

## Title 3 FRANCHISES

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### Chapter 3.10 SOLID WASTE MANAGEMENT FRANCHISE

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### 3.10.010 Short title.

The ordinance codified in this chapter shall be known as the “Solid Waste Management Ordinance” and may be so cited and pleaded and shall be cited herein as “this chapter.” (Ord. 98 § 1, passed 8-9-2005)

### 3.10.020 Purpose, policy and scope.

(1) In order to protect the health, safety, welfare and environment and to conserve energy and natural resources within the City; in order to provide for the opportunity to recycle, and to otherwise provide for solid waste management, it is declared to be the public policy of the City to regulate solid waste management to:

- (a) Carry out policies in ORS Chapters [459](#) and [459A](#) and to provide for the opportunity to recycle, taking advantage of a coordinated areawide recycling collection service and promotion, education and marketing program;
- (b) Ensure safe, economical and comprehensive solid waste management service, including the efficient accumulation, storage, collection, transportation and disposal or resource recovery of solid wastes;
- (c) Ensure rates that are just, fair, reasonable and adequate to provide necessary service to users;
- (d) Prohibit rate preference and other discriminatory practices which benefit one or a few users at an expense to other users of the service or the public.

(2) Pursuant to ORS [459A.085](#), this chapter is adopted and the collection service franchise granted under this chapter is continued, extended and renewed. This action carries out the requirements of ORS [459A](#); the purposes of ORS [459.015](#) and the State Solid Waste Management Plan. This chapter is also adopted under municipal authority of the City.

(3) To achieve the purposes of this section, the City Council finds that it is necessary to have an exclusive collection service franchise for the City. On the basis of adequate public service, a voluntary level of recycling service in excess of City and State requirements; and meeting all requirements of this chapter, the existing collector, Albany-Lebanon Sanitation Company, a division of Allied Waste in North America, is recognized and franchised.

(4) No person shall accumulate, store, collect, transport, dispose of, or resource recover solid wastes or provide service, except in compliance with this chapter and with ORS Chapters [459](#) and [459A](#) dealing with solid waste and with regulations of the Environmental Quality Commission promulgated thereunder.

(5) Except as otherwise provided in MMC [3.10.040](#), no person other than the franchisee shall provide service or offer to provide or advertise for the performance of service. (Ord. 98 § 2, passed 8-9-2005)

### 3.10.030 Definitions and explanations.

(1) As used in this chapter:

(a) *Specific Definitions.*

“City” means the City of Millersburg and the area within its boundaries, including its boundaries as extended in the future.

“Collection vehicle” is any vehicle used to collect, transport or dispose of solid waste and recyclable materials.

“Compaction” means the process by which material is shredded, manually compacted or mechanically compacted.

“Compensation” includes:

- (i) Any type of consideration paid for service including, but not limited to, rent, the proceeds from resource recovery, any direct or indirect provisions for the payment of money, goods, services or benefits by tenants, lessees, occupants, members, cooperatives, or similarly situated persons;
- (ii) The exchange of service between persons; and
- (iii) The flow of consideration from a person owning, possessing or generating solid waste to another person who provides services or from a person providing services to another person owning, possessing or generating solid waste.

“Council” means the legislative body of the City.

“Dispose” or “disposal” includes accumulation, storage, collection, transportation and disposal of solid waste.

“Franchise collection” is a franchise to collect, transport, process, or recover solid waste and recyclable materials.

“Franchise disposal” is a franchise to create or maintain a disposal site.

“Franchisee” means the person granted the franchise by MMC [3.10.040](#), or a subcontractor of such person. The particular franchisee referred to in this chapter is Albany-Lebanon Sanitation Company.

“Generator” means the person who produces the solid waste and recyclable material and places it for collection and disposal or processing. The term does not include a person who manages an intermediate function that results in alteration or compaction of the material after it has been produced by the generator and placed for collection and disposal or recovery.

“Grantee” means the corporation referred to in MMC [3.10.040](#).

“Infectious waste” means biological waste, cultures and stocks, pathological wastes and sharps as defined in ORS [459.386](#) and [459.387](#).

“Incinerator” means a waste-to-energy facility specifically designed for the reduction by burning of solid, semi-solid or liquid combustible wastes, and the recovery of energy from said wastes.

“Mixed recyclables” means two or more recyclable materials collected together, that are not separated, and that are in the combination of materials allowed by the City.

“Person” means an individual, corporation, association, firm, partnership, cooperative, trust, estate, joint partnership or other private legal entity.

“Placed for collection” means solid waste, recyclable materials or yard debris that has been placed by the generator for collection by the franchisee in accordance with the terms of this chapter.

“Processing” means an operation where collected materials are sorted, graded, cleaned, identified or otherwise prepared for end use markets.

“Public place” includes any City-owned park, place or grounds within the City that is open to the public but does not include a street or bridge.

“Putrescible material” is solid waste containing organic material that can decompose and may give rise to foul-smelling, offensive products or which is capable of providing food for birds and potential disease vectors, such as rodents and flies, including but not limited to bones, meat, meat scraps, fat, grease, fish, fish scraps, vegetables, fruit and food containers or products contaminated with food wastes, particles or residues.

“Recycling opportunity” means recycling done in accordance with ORS Chapter [459A](#), together with the regulations promulgated thereunder.

“Resource recovery” is the process of obtaining useful material or energy resources from solid waste, including energy recovery, material recovery, recycling and reuse of solid waste.

“Rules” are rules promulgated by State agencies pursuant to ORS Chapters [459](#) and [459A](#).

“Sanitary landfill” is a site operated in compliance with a permit issued by the Department of Environmental Quality for the disposal of solid waste by placing it in or upon land and covering it with earth or other approved cover material.

“Service” means collection service as defined by ORS [459.005\(3\)](#) and which service includes the collection, transportation, disposal, reuse, recycling or other resource recovery of or from solid waste or recyclable materials or both, by franchisee for compensation.

“Service area” is the geographical area in which service, other than operation of a disposal site, is provided by franchisee, and includes all area within the City limits of the City.

Solid Waste. See subsection [\(1\)\(b\)](#) of this section, General Definitions.

“Solid waste management” is the management of service.

“Transfer site” or “transfer facility” means a facility used as an adjunct to collection vehicles, a resource recovery facility, or a disposal site between the collection of the waste/solid waste and disposal site, including but not limited to a concrete slab, pit, building, hopper, railroad gondola or barge. Transfer site or transfer facility does not include a self-propelled, compactor-type solid waste collection vehicle into which scooters, pickups, small packers or other satellite collection vehicles dump collected solid waste for transport to a transfer site, disposal site, landfill, waste-to-energy facility, or resource recovery site or facility.

“Waste” is material that is no longer wanted or usable by the source, the source generator or producer of the material, which material is to be disposed of or resource recovered by another person, and includes both source separated material and nonsource separated materials.

(b) *General Definitions.* The following terms shall have the meanings as they are defined in ORS [459.005](#) and [459A.005](#): “collection service,” “commercial,” “disposal site,” “energy recovery,” “franchise,” “hazardous waste,” “household hazardous waste,” “material recovery,” “recyclable material,” “recycling,” “reuse,” “solid waste,” “source separate.”

(2) As used in this chapter, the singular number may include the plural and the plural number may include the singular. (Ord. 98 § 3, passed 8-9-2005)

### 3.10.040 Rights granted by exclusive franchise.

(1) Subject to the conditions and reservations contained in this chapter, and to further the purpose, policy and scope as stated in MMC [3.10.020](#), the City hereby grants to Albany-Lebanon Sanitation Company, a corporation, the exclusive right, privilege and franchise to provide service to residents and persons located within the City of Millersburg, and to use the City streets within the City of Millersburg for said purpose, and to charge compensation from the residents and persons within the City for whom service is provided. The franchisee shall have all other rights, privileges and franchises necessary or incidental to the business of providing such service. The boundaries of the City are those in effect as of the effective date of the ordinance codified in this chapter, and any area that may be hereafter annexed to the City. For the purpose of this

franchise, the franchisee shall have the right to use the streets of the City. No other person shall provide service for compensation or offer to provide or advertise for the performance of such service to any owner, tenant, lessee, member or occupant of any real property in the City.

(2) Nothing in this chapter shall:

(a) Prohibit any person from engaging in the collection of source separated materials for resource recovery or recycling for the purpose of raising funds for a charitable, civic or benevolent activity after notice to the franchisee and permission from the franchisee or the Council, providing said person or organization is not organized or operated for any solid waste management purpose.

(b) Prohibit any person from transporting solid wastes produced by themselves if the loading and operation of the vehicle containing the solid waste or wastes prevents the contents from dropping, sifting, leaking or otherwise escaping onto public rights-of-way or property adjacent thereto, and if such material will be disposed of or resource recovered pursuant to all applicable laws, ordinances and regulations of Federal, State or local government units having jurisdiction. Solid waste produced by a tenant, lessee, member, occupant or person other than the owner of the occupied, leased, or licensed premises shall be considered to be produced by such tenant, licensee, member, occupant or person and not by the landlord or property owner, and shall not be collected or transported by the owner or manager or landlord of the facility being rented, leased or for which a membership benefit may accrue.

(c) Prohibit any person from contracting with the State or a Federal agency to provide service to such agency under a written contract with such agency.

(d) Prohibit any person from providing service for hazardous waste, as defined herein, if they comply with all rules and regulations related to the collection, transportation and disposal of hazardous waste. (Ord. 98 § 4, passed 8-9-2005)

### 3.10.050 Franchise term.

(1) The rights, privileges and collection franchise herein granted shall be considered as a continuing six-year franchise, subject to termination as follows:

(2) Unless grounds exist for suspension, modification or revocation of the franchise under MMC [3.10.120](#), the franchise granted under this chapter shall be considered as a continuing six-year term. That is, beginning on January 1st of each year, the franchise shall be considered renewed for an additional six-year term, unless at least 30 days prior to January 1st of any year, the City shall notify the franchisee in writing of its intent to terminate the franchise. Upon the giving of such notice of termination, the franchisee shall have a franchise which will terminate six years from the date of the written notice of termination. Further continuing term renewals may be reinstated by the City.

(3) The City shall have the right, at the end of every two-year period, to review any of the terms of this franchise and to work with franchisee to implement the modifications desired by the City (including an adjustment in the franchise fee), taking into account the technological and economical feasibility of such modifications, and allowing compensation to franchisee in the rates for any increased cost of service due to such modifications. (Ord. 98 § 5, passed 8-9-2005)

### 3.10.060 Public works and improvements not affected by franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any street, bridge or public place; and
- (3) Vacate, alter or close any street, bridge or public place. (Ord. 98 § 6, passed 8-9-2005)

### 3.10.070 Safety standards and work specifications.

- (1) The equipment and facilities of the franchisee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time, taking into account the technological and economical feasibility of said changes and allowing compensation to franchisee in the rates for any increased cost of said changes. (Ord. 98 § 7, passed 8-9-2005)

### 3.10.080 Location and relocation of facilities.

The franchisee may maintain business facilities within the City if areas are properly zoned for that purpose, but not a disposal site. (Ord. 98 § 8, passed 8-9-2005)

### 3.10.090 Franchise fee.

- (1) In consideration of the franchise granted by this chapter, the franchisee shall pay the City from and after the 9th day of August, 2005, an amount equal to five percent per year of the gross revenue from collection service provided to residents and persons within the City. For the purpose of determining the franchise fee, uncollectible debts shall be deducted in computing gross revenue.
- (2) The franchise fee required by this section shall be due for each calendar year on a quarterly basis, and payments are to be made within 30 days of the end of each calendar quarter.
- (3) The franchisee shall furnish to the City with each payment of franchise fee required by this section, a written statement, under oath, and executed by an officer of franchisee, showing the amount of gross revenue of the franchisee within the City for the period covered by the payment, computed on the basis set out in subsection [\(1\)](#) of this section. If the franchisee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the franchisee within 15 days from discovery of the error or determination of the correct amount. Any overpayment to the City, through error or otherwise, shall be offset against the next payment due from the franchisee.
- (4) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City. (Ord. 98 § 9, passed 8-9-2005)

### 3.10.100 Franchisee responsibility.

- (1) The franchisee shall:
  - (a) Dispose of solid waste and waste collected at a disposal site, waste-to-energy facility or transfer site or facility approved by the Department of Environmental Quality, or resource recover the solid waste and waste, both in compliance with ORS Chapters [459](#) and [459A](#), and regulations promulgated thereunder.
  - (b) Provide the opportunity to recycle in accordance with ORS Chapter [459A](#), together with the regulations promulgated thereunder.
  - (c) Provide and keep in force public liability insurance in an amount that is not less than the minimum requirements of the Oregon Tort Claims Act in ORS [30.270](#), which shall be evidenced by a certificate of insurance filed with the City Recorder.
  - (d) Provide sufficient collection vehicles, containers, facilities, personnel and finances to provide all types of necessary service, or subcontract with others to provide certain types of specialized service in accordance with this chapter.

- (e) Respond to any written complaint on service.
- (2) The franchisee shall not:
- (a) Give any rate preference to any person, locality or type of solid waste service. This subsection shall not prohibit uniform classes of rates based upon length of haul, time of haul, type or quantity of solid waste handled and location of customers, so long as such rates are reasonably based upon costs of the particular service and are approved by the Council in the same manner as other rates, nor shall it prevent franchisee from volunteering service at reduced cost for a charitable, community, civic or benevolent purpose.
  - (b) Transfer this franchise or any portion thereof to other persons without the prior written consent of the City Council, which consent shall not be unreasonably withheld. The City Council shall approve the transfer if the transferee meets all applicable requirements met by the original franchise holder. A pledge of this franchise shall be considered as a transfer for the purposes of this subsection. (Ord. 98 § 10, passed 8-9-2005)

### 3.10.110 Supervision.

Service provided under this franchise shall be under the supervision and inspection of the City Council or their designee. The franchisee shall, at reasonable times that are during regular business hours, permit inspection of its facilities, equipment, personnel and records in relation to the service under this franchise. (Ord. 98 § 11, passed 8-9-2005)

### 3.10.120 Suspension, modification or revocation of franchise.

- (1) Willful violation of this chapter, or failure of franchisee to comply with a written notice from the Council to provide necessary service or to otherwise comply with the provisions of this chapter, after a reasonable opportunity to comply, shall be grounds for modification, revocation or suspension of the franchise.
- (2) After written notice from the City Council that such grounds exist, the franchisee shall have 30 days from the date of giving such notice in which to comply or to request a public hearing before the City Council. Said written notice may be delivered to franchisee personally, electronically or by U.S. mail to franchisee's business address. In the event of a public hearing, the franchisee and other interested persons shall have an opportunity to present information and testimony in oral or written form.
- (3) If franchisee fails to comply within the specified time or fails to comply with the order of the City Council entered upon the basis of findings at the public hearing, the City Council may suspend, modify or revoke the

franchise, or make such action contingent upon continued noncompliance with this chapter. (Ord. 98 § 12, passed 8-9-2005)

### 3.10.130 Interruption or termination of service.

The franchisee shall not terminate service to all or a portion of his customers unless:

- (1) The street or road access is unavoidably blocked through no fault of the franchisee and there is no reasonable alternate route or routes to serve all or a portion of its customers; but in either event, the City shall not be liable for any such blocking of access; or
- (2) Adverse weather conditions or other access conditions render providing service unduly hazardous to persons or equipment providing such service, or if such interruption or termination is caused by an act of God or a public enemy; or
- (3) A customer has not paid for services rendered within 60 days of the mailing of the bill. (Ord. 98 § 13, passed 8-9-2005)

### 3.10.140 Books of accounts and reports.

The franchisee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under MMC [3.10.090](#). The City may inspect the books of account at any time during business hours and may audit the books from time to time. The Council may require periodic reports from the franchisee relating to its operations and revenues within the City. (Ord. 98 § 14, passed 8-9-2005)

### 3.10.150 Collection facilities.

The franchisee may maintain facilities in the City where its customers may pay their bills for service during normal business hours. (Ord. 98 § 15, passed 8-9-2005)

### 3.10.160 Supplying maps upon request.

The franchisee shall maintain on file at an office in Oregon maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the franchisee shall furnish to the City, without charge, and on a current basis, maps

showing the places of collection and routes of transportation of the franchisee's motor vehicles in the City. (Ord. 98 § 16, passed 8-9-2005)

### 3.10.170 Indemnification.

The franchisee shall indemnify and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to or death of persons due to any wrongful or negligent act or omission of the franchisee, its agents or employees or due to exercising the rights, privileges and franchise hereby granted. (Ord. 98 § 17, passed 8-9-2005)

### 3.10.180 Assignment of franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the franchisee. (Ord. 98 § 18, passed 8-9-2005)

### 3.10.190 Remedies not exclusive when requirement waived.

All remedies and penalties under this chapter, including termination of the franchise, are cumulative and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such penalty or remedy. The remedies and penalties contained in this chapter, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of this chapter or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the franchisee by or pursuant to this chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the franchisee by or pursuant to this chapter shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself. (Ord. 98 § 19, passed 8-9-2005)

### 3.10.200 Annexation.

Subject to ORS [459.085\(3\)](#), franchisee reserves all rights to serve any and all areas annexed to the City. (Ord. 98 § 20, passed 8-9-2005)

### 3.10.210 Rates and charges.

The franchisee shall submit to the City a schedule of rates for its customers and those rates are subject to approval by resolution by the City. The City may approve those rates if they are not unreasonable and are not substantially higher than those charged generally under similar service requirements and for the same and similar quality of service, or the City may establish a different rate schedule. In establishing rates or in considering rate increases or decreases, the City must find that the rates will be just, fair, reasonable and sufficient to provide proper service to the public and will take into consideration the cost of doing business by the franchisee, the ability of the customer to pay such rates and the rates charged by a similar business. In determining the appropriate rates to be charged by the franchisee, the Council shall consider:

- (1) The cost of performing the service provided by the franchisee;
- (2) The anticipated increase or decrease in the cost of providing this service;
- (3) The need for equipment replacement and the need for additional equipment to meet the service needs; compliance with Federal, State or local laws or regulations; or technological changes;
- (4) The franchisee's investment, the value of the business and the necessity that the franchisee have a reasonable operating margin and rate of return on revenue;
- (5) The public interest in assuring reasonable rates to enable the franchisee to provide efficient and beneficial service to the residents and other users of the service;
- (6) The local wage scales, cost of management, facilities, and disposal fees and charges;
- (7) Any profit or cost savings resulting from recycling and resource recovery, and any additional costs resulting from recycling and resource recovery;
- (8) Any increase or decrease in the franchise fee charged by the City;
- (9) Rates in other cities for similar service;
- (10) Any other information deemed necessary for a rate review and adjustment. (Ord. 98 § 21, passed 8-9-2005)

### 3.10.220 Public responsibility.

Both the franchisee and the public shall comply with ORS Chapters [459](#) and [459A](#) and regulations promulgated pursuant thereto, including those regulations issued by the Department of Environmental Quality and the Workers' Compensation Board. The following requirements shall pertain to service under this chapter:

- (1) Each person in the City shall dispose of their putrescible solid waste and wastes in an approved manner at least every seven days or at more frequent intervals where necessary to prevent the creation of health hazards, rodent harborage or sustenance, vector production or sustenance, or public nuisance.
- (2) If a customer uses a roller cart designed for mechanical collection, the customer shall use only receptacles furnished by the franchisee and the loaded weight of the receptacles shall comply with the manufacturer's specifications.
- (3) All carts designed for mechanical solid waste collection and all carts and containers designed for mechanical recyclable materials collection shall be placed at the curb or roadside by the customer prior to the time of collection.
- (4) If a customer uses a garbage can designed for manual collection, no garbage can shall exceed 32 gallons in size and shall not weigh more than 60 pounds gross loaded weight. Only round garbage cans shall be used, and cans shall be tapered so that they are larger at the top, and cans shall have handles at the top and a place for a handhold at the bottom.
- (5) Sunken refuse cans or containers shall not be installed or used.
- (6) To protect against injury to employees of the franchisee, and to protect against rodent and fire dangers, cans shall be rigid and of material that will not split or crack in cold weather.
- (7) Customers shall provide safe access to the pickup point so as not to jeopardize the persons or equipment supplying service or the motoring public.
- (8) Stationary compactors for handling solid waste or recyclable materials shall comply with applicable Federal and State safety regulations. No stationary compactor or other container or drop box shall be loaded so as to exceed the safe loading design limit or operation limit for collection vehicles used by franchisee. A person who wishes service for a compactor that such person is going to acquire, shall acquire a compactor approved by the franchisee that is compatible with the equipment of the franchisee or the equipment the franchisee is willing to acquire.
- (9) Customers shall take appropriate action to ensure that hazardous materials, chemicals, paint, corrosive materials, infectious waste or hot ashes are not put into a cart, container or drop box. When materials or customer abuse, fire, or vandalism causes excessive wear or damage to a cart, container or drop box, the cost of repair or replacement may be charged to the customer.
- (10) Any person who receives service shall be responsible for the payment for that service. The landlord of any premises impliedly consents to the provision of service to the tenant thereof, and shall be responsible for payment for the service if the tenant does not pay.
- (11) The following additional billing policies shall apply:

- (a) There shall be a pro-rated credit allowed on the regular monthly charge for service which is cancelled for three weeks or more, but none shall be allowed for service which is cancelled for less than three weeks.
- (b) The franchisee may deny solid waste collection service to nonowner occupants of property unless payment therefor has been guaranteed in advance by the property owner, or unless a satisfactory cash deposit or advance payment has been made by said nonowner occupant.
- (c) The franchisee may charge a late fee or a service-interrupt fee in accordance with the Resolution setting forth rates to be charged to customers by franchisee, as approved by the City from time to time. (Ord. 98 § 22, passed 8-9-2005)

### 3.10.230 City enforcement.

The City, through its appropriate officers, shall take all appropriate steps within the power of the City to protect the exclusive right and interest hereby given to the franchisee and shall cooperate in all particulars with the franchisee in protecting such exclusive right and shall, if deemed necessary, pass such additional ordinances as may be required to make the franchise exclusive and to enforce such ordinances by administrative, civil or criminal action, as necessary to obtain compliance with said ordinances.

Unless otherwise specified in this chapter, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council. (Ord. 98 § 23, passed 8-9-2005)

## Chapter 3.20

### TELECOMMUNICATIONS – ASTOUND BROADBAND, LLC

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3.20.130 Duration of franchise.

### 3.20.010 Franchise granted.

(1) The City of Millersburg (City) grants to Astound Broadband, LLC, a Washington limited liability company, d/b/a Wave (Astound Broadband), its successors and assigns, the nonexclusive right, franchise and privilege to conduct a general telecommunications business with the City and to place, erect, lay, maintain and operate in, upon, under and over public rights-of-way within the City poles, wires, cables, fiber optics, conduit and other appliances and conductors (collectively, facilities) for the transmission of light, electricity, or other impulses for telecommunications purposes, including the provision of telecommunications, private line, and Internet access services (collectively, telecommunications services). Such facilities may be strung upon poles and other fixtures above ground or may be laid underground in pipes and conduits or otherwise protected. This chapter does not grant Astound Broadband authority to use its facilities to provide cable services or any other nontelecommunications services. The facilities installed pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of public ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such public ways.

(2) This chapter is subject to, and Astound Broadband agrees to comply with, applicable State, Federal and City laws, rules, regulations, ordinances, resolutions or orders now in effect or adopted after this chapter takes effect. The City may regulate rates charged by Astound Broadband for the provision of telecommunications services if expressly permitted by Federal or State law. (Ord. 119 § 1, passed 1-12-2016)

### 3.20.020 Excavations.

Subject to obtaining required permits from the City, Astound Broadband is granted authority to make all needed and necessary excavation in any public right-of-way. All excavation and construction work must comply with City ordinances, resolutions, rules and orders now in effect or that take effect during the term of this franchise. City will enter discussions with Astound Broadband to consider solutions to issues identified by Astound Broadband regarding proposed changes to City ordinances, resolutions, rules or orders whenever such discussions are practicable. Astound Broadband does not waive its right to challenge the legality, validity or enforceability of any changes to City ordinances, resolutions, rules or orders adopted after this chapter takes effect. This chapter does not require Astound Broadband to comply with future ordinances, resolutions, rules or orders that apply only to Astound Broadband. Astound Broadband is not required to use any City-owned conduit or appurtenances for which the City imposes any fee, tax or other charges for its use. (Ord. 119 § 2, passed 1-12-2016)

### 3.20.030 Aerial facility installation.

In compliance with all required permits and licenses, Astound Broadband may install aerial facilities, except that the facilities of Astound Broadband shall be installed underground in those areas of the City where all existing telephone, cable, and electric services are underground at the time of system construction. At such time as the existing aerial facilities of similarly situated entities are required to be placed underground by the City in accordance with ORS [758.210](#) through [758.270](#), or otherwise, Astound Broadband shall likewise place its facilities underground at the sole cost of Astound Broadband. In no event, however, shall Astound Broadband be required to place more than 800 feet of its facilities underground in any given year at its sole expense. (Ord. 119 § 3, passed 1-12-2016)

### 3.20.040 Restoration of public right-of-way.

Whenever Astound Broadband disturbs any public right-of-way for the purpose of excavation or construction, it must restore, within the time specified in the permit issued by the City for such work, the public right-of-way to at least as good condition as existed prior to excavation or construction, as directed by City. If Astound Broadband fails to restore the public right-of-way within a reasonable time after receipt of written notice from City or fails to do so as directed by City, then City will make such restoration and Astound Broadband must reimburse City for the costs of such restoration within 10 days of demand therefor. Restoration to the condition that existed before excavation or construction does not require Astound Broadband to restore areas larger than the areas of excavation and construction unless required by applicable codes, rules or regulations. (Ord. 119 § 4, passed 1-12-2016)

### 3.20.050 Authority of City.

This chapter does not limit the authority of the City to sewer, grade, pave, and repair, alter or improve any public right-of-way in or upon which Astound Broadband may place facilities. To the extent reasonably possible all such City work or improvements will be done in a manner that does not obstruct or prevent the free use of Astound Broadband facilities. (Ord. 119 § 5, passed 1-12-2016)

### 3.20.060 Temporary rearrangement of utilities for passage of buildings.

Whenever it becomes necessary to temporarily rearrange, remove, lower or raise Astound Broadband facilities for the passage of buildings, machinery or other objects, Astound Broadband will temporarily rearrange, remove, lower or raise its facilities as required by City. The person moving any such buildings, machinery or other objects must pay the entire actual cost to Astound Broadband of changing, altering, moving, removing or

replacing its facilities so as to permit such passage. Astound Broadband will be given not less than five days' written notice by the person desiring to move a building or other object. This notice must state the route of movement of such building or other objects over and along the public rights-of-way and must be approved by the City. Such moving must be done as quickly as possible without unnecessary delay to limit expense and inconvenience to Astound Broadband. (Ord. 119 § 6, passed 1-12-2016)

### 3.20.070 Franchise fee.

(1) As consideration for the use of City's public rights-of-way, Astound Broadband shall remit to City a franchise fee which shall equal seven percent of its gross revenues earned, less bad debts, from the provision of telecommunications services within the City. The franchise fee payment shall be due quarterly and payable within 45 days after the close of the preceding calendar quarter. Each payment shall be accompanied by a brief report prepared by a representative of Astound Broadband showing the basis for the computation.

(2) In the event the maximum allowable franchise fee is increased or decreased by applicable law, the City may hold a public hearing on such matter to obtain input from subscribers and Astound Broadband and may thereafter unilaterally increase or decrease the percentage amount of the franchise fee.

(3) "Gross revenues" means any revenue received by Astound Broadband and all its affiliates from the operation of the facilities to provide telecommunications services in the City; provided, however, that such phrase shall not include: (a) any tax, fee or assessment of general applicability collected by Astound Broadband from subscribers for pass-through to a government agency; (b) any revenue derived from the provision of Internet access services where such franchise revenue is expressly prohibited by Federal or State law; and (c) unrecovered bad debt. For purposes of this section, the term "affiliate" shall mean an entity providing service within the service area and which provides "telecommunications services," as contractors, subcontractors, assignees, or subsidiaries of, for and at the request of Astound Broadband during the term of this franchise.

(4) The franchise fee required under this section: (a) shall not take effect until Astound Broadband begins construction, and (b) thereafter, shall be payable quarterly. City shall have the right, upon 48 hours' notice and during normal business hours, to conduct or cause to be conducted an audit of gross revenues as defined herein for the purpose of ascertaining whether Astound Broadband's franchise fee payments have met the requirements of this franchise. Any difference of payment due either the City or Astound Broadband following audit shall be payable within 30 days after written notice to the affected party. Neither party is entitled to recover any under- or over-payment more than three years after the payment's due date. In lieu of all or a portion of the payments required under this section, Astound Broadband may provide telecommunications or other services to the City. Any agreement for the provision of such services will be as mutually agreed by the parties in separate documentation. The offset value of any such services provided to the City will be determined based on the standard rates Astound Broadband charges to thirdparty customers for substantially equivalent services. (Ord. 119 § 7, passed 1-12-2016)

### 3.20.080 Insurance requirements.

(1) Astound Broadband shall maintain throughout the term of the franchise insurance in amounts at least as follows:

Workers' compensation	Statutory limits
Commercial general liability	\$1,000,000 per occurrence
Combined single liability (C.S.L.)	\$2,000,000 general aggregate
Auto liability including coverage	\$1,000,000 per occurrence C.S.L. on all owned, nonowned hired autos
Umbrella liability	\$1,000,000 per occurrence C.S.L.

(2) The City shall be added as an additional insured, arising out of work performed by Astound Broadband, to the above commercial general liability, auto liability and umbrella liability insurance coverage.

(3) Astound Broadband shall furnish the City with current certificates of insurance evidencing such coverage upon request. (Ord. 119 § 8, passed 1-12-2016)

### 3.20.090 Franchisee to defend City against claims.

Astound Broadband shall defend the City, its officers, boards, commissions, agents, and employees from all claims for injury to any person or property caused by, or alleged to be the result of, the negligence or fault of Astound Broadband in the construction or operation of its facilities and, in the event of a determination of liability, shall indemnify and hold the City, its officers, boards, commissions, agents, and employees harmless from any and all liabilities, claims, demands, or judgments growing out of any injury to any person or property as a result of the negligence or fault of Astound Broadband arising out of the construction, repair, extension, maintenance, operation or removal of its wires, poles or other equipment of any kind or character used in connection with the installation and operation of its facilities by Astound Broadband or its subcontractors, except that the foregoing indemnification obligation does not apply if the City fails to provide timely notice reasonable under the circumstances to Astound Broadband. In the event any such claim arises, the City shall tender the defense thereof to Astound Broadband, and Astound Broadband shall have the right to defend, settle or compromise any claims arising hereunder, except that if such settlement or compromise might obligate the City, Astound Broadband shall obtain the City's written consent to the settlement or compromise, which the City may not unreasonably withhold. Notwithstanding the foregoing, Astound Broadband shall not be obligated to indemnify the City for any damages, liability or claims resulting from the willful misconduct or negligence of the City, its officers, boards, commissions, agents, or employees. This obligation of indemnification shall survive the termination of this franchise. (Ord. 119 § 9, passed 1-12-2016)

### 3.20.100 Monetary damages for default.

Subject to applicable Federal and State law, in the event the City determines that Astound Broadband is in default of any provision of the franchise, and the default is not contested or cured within 90 days, the City may commence an action at law for monetary damages or seek other equitable relief; or in the case of a substantial default of a material provision of the franchise, revoke the franchise itself in accordance with MMC [3.20.110](#). (Ord. 119 § 10, passed 1-12-2016)

### 3.20.110 Written notice for intent to revoke franchise.

(1) The City shall give written notice to Astound Broadband of its intent to revoke the franchise on the basis of any uncured noncompliance by Astound Broadband. The notice of intent to revoke may be combined with a notice of default if the City is satisfied that there has been a pattern of noncompliance. If the City does not provide notice of intent to revoke with the notice of default, the City shall provide an additional notice of intent to revoke. Any notice of intent to revoke shall set forth the exact nature of the noncompliance. Astound Broadband shall have 90 days from such notice to either object in writing and to state its reasons for such objection and provide any explanation or to cure the alleged noncompliance. If the City has not received a satisfactory response from Astound Broadband, the City Council of Millersburg shall hold a public hearing on the question of revocation. The City shall give Astound Broadband at least 30 days' notice of the time and place of such a public hearing. Astound Broadband shall be entitled to appear at the public hearing and present evidence and arguments concerning its failure to comply with the franchise and the proposed revocation. If, at the close of the hearing, or at a later time after deliberations, the Council determines that the City's original determination of default was correct, and that Astound Broadband has failed to cure the default, or offer a credible plan for cure, the City may revoke the franchise.

(2) Upon revocation or termination of the franchise, Astound Broadband shall remove its facilities from the streets of the City, or, subject to all pole license or rental agreements and requirements, provide City written notice that it is electing to abandon the system in place. Upon receipt of notice of intent to abandon the system, or the passage of 60 days after the notice of revocation has been sent to Astound Broadband, the City may, at its sole discretion, take ownership of the abandoned system, or remove the system and bill Astound Broadband for the out-of-pocket expense of removal, or any combination of the two options. The obligation to pay for such expenses shall survive the termination of this franchise. (Ord. 119 § 11, passed 1-12-2016)

### 3.20.120 Consent of City for reassignment of franchise.

Astound Broadband's right, title, or interest in the franchise shall not be sold, transferred, assigned, or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Astound Broadband, without the prior consent of the City, such consent not to be unreasonably withheld. No

such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest in the franchise or facilities in order to secure indebtedness. Within 30 days of receiving a request for transfer, the City shall notify Astound Broadband in writing of any additional information it reasonably requires to determine the legal, financial and technical qualifications of the transferee. (Ord. 119 § 12, passed 1-12-2016)

### 3.20.130 Duration of franchise.

The rights, privileges and franchise granted will continue and be in full force for a period of 10 years from the date of enactment of this chapter unless terminated earlier by Astound Broadband upon notice to the City. This chapter does not grant a franchise unless it is accepted in writing by Astound Broadband within 60 days after its enactment. (Ord. 119 § 13, passed 1-12-2016)

## Chapter 3.30

### GAS UTILITY – NORTHWEST NATURAL GAS COMPANY

#### Sections:

- 3.30.010 Definitions and explanations.
- 3.30.020 Rights granted.
- 3.30.030 Use of streets, bridges and public places by grantee.
- 3.30.040 Duration.
- 3.30.050 Franchise not exclusive.
- 3.30.060 Public works and improvements not affected by franchise.
- 3.30.070 Continuous service.
- 3.30.080 Safety standards and work specifications.
- 3.30.090 Control of construction.
- 3.30.100 Street excavation and restorations.
- 3.30.110 Location and relocation of facilities.
- 3.30.120 Compensation.
- 3.30.130 Books of account and reports.
- 3.30.140 Supplying maps upon request.
- 3.30.150 Indemnification.
- 3.30.160 Assignment of franchise.
- 3.30.170 Termination of franchise for cause.
- 3.30.180 Remedies not exclusive – When requirement waived.
- 3.30.190 Expiration.
- 3.30.200 Acceptance.

### 3.30.010 Definitions and explanations.

(1) As used in this chapter:

“Bridge” includes a structure erected within the City to facilitate the crossing of a river, stream, ditch, ravine or other place, but does not include a culvert.

“City” means the City of Millersburg and the area within its boundaries, including its boundaries as extended in the future.

“Council” means the legislative body of the City.

“Gas mains” include all gas transmission and distribution facilities located on or under any street, bridge or public place within the City.

“Grantee” means the corporation referred to in MMC [3.30.020](#).

“Gross revenue” means revenues received from the use of the gas utility system within the City limits less related net uncollectibles. Gross revenues shall include revenues from the use, rental or lease of the gas utility system, except when those revenues have been paid to grantee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operations of the other franchisee within the City limits. Gross revenues shall not include proceeds from the sale of bonds, mortgage, or other evidence of indebtedness, securities or stocks, or sales at wholesale by grantee to any public utility or public agency when the public utility or public agency purchasing the gas is not the ultimate customer. Gross revenues also shall not include public purpose charges; provided, that such charges or surcharges are required or authorized by Federal or State statute, administrative rule, or by tariff approved by the OPUC and raised revenue is used solely for the public purpose and not to compensate grantee for the sale or use of natural gas or for the use, rental, or lease of grantee’s utility system within the City. Public purpose activities include, but are not limited to, energy efficiency programs, market transformation programs, low-income energy efficiency programs, and carbon offset programs designed to benefit residential and commercial customers within grantee’s service territory in Oregon. Gross revenues also shall not include revenues paid directly by the United States of America or any of its agencies.

“Person” includes an individual, corporation, association, firm, partnership and joint stock company.

“Public place” includes any City-owned park, place or grounds within the City that is open to the public but does not include a street or bridge.

“Street” includes a street, alley, avenue, road, boulevard, thoroughfare or public highway within the City, but does not include a bridge.

(2) As used in this chapter, the singular number may include the plural and the plural number may include the singular.

(3) Unless otherwise specified in this chapter, any action authorized or required to be taken by the City may be taken by the Council or by an official or agent designated by the Council. (Ord. 124 § 1, passed 12-13-2016)

### 3.30.020 Rights granted.

Subject to the conditions and reservations contained in this chapter, the City hereby grants to Northwest Natural Gas Company, a corporation, the right, privilege and franchise to:

- (1) Construct, maintain and operate a gas utility system within the City;
- (2) Install, maintain and operate on and under the streets and bridges and public places in the City, facilities for the transmission and distribution of gas to the City and its inhabitants and to other customers and territory beyond the limits of the City; and
- (3) Transmit, distribute and sell gas. (Ord. 124 § 2, passed 12-13-2016)

### 3.30.030 Use of streets, bridges and public places by grantee.

- (1) Before the grantee may use or occupy any street, bridge or public place, the grantee shall first obtain permission from the City to do so and shall comply with any special conditions the City desires to impose on such use or occupation.
- (2) The compensation paid by the grantee for this franchise includes compensation for the use of streets, bridges and public places located within the City as authorized. (Ord. 124 § 3, passed 12-13-2016)

### 3.30.040 Duration.

This franchise is granted for a period of 20 years from and after the effective date of this chapter. (Ord. 124 § 4, passed 12-13-2016)

### 3.30.050 Franchise not exclusive.

This franchise is not exclusive, and shall not be construed as a limitation on the City in:

- (1) Granting rights, privileges and authority to other persons similar to or different from those granted by this chapter.

(2) Constructing, installing, maintaining or operating any City-owned public utility. (Ord. 124 § 5, passed 12-13-2016)

### 3.30.060 Public works and improvements not affected by franchise.

The City reserves the right to:

- (1) Construct, install, maintain and operate any public improvement, work or facility;
- (2) Do any work that the City may find desirable on, over or under any street, bridge or public place.
- (3) Vacate, alter or close any street, bridge or public place.
- (4) Whenever the City shall excavate or perform any work in any of the present and future streets, alleys and public places of the City, or shall contract or issue permits for such excavation or work where such excavation or work may disturb grantee's gas mains, pipes and appurtenances, the City shall, in writing, notify grantee sufficiently in advance of such contemplated excavation or work to enable grantee to take such measures as may be deemed necessary to protect such gas mains, pipes and appurtenances from damage and possible inconvenience or injury to the public. In any such case, the grantee, upon request, shall furnish maps or drawings to the City or contractor, as the case may be, showing the approximate location of all its structures in the area involved in such proposed excavation or other work.
- (5) Whenever the City shall vacate any street or public place for the convenience or benefit of any person or governmental agency and instrumentality other than the City, grantee's rights shall be preserved as to any of its facilities then existing in such street or public place. (Ord. 124 § 6, passed 12-13-2016)

### 3.30.070 Continuous service.

The grantee shall maintain and operate an adequate system for the distribution of gas in the City. The grantee shall use due diligence to maintain continuous and uninterrupted 24-hour-a-day service which shall at all times conform at least to the standards common in the business and to the standards adopted by State authorities and to standards of the City which are not in conflict with those adopted by the State authorities. Under no circumstances shall the grantee be liable for an interruption or failure of service caused by act of God, unavoidable accident or other circumstances beyond the control of the grantee through no fault of its own. (Ord. 124 § 7, passed 12-13-2016)

### 3.30.080 Safety standards and work specifications.

- (1) The facilities of the grantee shall at all times be maintained in a safe, substantial and workmanlike manner.
- (2) For the purpose of carrying out the provisions of this section, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specification from time to time. (Ord. 124 § 8, passed 12-13-2016)

### 3.30.090 Control of construction.

The grantee shall file with the City maps showing the location of any construction, extension or relocation of its gas mains in the streets of the City and shall obtain from the City approval of the location and plans prior to commencement of the work. The City may require the grantee to obtain a permit before commencing the construction, extension or relocation of any of its gas mains. (Ord. 124 § 9, passed 12-13-2016)

### 3.30.100 Street excavation and restorations.

- (1) Subject to provisions of this chapter, the grantee may make necessary excavations for the purpose of constructing, installing, maintaining and operating its facilities. Except in emergencies, and in the performance of routine service connections and ordinary maintenance, prior to making an excavation within the traveled portion of any street, bridge, or any public place, the grantee shall obtain from the City approval of the proposed excavation and of its location. Grantee shall give notice to the City by telephone, electronic data transmittal or other appropriate means prior to the commencement of service or maintenance work and as soon as is practicable after the commencement of work performed under emergency conditions.
- (2) When any excavation is made by the grantee, the grantee shall promptly restore the affected portion of the street, bridge or public place to the same condition in which it was prior to the excavation. The restoration shall be in compliance with specifications, requirements and regulations of the City in effect at the time of such restoration. If the grantee fails to restore promptly the affected portion of a street, bridge or public place to the same condition in which it was prior to the excavation, the City may make the restoration, and the cost thereof shall be paid by the grantee. (Ord. 124 § 10, passed 12-13-2016)

### 3.30.110 Location and relocation of facilities.

- (1) All facilities of the grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets, bridges and public places and in accordance with any specification adopted by the City governing the location of facilities.
- (2) The City may require, in the public interest, the removal or relocation of facilities maintained by the grantee in the streets of the City, and the grantee shall remove and relocate such facilities within a reasonable time after receiving reasonable notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the grantee, but when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, grantee shall be entitled to reimbursement for the reasonable cost thereof from such person, agency or instrumentality. (Ord. 124 § 11, passed 12-13-2016)

### 3.30.120 Compensation.

- (1) As compensation for the franchise granted by this chapter, the grantee shall pay to the City an amount equal to five percent of the gross revenue collected by the grantee from its customers, whether the customers are supplied under an interruptible or uninterruptible (firm) tariff schedule and except as otherwise excluded, for gas consumed within the City. The grantee may offset against such compensation the amount of any license, permit or other fees paid to the City in connection with the grantee's use of the streets, bridges and public places of the City and the amount of any privilege tax particularly imposed upon energy utilities.
- (2) The compensation required by this section shall be due for each calendar year, or fraction thereof, within 60 days after the close of such calendar year, or fraction thereof. Within 60 days after the termination of this franchise, compensation shall be paid for the period elapsing since the close of the last calendar year for which compensation has been paid.
- (3) The grantee shall furnish to the City with each payment of compensation required by this section a written statement, showing the amount of gross revenue of the grantee within the City for the period covered by the payment computed on the basis set out in subsection (1) of this section. The compensation for the period covered by the statement shall be computed on the basis of the gross revenue so reported. If the grantee fails to pay the entire amount of compensation due the City through error or otherwise, the difference due the City shall be paid by the grantee within 30 days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise, shall be offset against the next payment due from the grantee.
- (4) Acceptance by the City of any payment due under this section shall not be deemed to be a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. (Ord. 124 § 12, passed 12-13-2016)

### 3.30.130 Books of account and reports.

The grantee shall keep accurate books of account at an office in Oregon for the purpose of determining the amounts due to the City under MMC [3.30.120](#). The City may inspect the books of account at any time during business hours and may audit the books from time to time; provided, that only payments that occurred or should have occurred during a period of 36 months prior to the date the City notifies the grantee of its intent to perform an audit or financial review will be included. The Council may require periodic reports from the grantee relating to its operations and revenues within the City. The grantee will not provide the City with records containing customer information that identifies or can be attributed to a specific customer, without a written legal opinion by the City to the grantee's reasonable satisfaction that such records will not be subject to public disclosure under State law, and that the City will inform NW Natural and oppose their disclosure should a public disclosure request be made. (Ord. 124 § 13, passed 12-13-2016)

### 3.30.140 Supplying maps upon request.

The grantee shall maintain on file, at an office in Oregon, maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the grantee shall furnish to the City, without charge and on a current basis, maps showing the location of the gas mains of the grantee in the City. (Ord. 124 § 14, passed 12-13-2016)

### 3.30.150 Indemnification.

The grantee shall indemnify, defend and save harmless the City and its officers, agents and employees from any and all loss, cost and expense arising from damage to property and/or injury to, or death of, persons due to any wrongful or negligent act or omission of the grantee, its agents or employees in exercising the rights, privileges and franchise hereby granted. (Ord. 124 § 15, passed 12-13-2016)

### 3.30.160 Assignment of franchise.

This franchise shall be binding upon and inure to the benefit of the successors, legal representatives and assigns of the grantee. (Ord. 124 § 16, passed 12-13-2016)

### 3.30.170 Termination of franchise for cause.

Upon the willful failure of the grantee, after 60 days' notice and demand in writing, to perform promptly and completely each and every term, condition or obligation imposed upon it under or pursuant to this chapter, the City may terminate this franchise, subject to grantee's right to a court review of the reasonableness of such action. (Ord. 124 § 17, passed 12-13-2016)

### 3.30.180 Remedies not exclusive – When requirement waived.

All remedies and penalties under this chapter, including termination of the franchise, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this chapter, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the grantee by or pursuant to this chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the grantee by or pursuant to this chapter shall not be a waiver of any other or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself. (Ord. 124 § 18, passed 12-13-2016)

### 3.30.190 Expiration.

At the end of the franchise term, if the City and grantee are negotiating another franchise and have not concluded their negotiations, grantee's rights and responsibilities shall be controlled by this franchise until the City grants a new franchise and grantee accepts it. (Ord. 124 § 19, passed 12-13-2016)

### 3.30.200 Acceptance.

The grantee shall, within 30 days from the date this chapter takes effect, file with the City its written unconditional acceptance of this franchise, and if the grantee fails to do so, this chapter shall be void. (Ord. 124 § 20, passed 12-13-2016)

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## Chapter 3.40

### ELECTRIC UTILITY – PACIFICORP

**Sections:**

- 3.40.010 Grant of franchise and general utility easement.
- 3.40.020 Term.
- 3.40.030 Acceptance by PacifiCorp.
- 3.40.040 Nonexclusive franchise.
- 3.40.050 City regulatory authority.
- 3.40.060 Indemnification.
- 3.40.070 Annexation.
- 3.40.080 Planning, design, construction and installation of company facilities.
- 3.40.090 Relocation of electric facilities.
- 3.40.100 Subdivision plat notification.
- 3.40.110 Vegetation management.
- 3.40.120 Compensation.
- 3.40.130 Renewal.
- 3.40.140 No waiver.
- 3.40.150 Transfer of franchise.
- 3.40.160 Amendment.
- 3.40.170 Noncontestability – Breach of contract.
- 3.40.180 Notices.
- 3.40.190 Waiver of jury trial.

#### 3.40.010 Grant of franchise and general utility easement.

The City hereby grants to PacifiCorp the right, privilege and authority to construct, maintain, operate, upgrade, and relocate its electrical distribution and transmission lines and related appurtenances, including underground conduits and structures, poles, towers, wires, guy anchors, vaults, transformers, transmission lines, and communication lines (collectively referred to herein as “electric facilities”) in, under, along, over and across the present and future streets, alleys, public ways and public places (collectively referred to herein as “public ways”) within the City, for the purpose of supplying and transmitting electric power and energy to the inhabitants of the City and persons and corporations beyond the limits thereof. (Ord. 127 § 1, passed 5-9-2017)

### 3.40.020 Term.

The term of this franchise and general utility easement is 10 years commencing on the date of acceptance by the company as set forth in MMC [3.40.030](#). (Ord. 127 § 2, passed 5-9-2017)

### 3.40.030 Acceptance by PacifiCorp.

Within 60 days after the passage of the ordinance codified in this chapter by the City, PacifiCorp shall file an unqualified written acceptance thereof, with the City Recorder, otherwise this chapter and the rights granted herein shall be null and void. (Ord. 127 § 3, passed 5-9-2017)

### 3.40.040 Nonexclusive franchise.

The right to use and occupy the public ways of the City shall be nonexclusive and the City reserves the right to use the public ways for itself or any other entity that provides service to City residences; provided, however, that such use shall not unreasonably interfere with PacifiCorp's electric facilities or PacifiCorp's rights granted herein. (Ord. 127 § 4, passed 5-9-2017)

### 3.40.050 City regulatory authority.

In addition to the provision herein contained, the City reserves the right to adopt such additional ordinances and regulations as may be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens and their properties or exercise any other rights, powers, or duties required or authorized, under the Constitution of the State of Oregon, the laws of Oregon or City ordinances. (Ord. 127 § 5, passed 5-9-2017)

### 3.40.060 Indemnification.

The City shall in no way be liable or responsible for any loss or damage to property or any injury to, or death of, any person that may occur in the construction, operation or maintenance by PacifiCorp of its electric facilities. PacifiCorp shall indemnify, defend and hold the City harmless from and against claims, demands, liens and all liability or damage of whatsoever kind on account of PacifiCorp's use of the public ways within the City, and shall pay the costs of defense plus reasonable attorneys' fees for any claim, demand or lien brought thereunder. The City shall: (1) give prompt written notice to PacifiCorp of any claim, demand or lien

with respect to which the City seeks indemnification hereunder; and (2) unless in the City's judgment a conflict of interest exists between the City and PacifiCorp with respect to such claim, demand or lien, permit PacifiCorp to assume the defense of such claim, demand, or lien with counsel satisfactory to City. If such defense is not assumed by PacifiCorp, PacifiCorp shall not be subject to liability for any settlement made without its consent. Notwithstanding any provision hereof to the contrary, PacifiCorp shall not be obligated to indemnify, defend or hold the City harmless to the extent any claim, demand or lien arises out of or in connection with any negligent or willful act or failure to act of the City or any of its officers or employees. (Ord. 127 § 6, passed 5-9-2017)

### 3.40.070 Annexation.

(1) *Extension of City Limits.* Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All electrical facilities owned, maintained, or operated by PacifiCorp located within any public ways of the annexed territory shall thereafter be subject to all of the terms hereof.

(2) *Annexation.* When any territory is approved for annexation to the City, the City shall, not later than 10 working days after passage of an ordinance approving the proposed annexation, provide by certified mail to PacifiCorp: (a) each site address to be annexed as recorded on county assessment and tax rolls; (b) a legal description of the proposed boundary change; and (c) a copy of the City's ordinance approving the proposed annexation. The notice shall be mailed to:

PacifiCorp Customer Contact Center  
P.O. Box 400  
Portland, Oregon 97202-0400

With a copy to:

PacifiCorp  
Attn: Office of the General Counsel  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232

Additional or increased fees or taxes, other than ad valorem taxes, imposed on PacifiCorp as a result of an annexation of territory to the City shall become effective on the effective date of the annexation, provided notice is given to PacifiCorp in accordance with ORS [222.005](#), as amended from time to time. (Ord. 127 § 7, passed 5-9-2017)

### 3.40.080 Planning, design, construction and installation of company facilities.

- (1) All electric facilities installed or used under authority of this franchise shall be used, constructed and maintained in accordance with applicable Federal, State and City laws, codes and regulations.
- (2) Except in the case of an emergency, PacifiCorp shall, prior to commencing new construction or major reconstruction work in the public way or street or other public places, apply for applicable permit(s) from the City and these permits shall not be unreasonably withheld, conditioned, or delayed. PacifiCorp will abide by all applicable ordinances and all rules, regulations and requirements of the City. The City may inspect the manner of such work and require remedies as may be necessary to assure compliance. Notwithstanding the foregoing, PacifiCorp shall not be obligated to obtain permits to perform emergency repairs. As used herein, the term “emergency” means a condition or situation that causes, or that, if not immediately remediated, is likely to cause: (a) endangerment to life, (b) injury/damage to person or property, including grantee’s electrical system, (c) impairment of the security or reliability of grantee’s electrical system or (d) an electrical outage.
- (3) All electric facilities shall be located so as to cause minimum interference with the public ways of the City and shall be constructed, installed, maintained, cleared of vegetation, renovated or replaced in accordance with applicable rules, ordinances and regulations of the City.
- (4) If, during the course of work on its electrical facilities, PacifiCorp causes damage to or alters the public way or public property, PacifiCorp shall (at its own cost and expense and in a manner approved by the City) replace and restore it to a condition comparable to that which existed before the work commenced.
- (5) In addition to the installation of underground electric distribution lines as provided by applicable State law and regulations, PacifiCorp shall, upon payment of all charges provided in its tariffs or their equivalent, place newly constructed electric distribution lines underground as may be required by City ordinance.
- (6) The City as well as its emergency service providers shall have the right without cost to use all poles and suitable overhead structures owned by PacifiCorp within public ways for City and its emergency service providers’ wires used in connection with its fire alarms, police signal systems, or other communication lines used for governmental purposes; provided, however, any such uses shall be for activities owned, operated or used by the City and its emergency service providers for a public purpose and shall not include the provision of CATV, internet, or similar services to the public; provided further, that PacifiCorp shall assume no liability nor shall it incur, directly or indirectly, any additional expense in connection therewith, and the use of said poles and structures by the City and its emergency service providers shall be in such a manner as to prevent safety hazards or interferences with PacifiCorp’s use of same. Nothing herein shall be construed to require PacifiCorp to increase pole size, or alter the manner in which PacifiCorp attaches its equipment to poles, or alter the manner in which it operates and maintains its electric facilities. City and its emergency service providers’ attachments shall be installed and maintained in accordance with the reasonable requirements of PacifiCorp and the current edition of the National Electrical Safety Code pertaining to such construction. Further, City and its emergency service providers’ attachments shall be attached or installed only after written approval by PacifiCorp.

(7) PacifiCorp shall have the right to excavate the public ways subject to advance approval of City; provided, that such approval shall not be unreasonably withheld, conditioned or delayed. Before installing new underground conduits or replacing existing underground conduits, PacifiCorp shall first notify the City of such work and shall allow the City, at its own expense, to share the trench of PacifiCorp to lay its own conduit therein; provided, that such action by the City will not unreasonably interfere with PacifiCorp's electric facilities or delay project completion.

(8) Before commencing any street improvements or other work within a public way that may affect PacifiCorp's electric facilities, the City shall give written notice to PacifiCorp.

(9) No structures, buildings or signs shall be erected below PacifiCorp's facilities or in a location that prevents PacifiCorp from accessing or maintaining its facilities.

(10) PacifiCorp shall provide the City with a report of all new services created within City boundaries on an annual basis during the term of this franchise. The City shall provide written confirmation of the accuracy of the report and/or any corrections thereto to PacifiCorp within a reasonable time following receipt of the report. (Ord. 127 § 8, passed 5-9-2017)

### 3.40.090 Relocation of electric facilities.

(1) The City reserves the right to require PacifiCorp to relocate overhead electric facilities within the public ways in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, PacifiCorp shall promptly commence the overhead relocation of its electrical facilities. Before requiring a relocation of electric facilities, the City shall, with the assistance and consent of PacifiCorp, identify a reasonable alignment for the relocated electric facilities within the public ways of the City. The City shall assign or otherwise transfer to the company all right it may have to recover the cost for the relocation work and shall support the efforts of PacifiCorp to obtain reimbursement. In cases of capital improvement projects undertaken by the City, PacifiCorp shall convert existing overhead distribution facilities to underground, so long as PacifiCorp is allowed to collect the costs associated with conversion from overhead to underground distribution facilities consistent with OAR [860-022-0046](#), the Oregon Public Utility Commission rule on forced conversions.

(2) PacifiCorp shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, PacifiCorp may charge the expense of removal or relocation to the developer or customer. For example, PacifiCorp shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. In such event, the City shall require the developer to pay PacifiCorp for such relocation costs as part of its approval procedures. (Ord. 127 § 9, passed 5-9-2017)

### 3.40.100 Subdivision plat notification.

Before the City approves any new subdivision and before recordation of the plat, the City shall mail notification of such approval and a copy of the plat to PacifiCorp:

Willamette Operations Center  
Pacific Power  
Attn: Estimating Department  
Local Address: PO Box 248, Albany, OR 97321

(Ord. 127 § 10, passed 5-9-2017)

### 3.40.110 Vegetation management.

PacifiCorp or its contractor may prune all trees and vegetation which overhang the public ways, whether such trees or vegetation originate within or outside the public ways, to prevent the branches or limbs or other part of such trees or vegetation from interfering with PacifiCorp's electrical facilities. It is understood the City does not authorize by way of this franchise agreement vegetation management outside public ways where the City has no authority. Methods of pruning shall comply with the American National Standard for Tree Care Operation (ANSI A300) and be conducted under the direction of an arborist certified with the International Society of Arboriculture. A growth inhibitor treatment may be used for trees and vegetation species that are fast-growing and problematic; provided, adjoining property owners shall be made aware of any type of chemical inhibitor or defoliant and its associated health risks. Nothing contained in this section shall prevent PacifiCorp, when necessary and with the approval of the owner of the property on which they may be located, from cutting down and removing any trees which overhang streets. City property shall be protected during the cutting and removal of trees/vegetation. (Ord. 127 § 11, passed 5-9-2017)

### 3.40.120 Compensation.

(1) In consideration of the rights, privileges, and franchise hereby granted, PacifiCorp shall pay to the City from and after the effective date of the acceptance of this franchise, five percent of its gross revenues derived from within the corporate limits of City. The term "gross revenue" as used herein shall be construed to mean any revenue of PacifiCorp derived from the retail sale and use of electric power and energy within the municipal boundaries of the City after adjustment for the net write-off of uncollectible accounts and corrections of bills theretofore rendered. All amounts paid under this section shall be subject to review by the City; provided, that only payments which occurred during a period of 36 months prior to the date the City notifies PacifiCorp of its intent to conduct a review shall be subject to such review. Notwithstanding any

provision to the contrary, at any time during the term of this franchise, the City may elect to increase the franchise fee amount as may then be allowed by State law. The City shall provide PacifiCorp with prior written notice of such increase following adoption of the change in percentage by the City. The increase shall be effective 60 days after City has provided such written notice to PacifiCorp.

(2) The franchise fee shall not be in addition to any other license, occupation, franchise or excise taxes, permits or charges which might otherwise be levied or collected by the City from PacifiCorp with respect to PacifiCorp's electric business or the exercise of this franchise within the corporate limits of the City and the amount due to the City under any such other license, occupation, franchise, excise taxes, permits or other charges for corresponding periods shall be reduced by deducting therefrom the amount of said franchise fee paid hereunder. (Ord. 127 § 12, passed 5-9-2017)

### 3.40.130 Renewal.

At least 120 days prior to the expiration of this franchise, PacifiCorp and the City shall agree to either extend the term of this franchise for a mutually acceptable period of time or the parties shall use best faith efforts to renegotiate a replacement franchise. PacifiCorp shall have the continued right to use the public ways of the City as set forth herein in the event an extension or replacement franchise is not entered into upon expiration of this franchise for a mutually agreed upon period of time. (Ord. 127 § 13, passed 5-9-2017)

### 3.40.140 No waiver.

Neither the City nor PacifiCorp shall be excused from complying with any of the terms and conditions of this franchise by any failure of the other, or any of its officers, employees, or agents, upon any one or more occasions to insist upon or to seek compliance with any such terms and conditions. (Ord. 127 § 14, passed 5-9-2017)

### 3.40.150 Transfer of franchise.

PacifiCorp shall not transfer or assign any rights under this franchise to another entity, except transfers and assignments by operation of law, unless the City shall first give its approval in writing, which approval shall not be unreasonably withheld; provided, however, inclusion of this franchise as property subject to the lien of PacifiCorp's mortgage(s) shall not constitute a transfer or assignment. (Ord. 127 § 15, passed 5-9-2017)

### 3.40.160 Amendment.

At any time during the term of this franchise, the City, through its City Council, or PacifiCorp may propose amendments to this franchise by giving 30 days' written notice to the other of the proposed amendment(s) desired, and both parties thereafter, through their designated representatives, will, within a reasonable time, negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). No amendment or amendments to this franchise shall be effective until mutually agreed upon by the City and PacifiCorp and formally adopted as an ordinance amendment. (Ord. 127 § 16, passed 5-9-2017)

### 3.40.170 Noncontestability – Breach of contract.

(1) Neither the City nor PacifiCorp will take any action for the purpose of securing modification of this franchise before either the Oregon Public Utility Commission or any court of competent jurisdiction; provided, however, that neither shall be precluded from taking any action it deems necessary to resolve difference in interpretation of the franchise nor shall PacifiCorp be precluded from seeking relief from the courts in the event Oregon Public Utility Commission orders, rules or regulations conflict with or make performance under the franchise illegal.

(2) In the event PacifiCorp or the City fails to fulfill any of their respective obligations under this franchise, the City, or PacifiCorp, whichever the case may be, will have a breach of contract claim and remedy against the other in addition to any other remedy provided by law; provided, that no remedy which would have the effect of amending the specific provisions of this franchise shall become effective without such action which would be necessary to formally amend the franchise. (Ord. 127 § 17, passed 5-9-2017)

### 3.40.180 Notices.

Unless otherwise specified herein, all notices from PacifiCorp to the City pursuant to or concerning this franchise shall be delivered to the City Recorder's office. Unless otherwise specified herein, all notices from the City to PacifiCorp pursuant to or concerning this franchise shall be delivered to the Customer and Community Affairs Vice President, Pacific Power, 825 NE Multnomah, Lloyd Center Tower Suite 2000, Portland, Oregon 97232, and such other office as PacifiCorp may advise the City of by written notice. (Ord. 127 § 18, passed 5-9-2017)

### 3.40.190 Waiver of jury trial.

To the fullest extent permitted by law, each of the parties hereto waives any right it may have to a trial by jury in respect of litigation directly or indirectly arising out of, under or in connection with this agreement. Each party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. (Ord. 127 § 20, passed 5-9-2017)

## Chapter 3.50

### TELECOMMUNICATIONS FRANCHISE – LIGHTSPEED NETWORKS, INC.

#### Sections:

- 3.50.010 Definitions.
- 3.50.020 Grant of franchise.
- 3.50.030 Franchise not exclusive.
- 3.50.040 Term and termination.
- 3.50.050 No limitation of City authority.
- 3.50.060 Competitively neutral application.
- 3.50.070 Construction, maintenance and repair of infrastructure.
- 3.50.080 Insurance.
- 3.50.090 Transfers and change in control.
- 3.50.100 Indemnification.
- 3.50.110 Compensation.
- 3.50.120 Extension of City limits.
- 3.50.130 Right to inspect records.
- 3.50.140 Right to perform franchise fee audit or review – Default.
- 3.50.150 Right to inspect construction.
- 3.50.160 Limited waiver of sovereign immunity – Venue.
- 3.50.170 Limitation of liability.
- 3.50.180 Compliance with applicable laws.
- 3.50.190 Notice.
- 3.50.200 Captions.
- 3.50.210 Waiver.
- 3.50.220 Attorneys' fees.

### 3.50.010 Definitions.

“Gross revenues” means any and all revenue derived from telecommunications services, of any kind, nature, or form, without deduction for expense in the City of Millersburg and is further defined in MMC [3.50.110](#). All such revenue remains subject to applicable FCC rules and regulations which exclude revenues from Internet access services while prohibited by law.

“Rights-of-way” means the present and future streets, viaducts, elevated roadways, alleys, public highways and avenues in the City, including rights-of-way held in fee, or by virtue of an easement or dedication.

“Telecommunications” means the transmission between and among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

“Telecommunications network” means infrastructure owned by franchisee utilizing one or more facilities located within the City’s rights-of-way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of access to the Internet and telecommunications service.

“Telecommunications service” means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities’ uses. (Ord. 139 § 1, passed 11-13-2018)

### 3.50.020 Grant of franchise.

The City hereby grants to franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and franchise to erect, construct, operate, repair and maintain in, under, upon, along, across and over the City’s rights-of-way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive telecommunications network within the City. (Ord. 139 § 2, passed 11-13-2018)

### 3.50.030 Franchise not exclusive.

The franchise granted herein is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other rights-of-way, by franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and nondiscriminatory manner with respect to the rights, privileges and authorities afforded franchisee. (Ord. 139 § 3, passed 11-13-2018)

### 3.50.040 Term and termination.

The term of this franchise shall be 10 years, commencing with the effective date of the ordinance codified in this chapter. Franchisee shall request a renewal of the franchise no later than 180 days prior to expiration. Upon termination or expiration of the franchise, franchisee shall either: (1) within 180 days, remove all its facilities from the City's rights-of-way or (2) at franchisee's discretion, franchisee may offer for sale to City the remaining facilities at the then fair market value, if the City rejects this offer franchisee shall remove its facilities within 180 days of notice of rejection by the City. Should the franchisee fail to remove its facilities within the 180-day period, the City may remove said facilities. Franchisee will fully reimburse the City within 60 days for the cost of removal. (Ord. 139 § 4, passed 11-13-2018)

### 3.50.050 No limitation of City authority.

- (1) Except as provided in MMC [3.50.060](#), nothing in this franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from modifying or performing any work in its rights-of-way, or granting other franchises for use of rights-of-way, or of adopting general ordinances regulating use of or activities in the rights-of-way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its rights-of-way, whether now owned or hereinafter acquired.
- (2) In the event that any portion of the franchisee's infrastructure interferes with any present or future use the City desires to make of its rights-of-way, franchisee shall, upon request, and at its sole expense, promptly relocate such infrastructure, and restore the area where such relocation occurs to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
- (3) Where the franchisee had paid for the relocation costs of the same facilities at the request of the City within the past five years, the franchisee's share of the cost of relocation will be paid by the City if franchisee requests the subsequent relocation.
- (4) Except as otherwise provided by law, and subject to MMC [3.50.060](#), nothing in this franchise shall be construed to give the franchisee any credit or exemption from any nondiscriminatory, generally applicable business tax, or other tax now or hereafter levied upon franchisee's taxable real or personal property, or against any permit fees or inspection fees required as a condition of construction of any improvements upon franchisee's real property and imposed under a generally applicable ordinance or resolution. (Ord. 139 § 5, passed 11-13-2018)

### 3.50.060 Competitively neutral application.

The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of telecommunications services operating within the City. Any

requirement imposed on franchisee that is determined not in compliance with this section shall be unenforceable against franchisee. (Ord. 139 § 6, passed 11-13-2018)

### 3.50.070 Construction, maintenance and repair of infrastructure.

(1) Franchisee may make all needful excavations in any right-of-way for the purpose of placing, erecting, laying, maintaining or repairing franchisee's infrastructure, and shall repair, renew and replace the same as reasonably possible to the condition that existed prior to such excavation. Franchisee shall obtain all necessary permits for such excavation and construction, and pay all applicable fees. Such work shall be done only in accordance with plans or designs submitted to, and approved by, the City, such plans: (a) to be evaluated by the standards applied to the construction of other similar telecommunications systems in the City, and (b) maintained by the City as confidential and exempt from public disclosure to the maximum extent allowed by law. Such work shall be performed in a good and workmanlike manner and in compliance with all rules, regulations, or ordinances which may, during the term of this franchise, be adopted from time to time by the City, or any other authority having jurisdiction over rights-of-way. Prior to commencing excavation or construction, franchisee shall give appropriate notice to other franchisees, licensees or permittees of the City owning or maintaining facilities which may be affected by the proposed excavation or construction.

(2) In the event emergency repairs are necessary for franchisee's facilities, franchisee may immediately initiate such emergency repairs. Franchisee shall give notice to the City's Manager by telephone, electronic data transmittal or other appropriate means as soon as is practicable after commencement of work performed under emergency conditions. Franchisee shall make such repairs in compliance with applicable ordinances and regulations, and shall apply for any necessary permits no later than the business day next following the discovery of the need for such repairs.

(3) Franchisee shall construct and maintain its telecommunications system in such a manner so as to not interfere with City sewer or water systems, or other City facilities.

(4) *Emergency Removal and Alternate Routing of Facilities.* If, at any time, in case of fire, disaster, or other threat to public safety in the franchise territory, it shall become necessary in the reasonable judgment of the City to cut or move any of the wires, cables, amplifiers or other appurtenances to the system of the franchisee, such cutting or moving may be done after providing franchisee reasonable notice via electronic and verbal communication and affording franchisee reasonable time to respond to such emergency. Any repairs rendered necessary thereby shall be made by the franchisee, at its sole expense; provided, that such repairs are not necessitated by a negligent act of the City, in which case costs for repairs shall be borne by the City. The City shall hold the franchisee, its agents, employees, officers and assigns hereunder harmless from any claims arising out of the City's cutting or moving of franchisee's facilities.

(5) *Cables, Wires – Rearrangement – Notice.* Whenever the City determines that the public interest requires that it is necessary to rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the

franchisee to permit the passage of any building, machinery or other object, or to widen/realign City streets, or to make any other alteration or improvement which will require rearrangement of franchisee's facilities or equipment, the said franchisee will perform such rearrangement within a reasonable period after written notice from the City. Said notice shall bear the approval of such official as City Council may designate and shall provide that the costs of such rearrangement shall be borne by any third persons whose activities create the need for rearrangement except that a request by the City of Millersburg, on behalf of itself or any other unit of government, to rearrange aerial cables or wires or other apparatus of the franchisee shall be accomplished by the franchisee within 120 days at no cost to the City. (Ord. 139 § 7, passed 11-13-2018)

### 3.50.080 Insurance.

- (1) *General.* At all times during the term of this franchise, franchisee, at its own cost and expense, shall provide the insurance specified in this section.
- (2) *Evidence Required.* Within 30 days of the effective date of this franchise, franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that franchisee's insurance complies with this section.
- (3) *Notice of Cancellation, Reduction, or Material Change in Coverage.* Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than 30 calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible, to the extent not caused by the City's negligence or intentional misconduct, for the costs of any damage, liability, or injury, which are not otherwise covered by insurance or because of a failure to comply with this section.
- (4) *Insurance Required.* During the term of this contract, franchisee shall maintain in force, at its own expense, the following insurance:
  - (a) Workers' compensation insurance for all subject workers; and
  - (b) General liability insurance with a combined single limit, or the equivalent, of not less than \$500,000 for each person, and \$1,000,000 for each occurrence of bodily injury and \$1,000,000 for property damage, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to franchisee's activities pursuant to this franchise. (Ord. 139 § 8, passed 11-13-2018)

### 3.50.090 Transfers and change in control.

(1) *Transfer.* This franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the franchisee, either by act of the franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the franchisee wishes to transfer this franchise, the franchisee shall give City written notice of the proposed transfer, and shall request consent of the transfer by the City.

(2) Any transfer of ownership effected without the written consent of the City shall render this franchise subject to revocation. The City shall have 60 days to act upon any request for approval of a transfer. If the City fails to render a final decision on the request within said 60 days, the request shall be deemed granted unless the franchisee and the City agree to an extension of time.

(3) The franchisee, upon any transfer, shall within 60 days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment of the transferee that it agrees to be bound by the terms and conditions contained in this franchise.

(4) The requirements of this section shall not be deemed to prohibit the use of the franchisee's property as collateral for security in financing the construction or acquisition of all or part of a telecommunications system of the franchisee or any affiliate of the franchisee. However, the telecommunications system franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this franchise.

(5) The requirements of this section shall not be deemed to prohibit sale of tangible assets of the franchisee in the ordinary conduct of the franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City, a transfer to a transferee whose primary business is telecommunications system operation and having a majority of its beneficial ownership held by the franchisee, a parent of the franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the franchisee. (Ord. 139 § 9, passed 11-13-2018)

### 3.50.100 Indemnification.

Each party shall indemnify and hold the other harmless for any losses, claims, damages, awards, penalties or injuries incurred by any third party, including reasonable attorney's fees, which arise from any alleged breach of such indemnifying party's representations and warranties made under this agreement; provided, that the indemnifying party is promptly notified of any such claims. The indemnifying party shall have the sole right to defend such claims at its own expense. The other party shall provide, at the indemnifying party's expense, such

assistance in investigating and defending such claims as the indemnifying party may reasonably request. This indemnity shall survive the termination of this agreement. (Ord. 139 § 10, passed 11-13-2018)

### 3.50.110 Compensation.

(1) *Franchise Fee.* In consideration of permission to use the streets and rights-of-way of the City for the construction, operation, and maintenance of a telecommunications system within the franchise area, the franchisee shall pay to City during the term of this franchise an amount equal to seven percent of the franchisee's gross revenues ("franchise fee"). Any net uncollectibles, bad debts or other accrued amounts deducted from gross revenues shall be included in gross receipts at such time as they are actually collected. Revenue from point to point or multi-point services is based on the pro-rata share of the revenue from those services. Notwithstanding any provision to the contrary, the City and franchisee may mutually agree to allow franchisee to pay the compensation owing under this section in an in-kind exchange, in whole or in part, as long as the in-kind exchange complies with the following requirements:

(a) The in-kind exchange must have a value equal or greater than the required compensation to be paid to the City under subsection (1) of this section and shall include at minimum franchisee's provision of 100MB internet access to City Hall located at 4222 NE Old Salem Road, not including nonrecurring charges.

(b) If the in-kind exchange is at any time reasonably and mutually determined by the City and franchisee to have a value less than the required compensation to be paid under subsection (1) of this section, the franchisee shall pay the difference, such that the total amount paid to the City to be equal to the compensation required under subsection (1) of this section.

(c) The in-kind exchange does not create a competitive inequity in violation of any communications services, or franchisee's equal protection rights under the Telecommunications Act.

(2) *Modification Resulting from Action by Law.* Upon 30 days' notice and in the event any law or valid rule or regulation applicable to this franchise limits the franchise fee below the amount provided herein, or as subsequently modified, the franchisee agrees to and shall pay the maximum permissible amount and, if such law or valid rule or regulation is later repealed or amended to allow a higher permissible amount, then franchisee shall pay the higher amount commencing from the date of such repeal or amendment, up to the maximum allowable by law.

(3) *Payment of Franchise Fees.* Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of March 31st, June 30th, September 30th, and December 31st, each quarterly payment due and payable no later than 45 days after such dates. Not later than the date of each payment, the franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the franchisee, identifying in detail the amount of gross revenue received by the franchisee, the computation basis and method, for the quarter for which payment is made.

(4) The franchise fee includes all compensation for the use of the City's rights-of-way. Franchisee may offset against the franchise fee the amount of any fee or charge paid to the City in connection with the franchisee's use of the rights-of-way when the fee or charge is not imposed under a generally applicable ordinance or resolution. The franchise fee shall not be deemed to be in lieu of or a waiver of any ad valorem property tax which the City may now or hereafter be entitled to, or to participate in, or to levy upon the property of franchisee. (Ord. 139 § 11, passed 11-13-2018)

### 3.50.120 Extension of City limits.

Upon the annexation of any territory to the City, the rights granted herein shall extend to the annexed territory to the extent the City has such authority. All facilities owned, maintained, or operated by franchisee located within any public rights-of-ways of the annexed territory shall be subject to all of the terms of this chapter. (Ord. 139 § 12, passed 11-13-2018)

### 3.50.130 Right to inspect records.

In order to manage the franchisee's use of rights-of-way pursuant to this franchise, and to determine and verify the amount of compensation due to the City under this franchise, the franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: maps of the franchisee's telecommunications system; the amount collected by the franchisee from users of telecommunications service provided by franchisee via its telecommunications network; the character and extent of the telecommunications service rendered therefor to them; and any other related financial information required for the exercise of any other lawful right of franchisee under this franchise. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its rights-of-way, determining compliance with the terms of this franchise, and verifying the adequacy of franchisee's fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law. (Ord. 139 § 13, passed 11-13-2018)

### 3.50.140 Right to perform franchise fee audit or review – Default.

In addition to all rights granted under MMC [3.50.130](#), the City shall have the right to have performed a formal audit or a professional review of the franchisee's books and records by an independent private auditor, for the sole purpose of determining the gross receipts of the franchisee generated through the provision of telecommunications services under this franchise and the accuracy of amounts paid as franchise fees to the City by the franchisee; provided, however, that any audit or review must be commenced not later than three years after the date on which franchise fees for any period being audited or reviewed were due. The cost of any

such audit or review shall be borne by the City. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by State law, any information obtained as a result of its rights pursuant to this section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder. (Ord. 139 § 14, passed 11-13-2018)

### 3.50.150 Right to inspect construction.

The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this franchise and other pertinent provisions of law relating to management of the City's rights-of-way. (Ord. 139 § 15, passed 11-13-2018)

### 3.50.160 Limited waiver of sovereign immunity – Venue.

(1) The City may have sovereign or other immunities which might prevent or impair enforcement or enjoyment of the terms of this franchise. Without making a general waiver, limitation or modification of such sovereign or other immunity, the City hereby expressly grants, in favor of franchisee, a limited, nonassignable waiver of its immunities for claims arising under this franchise, it being the intent of the parties that the waivers herein provided shall result in the terms and conditions of this franchise being enforced in a competitively neutral manner.

(2) Venue for any proceeding brought to enforce any term or condition of this franchise shall be the local Circuit Court for the City in Linn County; provided, however, that should any proceeding be brought in a Federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Portland, Oregon, with the parties stipulating to trial in Portland, Oregon.

(3) Notwithstanding any applicable statute of limitations or other law, these limited waivers of sovereign immunity shall expire when all obligations under this franchise have been fully and completely performed, or the passage of 24 months from the termination of this franchise, whichever is later. (Ord. 139 § 16, passed 11-13-2018)

### 3.50.170 Limitation of liability.

The City and the franchisee agree that neither shall be liable to the other for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this franchise, or any part hereof, is determined or declared to be invalid. (Ord. 139 § 17, passed 11-13-2018)

### 3.50.180 Compliance with applicable laws.

Franchisee shall comply with all applicable Federal, State, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this franchise shall be construed as authorizing the franchisee, its officers, employees or agents, to violate any Federal, State or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS [646.750](#) through [646.836](#), or the Oregon Unlawful Trade Practices Act, ORS [646.650](#) through [646.652](#). Nothing contained in this section shall be construed as requiring franchisee to comply with any Federal, State or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this franchise. (Ord. 139 § 18, passed 11-13-2018)

### 3.50.190 Notice.

Any notice provided for under this franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing.

Name: City of Millersburg, Oregon  
Title: Attn: City Manager  
Address: 4222 NE Old Salem Road,  
Albany, OR 97321  
Phone: (541) 928-4523

Contracts Management  
LS Networks  
921 SW Washington Street, Suite 370  
Portland, OR 97205  
Phone: (503) 294-5300  
Facsimile: (503) 227-8585

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein. (Ord. 139 § 19, passed 11-13-2018)

### 3.50.200 Captions.

The captions to sections of this franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this franchise. (Ord. 139 § 20, passed 11-13-2018)

### 3.50.210 Waiver.

(1) The City is vested with the power and authority to reasonably regulate, and manage, its rights-of-way in a competitively neutral and nondiscriminatory manner, and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this franchise by reason of the 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.

(2) No provision of this franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if franchisee gives written notice of a failure or inability to cure or comply with a provision of this franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived. (Ord. 139 § 22, passed 11-13-2018)

### 3.50.220 Attorneys' fees.

In the event an attorney is employed to enforce the provisions of this franchise (including any bankruptcy, insolvency or similar proceedings affecting creditors' rights generally), the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred, irrespective of whether any legal proceeding is commenced. If any legal action, arbitration, or other proceeding is brought to construe, interpret, or enforce the terms of this franchise, the prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in connection therewith, both at trial and on any appeal therefrom or petitions for review thereof. Such sum shall include an amount estimated by the court as the reasonable costs and fees to be incurred by the prevailing party in collecting any monetary judgment or award or otherwise in enforcing any order, judgment or decree entered in such suit, action or other proceeding. (Ord. 139 § 23, passed 11-13-2018)

## Chapter 3.60 CENTURYLINK QC

### Sections:

- 3.60.010 Grant of franchise.
- 3.60.020 Excavations.
- 3.60.030 Street restoration required.
- 3.60.040 Duty of grantee.
- 3.60.050 Construction, maintenance and repair of infrastructure.
- 3.60.060 Compensation.
- 3.60.070 No limitation of City authority.
- 3.60.080 Fee calculation requirement.

- 3.60.090 Use of public ways.
- 3.60.100 Indemnification.
- 3.60.110 Remedies and penalties.
- 3.60.120 Term of franchise.
- 3.60.130 *Repealed.*
- 3.60.140 Maintenance of system.

### 3.60.010 Grant of franchise.

There is hereby granted by the City of Millersburg to Qwest Corporation d/b/a CenturyLink QC, its successors and assigns, a nonexclusive franchise to do a general communication business within said City of Millersburg and to place, erect, lay, maintain and operate in, upon, over and under the streets, alleys, avenues, thoroughfares, bridges and public highways, places and grounds within the City, poles, wires and other appliances and conductors for all telephone and other communications purposes. (Hereinafter “grantee’s facilities” or “facilities”). Such wires and other appliances and conductors may be strung upon poles or other fixtures above ground, or at the option of grantee, its successors and assigns, may be laid underground, and such other apparatus may be used as may be necessary or proper to operate and maintain the same. Notwithstanding the foregoing, the City through its appropriate representative shall have the authority to prescribe which public ways will be used and the location of communications facilities within the public way as may be reasonably necessary to minimize public inconvenience. (Ord. 86 § 1, passed 6-13-1995)

### 3.60.020 Excavations.

- (1) It shall be lawful for said grantee, its successors and assigns, to make all needful excavations in any of the streets, alleys, avenues, thoroughfares, bridges and public highways, places and grounds in said City for the purpose of placing, erecting, laying and maintaining poles or other supports or conduits for such wires and appliances and any auxiliary apparatus or repairing, renewing or replacing the same. The work shall be done in compliance with the necessary rules, regulations, ordinances or orders, which may during the continuance of this franchise be adopted from time to time by the City of Millersburg. All facilities of the grantee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets, bridges and public places and in accordance with specifications adopted by the City governing the location of facilities.
- (2) Except in emergencies, prior to making an excavation in the traveled portion of any street, bridge or public place and when required by the City in any untraveled portion of any street, bridge or any public place, the grantee shall obtain from the City approval of the proposed excavation and of its location. (Ord. 86 § 2, passed 6-13-1995)

### 3.60.030 Street restoration required.

Whenever grantee, its successors and assigns, shall disturb any of the streets for the purpose aforesaid, it or they shall restore the same to good order and condition as soon as practicable without unnecessary delay, and failing to do so the City of Millersburg, shall have the right to fix a reasonable time within which such repairs and restoration of streets shall be completed, and upon failure of such repairs being made by the grantee, its successors and assigns, the City may cause the repairs to be made at the expense of the grantee, its successors and assigns. (Ord. 86 § 3, passed 6-13-1995)

### 3.60.040 Duty of grantee.

(1) Nothing in this chapter shall be construed in any way to prevent the proper authorities of the City of Millersburg from sewerage, grading, planking, rocking, paving, repairing, altering, improving or doing any work that the City may find desirable on, over or under any of the streets, alleys, avenues, thoroughfares, bridges and public highways, places and grounds within the City of Millersburg in or upon which the poles, wires or conductors of the grantee shall be placed, but all such work or improvement shall be done if possible so as not to obstruct or prevent the free use of said poles, wires, conductors, conduits, pipes, or other apparatus. The moving of grantee's facilities where required due to such work by the City, will be done by grantee without cost to the City. However, any such work done for or at the request of a private individual, entity, developer or development shall be done at the expense of such private individual, entity, developer or development.

(2) The City reserves the right to vacate, alter or close any street, alley, avenue, thoroughfare, bridge, public highway or public place or ground. The City shall give grantee 30 days' notice of its intention to vacate any street, alley, avenue, thoroughfare, bridge, public highway or public place or ground in which grantee's facilities are located and grantee shall have the option of reserving an easement for grantee's use in the vacated area which shall be recorded with the notice of vacation. The City may also require in the public interest, and as necessary for the peace, health and safety of the citizens of the City, the removal or relocation of facilities maintained by the grantee within the City. In such cases, the grantee shall remove and relocate such facilities within a reasonable time after receiving notice to do so from the City. The cost of such removal or relocation of its facilities shall be paid by the grantee but, when such removal or relocation is required for the convenience or benefit of any person, governmental agency or instrumentality other than the City, grantee shall be entitled to reimbursement for the reasonable costs thereof from such person, agency or instrumentality. The City shall not require grantee to remove or relocate its facilities or vacate any street, alley or other public way incidental to any public housing or renewal project under ORS Chapters [456](#) or [457](#) without reserving grantee's right therein or without requiring grantee to be compensated for the cost thereof. (Ord. 163 Exh. A, passed 10-10-2019; Ord. 86 § 4, passed 6-13-1995)

### 3.60.050 Construction, maintenance and repair of infrastructure.

Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the grantee to permit the passage of any building, machinery or other object moved over the roads, streets, alleys, avenues, thoroughfares, bridges and public highways within the City, the grantee will perform such a rearrangement within a reasonable period after written notice from the owner or contractor-mover desiring to move said building, machinery or other objects. Said notice shall bear the approval of the City, shall detail the route of movement of the building, machinery, or other object, shall provide that the costs incurred by the grantee in making such a rearrangement of its aerial facilities will be borne by the contractor-mover and shall further provide that the contractor-mover will indemnify and save the grantee harmless of and from any and all damages of claims whatsoever kind or nature caused directly or indirectly from such temporary rearrangement of the facilities of the grantee, and if required by the grantee, shall be accompanied by a cash deposit or a good and sufficient bond to pay any and all such costs as estimated by the grantee. (Ord. 86 § 5, passed 6-13-1995)

### 3.60.060 Compensation.

In consideration of the rights, privileges, and franchise hereby granted, said grantee, CenturyLink QC, its successors and assigns, shall pay to the City of Millersburg from and after the effective date of this franchise, and until its expiration, seven percent per annum of its gross revenues derived from exchange access services, as defined in ORS [401.710](#), within the corporate limits of the City of Millersburg, less net uncollectibles. For the year 1995, payment of said five percent shall be made only for the period from January 1, 1995 to, but not including the effective date of this agreement, and payment of said seven percent shall be made for the period from and including the effective date of this agreement to December 31, 1995. Also for the year 1995, the first and second quarter payments shall be made together on or before July 31, 1995. Should State law change pertaining to the amount of franchise fees for access to the right-of-way that the City would be entitled to receive, the City may increase said franchise fees to this greater amount.

Payment of this franchise fee shall be made quarterly on or before April 30th, July 31st, October 31st, and January 31st for the calendar quarter immediately preceding. Such payment made by the grantee will be accepted by the City of Millersburg from the grantee, also in payment of any license, privilege or occupation tax or fee for revenue or regulation, or any permit or inspection fees for street openings, installations, construction or for any other purpose now or hereafter to be imposed by the City of Millersburg upon the grantee during the term of this franchise. (Ord. 163 Exh. A, passed 10-10-2019; Ord. 86 § 6, passed 6-13-1995)

### 3.60.070 No limitation of City authority.

Notwithstanding MMC [3.60.060](#), nothing in this chapter shall give the grantee any credit against:

- (1) Any nondiscriminatory business tax to the extent such tax applies to revenues other than those revenues that are subject to the franchise fee;
- (2) Any ad valorem property tax now or hereafter levied against real property or personal property within the City;
- (3) Any local improvement assessments levied on grantee's property; or
- (4) Any charges and penalties imposed by the City for noncompliance with charter provisions, ordinances, resolutions, or permit conditions. (Ord. 86 § 7, passed 6-13-1995)

### 3.60.080 Fee calculation requirement.

- (1) The grantee shall furnish to the City with each franchise fee payment required by this chapter a written statement under oath executed by the grantee setting forth the amount and calculation of the payment. The statement shall detail the gross revenues subject to this chapter which were received by the grantee from its operations within the City, and shall specify the nature and amount of all exclusions and deductions from such revenue claimed by the grantee in calculating the franchise fee. The City may require the grantee to provide any additional information reasonably necessary for administration of the franchise fee. The grantee shall make available and open to inspection by the City, or its designee, during regular office hours and at grantee's office, all accounts, books, and other records reasonably necessary for ascertaining the franchise fee liability.
- (2) If the grantee fails to pay the entire amount of compensation due to the City through error or otherwise, the difference due to the City shall be paid by the grantee within 30 days from discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall offset against the next payment due to the City from grantee.
- (3) Acceptance by the City of any payment due under this section shall not be deemed a waiver by the City of any breach of this franchise occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due or from collecting any balance due to the City. (Ord. 163 Exh. A, passed 10-10-2019; Ord. 86 § 8, passed 6-13-1995)

### 3.60.090 Use of public ways.

The grantee's use of the public ways shall comply with the standard specifications of the City, if any, and all other applicable Federal and State laws and regulations relating to such use now in effect or hereinafter adopted. No work affecting the public way shall be done by the grantee without first obtaining all permits required by the City, which may include plan submittal and approval before work begins. The City may require

the grantee to file with the City maps showing the location of grantee's facilities and any construction, extension or relocation of grantee's facilities within the City. (Ord. 86 § 9, passed 6-13-1995)

### 3.60.100 Indemnification.

The grantee shall defend, indemnify and hold harmless the City, its agents, officers and employees from any and all claims, demands, and damages of any kind, including attorney's fees which may arise, from any wrongful or negligent act or omissions of the grantee, its agents, officers or employees, in connection with the grantee's operations pursuant to this franchise. (Ord. 86 § 10, passed 6-13-1995)

### 3.60.110 Remedies and penalties.

All remedies and penalties under this chapter, including termination of the franchise, are cumulative and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this chapter, including termination of the franchise, are not exclusive and the City reserves the right to enforce the penal provisions of any ordinance, resolution or statute and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon the grantee by or pursuant to this chapter. A specific waiver of a particular breach of any term, condition or obligation imposed upon the grantee by or pursuant to this chapter shall not be a waiver of any other subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself. (Ord. 86 § 11, passed 6-13-1995)

### 3.60.120 Term of franchise.

The rights, privileges and franchise herein granted shall continue and be in force for the period of 20 years from and after the date the ordinance codified in this chapter becomes effective,\* except that it is understood and agreed that either party may terminate this agreement after 180 days' notice in writing. This chapter shall be subject to any and all State or Federal legislative enactments. (Ord. 86 § 12, passed 6-13-1995)

\* Code reviser's note: Ord. [163](#), passed October 8, 2019, extended Ord. [86](#) for an additional 20 years.

### 3.60.130 Acquisition by condemnation.

*Repealed by [Ord. 163](#). 3.60.140 Maintenance of system.*

The grantee shall maintain and operate an adequate system for the distribution of telephone and communication service in the City and the facilities of the grantee shall at all times be maintained in a safe, substantial and workmanlike manner. Subject to the jurisdiction of the Oregon Public Utility Commission and applicable State and Federal laws and regulations, the City may provide such specifications relating thereto as may be necessary or convenient for public safety or the orderly development of the City. The City may amend and add to such specifications from time to time. (Ord. 86 § 15, passed 6-13-1995)

**The Millersburg Municipal Code is current through Ordinance 177, passed September 8, 2020.**

Disclaimer: The City Recorder's office has the official version of the Millersburg Municipal Code. Users should contact the City Recorder's office for ordinances passed subsequent to the ordinance cited above.

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