

ORDINANCE NO. 2093

AN ORDINANCE OF THE CITY OF NEWPORT, WASHINGTON, GRANTING PUBLIC UTILITY DISTRICT NO. 1 OF PEND OREILLE COUNTY, WASHINGTON THE RIGHT, PRIVILEGE, AUTHORITY, AND FRANCHISE TO SET, CONSTRUCT, CONNECT, INSTALL, MAINTAIN, REPAIR, REPLACE, OPERATE AND USE ELECTRICAL AND TELECOMMUNICATION FACILITIES WITHIN THE FRANCHISE AREA FOR PURPOSES OF TRANSMITTING AND DISTRIBUTING ELECTRICAL ENERGY AND TELECOMMUNICATION SERVICES WITHIN THE FRANCHISE AREA AND OTHER MATTERS PROPERLY RELATED THERETO.

WHEREAS, in order to maintain control over the use of City of Newport (“City”) rights of way by utilities operating within the City, it is appropriate to enter into franchise agreements with such utilities; and

WHEREAS, Public Utility District No. 1 of Pend Oreille County, Washington (“Franchisee”) operates a utility for the purposes of transmitting and distributing electricity and communications within City rights-of-way under the franchise granted to it by City Ordinance No. 875, adopted July 16, 1996 and expiring August 13, 2021, provided, the City may continue to invoke any or all provisions of Ordinance No. 875 against Grantee enjoying de facto franchise privileges after the expiration date, and by letter dated May 12, 2021, Franchisee petitioned the City to continue the granting of an electric and communications utility franchise to it; and

WHEREAS, the City Council having duly considered the request of Franchisee and whether it is in the best interests of persons and businesses in the City to grant Franchisee a new franchise for the continued use of City rights-of-way for the delivery of electric and communications utility services within the boundaries of the City; and

WHEREAS, the City Council having fully complied with RCW 35A.47.040 by having first submitted this Ordinance to the city attorney for review, waiting at least five days after the first introduction of this Ordinance at a regular meeting to take action on this Ordinance, and publishing the full text of this Ordinance in the Newport Miner prior to the regular City Council meeting at which action may be taken, all as prescribed by law, and the City having been fully advised in the premises; and

WHEREAS, the City has determined that it is in the public interest to grant a non-exclusive franchise to Franchisee on the terms and conditions set forth in this Ordinance; now, therefore

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWPORT, WASHINGTON, AS FOLLOWS:

Section 1. Definitions

Where used in this Ordinance, the following definitions shall apply:

A. “Franchisee” means Public Utility District No. 1 of Pend Oreille County, a public utility district existing and operating pursuant to Title 54 RCW, and its respective successors and assigns.

B. “City” means the City of Newport, a non-charter code city existing and operating pursuant to Titles 35 and 35A RCW, and its respective successors and assigns.

C. “Franchise Area” means all of the public roads, streets, avenues, alleys, highways, and rights-of-way of the City as now laid out, platted, dedicated or improved; and any and all public roads, streets, avenues, alleys, highways, grounds, and rights-of-way that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and as the limits of the City may be extended, through annexations or otherwise; provided, that the Franchise Area shall not include or convey any right to Franchisee to install Facilities on, or to otherwise use, City owned or leased buildings, properties or parcels located within the Franchise Area.

D. “Facilities” means

1. all electric and telecommunications transmission and distribution systems, including but not limited to, poles, wires, lines, cables, fibers, braces, guys, anchors, switches, meter-reading devices, pipes, utilities, conduits, equipment, communication systems and signal lines, vaults, manholes, meters, and all necessary or desirable facilities and appurtenances, utilized by Franchisee in the operation of activities authorized by this Ordinance; and

2. all equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located above or below ground.

The abandonment by Franchisee of any Facilities as defined herein shall not act to remove the same from this definition.

E. “Franchise” or “Ordinance” means this ordinance setting forth the terms and conditions of this franchise.

Section 2. Franchise Grant

Subject to the terms and conditions set forth in this ordinance, the City grants to the Franchisee the non-exclusive right, privilege, authority, and franchise to construct, connect, install, maintain, repair, replace, operate and use Facilities in, over, along, across and under the Franchise Area for the purpose of providing the transmission, distribution and sale of electric energy for power, heat, light and such other purposes for which electric energy may be used, and the transmission, distribution and sale of telecommunication services.

Section 3. Franchise Term

The term of this Franchise shall be for a period of twenty-five (25) years from the effective date of this Ordinance as stated in Section 28 below. Unless lawfully terminated in accordance with the terms of this Ordinance, this Franchise shall remain in full force and effect. The City may continue to invoke any or all provisions of this Franchise against Franchisee, or any successor entity enjoying *de facto* Franchise privileges after expiration of the term.

Section 4. Non-exclusive Franchise; Assignability

This Franchise is not exclusive. It does not prohibit the City from granting franchises for other public or private utilities in, over, along, across, and under any City property, including City rights-of-way. This Franchise does not prevent or prohibit the City from operating its own utilities within City rights-of-way, or constructing, altering, maintaining or using any City rights-of-way covered by this Franchise. The City retains full power to make and effect all changes, relocations, repair, maintenance, or otherwise work in the Franchise Area as the City deems fit in its sole discretion.

This Franchise may not be assigned by Franchisee without the prior written consent of the City, which shall not be unreasonably withheld and which shall be issued in accordance and compliance with RCW 35A.47.040, as amended.

Section 5. Regulation of Use and Control

This Franchise does not deprive the City of any powers, rights, or privileges it now has or may later acquire in the future to regulate the use of and to control the City road rights-of-way covered by this Franchise. The City reserves the right and power at all times to exercise its police powers with respect to the time, manner and location of the placement of the Franchisee's Facilities. The City may adopt and enforce, and Franchisee will comply with, City ordinances regulating Franchisee's use of the Franchise Area, including all construction, maintenance and other work undertaken by Franchisee within the Franchise Area. The provisions of Newport Municipal Code shall apply to the performance of the conditions of this Franchise except as may be inconsistent or in conflict with the provisions of this Franchise and provided, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Franchisee by the Newport Municipal Code.

Section 6. Right of Excavation, Use and Maintenance of Facilities

A. Franchisee's Facilities shall be set, constructed, connected, installed, maintained, replaced, operated, used and repaired within the Franchise Area so as to provide for safety of persons and property, and not interfere with the free passage of traffic, all in accordance with the laws of the State of Washington, and the ordinances, resolutions, rules and regulations of the City. Franchisee shall use the rights-of-way in the Franchise Area in a manner whereby construction of the Facilities can be coordinated with other City and private construction activities and will least impact the existing condition of the Franchise Area, will least impact traffic during construction, and will least impact adjacent neighborhoods during construction and after installation, all to the extent reasonably practicable.

B. Whenever it shall be necessary for Franchisee to engage in any work or excavation for the purpose of installation, construction, repair, maintenance or relocation of its Facilities within the Franchise Area, Franchisee shall apply for and procure all necessary City permits and authorizations to do such work, and shall, except where expressly provided otherwise herein, comply with all requirements and conditions of this Franchise and such permits and authorizations, including but not limited to location restrictions, traffic control, and restoration, repair or other work to restore the surface of the Franchise Area to the City's satisfaction. Such permits and authorizations shall also be subject to any other applicable City ordinance, resolutions, codes, policies, and standards. After the work is completed, Franchisee shall, upon request by the City and to the extent allowed by law, provide to the City at no cost a copy of all as-built plans, maps and records of the Facilities. Nothing provided herein shall in any way limit the City's authority to otherwise exercise its police powers or other lawful authority.

C. Franchisee shall, after construction, maintenance or repair of its Facilities, promptly restore any disturbed right-of-way to at least the condition existing immediately prior to such work to the City's satisfaction and in accordance with the City standards and specifications, and applicable City permits. Excess or deleterious excavated material shall be promptly loaded and hauled away by the Franchisee. All concrete encased recorded monuments that have been disturbed or displaced by such work shall be restored to their condition existing immediately prior to such work pursuant to City standards and specifications. Franchisee agrees to promptly complete restoration work and to promptly repair any damage to the extent caused by Franchisee's work on the right-of-way at its sole cost and expense. It shall be the responsibility of the Franchisee to replace repairs until such time as the roadway is replaced or upgraded. In the event Franchisee fails to restore the Franchise Area to the condition existing immediately prior to Franchisee's work within seven (7) days after notice to repair or restore it, the City reserves the right to make such repairs or restoration to such Franchise Area and bill Franchisee for the actual, reasonable and necessary cost of such restoration, including the cost of labor and equipment to repair the damage caused by Franchisee's work. Franchisee shall pay such bill to the City within thirty (30) days.

D. In the event Franchisee's credit rating falls below investment grade (currently BBB- by Fitch or Baa3 by Moody's Investor Services, Inc.), the City may require Franchisee to post an appropriate bond, as reasonably determined by the City, to ensure satisfactory restoration of the Franchise Area following the completion of Franchisee's work therein. In lieu of a separate bond for each project or for routine individual projects within the Franchise Area, Franchisee may provide the City with a single performance bond for the term of the Franchise in an amount approved by the City.

Section 7. Coordination of Work in City Rights-of-Way

To facilitate the coordination of work in City rights-of-way, if the Franchisee shall at any time plan to make excavations in the Franchise Area, the Franchisee shall provide notice to the City of the planned excavation, affording the City or any other party the opportunity to share in the excavation, upon appropriate cost-sharing terms.

Section 8. Tree Trimming

A. Emergency Trimming. Where necessary for the protection of its services to the public, Franchisee shall remove, at its own expense and liability, any branches of trees which would impair the safe operation and maintenance of Franchisee's Facilities. In the case of emergency, or upon refusal or unreasonable delay by Franchisee, such trimming may be done by the City or under its supervision and direction at the expense of Franchisee.

B. Vegetation Management Program. Franchisee shall have the authority to utilize an integrated vegetation management program to prevent interference with Franchisee's Facilities at its sole risk on City right-of-way or subject to approval of the property owner if on private property.

1. **Privately Owned Property.** Franchisee shall use its best effort to provide at least seven (7) days written notice to the owner of private property, on which any tree or plant life Franchisee desires to trim is located. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information from the Franchisee regarding its tree trimming plans and express concerns regarding the trimming of the trees or plant life on their property. Franchisee shall make a good faith effort to conform with property owners' requests regarding trimming trees or plant life on their property. Franchisee shall be responsible for debris removal from any trimming activities. If such debris is not removed within twenty-four (24) hours, the City may, upon written notice to the Franchisee, at its sole discretion, remove such debris and charge Franchisee for the cost of removal and disposal.

2. **City Property.** Franchisee shall use its best effort to provide the City at least two (2) days' notice of its intent to trim trees or other vegetation located in the Franchise Area. Full removal of trees located on any property owned by the City shall require prior written approval of the City. The City may waive any notice period required of Franchisee for vegetation management on City Property.

C. Franchisee's Rights Cumulative. Franchisee's rights under this Section are cumulative with, and in no way limit, any other rights Franchisee may have under applicable law.

Section 9. Undergrounding of Facilities.

Franchisee acknowledges Newport City Code Chapters 17.04 and 17.03, in pertinent part, require the undergrounding of new Facilities in the Franchise Area in certain development projects and zones. Franchisee shall comply with the City's policies and regulations concerning the undergrounding of Facilities within the Franchise Area, as currently adopted or as may be adopted during the term of this Franchise.

Section 10. Information on Location of Facilities; Non-Interference.

A. The Franchisee shall provide the City, upon request and to the extent allowed by law, with all information regarding the location of the Franchisee's current Facilities, including but not limited to copies of all as-builts and on-site locations for such Facilities. The Franchisee

represents and warrants that all information provided to the City to its best knowledge, including any as-builts, are and will be consistent with utility industry standards.

B. Facilities shall be maintained within the Franchise Area so as not to unreasonably interfere with the free passage of traffic and in accordance with the laws of the State of Washington and the City; provided, however, in the event of any conflict or inconsistency between such laws of the City and the terms and conditions of this Franchise, the terms and conditions of this Franchise shall govern and control; provided, further, nothing herein shall be deemed to waive, prejudice or otherwise limit any right of appeal afforded Franchisee by such City laws.

Section 11. Reimbursement of Costs

Pursuant to RCW 35.21.860, Franchisee shall reimburse and pay to the City the amount of actual administrative expenses incurred by the City which are directly related to the receipt, review and approval of a permit, license and franchise, to the inspection of plans and construction, and to the preparation of detailed statements prepared pursuant to any applicable environmental law. As such expenses are incurred by the City, the City shall submit to Franchisee statements/billings for such expenses. Franchisee shall make payment to the City in reimbursement of such expenses within thirty (30) days of the receipt of such statements/billings.

Section 12. Indemnification / Hold Harmless

A. To the maximum extent provided by law, and except as otherwise provided herein, Franchisee shall indemnify and hold the City, its officers, directors, agents, servants, employees and volunteers harmless from any and all claims, demands, penalties, damages, losses, suits, including death, bodily injury or property damage, including attorneys' fees and court costs, arising out of or resulting from the acts, errors or omissions of Franchisee, its officers, directors, agents, servants and employees in its exercise of its rights and delivery of utility services under this Franchise, except for claims caused by the sole negligence of City. In the event that any claims, investigations, demands, suits, actions or lawsuits arise out of any of the aforesaid acts, errors, or omissions, Franchisee shall assume all costs of defending such claims, suits, actions or lawsuits, including legal fees incurred by City, any penalties imposed on City or Franchisee, and all judgments that may be obtained against City, or any of its officers, agents, or employees in such suits.

B. Franchisee shall not be responsible for damages, fees, or costs determined to arise out of the City's sole negligence. In the case where damages are determined to arise out of concurrent negligence of the parties, Franchisee's liability shall extend to damages determined to arise beyond the extent of Franchisee's concurrent negligence only so far as permitted by law.

C. The indemnification obligations set forth herein shall extend to claims regardless of whether they are reduced to suit and to any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

D. In the event that Franchisee refuses the tender of defense in any suit or claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction, or such other tribunal as agreed by the parties, to have been a wrongful refusal on the part of Franchisee, then Franchisee shall pay

all of the City's costs, including all expert witness fees, costs and attorney's fees, incurred in pursuing indemnification under this Section.

E. IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE INDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE FRANCHISEE'S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE, TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

F. The provisions of this Section shall survive the expiration or termination of this Franchise.

Section 13. Insurance

The Franchisee shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Franchisee, its agents, representatives, employees, contractors or subcontractors. Franchisee shall maintain the following policies, as a minimum, from a reputable insurance company or companies:

A. Automobile Liability Insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

B. Commercial General Liability Insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

C. Workers' Compensation Insurance in accordance with Washington state law.

This insurance shall be issued by an insurance company or companies admitted and licensed by the Insurance Commissioner to do business in the State of Washington, or by a Public Entity Insurance Pool, authorized by RCW 48.62. Franchisee shall, upon request by the City, supply the City with copies of the policies required by this Section.

Section 14. Safety

The Franchisee shall be responsible for safety and safety conditions on its job sites and for its work within the Franchise Area, including the safety of all persons and property during performance of any work therein. The services of the City's or City's consultant personnel in conducting construction review of the Franchisee's work relating to the Franchise is not intended to include review of the adequacy of Franchisee's work methods, equipment, scaffolding, or trenching, or safety measure in, on, or near such Franchise Area or job site. The Franchisee shall provide safe access for the City and its inspectors to adequately inspect the work and its conformance with applicable statutes, ordinance, rules, regulations, and the Franchise.

Section 15. Relocation of Facilities

A. Whenever the City undertakes as a public works project or causes to be undertaken the construction of any public works improvement within the Franchise Area, and such public works improvement necessitates the relocation or protection of Franchisee's then-existing Facilities within the Franchise Area, the City shall endeavor to give ninety (90) days' notice before the date Franchisee must relocate or protect its facility and shall:

1. Provide Franchisee written notice of such relocation or protection; and
2. Provide Franchisee with copies of pertinent portions of the City's plans and specifications for such public works improvement.

After receipt of such notice and such plans and specifications, Franchisee shall relocate or protect such Facilities within the Franchise Area as designated by the City or the City's authorized representative in accordance with the City's Public Works Standards and any amendments thereto at Franchisee's sole expense. City shall exercise its best efforts to assist Franchisee in such relocation or protection.

For the purposes of this Section, public works projects shall include but not be limited to streets, sidewalks, storm drains, water and/or sewer facilities installed by any public entity and private entities doing work directed by the City involving public facilities.

B. The City or its contractors, working in the Franchise Area shall not be charged for incidental costs incurred as a result of Franchisee's failure to properly identify its Facilities through the State's one-number locator service, so long as the City and its contractors complied with all excavator requirements in chapter 19.122 RCW. Whenever any person or entity, other than the City, requires the relocation of Franchisee's Facilities to accommodate the work of such person or entity within the Franchise Area, or, the City requires any person or entity to undertake work, other than work undertaken as a public works project including but not limited to streets, sidewalks and public utility lines or at the City's cost and expense, within the Franchise Area, and such work requires the relocation of Franchisee's Facilities within the Franchise Area, then Franchisee shall have the right as a condition of any such relocation to require such person or entity to:

1. Make payment to Franchisee, at a time and upon terms acceptable to Franchisee, for any and all reasonable costs and expenses incurred by Franchisee in the relocation of Franchisee's Facilities; and
2. Indemnify and hold Franchisee harmless from any and all claims and demand made against it on account of injury or damage to the person or property of another arising out of or in conjunction with the relocation of Franchisee's Facilities.

C. Nothing in this Section 15, "Relocation of Facilities" shall require Franchisee to bear any cost or expense in connection with the location or relocation of any Facilities then existing under benefit of easement or other recorded rights or licenses and not within the Franchise Area.

Section 16. Necessary Construction/Maintenance by City

The rights granted by this Franchise to Franchisee do not preclude the City, its agents, or contractors from blasting, grading, or doing other road work contiguous to the Franchisee's Facilities. When practical and in non-emergency situations, the City will attempt to give the Franchisee five (5) calendar days' notice of said blasting or other work. The City, its agents, and contractors shall be liable for any damages, including any consequential damages to third parties, to any Facilities owned by Franchisee caused by said work.

Section 17. Default

If Franchisee shall fail to comply with the provisions of this Franchise, the City may serve upon Franchisee a written notice of default and demand to cure within ninety (90) days from the date such order is received by Franchisee. If Franchisee does not cure its default after expiration of said ninety (90) day period, the City may, by ordinance, declare an immediate termination of this Franchise; PROVIDED however, if Franchisee's ability to proceed with due diligence towards compliance is subjected to unavoidable delays and events beyond its control, then the time for compliance shall be extended by such time as reasonably necessary to cure the default, subject to the following pre-conditions:

- A. Franchisee immediately notifies the City of the need for an extension,
- B. Franchisee engages in good faith discussions with the City as to the need for the extension and steps that are or may be taken to minimize the length of the extension, and
- C. Franchisee commences promptly and diligently to effect such compliance.

Section 18. Remedies to Enforce Compliance

The City may elect, upon satisfaction of the notice and cure provisions of Section 17 of this Ordinance, and without any prejudice to any of its other legal rights and remedies, to seek an order from the Superior Court of Pend Oreille County or such other court with jurisdiction, compelling Franchisee to comply with the provisions of this Franchise and to recover damages and costs incurred by the City by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any legal remedy to compel Franchisee and/or its successors and assigns to comply with the terms of this Franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a termination or revocation for breach of the conditions of this Franchise.

Section 19. Vacation of Property 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, to the extent permitted by law such vacation shall be subject to the reservation of a perpetual easement in favor of Franchisee for the purpose of operating and maintaining overhead and underground electric transmission and distribution lines and installations if the Franchisee is actively using overhead or underground electric transmission and distribution lines and installation on the property to be vacated. When such easement is retained, it shall also expressly prohibit any use of the vacated properties which will interfere with

the City's ability to provide Franchisee full enjoyment of its rights under this Franchise. The City shall also continue to permit Franchisee to operate and maintain its Facilities in or on the vacated property consistent with and subject to this Franchise. Where the vacated property is not being actively used, the City will endeavor to advise the Franchisee of the intended vacation to determine if the Franchisee has a need to retain an easement.

Section 20. Emergency Removal and Dangerous Conditions

A. In the event of any emergency in which any of the Franchisee's Facilities located in, above, or under any public way fail, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous condition(s) for the protection of property, life, health or safety of individuals without first applying for and obtaining a permit as required by this Franchise. Provided, this shall not relieve Franchisee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the City by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the fifth succeeding day during which the Newport City Hall is open for business.

B. To the extent allowed by law, the City reserves the right to remove such wires, poles, or any of Franchisee's Facilities in case of general conflagration, natural disaster, or in other cases of extreme emergency where there is neither the time nor the opportunity for Franchisee to perform such work. The City shall use reasonable care in the exercise of such emergency powers. This Section shall not operate as a license by Franchisee for the City or its personnel to operate or handle Franchisee's Facilities which may require professional qualifications.

C. Whenever construction, installation, or excavation of any Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public, other utilities, or City-owned property, the Public Works Director may direct the Franchisee, at the Franchisee's own expense, to take action to protect the public, adjacent public places, City-owned property, streets, utilities, and public ways. Such action may include compliance within a reasonable amount of time.

D. In the event Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways, to maintain the lateral support thereof, or any actions regarded as necessary safety precautions; and the Franchisee shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation, or termination by other means of this Franchise.

Section 21. Change in Boundaries of City

Any subsequent additions or modifications of the boundaries of the City, whether by annexation, consolidation or otherwise, shall be subject to the provisions of the Franchise as to all

such areas. The City shall notify Franchisee of the precise scope of any change of boundaries not less than sixty (60) days prior to such change becoming effective. However, failure to so notify shall not constitute a breach.

Section 22. Prior Franchises Superseded; Repealer and Ratification

This Franchise shall update and supersede all prior franchises heretofore granted to Franchisee, or its predecessors, by City, or its predecessors. Upon the effective date of this Ordinance as set forth below, Ordinance No. 875 shall be repealed and rescinded in its entirety and shall have no further effect or enforceability. By passage and adoption of this Ordinance, the City ratifies Franchisee's use of the Franchise Area prior to the effective date of this Franchise.

Section 23. Abandonment of Franchise and/or Removal of Franchise Facilities

A. Franchisee may at any time abandon any or all of the rights and authorities granted hereunder, provided that six (6) months written notice of intention to abandon any or all of the rights and authorities granted hereunder is given to the City.

B. In the event of a complete abandonment of this Franchise, or in the event of the abandonment of any Franchise Facility, including the permanent discontinuance of the use of any Facility, or in the event of the expiration or lawful termination of this Franchise, the City may request that Franchisee promptly remove from the Franchise Area all or any portion of its Facilities at Franchisee's sole cost and expense, and within a period of twelve (12) months. If Franchisee is unable to effect removal within that twelve (12) month period due to unavoidable delays or events beyond its control, including Acts of God, labor strikes, or the failure or delay of a governmental jurisdiction to issue permits necessary to effect such removal, then Franchisee may apply to the City for an extension of time to effect such removal, and the City's approval of any extension of time shall not be unreasonably withheld.

Section 24. City Use of Franchise Facilities

During the term of this Franchise, the City may, to the extent allowed by law and subject to Franchisee's prior written consent which shall not be unreasonably withheld, install and maintain City-owned, non-revenue-generating overhead fiber optic and other wires for traffic signalization, public safety, and other internal City communications upon Franchisee's poles and/or Facilities located within the Franchise Area. The foregoing rights of the City to install and maintain such wires are further subject to the following:

A. The City shall perform such installation and maintenance at its sole risk and expense in accordance with all applicable laws and such reasonable terms and conditions as Franchisee may specify from time to time (including, without limitation, Franchisee requirements and specifications regarding the installation of attachments to Facilities by Franchisee or other parties).

B. The City shall indemnify, defend and hold harmless Franchisee in connection with the City's use of Franchisee's poles.

C. To the extent allowed by law, Franchisee shall not charge the City for any costs associated with the City's non-revenue-generating use of Franchisee's Facilities, provided that should the City's proposed use of Franchisee's Facilities require Franchisee to upgrade such facilities (i.e. replacement of power poles to provide space for the City's use) City shall pay for such upgrade costs, unless the parties agree to other terms.

Nothing in this Section is intended, or shall be deemed, to amend, alter or limit any provisions, terms or conditions of any other agreement between Franchisee and the City with respect to attachments of City-owned non-revenue-generating equipment to Franchisee Facilities existing as of the effective date of this Franchise.

Section 25. Miscellaneous

A. If any term, provision, condition or portion of this Franchise shall be held to be invalid, such invalidity shall not affect the validity of the remaining portions of this Franchise, which shall continue in full force and effect.

B. The headings of sections and paragraphs of this Franchise are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of the Franchise.

C. The Parties agree that they shall comply with all applicable laws of the State of Washington, and shall pay, in a timely manner, all taxes, fees and costs legally imposed on it in connection with the activities, properties and operations of this Franchise.

D. This Franchise contains the entire agreement between the parties and, in executing it, the City and Franchisee do not rely upon any statement, promise, or representation, whether oral or written, not expressed herein. This Franchise shall have the effect of and shall be a contract between the City and Franchisee and shall be the measure of the rights and liabilities of both parties.

E. This Franchise may be amended only by the adoption of an amending City ordinance agreed to by Franchisee and adopted in conformance with RCW 35A.47.040 or any amendments or successor statutes thereto, approved and executed in accordance with the laws of the City and the State of Washington. Without limiting the applicability of the foregoing, this Franchise shall govern and supersede and shall not be changed, modified, deleted, added to, supplemented or otherwise revised or amended by any permit, approval, license, agreement or other document required by, or obtained from, the City in conjunction with Franchisee's exercise of, or failure to exercise, any and all rights, benefits, privileges, obligations or duties in and under this Franchise or the laws of the City and State of Washington. In the event of any conflict or inconsistency between the provisions of this Franchise and the provisions of any permit, approval, license, agreement or other document, the provisions of this Franchise shall control.

F. Franchisee shall reimburse City for all costs incurred for publication of this Ordinance in accordance with RCW 35A.47.040.

G. All provisions, conditions and requirements of this Franchise that may be reasonably construed to survive the termination or expiration of this Franchise shall survive the

termination or expiration of this Franchise. Subject to the conditions set forth herein, the respective rights and interests under this Franchise shall inure to the benefit of the City's and Franchisee's successors and assigns.

Section 26. Notice

Any notice or information required or permitted to be given to the parties under this Franchise Agreement may be sent to the following addresses unless otherwise specified:

City of Newport
ATTN: City Administrator
200 S. Washington Ave
Newport, WA 99156

Public Utility District No. 1 of Pend
Oreille County, Washington
ATTN: General Manager
P.O. Box 190
130 N. Washington Ave
Newport, WA 99156

Section 27. Public Benefit; No Third Party Beneficiary

It is expressly the purpose of this ordinance to provide for and promote the health, safety and welfare of the general public, and not to create or otherwise establish or designate any particular class or group of persons who will or should be especially protected or benefited by the terms of this Ordinance. No action may be commenced or prosecuted against either the City or Franchisee by any other party claiming rights as a beneficiary of this Ordinance and Franchise, and nothing in this Franchise shall release or discharge any obligation or liability of any third party to either the City or Franchisee.

Section 28. Effective Date and Acceptance by Franchisee

This Ordinance shall take effect five (5) days after passage and publication of an approved summary thereof in the official newspaper of the City, the Newport Miner, having first been submitted to the city attorney, having been published at least once in a newspaper of general circulation in the City, having been introduced to the City Council not less than five (5) days before its passage, having been passed a regular meeting of the City Council by an approving vote of at least a majority thereof.

Franchisee shall notify the City in writing of its acceptance of this Franchise within thirty (30) days of the passage of this Ordinance by the Newport City Council. Should Franchisee fail to provide notice of acceptance by such deadline, this Franchise shall be deemed rejected by Franchisee and the rights and privileges granted herein shall immediately cease, unless the City Council acts at its next regular meeting to extend the acceptance period. Should Franchisee provide notice of acceptance by such deadline, the initial term of this Franchise shall commence on January 1, 2022, or such extended date as the City Council may establish.

PASSED AND APPROVED BY A MAJORITY OF THE ENTIRE CITY COUNCIL AT
A REGULAR MEETING thereof this _____ day of _____, 2021.

CITY OF NEWPORT
Pend Oreille County, Washington

Shirley A. Sands, Mayor

ATTEST:

Nickole North, City Clerk/Treasurer

Summary Published: _____

[SEAL]

Approved as to Form:

City Attorney

DRAFT

ACCEPTANCE BY FRANCHISEE

Pursuant to and in satisfaction of the requirements above, the Franchisee hereby unconditionally accepts the terms and conditions of this Ordinance this ____ day of _____, 2021.

PUBLIC UTILITY DISTRICT NO. 1 OF
PEND OREILLE COUNTY,
WASHINGTON

Curtis J. Knapp, President

Richard A. Larson, Vice President

[SEAL]

Joseph B. Onley, Secretary

Approved as to Form:

District Attorney