

**CITY OF WINLOCK, WASHINGTON
ORDINANCE NO 1158**

AN ORDINANCE OF CITY OF WINLOCK, WASHINGTON GRANTING TO TOLEDOTEL A WASHINGTON LIMITED LIABILITY COMPANY, THE NONEXCLUSIVE RIGHT, PRIVILEGE, AUTHORITY AND FRANCHISE TO LOCATE, CONSTRUCT, INSTALL, OWN, MAINTAIN, REPAIR, REPLACE, EXTEND, OPERATE, AND USE FACILITIES IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE TRANSMISSION, DISTRIBUTION AND SALE OF TELECOMMUNICATIONS AND COMMUNICATIONS SERVICES; AND PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, The Toledo Telephone Co., Inc (DBA ToledoTel) "Franchisee", a Washington limited liability company, has filed with the City of Winlock State of Washington (the "City") a written application for a Franchise to locate, construct, operate, maintain a fiber optic communication system, and use such works, underground cables, equipment and appurtenances over, under, along and across all of City's rights of way and public property in the City, for the purposes of the transmission, distribution and sale of telecommunications and communications services; and

WHEREAS, pursuant to RCW 35A.47.040 the City of Winlock first introduced and read this Franchise Agreement on March 25, 2024; and

WHEREAS, pursuant to RCW 35A.47.040 this Franchise Agreement was submitted to the City of Winlock's Attorney for review; and

WHEREAS, the City of Winlock City Council has found it desirable for the welfare of the City and its residents that such non-exclusive franchise be granted to the Franchisee.

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

SECTION 1.0 DEFINITIONS

For the purposes of this Franchise the following terms, phrases, words, and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. Words not defined shall be given their common and ordinary meaning.

1.1 Franchisee. "Franchisee" means ToledoTel a Washington Corporation registered with the Secretary of State bearing UBI# 216-000-257, and its lawful successors, transferee, and assignee thereof.

1.2 City. "City" means City of Winlock, a municipal corporation of the State of Washington, and its respective successors and assigns.

1.3 Days. "Days" means business days.

1.4 Effective Date. "Effective Date" means the date of legal publication of this Ordinance, set forth in section 8.10, upon which the rights, duties and obligations of this Franchise shall come

into effect, and the date from which the time requirement for any notice, extension and/or renewal shall be measured.

1.5 Facilities. "Facilities" means, collectively, any and all transmission and distribution systems and appurtenances owned by the Franchisee, now and in the future in the Franchise Area, including but not limited to, poles, wires, pipes, conduits and other appliances and conductors for such Telecommunications system.

1.6 Franchise. "Franchise" means the grant by the City of rights, privileges and authority embodied in this Ordinance.

1.7 Franchise Area. "Franchise Area" means the surface and space above and below all rights-of-way for:

- (i) public roads, streets, avenues, alleys, bridges, tunnels, easements, and highways of the City, as now laid out, platted, dedicated, acquired, or improved within the present corporate limits of the City;
- (ii) public roads, streets, avenues, alleys, bridges, tunnels, easements, and highways that may hereafter be laid out, platted, dedicated, acquired, or improved within the present corporate limits of the City and as such limits may be extended by annexation or otherwise during the term of this Franchise;
- (iii) all City-owned utility easements dedicated for the placement and location of various utilities, provided such easements would permit the Franchisee to fully exercise the rights granted under this Franchise within the area covered by the easement; and
- (iv) any other specifically designated City-owned property.

1.8 Maintenance, maintaining, or maintain. The meaning of the terms "Maintenance, maintaining, or maintain" includes, without limit, repairing, replacing, upgrading, examining, testing, inspecting, and removing the Franchisee Facilities, vegetation management, digging and excavating, and restoration of affected right-of-way surfaces.

1.9 Parties. "Parties" means City and the Franchisee collectively.

1.10 Party. "Party" means either City or the Franchisee individually.

1.11 Person. "Person" means a business entity or natural person.

1.12 Public Project. "Public Project" means any City or other government-funded capital improvement project on the Rights-of-way or City property within the Franchise Area.

1.13 Right-of-way. "Right-of-way" means the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, utility easement and/or right-of-way now or hereafter held or administered by the City.

1.14 State. "State" means the State of Washington.

SECTION 2.0 GRANT OF FRANCHISE

City hereby grants to the Franchisee the right, power, privilege, and authority to enter upon all roads, rights of way, streets, alleys, highways, public places, or structures, lying within the Franchise Area to locate, construct, operate and maintain its Facilities for the maintenance and operation of a telecommunications and communications system within the Franchise Area.

2.1 Effective Date

This Ordinance is effective as of the Effective Date set forth in Section 8.10 of this

Franchise.

2.2 Term

The rights, privileges and Franchise hereby granted to the Franchisee will extend for a term of 25 years from the Effective Date, and shall continue year-to-year thereafter, until it is otherwise renewed for another 25-year term, or terminated by either Party, with not less than 180 days prior written notice to the other Party.

2.3 Non-Exclusive Franchise

This Franchise is not an exclusive Franchise. This Franchise shall not prohibit the City from granting other franchises within the Franchise Area that do not interfere with the Franchisee's rights under this Franchise. City may not; however, award a Telecommunications Franchise to another party under more favorable or less onerous terms than those of this Franchise without this Franchise being amended to reflect such more favorable or less onerous terms.

2.4 Assignment of Franchise

The Franchisee shall have the right to assign its rights, benefits, and privileges under this Franchise if, prior to the assignment, the City provides written authorization and approval of the same, which shall not be unreasonably withheld. Any assignee shall, within thirty (30) days prior to the effective date of any assignment, file written notice of the assignment with the City together with its written acceptance of all terms and conditions of this Franchise. Nothing in this section shall require prior written consent of any assignment (1) from Franchisee to an affiliate which is controlled by Franchisee, or any assignment to a lender for security purposes only.

- (i) Notwithstanding the provisions of this section, Franchisee may lease Facilities or any portion thereof to another or provide capacity or bandwidth in its Facilities to another, provided that Franchisee at all times during such lease maintains ownership of the leased Facilities and remains ultimately responsible for locating, servicing, repairing, relocating, or removing its Facilities pursuant to the terms and conditions of this Franchise.

2.5 Franchise Taxes, Fees, and Costs

The Franchisee shall pay all lawful permitting, license fees, costs and/or utility privilege taxes which it might be required to pay in connection with the issuance, maintenance, existence, continuation, or use of this Franchise, to the extent permitted by applicable law, whether federal, State, or municipal, or the City ordinance now in effect or enacted during the term of this Franchise. The City reserves the right to designate the time and manner of payment of such fees, costs or taxes owed by the Franchisee in connection with this Franchise.

- (i) Franchisee shall be subject to a one-time administrative fee not to exceed Two Thousand Five Hundred dollars and 00/100 (\$2,500.00) for reimbursement of costs associated with the preparation, processing, and approval of this Franchise Agreement. The administrative fee is exclusive of any ordinary permitting fees required for construction of any Facilities within the public right-of-way. Payment of the administrative fee is due within 30 days after Franchise approval.
- (ii) If, during the Franchise term, the City incurs costs and expenses for the review, inspection, or supervision of Franchisee activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances

relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City within sixty (60) days of receipt of any itemized billing provided by the City.

- (iii) If Franchisee provides services to any customers within the City Limits, Franchisee shall become subject to the City's utility tax in an amount equal to six percent (6%) of Franchisee's gross revenues earned by providing services to customers within the City limits from its Facilities within the Franchise Area. For the purposes of this section, "gross revenues" shall mean any and all revenue, of any kind, nature, or form, whether from customers, affiliates, lessees, or any other source, without deduction for expenses, but excluding bad debt, and subject to all applicable limitations imposed by federal or state law, including RCW 35.21.870.
- (iv) Franchisee warrants that its operations are those of a telephone business as defined under RCW 82.16.010 or Service Provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee other than as described in this Section. If RCW 35.21.860 is amended to allow collection of a franchise fee, this Franchise Agreement shall be amended to require Franchise Fee payments except as limited by applicable law.
- (v) Franchisee shall be responsible for the cost of publication of this Franchise.
- (vi) If Franchisee submits a request for work beyond the scope of this Franchise or submits a complex project that requires significant comprehensive plan review, or inspection, Franchisee shall reimburse the City for any amendments and all reasonable expenses associated with the project. Franchisee shall make such reimbursement within thirty (30) days of receipt of a bill from the City.

SECTION 3.0 FRANCHISEE'S OPERATIONS AND MAINTENANCE

3.1. Compliance with Laws, Regulations, Codes, and Standards

In carrying out any authorized activities under the privileges granted by this Franchise, the Franchisee shall conduct all work in a safe and workmanlike manner that meets accepted industry standards and codes and shall comply with all applicable laws, regulations and ordinances of any governmental entity with jurisdiction over the Franchisee's Facilities in the Franchise Area, including, but not limited to, applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) standards. No construction, maintenance, or repairs (except for emergency repairs pursuant to Section 3.8 of this Franchise) shall be undertaken in the Franchise Area without first obtaining requisite use permits required by the City Code. In the case of emergency work performed, Franchisee shall seek a permit from the City within twenty-four (24) hours of the first business day following the performance of the emergency repairs. This includes all applicable laws, regulations and ordinances existing as of the Effective Date or may be subsequently enacted by any governmental entity with jurisdiction over the Franchisee's operations within the Franchise Area. Subject to applicable law, the City shall have the right to make and enforce reasonable rules and regulations pertaining to the conduct of the Franchisee's operations within the Franchise Area. Prior to the adoption of any new rule, procedure or policy, the Franchisee shall be provided a written draft document for comment with a response period of not less than thirty days. All facilities must be installed and maintained in a safe condition. Franchisee shall keep its Facilities free of debris and anything of a dangerous, noxious, or offensive nature or which would create a

hazard or undue vibration, heat, noise, or any interference with City services.

3.2 Facility Location and Non-Interference

The Franchisee shall have the discretion to determine the placement of its Facilities as may be necessary to provide safe and reliable telecommunications service within the Franchise Area, subject to the following non-interference requirements. Where no overhead poles exist, all Facilities and related components shall be installed underground, except such facilities that technically must remain above ground to operate, or facilities that are otherwise exempted from this requirement in writing by the City. In sections of the City where cables, wires, utilities, or other such facilities are placed underground, Franchisee shall place its wires and other like facilities underground. If at any time the City determines that existing wires, cables, utilities, or other like facilities in the City shall be changed from an overhead to an underground installation, Franchisee shall convert its Facilities to underground in areas impacted by such requirement. If Franchisee's Facilities are to be placed underground in a common trench or bore shared by others, Franchisee shall share equally the expense of the trenching and/or boring in proportion to the number of joint users. Franchisee shall pay for Facilities installed for Franchisee's own use. If Franchisee owns the aerial supporting structure, additional incremental cost of undergrounding compared to aerial allocation will be paid by the City. Where the City requires relocation for aesthetic purposes only, costs associated therewith shall be paid by the City. In areas of the City where electrical or telephone systems are installed on poles above ground, Franchisee shall have the option of installing its system in like manner, above ground, or underground. All construction, installation, repair, or relocation of the Franchisee's Facilities performed by the Franchisee in the Franchise Area will be done in such a manner as not to interfere with the construction and maintenance of other utilities, drains, drainage and irrigation ditches and structures, and City-owned property within the Franchise Area.

3.3 Facility Location Information

Following any Facility construction, relocation, or modification (if said modification materially alters the dimensions of the Facilities), but not more than once annually, Franchisee shall provide the City with accurate copies, electronically and hard-copy, of as-built plans and maps prepared by Franchisee. The plans and maps shall accurately show the location of all Facilities within the Franchise Area and shall be provided at no cost or expense to the City. Franchisee shall warrant the accuracy of all plans, maps, and as-builts provided under this subsection. With respect to any excavations within the Franchise Area undertaken by or on behalf of the Franchisee or the City, nothing stated in this Franchise is intended (nor shall be construed) to relieve either Party of their respective obligations arising under the State one-call law with respect to determining the location of existing underground utility facilities in the vicinity of such excavations prior to commencing work. Except to the extent due to its negligent or willful acts or omissions, the City shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers resulting from (i) work performed for any City project for which Franchisee has failed to properly locate its facilities within the prescribed time limits and guidelines established by State one-call law; or (ii) work performed by third-parties under a permit issued by the City.

3.4 Vegetation Management

The right of the Franchisee to maintain its Facilities shall include the right to utilize an

integrated vegetation management program to minimize the likelihood that encroaching above ground vegetation can interfere with or limit access to the Franchisee's Facilities or pose a threat to public safety and welfare. Franchisee shall make every effort to ensure its tree trimming activities protect the appearance, integrity, and health of the trees to the extent possible. If, in exercising the rights under this subsection, any damage is done to any trees or natural growth owned by third parties, Franchisee shall indemnify and hold the City harmless from any and all third-party claims arising from Franchisee's vegetation management activities. Except when conducting emergency work pursuant to section 3.8, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" unless otherwise approved by the City.

3.5 Right of Excavation

For the purpose of implementing the privileges granted under this Franchise, and after any required notification is made to the City, and after obtaining any approvals or necessary permits from applicable federal, state, and City authorities, the Franchisee is authorized to make any necessary excavations in, under, and across the streets, alleys, roads, rights of way and public grounds within the Franchise Area. Such excavation shall be carried out with reasonable dispatch and with as little interference with or inconvenience to the public as may be feasible. The Franchisee shall remove all debris stemming from excavation and construction. The Right-of-way surface shall be restored by the Franchisee after excavation, in accordance with applicable City and Franchisee specifications. Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work in the Franchise Area or other affected area at its sole cost and expense, and according to the time and terms specified in any permit issued by the City. All work by Franchisee conducted under this Franchise shall be warranted by Franchisee for a period of two (2) years. If conditions make complete restoration required under this subsection impracticable, Franchisee shall temporarily restore the affected right-of-way or other affected property. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

3.6 Notice to City of Excavation.

If Franchisee shall, at any time, make excavations within the Franchise Area, Franchisee shall in addition to receiving requisite permitting, notify the City in writing at least ten (10) days prior to the commencing the excavation. Upon written request from the City, Franchisee shall afford the City an opportunity to share such excavation, provided that the joint use shall not unreasonably delay the work of Franchisee, and such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties. Franchisee shall be entitled to recover the incremental costs associated with such joint work from the City.

3.7 Notice to Third Party Landowners.

At the discretion of the City and depending on the impact of the usage of the rights-of-way, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature, and location of the work being performed. In addition to Franchisee's obligation to restore the right-of-way after completion of any work performed under this Franchise, Franchisee shall also be required to ameliorate any disturbance to landscaping, fencing, or other improvements on

private property caused by Franchisee's work at its sole cost and expense.

3.8 Emergency Work

In the event of an emergency requiring immediate action by the Franchisee to protect its Facilities, or the property of the City or other persons in the Franchise Area, the Franchisee may immediately proceed with excavation or other Right-of-way work, with concurrent notice to the City to the extent possible.

3.9 Additional Ducts or Conduits.

At any time during construction or relocation of any Facilities in the public right-of way, the City may require additional ducts or conduits necessary to allow access to the Facilities, provided that (i) the requested additional duct or conduit space and related access structures will not be used by the City to provide telecommunications or cable television service for hire, sale, or resale to the general public, and (ii) any and all fees and costs associated with such request, and any work stemming therefrom, including incremental amounts, including but not limited to permitting, engineering, design, and materials acquisition, delivery, installation, and testing, shall be the responsibility of the City, and shall be due and payable to Franchisee upon demand. Any demand for additional ducts or conduits contemplated under this subsection shall not be considered a public works construction project.

3.10 Work of Contractors and Subcontractors.

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

SECTION 4.0 RESERVATION OF CITY'S RIGHTS AND POWERS

The City, in granting this Franchise, does not waive any rights which it may now have or may subsequently acquire with respect to road rights-of-way or other property of City under this Franchise, and this Franchise shall not be construed to deprive the City of any such powers, rights or privileges which it now has or may hereafter acquire to regulate the use of and to control the City's roads, rights of way and other public property covered by this Franchise. Nothing in the terms of this Franchise shall be construed or deemed to prevent the City from exercising at any time any power of eminent domain granted to it under the laws of this State.

4.1 Necessary Construction/Maintenance by City

The construction, operation and maintenance of the Franchisee's Facilities authorized by this Franchise shall not preclude the City, its agents or its contractors, from grading, excavating, or doing other necessary road work contiguous to the Franchisee's Facilities, provided that the Franchisee shall be given not less than ten business days' notice of said work, and provided further that the City, its agents and contractors, shall be liable for any damages caused by said work to any installations belonging to the Franchisee subject to the limitation contained in section 3.3 of this

Franchise.

4.2 Removal of Abandoned Facilities

During the Term of this Franchise, or upon a revocation or non-renewal of this Franchise, the City may direct the Franchisee to remove designated abandoned Facilities from the Franchise Area at its own expense and as soon as practicable. Alternatively, the City may, at its sole option, allow Franchisee to abandon its facilities in place. If it becomes necessary for the City to remove the designated Facilities to ameliorate a threat to public health and safety, the City shall be paid the reasonable and actual costs of removal by the Franchisee.

4.3 Vacation of Properties by City

If, at any time, the City shall vacate any road, right of way or other public property which is subject to rights granted by this Franchise, the City shall endeavor to specifically reserve the continued use of the right of way by Franchisee. Unless the City specifically reserves to Franchisee the right to continue use of the vacated rights-of-way, Franchisee shall, without delay or expense to the City, remove its facilities from the vacated right-of-way and restore, repair, or reconstruct the right-of-way where such removal has occurred. In the event of failure, neglect, or refusal of Franchisee to restore, repair, or reconstruct such right-of-way as required by this subsection after thirty (30) days written notice from the City, the City may do such work or cause it to be done, and the reasonable cost thereof shall be paid by Franchisee within thirty (30) days of receipt of an invoice and documentation evidencing the City's costs incurred in connection with such work.

4.4 Eminent Domain.

The existence of this Franchise shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of the Franchisee's Facilities for the fair market value thereof.

SECTION 5.0 RELOCATION OF FRANCHISEE'S FACILITIES

5.1 Public Project Construction

Whenever the City causes the construction of any Public Project and/or the alteration or improvement of any road, highway or Right-of-way within the Franchise Area, and such construction necessitates the relocation of the Franchisee's Facilities from their existing location to another location within the Franchise Area, such relocation will be at no cost to the City. City shall notify the Franchisee of any intended or expected requirement or request to relocate the Franchisee's Facilities as early as practicable, but not less than 120 days prior to any such relocation. After receipt of such notice, the Franchisee shall complete relocation of its Facilities at least ten days prior to commencement of the project or an agreed upon date by both parties. If any relocation to accommodate the City forces the Franchisee off of a Right-of-way, then City will make a reasonable effort to accommodate said relocation on alternative public Right-of-way.

5.2 Public Project Related Relocation Costs

The City shall have no responsibility for the costs of the relocations described in Section 5.1 unless the City has failed to provide the required advanced notice, then any and all reasonable excess costs caused by the failure to provide such notice shall be paid by the City. If the City requires the subsequent relocation of any the Franchisee Facilities previously relocated at the sole

cost of Franchisee per Section 5.1, due to a Public Project within five years from the date of the initial relocation, the City shall bear the entire cost of such subsequent relocation if required by RCW 35.99.060(3).

5.3 Relocation of Facilities Requested by Third Parties

If the Franchisee's Facilities within the Franchise Area are to be relocated at the request of or for the benefit of a third party (including compliance by such party with any condition or requirement associated with approvals or permits to be obtained pursuant to any zoning, land use, construction or other development regulation), the City shall not require the Franchisee to relocate its Facilities until such time as the third party has entered into an agreement with the Franchisee for the up-front reimbursement of Facility relocation costs.

5.4 Availability of Other Funds

In the event federal, state, or other funds are available in whole or in part for utility relocating purposes related to a Public Project, the City shall apply for such funds and the Franchisee shall be reimbursed to the extent any such funds are actually obtained.

SECTION 6.0 INSURANCE, INDEMNIFICATION, AND BONDING REQUIREMENTS

6.1 Insurance

Within ninety (90) days following the grant of this Franchise, the Franchisee shall obtain, pay all premiums for, and make available to the City at its request Certificates of Insurance with endorsements listing the City as an additional insured:

- (i) A general comprehensive liability policy indemnifying, defending and saving harmless the City, its officers, boards, commissions, agents or employees from any and all claims by any person whatsoever on account of injury to or death of a person or persons occasioned by the operations of the Franchisee under the franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) per personal injury or death of any one person, and Two Million Dollars (\$2,000,000) for personal injury or death of any two or more persons in any one occurrence;
- (ii) Property damage insurance for property damage occasioned by the operation of the Franchisee under the Franchise herein granted, or alleged to have been so caused or occurred, with a minimum liability of One Million Dollars (\$1,000,000) for property damage to any one person and Two Million Dollars (\$2,000,000) for property damage to the property of two or more persons in any one occurrence;
- (iii) Worker's compensation within statutory limits and employer's liability insurance with limits of not less than One Million Dollars (\$1,000,000) for each accident/disease/policy limit or as required by law;
- (iv) All insurance policies called for herein shall require thirty (30) days written notice of any cancellation to both the City and the Franchisee. The Franchisee shall, in the event of any such cancellation notice, obtain, pay all premiums for, and file with the City, written evidence of the issuance of replacement policies within thirty (30) days following receipt by the City or the Franchisee of any notice of cancellation.
- (v) Franchisee's insurance as required by this Agreement shall not be construed to limit

the liability of Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy to which the City is otherwise entitled at law or in equity.

6.2 Indemnification of the City

Each Party shall indemnify and hold the other harmless for any losses, claims, awards, penalties, or injuries incurred by any third party, including attorneys' fees, which arise from an actual or alleged breach of such indemnifying Party's representations and warranties set forth herein, provided that the indemnifying Party is promptly notified of any such claims. The indemnifying Party shall have the sole right to defend such claims at its own expense. The other Party shall provide, at the indemnifying Party's expense, such assistance in investigating and defending such claims as the indemnifying Party may reasonably request. This indemnity shall survive expiration or earlier termination of this Franchise.

6.3 Hazardous Substances

Franchisee shall not introduce or use any hazardous substances (chemical or waste) within the City in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors, or any person under its control to do the same. Franchisee will be solely responsible for, and will defend, indemnify and hold the City, its officers, officials, employees, and agents harmless from and against any and all third party claims, costs, and liabilities, including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with the Franchisee's use, storage, or disposal of hazardous substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether inadvertent or intentional.

6.4 Performance Bond

If required by the City, Franchisee (or the general contractor enlisted by Franchisee to conduct the work) shall furnish a performance bond written by a corporate surety reasonably acceptable to the City equal to at least 100% of the estimated cost of constructing Franchisee's Facilities, excluding materials, within the Franchise Area prior to commencement of any such work, or such lesser amount as deemed appropriate by the City. If a bond is required under this subsection, the bond must remain in full force until the completion of construction or relocation, including final inspection, corrections, and final approval of the work, recording of all easements, provision of as-built drawings, and the posting of a maintenance bond required by subsection 6.5 of this Franchise. If a performance bond is required under this section, the performance bond shall guarantee:

- (i) the timely completion of construction
- (ii) construction in compliance with all applicable plans, permits, technical codes, and standards
- (iii) Proper location of the Facilities as specified by the City
- (iv) Restoration of the Franchise Area and other properties affected by construction
- (v) Submission of as-built drawings and maps after completion of construction or relocation
- (vi) Timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property.

SECTION 7.0

FRANCHISE DISPUTE RESOLUTION

7.1 Non-waiver

Failure of a Party to declare any breach or default of this Franchise immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but the Party shall have the right to declare any such breach or default at any time. Failure of a Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default. In addition, the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a revocation and forfeiture for breach of the conditions of the Franchise.

7.2 Stop Work Order

On notice from the City that any work is being performed by Franchisee contrary to the requirements and provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable use permit, laws, regulations, ordinances, or standards, the work may be immediately stopped by the City. The stop work order shall:

- (i) Be in writing
- (ii) Be delivered to the person doing the work or posted on the work site
- (iii) Be sent to Franchisee via overnight delivery
- (iv) Indicate the nature of the alleged violation or unsafe condition
- (v) Establish conditions under which work may be resumed.

7.3 Revocation and Forfeiture of Franchise

If the Franchisee shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given the Franchisee under the provisions of this grant, the City shall give 30-days' written notice of the non-conformance, during which period the Franchisee shall have the opportunity to remedy any breach, provided that if the breach is of such a nature that cure is not possible within such 30-day period, and Franchisee diligently pursues the cure to completion, the City shall abate any forfeiture action for the duration of such additional time necessary for Franchisee to cure the breach. If Franchisee does not work promptly and diligently to effect compliance during the 30-day notice period (and fails to diligently pursue cure thereafter if the breach is of such a nature that cure is not possible within such 30-day period), the City may elect to remedy the violation and charge reasonable costs and expenses of such remedial action to Franchisee. If the City does not elect to remedy the violation, and Franchisee remains in violation of the requirements of this Agreement at the expiration of the 30-day notice period (and fails to diligently pursue cure thereafter if the breach is of such a nature that cure is not possible within such 30-day period), City may declare an immediate forfeiture of this grant and all of Franchisee's rights under this grant shall be terminated.

7.4 Dispute Resolution by the Parties

Disputes regarding the interpretation or execution of the terms of this Franchise, that cannot be resolved by Department counterparts representing the Parties, shall be submitted to the City's Attorney and a representative of the Franchisee's Legal Department for resolution. If a mutually

satisfactory or timely resolution cannot then be reached by the above process, prior to resorting to a court of competent jurisdiction, the Parties shall submit the dispute to a non-binding alternate dispute resolution process agreed to by the Parties.

7.5 Right of Enforcement

No provision of this Franchise shall be deemed to bar the right of the City or the Franchisee to seek judicial relief from a violation of any provision of the Franchise to recover monetary damages for such violations by the other Party or to seek enforcement of the other Party's obligations under this Franchise by means of specific performance, injunctive relief, or any other remedy at law or in equity. Any litigation between the City and the Franchisee arising under or regarding this Franchise shall occur, if in the state courts, in a court of competent jurisdiction, and if in the federal courts, in the United States District Court for the Western District of Washington.

7.6 Attorneys' Fees and Costs

Except as otherwise provided in this Agreement, each Party shall pay for its own attorneys' fees and costs incurred in any dispute resolution process or legal action arising out of the existence of this Franchise.

SECTION 8.0 GENERAL PROVISIONS

8.1 Franchise as Contract, No Third-Party Beneficiaries

This Franchise is a contract between the Parties and binds and benefits the Parties and their respective successors and assigns. This Franchise does not and is not intended to confer any Rights or remedies upon any persons, entities, or beneficiaries other than the Parties.

8.2 Force Majeure

In the event that the Franchisee is delayed in or prevented from the performance of any of its obligations under the Franchise by circumstances beyond the Franchisee's control (Force Majeure) including, without limitation, third party labor disputes, fire, explosion, flood, earthquake, power outage, acts of God, war or other hostilities and civil commotion, then the Franchisee's performance shall be excused during the period of the Force majeure occurrence. The Franchisee will use all commercially reasonable efforts to minimize the period of the disability due to the occurrence. Upon removal or termination of the occurrence the Franchisee will promptly resume performance of the affected Franchise obligations in an orderly and expeditious manner.

8.3 Severability

The Franchise is granted pursuant to the laws of the State of Washington relating to the granting of such rights and privileges by City. If any article, section, sentence, clause, or phrase of this Franchise is for any reason held illegal, invalid, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the Franchise or any other section, sentence, clause, or phrase of this Franchise. The invalidity of any portion of this Franchise shall not abate, reduce, or otherwise affect any obligation required of the Franchisee.

8.4 Changes of Law and Amendments

This Franchise may be amended from time to time to conform to any changes in the

controlling federal or state law, or any Ordinances or Resolutions lawfully passed by the City, or any other regulations material to this Franchise. Each Party agrees to bargain in good faith concerning such proposed amendments. To the extent any rule, ordinance, or regulation is adopted or amended by the City that is generally imposed on similarly situated persons or entities, the rule, ordinance, or regulation shall apply without need for written amendment of this Franchise. Notwithstanding the foregoing, the City shall provide written notice to Franchisee of any such change to applicable rules, ordinances, and regulations affecting this Franchise prior to its adoption. Nothing in this section shall prevent the City and Franchisee from executing a mutually agreed written amendment to this Franchise at any time during the Franchise term, provided that said written amendment conforms with the same formalities of this Franchise.

8.5 Competitively Neutral Application.

The City shall impose, on a competitively neutral and non-discriminatory basis, similar terms, and conditions upon other similarly situated providers of telecommunications services operating within the City. Any requirements imposed on Franchisee that are determined not in compliance with this section shall be unenforceable against Franchisee.

8.6 Limitation of Liability.

The City and Franchisee agree that neither Party shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or in the event this Franchise or any part hereof, is determined or declared to be invalid.

8.7 Supremacy and Governing Law

This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Washington except as required under federal law.

8.8 Headings

The headings or titles in this Franchise are for the purpose of reference only and shall not in any way affect the interpretation or construction of this Franchise.

8.9 Acceptance of Franchise

The Franchisee shall, within 30 days after passage of this Ordinance, file with the City Clerk, its acceptance of the terms and conditions of this Franchise.

8.10 Franchise Effective Date

The Effective Date of this Franchise shall be March 25, 2024, provided that it has been duly accepted by the Franchisee as specified above. This Ordinance shall be in full force and effective five (5) days following its passage, approval, and publication.

PASSED by the majority vote of the entire City Council of the City of Winlock, Washington, and **APPROVED** by the Mayor of the City of Winlock at a regularly scheduled open public meeting thereof, this 25th day of March 2024.



Brandon Svenson, Mayor

Attest:


Penny Jo Haney, City Clerk

Approved as to form:


Marissa Y. Jay, WSBA # 55593
City Attorney

First Approved Reading: 03/25/2024
Publication Date: ~~03/28/2024~~ 04/11/2024
Effective Date: ~~04/02/2024~~ 04/16/2024

Letter of Acceptance by ToledoTel

HONORABLE MAYOR AND CITY COUNCIL
CITY OF WINLOCK, STATE OF WASHINGTON

IN RE: City of Winlock, Ordinance No. 1158

"Granting a Franchise to ToledoTel, Franchisee, for the Construction, Operation, and Maintenance of Telecommunications Facilities Within the City."

ToledoTel, LLC, for itself, its successors and assigns, hereby accepts the terms and conditions of the Franchise Agreement contained in the subject Ordinance and files this written acceptance with the City of Winlock. This acceptance is executed on

MARCH 27 . 2024

ToledoTel, LLC

By: 

Print Name: Dale Merten

Title: VP/COO

Copy Received for the City of Winlock

On: MARCH 27, 2024

By: Henry Jo Hovik



Mayor CITY CLERK