TELECOMMUNICATIONS FRANCHISE AGREEMENT

This TELECOMMUNICATIONS FRANCHISE AGREEMENT ("Agreement") is made and entered into by and between the City of Salem, an Oregon municipal corporation ("City"), and Ezee Fiber, a Delaware Limited Liability company qualified to do business in Oregon ("Franchisee") (collectively referred to herein as the "Parties").

RECITALS

1. Pursuant to federal law, state statutes, the Salem City Charter, and Salem Revised Code (SRC) section 35.020, the City is authorized to grant non-exclusive franchises to occupy the City's 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 Salem ("Franchise Area").

2. The City has found that the Franchisee meets all lawful requirements to obtain a franchise, and therefore the City approves the Franchisee's application for a Telecommunications Service franchise within the City.

AGREEMENT

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION.

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

1.2 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" is always mandatory and not merely directory.

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

1.3.1 "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.

1.3.2 "Franchise Administrator" means the Franchise Administrator of the City of Salem.

1.3.3 "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 Salem subject to all applicable limitations imposed by federal and /or state law.

1.3.4 "Linear Foot Fee" means the amount defined in SRC 35.220(b).

1.3.5 "Minimum Annual Franchise Fee" means the minimum amount paid to the City of Salem under this Agreement. The Minimum Annual Franchise Fee for this Agreement shall be ten thousand dollars ($10,000).

1.3.6 "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.

1.3.7 "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.

1.3.8 "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.

1.3.9 "Telecommunications Service" means any service provided 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).

1.3.10 "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.

SECTION 2. GRANT OF AUTHORITY.

2.1 The City hereby grants to the Franchisee the non-exclusive right and franchise 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 Service.

2.2 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.

2.3 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 according to Section 11 of this Agreement.

SECTION 3. EFFECTIVE DATE; TERM; TERMINATION.

3.1 The effective date of this Agreement shall be the first day of the full calendar month following the date on which both Parties sign this Agreement (the "Effective Date"). If both Parties sign on the first day of any calendar month, that date shall be the Effective Date. (e.g. if both Parties sign on June 1, June 1 shall be the Effective Date, however if one party signs on June 1 and the other party signs on June 15, July 1 shall be the Effective Date.)

3.2 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 ten (10) years, commencing on the Effective Date. Unless sooner terminated by either Party as set forth in subsections 3.3, 3.4, and 20.1 below, at the end of the initial ten (10) year term, this Agreement shall renew automatically for one (1) additional five (5) year term. Pursuant to Oregon Revised Statute ("ORS") 221.460(2013), in no event shall the term of this Agreement extend beyond twenty (20) years from the Effective Date.

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

3.4 Either party may terminate this Agreement at any time for default, including but not limited to those occurrences set forth in Section 20 of this Agreement, 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 Section 5 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.

3.5 Upon termination of this Agreement, the disposition of the Franchisee's property and Facilities that occupy the Rights-of-Way shall be governed by Section 17 of this Agreement.

SECTION 4. PERFORMANCE.

During the entire term of this Agreement, the Franchisee agrees to comply with all lawful terms

and conditions of SRC Chapter 35 and with SRC 802.025 which requires underground utilities in subdivisions and partitions, the provisions of which are incorporated herein as though fully set forth. Franchisee reserves the right to challenge any of the terms and conditions of Chapter 35 under applicable federal and state law in the future.

SECTION 5. FRANCHISE FEE; AUDITING.

5.1 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 an annual (based on the calendar year) franchise fee for the duration of this Agreement. The franchise fee amount shall be the greater of either: a) the Minimum Annual Franchise Fee of ten thousand dollars ($10,000); or b) an amount equal to seven percent (7%) of the Franchisee's Gross Revenues earned annually.

5.2 The Minimum Annual Franchise Fee shall be paid to the City annually following the Effective Date of this Agreement. For the first calendar year that this Agreement is in effect, the prorated Minimum Annual Franchise Fee shall be due and payable to the City within thirty (30) days of the Effective Date. Each subsequent annual payment of the Franchisee's Minimum Annual Franchise Fee shall be due and payable on or before February 15 of each calendar year. Each such payment shall be accompanied by a written report to the City, verified by an officer or other authorized representative of the Franchisee, containing an accurate statement in both detailed and summarized form of the Franchisee's Facilities in the Rights-of-Way. Such reports shall be in a form reasonably satisfactory to the City.

5.3 Franchisee shall compute the amount of the annual Gross Revenues-based franchise fee for the preceding calendar year and submit this figure along with the report required under subsection 6.1 of this Agreement. If the Gross Revenues-based franchise fee is greater than the Minimum Annual Franchise Fee, the difference between the two figures shall be paid to the City on or before April 1 of the year in which the Gross Revenues-based franchise fee is computed.

5.4 Pre-Agreement Negotiation and Administration Fee. The Franchisee shall pay the City five thousand dollars ($5,000.00) for its pre-Agreement costs, including the negotiation and initial administration of this Agreement. The Pre-Agreement Negotiation and Administration Fee shall be due and payable within one hundred and eighty (180) days of the Effective Date.

5.5 Franchise fee payments not received by the City on or before the due date shall be assessed interest based on the average prime interest rate set by the bank with which the City contracts for its general banking services on December 31st of the previous year, plus three percent (3%). At no time shall interest be reduced to less than twelve percent (12%). Interest shall be due on the entire late payment from the date on which the payment was due and payable until the date on which the City receives the payment. Interest shall accrue without regard to whether the City has provided notice of the delinquency.

5.6 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.

5.7 All amounts paid under this Section 5 shall be subject to confirmation and re-computation by the City, provided that such confirmation and re-computation is completed within three (3) years of the date any recomputed payment is due. If no re-computation is conducted within the three (3) year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. Upon receipt of an invoice from the City showing such confirmation and re-computation costs were actually incurred and directly related to the audit, the Franchisee agrees to reimburse the City for: (1) all of the reasonable costs of such confirmation if the City's re-computation discloses that the Franchisee has paid 95% or less of the fees owing for the period at issue; or (2) one-half of the reasonable costs of such confirmation if the City's re-computation discloses that the Franchisee had paid more than 95% but less than 98% of the fees owing for the period at issue. Notwithstanding such reimbursement requirements, City's costs which may be reimbursed under this subsection shall not exceed seven thousand dollars ($7000.00) per confirmation and re-computation within the first five (5) years of the Effective Date and ten thousand dollars ($10,000.00) per confirmation and re-computation thereafter.

5.8 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 rate of one percent (1%) over the existing prime or reference rate as set by the bank with which the City contracts for its general banking services. 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.

5.9 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.

5.10 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.

SECTION 6. REPORTS.

6.1 On or before April 1 of each calendar year that this Agreement is in effect, Franchisee shall submit to the City a written report detailing its Gross Revenues for the calendar year immediately preceding the April 1 reporting date. This report shall serve as the basis for determining the Franchise Fee under Section 5 of this Agreement and shall be accompanied by a

written declaration signed by an authorized officer or agent of Franchisee under penalty of perjury with the following language included immediately above the signature of the declarant: "I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury."

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

6.3 Franchisee shall make available to the City, upon not less than fourteen (14) days prior written notice, such information or reports pertinent to enforcing the terms of this Agreement, in such form and at such time as the City may reasonably request.

SECTION 7. CHANGE OF LAW; AMENDMENT OF FRANCHISE AGREEMENT.

7.1 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.

7.2 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. Such change will not affect Franchisee's reserved right of challenge as described in Section 4 of this Agreement.

SECTION 8. TAXES AND FEES.

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, tax or charge.

SECTION 9. INSURANCE AND BONDING.

9.1 The Franchisee shall obtain and maintain in effect during the term of this Agreement a policy or policies of commercial general liability insurance with combined single limits, or the equivalent, of not less than $2,000,000 (two million dollars) per occurrence/ $4,000,000 (four million dollars) in the aggregate for Bodily Injury, Death Property Damage, Contractual Liability, and Completed Operations. The Franchisee shall also obtain and maintain in effect during the term of this Agreement Professional Liability coverage with combined single limits of not less than $2,000,000 (two million dollars). The insurance shall be without prejudice to otherwise existing coverage and shall name and cover as additional insureds the City, its

officers, agents, and employees. 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 Manager and 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.

9.2 The Franchisee shall maintain on file with the City's Franchise Administrator a certificate of insurance certifying the coverage required above. The adequacy of the insurance shall be subject to the approval of the City's Risk Manager. Liability insurance through an insurance provider that is the primary carrier for Franchisee shall be acceptable so long as the minimum coverage amounts required under this Agreement are satisfied.

9.3 Faithful Performance Bond. Prior to the Effective Date of this Agreement, Franchisee shall furnish proof of the posting of a faithful performance bond running to the City, with good and sufficient surety approved by the City, in the penal sum of one hundred thousand dollars ($100,000), conditioned that Franchisee shall well and truly observe, fulfill, and perform each and every term and condition of this Agreement. Franchisee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of this Agreement, including, if necessary, the time required for removal of all of Franchisee's Facilities installed in the City's Rights-of-Way. The bond shall not be terminated or otherwise allowed to expire without thirty (30) days prior written notice first being given to the City's Franchise Manager. Franchisee shall file with the City's Franchise Administrator a duplicate copy of the bond along with written evidence of payment of the required premiums. However, in no event shall the City exercise its rights under this Agreement against the performance bond if a bona fide, good faith dispute exists between the City and Franchisee.

9.4. Construction Bond. During all times when Franchisee is performing any construction work in or under the City's Rights-of-Way requiring a permit, Grantee shall post a construction bond or irrevocable letter of credit, running to the City, with good and sufficient surety approved by the City, in the sum of ten thousand dollars ($10,000). The bond or letter of credit shall be conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition under the applicable permit. Franchisee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Franchisee's construction work in or under the Rights-of-Way by the City Engineer or his designee. Upon such approval, the City agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. For the duration of any construction work, Franchisee shall file with the City's Franchise Administrator a copy of the bond or letter of credit, along with written evidence of payment of the required premiums.

SECTION 10. INDEMNIFICATION.

10.1 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.

10.2 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.

10.3 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)(2013) caused by Franchisee's ownership, operation or maintenance of a Telecommunications System in the Rights-of-Way.

SECTION 11. CONSTRUCTION AND RELOCATION.

11.1 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.

11.2 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.

11.3 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.

11.4 All work by Franchisee in the Rights-of-Way shall be properly safeguarded for the prevention of accidents. All of Franchisee's work under Sections 11 and 12 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.

11.5 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.

11.6 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.

11.7 Franchisee shall comply with ORS 757.542 through ORS 757.562 (2013) and the rules and regulations promulgated thereunder in making excavations.

11.8 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.

11.9 As permitted by, and in accordance with SRC 35.440 through SRC 35.496, and any other 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.

11.10 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.

11.11 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.

11.12 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.

11.13 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 in Section 8.

SECTION 12. RESTORATION OF RIGHTS-OF-WAY.

12.1 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.

12.2 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.

12.3 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, the City's 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.

SECTION 13. USE OF DUCTS BY CITY; COMMON USERS.

13.1 For purposes of this Section:

13.1.1 "Attachment" means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment, for the purpose of voice, video, or data transmission.

13.1.2 "Conduit Facility" means any structure, or section thereof, containing one or more ducts, conduits, manholes, hand holes or other such facilities in the Franchisee's Telecommunications System.

13.1.3 "Duct" means a single enclosed raceway for conductors, optical fiber, wire or other cable.

13.1.4 "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association or cooperatively organized association franchised, licensed or otherwise permitted by the City to use the Rights-of-Way. For the purpose of this Section, the Franchisee shall not be construed to be a "Licensee" as defined herein.

13.1.5 "Municipal Purposes" includes, but is not limited to, the use of the structures and for City fire, police, traffic, water, telephone, or signal systems. "Municipal Purposes" does not include: (1) the sale or lease of Telecommunications Services to third parties; (2) the transfer of any rights by the City to third parties for the purpose of providing the City with access to interexchange carriers; or (3) the transportation of water or wastewater.

13.1.6 "Surplus Ducts or Conduits" are Conduit Facilities other than those occupied by the Franchisee or any prior Licensee, one unoccupied Duct held by

Franchisee as an emergency use spare, and other unoccupied Ducts that the Franchisee reasonably expects to use within the next eighteen (18) months.

13.2 Franchisee acknowledges that the Rights of Way have a finite capacity for containing Ducts and conduits. Therefore, the City Engineer may require Franchisee to permit a Licensee to use Franchisee's Surplus Ducts or Conduits in common with the Franchisee, pursuant to the terms and conditions of an agreement between Franchisee and the Licensee. If the Franchisee and Licensee fail to agree to the use of such Surplus Ducts and Conduits within a reasonable time, the City Council shall establish by resolution such terms, conditions and regulations for such common use as it may determine to be fair and equitable.

13.3 A Licensee occupying part of a Duct shall be deemed to occupy the entire Duct.

13.4 The Franchisee shall give not less than 120 days' advance written notice to a Licensee and the City of its need to occupy any licensed Duct or conduit, and shall propose that the Licensee take the first feasible action listed:

13.4.1 Pay revised Duct or conduit rent designed to recover the cost of retrofitting the Duct or conduit with multiplexing, optical fibers, or other space-saving technology sufficient to meet the Franchisee's space needs; or

13.4.2 Pay revised Duct or conduit rent based on the cost of new Ducts or conduits constructed to meet the Franchisee's space needs; or

13.4.3 Vacate Ducts and conduits that are no longer surplus; or

13.4.4 Construct and maintain sufficient new ducts or conduits to meet the Franchisee's space needs.

13.5 When two or more Licensees occupy a section of Conduit Facility, the last Licensee to occupy the Conduit Facility shall be the first to vacate or construct new conduit. When conduit rent is revised because of retrofitting of space-saving technology or construction of new conduit, all Licensees shall bear the revised cost equally.

13.6 All Attachments shall meet local, state, and federal clearance and other safety requirements, be properly grounded and anchored, and meet the provisions of contracts executed between the Franchisee and the Licensee. Franchisee may, at its option, correct any Attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay Franchisee for any fines, fees, damages, or other reasonable costs the Licensee's Attachments cause Franchisee to incur.

13.7 The City may install or affix and maintain wires and equipment for Municipal Purposes within any of Franchisee's Surplus Ducts or Conduits as defined in this Section upon not less than thirty (30) days' written notice to Franchisee. The City shall pay a Yearly Conduit Fee or a prorated portion of such fee to Franchisee for the use of Franchisee's Surplus Ducts or Conduits. This Yearly Conduit Fee shall be based upon the following formula:

Yearly Conduit Fee = 0.5 X Linear Foot Fee X (distance in linear feet) X (number of Ducts occupied by the City).

The City shall pay such Yearly Conduit Fee or a prorated portion thereof to the Franchisee until the City abandons or otherwise discontinues use of the Franchisee's Surplus Ducts or Conduits. The City shall provide written notification to the Franchisee indicating the date on which the City intends to abandon or otherwise discontinue the use of the Franchisee's Surplus Ducts or Conduits. All work to affix or maintain City wires and equipment shall be performed by Franchisee, according to the City's written specifications and subject to approval by the City, and shall be performed at the City's expense for Franchisee's direct costs of material and labor. Any damage caused by Franchisee to the City's wires and equipment when following the procedure approved by the City shall be repaired at the expense of the City. In the event of an emergency requiring the City to obtain immediate access to Franchisee's Surplus Ducts or Conduits, as reasonably determined by the City, the thirty (30) day written notice requirement shall be waived. In the event of such an emergency, the City shall contact the Franchisee, informing Franchisee of the emergency and the City's need for immediate access. If the Franchisee does not provide personnel on site within four (4) hours of the request, the City shall have the right to access the Surplus Ducts or Conduits with its own personnel. If the City damages Franchisee's Facilities during such emergency access, the City shall be responsible for the repair of such damages and all of the costs thereof.

13.8 The value of the City's use of Franchisee's Surplus Ducts or Conduits shall not be deducted from the Franchisee's franchise fee or any other fees payable to the City.

SECTION 14. 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.

SECTION 15. 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.

SECTION 16. 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.

SECTION 17. 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 for 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.

SECTION 18. HAZARDOUS SUBSTANCES

18.1 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 18, "Hazardous Substance" shall have the meaning given by ORS 465.200(16)(2013).

18.2 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.

18.3 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.

18.4 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 of Subsection 10.3 of this Agreement.

SECTION 19. ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE.

19.1 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.

19.2 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.

19.3 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.

19.4 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.

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

SECTION 20. FORFEITURE AND REMEDIES; FORCE MAJEURE.

20.1 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:

20.1.1 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;

20.1.2 The Franchisee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City;

20.1.3 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;

20.1.4 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.

20.1.5 Franchisee becomes unable or unwilling to pay its debts or is adjudged a bankrupt.

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

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

20.2.2 Any failure by Franchisee to submit timely reports regarding the calculation of its franchise fees to the City;

20.2.3 Any failure by Franchisee to provide or maintain the liability insurance required under this Agreement;

20.2.4 Any failure by Franchisee to post or maintain any bond(s) required under this Agreement;

20.2.5 Any failure by Franchisee to provide copies of requested information as required in subsection 5.10 of this Agreement; and

20.2.6 Any failure by Franchisee to otherwise fully comply with the requirements of this Agreement.

20.3 In addition to any rights set forth elsewhere in this Agreement, as well as its rights under the Salem Revised Code or any other law, the City reserves the right at its sole option to apply any of the following remedies, alone or in combination:

20.3.1 Impose a financial penalty of up to $1,000.00 per violation of this Agreement;

20.3.2 Suspend the Franchisee's Agreement rights until the Franchisee corrects or otherwise remedies the violation.

20.4 In determining which remedy or remedies are appropriate, the City shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the City deems appropriate.

20.5 The City shall give Franchisee thirty (30) days prior written notice of its intent to exercise its rights under this Section, stating the reason(s) for such action. If Franchisee fails to cure the stated reason within the thirty (30) day notice period, or if the Franchisee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, the City Council may impose any or all of the remedies available under this Section.

20.6 Force Majeure provisions of SRC 43.365 shall apply to this Agreement.

SECTION 21. RENEGOTIATION.

If any provision of this Agreement becomes invalid or unenforceable and the City Council or the Franchisee expressly finds that such provision constituted a consideration material to entering into this Agreement, the City and the Franchisee may mutually agree to renegotiate the terms of this Agreement. In addition, 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.

SECTION 22. REMOVAL OF FACILITIES UPON EXPIRATION.

Upon expiration of this Agreement, Franchisee shall either remove its Facilities in accordance with ORS 221.470(2013) or seek City's written consent to leave its Facilities in place pursuant to Section 17 of this Agreement.

SECTION 23. PUBLIC RECORDS

23.1 Franchisee acknowledges that information submitted to the City is open to public inspection under the Oregon Public Records Law, ORS 192.410 through 192.505. Franchisee is responsible for becoming familiar with, and understanding the provisions of the Oregon Public Records Law.

23.2 Franchisee may identify information, submitted to the City as confidential, such as trade secrets, financial records, customer information or technical information (as defined in ORS 192.501 or 192.502). 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.

SECTION 24. CHOICE OF LAW; VENUE; NOTICE.

24.1 This Agreement shall be construed and interpreted according to the laws of the State of Oregon, without regard to choice of law considerations. Any litigation between the City and the Franchisee arising under or regarding this Agreement shall occur, if in the state courts, in the Marion County Circuit Court, and if in the federal courts, in the United States District Court for the District of Oregon.

24.2 Any notice provided for under this Agreement shall be sufficient if in writing and: (1) delivered personally to the following addressee, (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 addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

If to the City:
City Manager
City of Salem, Oregon
555 Liberty Street SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

With copies to:

Franchise Administrator
City of Salem, Oregon
555 Liberty Street SE, Room 220
Salem, OR 97301-3503
FAX # (503) 588-6354

City Attorney
City of Salem, Oregon
555 Liberty Street SE, Room 205
Salem, OR 97301-3503
FAX # (503) 361-2202

If to the Franchisee:

Ezee Fiber
5959 Corporate Dr, Suite 2000
Houston, TX 77036
Phone# (713) 225-7500

With a copy to:
Legal
Ezee Fiber
5959 Corporate Dr, Suite 2000
Houston, TX 77036
legal@ezeefiber.com

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 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.

SECTION 25. PROVISION FOUND UNENFORCEABLE.

If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permitted the intent of Franchisee and the City as set forth in this Agreement.

SECTION 26. MERGER.

This 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.

SECTION 27. WAIVER OF BREACH.

One or more waivers or failures to object by either Party to the other's breach of any provision, term, condition, or covenant contained in this Agreement shall not be construed as a waiver of any subsequent breach, whether or not of the same nature.

SECTION 28. SIGNATURES.

The Parties, by their signatures below, acknowledge having read and understood this Agreement, and agree to be bound by its terms and conditions. The individual signing this Agreement on behalf of his or her respective Party hereby certifies that such signature has been authorized by his or her Party and that the individual has the authority to act on behalf of and to bind his or her Party.

IN WITNESS WHEREOF the Parties have caused this Agreement to be signed in their respective names by their duly authorized representatives as of the dates set forth below.

Ezee Fiber:

By: _____

Printed name: Garner Duncan

Title: Sr. Vice President of Gov. Affairs

Dated: 03/31/2025

CITY OF SALEM:

By: _____

Krishna Namburi,

Interim City Manager

Dated: June 12, 2025