ORDINANCE No. 180044

Grant a franchise to Northwest Metal Fab and Pipe Inc. for a period of ten years. (Ordinance)

The City of Portland ordains:

Section 1. NATURE AND TERM OF GRANT:

A. Grant of Franchise.

1. The City of Portland, does hereby grant to Northwest Metal Fab and Pipe Inc., an Oregon corporation qualified to do business in the State of Oregon, and to Northwest Metal Fab and Pipe Inc.'s successors and assigns, as approved by the City of Portland under Section 15 of this Franchise, a franchise to construct, operate and maintain a Conduit System, with all necessary Facilities, in, under, and over the surface of the City of Portland's Streets, as shown in black on a map attached hereto as Exhibit A, which is incorporated by reference. Grantee may seek to amend, alter or add to its Conduit System by filing a map showing such proposed changes with the City's Office of Cable Communications and Franchise Management and with the City Engineer. The City shall respond with its approval, modifications, or denial within 45 days from receiving Grantee's proposal. However the total length of the Grantee's Conduit System in City Streets shall not exceed 40,000 linear feet unless separately authorized by the City Council by ordinance. To the extent that Northwest Metal Fab and Pipe Inc.'s use of its Conduit System changes, the City of Portland may reopen this Franchise pursuant to the provisions of Section 19(I), hereof.

2. Throughout this Franchise, the City of Portland, Oregon, shall be referred to as the "City", and Northwest Metal Fab and Pipe Inc., shall be referred to as the "Grantee".

3. This Franchise does not authorize the Grantee to operate a cable system or provide video programming, as defined by 47 U.S.C.A §522. The Grantee has acknowledged that before providing cable services, it will notify the City for all necessary amendments and revisions to this franchise to address such authority.

4. This Franchise does not authorize the Grantee to provide telecommunications services within the state of Oregon. The Grantee acknowledges that it must apply to the Oregon Public Utility Commission for a certificate of authority before providing telecommunications services, and that it will notify the City for all necessary amendments and revisions to this Franchise or any succeeding franchise to address such authority.

5. Duration of Franchise. The term of this Franchise, and all rights and obligations pertaining thereto, shall be ten years from the effective date of the Franchise unless terminated sooner as provided herein. Upon expiration of the term of this franchise, or its revocation by the City Council, the Grantee shall remove its Conduit System and other facilities from the City Streets, or waive its rights to such Conduit System and other

facilities. Any such removal shall be directed by, and to the satisfaction of, the City Engineer.

B. Effective Date. The effective date of this Franchise shall be 60 days after passage of the Franchise by the City Council unless Grantee fails to file an unconditional written acceptance of this Franchise in accordance with Section 20 herein, in which event this Franchise shall be null and void. The passage date of this Franchise is set forth on the last page of the original hereof, as stamped by the Council Clerk.

C. Franchise Not Exclusive. This Franchise is not exclusive. The City expressly reserves the right to grant rights or Franchises to other Persons, as well as the right in its own name as a municipality, to use the Streets for similar or different purposes allowed Grantee hereunder, by Franchise, permit or otherwise.

D. Charter and General Ordinances to Apply. To the extent authorized by law, this Franchise is subject to the Charter of the City of Portland and general ordinance provisions passed pursuant thereto, affecting matters of general City concern and not merely existing contractual rights of Grantee, now in effect or hereafter made effective. Section 10-201 through 10-218, inclusive, of the Charter of the City of Portland, (1942 compilation, as revised in part by subsequent amendments), are hereby incorporated by reference and made a part of this Franchise, to the extent authorized by law. Nothing in this Franchise shall be deemed to waive the requirements of the various codes and ordinances of the City regarding permits, fees to be paid or the manner of construction.

E. Nothing in this Franchise shall preclude the Grantee from entering into a contract for the use of any portion of its Conduit System with any Person or other entity of any services, whether specified herein or not, provided that the Person or entity is another franchisee, licensee, or permittee and has assumed responsibility for obtaining any required authority from the City.

Section 2. DEFINITIONS:

A. Captions. Throughout this Franchise, captions to sections are intended solely to facilitate reading and to reference the sections and provisions of this Franchise. The captions shall not affect the meaning and interpretation of this Franchise.

B. Definitions. For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. 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 include the plural number. The word "shall" is always mandatory and not merely directory.

1. “Attachment” means any wire, optical fiber or other cable, and any related device, apparatus or auxiliary equipment.

2. “City” means the City of Portland, Oregon, a municipal corporation, and all of the territory within its corporate boundaries, as such may change from time to time.

3. “City Council” means the Council of the City of Portland.

4. “Conduit” means any structure, or section thereof, containing two or more ducts .

5. “Conduit System” means any structure, or section thereof, containing one or more ducts, conduits, manholes, handhole or other such facilities in the Grantee's Conduit System.

6. “Duct” means a single enclosed raceway for conductors, optical fiber, wire or other cable.

7. “Facility” means any tangible component of the Conduit System.

8. “Franchise” means this Franchise agreement, as approved by the City Council and accepted by the Grantee, according to the terms of Section 20 of this Franchise.

9. “Gross Revenues” shall mean any and all gross revenues derived by Grantee from the sale, lease, transfer, or assignment for the Portland portion of the Permittee's Conduit System.

10. Indefeasible Right of User Interest (IRU) means a form of acquired capital in a Conduit System, in which the holder of the interest possesses a right to use the Conduit System, but not the right to control, maintain, construct or revise the Conduit System.

11. “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 Streets. For the purposes of Section 12, the Grantee shall not be construed to be a "Licensee" as defined herein.

12. “Minimum Annual Franchise Fee” shall mean $10,000 in the first year of this Franchise, and shall increase by $1,000 annually, until reaching a minimum of $20,000 in year ten (10) of this Franchise.

13. “Optical Fiber” means a filament of transparent dielectric material, usually glass or plastic, and usually circular in cross section, that guides light, and is used to convey modulated information.

14. “Penalties” means any and all monetary penalties provided for in this Franchise.

15. “Person” means any individual, sole proprietorship, partnership, association, corporation or other form of organization authorized to do business in the State of Oregon, and includes any natural person.

16. "Streets" means the surface of, and the space above and below, any public street, road, alley or highway, within the City, used or intended to be used by the general public for travel, to the extent the City has the right to allow the Grantee to use them.

17. "Surplus ducts or conduits" are Conduit Facilities other than those occupied by the Grantee or any prior Licensee, one unoccupied duct held by Grantee as an emergency use spare, and other unoccupied ducts that the Grantee reasonably expects to use within the next 18 months.

18. "Year", "Annual", or "Annually" means the period consisting of a full calendar year, beginning January 1 and ending December 31, unless otherwise provided in this Franchise.

Section 3. COMPENSATION AND AUDITING:

A. Amount of compensation.

1. As compensation for the benefits and privileges under this Franchise and in consideration of permission to use the Streets of the City, the Grantee shall pay as a Franchise fee to the City, through the duration of this Franchise, the greater of either:

   a. The Minimum Annual Franchise Fee

   b. An amount equal to five percent (5%) of the Grantee's Gross Revenues. However, revenues derived from the sale of facilities and subject to Section 3(A)(2), shall be excluded from the Gross Revenues calculation of franchise fees under this Subsection 3(A)(1).

2. As additional compensation to the amounts set forth in Section 3(A)(1):

   a. In the event Grantee enters into any lease or grants any IRU for any portion of its Conduit System in the Streets, Grantee shall pay annually to the City a permit fee of five percent (5%) of the revenues from any such lease or IRU.

   b. In the event Grantee sells any portion of its Conduit System, Grantee shall pay a one-time Franchise fee to the City of one percent (1%) of the sales price.

   c. The calculation of the one percent (1%) franchise fee on sales shall be based on the sale price of the Portland, Oregon portion of the Conduit System or the minimum annual fee, whichever is greater. The calculations of the one percent franchise fee on sales revenues shall be calculated under the following formula:

   Franchise fee = (.01) x Ts x (Fp÷Ft), where:

   Ts = Total sales price for the facility(ies);

Fp = the length of the facilities sold located within the City, expressed in fiber-miles; and,

Ft = the total length of the facilities sold, expressed in fiber-miles.

An illustrative example of this calculation would be as follows: Out of a fiber optic bundle of twenty four (24) fibers in a forty mile loop, Grantee sells two (2) fibers to a purchaser for a total sales price of five hundred thousand dollars ($500,000). Ten miles of the fiber optic loop are located within the City of Portland. The calculation would be as follows: Franchise fee = (.01) X $500,000 X (2 x 10) ÷ (2 x 40) = $1,250.

The five percent (5%) franchise fee on leases and IRU's under 3(A)(1)(b) shall be calculated using the same formula as outlined above using five percent (5%).

B. City Use of Conduit System.

1. If the City requests conduit from the Grantee, which services are provided by the Grantee in the ordinary course of Grantee's business, other than as otherwise provided under Section 9, Grantee may deduct the charges for such services from Franchise fee payments. Grantee shall charge the City Grantee's most favorable rate offered at the time of the City's request charged to a similar user within Oregon for a similar volume of service. Other terms and conditions of such services shall be specified in a separate agreement between the City and Grantee.

2. As specifically provided elsewhere in this Franchise, Grantee may deduct charges for installation and maintenance services requested by the City from the Grantee's Franchise fee.

C. Franchise Fee Payments.

1. Grantee's Minimum Annual Franchise Fee payable under Section 3(A)(1) shall be paid to the City annually following the effective date of this Franchise. Each annual payment shall be made for the immediately preceding calendar year ending December 31. Each annual payment of the Grantee's Minimum Annual Franchise Fee shall be paid on or before the forty-fifth (45th) day following December 31st.

2. The Gross Revenue based Franchise fee payable under Section 3(A)(1), together with Franchise fees based upon revenues from sales under Section 3(A)(2), shall be computed and paid on or before the forty-fifth (45th) day following each calendar year quarter period (January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31) during the term of this Franchise.

3. 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 City's bank on December 31st of the previous year, plus 300 basis points (3%). At no time shall the annual interest rate be reduced to less than 12%.

D. Reports. During the duration of this Franchise, NW Metal shall report to the City upon any sale, lease, assignment or other form of transfer of any of its Conduit System. Such reports shall be submitted to the City within a reasonable time after the transfer is finalized, and shall be in a form satisfactory to the City.

E. Cost of Pre-franchising and Publication. Grantee has paid the City Five thousand Dollars ($5,000) for its pre-franchising costs, including publication of this Franchise, as such publication is required by the City Charter.

F. Acceptance of Payment and Recomputation.

1. No acceptance of any payment by Grantee 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 the City may have for further or additional sums payable. All amounts paid under Section 3 shall be subject to confirmation and recomputation by the City, provided that such audit and computation is completed within five (5) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within five (5) years of the date any audited and recomputed payment is due. If no such audit or financial review is conducted within the five (5) year period, then any claim that the City might have had for additional compensation shall be forever waived and relinquished. The Grantee agrees to reimburse the City for:

   a. The reasonable costs of such confirmation if the City's recomputation discloses that the Grantee has paid 95% or less of the Franchise fees owing for the period at issue upon receipt of an invoice from the City showing such costs were actually incurred and directly related to the audit.

   b. One-half of the reasonable costs of such confirmation if the City's recomputation discloses that the Grantee had paid more than 95% but less than 98% of the Franchise fees owing for the period at issue.

   c. The City's costs which may be reimbursed under this Section 3(F) shall not exceed $5,000.00 per audit or financial review.

   d. If the City determines that Grantee made any underpayment, and that the underpayment exceeded 5% of the amount due, Grantee shall pay interest compounded at the rate of one percent (1%) over the existing prime rate as set by the bank with which the City contracts for its banking services, compounded monthly. 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.

G. If the Grantee disputes the City's determination of underpayment, the Grantee shall place the disputed amount in an escrow account until final resolution.

H. The City and its agents and representatives shall have authority to arrange for and conduct reviews of the relevant financial obligations payable hereunder. The City may determine the scope of review in each instance. All amounts paid by Grantee shall be subject to review by the City, provided that such review be completed within five (5) years from the date payment was due. City requests for reviews shall be in writing. If Grantee has not provided copies of all information reasonably within the scope of the review to the City within 30 days from the date of the written request, Grantee shall provide access within the Portland metropolitan region, during normal business hours, upon 48 hours prior written notice. If the City requests in writing that the Grantee provide, or cause to be provided, copies of any information reasonably within the scope of the review, and the Grantee fails within 30 days of receipt of the request to provide, or cause to be provided, such information, then the five (5) year period shall be extended by one day for each day or part thereof beyond 30 days that Grantee fails to provide, or fails to cause to be provided, such requested information.

Section 4. GENERAL FINANCIAL AND INSURANCE PROVISIONS:

A. <u>Insurance</u>

1. The Grantee shall maintain public liability and property damage insurance that protects the Grantee and the City, as well as the City's officers, agents, and employees, from the claims referred to in Section 5. The insurance shall provide coverage at all times of not less than $200,000 for personal injury to each person, $500,000 for each occurrence, and $50,000 for each occurrence involving property damages, plus costs of defense; or a single limit policy of not less than $500,000 covering all claims per occurrence, plus costs of defense. The limits of the insurance shall be subject to statutory changes as to maximum limits of liability imposed on municipalities of the State of Oregon during the term of this Franchise. The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the City and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing in this Section 4(A)(1) shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days prior written notice first being given to the City Auditor. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee shall maintain continuous uninterrupted coverage, in the terms and amounts required, upon and after the effective date of this franchise.

2. The Grantee shall maintain on file with the City Auditor a certificate of insurance certifying the coverage required above. The certificate of insurance shall be reviewed and approved as to form by the City Attorney.

3. In the alternative to providing a certificate of insurance to the City, certifying liability insurance coverage as required in this Section, Grantee may provide the City with a statement regarding its self-insurance. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the City, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the City Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this Section 4(A)(3), any failure by the Grantee to maintain adequate self-insurance shall be cause for termination of this Franchise under Section 16.

B. Faithful Performance Bond.

1. Upon the effective date of this Franchise, the Grantee 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 $100,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of this Franchise. Grantee 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 Franchise, including, if necessary, the time required for removal of all of Grantee's Conduit System installed in the City's Streets. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without 30 days prior written notice first being given to the City Auditor. The bond shall be reviewed and approved as to form by the City Attorney.

2. During the term of this Franchise, Grantee shall file with the City Auditor 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 against the performance bond under Section 4(B)(2) if a bona fide, good faith dispute exists between the City and the Grantee.

C. Construction Bond . During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the City, with good and sufficient surety approved by the City, in the sum of $100,000. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under Section 6. Grantee 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 Grantee's construction work in or under the Streets by the City Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the City

agrees to sign all documents necessary to release the bond in accordance with the terms of this Section. During the duration of the construction work, Grantee shall file with the City Auditor a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of the City Attorney as to its adequacy under the requirements of this Section.

Section 5. COVENANT TO INDEMNIFY AND HOLD THE CITY HARMLESS:

1. General Indemnification. Grantee hereby agrees and covenants to indemnify, defend and hold the City, its officers, agents and employees, harmless from any claim for injury, damage, loss, liability, cost or expense, including court and appeal costs and attorney fees or expenses, arising from any casualty or accident to person or property by reason of any construction, excavation or any other act done under this Franchise, by or for Grantee, its agents or employees, or by reason of any neglect or omission of Grantee to keep its Conduit System in a safe condition, but not if arising out of or by reason of any negligence or willful misconduct by the City, its officers, agents or employees. The City shall provide Grantee with prompt notice of any such claim which Grantee shall defend with counsel of its own choosing and no settlement or compromise of any such claim will be done by the City without the prior written approval of Grantee. Grantee and its agents, contractors and others shall consult and cooperate with the City while conducting its defense of the City.

2. Relocation Indemnification. Grantee also hereby agrees to indemnify the City for any damages, claims, additional costs or expenses assessed against or payable by the City arising out of or resulting from Grantee's failure to remove, adjust or relocate any of its Facilities in the Streets in a timely manner in accordance with a relocation schedule furnished to Grantee by the City Engineer, unless Grantee's failure arises directly from the City's negligence or willful misconduct.

Section 6. CONSTRUCTION AND RELOCATION:

A. Subject to applicable regulations of the City, Grantee may perform all necessary construction to construct, operate and maintain its Conduit System. All construction and maintenance of any and all Conduit System Facilities within Streets shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. Grantee shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any Facilities within City Streets. Grantee shall pay all applicable fees due for City construction permits.

Maps

a. Prior to beginning construction, Grantee shall provide the City’s Office of Cable Communications and Franchise Management with an initial construction schedule for work in the Streets and the estimated total cost of such work. As the Grantee's construction in the Streets is completed, Grantee shall provide the City with maps

showing the location of its installed Conduit System in the Streets, as built. Such as-built maps shall be in a form acceptable to the City Engineer.

b. Upon the request of the City, the Grantee shall provide a map to the City's Office of Cable Communications and Franchise Management, or its successor, showing the location of Grantee's optical fibers, conduit and ducts in, over or through the Streets on a scale of Three thousand five hundred feet (3,500') per inch or whatever standard scale the City adopts for general use. Grantee shall also provide such maps in an electronic format acceptable to the City and the Grantee.

1. Grantee may make excavations in the City Streets for any Facility needed for the maintenance or extension of the Grantee's Conduit System, subject to obtaining permits from the City. Prior to doing such work, Grantee must apply for, and obtain, appropriate permits from the City, and give appropriate notices to any further Franchisees, licensees or permittees of the City, or bureaus of the City, or other units of government, owning or maintaining facilities which may be affected by the proposed excavation.

2. In the event that emergency repairs are necessary for Grantee's Facilities in the Streets, Grantee shall immediately notify the City of the need for such repairs. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all Charter and ordinance provisions relating to such excavations or construction, including the payment of permit or license fees.

B. Locates. Grantee shall comply with the requirements of the Oregon Utility Notification Law (ORS 757.542 to 757.562 (2003)) and ORS 757.993 (2003) and the rules and regulations promulgated thereunder.

C. Relocation. The City shall have the right to require Grantee to change the location of its Conduit System within the Streets when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The City shall provide the Grantee with the standard notice given under the circumstances to other franchisees, licensees, or permittees. Should Grantee fail to remove, or relocate such facilities by the date established by the City, the City may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the City due to Grantee's delay. If the City requires Grantee to relocate its facilities located within the City's Streets, the City will make a reasonable effort to provide Grantee with an alternate location for its facilities within the City's Streets.

D. Grantee's Conduit 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 Streets by or under the City's authority.

E. Within thirty (30) days following Grantee's acquisition of any conduits, ducts or other facilities in the Streets, or upon any addition or annexation to the City of any area in which Grantee retains any such Facilities in the Streets, the Grantee shall submit to the City a written statement describing all Facilities involved, whether authorized by franchise or any other form of prior right, and specifying the location of all such Facilities. At the City's sole option, as expressed by ordinance adopted by the City Council, Facilities acquired by Grantee shall immediately be subject to the terms of this Franchise, within a reasonable period of time to bring such acquired Facilities into compliance with this Franchise.

Section 7. RESTORATION OF STREETS:

A. Whenever Grantee disturbs the surface of any unimproved Street for any purpose, Grantee shall promptly restore the street to at least its prior condition to the satisfaction of the City Engineer, to the extent reasonably practicable. When any opening is made by Grantee in a hard surface pavement in any Street, Grantee shall promptly refill the opening and restore the surface to a condition satisfactory to the City Engineer, in accordance with standards developed and adopted by the City Engineer.

B. If Grantee excavates the surface of any Street, Grantee shall be responsible for restoration of the Street and its surface within the area affected by the excavation. The City may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the Street, and the expense thereof shall be paid by Grantee. The City reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the City Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the Streets shall be properly safeguarded for the prevention of accidents. All of Grantee's work under Section 7 shall be done in strict compliance with all applicable rules, regulations and ordinances of the City.

Section 8. RESERVATION OF CITY STREET RIGHTS. Nothing in this Franchise shall be construed to prevent the City from constructing sewers, grading, paving, repairing and/or altering any Street or laying down, repairing or removing water mains or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of the Conduit Systems of the Grantee under this Franchise. However, if any of the Grantee's Conduit System interferes with the construction or repair of any Street or public improvement, including construction, repair or removal of a sewer or water main, the Grantee's System shall be removed or replaced in the manner the City shall direct; provided, however, the City will cooperate with the Grantee to identify alternate locations within the Streets. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its Facilities by the date established by the City Engineer's written notice to Grantee, the City may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

Section 9. PROVISION OF DUCTS TO CITY.

A. Grantee shall provide one duct of at least one and one-quarter inch (1.25") diameter to the City along the route identified in Exhibit A attached to this Permit. The City shall take all reasonably necessary and appropriate action to mark and/or identify its ducts. Within thirty (30) days of the effective date of this Franchise, the Grantee shall provide to the City a deed or other form of ownership documentation, in a form acceptable to the City Attorney, indicating City ownership of such duct. NW Metal agrees that all taxes, assessments and any and all other charges related to the ownership, maintenance and operation of the duct shall be and remain its sole responsibility until such time as it provides documentation of ownership acceptable to the City. NW Metal agrees to indemnify and hold the City harmless from any liability arising from claims for such charges applicable to the duct until such time as documentation of ownership has been accepted by the City.

B. Ducts.

1. In the case of any new construction by the Grantee in the Streets, after prior written notice to and upon written request by the City, Grantee shall install for the City two 1.25" inch ducts. Grantee shall provide maps to the City of the route of any planned duct or conduit construction. Such maps shall be provided at least thirty (30) days prior to the beginning of construction. After receipt of the maps, the City will notify Grantee if it does not desire any duct or conduit along the planned route. Notwithstanding the foregoing, and unless otherwise noted, Grantee shall install two 1.25 inch (1.25") ducts for the City's use for any river crossing by the Grantee's Facilities. If Grantee is joint trenching its ducts or conduit with another franchisee, the parties may jointly satisfy the requirements of this section through the provision of one duct for each duct installed, up to four ducts, or one single four-inch (4") duct. The cost of such ducts shall not be deducted from Franchise fees payable to the City, or otherwise be charged to the City. The duct will be proven by pulling a one and three-eights inch (1 3/8") metallic mandrel end-to-end. Within ten (10) working days, upon completing installation and construction of the ducts or conduit in the Streets, Grantee shall submit to the City a deed or other form of ownership documentation, in a form acceptable to the City Attorney, indicating City ownership of such ducts or conduit. Upon written request from the City, Grantee shall facilitate access to the City's ducts at the City's expense. The cost of these ducts shall not be deducted from Franchise fees payable to the City, or otherwise be charged to the City.

2. Grantee will obtain and construct all Facilities for the City to the same standards of workmanship that are used in the obtaining and construction of its own Facilities. This will include hangers, braces and expansion joints in the case of bridge crossings, construction or aerial plant where needed, and industry-standard methods of placing vaults and ducts underground.

C. Vaults

1. Unless otherwise noted, any and all ducts for the City by the Grantee or pursuant to this Franchise shall connect into and be accessible from Grantee's vaults in the Streets. For purposes of section 9(C), "vault" means any enclosure placed underground, including but not limited to manholes, handholes and splice boxes, that provides access to the ducts. The City shall not access Grantee's vaults without Grantee's prior approval, except in the event of an emergency requiring that the City obtain access to those vaults. In such an emergency, the City shall exercise its best efforts to notify the Grantee as soon as possible of the emergency and the City's need for immediate access. Grantee's approval shall not be unreasonably withheld.

2. The City may require access to some or all of Grantee's vaults for non-emergency purposes, which may include regular construction, installation or maintenance activities for the City's communications networks. In the event that the City requires such access, the City shall notify the Grantee and enter into a separate agreement with the Grantee for such access. All such work to attach, install, and/or maintain City Facilities in such vaults shall be performed by Grantee, or by a licensed contractor of the City, approved by the Grantee (such approval shall not be unreasonably withheld). If work is performed by the Grantee on behalf of the City under a separate agreement, such work shall be performed for the City at a charge not to exceed Grantee's direct incremental costs of material and labor plus ten percent (10%). Should a contractor other than Grantee perform the work for the City within Grantee's vaults, the City will reimburse Grantee for Grantee's reasonable costs arising directly from monitoring the construction process. Grantee's charges for attaching, installing or maintaining such City wires and equipment may not be deducted from Permit fees payable to the City, but may otherwise be separately charged by the Grantee to the City pursuant to a separate agreement.

D. City Use of Surplus Ducts or Conduits. The City may, as a Common User and in accordance with Section 12 of this Agreement, install or affix, and maintain wires and equipment within any of Grantee's surplus ducts or conduits. Grantee shall not be responsible for any damages resulting to the wires or property of the City occurring as a result of the City's use of Grantee's surplus ducts or conduits. The City shall not have access to Grantee's surplus ducts and conduits without Grantee's prior approval, except in the event of an emergency requiring that the City obtain immediate access to those conduits or ducts. In such an emergency, the City shall exercise its best efforts to notify the Grantee as soon as possible of the emergency and the City's need for immediate access. All work to attach, install, and/or maintain City wires and equipment in such surplus ducts shall be performed by Grantee, at City expense, at a charge not to exceed Grantee's direct incremental costs of material and labor plus ten percent (10%). Grantee's charges for attaching, installing or maintaining such City wires and equipment may be deducted from Franchise fees payable to the City, or may otherwise be separately charged by the Grantee to the City.

E. The value of the City's use of Grantees surplus conduits or ducts shall not be charged to the City, or be deducted from Grantee's Franchise fee, or other fees or charges payable to the City.

Section 10. STREET VACATION.

If any Street or portion thereof used by Grantee is vacated by the City during the term of this Franchise, unless the City Council specifically reserves to Grantee the right to continue its installation in the vacated Street, Grantee shall, without expense to the City, forthwith remove its Conduit System from such Street, and restore, repair or reconstruct the Street where such removal has occurred, and place the Street in such condition as may be required by the City Council which shall be no better than the condition of such Street immediately prior to removal. In the event of any failure, neglect or refusal of Grantee, after thirty (30) days' notice by the City Council, to repair, improve or maintain such Street, the City may do such work or cause it to be done, and the direct cost thereof, as found and declared by the City Council, shall be entered in the Docket of City Liens against any property of Grantee which City may choose, and such lien shall be enforced in like manner and with like effect as other liens entered in such docket. The City will cooperate with Grantee to identify alternative locations within the Streets.

Section 11. MAINTENANCE OF FACILITIES.

Grantee shall provide and put in use all Conduit System so as to prevent injury to the City's property or property belonging to any Person within the City. Grantee, solely at its own expense, shall repair, renew, change and improve its Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Conduit System in a manner that requires any customer, except the City, or any entity franchised by the City to install cables, ducts, conduits, or other facilities, in, under or over the City's Streets.

Section 12. COMMON USERS:

A. Grantee acknowledges that the Streets have a finite capacity for containing conduits, ducts and other Facilities. Therefore, Grantee agrees that whenever the City Engineer determines it is impracticable to permit construction of an underground conduit system by any other Person which may at the time have authority from the City to construct or maintain conduits or ducts in the Streets, unless safety or engineering concerns cannot reasonably be mitigated or eliminated the City Engineer may require Grantee to afford to such Person the right to use Grantee's surplus ducts or conduits in common with the Grantee, pursuant to the terms and conditions of an agreement for use of surplus conduits and ducts being entered into by the Grantee and the Licensee. If the Grantee and the Licensee are unable to mutually agree upon the terms and conditions of the use of surplus conduits and ducts, the parties shall submit the matter to final and binding arbitration. Such arbitration shall be conducted according to the procedures set forth under ORS 36.600 through 36.740 (2003). The cost of the arbitration, including the costs of

witnesses and compensation of the arbitrators, shall be taxed against the losing party. However, each party shall separately bear its own costs of attorneys' fees.

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

C. Grantee shall give a Licensee and the City 120 written days notice of its need to occupy licensed conduit and shall propose that the Licensee take the first feasible action listed:

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

2. Pay revised conduit rent based on the cost of new conduit constructed to meet the Grantee's space needs;

3. Vacate ducts that are no longer surplus; or,

4. Construct and maintain sufficient new conduit to meet the Grantee's space needs.

5. Grantee shall provide a written copy of such notice to the City at the same time such notice is provided to the Licensee.

D. 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.

E. 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 Grantee and the Licensee. The Grantee may, at its option, correct any attachment deficiencies and charge the Licensee for its costs. Each Licensee shall pay the Grantee for any fines, fees, damages, or other reasonable costs the Licensee's attachments cause the Grantee to incur.

Section 13. DISCONTINUED USE OF FACILITIES.

Whenever Grantee intends to discontinue use of its Conduit System within all or part of a particular portion of the Streets and does not intend to use said Facilities again in the future, Grantee shall submit to the City Engineer for the City Engineer's approval a completed application describing the Facility and the date on which the Grantee intends to discontinue using the Facility. Grantee may remove the Facility or request that the City permit it to remain in place, which permission shall not be unreasonably withheld or delayed. If Grantee is permitted to abandon its Facilities in place, upon written consent of the City, the ownership of Facilities in the City's Streets shall transfer to the City and Grantee shall have no further obligation therefor. Notwithstanding the Grantee's request that any such Facility remain in place, the City Engineer may require the Grantee to remove the Facility from the street area

or modify the Facility in order to protect the public health and safety or otherwise serve the public interest. The City Engineer may require the Grantee to perform a combination of modification and removal of the Facility. Grantee shall complete such removal or modification in accordance with a schedule set by the City Engineer. Until such time as Grantee 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 having authority to construct and maintain such Facility, Grantee shall be responsible for all necessary repairs and relocations of the Facility, as well as restoration of the Street, in the same manner and degree as if the Facility were in active use, and Grantee shall retain all liability for such Facility.

Section 14. HAZARDOUS SUBSTANCES:

1. Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Conduit System in the City Streets. For purposes of this Section, "Hazardous Substances" shall have the meaning given by ORS 465.200(16) (2003).

2. Inspection and Removal.

   (a) Grantee shall maintain and inspect its Conduit System located in the City Streets. Upon reasonable notice to Grantee and in the presence of an authorized representative of Grantee, the City may inspect Grantee's Facilities in the Streets to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Conduit System Facilities.

   (b) In removing or modifying Grantee's Facilities as provided in Sections 6(C), 8 and 13 of this Franchise, Grantee shall also remove all residue of Hazardous Substances in compliance with applicable environmental clean-up standards related thereto. The City shall provide Grantee with information within the City's possession which identifies potentially responsible parties for the purposes of recovering such removal costs.

   (c) Grantee agrees to forever indemnify the City against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of the release or threat of release of Hazardous Substances caused by Grantee's ownership or operation of a Conduit System in the Streets.

Section 15.CITY'S WRITTEN CONSENT REQUIRED FOR ASSIGNMENT, TRANSFER, MERGER, LEASE OR MORTGAGE:

A. Except as otherwise permitted by Section 15(B), neither this Franchise nor any of Grantee's Conduit System located in the Streets by authority of this Franchise shall be sold, leased, mortgaged, assigned, merged or otherwise transferred without the prior written consent of the City as expressed by ordinance, which consent shall not be unreasonably withheld, except to entities that control, are controlled by, or are under common control with the Grantee. Grantee shall give written notice to the City of any

transfers to entities under such common control within ten (10) days of such transfers. The City's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance. Nothing contained in this Section 15 shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantees Conduit System for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Conduit System, within or outside the City, without the City's consent, but any such mortgage, pledge or assignment shall be subject to the City's other rights contained in this Franchise.

1. In determining whether the City will consent to any sale, lease, mortgage, assignment, merger or transfer, the City may inquire into the technical, legal, and financial qualifications of the prospective party. Grantee shall assist the City in any such inquiry. The City may condition any sale, lease, mortgage, assignment, merger or transfer upon such conditions related to the technical, legal, and financial qualifications of the prospective party to perform according to the terms of this Franchise, as it deems appropriate. The City shall not unreasonably delay or withhold its consent to any such sale, lease, mortgage, assignment, transfer or merger.

2. No sale, lease, mortgage, assignment, transfer or merger for which the City's consent by ordinance is required may occur until the successor, assignee or lessee has complied with the requirements of Section 4, including, but not limited to, providing certificates of insurance, unless the City Council waives such compliance by ordinance. Within ten (10) days after execution and delivery of any instrument so consented to by the City, Grantee shall file with the Auditor an executed counterpart or certified copy thereof.

B. Grantee shall not lease any of its Facilities without the City's prior consent as expressed by ordinance. However, and notwithstanding Section 15(A), Grantee may lease any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. A lessee of Grantee's Facilities shall not obtain any rights under this Franchise. For the purposes of this Subsection, a capital lease shall be treated as a lease under this Subsection until the conclusion of the lease, when transfer of ownership occurs. At that point in time, the capital lease shall be treated as a sale under Section 15(B)(2).

1. Notwithstanding Section 15(A)(1), Grantee may grant Indefeasible Right of User Interests in any portion of its Facilities in the ordinary course of its business without otherwise obtaining the City's consent by ordinance, so long as Grantee remains solely responsible for locating, servicing, repairing, relocating or removing such Facilities. The holder of any IRU in Grantee's Facilities shall not obtain any rights under this Franchise. For the purposes of this Subsection, if a transfer of ownership of the Facilities occurs at the conclusion of the IRU, it shall be treated as a sale under Section 15(B)(2) at that point in time.

2. Notwithstanding Section 15(A)(1), Grantee may sell portions of its Conduit System in the ordinary course of its business, without otherwise obtaining the City's consent by ordinance, so long as Grantee complies with the following conditions:

   a. The sale is to the holder of a current existing, valid franchise with the City.

   b. Within fourteen days of the sale being executed and becoming final, Grantee shall provide written notice to the City, describing the portions of the Conduit System sold by the Grantee, identifying the purchaser of the Facilities, the location of the Facilities (in accordance with the requirements of Section 6(A)(2)), and providing an executed counterpart or certified copy of the sales documents.

   c. Grantee remains solely responsible for locating, servicing, repairing, relocating or removing its remaining Conduit System.

   d. Within fourteen days of the sale being executed and becoming final, the purchaser of such Facilities shall file written notice to the City that it has assumed sole responsibility for locating, servicing, repairing, relocating or removing the purchased Facilities under the purchaser's current, existing valid franchise. The purchaser shall not obtain any of the Grantee's rights under this Franchise.

Section 16. FORFEITURE AND REMEDIES:

A. Forfeiture. In addition to any other rights set out elsewhere in this Franchise, the City reserves the right to declare a forfeiture of the Franchise, and all of Grantee's rights arising thereunder, in the event that:

1. The Grantee violates any material provision of the Franchise. For purposes of this Section, the following are material provisions of this Franchise, allowing the City, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Franchise:

   (i) The invalidation, failure to pay or any suspension of Grantee's payments of Franchise Fees to the City for use of the Streets under this Franchise;

   (ii) Any failure by the Grantee to submit timely reports regarding the calculation of its Franchise Fees to the City;

   (iii) Any failure by Grantee to maintain the liability insurance required under this Franchise;

   (iv) Any failure by Grantee to maintain the performance bond required under this Franchise; or,

   (v) Any failure by Grantee to otherwise fully comply with the requirements of this Franchise.

2. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the City.

3. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its Conduit System within the City

4. The Grantee becomes unable or unwilling to pay its debts, or is adjudged a bankrupt.

B. Additional Remedies. In addition to any rights set out elsewhere in this Franchise, as well as its rights under the City Code, the City reserves the right at its sole option to apply any of the following, alone or in combination:

1. Impose a financial penalty of up to $1,000.00 per Franchise violation

2. Suspend the Grantee's Franchise rights, until the Grantee corrects or otherwise remedies the violation.

3. Revocation. The City Council may revoke this Franchise in the event that any provision becomes invalid or unenforceable and the City Council expressly finds that such provision constituted a consideration material to the grant of the Franchise.

C. 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.

D. Notice and Opportunity to Cure. The City shall give Grantee thirty (30) day's prior written notice of its intent to exercise its rights under this Section, stating the reasons for such action. If Grantee cures the stated reason within the thirty (30) day notice period, or if the Grantee initiates efforts satisfactory to the City to remedy the stated reason and the efforts continue in good faith, the City shall not exercise its remedy rights. If Grantee fails to cure the stated reason within the thirty (30) day notice period, or if the Grantee does not undertake and/or maintain efforts satisfactory to the City to remedy the stated reason, then the City Council may impose any or all of the remedies available under this Section. However, in no event shall the City exercise its rights under this Section if a bona fide, good faith dispute exists between the City and the Grantee.

Section 17. RENEGOTIATION:

In the event that any provision of this Franchise becomes invalid or unenforceable and the City Council or the Grantee expressly finds that such provision constituted a consideration material to entering into this Franchise, the City and the Grantee may mutually agree to renegotiate the terms of this Franchise. The party seeking renegotiation shall serve on the other party written notice of an offer to renegotiate. In the event the other party accepts the

offer to renegotiate, the parties shall have 90 days to conduct and complete the renegotiation. If both parties agree to renegotiations under this Section, the parties shall proceed in good faith and in a manner that is reasonable under the circumstances.

Section 18. EXPIRATION:

Upon the expiration of this Franchise, on application made by the Grantee for Franchise renewal or additional authority to exercise the privileges, or any of them, hereby granted, the Grantee shall have the first and preferential right to take and receive such authority upon terms and conditions approved by the City. If the Grantee does not promptly apply for such renewal or additional authority, or if the Grantee rejects the terms and conditions of such authority offered by the City, the City may, within one year from the expiration of the prior Franchise, grant a permit or Franchise to any other Person. In the event of such a grant, such other Person taking such new or additional authority, shall in addition to any compensation to be paid to the City for such new or additional authority, pay to the Grantee, at or before the time such new or additional authority takes effect, and before the Grantee shall be deprived of the right to possess, maintain and operate its Telecommunications System located within the Streets, the fair and equitable valuation of Grantee's Telecommunications System located within the Streets. If the third party and Grantee cannot agree on the fair and equitable value of said Telecommunications System, the dispute shall be submitted for a declaratory determination by the courts of the State of Oregon. Until such time as the City exercises its rights as set forth in this Section, the Grantee's rights and responsibilities within the City shall continue to be controlled by the terms and conditions of this Franchise.

Section 19. MISCELLANEOUS:

A. Compliance with Laws.

1. Both Grantee and the City shall comply with all applicable federal and state laws.

2. Grantee shall comply with all applicable City ordinances, resolutions, rules and regulations adopted or established pursuant to the City's lawful authority.

B. Severability. If any paragraph, provision or clause of this Franchise is held by a court of competent jurisdiction to be invalid or unenforceable, or is preempted by federal or state laws or regulations, the remainder of this Franchise shall not be affected.

C. Regulation and Nonenforcement by the City. The City Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this Franchise in the public interest. Grantee shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

D. Force Majeure

1. For purposes of this Section 17(D), the term Force Majeure shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts or terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots, or other similar events which are not reasonably within the control of the parties hereto.

2. If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the City prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

E. Choice of Forum. Any litigation between the City and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Multnomah County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Oregon.

F. Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the following addressee or deposited in the United States mail, postage prepaid, certified mail, return receipt requested, (2) sent by overnight or commercial air courier (such as Federal Express), or (3) sent by facsimile transmission addressed as follows, or to such other address as the receiving party hereafter shall specify in writing:

1. If to the City: Office of Cable Communications and Franchise Management
City of Portland, Oregon
1120 SW 5th Avenue, Room 1305
Portland, Oregon 97204
FAX (503) 823-5370

With a copy to: City Attorney's Office
City of Portland
Room 430, City Hall
1221 SW 4th Avenue
Portland, Oregon 97204
FAX (503) 823-3089

2. If to the Grantee: William R. Morgan, President
Northwest Metal Fab and Pipe, Inc.
6720 SW Frogpond Lane
Wilsonville, Oregon 97070
Cell phone number. (503) 860-1061
FAX (503) 692-0218

With a copy to: Theresa M. Kohlhoff
3122 Diane Drive
Lake Oswego, OR 97070
Telephone: (503) 699-1175
FAX: (503) 699-1172

3. Any such notice, communication or delivery shall be deemed effective and delivered upon the earliest to occur of actual delivery, three (3) business days after depositing in the United States mail as aforesaid, one (1) business day after shipment by commercial air courier as aforesaid or the same day as facsimile transmission (or the first business day thereafter if faxed on a Saturday, Sunday or legal holiday).

G. Confidentiality. Grantee may identify information submitted to the City as confidential. Prior to submitting such information to the City, Grantee shall prominently mark any such information with the mark Confidential in letters at least one-half (1/2") inch in height. The City shall treat any information so marked as confidential and not subject to public disclosure, until the City receives any public records request for disclosure of such information. Within five (5) working days of receiving any such request, the City shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the City, before the City may release any of the requested confidential information. Whether the Grantee submits any written response to the City, the City shall retain final discretion to determine whether to release the requested confidential information, provided that the City shall give the Grantee at least five days written notice after receipt of any response from Grantee, prior to releasing such information.

H. Public Records

1. Some information submitted by the Grantee to the City may be relevant to the Grantee's obligation to pay franchise fees. Requiring such information to be submitted to the City in order to determine fees payable or paid to the City may qualify such information as being exempt from public disclosure under ORS 192.501(5) (2003) of the Oregon Public Records Law.

2. Some of the information submitted by the Grantee to the City may otherwise be used to conduct its business and known to certain individuals within the organization, with actual or potential commercial value, and giving Grantee a business advantage over its competitors. Such information may constitute trade secrets and be exempt

from public disclosure under ORS 192.501(2) (2003) of the Oregon Public Record Law.

3. Identification of these exemptions under the Oregon Public Records Law, which may apply to information submitted by the Grantee to the City, is not an exhaustive list of those possibly applicable to such information.

I. Franchise Amendment.

1. The City has negotiated this Franchise in good faith, in reliance upon the information provided by the Grantee regarding its business plan for operating a Conduit System in the Streets. In the event that Grantee actually applies for and receives authority to offer services outside the scope of this Franchise, including but not limited to telecommunications or cable services, or otherwise begins offering telecommunications services outside the scope of those identified in this Franchise, the Grantee shall immediately notify the City. Within 90 days of receiving such notice, the City may either enter into negotiations with the Grantee to revise or amend this Franchise to reflect such changed circumstances, or may proceed with early termination of this Franchise. The parties will negotiate in good faith to revise the franchise to authorize the expanded scope of services.

2. Grantee has fully reviewed the terms and conditions of this Franchise through its duly authorized officials and discussed its terms and conditions with its legal counsel. Grantee fully understands and voluntarily accepts the terms and conditions of this Franchise. Grantee releases and forever discharges the City of Portland, its agents, officers, employees, officials from any and all claims, demands, actions or causes of action, damages, judgments, and execution, of whatsoever nature, in any way relating to, directly or indirectly, the Franchise.

Section 20. WRITTEN ACCEPTANCE. On or before the thirtieth (30th) day after this ordinance becomes effective, Grantee shall file in the Office of the Auditor of the City of Portland a written acceptance of this ordinance, executed by the Grantee, meeting the approval of the City Attorney. Any failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this ordinance shall thereupon be null and void. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this ordinance.

Section 21. OTHER AUTHORITY SUPERSEDED. Upon effectiveness of this Franchise, any and all authority to operate previously granted to Grantee by the City shall be superseded by this Franchise.

Passed by Council April 5, 2006

Gary Blackmer
Auditor of the City of Portland
By /S/Susan Parsons
Deputy

Commissioner Dan Saltzman
D. Soloos/BWalters
February 14, 2006

BACKING SHEET INFORMATION

AGENDA NO. ~~264~~, 437-2006

ACTION TAKEN:
MARCH 1, 2006 PASSED TO SECOND READING APRIL 5, 2006 9:30 AM

ORDINANCE/RESOLUTION/COUNCIL DOCUMENT NO. 180044

COMMISSIONERS VOTED AS FOLLOWS:		
	YEAS	NAYS
ADAMS	------	------
LEONARD	X	
SALTZMAN	X	
STEN	X	
POTTER	X	