit, cables, wires, microwave transmitters, antennae, amplifiers, etc.
21. "Telecommunications Service" (as defined in ORS 759.05(8)) and means any service provided for a fee to the public, or to such class of users as to be effectively available to the public without regard to the facilities used to provide the telecommunications; and for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission ("FCC") or the Oregon Public Utility Commission. Telecommunications Service does not include any of the following: cable service as defined by 47 U.S.C. § 522; open video system service as defined in 47 C.F.R. § 76 (2009); private communications system services provided without using the public rights-of-way; over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996; or commercial mobile radio service as defined by 47 C.F.R. § 20.3 (2009).
22. "Telecommunications System" means all Facilities owned, leased, rented, maintained, or used by Franchisee for the purpose of providing Telecommunications Service and located in, under and/or above Rights-of-Way.

3.70.030 Effective date; Term.

The effective date of this Agreement shall be the first day of the full calendar month following the date the ordinance takes effect (the "Effective Date").

This Agreement, and all rights and obligations pertaining hereto, shall, subject to any applicable statutory or regulatory limitations on the maximum term allowed for public contracts, continue in full force and effect for an initial term of five (5) years, commencing on the Effective Date. Unless sooner terminated by either Party as set forth in subsection 28.1 below, at the end of the initial five (5) year term, this Agreement shall be reviewed by both Parties and must be in compliance with Oregon Revised Statute ("ORS") 221.460(2020).

3.70.040 Construction; Excavation; and Relocation.

Franchisee shall maintain maps and data pertaining to all of its Facilities located in the City on file at an office in the State of Oregon. The City shall be allowed to inspect all such maps and data pertaining to its Facilities located in the City Rights-of-Way at any time during regular business hours upon not less than five (5) business days' prior notice. Upon request of the City and without charge, Franchisee shall provide current maps and data to the City showing the location of all Franchisee's Facilities within the City. Upon completion of any and all of its Facilities in the Public Right-of-Way, Franchisee shall provide a map or maps consistent with this Section to the City, showing the location as built of its installed Telecommunication System in the Rights-of-Way. Such as-built maps shall be in a form reasonably acceptable to the City Engineer and shall define specific locations of Facilities. City will not sell or transmit Franchisee maps or data to third parties unless permitted by Franchisee or required by law. The City will make available to Franchisee at no cost any relevant City-prepared maps or data.

Subject to applicable rules and regulations of the City, Franchisee may perform all excavations and other work necessary to construct, operate and maintain its Telecommunications System. All construction and maintenance of any and all Facilities within Rights-of-Way shall, regardless of who performs the excavation, installation and/or construction, are and shall remain the responsibility of the Franchisee. Franchisee shall apply for and obtain all permits necessary for excavation, installation and/or construction of any Facilities located in the Rights-of-Way and shall pay all applicable fees due for City permits. Franchisee must also give such notice as required by law to other franchisees, licensees, or permittees of the City, and/or other units of government owning or maintaining facilities which may be affected by the proposed work.

Prior to beginning any excavation, installation, or construction work, Franchisee shall provide the City with an initial schedule and the estimated total cost of such work. When Franchisee's work under its permit is completed, Franchisee shall provide the City with the total amount of Right-of-Way, measured linearly, occupied by Franchisee's Telecommunications System, and with a map showing the location of its installed Telecommunications System, as built. Such "as-built" maps shall be in a form reasonably acceptable to the City Engineer.

All work by Franchisee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Franchisee's work under AMC 3.70.130 and 3.70.150 of this Agreement shall be done in strict compliance with all applicable laws, ordinances, rules and regulations of the City and the State of Oregon.

Within thirty (30) days of any change in location of Franchisee's Telecommunications System, Franchisee shall provide a map to the City Engineer, showing the location of Franchisee's Telecommunications System on whatever standard scale the City adopts for general use. The Franchisee shall also provide such maps in an electronic format acceptable to both the City and Franchisee.

In the event that emergency repairs to its Telecommunications System are necessary, Franchisee shall immediately notify the City of the need for such repairs. Franchisee may immediately initiate such emergency repairs and shall apply for appropriate permits the next business day following discovery of the emergency. Franchisee shall comply with all City ordinances and regulations relating to any excavations or construction undertaken during emergency repair work, including the payment of permits or license fees. If emergency work has been done in a manner or location unacceptable to the City, the City shall notify the Franchisee in writing. The Franchisee shall make all appropriate modifications and relocation within sixty (60) days of such written notice.

Franchisee shall comply with ORS 757.542 through ORS 757.562(2020) and the rules and regulations promulgated thereunder in making excavations.

The City shall have the right to require Franchisee to change the location of any of its Facilities located within the Rights-of-Way when public convenience and necessity requires such change, and the expense thereof shall be paid solely by Franchisee. However, if the relocation request is initiated by a third party, the Franchisee shall have the right to charge the cost of the relocation to that third party. Should Franchisee fail to remove or relocate any such Facilities by the date established by the City, which, except in the event of a public emergency, shall not be sooner than 120 days after City's written notice to remove/relocate, the City may cause or effect such removal or relocation, and the expense thereof shall be paid by Franchisee, including all direct, indirect or consequential costs and expenses incurred by the City due to Franchisee's delay. If the City requires Franchisee to relocate any of its Facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location for such Facilities.

As permitted by applicable law, administrative rule, or regulation, the City may require Franchisee to remove and replace any overhead Facilities with underground Facilities at the same or different locations subject to Franchisee's engineering and safety standards. The expense of such a conversion shall be paid by Franchisee, and Franchisee may recover its costs from its customers in accordance with state laws and administrative rules or regulations. Nothing in this subsection prevents the City and Franchisee from agreeing to a different form of cost recovery consistent with applicable statutes and administrative rules or regulations on a case-by-case basis.

Franchisee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, or other facilities that may have been laid in the Rights-of-Way by the City or pursuant to the City's authority.

Upon Franchisee's acquisition of any Facilities located in the Rights-of-Way, or upon any addition or annexation to the City of any area in which Franchisee owns or controls any Facilities in the Rights-of-Way, the Franchisee shall submit to the City a written statement describing all Facilities involved, along with any documentation evidencing such acquisition and specifying the location of all such Facilities. Such Facilities shall immediately be subject to the terms of this Agreement upon acquisition or control by Franchisee.

The City may require Franchisee to temporarily remove and/or relocate Facilities located in any Right-of-Way by giving not less than thirty (30) days' advance written notice to Franchisee. Prior to such removal and/or relocation, the City agrees to provide a suitable substitute location for such relocated Facilities to maintain service. The City will assist in acquiring any needed easements if required square footage is not available in the Rights-Of-Way. The cost of removal and relocation of its Facilities to accommodate public projects shall be paid by Franchisee; however, when such removal and relocation are to be temporary and both the initial and the subsequent relocation are for public projects and not at the request of or to accommodate a private party, initial relocation costs shall be paid by Franchisee and the costs of subsequent relocations occurring less than two years after the initial relocation shall be paid by the City.

Nothing in this Agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work in any Rights-Of-Way consistent with National Electric Safety Code. The City shall coordinate any such work with Franchisee to avoid, to the extent reasonably foreseeable, any obstruction, injury, or restriction on the use of any of Franchisee's Facilities. Nothing in this Section relieves Franchisee from its obligations set forth herein.

3.70.050 Street repair – Expense responsibility.

Whenever Franchisee shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition in accordance with the City of Albany Standard Construction Specifications and the permit issued for the work as soon as practicable without unnecessary delay, and failing to do so, the City shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by said company, its successors and assigns, the City shall cause such repairs to be made at the expense of Franchisee.

3.70.060 Restoration of rights-of-ways.

Whenever Franchisee disturbs the surface of any Right-of-Way for any purpose, Franchisee shall promptly restore the Right-of-Way to as good or better condition than it had been prior to such disturbance.

All restoration of Rights-of-Way surfaces shall be subject to the approval of the City Engineer who may issue an order requiring correction of the restoration work. If the correction order is not complied with within thirty (30) days or any other such later time as may be specified in the order, the City may restore the surface of the Rights-of-Way, in which case Franchisee shall pay all reasonable costs of the restoration work to the City, including the resurfacing, inspection, supervision, and administrative costs of the resurfacing. If the City restores the surface of any Rights-of-way under this subsection, Franchisee shall also pay for the cost of issuing the correction order. If the work by Franchisee creates a public safety hazard as determined by the City Engineer, Franchisee may be required to repair or restore such Right-of-Way within twenty-four (24) hours of such determination or within such time as otherwise agreed upon by the City Engineer and Franchisee.

3.70.070 Improvements – Utility obstruction prohibited.

The City reserves the right to construct, install, maintain, and operate any public improvement, work, or facility, to do any work that the City may find desirable on, over, or under any street, bridge, or public place, and to vacate, alter or close any street, bridge, or public place. If City vacates any portion of the public way containing facilities, City shall reserve an appurtenant easement for public utilities within that vacated portion within which Franchisee may continue to operate existing facilities under the terms of this franchise for at least the remaining term as set forth in AMC 3.70.030. Nothing in this Chapter shall be construed in any way to prevent the proper authorities of the City from sewerage (sanitary and storm), providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways,

places and grounds within the City in or upon which the poles, wires or other conductors of Franchisee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus, and the moving of company facilities, where required due to such work by the City, will be done by Franchisee within 120 days of notice by the City without cost to the City. The Franchisee shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed work. Any such work done for or at the request of a private individual, entity, developer, or development shall be done at the expense of such private individual, entity, developer, or development.

3.70.080 Emergency removal and alternate routing of facilities.

If, at any time, in case of fire, disaster, or other imminent threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers or other appurtenances to the system of the Franchisee, such cutting or moving may be done in a manner that minimizes disruption to Franchisee's services and facilities, and City shall provide prompt notice to Franchisee. Any repairs rendered necessary thereby shall be made by the Franchisee, at its sole expense; provided, that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City. The City shall hold the Franchisee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the City's cutting or moving of Franchisee's facilities. In the event continued use of any street is denied to the Franchisee by the City for any reason, the Franchisee shall provide service to affected subscribers over such alternate routes as shall be determined by Franchisee within a reasonable period of time.

3.70.090 Cables, wires – Rearrangement – Notice.

Whenever the City reasonably determines that the public interest requires that it is necessary to rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery or other object, or to widen/realign City streets, or to make any other alteration or improvement which will require rearrangement of Franchisee's facilities or equipment, the said Franchisee will perform such rearrangement within a reasonable period after written notice from the City. Said notice shall bear the approval of such official as Council may designate and shall provide that the costs of such rearrangement shall be borne by any third persons whose activities create the need for rearrangement except that a request by the City of Albany, on behalf of itself or any other unit of government, to rearrange aerial cables or wires or other apparatus of the Franchisee shall be accomplished by the Franchisee within 120 days at no cost to the City.

3.70.100 Tree trimming.

Subject to the provisions of this Chapter, Franchisee may trim trees, when necessary, in public rights-of-way for the operation of the lines, wires, cables and antennas or other appurtenances, provided such trimming shall be done by competent employees, agents, or contractors; and it shall be done without cost or expense to the City.

Franchisee may prune or cause to be pruned, using proper arboricultural practices, any tree located in the Right-of-Way which substantially interferes with Franchisee's Telecommunications System if Franchisee gives no less than fourteen (14) days' advance written notice to the City's Urban Forester, City Franchise Administrator, and any adjoining property owners. Such pruning work shall be the minimum amount required to alleviate the substantial interference with the operation of Franchisee's Telecommunications System. Any contractor engaged by Franchisee to perform work under this subsection must be approved by the City in advance of the performance of any work. Any wood, debris or other matter resulting from the pruning of trees shall be removed from the Right-of-Way on the same day pruning occurs.

3.70.110 Use of poles.

The City reserves to itself the right at any time to use the poles and other installations of the Franchisee erected or installed under the authority granted in this Chapter for any City-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the Franchisee's use thereof. Franchisee shall not be required to own or operate any facilities the City is using if the Franchisee ceases to have a need therefor.

3.70.120 Temporary relocation at the request of third parties.

Whenever it is necessary to temporarily relocate or rearrange any Facility of Franchisee to permit the passage of any building, machinery or other object, Franchisee shall perform the work upon thirty (30) business days' written notice from the persons desiring to move the building, machinery, or other object. The notice shall: (1) demonstrate that the third party has acquired any necessary permit from the City; (2) detail the route of movement of the building, machinery or other object; (3) provide that the person requesting the temporary relocation shall be responsible for Franchisee's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Franchisee from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of Franchisee Facilities; and (5) be accompanied by a cash deposit or other security acceptable to Franchisee for the costs of relocation. Franchisee is not obligated to comply with any request to temporarily relocate or rearrange any Facility if the notice fails to meet any of the requirements in the previous sentence. The cash deposit or other acceptable security shall be in an amount reasonably calculated by Franchisee to cover Franchisee's costs of temporary relocation and restoration. Franchisee may, in its sole discretion, waive the cash deposit or other acceptable security requirement.

3.70.130 Right-of-way vacation.

If any Right-of-Way or portion thereof used by Franchisee is vacated by the City during the term of this Agreement, Franchisee shall, without expense to the City, remove its Telecommunications System therefrom and restore, repair, or reconstruct the Right-of-Way or portion thereof in as good or better condition as before the removal, unless the City Council specifically reserves to Franchisee the right to continue to use the vacated Right-of-Way. In the event of failure, neglect, or refusal of Franchisee, after ninety (90) days' notice by the City, to restore, repair, reconstruct, improve, or maintain such vacated Right-of-Way, the City may perform such work or cause such work to be performed. The direct, indirect, and consequential costs thereof, as a result of the Franchisee's delay, as determined by the City Council, shall be entered in the Docket of City Liens against any property of Franchisee, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. In the event of vacation under this Section, the City shall cooperate with Franchisee to identify alternative locations within the Rights-of-Way for placement of Franchisee's Facilities.

3.70.140 Maintenance of facilities.

Franchisee shall be solely responsible for performing all required maintenance and improvements to its Telecommunications System and for installing all safeguards reasonably necessary to prevent injury to any person, or to any publicly or privately owned property, and Franchisee shall be solely responsible for all costs thereof. Franchisee shall not construct its Telecommunications System in a manner that requires any of its customers to install cables, ducts, conduits, or other facilities in, under, or over the Rights-of-Way. Franchisee shall be responsible, at its own expense, for repairing any trench settlement or other paving defect resulting from the installation of Facilities in the Rights-of-Way.

3.70.150 Discontinued use of facilities.

Whenever Franchisee intends to permanently discontinue use of part or all its Telecommunications System, Franchisee shall submit a completed application to the City Engineer for approval, describing the Facility or Facilities involved and the date on which the Franchisee intends to discontinue its use. Franchisee may remove the Facility or request that the City permit the Facility to remain in place, which permission shall *be in the sole discretion of the City*. If Franchisee is permitted to abandon its Facilities in place as evidenced by written consent from the City, Franchisee shall submit to the City a deed or other form of documentation acceptable to the City Attorney transferring ownership of such Facilities in the Rights-of-Way to the City.

After the transfer of ownership is complete, the Franchisee shall have no further obligation on the Facilities. Notwithstanding Franchisee's request that any such Facility remain in place, the City Engineer may require the Franchisee to remove the Facility from the Rights-of-Way, or modify the Facility, or a combination of both, in order to protect the public health and safety, or otherwise serve the public interest. Franchisee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until the City consents

to Franchisee's abandonment, or Franchisee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another person or entity having authority to construct and maintain such Facilities, Franchisee shall be responsible for all necessary repairs and relocations of the Facilities, as well as restoration of the Public Rights-Of-Way, in the same manner and degree as if the Facilities were in active use. Franchisee shall also retain all liability for such Facilities.

3.70.160 Hazardous substances.

Franchisee shall comply with all applicable state and federal laws, statutes, regulations, and orders concerning hazardous substances relating to Franchisee's Telecommunications System in the Rights-of-Way. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(16)(2020).

Upon reasonable notice to Franchisee and in the presence of an authorized representative of Franchisee, the City may inspect Franchisee's facilities in the Right-of-Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Franchisee's Telecommunications System.

In removing or modifying any of its Facilities as provided in this Agreement, Franchisee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto.

City and Franchisee expressly acknowledge that the City shall have no liability whatsoever for any claims, damages or harm caused by or related to the existence or release of Hazardous Substances in or by Franchisee's Telecommunications System, or for Franchisee's failure to adequately address or clean up such Hazardous Substances. Franchisee shall indemnify City for any claims, damages, or harm according to the requirements set forth in AMC 3.70.260 of this Agreement.

3.70.170 Performance, compliance with laws, rules, and regulations.

At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of Albany, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of Albany and to such reasonable regulations of general applicability as the City may from time to time hereafter by resolution or ordinance provide insofar as such regulations or ordinances do not materially alter or impair the rights and obligations of Franchisee and are adopted pursuant to the lawful police power of the City, and are adopted and enforced in a reasonable, uniform, and nondiscriminatory manner. No provision of this franchise shall be construed as a waiver of local, State or Federal law, or as a limit of liability.

Franchisee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in good state of repair and shall at all times conduct its operations under this franchise, including installation, construction, or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City.

The location, construction, extension, installation, maintenance, removal, and relocation of the facilities of the Franchisee shall conform to the requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and such reasonable specifications in force at the time of such work, as the City may from time to time adopt. All installations, rearrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinances of the City. The City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

3.70.180 Franchise fee; Payment; and Auditing.

As compensation for the benefits and privileges granted pursuant to this Agreement, and in consideration for use of the Rights-of-Way, the Franchisee shall pay to the City, on a quarterly basis, a franchise fee for the duration of this Agreement.

Effective on the date when the Franchise agreement is fully executed, and until the franchise's expiration as provided in AMC 3.70.030 Franchisee shall pay to the City quarterly the greater of: (1) seven percent (7%) of gross revenues collected by Franchisee and derived from Franchisee's provision of all services authorized and delivered pursuant to this agreement within the corporate limits of the City, or (2) a minimum fee of \$750.00 per quarter will be due the City for administration of this agreement and for use of the City's Right-of-Way. If the seven percent (7%) of gross revenues exceeds the minimum fee each quarter, then the greater amount will be due the City.

This franchise fee shall be sent by check or electronic funds transfer and received by the finance department of the City of Albany before the last business day of the month following the month revenues were received by the Franchisee, e.g., Ordinance approval March 23, Effective Date April 23, Payment period begins May 1 through July 31, Quarterly payment due August 31. If a payment is not received by the date set forth above, the payment shall be deemed delinquent and shall accrue interest at a rate of nine percent (9%) per annum.

Payments made by Franchisee will be accepted by the City from the Franchisee, in payment of any separate permit fees that are imposed by the City on Franchisee for street openings, construction or inspection or maintenance of fixtures or facilities. However, Franchisee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this Chapter.

No acceptance of any franchise fee payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim that the City may have for further or additional sums payable.

If the City determines that Franchisee made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, Franchisee shall pay interest compounded monthly at the current rate nine percent (9%). Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received. If the Franchisee disputes the City's determination of underpayment, the Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest shall accrue to the prevailing party.

The City, its agents, and representatives shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records, directly concerning any and all amounts due under this Agreement, upon not less than thirty (30) days' prior written notice to Franchisee. Franchisee shall keep all books, maps, and records so as to accurately show the same and shall have such books, maps, and records available during normal business hours within the City's metropolitan region. Any review by the City under this subsection shall be completed within three (3) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the three (3) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

3.70.190 Taxes, fees, and charges.

Nothing in this Chapter shall give the Franchisee any credit against any uniform, nondiscriminatory business tax to the extent such tax applies to revenues other than those revenues that are the subject of the franchise fee, or any ad valorem property tax now or hereafter levied against real property or personal property within the City, or against any local improvement assessments or any business tax imposed on Franchisee, or against any charges imposed upon the Franchisee, or against any changes imposed upon the Franchisee's property.

Payment of the franchise fee due under this Agreement shall not exempt the Franchisee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property, activity, or income of the

Franchisee that may be lawfully imposed by the City or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, permit fee, inspection fee, tax, or charge.

3.70.200 Sale of subscriber lists prohibited.

Except as otherwise expressly permitted by law, the Franchisee shall not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency, or entity, except as needed to maintain current services or implement new services to subscribers in connection with Franchisee's services.

3.70.210 Abandonment; Removal of facilities upon expiration.

If the Franchisee goes out of business or withdraws service from the area and as a consequence refuses to renew the agreement, all rights to the use of the connection media revert to the City who may sell, lease, or otherwise use the connection media at its sole discretion. The connection media shall be left in working order and not be intentionally cut or destroyed. The City may require the media be removed from all poles and underground conduits by the former Franchisee at its own expense.

Upon expiration of this Agreement, Franchisee shall either remove its Facilities in accordance with ORS 221.470(2020) or seek City's written consent to leave its Facilities in place pursuant to AMC 3.70.150 of this Agreement.

3.70.220 Reports and inspection.

With each franchise fee payment, the Franchisee shall furnish a sworn statement or declaration under oath from the Chief Finance Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the gross linear feet of cable which exists within the Albany city limits and the calculation of the franchise fee paid and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Franchisee in calculating the franchise fee. The Franchise Administrator of the City may require the Franchisee to provide any additional information reasonably necessary for administration of the franchise fee.

3.70.230 Change of law; Amendment of franchise agreement.

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 also may be amended by mutual consent of the parties or their successors-in-interest. Any amendments hereto shall be by written instrument executed with the same formalities as this Agreement.

To the extent any lawful City rule, ordinance, or regulation is adopted or amended and is generally imposed on all similarly situated persons or entities, the rule, ordinance, or regulation shall apply without need for amendment of this Agreement. The City shall provide Franchisee with notice of any such change in law prior to its adoption.

3.70.240 Franchise nonexclusive.

This franchise is not exclusive and shall not be construed as a limitation on the City in granting rights, privileges, and authority to other persons similar to, or different from, those granted by this Chapter, or in constructing, installing, maintaining, or operating any City-owned public utility. In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Franchisee to enter into the City's streets and public ways for the purpose of conducting business as a telecommunications carrier as that term is defined in ORS 133.721(8) within the City, the material provisions thereof shall be reasonably comparable to those contained herein, insofar as this is not in conflict with rules of government, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

3.70.250 Insurance and bonding.

The Franchisee shall, for the purposes of carrying out the provisions of this Section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the franchise a certificate of insurance evidence thereto with the Franchise Administrator, good and sufficient policies covering:

1. Workers' Compensation Insurance as required by the State of Oregon including Employers' Liability with limits of \$1,000,000; Franchisee shall ensure that each of its subcontractors complies with these same requirements and shall contain a Waiver of Subrogation against the City; and
2. Commercial General Liability Insurance with limits of \$5,000,000 per occurrence and \$5,000,000 general aggregate, with the aggregate on a per-project basis; and
3. Business Automobile Liability Insurance, for any owned, hired, or non-owned vehicles used in the performance of this agreement with combined single limits of \$5,000,000 each accident; and
4. Pollution Liability Insurance with limits of \$5,000,000 each incident and in the aggregate. If policy is on a "claims made" basis it must provide a 24-month tail or reporting period.

The City of Albany, its officers, agents, and employees, shall be named an additional insured in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.

Franchisee shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance. This insurance shall not be canceled or materially altered without thirty (30) days' written notice first being given to the City's Franchise Administrator. If the insurance is canceled or materially altered within the term of this Agreement, Franchisee shall provide a replacement policy with the same terms.

Each policy, Workers' Compensation, Commercial General Liability, Business Automobile Liability, Pollution Liability shall contain a waiver of subrogation against the City.

Prior to the commencement of any construction work by the Franchisee, the Franchisee shall file both a construction bond and a performance bond in an amount approved by the City in favor of the City and any other person who may suffer damages as a result of the breach of any duty by the Franchisee assured by such bond. Such bond as contemplated herein shall be in a form approved by the City and shall, among other matters, cover the cost of removal of any property of Franchisee. In no event shall the amount of said bond be construed to limit the liability of the Franchisee for damages. The City, at its sole option, may waive this requirement.

3.70.260 Indemnification.

Subject to the limitations set forth in ORS 30.260 through ORS 30.300, the Oregon Tort Claims Act, and the Oregon Constitution each party shall indemnify, defend and hold harmless the other, and the other's officials, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities ("Claims") arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by that party pursuant to this Agreement. Each party shall give to the other notice in writing of any such Claims within twenty (20) days of the date that party receives notice of any such Claims. Neither party shall settle, compromise, or take any action prejudicial to the other's defense of or interest in such Claims without the express written consent of the other party.

Franchisee also shall indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Franchisee's failure to remove, adjust or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with a relocation schedule furnished to Franchisee by the City Engineer, unless Franchisee's failure arises directly from the City's negligence or willful misconduct.

Franchisee agrees to forever indemnify the City against any claims, suits, actions, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of any hazardous substance as defined in ORS 465.200(16)(2020) caused by Franchisee's ownership, operation, or maintenance of a Telecommunications System in the Rights-of-Way.

3.70.270 Assignment, transfer, merger, lease, or mortgage.

This Agreement shall not be assigned nor any of Franchisee's Telecommunications System located in the Rights-of-Way sold, mortgaged, assigned, or otherwise transferred, without the prior written consent of the City, which will not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with, the Franchisee, or in the event that only *de minimis* assets are sold, assigned, or transferred. The Franchisee shall notify the City of any proposed transfers to such entities no less than thirty (30) days in advance of such assignment or transfer. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Franchisee's Telecommunications System for the purpose of financing the acquisition of equipment for, or the construction and operation of, Franchisee's Telecommunications System without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights under this Agreement.

In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer of the Franchisee's Telecommunications System, the City may inquire into the technical, legal, and financial qualifications of the prospective party with respect to its ability to perform under this Agreement, and the City may condition its consent upon satisfactory results of such inquiry. Franchisee shall assist the City with any such inquiry. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer, or merger.

No sale, lease, mortgage, assignment, transfer, or merger for which the City's consent is required may occur until the Franchisee's successor, assignee or lessee has complied with the requirements of this Agreement, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by official act.

Within ten (10) days after execution and delivery of any instrument so consented to by the City, Franchisee shall file with the City Clerk an executed counterpart or certified copy thereof.

3.70.280 Rights; Forfeiture; Termination; Remedies.

In addition to any other rights set out elsewhere in this Agreement, the City reserves the right to declare a forfeiture of this Agreement and all of Franchisee's rights arising hereunder, upon the occurrence of one or more of the following:

1. The Franchisee violates any material provision of this Agreement and fails to cure the violation within thirty (30) calendar days of receiving notice of the violation from the City.
2. The Franchisee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
3. There is a final determination that Franchisee has failed, refused, neglected or is otherwise unable to obtain or maintain any permit required by any federal or state regulatory body regarding Franchisee's operation of its Telecommunications System within the City.
4. Franchisee fails to complete construction of any approved Facilities for more than eighteen (18) months after approval unless the City and Franchisee agree in writing to an extension for completion of such construction.
5. Franchisee becomes unable or unwilling to pay its debts or is adjudged a bankrupt.

For purposes of this subsection, the following provisions are, without limitation, material to this Agreement, thus allowing the City to exercise any of its rights under this Agreement:

1. The invalidation, failure to pay or any suspension of Franchisee's payments of franchise fees to the City under this Agreement.

2. Any failure by Franchisee to submit timely reports regarding the calculation of its franchise fees to the City.
3. Any failure by Franchisee to provide or maintain the liability insurance required under this Agreement.
4. Any failure by Franchisee to post or maintain any bond(s) required under this Agreement.
5. Any failure by Franchisee to provide copies of requested information as required in AMC 3.70.180 of this Agreement.
6. Any failure by Franchisee to otherwise fully comply with the requirements of this Agreement.

This Agreement may be terminated by mutual written consent of the parties at any time.

Either party may terminate this Agreement at any time for default, including but not limited to those occurrences set forth in this Section by providing not less than thirty (30) days' prior written notice to the other party, provided, however that this Agreement shall automatically terminate if Franchisee does not pay the franchise fee required under AMC 3.70.180 within one hundred and eighty (180) days of its due date and has been given not less than thirty (30) days' written notice to cure the delinquency.

Upon termination of this Agreement, the disposition of the Franchisee's property and Facilities that occupy the Rights-of-Way shall be governed by AMC 3.70.150 of this Agreement.

In addition to any other rights set out elsewhere in this franchise, the City may terminate this franchise if Franchisee violates any material provision of the franchise, including but not limited to failing to pay or any suspension of Franchisee's payments of franchise fees to the City under this franchise, failure by Franchisee to submit timely reports regarding the calculation of its gross revenues-based franchise fees to the City, failure to maintain the liability insurance and/or bonds required under this franchise, or failure to comply with all other State, Federal or local laws as set forth in this franchise, and the violation continues for 45 days after Franchisee receives notice of the violation from the City. All remedies and penalties under this franchise, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty.

The remedies and penalties contained in this Chapter, including termination of the franchise, are not exclusive, and 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 the Franchisee by, or pursuant to, this Chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this Chapter or acceptance of any payment due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation itself.

3.70.290 Force majeure.

Neither the City nor the Franchisee shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

3.70.300 Severability; Renegotiation.

In the event any provisions of this franchise are deemed to be void, invalid or unenforceable, that provision shall be severed from the remainder of this franchise so as not to cause the invalidity or unenforceability of the remainder of this franchise. All remaining provisions of this franchise shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope and breadth, such provisions shall be deemed valid to the extent of the scope and breadth permitted by law.

If any change in federal or state law materially affects any provision of this Agreement, including any change in the laws governing the services which may be assessed franchise fees, the City and the Franchisee may mutually agree to renegotiate the terms of this Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the party receiving the notification request accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation.

3.70.310 Public records.

Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.311 through 192.478. Franchisee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

Franchisee may identify information, submitted to the City as confidential pursuant to ORS 192.355(4), such as trade secrets, financial records, customer information or technical information. Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. Franchisee shall also provide a written explanation as to why such information is confidential under state or federal law. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. City shall make reasonable efforts to provide the Franchisee notice of a request for information marked as confidential, including a copy of the request, within ten (10) business days of receiving any such request. Franchisee shall have five (5) business days within which to provide a written response to the City before the City will disclose any of the requested confidential information. The City shall retain the sole discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

3.70.320 Choice of law; Venue; Notice.

The laws of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in the Circuit Courts in and for Linn County, Oregon.

Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the other party, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) sent by facsimile transmission.

Any such notice or communication delivered by personal delivery shall be deemed delivered and effective upon actual receipt. Any notice or communication sent by United States mail, postage prepaid, shall be deemed delivered and effective five (5) days after mailing. Any notice or communication sent by overnight courier shall be deemed delivered and effective one (1) business day after dispatch. Any notice or communication sent by facsimile transmission shall be deemed delivered when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

3.70.330 Complete agreement.

This Franchise Agreement, including any attachments and laws, rules and regulations incorporated herein or to which this Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

3.70.340 Dispute costs; Attorneys' fees.

In the event an attorney is employed to enforce the provisions of this franchise (including any bankruptcy, insolvency or similar proceedings affecting creditors' rights generally), the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred, irrespective of whether any legal proceeding is commenced. If any legal action, arbitration, or other proceeding is brought to construe, interpret, or enforce the terms of this franchise, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in connection therewith, both at trial and on any appeal therefrom or petitions for review thereof. Such

sum shall include an amount estimated by the court as the reasonable costs and fees to be incurred by the prevailing party in collecting any monetary judgment or award or otherwise in enforcing any order, judgment or decree entered in such suit, action, or other proceeding.

3.70.350 Successors and assigns.

This franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors, and assigns. Franchisee, however, shall not make any assignment without written consent of the City, and any assignment made without the City’s consent, shall be null and void. Notwithstanding the previous sentence, Franchisee may assign this franchise without the City’s consent, (1) to an entity controlled by, under common control with, or controlling Franchisee; or (2) by mortgage, hypothecation, or other security instrument to secure indebtedness.

Section 2. Franchise effective only upon acceptance of Franchisee.

This franchise is effective on the date provided herein only upon written acceptance of its terms by an authorized representative of Franchisee.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



AN ORDINANCE AMENDING CHAPTER 3.80 OF THE ALBANY MUNICIPAL CODE (AMC) AND RENEWING A NON-EXCLUSIVE TELECOMMUNICATIONS SYSTEM FRANCHISE TO ASTOUND BROADBAND, LLC FOR THE CONSTRUCTION AND OPERATION OF A TELECOMMUNICATON SYSTEM; AND FIXING TERMS, CONDITIONS, AND COMPENSATION OF SUCH FRANCHISE; AND REPEALING ORDINANCE NO. 5840

WHEREAS, pursuant to federal law and state statutes the City is authorized to grant non-exclusive franchises to occupy the City Rights-of-Way or other public property in order to construct, operate, use, and maintain telecommunications service, gas service, electricity, and other public utilities, within the municipal boundaries of the city of Albany; and

WHEREAS, the City of Albany has determined that the financial, legal, and technical ability of Astound Broadband, LLC (“Astound”) is reasonably sufficient to continue to provide services, facilities, and equipment necessary to meet the future telecommunication needs of the community.

NOW, THEREFORE, the people of the City of Albany do ordain as follows.

Section 1. AMC Chapter 3.80.010 through 3.80.350 is established to read as follows:

3.80.010 Franchise granted.

The City of Albany, hereinafter referred to as “City”, hereby grants to Astound, a limited liability company authorized to conduct business in Oregon, hereinafter referred to as “Franchisee”, the non-exclusive right and privilege to occupy the City’s Rights-of-Way for the purpose of construction, use, operation, and maintenance of a Telecommunications System. Franchisee shall use its Telecommunications System solely to provide Telecommunications Services (as defined in ORS 759.005(8)), private telecommunication network (as defined in ORS 759. 005(4)) service, and internet access service (as defined in ORS 305. 822(1)(b)) within the City and to place, erect, lay, maintain, and operate in, upon, over and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City (collectively, “Public Ways”), poles, wires, conduits, cabinets, appurtenances, and other appliances and conductors (collectively, “Facilities”) for all communication purposes.

This Agreement and the grant of authority conferred herein are not exclusive. The City reserves the right to grant the authority to others to use the Franchise Area during the term of this Agreement. The Franchisee shall respect the rights and property of the City and other authorized users of the Rights-of-Way. This Agreement does not confer on Franchisee any right, title, or interest in any Right-of-Way beyond that expressly conferred herein. This Agreement does not confer any right or privilege to use or occupy any other property of the City or any other entity.

Nothing in this Agreement shall be construed to prevent the City from constructing sewers; from grading, paving, repairing, or altering any Right-of-Way, or from constructing, installing, repairing, or removing water mains or any other public work or improvement. If any of the Franchisee’s Telecommunications System interferes with the work described in this subsection, the Franchisee’s Telecommunications System shall be removed or replaced as set forth in AMC 3.80.040 of this Agreement.

3.80.020 Rules of construction; Definitions.

Throughout this Agreement, captions are intended solely to facilitate reading and reference and shall not affect the meaning and interpretation of this Agreement.

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” will always mean mandatory and not merely directory.

For the purpose of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise.

1. “City” means the City of Albany, Oregon and the area within its boundaries as extended in the future.
2. “Conduit” is an electrical raceway for the enclosure of electrical conductors and may consist of rigid conduit of electrical metallic tubing or plastic tubing.
3. “Council” means the legislative body of the City.
4. “Customer,” “user” or “subscriber” shall mean any person or entity lawfully receiving telecommunications service.
5. “Facility” means any tangible component of the Franchisee’s Telecommunications System including, but not limited to, fiber, wires, cables, pipes, mains, ducts, conduits, vaults, pedestals, poles, antennas, power boxes, cabinets, and electronic equipment.
6. “Franchise Administrator” means the City Manager or designee of the City of Albany.
7. “Franchisee” means Astound, its successors, legal representatives, or assigns.
8. “Gross Revenues” means any and all revenue in whatever form, grant, subsidy, exchange, or otherwise directly or indirectly received by the Franchisee for Telecommunications Service provided to subscribers within the City of Albany subject to all applicable limitations imposed by federal and/or state law. “Local” means Linn County, Oregon or Benton County, Oregon.
9. “May” is permissive.
10. “Minimum Annual Franchise Fee” means the minimum amount paid to the City of Albany under this Agreement.
11. “Person” includes an individual, corporation, association, firm, partnership, and joint stock company.
12. “Private Telecommunications Network” means a system for the provision of telecommunications service or any portion of telecommunications service, including the construction, maintenance, or operation of the system, by a person for the exclusive use of that person and not for resale, directly or indirectly.
13. “Public Place” includes any City-owned park, place, facility, or grounds within the City that is open to the public but does not include a street or bridge.
14. “Radio Common Carrier” means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.
15. “Rights-of-Way” means the surface of, and the space above and below, any street, road, alley, highway, sidewalk, utility easement, public square, public park, or other public place owned or otherwise held by the City.
16. “Service Area” means the legal boundaries of the City and including any areas annexed during the term of the franchise.
17. “Street” includes the surface, the air space above the surface, and the area below the surface of any public street, alley, avenue, road, boulevard, thoroughfare, or public highway, other public right-of-way, including public utility easements, but does not include a bridge or public place.
18. “Shall” is mandatory.
19. “Technical Facilities” or “Facilities” shall mean all real property, equipment, and fixtures used by Franchisee in the distribution of its services through its system and includes, but is not limited to, poles, conduit, cables, wires, microwave transmitters, antennae, amplifiers, etc.

20. “Telecommunications Service” (as defined in ORS 759.05(8)) and means any service provided for a fee to the public, or to such class of users as to be effectively available to the public without regard to the facilities used to provide the telecommunications; and for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission (“FCC”) or the Oregon Public Utility Commission. Telecommunications Service does not include any of the following: cable service as defined by 47 U.S.C. § 522; open video system service as defined in 47 C.F.R. § 76 (2009); private communications system services provided without using the public rights-of-way; over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1980; or commercial mobile radio service as defined by 47 C.F.R. § 20.3 (2009).
21. “Telecommunications System” means all Facilities owned, leased, rented, maintained, or used by Franchisee for the purpose of providing Telecommunications Service and located in, under and/or above Rights-of-Way.

3.80.030 Effective date; Term.

The effective date of this Agreement shall be the first day of the full calendar month following the date the ordinance takes effect (the “Effective Date”).

This Agreement, and all rights and obligations pertaining hereto, shall, subject to any applicable statutory or regulatory limitations on the maximum term allowed for public contracts, continue in full force and effect for an initial term of five (5) years, commencing on the Effective Date. Unless sooner terminated by either party as set forth in AMC 3.80.280 below, at the end of the initial five (5) year term, this Agreement shall be reviewed by both parties and must be in compliance with ORS 221.460(2020). This agreement may be extended by mutual written agreement of the parties so long as no party is in default.

3.80.040 Construction; Excavation; and Relocation.

Franchisee shall maintain maps and data pertaining to all of its Facilities located in the City on file at an office in the State of Oregon. The City shall be allowed to inspect all such maps and data pertaining to its Facilities located in the City Rights-of-Way at any time during regular business hours upon not less than five (5) business days’ prior notice. Upon request of the City and without charge, Franchisee shall provide current maps and data to the City showing the location of all Franchisee’s Facilities within the City. Upon completion of any and all of its Facilities in the Public Right-of-Way, Franchisee shall provide a map or maps consistent with this Section to the City, showing the location as built of its installed Telecommunication System in the Rights-of-Way. Such as-built maps shall be in a form reasonably acceptable to the City Engineer and shall define specific locations of Facilities. City will not sell or transmit Franchisee maps or data to third parties unless permitted by Franchisee or required by law. The City will make available to Franchisee at no cost any relevant City-prepared maps or data.

Subject to applicable rules and regulations of the City, Franchisee may perform all excavations and other work necessary to construct, operate and maintain its Telecommunications System. All construction and maintenance of any and all Facilities within Rights-of-Way shall, regardless of who performs the excavation, installation and/or construction, are and shall remain the responsibility of the Franchisee. Franchisee shall apply for and obtain all permits necessary for excavation, installation and/or construction of any Facilities located in the Rights-of-Way and shall pay all applicable fees due for City permits. Franchisee must also give such notice as required by law to other franchisees, licensees, or permittees of the City, and/or other units of government owning or maintaining facilities which may be affected by the proposed work.

Prior to beginning any excavation, installation, or construction work, Franchisee shall provide the City with an initial schedule and the estimated total cost of such work. When Franchisee's work under its permit is completed, Franchisee shall provide the City with the total amount of Right-of-Way, measured linearly, occupied by Franchisee's Telecommunications System, and with a map showing the location of its installed Telecommunications System, as built. Such "as-built" maps shall be in a form reasonably acceptable to the City Engineer.

All work by Franchisee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Franchisee's work under AMC 3.80.130 and 3.80.150 of this Agreement shall be done in strict compliance with all applicable laws, ordinances, rules and regulations of the City and the State of Oregon.

Within thirty (30) days of any change in location of Franchisee's Telecommunications System, Franchisee shall provide a map to the City Engineer, showing the location of Franchisee's Telecommunications System on whatever standard scale the City adopts for general use. The Franchisee shall also provide such maps in an electronic format acceptable to both the City and Franchisee.

In the event that emergency repairs to its Telecommunications System are necessary, Franchisee shall immediately notify the City of the need for such repairs. Franchisee may immediately initiate such emergency repairs and shall apply for appropriate permits the next business day following discovery of the emergency. Franchisee shall comply with all City ordinances and regulations relating to any excavations or construction undertaken during emergency repair work, including the payment of permits or license fees. If emergency work has been done in a manner or location unacceptable to the City, the City shall notify the Franchisee in writing. The Franchisee shall make all appropriate modifications and relocation within sixty (60) days of such written notice.

Franchisee shall comply with ORS 757.542 through ORS 757.562(2020) and the rules and regulations promulgated thereunder in making excavations.

The City shall have the right to require Franchisee to change the location of any of its Facilities located within the Rights-of-Way when public convenience and necessity requires such change, and the expense thereof shall be paid solely by Franchisee. Should Franchisee fail to remove or relocate any such Facilities by the date established by the City, which, except in the event of a public emergency, shall not be sooner than ninety (90) days after City's written notice to remove/relocate, the City may cause or effect such removal or relocation, and the expense thereof shall be paid by Franchisee, including all direct, indirect or consequential costs and expenses incurred by the City due to Franchisee's delay. If the City requires Franchisee to relocate any of its Facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location for such Facilities.

As permitted by applicable law, administrative rule, or regulation, the City may require Franchisee to remove and replace any overhead Facilities with underground Facilities at the same or different locations subject to Franchisee's engineering and safety standards. The expense of such a conversion shall be paid by Franchisee, and Franchisee may recover its costs from its customers in accordance with state laws and administrative rules or regulations. Nothing in this subsection prevents the City and Franchisee from agreeing to a different form of cost recovery consistent with applicable statutes and administrative rules or regulations on a case-by-case basis.

Franchisee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, or other facilities that may have been laid in the Rights-of-Way by the City or pursuant to the City's authority.

Upon Franchisee's acquisition of any Facilities located in the Rights-of-Way, or upon any addition or annexation to the City of any area in which Franchisee owns or controls any Facilities in the Rights-of-Way, the Franchisee shall submit to the City a written statement describing all Facilities involved, along with any documentation

evidencing such acquisition and specifying the location of all such Facilities. Such Facilities shall immediately be subject to the terms of this Agreement upon acquisition or control by Franchisee.

The City may require Franchisee to temporarily remove and/or relocate Facilities located in any Right-of-Way by giving not less than thirty (30) days' advance written notice to Franchisee. Prior to such removal and/or relocation, the City agrees to provide a suitable substitute location for such relocated Facilities to maintain service. The City will assist in acquiring any needed easements if required square footage is not available in the Rights-Of-Way. The cost of removal and relocation of its Facilities to accommodate public projects shall be paid by Franchisee; however, when such removal and relocation are to be temporary and both the initial and the subsequent relocation are for public projects and not at the request of or to accommodate a private party, initial relocation costs shall be paid by Franchisee and the costs of subsequent relocations occurring less than two years after the initial relocation shall be paid by the City.

Nothing in this Agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work in any Rights-Of-Way consistent with National Electric Safety Code. The City shall coordinate any such work with Franchisee to avoid, to the extent reasonably foreseeable, any obstruction, injury, or restriction on the use of any of Franchisee's Facilities. Nothing in this Section relieves Franchisee from its obligations set forth herein.

3.80.050 Street repair – Expense responsibility.

Whenever Franchisee shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition in accordance with the City of Albany Standard Construction Specifications and the permit issued for the work as soon as practicable without unnecessary delay, and failing to do so, the City shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by said company, its successors and assigns, the City shall cause such repairs to be made at the expense of Franchisee.

3.80.060 Restoration of rights-of-ways.

Whenever Franchisee disturbs the surface of any Right-of-Way for any purpose, Franchisee shall promptly restore the Right-of-Way to as good or better condition than it had been prior to such disturbance.

All restoration of Rights-of-Way surfaces shall be subject to the approval of the City Engineer who may issue an order requiring correction of the restoration work. If the correction order is not complied with within thirty (30) days or any other such later time as may be specified in the order, the City may restore the surface of the Rights-of-Way, in which case Franchisee shall pay all reasonable costs of the restoration work to the City, including the resurfacing, inspection, supervision, and administrative costs of the resurfacing. If the City restores the surface of any Rights-of-way under this subsection, Franchisee shall also pay for the cost of issuing the correction order. If the work by Franchisee creates a public safety hazard as determined by the City Engineer, Franchisee may be required to repair or restore such Right-of-Way within twenty-four (24) hours of such determination or within such time as otherwise agreed upon by the City Engineer and Franchisee.

3.80.070 Improvements – Utility obstruction prohibited.

The City reserves the right to construct, install, maintain, and operate any public improvement, work, or facility, to do any work that the City may find desirable on, over, or under any street, bridge, or public place, and to vacate, alter or close any street, bridge, or public place. If City vacates any portion of the public way containing facilities, City shall reserve an appurtenant easement for public utilities within that vacated portion within which Franchisee may continue to operate existing facilities under the terms of this franchise for at least the remaining term as set forth in AMC 3.80.030. Nothing in this Chapter shall be construed in any way to prevent the proper authorities of the City from sewerage (sanitary and storm), providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways, places and grounds within the City in or upon which the poles, wires or other conductors of Franchisee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus, and the moving of company facilities, where

required due to such work by the City, will be done by Franchisee within 120 days of notice by the City without cost to the City. The Franchisee shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed work. Any such work done for or at the request of a private individual, entity, developer, or development shall be done at the expense of such private individual, entity, developer, or development.

3.80.080 Emergency removal and alternate routing of facilities.

If, at any time, in case of fire, disaster, or other imminent threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers or other appurtenances to the system of the Franchisee, such cutting or moving may be done in a manner that minimizes disruption to Franchisee's services and facilities, and City shall provide prompt notice to Franchisee. Any repairs rendered necessary thereby shall be made by the Franchisee, at its sole expense; provided, that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City. The City shall hold the Franchisee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the City's cutting or moving of Franchisee's facilities. In the event continued use of any street is denied to the Franchisee by the City for any reason, the Franchisee shall provide service to affected subscribers over such alternate routes as shall be determined by Franchisee within a reasonable period of time.

3.80.090 Cables, wires – Rearrangement – Notice.

Whenever the City reasonably determines that the public interest requires that it is necessary to rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery or other object, or to widen/realign City streets, or to make any other alteration or improvement which will require rearrangement of Franchisee's facilities or equipment, the said Franchisee will perform such rearrangement within a reasonable period after written notice from the City. Said notice shall bear the approval of such official as Council may designate and shall provide that the costs of such rearrangement shall be borne by any third persons whose activities create the need for rearrangement except that a request by the City of Albany, on behalf of itself or any other unit of government, to rearrange aerial cables or wires or other apparatus of the Franchisee shall be accomplished by the Franchisee within 120 days at no cost to the City.

3.80.100 Tree trimming.

Subject to the provisions of this Chapter, Franchisee may trim trees, when necessary, in public rights-of-way for the operation of the lines, wires, cables and antennas or other appurtenances, provided such trimming shall be done by competent employees, agents, or contractors; and it shall be done without cost or expense to the City.

Franchisee may prune or cause to be pruned, using proper arboricultural practices, any tree located in the Right-of-Way which substantially interferes with Franchisee's Telecommunications System if Franchisee gives no less than fourteen (14) days' advance written notice to the City's Urban Forester, City Franchise Administrator, and any adjoining property owners. Such pruning work shall be the minimum amount required to alleviate the substantial interference with the operation of Franchisee's Telecommunications System. Any contractor engaged by Franchisee to perform work under this subsection must be approved by the City in advance of the performance of any work. Any wood, debris or other matter resulting from the pruning of trees shall be removed from the Right-of-Way on the same day pruning occurs.

3.80.110 Use of poles.

The City reserves to itself the right at any time to use the poles and other installations of the Franchisee erected or installed under the authority granted in this Chapter for any City-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the Franchisee's use thereof. Franchisee shall not be required to own or operate any facilities the City is using if the Franchisee ceases to have a need therefor.

3.80.120 Temporary relocation at the request of third parties.

Whenever it is necessary to temporarily relocate or rearrange any Facility of Franchisee to permit the passage of any building, machinery or other object, Franchisee shall perform the work upon thirty (30) business days' written notice from the persons desiring to move the building, machinery, or other object. The notice shall: (1) demonstrate that the third party has acquired any necessary permit from the City; (2) detail the route of movement of the building, machinery or other object; (3) provide that the person requesting the temporary relocation shall be responsible for Franchisee's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Franchisee from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of Franchisee Facilities; and (5) be accompanied by a cash deposit or other security acceptable to Franchisee for the costs of relocation. Franchisee is not obligated to comply with any request to temporarily relocate or rearrange any Facility if the notice fails to meet any of the requirements in the previous sentence. The cash deposit or other acceptable security shall be in an amount reasonably calculated by Franchisee to cover Franchisee's costs of temporary relocation and restoration. Franchisee may, in its sole discretion, waive the cash deposit or other acceptable security requirement.

3.80.130 Right-of-way vacation.

If any Right-of-Way or portion thereof used by Franchisee is vacated by the City during the term of this Agreement, Franchisee shall, without expense to the City, remove its Telecommunications System therefrom and restore, repair, or reconstruct the Right-of-Way or portion thereof in as good or better condition as before the removal, unless the City Council specifically reserves to Franchisee the right to continue to use the vacated Right-of-Way. In the event of failure, neglect, or refusal of Franchisee, after ninety (90) days' notice by the City, to restore, repair, reconstruct, improve, or maintain such vacated Right-of-Way, the City may perform such work or cause such work to be performed. The direct, indirect, and consequential costs thereof, as a result of the Franchisee's delay, as determined by the City Council, shall be entered in the Docket of City Liens against any property of Franchisee, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. In the event of vacation under this Section, the City shall cooperate with Franchisee to identify alternative locations within the Rights-of-Way for placement of Franchisee's Facilities.

3.80.140 Maintenance of facilities.

Franchisee shall be solely responsible for performing all required maintenance and improvements to its Telecommunications System and for installing all safeguards reasonably necessary to prevent injury to any person, or to any publicly or privately owned property, and Franchisee shall be solely responsible for all costs thereof. Franchisee shall not construct its Telecommunications System in a manner that requires any of its customers to install cables, ducts, conduits, or other facilities in, under, or over the Rights-of-Way. Franchisee shall be responsible, at its own expense, for repairing any trench settlement or other paving defect resulting from the installation of Facilities in the Rights-of-Way.

3.80.150 Discontinued use of facilities.

Whenever Franchisee intends to permanently discontinue use of part or all its Telecommunications System, Franchisee shall submit a completed application to the City Engineer for approval, describing the Facility or Facilities involved and the date on which the Franchisee intends to discontinue its use. Franchisee may remove the Facility or request that the City permit the Facility to remain in place, which permission shall *be in the sole discretion of the City*. If Franchisee is permitted to abandon its Facilities in place as evidenced by written consent from the City, Franchisee shall submit to the City a deed or other form of documentation acceptable to the City Attorney transferring ownership of such Facilities in the Rights-of-Way to the City.

After the transfer of ownership is complete, the Franchisee shall have no further obligation or the Facilities. Notwithstanding Franchisee's request that any such Facility remain in place, the City Engineer may require the Franchisee to remove the Facility from the Rights-of-Way, or modify the Facility, or a combination of both, in order to protect the public health and safety, or otherwise serve the public interest. Franchisee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until the City consents to Franchisee's abandonment, or Franchisee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another person or entity having authority

to construct and maintain such Facilities, Franchisee shall be responsible for all necessary repairs and relocations of the Facilities, as well as restoration of the Public Rights-Of-Way, in the same manner and degree as if the Facilities were in active use. Franchisee shall also retain all liability for such Facilities.

3.80.160 Hazardous substances.

Franchisee shall comply with all applicable state and federal laws, statutes, regulations, and orders concerning hazardous substances relating to Franchisee's Telecommunications System in the Rights-of-Way. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(16)(2020).

Upon reasonable notice to Franchisee and in the presence of an authorized representative of Franchisee, the City may inspect Franchisee's facilities in the Right-of-Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Franchisee's Telecommunications System.

In removing or modifying any of its Facilities as provided in this Agreement, Franchisee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto.

City and Franchisee expressly acknowledge that the City shall have no liability whatsoever for any claims, damages or harm caused by or related to the existence or release of Hazardous Substances in or by Franchisee's Telecommunications System, or for Franchisee's failure to adequately address or clean up such Hazardous Substances. Franchisee shall indemnify City for any claims, damages, or harm according to the requirements set forth in AMC 3.80.260 of this Agreement.

3.80.170 Performance, compliance with laws, rules, and regulations.

At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of Albany, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of Albany and to such reasonable regulations of general applicability as the City may from time to time hereafter by resolution or ordinance provide insofar as such regulations or ordinances do not materially alter or impair the rights and obligations of Franchisee and are adopted pursuant to the lawful police power of the City, and are adopted and enforced in a reasonable, uniform, and nondiscriminatory manner. No provision of this franchise shall be construed as a waiver of local, State or Federal law, or as a limit of liability.

Franchisee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in good state of repair and shall at all times conduct its operations under this franchise, including installation, construction, or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City.

The location, construction, extension, installation, maintenance, removal, and relocation of the facilities of the Franchisee shall conform to the requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and such reasonable specifications in force at the time of such work, as the City may from time to time adopt. All installations, rearrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinances of the City. The City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

3.80.180 Franchise fee; Payment; and Auditing.

As compensation for the benefits and privileges granted pursuant to this Agreement, and in consideration for use of the Rights-of-Way, the Franchisee shall pay to the City, on a quarterly basis, a franchise fee for the duration of this Agreement.

Effective on the date when the Franchise agreement is fully executed, and until the franchise's expiration as provided in AMC 3.80.030 Franchisee shall pay to the City quarterly the greater of: (1) seven percent (7%) of gross revenues collected by Franchisee and derived from Franchisee's provision of all services authorized and delivered pursuant to this agreement within the corporate limits of the City, or (2) a minimum fee of \$750.00 per quarter will be due the City for administration of this agreement and for use of the City's Right-of-Way. If the seven percent (7%) of gross revenues exceeds the minimum fee each quarter, then the greater amount will be due the City.

This franchise fee shall be sent by check or electronic funds transfer and received by the finance department of the City of Albany before the last business day of the month following the month revenues were received by the Franchisee, e.g., Ordinance approval March 23, Effective Date April 23, Payment period begins May 1 through July 31, Quarterly payment due August 31. If a payment is not received by the date set forth above, the payment shall be deemed delinquent and shall accrue interest at a rate of nine percent (9%) per annum.

Payments made by Franchisee will be accepted by the City from the Franchisee, in payment of any separate permit fees that are imposed by the City on Franchisee for street openings, construction or inspection or maintenance of fixtures or facilities. However, Franchisee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this Chapter.

No acceptance of any franchise fee payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim that the City may have for further or additional sums payable.

If the City determines that Franchisee made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, Franchisee shall pay interest compounded monthly at the current rate nine percent (9%). Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received. If the Franchisee disputes the City's determination of underpayment, the Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest shall accrue to the prevailing party.

The City, its agents, and representatives shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records, directly concerning any and all amounts due under this Agreement, upon not less than thirty (30) days' prior written notice to Franchisee. Franchisee shall keep all books, maps, and records so as to accurately show the same and shall have such books, maps, and records available during normal business hours within the City's metropolitan region. Any review by the City under this subsection shall be completed within three (3) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the three (3) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

3.80.190 Taxes, fees, and charges.

Nothing in this Chapter shall give the Franchisee any credit against any uniform, nondiscriminatory business tax to the extent such tax applies to revenues other than those revenues that are the subject of the franchise fee, or any ad valorem property tax now or hereafter levied against real property or personal property within the City, or against any local improvement assessments or any business tax imposed on Franchisee, or against any charges imposed upon the Franchisee, or against any changes imposed upon the Franchisee's property.

Payment of the franchise fee due under this Agreement shall not exempt the Franchisee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property, activity, or income of the Franchisee that may be lawfully imposed by the City or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, permit fee, inspection fee, tax, or charge.

3.80.200 Sale of subscriber lists prohibited.

Except as otherwise expressly permitted by law, the Franchisee shall not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency, or entity, except as needed to maintain current services or implement new services to subscribers in connection with Franchisee's services.

3.80.210 Abandonment; Removal of facilities upon expiration.

If the Franchisee goes out of business or withdraws service from the area and as a consequence refuses to renew the agreement, all rights to the use of the connection media revert to the City who may sell, lease, or otherwise use the connection media at its sole discretion. The connection media shall be left in working order and not be intentionally cut or destroyed. The City may require the media be removed from all poles and underground conduits by the former Franchisee at its own expense.

Upon expiration of this Agreement, Franchisee shall either remove its Facilities in accordance with ORS 221.470(2020) or seek City's written consent to leave its Facilities in place pursuant to AMC 3.80.150 of this Agreement.

3.80.220 Reports and inspection.

With each franchise fee payment, the Franchisee shall furnish a sworn statement or declaration under oath from the Chief Finance Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the gross linear feet of cable which exists within the Albany city limits and the calculation of the franchise fee paid and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Franchisee in calculating the franchise fee. The Franchise Administrator of the City may require the Franchisee to provide any additional information reasonably necessary for administration of the franchise fee.

3.80.230 Change of law; Amendment of franchise agreement.

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 also may be amended by mutual consent of the parties or their successors-in-interest. Any amendments hereto shall be by written instrument executed with the same formalities as this Agreement.

To the extent any lawful City rule, ordinance, or regulation is adopted or amended and is generally imposed on all similarly situated persons or entities, the rule, ordinance, or regulation shall apply without need for amendment of this Agreement. The City shall provide Franchisee with notice of any such change in law prior to its adoption.

3.80.240 Franchise nonexclusive.

This franchise is not exclusive and shall not be construed as a limitation on the City in granting rights, privileges, and authority to other persons similar to, or different from, those granted by this Chapter, or in constructing, installing, maintaining, or operating any City-owned public utility. In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Franchisee to enter into the City's streets and public ways for the purpose of conducting business as a telecommunications carrier as that term is defined in ORS 133.721(8) within the City, the material provisions thereof shall be reasonably comparable to those contained herein, insofar as this is not in conflict with rules of government, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

3.80.250 Insurance and bonding.

The Franchisee shall, for the purposes of carrying out the provisions of this Section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the franchise a certificate of insurance evidence thereto with the Franchise Administrator, good and sufficient policies covering:

1. Workers' Compensation Insurance as required by the State of Oregon including Employers' Liability with limits of \$1,000,000; Franchisee shall ensure that each of its subcontractors complies with these same requirements and shall contain a Waiver of Subrogation against the City; and
2. Commercial General Liability Insurance with limits of \$5,000,000 per occurrence and \$5,000,000 general aggregate, with the aggregate on a per-project basis; and
3. Business Automobile Liability Insurance, for any owned, hired, or non-owned vehicles used in the performance of this agreement with combined single limits of \$5,000,000 each accident; and
4. Pollution Liability Insurance with limits of \$5,000,000 each incident and in the aggregate. If policy is on a "claims made" basis it must provide a 24-month tail or reporting period.
5. Excess or an Umbrella Insurance Policy: A combination of primary and Excess Liability or an Umbrella Insurance policy may be used to meet the required limits of insurance. Indication of use must be provided either on the certificate of insurance or within the endorsements.

The City of Albany, its officers, agents, and employees, shall be named an additional insured in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.

Franchisee shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance. This insurance shall not be canceled or materially altered without thirty (30) days' written notice first being given to the City's Franchise Administrator. If the insurance is canceled or materially altered within the term of this Agreement, Franchisee shall provide a replacement policy with the same terms.

Each policy, Workers' Compensation, Commercial General Liability, Business Automobile Liability, Pollution Liability, shall contain a waiver of subrogation against the City.

Prior to the commencement of any construction work by the Franchisee, the Franchisee shall file both a construction bond and a performance bond in an amount approved by the City in favor of the City and any other person who may suffer damages as a result of the breach of any duty by the Franchisee assured by such bond. Such bond as contemplated herein shall be in a form approved by the City and shall, among other matters, cover the cost of removal of any property of Franchisee. In no event shall the amount of said bond be construed to limit the liability of the Franchisee for damages. The City, at its sole option, may waive this requirement.

3.80.260 Indemnification.

Subject to the limitations set forth in ORS 30.260 through ORS 30.300, the Oregon Tort Claims Act, and the Oregon Constitution each party shall indemnify, defend and hold harmless the other, and the other's officials, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities ("Claims") arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by that party pursuant to this Agreement. Each party shall give to the other notice in writing of any such Claims within twenty (20) days of the date that party receives notice of any such Claims. Neither party shall settle, compromise, or take any action prejudicial to the other's defense of or interest in such Claims without the express written consent of the other party.

Franchisee also shall indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Franchisee's failure to remove, adjust or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with a relocation schedule furnished to Franchisee by the City Engineer, unless Franchisee's failure arises directly from the City's negligence or willful misconduct.

Franchisee agrees to forever indemnify the City against any claims, suits, actions, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of any hazardous substance as defined in ORS 465.200(16)(2020) caused by Franchisee's ownership, operation, or maintenance of a Telecommunications System in the Rights-of-Way.

3.80.270 Assignment, transfer, merger, lease, or mortgage.

This Agreement shall not be assigned nor any of Franchisee's Telecommunications System located in the Rights-of-Way sold, mortgaged, assigned, or otherwise transferred, without the prior written consent of the City, which will not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with, the Franchisee, or in the event that only *de minimis* assets are sold, assigned, or transferred. The Franchisee shall notify the City of any proposed transfers to such entities no less than thirty (30) days in advance of such assignment or transfer. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Franchisee's Telecommunications System for the purpose of financing the acquisition of equipment for, or the construction and operation of, Franchisee's Telecommunications System without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights under this Agreement.

In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer of the Franchisee's Telecommunications System, the City may inquire into the technical, legal, and financial qualifications of the prospective party with respect to its ability to perform under this Agreement, and the City may condition its consent upon satisfactory results of such inquiry. Franchisee shall assist the City with any such inquiry. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer, or merger. In the event such transfer is approved by the Oregon Public Utilities Commission, the City will automatically consent.

No sale, lease, mortgage, assignment, transfer, or merger for which the City's consent is required may occur until the Franchisee's successor, assignee or lessee has complied with the requirements of this Agreement, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by official act.

Within ten (10) days after execution and delivery of any instrument so consented to by the City, Franchisee shall file with the City Clerk an executed counterpart or certified copy thereof.

3.80.280 Rights; Forfeiture; Termination; Remedies.

In addition to any other rights set out elsewhere in this Agreement, the City reserves the right to declare a forfeiture of this Agreement and all of Franchisee's rights arising hereunder, upon the occurrence of one or more of the following:

1. The Franchisee violates any material provision of this Agreement and fails to cure the violation within thirty (30) calendar days of receiving notice of the violation from the City.
2. The Franchisee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
3. There is a final determination that Franchisee has failed, refused, neglected or is otherwise unable to obtain or maintain any permit required by any federal or state regulatory body regarding Franchisee's operation of its Telecommunications System within the City.
4. Franchisee fails to complete construction of any approved Facilities for more than eighteen (18) months after approval unless the City and Franchisee agree in writing to an extension for completion of such construction.
5. Franchisee becomes unable or unwilling to pay its debts or is adjudged a bankrupt.

For purposes of this subsection, the following provisions are, without limitation, material to this Agreement, thus allowing the City to exercise any of its rights under this Agreement:

1. The invalidation, failure to pay or any suspension of Franchisee's payments of franchise fees to the City under this Agreement.
2. Any failure by Franchisee to submit timely reports regarding the calculation of its franchise fees to the City.
3. Any failure by Franchisee to provide or maintain the liability insurance required under this Agreement.
4. Any failure by Franchisee to post or maintain any bond(s) required under this Agreement.
5. Any failure by Franchisee to provide copies of requested information as required in AMC 3.80.180 of this Agreement.
6. Any failure by Franchisee to otherwise fully comply with the requirements of this Agreement.

This Agreement may be terminated by mutual written consent of the parties at any time.

Either party may terminate this Agreement at any time for default, including but not limited to those occurrences set forth in this Section by providing not less than thirty (30) days' prior written notice to the other party, provided, however that this Agreement shall automatically terminate if Franchisee does not pay the franchise fee required under AMC 3.80.180 within one hundred and eighty (180) days of its due date and has been given not less than thirty (30) days' written notice to cure the delinquency.

Upon termination of this Agreement, the disposition of the Franchisee's property and Facilities that occupy the Rights-of-Way shall be governed by AMC 3.80.150 of this Agreement.

In addition to any other rights set out elsewhere in this franchise, the City may terminate this franchise if Franchisee violates any material provision of the franchise, including but not limited to failing to pay or any suspension of Franchisee's payments of franchise fees to the City under this franchise, failure by Franchisee to submit timely reports regarding the calculation of its gross revenues-based franchise fees to the City, failure to maintain the liability insurance and/or bonds required under this franchise, or failure to comply with all other State, Federal or local laws as set forth in this franchise, and the violation continues for 45 days after Franchisee receives notice of the violation from the City. All remedies and penalties under this franchise, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty.

The remedies and penalties contained in this Chapter, including termination of the franchise, are not exclusive, and 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 the Franchisee by, or pursuant to, this Chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this Chapter or acceptance of any payment due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation itself.

3.80.290 Force majeure.

Neither the City nor the Franchisee shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

3.80.300 Severability; Renegotiation.

In the event any provisions of this franchise are deemed to be void, invalid or unenforceable, that provision shall be severed from the remainder of this franchise so as not to cause the invalidity or unenforceability of the remainder of this franchise. All remaining provisions of this franchise shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope and breadth, such provisions shall be deemed valid to the extent of the scope and breadth permitted by law.

If any change in federal or state law materially affects any provision of this Agreement, including any change in the laws governing the services which may be assessed franchise fees, the City and the Franchisee may mutually agree to renegotiate the terms of this Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the party receiving the notification request accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation.

3.80.310 Public records.

Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.311 through 192.478. Franchisee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

Franchisee may identify information, submitted to the City as confidential pursuant to ORS 192.355(4), such as trade secrets, financial records, customer information or technical information. Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. Franchisee shall also provide a written explanation as to why such information is confidential under state or federal law. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. City shall make reasonable efforts to provide the Franchisee notice of a request for information marked as confidential, including a copy of the request, within ten (10) business days of receiving any such request. Franchisee shall have five (5) business days within which to provide a written response to the City before the City will disclose any of the requested confidential information. The City shall retain the sole discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

3.80.320 Choice of law; Venue; Notice.

The laws of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in the Circuit Courts in and for Linn County, Oregon.

Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the other party, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) sent by facsimile transmission.

Any such notice or communication delivered by personal delivery shall be deemed delivered and effective upon actual receipt. Any notice or communication sent by United States mail, postage prepaid, shall be deemed delivered and effective five (5) days after mailing. Any notice or communication sent by overnight courier shall be deemed delivered and effective one (1) business day after dispatch. Any notice or communication sent by facsimile transmission shall be deemed delivered when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

3.80.330 Complete agreement.

This Franchise Agreement, including any attachments and laws, rules and regulations incorporated herein or to which this Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

3.80.340 Dispute costs; Attorneys' fees.

In the event an attorney is employed to enforce the provisions of this franchise (including any bankruptcy, insolvency or similar proceedings affecting creditors' rights generally), the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred, irrespective of whether any legal proceeding is commenced. If any legal action, arbitration, or other proceeding is brought to construe, interpret, or enforce the

terms of this franchise, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in connection therewith, both at trial and on any appeal therefrom or petitions for review thereof. Such sum shall include an amount estimated by the court as the reasonable costs and fees to be incurred by the prevailing party in collecting any monetary judgment or award or otherwise in enforcing any order, judgment or decree entered in such suit, action, or other proceeding.

3.80.350 Successors and assigns.

This franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors, and assigns. Franchisee, however, shall not make any assignment without written consent of the City, and any assignment made without the City's consent, shall be null and void. Notwithstanding the previous sentence, Franchisee may assign this franchise without the City's consent, (1) to an entity controlled by, under common control with, or controlling Franchisee; or (2) by mortgage, hypothecation, or other security instrument to secure indebtedness.

Section 2. Franchise effective only upon acceptance of Franchisee.

This franchise is effective on the date provided herein only upon written acceptance of its terms by an authorized representative of Franchisee.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager

FROM: Jeanna Yeager, Finance Director

DATE: October 11, 2024, for the October 23, 2024, City Council

SUBJECT: Renew Telecommunications System Franchise with AT&T.

Relates to Strategic Plan theme: Effective Government

Action Requested:

Repeal ordinances 5471, 5493, and 5838 and adopt a new ordinance to amend the nonexclusive telecommunications system franchise to AT&T Corp. for the ongoing operation of a telecommunications system, and fixing terms, conditions, and compensation of such franchise.

Discussion:

AT&T has successfully maintained a franchise relationship with the City over the last twenty-four years and is seeking to renew its agreement. The current agreement is codified in Albany Municipal Code 3.40.

The City has implemented updated telecommunication franchise agreements that comprehensively address utility services and their use of public rights-of-way. Each agreement consists of 35 sections across 15 pages, with Section 340.180 specifically addressing financial compensation to the City. This payment is classified as "rent" for the use of public spaces, rather than a tax, and serves as compensation for the benefits utilities gain from access to these areas. It also helps to offset any public inconvenience caused by the installation, maintenance, or removal of utility infrastructure.

This ordinance covers much more than just financial considerations. The subject headings highlight the contractual nature of the agreement and detail both parties' responsibilities on non-financial issues. These include, but are not limited to, provisions for Construction, Excavation, and Relocation; Restoration of Rights-of-Way; Right-of-Way Vacations; and management of Hazardous Substances; as well as requirements for Insurance and Bonding.

Budget Impact:

This is a renewal and will have no additional impact on the budget.

Attachments: Ordinance



AN ORDINANCE AMENDING CHAPTER 3.40 OF THE ALBANY MUNICIPAL CODE (AMC) AND RENEWING A NON-EXCLUSIVE TELECOMMUNICATIONS SYSTEM FRANCHISE TO AT&T CORP. FOR THE CONSTRUCTION AND OPERATION OF A TELECOMMUNICATION SYSTEM; AND FIXING TERMS, CONDITIONS, AND COMPENSATION OF SUCH FRANCHISE; AND REPEALING ORDINANCE NO. 5471, ORDINANCE NO. 5493, AND ORDINANCE NO. 5838

WHEREAS, pursuant to federal law and state statutes the City is authorized to grant non-exclusive franchises to occupy the City Rights-of-Way or other public property in order to construct, operate, use, and maintain telecommunications service, gas service, electricity, and other public utilities, within the municipal boundaries of the city of Albany; and

WHEREAS, the City of Albany has determined that the financial, legal, and technical ability of AT&T Corp. is reasonably sufficient to continue to provide services, facilities, and equipment necessary to meet the current and future telecommunication needs of the community.

NOW, THEREFORE, the people of the City of Albany do ordain as follows.

Section 1. AMC Chapter 3.40.010 through 3.40.350 is established to read as follows:

3.40.010 Franchise granted.

The City of Albany, hereinafter referred to as “City”, hereby grants to AT&T, a Corporation authorized to conduct business in Oregon, hereinafter referred to as “Franchisee”, the non-exclusive right and privilege to occupy the City’s Rights-of-Way for the purpose of construction, use, operation, and maintenance of a Telecommunications System. Franchisee shall use its Telecommunications System solely to provide Telecommunications Services (as defined in ORS 759.005(8)), private telecommunication network (as defined in ORS 759.005(4)) service, and internet access service (as defined in ORS 305.822(1)(b)) within the City and to place, erect, lay, maintain, and operate in, upon, over and under streets, alleys, avenues, thoroughfares and public highways, places and grounds within the City (collectively, “Public Ways”), poles, wires, conduits, cabinets, appurtenances, and other appliances and conductors (collectively, “Facilities”) for all communication purposes.

This Agreement and the grant of authority conferred herein are not exclusive. The City reserves the right to grant the authority to others to use the Franchise Area during the term of this Agreement. The Franchisee shall respect the rights and property of the City and other authorized users of the Rights-of-Way. This Agreement does not confer on Franchisee any right, title, or interest in any Right-of-Way beyond that expressly conferred herein. This Agreement does not confer any right or privilege to use or occupy any other property of the City or any other entity.

Nothing in this Agreement shall be construed to prevent the City from constructing sewers; from grading, paving, repairing, or altering any Right-of-Way, or from constructing, installing, repairing, or removing water mains or any other public work or improvement. If any of the Franchisee’s Telecommunications System interferes with the work described in this subsection, the Franchisee’s Telecommunications System shall be removed or replaced as set forth in AMC 3.40.040 of this Agreement.

3.40.020 Rules of construction; Definitions.

Throughout this Agreement, captions are intended solely to facilitate reading and reference and shall not affect the meaning and interpretation of this Agreement.

When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word “shall” will always mean mandatory and not merely directory.

For the purpose of this Agreement, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise.

1. “City” means the City of Albany, Oregon and the area within its boundaries as extended in the future.
2. “Conduit” is an electrical raceway for the enclosure of electrical conductors and may consist of rigid conduit of electrical metallic tubing or plastic tubing.
3. “Council” means the legislative body of the City.
4. “Customer,” “user” or “subscriber” shall mean any person or entity lawfully receiving telecommunications service.
5. “Facility” means any tangible component of the Franchisee’s Telecommunications System including, but not limited to, fiber, wires, cables, pipes, mains, ducts, conduits, vaults, pedestals, poles, antennas, power boxes, cabinets, and electronic equipment.
6. “Franchise Administrator” means the City Manager or designee of the City of Albany.
7. “Franchisee” means AT&T, Corp., its successors, legal representatives, or assigns.
8. “Gross Revenues” means any and all revenue in whatever form, grant, subsidy, exchange, or otherwise directly or indirectly received by the Franchisee for Telecommunications Service provided to subscribers within the City of Albany subject to all applicable limitations imposed by federal and/or state law.
9. “Local” means Linn County, Oregon or Benton County, Oregon.
10. “May” is permissive.
11. “Minimum Annual Franchise Fee” means the minimum amount paid to the City of Albany under this Agreement.
12. “Person” includes an individual, corporation, association, firm, partnership, and joint stock company.
13. “Private Telecommunications Network” means a system for the provision of telecommunications service or any portion of telecommunications service, including the construction, maintenance, or operation of the system, by a person for the exclusive use of that person and not for resale, directly or indirectly.
14. “Public Place” includes any City-owned park, place, facility, or grounds within the City that is open to the public but does not include a street or bridge.
15. “Radio Common Carrier” means any corporation, company, association, joint stock association, partnership and person, their lessees, trustees or receivers and any town making available facilities to provide radio communications service, radio paging or cellular communications service for hire.
16. “Rights-of-Way” means the surface of, and the space above and below, any street, road, alley, highway, sidewalk, utility easement, public square, public park, or other public place owned or otherwise held by the City.
17. “Service Area” means the legal boundaries of the City and including any areas annexed during the term of the franchise.
18. “Street” includes the surface, the air space above the surface, and the area below the surface of any public street, alley, avenue, road, boulevard, thoroughfare, or public highway, other public right-of-way, including public utility easements, but does not include a bridge or public place.
19. “Shall” is mandatory.

20. "Technical Facilities" or "Facilities" shall mean all real property, equipment, and fixtures used by Franchisee in the distribution of its services through its system and includes, but is not limited to, poles, conduit, cables, wires, microwave transmitters, antennae, amplifiers, etc.
21. "Telecommunications Service" (as defined in ORS 759.05(8)) and means any service provided for a fee to the public, or to such class of users as to be effectively available to the public without regard to the facilities used to provide the telecommunications; and for the purpose of voice, video or data transmission, including, but not limited to, local exchange service, access service, extended area service, call origination, interconnection, switching, transport, call termination and/or any other telecommunications service identified and authorized by the Federal Communications Commission ("FCC") or the Oregon Public Utility Commission. Telecommunications Service does not include any of the following: cable service as defined by 47 U.S.C. § 522; open video system service as defined in 47 C.F.R. § 76 (2009); private communications system services provided without using the public rights-of-way; over-the-air radio or television broadcasting to the public-at-large from facilities licensed by the FCC or any successor thereto; direct-to-home satellite service within the meaning of Section 602 of the Telecommunications Act of 1996; or commercial mobile radio service as defined by 47 C.F.R. § 20.3 (2009).
22. "Telecommunications System" means all Facilities owned, leased, rented, maintained, or used by Franchisee for the purpose of providing Telecommunications Service and located in, under and/or above Rights-of-Way.

3.40.030 Effective date; Term.

The effective date of this Agreement shall be the first day of the full calendar month following the date the ordinance takes effect (the "Effective Date").

This Agreement, and all rights and obligations pertaining hereto, shall, subject to any applicable statutory or regulatory limitations on the maximum term allowed for public contracts, continue in full force and effect for an initial term of five (5) years, commencing on the Effective Date. Unless sooner terminated by either Party as set forth in subsection 28.1 below, at the end of the initial five (5) year term, this Agreement shall be reviewed by both Parties and must be in compliance with Oregon Revised Statute ("ORS") 221.460(2020).

3.40.040 Construction; Excavation; and Relocation.

Franchisee shall maintain maps and data pertaining to all of its Facilities located in the City on file at an office in the State of Oregon. The City shall be allowed to inspect all such maps and data pertaining to its Facilities located in the City Rights-of-Way at any time during regular business hours upon not less than five (5) business days' prior notice. Upon request of the City and without charge, Franchisee shall provide current maps and data to the City showing the location of all Franchisee's Facilities within the City. Upon completion of any and all of its Facilities in the Public Right-of-Way, Franchisee shall provide a map or maps consistent with this Section to the City, showing the location as built of its installed Telecommunication System in the Rights-of-Way. Such as-built maps shall be in a form reasonably acceptable to the City Engineer and shall define specific locations of Facilities. City will not sell or transmit Franchisee maps or data to third parties unless permitted by Franchisee or required by law. The City will make available to Franchisee at no cost any relevant City-prepared maps or data.

Subject to applicable rules and regulations of the City, Franchisee may perform all excavations and other work necessary to construct, operate and maintain its Telecommunications System. All construction and maintenance of any and all Facilities within Rights-of-Way shall, regardless of who performs the excavation, installation and/or construction, are and shall remain the responsibility of the Franchisee. Franchisee shall apply for and obtain all permits necessary for excavation, installation and/or construction of any Facilities located in the Rights-of-Way and shall pay all applicable fees due for City permits. Franchisee must also give such notice as required by law to other franchisees, licensees, or permittees of the City, and/or other units of government owning or maintaining facilities which may be affected by the proposed work.

Prior to beginning any excavation, installation, or construction work, Franchisee shall provide the City with an initial schedule and the estimated total cost of such work. When Franchisee's work under its permit is completed, Franchisee shall provide the City with the total amount of Right-of-Way, measured linearly, occupied by Franchisee's Telecommunications System, and with a map showing the location of its installed Telecommunications System, as built. Such "as-built" maps shall be in a form reasonably acceptable to the City Engineer.

All work by Franchisee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Franchisee's work under AMC 3.40.130 and 3.40.150 of this Agreement shall be done in strict compliance with all applicable laws, ordinances, rules and regulations of the City and the State of Oregon.

Within thirty (30) days of any change in location of Franchisee's Telecommunications System, Franchisee shall provide a map to the City Engineer, showing the location of Franchisee's Telecommunications System on whatever standard scale the City adopts for general use. The Franchisee shall also provide such maps in an electronic format acceptable to both the City and Franchisee.

In the event that emergency repairs to its Telecommunications System are necessary, Franchisee shall immediately notify the City of the need for such repairs. Franchisee may immediately initiate such emergency repairs and shall apply for appropriate permits the next business day following discovery of the emergency. Franchisee shall comply with all City ordinances and regulations relating to any excavations or construction undertaken during emergency repair work, including the payment of permits or license fees. If emergency work has been done in a manner or location unacceptable to the City, the City shall notify the Franchisee in writing. The Franchisee shall make all appropriate modifications and relocation within sixty (60) days of such written notice.

Franchisee shall comply with ORS 757.542 through ORS 757.562(2020) and the rules and regulations promulgated thereunder in making excavations.

The City shall have the right to require Franchisee to change the location of any of its Facilities located within the Rights-of-Way when public convenience and necessity requires such change, and the expense thereof shall be paid solely by Franchisee. However, if the relocation request is initiated by a third party, the Franchisee shall have the right to charge the cost of the relocation to that third party. Should Franchisee fail to remove or relocate any such Facilities by the date established by the City, which, except in the event of a public emergency, shall not be sooner than ninety (90) days after City's written notice to remove/relocate, the City may cause or effect such removal or relocation, and the expense thereof shall be paid by Franchisee, including all direct, indirect or consequential costs and expenses incurred by the City due to Franchisee's delay. If the City requires Franchisee to relocate any of its Facilities located within the Rights-of-Way, the City shall make a reasonable effort to provide Franchisee with an alternate location for such Facilities.

As permitted by applicable law, administrative rule, or regulation, the City may require Franchisee to remove and replace any overhead Facilities with underground Facilities at the same or different locations subject to Franchisee's engineering and safety standards. The expense of such a conversion shall be paid by Franchisee, and Franchisee may recover its costs from its customers in accordance with state laws and administrative rules or regulations. Nothing in this subsection prevents the City and Franchisee from agreeing to a different form of cost recovery consistent with applicable statutes and administrative rules or regulations on a case-by-case basis.

Franchisee's Telecommunications System shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, or other facilities that may have been laid in the Rights-of-Way by the City or pursuant to the City's authority.

Upon Franchisee's acquisition of any Facilities located in the Rights-of-Way, or upon any addition or annexation to the City of any area in which Franchisee owns or controls any Facilities in the Rights-of-Way, the Franchisee shall submit to the City a written statement describing all Facilities involved, along with any documentation evidencing such acquisition and specifying the location of all such Facilities. Such Facilities shall immediately be subject to the terms of this Agreement upon acquisition or control by Franchisee.

The City may require Franchisee to temporarily remove and/or relocate Facilities located in any Right-of-Way by giving not less than thirty (30) days' advance written notice to Franchisee. Prior to such removal and/or relocation, the City agrees to provide a suitable substitute location for such relocated Facilities to maintain service. The City will assist in acquiring any needed easements if required square footage is not available in the Rights-Of-Way. The cost of removal and relocation of its Facilities to accommodate public projects shall be paid by Franchisee; however, when such removal and relocation are to be temporary and both the initial and the subsequent relocation are for public projects and not at the request of or to accommodate a private party, initial relocation costs shall be paid by Franchisee and the costs of subsequent relocations occurring less than two years after the initial relocation shall be paid by the City.

Nothing in this Agreement shall be construed in any way to prevent the City from excavating, grading, paving, planking, repairing, widening, altering, or doing any work in any Rights-Of-Way consistent with National Electric Safety Code. The City shall coordinate any such work with Franchisee to avoid, to the extent reasonably foreseeable, any obstruction, injury, or restriction on the use of any of Franchisee's Facilities. Nothing in this Section relieves Franchisee from its obligations set forth herein.

3.40.050 Street repair – Expense responsibility.

Whenever Franchisee shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition in accordance with the City of Albany Standard Construction Specifications and the permit issued for the work as soon as practicable without unnecessary delay, and failing to do so, the City shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by said company, its successors and assigns, the City shall cause such repairs to be made at the expense of Franchisee.

3.40.060 Restoration of rights-of-ways.

Whenever Franchisee disturbs the surface of any Right-of-Way for any purpose, Franchisee shall promptly restore the Right-of-Way to as good or better condition than it had been prior to such disturbance.

All restoration of Rights-of-Way surfaces shall be subject to the approval of the City Engineer who may issue an order requiring correction of the restoration work. If the correction order is not complied with within thirty (30) days or any other such later time as may be specified in the order, the City may restore the surface of the Rights-of-Way, in which case Franchisee shall pay all reasonable costs of the restoration work to the City, including the resurfacing, inspection, supervision, and administrative costs of the resurfacing. If the City restores the surface of any Rights-of-way under this subsection, Franchisee shall also pay for the cost of issuing the correction order. If the work by Franchisee creates a public safety hazard as determined by the City Engineer, Franchisee may be required to repair or restore such Right-of-Way within twenty-four (24) hours of such determination or within such time as otherwise agreed upon by the City Engineer and Franchisee.

3.40.070 Improvements – Utility obstruction prohibited.

The City reserves the right to construct, install, maintain, and operate any public improvement, work, or facility, to do any work that the City may find desirable on, over, or under any street, bridge, or public place, and to vacate, alter or close any street, bridge, or public place. If City vacates any portion of the public way containing facilities, City shall reserve an appurtenant easement for public utilities within that vacated portion within which Franchisee may continue to operate existing facilities under the terms of this franchise for at least the remaining term as set forth in AMC 3.40.030. Nothing in this Chapter shall be construed in any way to prevent the proper authorities of the City from sewerage (sanitary and storm), providing water service, grading, planking, rocking, paving, repairing, altering, or improving any of the streets, alleys, avenues, thoroughfares, and public highways,

places and grounds within the City in or upon which the poles, wires or other conductors of Franchisee shall be placed, but all such work or improvements shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus, and the moving of company facilities, where required due to such work by the City, will be done by Franchisee within 120 days of notice by the City without cost to the City. The Franchisee shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed work. Any such work done for or at the request of a private individual, entity, developer, or development shall be done at the expense of such private individual, entity, developer, or development.

3.40.080 Emergency removal and alternate routing of facilities.

If, at any time, in case of fire, disaster, or other imminent threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers or other appurtenances to the system of the Franchisee, such cutting or moving may be done in a manner that minimizes disruption to Franchisee's services and facilities, and City shall provide prompt notice to Franchisee. Any repairs rendered necessary thereby shall be made by the Franchisee, at its sole expense; provided, that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City. The City shall hold the Franchisee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the City's cutting or moving of Franchisee's facilities. In the event continued use of any street is denied to the Franchisee by the City for any reason, the Franchisee shall provide service to affected subscribers over such alternate routes as shall be determined by Franchisee within a reasonable period of time.

3.40.090 Cables, wires – Rearrangement – Notice.

Whenever the City reasonably determines that the public interest requires that it is necessary to rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Franchisee to permit the passage of any building, machinery or other object, or to widen/realign City streets, or to make any other alteration or improvement which will require rearrangement of Franchisee's facilities or equipment, the said Franchisee will perform such rearrangement within a reasonable period after written notice from the City. Said notice shall bear the approval of such official as Council may designate and shall provide that the costs of such rearrangement shall be borne by any third persons whose activities create the need for rearrangement except that a request by the City of Albany, on behalf of itself or any other unit of government, to rearrange aerial cables or wires or other apparatus of the Franchisee shall be accomplished by the Franchisee within 120 days at no cost to the City.

3.40.100 Tree trimming.

Subject to the provisions of this Chapter, Franchisee may trim trees, when necessary, in public rights-of-way for the operation of the lines, wires, cables and antennas or other appurtenances, provided such trimming shall be done by competent employees, agents, or contractors; and it shall be done without cost or expense to the City.

Franchisee may prune or cause to be pruned, using proper arboricultural practices, any tree located in the Right-of-Way which substantially interferes with Franchisee's Telecommunications System if Franchisee gives no less than fourteen (14) days' advance written notice to the City's Urban Forester, City Franchise Administrator, and any adjoining property owners. Such pruning work shall be the minimum amount required to alleviate the substantial interference with the operation of Franchisee's Telecommunications System. Any contractor engaged by Franchisee to perform work under this subsection must be approved by the City in advance of the performance of any work. Any wood, debris or other matter resulting from the pruning of trees shall be removed from the Right-of-Way on the same day pruning occurs.

3.40.110 Use of poles.

The City reserves to itself the right at any time to use the poles and other installations of the Franchisee erected or installed under the authority granted in this Chapter for any City-owned facilities of whatsoever nature, but it is agreed that such use shall not interfere with the Franchisee's use thereof. Franchisee shall not be required to own or operate any facilities the City is using if the Franchisee ceases to have a need therefor.

3.40.120 Temporary relocation at the request of third parties.

Whenever it is necessary to temporarily relocate or rearrange any Facility of Franchisee to permit the passage of any building, machinery or other object, Franchisee shall perform the work upon thirty (30) business days' written notice from the persons desiring to move the building, machinery, or other object. The notice shall: (1) demonstrate that the third party has acquired any necessary permit from the City; (2) detail the route of movement of the building, machinery or other object; (3) provide that the person requesting the temporary relocation shall be responsible for Franchisee's costs; (4) provide that the requestor shall indemnify and hold harmless the City and Franchisee from any and all damages or claims resulting either from the moving of the building, machinery or other object or from the temporary relocation of Franchisee Facilities; and (5) be accompanied by a cash deposit or other security acceptable to Franchisee for the costs of relocation. Franchisee is not obligated to comply with any request to temporarily relocate or rearrange any Facility if the notice fails to meet any of the requirements in the previous sentence. The cash deposit or other acceptable security shall be in an amount reasonably calculated by Franchisee to cover Franchisee's costs of temporary relocation and restoration. Franchisee may, in its sole discretion, waive the cash deposit or other acceptable security requirement.

3.40.130 Right-of-way vacation.

If any Right-of-Way or portion thereof used by Franchisee is vacated by the City during the term of this Agreement, Franchisee shall, without expense to the City, remove its Telecommunications System therefrom and restore, repair, or reconstruct the Right-of-Way or portion thereof in as good or better condition as before the removal, unless the City Council specifically reserves to Franchisee the right to continue to use the vacated Right-of-Way. In the event of failure, neglect, or refusal of Franchisee, after ninety (90) days' notice by the City, to restore, repair, reconstruct, improve, or maintain such vacated Right-of-Way, the City may perform such work or cause such work to be performed. The direct, indirect, and consequential costs thereof, as a result of the Franchisee's delay, as determined by the City Council, shall be entered in the Docket of City Liens against any property of Franchisee, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. In the event of vacation under this Section, the City shall cooperate with Franchisee to identify alternative locations within the Rights-of-Way for placement of Franchisee's Facilities.

3.40.140 Maintenance of facilities.

Franchisee shall be solely responsible for performing all required maintenance and improvements to its Telecommunications System and for installing all safeguards reasonably necessary to prevent injury to any person, or to any publicly or privately owned property, and Franchisee shall be solely responsible for all costs thereof. Franchisee shall not construct its Telecommunications System in a manner that requires any of its customers to install cables, ducts, conduits, or other facilities in, under, or over the Rights-of-Way. Franchisee shall be responsible, at its own expense, for repairing any trench settlement or other paving defect resulting from the installation of Facilities in the Rights-of-Way.

3.40.150 Discontinued use of facilities.

Whenever Franchisee intends to permanently discontinue use of part or all its Telecommunications System, Franchisee shall submit a completed application to the City Engineer for approval, describing the Facility or Facilities involved and the date on which the Franchisee intends to discontinue its use. Franchisee may remove the Facility or request that the City permit the Facility to remain in place, which permission shall *be in the sole discretion of the City*. If Franchisee is permitted to abandon its Facilities in place as evidenced by written consent from the City, Franchisee shall submit to the City a deed or other form of documentation acceptable to the City Attorney transferring ownership of such Facilities in the Rights-of-Way to the City.

After the transfer of ownership is complete, the Franchisee shall have no further obligation on the Facilities. Notwithstanding Franchisee's request that any such Facility remain in place, the City Engineer may require the Franchisee to remove the Facility from the Rights-of-Way, or modify the Facility, or a combination of both, in order to protect the public health and safety, or otherwise serve the public interest. Franchisee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until the City consents

to Franchisee's abandonment, or Franchisee removes or modifies the Facility as directed by the City Engineer, or until the rights to and responsibility for the Facility are accepted by another person or entity having authority to construct and maintain such Facilities, Franchisee shall be responsible for all necessary repairs and relocations of the Facilities, as well as restoration of the Public Rights-Of-Way, in the same manner and degree as if the Facilities were in active use. Franchisee shall also retain all liability for such Facilities.

3.40.160 Hazardous substances.

Franchisee shall comply with all applicable state and federal laws, statutes, regulations, and orders concerning hazardous substances relating to Franchisee's Telecommunications System in the Rights-of-Way. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(16)(2020).

Upon reasonable notice to Franchisee and in the presence of an authorized representative of Franchisee, the City may inspect Franchisee's facilities in the Right-of-Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Franchisee's Telecommunications System.

In removing or modifying any of its Facilities as provided in this Agreement, Franchisee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto.

City and Franchisee expressly acknowledge that the City shall have no liability whatsoever for any claims, damages or harm caused by or related to the existence or release of Hazardous Substances in or by Franchisee's Telecommunications System, or for Franchisee's failure to adequately address or clean up such Hazardous Substances. Franchisee shall indemnify City for any claims, damages, or harm according to the requirements set forth in AMC 3.40.260 of this Agreement.

3.40.170 Performance, compliance with laws, rules, and regulations.

At all times during the term of this franchise, Franchisee shall comply with all applicable laws, ordinances, rules and regulations of the United States of America, the State of Oregon, and the City of Albany, including all agencies and subdivisions thereof. Franchisee shall be subject to the lawful exercise of the police power of the City of Albany and to such reasonable regulations of general applicability as the City may from time to time hereafter by resolution or ordinance provide insofar as such regulations or ordinances do not materially alter or impair the rights and obligations of Franchisee and are adopted pursuant to the lawful police power of the City, and are adopted and enforced in a reasonable, uniform, and nondiscriminatory manner. No provision of this franchise shall be construed as a waiver of local, State or Federal law, or as a limit of liability.

Franchisee shall at all times keep and maintain all of its poles, fixtures, conduits, wires, and its entire system in good state of repair and shall at all times conduct its operations under this franchise, including installation, construction, or maintenance of its facilities, in a safe and workmanlike manner so as not to present a danger to the public or the City.

The location, construction, extension, installation, maintenance, removal, and relocation of the facilities of the Franchisee shall conform to the requirements of the State and Federal statutes and regulations adopted pursuant thereto in force at the time of such work, and such reasonable specifications in force at the time of such work, as the City may from time to time adopt. All installations, rearrangements, removals, lowering or raising of aerial cables or wiring or other apparatus shall be done in conformance with the requirements of the National Electric Safety Code, the laws of the State of Oregon and the ordinances of the City. The City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time.

3.40.180 Franchise fee; Payment; and Auditing.

As compensation for the benefits and privileges granted pursuant to this Agreement, and in consideration for use of the Rights-of-Way, the Franchisee shall pay to the City, on a quarterly basis, a franchise fee for the duration of this Agreement.

Effective on the date when the Franchise agreement is fully executed, and until the franchise's expiration as provided in AMC 3.40.030 Franchisee shall pay to the City quarterly the greater of: (1) seven percent (7%) of gross revenues collected by Franchisee and derived from Franchisee's provision of all services authorized and delivered pursuant to this agreement within the corporate limits of the City, or (2) a minimum fee of \$750.00 per quarter will be due the City for administration of this agreement and for use of the City's Right-of-Way. If the seven percent (7%) of gross revenues exceeds the minimum fee each quarter, then the greater amount will be due the City.

This franchise fee shall be sent by check or electronic funds transfer and received by the finance department of the City of Albany before the last business day of the month following the month revenues were received by the Franchisee, e.g., Ordinance approval March 23, Effective Date April 23, Payment period begins May 1 through July 31, Quarterly payment due August 31. If a payment is not received by the date set forth above, the payment shall be deemed delinquent and shall accrue interest at a rate of nine percent (9%) per annum.

Payments made by Franchisee will be accepted by the City from the Franchisee, in payment of any separate permit fees that are imposed by the City on Franchisee for street openings, construction or inspection or maintenance of fixtures or facilities. However, Franchisee shall not deduct charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions from the franchise fee required by this Chapter.

No acceptance of any franchise fee payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall any acceptance of payments be construed as a release of any claim that the City may have for further or additional sums payable.

If the City determines that Franchisee made any underpayment, and that the underpayment exceeded five percent (5%) of the amount due, Franchisee shall pay interest compounded monthly at the current rate nine percent (9%). Interest shall be due on the entire underpayment from the date on which payment was due until the date on which full payment is received. If the Franchisee disputes the City's determination of underpayment, the Franchisee shall place the disputed amount in an interest-bearing escrow account jointly controlled by the parties until final resolution. Interest shall accrue to the prevailing party.

The City, its agents, and representatives shall have the authority to inspect, review and audit all of Franchisee's books, maps, and records, directly concerning any and all amounts due under this Agreement, upon not less than thirty (30) days' prior written notice to Franchisee. Franchisee shall keep all books, maps, and records so as to accurately show the same and shall have such books, maps, and records available during normal business hours within the City's metropolitan region. Any review by the City under this subsection shall be completed within three (3) years from the date payment was due. If the City requests in writing that Franchisee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and Franchisee fails within thirty (30) days of receipt of the request to provide, or cause to be provided, such information, then the three (3) year period shall be extended by one day for each day or part thereof beyond thirty (30) days that Franchisee fails to provide, or fails to cause to be provided, such requested information.

3.40.190 Taxes, fees, and charges.

Nothing in this Chapter shall give the Franchisee any credit against any uniform, nondiscriminatory business tax to the extent such tax applies to revenues other than those revenues that are the subject of the franchise fee, or any ad valorem property tax now or hereafter levied against real property or personal property within the City, or against any local improvement assessments or any business tax imposed on Franchisee, or against any charges imposed upon the Franchisee, or against any changes imposed upon the Franchisee's property.

Payment of the franchise fee due under this Agreement shall not exempt the Franchisee from the payment of any other license fee, permit fee, tax or charge on the business, occupation, property, activity, or income of the

Franchisee that may be lawfully imposed by the City or any other taxing authority, except as may otherwise be provided in the ordinance or laws imposing such other license fee, permit fee, inspection fee, tax, or charge.

3.40.200 Sale of subscriber lists prohibited.

Except as otherwise expressly permitted by law, the Franchisee shall not sell, or otherwise make available any list which identifies subscribers by name or address, to any person, agency, or entity, except as needed to maintain current services or implement new services to subscribers in connection with Franchisee's services.

3.40.210 Abandonment; Removal of facilities upon expiration.

If the Franchisee goes out of business or withdraws service from the area and as a consequence refuses to renew the agreement, all rights to the use of the connection media revert to the City who may sell, lease, or otherwise use the connection media at its sole discretion. The connection media shall be left in working order and not be intentionally cut or destroyed. The City may require the media be removed from all poles and underground conduits by the former Franchisee at its own expense.

Upon expiration of this Agreement, Franchisee shall either remove its Facilities in accordance with ORS 221.470(2020) or seek City's written consent to leave its Facilities in place pursuant to AMC 3.40.150 of this Agreement.

3.40.220 Reports and inspection.

With each franchise fee payment, the Franchisee shall furnish a sworn statement or declaration under oath from the Chief Finance Officer or designee, setting forth the amount and calculation of the payment. The statement shall detail the gross linear feet of cable which exists within the Albany city limits and the calculation of the franchise fee paid and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the Franchisee in calculating the franchise fee. The Franchise Administrator of the City may require the Franchisee to provide any additional information reasonably necessary for administration of the franchise fee.

3.40.230 Change of law; Amendment of franchise agreement.

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 also may be amended by mutual consent of the parties or their successors-in-interest. Any amendments hereto shall be by written instrument executed with the same formalities as this Agreement.

To the extent any lawful City rule, ordinance, or regulation is adopted or amended and is generally imposed on all similarly situated persons or entities, the rule, ordinance, or regulation shall apply without need for amendment of this Agreement. The City shall provide Franchisee with notice of any such change in law prior to its adoption.

3.40.240 Franchise nonexclusive.

This franchise is not exclusive and shall not be construed as a limitation on the City in granting rights, privileges, and authority to other persons similar to, or different from, those granted by this Chapter, or in constructing, installing, maintaining, or operating any City-owned public utility. In the event the City enters into a franchise, permit, license, authorization, or other agreement of any kind with any other person or entity other than Franchisee to enter into the City's streets and public ways for the purpose of conducting business as a telecommunications carrier as that term is defined in ORS 133.721(8) within the City, the material provisions thereof shall be reasonably comparable to those contained herein, insofar as this is not in conflict with rules of government, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

3.40.250 Insurance and bonding.

The Franchisee shall, for the purposes of carrying out the provisions of this Section, prior to commencing construction of any kind, have in full force and effect, and file and maintain during the term of the franchise a certificate of insurance evidence thereto with the Franchise Administrator, good and sufficient policies covering:

1. Workers' Compensation Insurance as required by the State of Oregon including Employers' Liability with limits of \$1,000,000; Franchisee shall ensure that each of its subcontractors complies with these same requirements and shall contain a Waiver of Subrogation against the City; and
2. Commercial General Liability Insurance with limits of \$5,000,000 per occurrence and \$5,000,000 general aggregate, with the aggregate on a per-project basis; and
3. Business Automobile Liability Insurance, for any owned, hired, or non-owned vehicles used in the performance of this agreement with combined single limits of \$5,000,000 each accident; and
4. Pollution Liability Insurance with limits of \$5,000,000 each incident and in the aggregate. If policy is on a "claims made" basis it must provide a 24-month tail or reporting period.
5. Excess or an Umbrella Insurance Policy: A combination of primary and Excess Liability or an Umbrella Insurance policy may be used to meet the required limits of insurance. Indication of use must be provided either on the certificate of insurance or within the endorsements.

The City of Albany, its officers, agents, and employees, shall be named an additional insured in said policy for losses caused in whole or in part by reason of the exercise of the rights and privileges herein granted.

Franchisee shall be financially responsible for all pertinent deductibles, self-insured retention and/or self-insurance. This insurance shall not be canceled or materially altered without thirty (30) days' written notice first being given to the City's Franchise Administrator. If the insurance is canceled or materially altered within the term of this Agreement, Franchisee shall provide a replacement policy with the same terms.

Each policy, Workers' Compensation, Commercial General Liability, Business Automobile Liability, Pollution Liability shall contain a waiver of subrogation against the City.

Prior to the commencement of any construction work by the Franchisee, the Franchisee shall file both a construction bond and a performance bond in an amount approved by the City in favor of the City and any other person who may suffer damages as a result of the breach of any duty by the Franchisee assured by such bond. Such bond as contemplated herein shall be in a form approved by the City and shall, among other matters, cover the cost of removal of any property of Franchisee. In no event shall the amount of said bond be construed to limit the liability of the Franchisee for damages. The City, at its sole option, may waive this requirement.

3.40.260 Indemnification.

Subject to the limitations set forth in ORS 30.260 through ORS 30.300, the Oregon Tort Claims Act, and the Oregon Constitution each party shall indemnify, defend and hold harmless the other, and the other's officials, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities ("Claims") arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by that party pursuant to this Agreement. Each party shall give to the other notice in writing of any such Claims within twenty (20) days of the date that party receives notice of any such Claims. Neither party shall settle, compromise, or take any action prejudicial to the other's defense of or interest in such Claims without the express written consent of the other party.

Franchisee also shall indemnify the City for any damages, claims, additional costs, or expenses assessed against or payable by the City arising out of or resulting, directly or indirectly, from Franchisee's failure to remove, adjust or relocate any of its Facilities in the Rights-of-Way in a timely manner in accordance with a relocation schedule furnished to Franchisee by the City Engineer, unless Franchisee's failure arises directly from the City's negligence or willful misconduct.

Franchisee agrees to forever indemnify the City against any claims, suits, actions, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of any hazardous substance as defined in ORS 465.200(16)(2020) caused by Franchisee's ownership, operation, or maintenance of a Telecommunications System in the Rights-of-Way.

3.40.270 Assignment, transfer, merger, lease, or mortgage.

This Agreement shall not be assigned nor any of Franchisee's Telecommunications System located in the Rights-of-Way sold, mortgaged, assigned, or otherwise transferred, without the prior written consent of the City, which will not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with, the Franchisee, or in the event that only *de minimis* assets are sold, assigned, or transferred. The Franchisee shall notify the City of any proposed transfers to such entities no less than thirty (30) days in advance of such assignment or transfer. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Franchisee's Telecommunications System for the purpose of financing the acquisition of equipment for, or the construction and operation of, Franchisee's Telecommunications System without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights under this Agreement.

In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer of the Franchisee's Telecommunications System, the City may inquire into the technical, legal, and financial qualifications of the prospective party with respect to its ability to perform under this Agreement, and the City may condition its consent upon satisfactory results of such inquiry. Franchisee shall assist the City with any such inquiry. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer, or merger.

No sale, lease, mortgage, assignment, transfer, or merger for which the City's consent is required may occur until the Franchisee's successor, assignee or lessee has complied with the requirements of this Agreement, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by official act.

Within ten (10) days after execution and delivery of any instrument so consented to by the City, Franchisee shall file with the City Clerk an executed counterpart or certified copy thereof.

3.40.280 Rights; Forfeiture; Termination; Remedies.

In addition to any other rights set out elsewhere in this Agreement, the City reserves the right to declare a forfeiture of this Agreement and all of Franchisee's rights arising hereunder, upon the occurrence of one or more of the following:

1. The Franchisee violates any material provision of this Agreement and fails to cure the violation within thirty (30) calendar days of receiving notice of the violation from the City.
2. The Franchisee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.
3. There is a final determination that Franchisee has failed, refused, neglected or is otherwise unable to obtain or maintain any permit required by any federal or state regulatory body regarding Franchisee's operation of its Telecommunications System within the City.
4. Franchisee fails to complete construction of any approved Facilities for more than eighteen (18) months after approval unless the City and Franchisee agree in writing to an extension for completion of such construction.
5. Franchisee becomes unable or unwilling to pay its debts or is adjudged a bankrupt.

For purposes of this subsection, the following provisions are, without limitation, material to this Agreement, thus allowing the City to exercise any of its rights under this Agreement:

1. The invalidation, failure to pay or any suspension of Franchisee's payments of franchise fees to the City under this Agreement.
2. Any failure by Franchisee to submit timely reports regarding the calculation of its franchise fees to the City.
3. Any failure by Franchisee to provide or maintain the liability insurance required under this Agreement.
4. Any failure by Franchisee to post or maintain any bond(s) required under this Agreement.
5. Any failure by Franchisee to provide copies of requested information as required in AMC 3.40.180 of this Agreement.
6. Any failure by Franchisee to otherwise fully comply with the requirements of this Agreement.

This Agreement may be terminated by mutual written consent of the parties at any time.

Either party may terminate this Agreement at any time for default, including but not limited to those occurrences set forth in this Section by providing not less than thirty (30) days' prior written notice to the other party, provided, however that this Agreement shall automatically terminate if Franchisee does not pay the franchise fee required under AMC 3.40.180 within one hundred and eighty (180) days of its due date and has been given not less than thirty (30) days' written notice to cure the delinquency.

Upon termination of this Agreement, the disposition of the Franchisee's property and Facilities that occupy the Rights-of-Way shall be governed by AMC 3.40.150 of this Agreement.

In addition to any other rights set out elsewhere in this franchise, the City may terminate this franchise if Franchisee violates any material provision of the franchise, including but not limited to failing to pay or any suspension of Franchisee's payments of franchise fees to the City under this franchise, failure by Franchisee to submit timely reports regarding the calculation of its gross revenues-based franchise fees to the City, failure to maintain the liability insurance and/or bonds required under this franchise, or failure to comply with all other State, Federal or local laws as set forth in this franchise, and the violation continues for 45 days after Franchisee receives notice of the violation from the City. All remedies and penalties under this franchise, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty.

The remedies and penalties contained in this Chapter, including termination of the franchise, are not exclusive, and 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 the Franchisee by, or pursuant to, this Chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Franchisee by, or pursuant to, this Chapter or acceptance of any payment due shall not be waiver of any other or subsequent or future breach of the same or of any other term, condition, or obligation itself.

3.40.290 Force majeure.

Neither the City nor the Franchisee shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, or other events beyond the control of the other or the other's employees and agents.

3.40.300 Severability; Renegotiation.

In the event any provisions of this franchise are deemed to be void, invalid or unenforceable, that provision shall be severed from the remainder of this franchise so as not to cause the invalidity or unenforceability of the

remainder of this franchise. All remaining provisions of this franchise shall then continue in full force and effect. If any provision shall be deemed invalid due to its scope and breadth, such provisions shall be deemed valid to the extent of the scope and breadth permitted by law.

If any change in federal or state law materially affects any provision of this Agreement, including any change in the laws governing the services which may be assessed franchise fees, the City and the Franchisee may mutually agree to renegotiate the terms of this Agreement. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the party receiving the notification request accepts the offer to renegotiate, the parties shall have ninety (90) days to conduct and complete the renegotiation.

3.40.310 Public records.

Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.311 through 192.478. Franchisee is responsible for becoming familiar with and understanding the provisions of the Oregon Public Records Law.

Franchisee may identify information, submitted to the City as confidential pursuant to ORS 192.355(4), such as trade secrets, financial records, customer information or technical information. Franchisee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the City. Franchisee shall also provide a written explanation as to why such information is confidential under state or federal law. The City shall treat any information so marked as confidential until the City receives any request for disclosure of such information. City shall make reasonable efforts to provide the Franchisee notice of a request for information marked as confidential, including a copy of the request, within ten (10) business days of receiving any such request. Franchisee shall have five (5) business days within which to provide a written response to the City before the City will disclose any of the requested confidential information. The City shall retain the sole discretion to determine whether to release the requested confidential information, in accordance with applicable laws.

3.40.320 Choice of law; Venue; Notice.

The laws of the State of Oregon shall govern the validity of this Agreement, its interpretation and performance, and other claims related to it. Venue for litigation shall be in the Circuit Courts in and for Linn County, Oregon.

Any notice provided for under this Agreement shall be sufficient if in writing and (1) delivered personally to the other party, (2) deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (3) sent by overnight or commercial air courier (such as Federal Express), or (4) sent by facsimile transmission.

Any such notice or communication delivered by personal delivery shall be deemed delivered and effective upon actual receipt. Any notice or communication sent by United States mail, postage prepaid, shall be deemed delivered and effective five (5) days after mailing. Any notice or communication sent by overnight courier shall be deemed delivered and effective one (1) business day after dispatch. Any notice or communication sent by facsimile transmission shall be deemed delivered when receipt of the transmission is generated by the transmitting machine. To be effective against either party, such facsimile transmission shall be confirmed by telephone notice to the other party.

3.40.330 Complete agreement.

This Franchise Agreement, including any attachments and laws, rules and regulations incorporated herein or to which this Agreement is subject, constitutes the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.

3.40.340 Dispute costs; Attorneys' fees.

In the event an attorney is employed to enforce the provisions of this franchise (including any bankruptcy, insolvency or similar proceedings affecting creditors' rights generally), the prevailing party shall be entitled to

recover reasonable attorneys' fees and other costs incurred, irrespective of whether any legal proceeding is commenced. If any legal action, arbitration, or other proceeding is brought to construe, interpret, or enforce the terms of this franchise, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in connection therewith, both at trial and on any appeal therefrom or petitions for review thereof. Such sum shall include an amount estimated by the court as the reasonable costs and fees to be incurred by the prevailing party in collecting any monetary judgment or award or otherwise in enforcing any order, judgment or decree entered in such suit, action, or other proceeding.

3.40.350 Successors and assigns.

This franchise is binding upon and will inure to the benefit of all parties hereto, their respective heirs, legal representatives, successors, and assigns. Franchisee, however, shall not make any assignment without written consent of the City, and any assignment made without the City's consent, shall be null and void. Notwithstanding the previous sentence, Franchisee may assign this franchise without the City's consent, (1) to an entity controlled by, under common control with, or controlling Franchisee; or (2) by mortgage, hypothecation, or other security instrument to secure indebtedness.

Section 2. Franchise effective only upon acceptance of Franchisee.

This franchise is effective on the date provided herein only upon written acceptance of its terms by an authorized representative of Franchisee.

Passed by the Council: _____

Approved by the Mayor: _____

Effective Date: _____

Mayor

ATTEST:

City Clerk



MEMO

TO: Albany City Council

VIA: Peter Troedsson, City Manager
Chris Bailey, Public Works Director

FROM: Scott LaRoque, Water Superintendent

DATE: October 15, 2024, for the October 23, 2024, City Council Meeting

SUBJECT: Exemption from Competitive Bidding and Establish a Special Procurement for Monitoring Equipment for Facilities

Relates to Strategic Plan theme: An Effective Government, A Safe City

Action Requested:

Staff recommends City Council, acting as the Local Contract Review Board, adopt the attached resolution (Attachment 1) that will:

- 1) Waive competitive bidding and establish a class special procurement for the Public Works Department to purchase Hach analyzers, Endress Hauser analyzers, Lovibond analyzers, reagents, and related equipment; and
- 2) Authorize the Public Works director to negotiate and award special procurement contracts for Hach analyzers, reagents, and related equipment with Hach Company; Endress Hauser analyzers and related equipment with Field Instruments and Controls; and Lovibond analyzers and related equipment with Correct Equipment Company.

Discussion:

The Albany-Millersburg Water Reclamation Facility; the Albany-Millersburg Water Treatment Plant; the Vine Street Water Treatment Plant; and various reservoirs, pump stations, lift stations, and the Santiam-Albany canal have numerous online and benchtop water analyzers. They are used to monitor several things such as chlorine residuals, pH, temperature, pressure, turbidity, ammonia, etc. The type, brand, and quality of analyzers varies. As new equipment installations are required for new construction, upgrades, or replacement due to failure, it is advantageous to standardize to promote familiarity, safety, and efficiency for the City's essential facilities. There is only one authorized supplier of this equipment, and it is in the best interest of the City to make a series of purchases through a special procurement process.

The existing state purchasing rules, which the City has adopted as our own, allow for exceptions to competitive bidding requirements and allow for purchases to be made under a "Special Procurement" with approval of the city council, acting as the Local Contract Review Board. In accordance with Oregon Revised Statutes (ORS) 279B.085 and Oregon Administrative Rule (OAR) 137-047-0285, staff is seeking approval of a class special procurement for Hach, Endress Hauser, and Lovibond water monitoring equipment.

Staff has determined this special procurement request meets all of the requirements as outlined below:

- The special procurement is unlikely to encourage favoritism in the awarding of public contracts or substantially diminish competition for public contracts.

Hach, Endress Hauser, and Lovibond analyzers have been installed in multiple City facilities because of their quality, service, and warranty, and future purchases are intended over the next five or more years. The intent is also to replace other analyzers throughout the city as they fail, provide replacement parts, or perform maintenance as required.

Hach Company is a sole-source supplier for Hach Equipment; Field Instruments and Controls a sole-source supplier for Endress Hauser equipment; and Correct Equipment Company is a sole-source supplier for Lovibond equipment. They are the only approved vendors for these products; therefore, approval of a class special procurement will be unlikely to encourage favoritism in the awarding of the public contracts or substantially diminish competition for public contracts.

- **The special procurement is reasonably expected to result in substantial cost savings to the contracting agency or to the public; or otherwise substantially promote the public interest in a manner that could not practicably be realized by complying with the other available methods of procurement.**

The use of the class special procurement procedure for the Public Work Department's acquisition of Hach, Endress Hauser, and Lovibond water meter analyzers, reagents, and related equipment will result in substantial cost savings. Standardization of analyzers will eliminate purchasing delays and reduce administrative costs incurred during the procurement process to acquire the actuators and related parts. It will allow for the interchange of analyzers during the repair process, reducing downtime and allow staff to negotiate greater discounts from a larger quantity purchase.

- **It will also substantially promote the public interest by allowing the City to make timely equipment repairs or replacements on critical infrastructure and promote operational efficiencies that may not be realized by using another procurement sourcing method.**

Public notice of the approval of a special procurement meeting requirements of ORS 279B.055(4) must be given at least seven days before award of the contract and affected persons may protest the request. Public notice of this request will be made in accordance with state purchasing requirements. This will allow prospective suppliers an opportunity to provide input or feedback to the council, acting as the Local Contract Review Board prior to the notice of award.

The attached resolution authorizes the use of the class special procurement process after adopting the findings needed to satisfy City and State purchasing requirements.

Budget Impact:

Analyzers, parts, and reagents are budgeted annually within water (GL 61540410, 61540420, 61540415, and 61540425) and wastewater (GL 60140325, 60140320, 60140315, and 60140310) operating budgets.

SL:kc
Attachment - Resolution



RESOLUTION NO. _____

A RESOLUTION OF THE ALBANY CITY COUNCIL, ACTING AS THE LOCAL CONTRACT REVIEW BOARD, WAIVING COMPETITIVE BIDDING, ESTABLISHING A CLASS SPECIAL PROCUREMENT, AND AWARDING A SPECIAL PROCUREMENT CONTRACT FOR HACH, ENDRESS AND HAUSER, AND LOVIBOND PRODUCTS AND RELATED EQUIPMENT TO HACH, FIELD INSTRUMENTS AND CONTROLS, AND CORRECT EQUIPMENT COMPANY RESPECTIVELY

WHEREAS, Albany Municipal Code 2.66.060 (11), Oregon Revised Statutes 279B.085 and OAR 137-047-0285 allow the City Council, acting as the Local Contract Review Board, to authorize the use of the Special Procurement process for the selection of goods and services contractors for a special purpose and for a series of related contracts; and

WHEREAS, such authorization must be based on written findings submitted by the department seeking the exception that describes the selected special procurement method to be used and the circumstances that support the use of the special procurement as set forth below; and

WHEREAS, the Public Works department water facilities currently use Hach meters and related equipment; and

WHEREAS, the Public Works Department water facilities currently use Endress and Hauser meters and related equipment; and

WHEREAS, the Public Works Department water facilities currently use Lovibond meters and related equipment; and

WHEREAS, procurement of standardized meters and related equipment allows for compatibility with other existing equipment, maintains efficient operations, and promotes the public's best interest; and

WHEREAS, Hach is the sole manufacturer/supplier of Hach products, so awarding a contract to Hach is unlikely to encourage favoritism in the awarding of public contract or to substantially diminish competition for public contracts; and

WHEREAS, Field Instruments and Controls is the sole manufacturer/supplier of Endress and Hauser products, so awarding a contract to Field Instruments and Controls is unlikely to encourage favoritism in the awarding of public contract or to substantially diminish competition for public contracts; and

WHEREAS, Correct Equipment Company is the sole manufacturer/supplier of Lovibond products, so awarding a contract to Correct Equipment Company is unlikely to encourage favoritism in the awarding of public contract or to substantially diminish competition for public contracts; and

WHEREAS, it is reasonable to expect the use of a class special procurement process to purchase Hach, Endress and Hauser, and Lovibond products and related equipment to result in substantial cost savings to the City; and

WHEREAS, the use of a class special procurement process to purchase Hach, Endress and Hauser, and Lovibond products and related equipment will substantially promote the public interest in a manner that could not practicably be realized by complying with requirements that are under ORS 279B.055, 279B.060, 279B.065 or 279B.070 or under any rules adopted thereunder.

NOW, THEREFORE, BE IT RESOLVED BY THE ALBANY CITY COUNCIL, ACTING AS THE LOCAL CONTRACT REVIEW BOARD:

SECTION 1. Adopts the following findings:

1. The City requires a class special procurement of Hach, Endress and Hauser, and Lovibond products and related equipment for Public Works facilities in order to maintain consistency, uniformity, and efficiency in operations.
2. The Public Works Department has researched options and found that standardization of Hach, Endress and Hauser, and Lovibond products and related equipment promotes familiarity, safety, and efficiency in operations and allows prompt repair and exchange of parts and accessories between facilities.
3. Hach, Field Instruments and Controls, and Correct Equipment Company are the sole manufacturers/suppliers respectively of Hach, Endress and Hauser, and Lovibond products and related equipment, and awarding a contract to Hach, Field Instruments and Controls, and Correct Equipment Company would unlikely diminish competition or encourage favoritism.
4. The use of a class special procurement process allows the Public Works Department to acquire additional future purchases of Hach, Endress and Hauser, and Lovibond products and related equipment without making subsequent request for special procurement and provides savings of time and cost associated with a more prolonged procurement selection process.

SECTION 2. Notwithstanding the provisions of City Code Section 2.66.060, the Public Works Department is authorized and directed to use the class special procurement method to procure Hach, Endress and Hauser, and Lovibond products and related equipment for five years with an option to extend the class special procurement for an additional five-year term.

SECTION 3. The Public Works Director is hereby directed to negotiate and award a contract for Hach, Endress and Hauser, and Lovibond products and related equipment to Hach, Field Instruments and Controls, and Correct Equipment Company respectively after the City has given public notice for seven days of its intent to award a contract, per Oregon Administrative Rules (OAR) 137-047-0285.

DATED AND EFFECTIVE THIS 23RD DAY OF OCTOBER 2024.

Mayor

ATTEST:

City Clerk



MINUTES

Wednesday, September 25, 2024

Meeting

Council Chambers, City Hall

Approved: DRAFT

Call to Order and Pledge of Allegiance

Mayor Alex Johnson II called the meeting to order at 6:00 p.m. The mayor led the pledge of allegiance.

Roll Call

Councilors present: Mayor Alex Johnson II and Councilors Matilda Novak, Steph Newton-Azorr, Ray Kopczynski, Jackie Montague, Marilyn Smith, and Ramycia McGhee

Councilors absent: None

Public Hearings

6:01 p.m.

- a. CDBG Consolidated annual performance report
Mayor Johnson II opened the public hearing at 6:01 p.m.

Planner II Beth Freeland presented the report, summarizing how Albany used Community Development Block Grant funds to meet community needs.

Councilor Steph Newton-Azorr asked why the number of Hispanic people served in the most recent year was fewer than the number for the previous year. Freeland said she will review outreach for the two years.

Newton-Azorr asked how close the served numbers are to population ratios. Freeland said they're broadly in line. The ratio depends in part on who is seeking assistance.

No one else wished to speak.

Johnson II closed the public hearing at 6:10 p.m.

MOTION: Councilor Marilyn Smith moved to authorize Planning staff to submit the report to HUD. Councilor Jackie Montague seconded the motion, and it passed 6-0.

- b. PRO Housing grant application
Johnson II opened the public hearing at 6:13 p.m.

6:13 p.m.

Comprehensive Planning Manager Anne Catlin said Planning applied for this grant a year ago but didn't get it. This year they've broadened the scope of the application to include a request for more money to start an affordable housing fund.

Councilor Matilda Novak asked several clarifying questions, which Catlin and Public Works Director Chris Bailey answered. Novak said she can only support the application if North Albany is excepted from all of it. Catlin said the grant could apply to any affordable housing development and the climate-friendly area in North Albany off Hickory Street is identified as an opportunity area.

Gamael Nassar, of Habitat for Humanity, said Albany is one of the best cities in the area in supporting affordable housing.

Johnson II closed the public hearing at 6:27 p.m.

MOTION: Montague moved to approve the grant application. Newton-Azorr seconded the motion and it passed 5-1, with Novak voting against.

Business from the Public

6:29 p.m.

Dennis Abeene read a statement about the wild turkeys in Mennonite Village. He asked for an ordinance that included fines for feeding them.



Abeene also spoke about a neighborhood cat that urinates on his barbeque cover.

Jessica Becker, of Albany Helping Hands, presented an idea for use of the three properties next to theirs and asked the council to declare them surplus.

Brad Dennis, of the North Albany Neighborhood Association, said the association is working to bring together agencies who manage roads in North Albany to solve problems.

Audrey Eldridge, secretary of the North Albany Neighborhood Association, asked several questions and presented a petition to review the three-basin rule.*

Trevor Lee said the people of Albany don't want a transportation service fee.

Lise Grato, executive director of the Albany Downtown Association, presented an update on downtown activities.

Joe Esker asked the council to consider all funding options for street maintenance.

Second reading of ordinance

6:57 p.m.

Creating AMC Chapter 14.30, street maintenance fee

The ordinance was read for the first time in title only at the meeting on August 7, 2024, but a motion to read it a second time at the same meeting didn't pass.

City Attorney Sean Kidd read the ordinance in title only.

Bailey said the council has received presentations on this subject since August 2023. This ordinance provides legal authority to establish a new fee. It does not establish a fee. The authority is needed in order to develop a methodology for a fee. Public Works staff has looked at all options, and is talking about a fee because the council directed them to do so.

Montague said this has been a problem for a long time, and it won't go away. It will just get more expensive.

Councilor Ramycia McGhee said, no one has come to tell the council "we want a fee." Based on the people who come to the council, it doesn't seem to be a popular idea.

Newton-Azorr said she has also heard that people don't want a fee, they want a gas tax.

Novak objected to the implied power given to the public works director.

Councilor Ray Kopczynski said, we are elected to make hard decisions. It's time to do it. All this ordinance does is allow staff to go forward and develop a methodology.

Smith agreed.

Bailey said the council can choose not to pass the ordinance, but then they will have to pass a motion to direct staff how to proceed. She said all options are still on the table. We will need a combination of them.

Novak said a constituent pointed out \$8.4 million available in the budget. Bailey said that was the year-end balance from 2022. The money was available to use as of June 30, 2022, and was rolled over for use in FY 2023.

Smith called for the question.

MOTION: Montague moved to adopt the ordinance. Kopczynski seconded the motion. On a roll-call vote, Kopczynski, Montague, and Smith voted for adoption, and McGhee, Novak, and Newton-Azorr voted against. Johnson II voted for adoption to break the tie, and the motion passed 4-3. The ordinance was designated Ordinance No. 6050

Award of Contracts

7:40 p.m.

- a. Exemption from competitive bidding and sole-source procurement of fire alerting system

Smith asked what the fire alerting system is. Fire Chief Chris LaBelle said when a 911 call is received, the existing system manually directs an alert to the appropriate station. The system has been in place since the early 1980s. The new system broadcasts the alert to the stations as the call is being handled.

MOTION: Montague moved to adopt the resolution. McGhee seconded the motion, which passed 6-0. The resolution was designated Resolution No. 7354.

- b. Exemption from competitive bidding for sole source procurement of document management system support

MOTION: Montague moved to adopt the resolution. Kopczynski seconded the motion, which passed 6-0. The resolution was designated Resolution No. 7355.

Adoption of Consent Agenda

7:47 p.m.

- a. Appointments
 - 1) Appointing Tami Cockeram to the Human Relations Commission
- b. Approval of minutes
 - 1) July 22, 2024, city council work session
 - 2) July 24, 2024, city council meeting
 - 3) August 5, 2024, city council work session
 - 4) August 7, 2024, city council meeting
- c. Adoption of resolutions
 - 1) Granting public utility easement and dedicating right-of-way on South Albany Park property – Kim Lyddane RES NO. 7356
 - 2) Accepting grant funds from Oregon Criminal Justice Commission organized retail theft grant – Marcia Harnden RES NO. 7357
- d. Approval of agreements
 - 1) Authorize City of Albany Fire Department to enter into a lease agreement with Hughes Fire equipment at 1980 Three Lakes RD SE – Chris LaBelle RES NO. 7358

MOTION: Montague asked to pull item c2 for discussion. A motion to approve the consent agenda with item c2 removed passed 6-0.

Montague asked how much staff time use of the camera system would require. Fire Chief Marcia Harnden said it's all automated.

Newton-Azorr expressed concern about data sharing. She also said license-plate readers disproportionately gather data in under-privileged areas. Harnden said they are designed for a specific use against specific criminal behavior. Newton-Azorr said she has read negative things about the company that produces the readers.

MOTION: Montague moved to adopt the resolution accepting the funds. Kopczynski seconded the motion, which passed 5-1, with Newton-Azorr voting no.

Staff Reports

8:01 p.m.

Ratification of decisions made during the council break

- a. Contract award for AR-24-21, fixed base operator (FBO) building and historic hangar rehabilitation and approval to apply for and accept a Federal Aviation Administration Bipartisan Infrastructure Law grant RES NO. 7359
- b. Contract for BR-22-01, Salem Avenue bridge over Cox Creek
- c. Contract extension for water meter reading services

Bailey said this is unusual. These three contracts had to be executed while the council was on their summer break. Now the council needs to ratify their execution.

MOTION: Montague moved to ratify all three contracts. McGhee seconded the motion, and it passed 6-0.

Business from the Council

8:03 p.m.

Kopczynski asked staff to look at modifying Albany's wildlife ordinances to bring them into line with other cities. Smith said she wants the ordinance to prohibit feeding only wild turkeys.

Code Compliance Officer Kris Schendel said he will work on it. He will also update the Municipal Code as it applies to cats.

City Manager Report

8:15 p.m.

Interim City Manager Chris Bailey said the September 30 joint meeting has been changed. The city council will meet from 4:00 until 5:15 that night, and the planning commission will meet beginning at 5:30.

Next Meeting Dates

Monday, September 30, 2024; ~~5:15 p.m. joint work session with planning commission~~ 4-5:15 work session

Monday, October 7, 2024; 4:00 p.m. budget review committee work session

Wednesday, October 9, 2024; 6:00 p.m. meeting

ADJOURNMENT

There being no other business, the meeting was adjourned at 8:19 p.m.

Respectfully submitted,

Reviewed by,

Allison Liesse
City Clerk

Peter Troedsson
City Manager

**Documents discussed at the meeting that are not in the agenda packet are archived in the record. Documents from staff are posted to the website after the meeting. Documents submitted by the public are available by emailing cityclerk@albanyoregon.org.*



MINUTES

Wednesday, October 9, 2024

Meeting

Council Chambers, City Hall

Approved: DRAFT

Call to Order and Pledge of Allegiance

Mayor Alex Johnson II called the meeting to order at 6:00 p.m. The mayor led the pledge of allegiance.

Roll Call

Councilors present: Mayor Alex Johnson II and Councilors Matilda Novak, Steph Newton-Azorr, Ray Kopczynski, Jackie Montague, Marilyn Smith, and Ramycia McGhee

Councilors absent: None

Special Presentations

6:01 p.m.

- a. Community Health Centers of Benton and Linn Counties – Christine Mosbaugh and Lacey Mollel
Mollel distributed handouts*. She said Community Health Centers have been around for 53 years. They are federally funded and don't turn patients away if they can't pay. The health centers focus on veterans, the homeless, and migrants. They are patient-governed. There are five clinics currently in Linn and Benton counties, and they hope to start one in Albany.

Councilor Ray Kopczynski asked if the clinic's purpose is to fill a gap, or to duplicate services? Mollel said they are a gap-filler for those who need integrated services.

Councilor Ramycia McGhee asked if they plan to partner with LBCC programs. Mollel said yes.

Johnson II asked if seniors are eligible for care. Mollel said yes, seniors and Medicare patients are eligible.

- b. Oregon Community Foundation – Jackie Roth, Ruby Buckholz **6:12 p.m.**
Jackie Roth said she is the regional director of the southern Willamette Valley region of the Oregon Community Foundation (OCF). The OCF is a grant-making charity whose assets come from thousands of donations. The donations are established as charitable funds, and can be managed by the donors.

Business from the Public

6:22 p.m.

John Pitsch said the City allows drivers on his street to get away with speeding. He has complained to the council three times and wants the City to do its job.

Lise Grato, executive director of the Albany Downtown Association, gave an update on activities downtown.

First reading of ordinances

6:29 p.m.

Renewing franchise agreements

- 1) Lightspeed Networks, Inc, dba LS Networks
City Attorney Sean Kidd read the ordinance for the first time in title only.

MOTION: Councilor Marilyn Smith moved to have the ordinance read a second time in title only. Kopczynski seconded the motion, and it failed 5-1, with Councilor Matilda Novak voting against. It takes a unanimous vote of the council to have an ordinance read a second time in the same meeting. This ordinance will come back to the October 23, 2024, council meeting for an automatic second reading.

Councilor Matilda Novak asked, if the City requires the franchisee to replace overhead lines with underground lines, can the franchisee recover its costs from its ratepayers? Finance Director Jeanna Yeager said potentially, yes. The Public Utility Commission regulates this.

Novak said the indemnity clause mentions hazardous substances. What kind of hazardous substances? Yeager said she talked with the City's engineering division. It's generic language that protects the City. Kidd said the mutual indemnity between the City and the franchisee does not affect a resident's right to sue if they are harmed.



Novak asked why the franchisee has 180 days to pay franchise fees, but residents can be fined \$1,000 per day if they are late paying the street maintenance fee. City Manager Peter Troedsson said the comparison is inaccurate, and utility billing staff routinely work with customers who are having trouble paying their bills. It is very rare that a fine is assessed. Novak said it "smells of a lack of integrity."

2) Astound Broadband, LLC

Kidd read the ordinance for the first time in title only.

MOTION: Smith moved to have the ordinance read a second time in title only. McGhee seconded the motion, and it failed 5-1, with Novak voting against. It takes a unanimous vote of the council to have an ordinance read a second time in the same meeting. The ordinance will come back to the October 23, 2024, meeting for an automatic second reading.

Award of contract

6:48 p.m.

Special procurement for police vehicle in-car cameras

MOTION: Smith moved to adopt the resolution awarding the contract. McGhee seconded the resolution, and it passed 6-0 and was designated Resolution No. 7360.

Adoption of Consent Agenda

6:50 p.m.

a. Appointments

- 1) Accepting Karen Messer's resignation from the Library Board
- 2) Accepting Pat Kidd's resignation from the Public Safety Commission
- 2) Appointing Scott Kniefel to the Library Board

b. Approval of minutes

- 1) September 23, 2024, city council work session

MOTION: Kopczynski moved to adopt the consent agenda as presented. McGhee seconded the motion, and it passed 6-0.

Business from the Council

6:50 p.m.

Novak read selections from several communications she has received. No copies were provided to the clerk.

Smith said she would like to remind the public and those present that there is no street maintenance fee. There is an ordinance to authorize study of a street maintenance utility. She also wished to defend the personal integrity of staff and councilors.

City Manager Report

6:57 p.m.

There was none.

Next Meeting Dates

Monday, October 21, 2024; 4:00 p.m. work session

Wednesday, October 23, 2024; 6:00 p.m. meeting

ADJOURNMENT

There being no other business, the meeting was adjourned at 6:57 p.m.

Respectfully submitted,

Reviewed by,

Allison Liesse
City Clerk

Peter Troedsson
City Manager

**Documents discussed at the meeting that are not in the agenda packet are archived in the record. Documents from staff are posted to the website after the meeting. Documents submitted by the public are available by emailing cityclerk@albanyoregon.org.*



MEMO



TO: Albany City Council

VIA: Peter Troedsson, City Manager

FROM: Chris LaBelle, Fire Chief

DATE: October 11, 2024, for the October 23, 2024, City Council Meeting

SUBJECT: Intergovernmental Agreement Between City of Albany and City of Corvallis for Use of Public Education Prop

Relates to Strategic Plan theme: A Safe City

Action Requested:

City Council approval to direct the Albany Fire Department to enter into an intergovernmental agreement with the City of Corvallis for use of an inflatable public education prop.

Discussion:

The Fire Department participates in public outreach and education events as often as possible within its mission to “Prevent and Protect from Harm.” Hands-on education and props that assist in these efforts are invaluable to the quality of our programs. The City of Corvallis Fire Department (CFD) had a mobile prevention trailer that was shared with Albany Fire at no cost, but it was recently decommissioned. CFD subsequently purchased an inflatable prevention “house” education prop with similar features that enhance fire safety learning, such as escape drills in the home, and can be moved to different locations. This agreement would allow Albany Fire Department access to the asset for training purposes at no cost to the City of Albany.

Budget Impact:

None.

Attachments (1)

**INTERGOVERNMENTAL AGREEMENT
CITY OF CORVALLIS AND CITY OF ALBANY**

PARTIES

This Intergovernmental Agreement (this "Agreement") is entered into between the CITY OF CORVALLIS, a municipal corporation of the State of Oregon, 501 SW Madison Avenue, Corvallis, OR 97330, hereinafter referred to as ("Corvallis"), and the CITY OF ALBANY, a municipal corporation of the State of Oregon, 333 Broadalbin Street SW, Albany, Oregon 97321, hereinafter referred to as ("Albany"), and jointly referred to as ("Parties"), or individually as a ("Party").

RECITALS

1. WHEREAS, ORS 190.007 et seq. provides for intergovernmental cooperation in the interest of furthering economy and efficiency of local government; and
2. WHEREAS, ORS 190.003 for purposes of such intergovernmental cooperation defines a unit of local government as including a county, city, district, or other public corporation, commission, authority, entity organized and existing under statute or city charter; and
3. WHEREAS, ORS 190.010 provides that a unit of local government may enter into a written agreement with any other unit or units of local government for the performance of any or all functions and activities that a party to the Agreement, its officers or agencies, have authority to perform; and
4. WHEREAS, in an effort to further economy and efficiency, the Parties hereto wish to cooperatively support the sharing of equipment during times of need; and
5. WHEREAS, the Parties wish to establish this collaborative agreement to ensure continued consideration of opportunities for cooperation which may arise.

NOW, THEREFORE, IT IS HEREBY AGREED BETWEEN THE PARTIES AS FOLLOWS:

AGREEMENTS

Article 1: Scope of Services

1.1 Use of Equipment

The City of Corvallis Fire Department will make available and allow the City of Albany Fire Department to use an inflatable education fire house prop (the "Equipment") that is owned by Corvallis and is used for fire prevention activities such as "escape drills" in the home. The house has multiple features that enhance fire safety learning. It can be transported to different locations for public education purposes. The availability of the Equipment for use by Albany will be determined by Corvallis.

1.2 Permissible Places of Operation

The City of Corvallis Fire Department agrees to permit the City of Albany Fire Department to operate the Equipment in the following places within its service areas: Albany parks, Albany schools, Linn County Fairgrounds, City of Millersburg, and fire stations operated by Albany Fire.

Article 2: Term/Time of Performance

The term of this Agreement shall become effective upon the final signature of the Parties and shall remain in effect until it is terminated as provided herein. This Agreement shall be reviewed annually.

Article 3: Compensation

Neither Party is responsible to compensate or provide any other benefit to the other Party for the performance of the terms of this Agreement.

Article 4: Entire Agreement/Change or Modification

This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior express and/or implied statements, negotiations and/or agreements between the Parties, either oral or written. Either Party to this Agreement may from time-to-time request changes in the scope of this Agreement as set forth herein. No change, modification, or waiver of any provision in this Agreement shall be valid or binding upon the Parties except upon written amendment executed by all of the Parties.

Article 5: Transfer of Interest

Neither Party to this Agreement shall assign or transfer any interest in or duty under this Agreement without the written consent of the other Party, and no assignment shall be of any force or effect whatsoever unless and until the other Party shall have so consented in writing.

Article 6: Indemnity

Subject to the limits of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, each Party shall indemnify, defend and hold harmless the other Party and such other Party's officers, elected officials, employees and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities of the indemnifying Party or its officers, elected officials, employees, subcontractors or agents under this Agreement, provided that no Party shall be required to indemnify the other Party for any liability arising out of the wrongful acts of the officers, elected officials, employees, subcontractors or agents of the other Party. The provisions of this paragraph shall survive the expiration or sooner termination of this Agreement.

Article 7: Insurance/Liability

Each Party agrees to provide and be responsible for their employees' workers' compensation insurance. Each Party agrees to maintain levels of insurance, or self-insurance, sufficient to satisfy their obligations under this Agreement and all requirements under applicable law.

Additionally, each Party shall be responsible for any and all liability arising out of its use of the

Equipment by its respective officers, employees, board members, agents, or volunteers. Each Party further agrees to be responsible for and make repairs or replacements required due to any physical damage to the Equipment while it is in the custody of that Party or being used, stored, or parked by that Party.

Article 8: No Warranties/Release

The City of Corvallis Fire Department makes no representations or warranties, express or implied, as to the safety or suitability of the Equipment, and the City of Albany Fire Department agrees that use of the Equipment is at its sole risk. The City of Albany Fire Department may, at the City of Albany Fire Department's sole risk, transport, utilize, and operate the Equipment for its own public education initiatives.

In consideration of Corvallis' agreement to allow use of the Equipment by Albany, Albany agrees to release and forever discharge Corvallis, its officers, elected officials, employees and agents, successors and assigns of and from all claims, demands, suits, injuries or damage of any kind arising in any way out of Albany's use of the Equipment.

Article 9: Severability

Invalidation of any term or provision herein by judgment or court order shall not affect any other provisions that remain in full force and effect.

Article 10: Termination/Withdrawal

Either Party may terminate this Agreement for any reason with 30 days' written notice to the other Party. Each Party shall continue to carry out the provisions of this Agreement during the period after the giving of notice to the effective date of termination.

Article 11: Operations of Agreement

In any decisions regarding the operation of this Agreement, it is the intent of both Parties hereto that the specific provisions of this Intergovernmental Agreement shall govern. Decisions necessary to implement this Agreement that are not covered by the specific provisions of this Agreement shall require the agreement of both Parties. Such agreement shall be provided through their designated representatives. In the event that the Parties do not reach an agreement on a decision or a particular course of action, the matter will be referred to the nonelected chief executive officers of the respective Parties to this Agreement for resolution. Those officers will meet and make a decision regarding this matter. In the event that the chief executive officers are unable to agree, then the issue will be processed in accordance with Article 12.

Article 12: Disagreement/Arbitration

In the event the Parties to this Agreement are unable to agree, as specified in Article 11, either Party may apply to the presiding judge of Linn County requesting the appointment of a neutral arbitrator. The arbitrator thus selected shall establish the procedures for arbitration of the dispute and his/her decision shall be final. The Parties shall share equally in all arbitration fees and costs.

Article 13: Attorneys' Fees

In the event a suit or action is commenced to enforce the terms of this Agreement, the prevailing

party shall recover, and the losing party shall pay the prevailing party court costs and reasonable attorney fees incurred in the suit or action. This provision specifically includes any court costs and attorneys' fees incurred by the party prevailing on appeal.

Article 14: Independent Contractor

Each of the Parties hereto shall be deemed an independent contractor for purposes of this Agreement. No representative, agent, employee or contractor of one Party shall be deemed to be a representative, agent, employee or contractor of the other Party for any purpose, except to the extent specifically provided herein. Nothing herein is intended, nor shall it be construed, to create between the Parties any relationship of principal and agent, partnership, joint venture or any similar relationship, and each Party hereby specifically disclaims any such relationship.

Article 15: Compliance with Applicable Law

The Parties shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to work performed under this Agreement.

Article 16: Electronic Signatures

Each Party agrees that electronic signatures, whether digital or encrypted, of the Parties included in this Agreement, if any, are intended to authenticate this writing and to have the same force and effect as manual signatures. The term "electronic signature" means any electronic sound, symbol, or process attached to or logically associated with a contract or record and executed and adopted by a Party with the intent to sign, authenticate or accept such contract or record. Any signature hereto or to any other certificate, agreement or document related to this transaction, and any contract formation or recordkeeping through electronic means will have the same legal validity and enforceability as a manually executed signature or use of a paper-based recordkeeping system to the fullest extent permitted by applicable law and may not be denied legal effect as provided in ORS 84.019.

IN WITNESS WHEREOF, the Parties have herewith executed their signatures.

CITY OF CORVALLIS, OREGON

CITY OF ALBANY, OREGON

Ben Janes, Fire Chief

Chris LaBelle, Fire Chief

Date

Date

Mark Shepard, City Manager

Peter Troedsson, City Manager

Date

Date

APPROVED AS TO FORM:

Esin Onart, City Attorney

M. Sean Kidd, City Attorney

Date

Date