

ORIGINAL

CITY OF ORTING  
WASHINGTON

ORDINANCE NO. 2019-1046

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**AN ORDINANCE OF THE CITY OF ORTING, WASHINGTON,  
GRANTING A NONEXCLUSIVE MASTER USE PERMIT TO  
MCIMETRO ACCESS TRANSMISSION SERVICES CORP.  
D/B/A VERIZON ACCESS TRANSMISSION SERVICES;  
PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN  
EFFECTIVE DATE**

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**WHEREAS**, MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services (“MCImetro”), hereinafter referred to as “Permittee” is a telecommunications company that, among other things, provides fiber optic-based telecommunications service to customers in the Western Washington region; and

**WHEREAS**, Permittee’s desired route through the City of Orting, hereinafter referred to as “City,” requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a fiber optic-based communications system; and

**WHEREAS**, the City Council has determined that the use of portions of the City’s rights-of-way for installation of a telecommunications system is appropriate from the standpoint of the benefits to be derived by local business and the region as a result of such services; and

**WHEREAS**, the City Council also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the future needs of the citizens of Orting and that the coordination, planning, and management of the City’s rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

**WHEREAS**, the Revised Code of Washington (“RCW”) authorizes the City to grant and regulate master use permits for the use of public rights-of-way for the installation, operation, and maintenance of telecommunications services;

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

**Section 1. Master Permit Granted.** Subject to the terms and conditions hereinafter set forth, the City grants to the Permittee a master permit for a telecommunications system as follows:

## ARTICLE 1. DEFINITIONS

“Affiliate” when used in connection with Permittee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Permittee, or any Person into which Permittee may merge or consolidate.

“Architectural Design Review” refers to administrative process of application review by City Staff and the City’s Planning Commission, conducted in accordance with the procedures set forth at Orting Municipal Code sections 13-6-7 and 15-5-1.

“Breach” means any failure of a Party to keep, observe, or perform any of its duties or obligations under this Master Use Permit.

“City” means the City of Orting, a non-charter, optional Code City, operating under the laws of the state of Washington.

“Construct” means to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, modify, improve, remove, support, maintain, or repair.

“Design Document(s)” means the plans and specifications for the Construction of the Facilities and improvements illustrating and describing the refinement of the design of the Facilities to be Constructed and related improvements, establishing the scope, relationship, forms, size and appearance of the Facilities by means of plans, sections and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

“100% Design Submittal” means a Design Document(s) upon which Permittee’s contractors will rely in constructing the Facilities. 100% Design Submittal shall bear the seal of an engineer licensed within the State of Washington.

“Direct Costs” include all actual and identifiable costs and expenses to the City to the extent resulting directly from this Master Use Permit and allowable by applicable Law, including by way of example:

- i. Costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used in connection with or incorporated with this Master Use Permit and any applicable taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;
- ii. Costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees performing work for the activity and determined in accordance with the City’s ordinary governmental accounting procedures; and,

iii. Costs and expenses for work by consultants or contractors to the extent such work is related directly to the issuance, renewal, amendment, or administration of this Master Use Permit, including by way of example and not limitation, engineering and legal services.

“Emergency” means a sudden, generally unexpected occurrence, condition or set of circumstances that, (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and Permittee’s ability to continue to provide services if immediate action is not taken, (b) presents an imminent threat of harm to persons or property if immediate action is not taken, or (c) presents an imminent threat of harm to the national security.

“Facility” means any part or all of the facilities, materials, equipment and appurtenances of Permittee whether underground or overhead and located within the Public Right-of-Way as part of the Permittee’s System, including by way of example and not limitation, conduit, case, pipe, line, fiber, equipment, equipment cabinets and shelters, vaults, generators or other back up power supplies, power transfer switches, cut-off switches, electric meters, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, towers, anchors, transmitters, receivers, antennas, and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located across, above, along, below, in, over, through, or underground.

“Law(s)” means all present and future applicable laws, ordinances, rules, regulations, resolutions, Master use permits, authorizations, environmental standards, orders, decrees and requirements of all federal, state, City and municipal governments, the departments, bureaus or commissions thereof, authorities, boards or officers, any national or local board of fire underwriters, or any other body or bodies exercising similar functions having or acquiring jurisdiction over all or any part of the Facilities, including the City acting in its governmental capacity, or other requirements. References to Laws shall be interpreted broadly to cover government actions, however nominated, and include laws, ordinances and regulations now in force or hereinafter enacted or amended. Notwithstanding the foregoing, Permittee shall not be required to apply any new Laws to then-existing Facilities, unless required by Law.

“Legal action” means filing a lawsuit or invoking the Party’s right to arbitration or other legal proceeding.

“Master Use Permit” means the grant, once accepted by the Permittee, giving general permission to Permittee to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

“Master Use Permit Area” means those Public Rights-of-Way located within the area described in Exhibit “A” (Master Use Permit Area”). In the event that the Master Use Permit Area is described as the entire present territorial limits of the City, it shall also include any area annexed thereto during the term of the Master Use Permit.

“Master Use Permit Ordinance” means this Ordinance setting forth the terms and conditions upon which the Permittee shall be granted a Master Use Permit.

“Material Breach” means any of the following circumstances that are not cured beyond applicable notice and cure periods:

- If a Party attempts to evade any material provision of this Master Use Permit or engages in any fraud or deceit upon the other Party;
- If Permittee becomes insolvent, or if there is an assignment for the benefit of Permittee’s creditors;
- If Permittee fails to provide or maintain the insurance, bonds, or other security required by this Master Use Permit;
- A bad faith Breach;
- Breach of Section 6.1 (Dispute Avoidance);
- Any Breach that cannot practicably be cured; or
- Any non-material breach that is not cured as required pursuant to Section 6.3.

“Non-Material Breach” means any breach that does not constitute a Material Breach.

“Noticed Party” shall mean the Party in receipt of notice that it is in Breach.

“Party(ies)” mean either the City or the Permittee or both.

“Person” includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing districts, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

“Permittee” shall mean MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services and any of its Affiliates.

“Public Rights-of-Way” means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle or other dedicated public right-of-way, including, any easement now or hereafter held by the City within the Master Use Permit Area for the purpose of public travel, and over which the City has authority to grant permits, licenses or Master Use Permits for use thereof, or has regulatory authority thereover, excluding railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, or similar facilities or property owned, maintained or leased by the City in its governmental or proprietary capacity or as an operator of a utility.

“Telecommunications System” or “System” shall mean collectively the Facilities necessary to provide fiber optic telecommunications services, including, but not limited to: the transmission of voice, data, or other electronic information, facsimile reproduction,

burglar alarm monitoring, meter reading, or other subsequently developed technology that carries an electronic signal over fiber optic cable, as well as non-switched, dedicated and private line, high capacity fiber optic transmission services to firms, businesses or institutions within the City. Telecommunications System shall not mean or include Facilities owned or used for the provision of cable services (as defined in 47 U.S.C. § 522) for which a separate franchise would be required.

“Transfer” means any transaction in which all or a portion of the System is sold, leased or assigned (except a sale or transfer that results in removal of a particular portion of the System from the Public Rights-of-Way); or the rights and/or obligations held by the Permittee under the Master Use Permit are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another Person. A transfer of control of an operator shall not constitute a Transfer as long as the same person continues to hold the Master Use Permit both before and after the Transfer of control. The term "control" (including "controlled by") means the power or authority to direct the management or operations of the Permittee.

“Use Permit” means a document issued under the authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way.

“Work” means any and all activities of the Permittee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

## ARTICLE 2. MASTER USE PERMIT GRANT

2.1 Public Right-of-Way Use Authorized. Subject to the terms and conditions of this Master Use Permit, the City grants to Permittee a nonexclusive Master Use Permit generally authorizing the Permittee to Construct and operate Facilities for the purposes of owning, operating, and maintaining a Telecommunications System in, along, among, upon, across, above, over, and under the Public Rights-of-Ways located within the Master Use Permit Area, as shown on the attached Exhibit A. However, Permittee must apply for and be granted Use Permits for authorization to Construct Facilities on a site-by-site basis. As part of the permitting process and consistent with applicable laws, the City may impose such conditions as are necessary for the protection, preservation, and management of the Public Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any improvements, equipment, and devices in such Public Rights-of-Way, and for providing for the proper restoration of such Public Rights-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic. Permittee shall pay all generally applicable and lawful fees for the requisite City Use Permits.

2.2 Permit Term. The rights granted herein shall remain in full force and effect for a period of ten (10) years from the effective date of this ordinance. However, this Master Use Permit shall not take effect and Permittee shall have no rights under this Master Use Permit unless a written acceptance with the City is received pursuant to this Master

Use Permit. If Permittee desires to renew this Master Use Permit, it shall file a renewal application with the City between 180 days and 120 days prior to the expiration of the existing Master Use Permit term. In the event of such filing, the City may, at the City's sole discretion extend the term of this Master Use Permit for up to one year beyond the expiration date to allow processing of renewal. If the City elects to extend the term of this Master Use Permit, written notice of the extension shall be provided to Permittee prior to the Master Use Permit expiration date.

2.3 No Rights By Implication. No rights shall pass to the Permittee by implication. Without limiting the foregoing and by way of example, this Master Use Permit shall not include or be a substitute for:

2.3.1 Any other authorization required for the privilege of transacting and carrying on a business within the City that may be required by the Laws of the City;

2.3.2 Any permit, agreement, or authorization required by the City for Public Rights-of-Way users in connection with operations on or in Public Rights-of-Way or public property including, by way of example and not limitation, Use Permits for specific site authorization to Construct Facilities; or

2.3.3 Any permits, licenses, leases, easements, or other agreements for occupying any other property or infrastructure of the City or other Persons to which access is not specifically granted by this Master Use Permit including, without limitation, agreements for placing devices on poles, light standards, in conduits, in vaults, in or on pipelines, or in or on other structures or public buildings.

2.4 Interest in the Public Right-of-Way. This Master Use Permit shall not operate or be construed to convey title, equitable or legal, in the Public Rights-of-Way. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interest, or other right to control the use of such Public Right-of-Way, is sufficient to Master Use Permit its use for such purposes. The grant given herein does not confer rights other than as expressly provided in the grant hereof. Such right may not be subdivided or subleased to a person other than the holder of the Master Use Permit. CITY DOES NOT WARRANT ITS TITLE OR PROPERTY INTEREST IN OR TO ANY MASTER USE PERMIT AREA NOR UNDERTAKE TO DEFEND PERMITTEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

2.5 Condition of Master Use Permit Area. Permittee has inspected or will inspect the Master Use Permit Area, and enters upon each such Master Use Permit Area with knowledge of its physical condition and the danger inherent in operations conducted in, on, or near any Master Use Permit Area. PERMITTEE ACCEPTS THE MASTER USE PERMIT AREA IN AN "AS-IS WITH ALL FAULTS" BASIS WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY KIND

WHATSOEVER FROM THE CITY AS TO ANY MATTERS CONCERNING THE MASTER USE PERMIT AREA.

2.6 Transfer. Any assignment of use or occupancy privileges granted under this Master Use Permit requires consent of the City in the same manner as right of use or occupancy originally granted, excepting minor stock transfers. Notwithstanding the foregoing, Permittee may assign or transfer the rights and privileges granted herein to any Affiliate, or to any purchaser of all or substantially all of the assets of Permittee, without the requirement for City approval, so long as the successor provides advance written notice to the City that it is then fully liable to the City for compliance with all terms and conditions of this Master Use Permit.

2.7 Street Vacation. If any Public Right-of-Way or portion thereof used by Permittee is to be vacated during the term of this Master Use Permit, unless as a condition of such vacation the Permittee is granted the right to continue its Facilities in the vacated Public Right-of-Way, within one hundred twenty (120) days after notice from City, Permittee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair, or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition to its original condition, reasonable wear and tear excepted.

2.8 Reservation of City Use of Public Right-of-Way. Nothing in this Master Use Permit shall prevent the City from constructing utility facilities including, but not limited to: sewers and stormwater facilities, grading, changing grade, paving, repairing, or altering any Public Right-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable. The City shall use reasonable efforts to not harmfully interfere with Permittee's use and placement of its Facilities within the Public Right of Way during such construction or repair, unless the City requires Permittee to remove its Facilities in accordance with the terms herein.

2.9 Government Services. To the extent that the Permittee makes its Facilities and/or services available to other governmental entities within the State of Washington, Permittee shall also make such facilities and services available to the City at similar rates and on similar terms and conditions unless otherwise prohibited or restricted by state or federal laws, regulations, or tariffs.

### ARTICLE 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

3.1 Compliance with Laws. Except as provided herein pursuant to Section 3.3, the Permittee agrees to comply with all applicable Laws as now or hereafter in effect, and any lawful orders from regulatory agencies or courts with jurisdictions over Permittee and its Facilities, or over the City and the Public Rights-of-Way.

3.2 Police Powers. Permittee acknowledges that its rights hereunder are subject to those powers expressly reserved by the City and further are subject to the police powers of the City to adopt and enforce ordinances necessary to protect the health, safety, and

welfare of the public. Permittee agrees to comply with all applicable general ordinances now or hereafter enacted by the City pursuant to such power.

3.3 Reservation of Rights/Wavier. The City shall be vested with the power and right to administer and enforce the requirements of this Master Use Permit and the regulations and requirements of applicable Law, or to delegate that power and right, or any part thereof, to the extent permitted under Law, to any agent in the sole discretion of the City.

3.4 Order of Precedence. In the event of a conflict between a provision, term, condition, or requirement of the Municipal Code or City ordinance and a provision, term, condition, or requirement of this Master Use Permit, the provision, term, condition, or requirement Municipal Code or City ordinance shall control to the extent of such conflict.

3.5 Future Laws. Notwithstanding anything herein to the contrary, Permittee shall not be required to apply any new Laws to then-existing Facilities, unless required by Law.

#### ARTICLE 4. ACCEPTANCE

4.1 Acceptance. Within thirty (30) days after the passage and approval of this Master Use Permit by the City Council, this Master Use Permit shall be accepted by Permittee by filing with the City Clerk or their designee during regular business hours, three originals of this Master Use Permit with its original signed and notarized written acceptance (as shown on the attached Exhibit B) of all of the terms, provisions, and conditions of this Master Use Permit, together with the following, if required herein:

4.1.1 Any required Insurance Certificates or other proof of insurance required in conformance with the requirements of Section 5.3 herein.

4.1.2 The performance and payment bond in conformance with the requirements of Section 5.5.1 herein.

4.1.3 Payment in readily available funds of the administrative costs for issuance of the Master Use Permit in conformance with the requirements of Section 5.5.1 herein.

4.1.4 Payment of the costs of publication of this Master Use Permit Ordinance in conformance with the requirements of Section 5.5.4 herein.

In the event that the thirtieth day falls on a Saturday, Sunday, or legal holiday during which the City is closed for business, the filing date shall fall on the next business day.

4.2 Failure to Timely File Acceptance. Except as provide in this Section 4.2 below, the failure of Permittee to timely file its written acceptance shall be deemed a



rejection by Permittee of this Master Use Permit, and this Master Use Permit shall then be void.

4.3 Effective Date. Except as provided pursuant to Section 4.2 of this Master Use Permit, the Effective Date of this Ordinance and Master Use Permit shall be 12:01 a.m. on the 31<sup>st</sup> day following passage and approval of this Master Use Permit by the City Council.

4.4 Effect of Expiration/Termination. Upon expiration, revocation, or termination of the Master Use Permit without renewal or other authorization, Permittee shall no longer be authorized by the City to operate the Facilities and shall, to the extent it may lawfully do so, cease operation of the Facilities. Forthwith thereafter, except as provided in this Section, or as otherwise provided by ordinance, Permittee shall: (1) remove its Facilities from the Public Rights-of-Ways and restore the Public Rights-of-Way within one hundred twenty (120) days and in accordance with Section 7.13 of this Master Use Permit, all at Permittee's expense; (2) sell its Facilities to another entity (which may include the City) upon City approval; or (3) abandon any Facilities in place in the Public Rights-of-Way in accordance with Section 7.14.

## ARTICLE 5. PROTECTION OF THE CITY AND PUBLIC

### 5.1 Limitation of Liability

5.1.1 Indemnity/Release/Defense. The Permittee shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses, or suits including attorney fees, arising out of Permittee's negligence or willful misconduct, except to the extent such injuries and damages are caused by the negligence or willful misconduct of the City.

5.1.2 Should a court of competent jurisdiction determine that RCW 4.24.115 applies to this Permit, then the Permittee agrees to defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless to the maximum extent permitted thereunder. It is further specifically and expressly understood that the indemnification provided herein constitutes the Permittee's waiver of immunity under Industrial Insurance, Title 51 RCW, relating solely to claims made against the City by Permittee's employees. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

5.2 Contractors/Subcontractors. Permittee's contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by this Master Use Permit, City Code or regulations, or other applicable Law.

### 5.3 Insurance Requirements.

5.3.1 General Requirement. The Permittee shall procure and maintain for the duration of the Permit, insurance against claims for injuries to persons or damage to property which may arise from or in connection with operations or activities performed by Permittee or on Permittee's behalf with the issuance of this Permit. The Permittee's maintenance of insurance as required by the Permit shall not be construed to limit the liability of the Permittee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

5.3.2 Scope of Insurance. The Permittee shall obtain insurance of the types and coverage described below:

Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form and shall cover liability arising from premises, operations, products-completed operations, and stop-gap liability. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The City shall be included as an additional insured as their interest may appear under this Agreement under Permittee's Commercial General Liability insurance policy using ISO Additional Insured Form or equivalent, providing at least as broad coverage.

Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be at least as broad as Insurance Services Office (ISO) form.

5.3.3 Insurance Limits. The Permittee shall maintain the following insurance coverages and limits:

Commercial General Liability insurance shall be written with limits of \$1,000,000 each occurrence, \$2,000,000 general aggregate and a \$2,000,000 products-completed operations aggregate limit.

Commercial Automobile Liability insurance with a combined single limit for bodily injury and property damage of \$1,000,000 each accident.

5.3.4 Other Insurance Provision. The Permittee's Commercial General Liability insurance policy or policies shall be primary insurance as respect the City. Any insurance, self-insurance, or self-insured pool coverage maintained by the City shall be excess of the Permittee's insurance and shall not contribute with it.

5.3.5 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A-VII.

5.3.6 Verification of Coverage. The Permittee shall furnish the City with original certificates and a copy of blanket additional insured endorsement, evidencing the insurance requirements of the Permittee before issuance of the Permit.

5.3.7 Notice of Cancellation. Upon receipt of notice from its insurer, Permittee shall provide the City with thirty (30) days' prior written notice of any policy cancellation.

5.3.8 Failure to Maintain Insurance. Failure on the part of the Permittee to maintain the insurance as required shall constitute a Material Breach of the Permit, upon which the City may, after giving thirty (30) days' notice to the Permittee to correct the Breach, immediately terminate the Permit.

5.4 Liens. Permittee shall keep its Facilities within the Public Rights-of-Way free from all mechanic's liens arising out of or in connection with the installation, attachment, reattachment, removal, replacement, maintenance, and operation of the Facilities on account of any action taken by or on Permittee's behalf.

5.5 Financial Conditions.

5.5.1 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. Within thirty (30) days after notice, Permittee shall reimburse the City for the City's Direct Costs relating to the issuance, renewal, amendment, and administration of this Master Use Permit.

5.5.2 Reimbursement of Direct Costs of Design Review and Inspection. Permittee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with the Master Use Permit. Approvals and inspection, including review of the Design Documents and inspection for compliance with Standards (as defined in Section 7.2.1) and the Design Documents.

5.5.3 Work Performed by the City. Subject to Section 5.5.6, Permittee shall reimburse the City after submittal by the City of an itemized billing by project costs, for Permittee's proportionate share of all actual and identifiable expenses incurred by the City in planning, designing, constructing, installing, repairing, or altering any City facility as a result of the actual or proposed presence of Permittee's Facilities. Such costs and expenses shall include, but not be limited to, the, proportionate cost of City personnel and/or contractors utilized to oversee or engage in any work in the Public Right of Way as the result of the presence of Permittee's Facility in the Public Right of Way. Such costs and expenses shall also include but not be limited to the proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of City facilities or the routing or rerouting of any utilities so as not to interfere with Permittee's Facilities. The time of City employees or contractors shall be charged at the rates shown on the City's Taxes, Rates, and Fees schedule (if City employees) or at the hourly rate billed to the City (if contractors). Any other costs will be billed proportionately on an actual cost basis. All billing will be itemized to specifically identify the costs and expenses for each project for which the City claims reimbursement. Further, any work performed by the City that Permittee has failed to perform beyond applicable notice and cure periods as required pursuant to this Master Use Permit and which is performed by the City in

accordance with the terms of this Master Use Permit, shall be performed at the cost and expense of the Permittee. Permittee shall be obligated to pay the Direct Costs to the City of performing such work.

5.5.4 Costs of Publication. Permittee shall reimburse the City for all costs of publication of this Master Use Permit, and any notices prior to any public hearing regarding this Master Use Permit, contemporaneous with its acceptance of this Master Use Permit.

5.5.5 Taxes and Fees. Nothing contained in this Master Use Permit Agreement shall exempt Permittee from Permittee's obligation to pay any applicable utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Permittee. Any fees, charges and/or fines provided for in the Orting Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Permittee.

5.5.6 Time for Payment. All non-contested amounts owing shall be due and paid within thirty (30) days of invoice. Any amounts payable under this Master Use Permit by Permittee which shall not be paid upon the due date thereof, shall bear interest at an annual rate equal to the commercial prime interest rate of the City's primary depository bank during the period such unpaid amount is owed.

5.5.7 Reservation of Rights. Pursuant to Section 35.21.860 RCW, the City is precluded from imposing a franchise fee on a telephone business as defined in RCW 82.04.065, except for administrative expenses or any tax authorized by RCW 35.21.865, or a service provider as defined in RCW 35.21.860. Permittee hereby warrants that its operations as authorized under this franchise are those of a telephone business as defined in RCW 82.04.065 or as a service provider. As a result the City, will not impose a franchise fee under the terms of this ordinance, other than as described herein.

However, the City hereby reserves its right to impose a franchise fee on Permittee for purposes other than to recover its administrative expenses, if Permittee's operations as authorized by this franchise change so that not all uses of the franchise are those of a "telephone business" as defined in RCW 82.04.065 or as a service provider; or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Permittee obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Permittee's operations, as allowed under applicable law.

## ARTICLE 6. ENFORCEMENT AND REMEDIES

6.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties

agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will attempt to resolve any such Disputes through discussions between representatives of each Party. Each Party will exchange relevant information that will assist the Parties in resolving the Dispute.

6.2 Remedies. The Parties have the right to seek any and all remedies, in equity, at law or in contract. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others. No provision of this Franchise shall be deemed to bar either Party from seeking appropriate judicial relief.

Neither the existence of other remedies identified in this Master Use Permit nor the exercise thereof shall be deemed to bar or otherwise limit the right of either Party to recover monetary damages, as allowed under applicable Law, or to seek and obtain judicial enforcement by means of specific performance, injunctive relief or mandate, or to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages, costs and expenses arising from the Default and to recover all such damages, costs and expenses, including reasonable attorneys' fees.

The City specifically does not, by any provision of this Master Use Permit, waive any right, immunity, limitation or protection otherwise available to the City, its officers, officials, City Council, Boards, commissions, agents, or employees under federal, State, or local law.

### 6.3 Right to Cure Default.

6.3.1 Notice. If a Party believes that the other Party is in default, such Party shall give written notice to the Noticed Party stating with reasonable specificity the nature of the alleged default. The Noticed Party shall have thirty (30) days, or such greater time as specified in the notice or such lesser time as specified in the event that there is an imminent threat of harm to the public health, safety or welfare resulting from the default, from the receipt of such notice to:

6.3.1.1 Respond to the other Party, contesting that Party's assertion that a Default has occurred; or

6.3.1.2 Cure the default; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the default within the time provided in the notice, because of the nature of the Default. In the event the Default cannot be cured within the time provided in the notice, the Noticed Party shall promptly take all reasonable steps to begin to cure the Default and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time

beyond the time provided in the notice is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account, the nature and scope of the alleged Default, the nature and scope of the work required to cure the Default, whether the Default has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure will result in adverse financial consequences or other harm to the Party giving notice, and whether delay in implementing a cure will result in a violation of Law or Default of contract.

6.3.3 Failure to Cure. If the Noticed Party fails to promptly commence and diligently pursue cure of a Default to completion to the reasonable satisfaction of the Party giving notice and in accordance with the agreed upon time line or the time provided for in the Notice of Default, then the parties may pursue any remedies available to them.

6.4 Termination/Revocation. In addition to the remedies available to the City as provided at Law, in equity or in this Master Use Permit, upon a Default without cure, the City may revoke this Master Use Permit and rescind all rights and privileges associated with this Master Use Permit in accordance with the following:

6.4.1 Notice. Prior to termination of the Master Use Permit, the City shall give written notice to the Permittee of its intent to revoke the Master Use Permit. The notice shall set forth the exact nature of the Default. If Permittee objects to such termination, Permittee shall object in writing and state its reasons for such objection and provide any explanation.

6.4.2 Hearing. The City may then seek a termination/revocation of the Master Use Permit in accordance with this Subsection.

6.4.2.1 The City Council, or its designee, shall conduct a public hearing to determine if termination/revocation of the Master Use Permit is warranted.

6.4.2.2 At least fourteen (14) days prior to the public hearing, the City shall issue a public hearing notice that shall establish the issue(s) to be addressed in the public hearing; provide the time, date and location of the hearing; provide that the Hearing Body/Officer shall hear any Persons interested therein; and provide that the Permittee shall be afforded fair opportunity for full participation, including the right to introduce evidence, to require the production of evidence, to be represented by counsel and to question witnesses. The public hearing notice shall be provided to Permittee in accordance with Section 8.13 hereof and public notice of the hearing shall be provided in the same manner as notice is provided for regular meetings of the City Council.

6.4.2.3 Within sixty (60) days after the close of the hearing, the City Council shall issue a written decision regarding the termination/revocation of the Master Use Permit. If the City Council has designated another hearing body/officer to conduct the public

hearing, such hearing body/officer shall make a recommendation to the City Council within thirty (30) days following the close of the public hearing, and the City Council shall make a decision upon the recommendation of the Hearing Body/Officer after a closed record hearing and within sixty (60) days following receipt of the recommendation of the Hearing Body/Officer. The decision of the City Council shall be final. The Parties recognize that a decision to terminate/revoke a Master Use Permit is not a land use decision that is subject to appeal pursuant to the Land Use Petition Act (Chapter 36.70C RCW). Failure to render a decision within the required time period shall not be a basis for invalidation of the decision that is made. Any appeal to which the Permittee may be entitled (e.g., constitutional or statutory writ of review) shall be filed within 30 calendar days of issuance of the final decision of the City Council.

6.4.3 Decision to Terminate. The City Council may consider one or more of the following when determining whether or not to terminate/revoke the Master Use Permit based upon the material Default:

6.4.3.1 The history of repeated non-compliance by Permittee with material terms and conditions of this Master Use Permit;

6.4.3.2 Whether other remedies will achieve compliance with this Master Use Permit;

6.4.3.3 Whether the Permittee has acted in good faith;

6.4.3.4 Whether the acts or omissions that gave rise to the Default were willful or indifferent to the requirements that gave rise to the Default;

6.4.3.5 Whether the type of services provided by the Permittee will be available to the general public through other providers;

6.4.3.6 Whether services provided by the Permittee are essential public services or regulated utilities;

6.4.3.7 The impact or potential impact of the Default upon the public health, safety and welfare;

6.4.3.8 The economic risk the City is exposed to as a result of the Default;

6.4.3.9 Whether consent, permission, adjudication, an order or other authorization of a governmental agency or body, is required as a condition precedent to the City ordering the Permittee to abandon or remove Facilities from the Public Rights-of-Way or to cease operations (temporarily or otherwise) of the Facilities.

6.4.3.10 Such other facts and circumstances that are relevant to the controversy that gave rise to the Default and/or to whether or not the continued presence

and operation of the Permittee Facilities with the Master Use Permit Area will be harmful to the public health, safety or welfare.

6.5 Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Master Use Permit may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Permittee whether in a receivership, reorganization, bankruptcy or other action or proceeding, unless:

6.5.1 The receivership or trusteeship is timely vacated; or

6.5.2 The receiver or trustee has timely and fully complied with all the terms and provisions of this Master Use Permit, and has remedied all defaults under the Master Use Permit. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision and limitation of this Master Use Permit.

## ARTICLE 7. GENERAL CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY

7.1 Regulatory Permit. If Permittee has submitted an application for a Regulatory Permit to perform work in the Public Rights-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

### 7.2 Submission; Approval of Design Documents.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that Permittee seeks to alter or change the location of Facilities in a Master Use Permit Area, Permittee shall submit its Design Documents to the City for review and approval in accordance with the City's plan review process.

7.2.2 Use of Public Rights-of-Way. The City may require that Facilities be installed at a particular time, at a specific place or in a particular manner as a condition of access to the proposed Master Use Permit Area and may deny access if Permittee is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards (defined in Section 7.3 below) or which is installed without prior City approval of the time, place, or manner of installation.

7.2.3 Approval of Plans. At the time of application for a Use Permit for Construction of Facilities within the Public Rights-of-Way, Permittee shall submit to provide the City with detailed Design Documents for any System Construction as required by the Public Works Director/City Engineer and as otherwise required pursuant to the Orting Municipal Code, and shall submit to Architectural Design Review, pursuant to OMC 13-6-7.

Work may not commence without prior approval by the City of the Design Documents submitted by the Permittee, which approval will not be unreasonably withheld,



conditioned or delayed. The City may review and approve the Permittee's Design Documents with respect to:

7.2.3.1 Location/Alignment/Depth;

7.2.3.2 The manner in which the Facility is to be installed;

7.2.3.3 Measures to be taken to preserve safe and free flow of traffic;

7.2.3.4 Structural integrity, functionality, appearance, compatibility with and impact upon roadways, bridges, sidewalks, planting strips, signals, traffic control signs, intersections, or other facilities and structures in the Public Rights-of-Way;

7.2.3.5 Ease of future road maintenance, and appearance of the roadway;

7.2.3.6 Compliance with applicable Standards (as defined below) and codes; and

7.2.3.7 Compliance and compatibility with the City's comprehensive plan, six-year transportation plan, capital improvements plans, and regional transportation improvement plans.

7.3 Compliance with Standards/Codes. Except as may be preempted by federal or state Laws, all Facilities shall conform to and all Work shall be performed in compliance with the following "Standards" as now or may be hereafter revised, updated, amended or re-adopted:

7.3.1 Standards for Public Works Engineering and Construction. The most current edition of the City of Orting Development Standards, Special Provisions and Standard Details as adopted from time to time by the City. This document includes the City Design Standards Manual, Design Standards Detail, and appendices, and the most recently City adopted edition of the Standard Specifications for Road, Bridge and Municipal Construction as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA");

7.3.2 MUTCD. The Washington State Department of Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

7.3.3 Special Conditions. Requirements and standards set forth as additional conditions in a Regulatory Permit.

7.3.4 City Regulations. City ordinances, codes, and regulations those establishing standards for placement of Facilities in Public Rights-of-Way, including by way of example and not limitation, the specific location of Facilities in the Public Rights-of-Way. This shall also include any road design standards that the City shall, consistent with applicable law, deem necessary to provide adequate protection to the Public Rights-of-Way, its safe operation, appearance, and maintenance;

7.3.5 Other Regulatory Requirements. Applicable requirements of federal or state governmental authorities that have regulatory authority over the placement, construction, or design of Permittee Facilities;

7.3.6 Industry Standards. All Work shall be done in a safe, thorough, and workmanlike manner. All Facilities shall be durable and Constructed in accordance with good engineering practices and standards promulgated by the government and industry for placement, Construction, design, type of materials and operation of Permittee's Facilities;

7.3.7 Safety Codes and Regulations. Permittee's Facilities and Work shall comply with all applicable federal, State and City safety requirements, rules, regulations, Laws and practices. By way of illustration and not limitation, Permittee shall comply with the National Electrical Safety Code and the Occupational Safety and Health Administration (OSHA) Standards; and

7.3.8 Building Codes. Permittee's Facilities and Work shall comply with all applicable City Building Codes. However, nothing in this Master Use Permit excuses Permittee from compliance with any other applicable City code, including without limitation, construction codes, fire code, zoning codes and regulations.

7.4 Conditions Precedent to Work. Except as may be otherwise required by applicable City code, rule, regulation or Standard, Permittee shall comply with the following as a condition precedent to Work:

7.4.1 Regulatory Permits Required. Except in the event of an Emergency, prior to performing any Work in the Public Right-of-Way requiring a Regulatory Permit, Permittee shall apply for, and obtain, in advance, such appropriate Regulatory Permits from the City as are required by ordinance or rule. Permittee shall pay all generally applicable and lawful fees for the requisite City Regulatory Permits.

7.4.2 Compliance with Master Use Permit. Permittee shall be in material compliance with the Master Use Permit.

7.5 Work in the Public Rights-of-Way.

7.5.1 Least Interference. Work in the Public Rights-of-Way shall be done in a manner that does not unnecessarily hinder or obstruct the free use of the Public Rights-of-Way or other public property and which causes the least interference with the rights and reasonable convenience of property owners, businesses and residents along the Public Rights-

of-Way. Permittee Facilities shall be designed, located, aligned and Constructed at Permittee's sole expense so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or City's existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of City or the Parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date. Permittee's Facilities shall be designed, located, aligned, and Constructed in such a manner as not to interfere with any planned utilities. For purposes of this section, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the Capital Investment Program Plan, a comprehensive utility plan, a transportation improvement plan or other written construction or planning schedule that is publicly available or provided to Permittee upon request.

7.5.2 Work Subject to Inspection. The City may observe or inspect the Construction Work, or any portion thereof, at any time to ensure compliance with applicable Regulatory Permits, this Master Use Permit, applicable Law, the applicable approved Design Documents, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.3 Notice to the Public. Except in the case of an Emergency, City retains the right to require the Permittee to notify the public prior to commencing any significant planned Construction that Permittee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.4 Work of Contractors and Subcontractors. Permittee's contractors and subcontractors performing Work in the Master Use Permit Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of the Permittee shall be deemed servants and agents of the Permittee for the purposes of this Master Use Permit and are subject to the same restrictions, limitations and conditions as if the Work were performed by Permittee. Permittee shall be responsible for all Work performed by its contractors and subcontractors and others performing Work on its behalf as if the Work were performed by it, and shall ensure that all such Work is performed in compliance with this Master Use Permit and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Permittee's responsibility to ensure that contractors, subcontractors or other Persons performing Work on Permittee's behalf are familiar with the requirements of this Franchise and other applicable Laws governing the Work performed by them.

7.5.5 Emergency Permits. In the event that Emergency repairs are necessary, Permittee shall immediately notify the City of the need for such repairs. Permittee may initiate such Emergency repairs, and shall apply for appropriate Use Permits within forty-eight (48) hours after discovery of the Emergency. In the event of an Emergency, a Permittee may perform Emergency Work in the Public Rights-of-Way without first securing a Use

Permit for such Emergency Work, provided that: (1) the Permittee notifies the City in advance or as soon as practicable upon commencing work of the Emergency requiring the performance of such Emergency Work and the type and location of such Work; (2) the Permittee applies for a Use Permit by the third business day following commencement of such Work; and (3) the Permittee, at its sole cost and expense, makes its Work performed in the Public Rights-of-Way available for inspection to determine compliance with Laws and Standards.

7.5.6 Stop Work. On notice from the City that any Work does not comply with the Master Use Permit, the approved Design Documents for the Work, the Standards, the Use Permit, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition; and establish conditions under which Work may be resumed. If so ordered, Permittee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is reasonably satisfied that Permittee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Permittee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its reasonable discretion. The City has the right to inspect, repair and correct the unsafe condition if Permittee fails to do so, and to reasonably charge Permittee for the costs incurred to perform such inspection, repair or correction. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

7.5.7 Discovery of Hazardous Substances/Indemnity. In the event that the Work of the Master Use Permit in, on, and upon the Master Use Permit Area results in the discovery of the presence of Hazardous Substances (“**Discovered Matters**”) in, on or upon the areas excavated or otherwise opened or exposed by Permittee within the Master Use Permit Area (the “**Excavated Areas**”), the Permittee shall immediately notify the City and, take whatever other reporting action is required by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas.

In the event the Permittee’s Work, in, on or upon the Master Use Permit Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by Permittee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Permittee, then the Permittee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of Permittee’s share of the liability for the release. Permittee’s liability for the release may, inter alia, be determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by Permittee and the Environmental Authority.

7.6 Alterations. Except as may be shown in the Design Documents or Regulatory Permits approved by the City or the record drawings, or as may be necessary to respond to an Emergency, Permittee, and Permittee's contractors and subcontractors, may not make any material alterations to the Master Use Permit Area, or permanently affix anything to the Master Use Permit Area, without the City's prior written consent. Material alteration shall include by way of example and not limitation, a change in the dimension or height of the above ground Facilities. If Permittee desires to change either the location of any Facilities or otherwise deviates from the approved design of any of the Facilities, Permittee shall submit such change to the City in writing for its approval pursuant to Section 7.2 of this Master Use Permit. Permittee shall have no right to commence any such alteration change until after Permittee has received the City's approval of such change in writing.

7.7 General Conditions.

7.7.1 Right-of-Way Meetings. Subject to receiving advance notice, Permittee will make reasonable efforts to attend and participate in meetings of the City regarding Right-of-Way issues that may impact the Telecommunications System.

7.7.2 Compliance Inspection. Permittee's Facilities shall be subject to the City's right of periodic inspection upon at least seventy-two (72) hours' notice, or, in case of an emergency, upon demand without prior notice, to determine compliance with the provisions of this Master Use Permit or other applicable Law over which the City has jurisdiction. Permittee shall respond to requests for information regarding its Telecommunications System as the City may from time to time issue in writing to determine compliance with this Master Use Permit, including requests for information regarding the Permittee's plans for Construction and the purposes for which the Facility is being Constructed.

7.7.3 One Call. If Permittee places Facilities underground, Permittee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Permittee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 5 business days after notice from the City, Permittee shall remove any graffiti on any part of its Telecommunications System, including, by way of example and not limitation, equipment cabinets. If either the Permittee fails to do so within 5 business days or in the City's discretion and subject to advance communication with the Permittee, the City may remove the graffiti and bill the Permittee for the reasonable cost thereof.

7.7.5 Dangerous Conditions, Authority for City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that in the reasonable opinion of the City Engineer and/or Public Works Director, substantially impairs the lateral

support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Permittee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities. Such action may include compliance within a prescribed time. In the event that the Permittee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and utilities, to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the Permittee shall be liable to the City for the reasonable costs thereof to the extent Permittee is the cause of such condition, as determined by the City in its reasonable discretion.

7.7.6 No Duty. Notwithstanding the right of the City to inspect the Work, issue a stop work order, and order or make repairs or alterations, the City has no duty or obligation to observe or inspect, or to halt Work on, the applicable Facilities, it being solely Permittee's responsibility to ensure that the Facilities are Constructed and operated in strict accordance with this Master Use Permit, a Use Permit, the approved Design Documents, the Standards, and applicable Law. Neither the exercise nor the failure by the City to exercise any right set forth in this Article 7 shall alter the liability allocation set forth in this Master Use Permit.

7.7.7 Roadside Hazard. All of Permittee's Facilities shall be kept by Permittee at all times in a safe and hazard-free condition. Permittee shall ensure that Facilities within the Public Rights-of-Way do not become or constitute an unacceptable roadside obstacle and do not interfere with or create a hazard to maintenance of and along the Public Rights-of-Way. In such event, the Permittee shall take corrective action. In the event that the City determines that a Facility within the Public Rights-of-Way has become or constitutes an unacceptable roadside obstacle or may interfere with or create a hazard to maintenance of and along the Public Rights-of-Way, following written notice explaining with reasonable specificity the nature of any such matter and a reasonable opportunity to cure of not less than thirty (30) days, the Permittee shall take corrective action; provided that, nothing herein shall relieve the Permittee from keeping its Facilities at all times in safe and hazard-free condition.

Permittee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to Permittee's agents or employees. Permittee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. Permittee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by Permittee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30) days' notice by the City and in order to facilitate the location, alignment and design of Public Improvements (defined below), the Permittee agrees to locate, and if reasonably determined necessary by the City, to excavate and expose portions of its Facilities for inspection so that the location of same may be taken into account in the Public Improvement design; PROVIDED that, Permittee shall not be required to excavate and expose its Facilities unless the Permittee's record drawings and maps of its Facilities submitted pursuant to Section 7.11 of this Master Use Permit are reasonably determined by the City to be inadequate for purposes of this paragraph.

7.7.9 No Interference. Permittee's equipment operations shall comply with all non-interference rules of the Federal Communications Commission ("FCC"). Permittee agrees that in the event its Telecommunications System interferes with the operation of the City public safety radio system, including but not limited to Lahar Warning System and City of Orting Public Works SCADA radio network, as now or hereafter constructed and operated, Permittee shall, within twenty-four (24) hours after notice, modify its Facilities to eliminate such interference.

7.7.10 Shared Use of Excavations. If at any time, or from time to time, either Permittee or the City shall cause excavations to be made near Facilities, the party causing such excavation to be made shall afford the other, upon receipt of a written request to do so within ninety (90) days of written notice from the party causing the excavation, an opportunity to use such excavation, provided that: (i) such joint use shall not unreasonably delay the work of the party causing the excavation to be made; and (ii) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties.

## 7.8 Facility Relocation at Request of the City.

7.8.1 Public Improvement. The City may require Permittee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public Rights-of-Way for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, by way of example but not limitation, Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, stormwater facilities, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the Construction of any public improvement or structure by any governmental agency acting in a governmental capacity for the public benefit.

7.8.2 Alternatives. If the City requires Permittee to relocate its Facilities, the City shall make a reasonable effort to provide Permittee with an alternate location

within the Public Right-of-Way. The Permittee may, within thirty (30) days after receipt of written notice requesting a relocation of its Facilities, propose design alternatives that would mitigate or lessen the impact upon Permittee's Facilities. The City shall provide a full and fair evaluation of such proposed design alternatives that, in the judgment of the City, would not impair, interfere with, or materially alter the scope, purpose or functioning of the Public Improvement and would not increase the anticipated public costs of the Public Improvement. If so requested by the City, Permittee shall submit additional information to assist the City in making such evaluation. In the event that the City determines that it does not have available resources within the existing Public Improvement budget to fully and fairly evaluate Permittee's proposal, the City shall not be obligated to further consider such proposal unless and until the Permittee funds the additional costs to the City to complete its evaluation. In the event the City determines, after due consideration, that there is no other reasonable alternative, Permittee shall relocate its facilities as otherwise provided in this Section 7.8.

7.8.3 Notice. The City shall notify Permittee in writing as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency such notice shall be no less than one hundred and eighty (180) days. In calculating the date that relocation must be completed, City shall consult with Permittee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Permittee shall complete the relocation by the date specified, unless the City, or a reviewing court, establishes a later date for completion, after a showing by the Permittee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.

7.8.4 Coordination of Work. Permittee acknowledges and understands that any delay by Permittee in performing the Work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Improvement, and result in damage to the City and/or its contractors, including but not limited to, delay and disruption claims. Permittee shall cooperate with the City and its contractors and subcontractors to coordinate such Permittee Work to accommodate the Public Improvement project and project schedules to avoid delay, hindrance, or disruption of such project.

7.8.5 Assignment of Rights. In addition to any other rights of assignment the City may have, the City may from time to time assign or transfer to its contractors or subcontractors its rights under Section 7.10 of this Permittee.

7.8.6 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Master Use Permit, Permittee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized by Law, including in statute. Further, if the City reimburses or pays the relocation costs of a similarly situated franchisee for a given Public



Improvement project, the City shall reimburse or pay Franchisee's relocation costs on the same basis.

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Telecommunications System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, Permittee shall, after at least sixty (60) days advance written notice, take action to effect the necessary changes requested by the responsible Person; provided that, (a) the Person requesting the same pays for the Permittee's time, design, engineering and material costs associated with the requested work; (b) the alteration, adjustment, relocation or protection in place is reasonably necessary to accommodate such work; and (c) Permittee's services are not interrupted.

7.9.2 Temporary Changes for Other Permittees. At the request of any Person holding a valid permit and upon reasonable advance notice, Permittee shall temporarily raise, lower or remove its wires as necessary to permit the moving of a building, vehicle, equipment or other item. The expense of such temporary changes must be paid by the permit holder. Franchisee shall be given not less than thirty (30) days' advance notice to arrange for such temporary wire changes.

7.10 Movement of Facilities During Emergencies.

7.10.1 Immediate Threat. In the event of an unforeseen event, condition or circumstance that creates an immediate threat to the public safety, health, or welfare, the City shall have the right to require Permittee to shut down, relocate, remove, replace, modify, or temporarily disconnect Permittee's Facilities located in the Public Rights-of-Way at the expense of the Permittee without regard to the cause or causes of the immediate threat.

7.10.2 Emergency. In the event of an Emergency, or where a Facility creates or is contributing to an imminent danger to health, safety, or property, the City retains the right and privilege to protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way, as the City may determine to be reasonably necessary, appropriate or useful in response to any public health or safety Emergency and charge the Permittee for costs incurred. The City may use contractors or agents to perform the actions permitted pursuant to this Section 7.10.2, and shall endeavor to provide Permittee as much prior notice as is possible of such action.

7.10.3 Notice. During Emergencies the City shall endeavor to, as soon as practicable, provide notice to Permittee of such Emergency at a designated Emergency response contact number, to allow Permittee the opportunity to respond and rectify the problem without disrupting Telecommunications Service. If after providing notice, there is no immediate response, the City may protect, support, temporarily disconnect, remove, or

relocate any or all parts of the Telecommunications System located within the Public Rights-of-Way in accordance with this Section 7.10.

7.10.4 Limitation on Liability. The City shall not be liable for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section.

7.11 Record of Installations.

7.11.1 Map/Record Drawing of Telecommunications System. Upon request by the City, Permittee shall search for and provide the City with the most accurate and available maps and record drawings in a form and content prescribed by the City reflecting the horizontal and vertical location and configuration of its Telecommunications System within the Public Rights-of-Way and upon City property in a format reasonably acceptable to the City. Permittee shall provide the City with updated record drawings and maps within a reasonable period of time following receipt of written request. As to any such record drawings and maps so provided, Permittee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.11.2 Maps/Record Drawings of Improvements. After Construction involving the locating or relocating of Facilities, the Permittee shall provide the City with accurate copies of all record drawings and maps showing the horizontal and vertical location and configuration of all located or relocated Facilities within the Public Rights-of-Way. These record-drawings and maps shall be provided at no cost to the City, and shall include hard copies and digital copies in a format reasonably specified by the City. As to any such record drawings and maps so provided, Permittee does not warrant the accuracy thereof and to the extent the location of the Telecommunications System is shown, such Telecommunications System is shown in its approximate location.

7.12 Restoration of Public Rights-of-Way, Public and Private Property.

7.12.1 Restoration after Construction. Permittee shall, after completion of Construction of any part of its Telecommunications System, leave the Public Rights-of-Way and other property disturbed thereby, in as good or better condition in all respects as it was in before the commencement of such Construction. Permittee agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City Standards, including by way of example and not limitation, backfilling and restoration requirements as set forth in City Standards.

7.12.2 Notice. Except in the case of an Emergency, Permittee shall give reasonable advanced notice to private property owners and tenants of Construction Work on or adjacent to such private property if the Permittee reasonably anticipates such Work will materially disturb or disrupt the use of private property and when the City otherwise requires Permittee to provide such notice. If Permittee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way

or other public or private property, the Franchisee shall promptly notify the property owner within twenty-four (24) hours.

7.12.3 Duty to Restore. If Permittee's Work causes unplanned, unapproved, or unanticipated disturbance of or alteration or damage to Public Rights-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the reasonable satisfaction of the City and in accordance with City Standards.

7.12.4 Temporary Restoration. If weather or other conditions do not allow the complete restoration required by this Section, Permittee shall temporarily restore the affected Public Right-of-Way or public property. Permittee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

7.12.6 Approval. The City Engineer, or designee, shall be responsible for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. Permittee is responsible for all testing and monitoring of restoration activities. The provisions of this section shall survive the expiration, revocation or termination of this Master Use Permit.

7.12.7 Warranty. Permittee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for two (2) years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by the Permittee, the City may, after prior notice to the Permittee, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Permittee. .

7.12.8 Restoration of Private Property. When Permittee does any Work in the Public Rights-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to the reasonable satisfaction of the private property owner.

7.12.9 Failure to Restore per City Standards. If Permittee should fail to leave any portion of the excavation in a condition that meets the City's Standards, the City may on five (5) days' notice to Permittee, which notice shall not be required in case of an Emergency, cause all work necessary to restore the excavation to a safe condition. Permittee shall pay to the City the cost of such work; which shall include, among other things, the City's overhead in obtaining completion of said work (provided that in no event shall such overhead exceed 5% of the total costs, fees and expenses of third parties).

7.13 Approvals. Nothing in this Master Use Permit shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Permittee's Design Documents or to ascertain whether Permittee's proposed or actual Construction is adequate or sufficient or in conformance with the Design Documents reviewed and approved by the City. No approval given, inspection made, review or supervision performed by the City pursuant to or under authority of this Master Use Permit shall constitute or be construed as a representation or warranty express or implied by the City that such item reviewed, approved, inspected, or supervised, complies with applicable Laws or this Master Use Permit or meets any particular Standard, code or requirement, or is in conformance with the approved Design Documents, and no liability shall attach with respect thereto. City approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Telecommunications System, suitability of the Master Use Permit Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

7.14 Abandonment of Facilities. Except as may be otherwise provided by Law, Permittee may not abandon in place any Facilities in the Public Rights-of-Way without written consent from the City. Permittee shall provide written notice of its intent to abandon and such notice shall include a description of the Facilities it intends to abandon, the specific location in the Public Rights-of-Way of such Facilities, and the condition of such Facilities. If the City determines within 180 days of the receipt of notice of abandonment from the Permittee, that it wants the Facilities to be removed, then the operator must remove its abandoned Facilities by a date specified by the City and restore the Public Rights-of-Way in accordance with City Standards. Permittee shall be and remain responsible in perpetuity for any Facilities abandoned in the Public Rights-of-Way.

7.15 Location of Facilities. Permittee shall place any new Facilities underground where existing telecommunications and cable facilities are located underground; provided, however, that any new Facilities may be located above-ground where existing aerial routes are available from utility pole owners. Any new Facilities to be located above-ground shall be placed on existing utility poles. No new utility poles shall be installed in connection with placement of new above-ground Facilities.

## ARTICLE 8. MISCELLANEOUS

8.1 Entire Agreement. This Master Use Permit contains all covenants and agreements between the City and the Permittee relating in any manner to the Master Use Permit, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Master Use Permit. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Master Use Permit shall not be altered, modified, or added to except in writing signed by

the City and Permittee and approved by the City in the same manner as the original Master Use Permit was approved.

8.2 Incorporation of Exhibits. All exhibits attached at the time of execution of this Master Use Permit or in the future as contemplated herein, are incorporated by reference as though fully set forth herein.

8.3 Calculation of Time. All periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided at Section 4.3 of this Master Use Permit.

8.4 Time Limits Strictly Construed. Whenever this Master Use Permit sets forth a time for any act to be performed by Permittee, such time shall be deemed to be of the essence, and any failure of Permittee to perform within the allotted time may be considered a Breach of this Master Use Permit.

8.5 No Joint Venture. Nothing contained in this Master Use Permit shall create any partnership, joint venture, or principal-agent relationship or other arrangement between Permittee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner which would indicate any such relationship with the other.

8.6 Approval Authority. Except as may be otherwise provided by Law or herein, any approval or authorization required to be given by the City, shall be given by the Public Works Director (or his/her successor), or by the Public Works Director's designee.

8.7 Waiver. No failure by either Party to insist upon the performance of any of the terms of this Master Use Permit or to exercise any right or remedy consequent upon a Breach thereof, shall constitute a waiver of any such Breach or of any of the terms of this Master Use Permit.

8.8 Severability. If any word, article, section, subsection, paragraph, provision, condition, clause, sentence, or its application to any person or circumstance (collectively referred to as "Term"), shall be held to be illegal, invalid, or unconstitutional for any reason by any court or agency of competent jurisdiction, such Term declared illegal, invalid or unconstitutional shall be severable and the remaining Terms of the Master Use Permit shall remain in full force and effect unless to do so would be inequitable or would result in a material change in the rights and obligations of the Parties hereunder.

8.9 Notice. Any notice required or Permitted to be given hereunder shall be in writing, unless otherwise expressly permitted or required, and shall be deemed effective either, (i) upon hand delivery to the person then holding the office shown on the attention

line of the address below, or, if such office is vacant or no longer exists, to a person holding a comparable office, or (ii) when delivered by a nationally recognized overnight mail delivery service, to the Party and at the address specified below:

**Permittee's address:** MCImetro Access Transmission Services Corp.  
d/b/a Verizon Access Transmission Services  
600 Hidden Ridge – E02E102  
Irving, TX 75038  
Phone: 972.457.7420

with a copy (except for invoices) to:

Verizon Business Services  
1320 N. Courthouse Road, Suite 900  
Arlington, VA 22201  
Attn: General Counsel, Network & Technology

**The City's Address:** City of Orting  
110 Train Street SE  
Orting, WA 98360

The City and Permittee may designate such other address from time to time by giving written notice to the other.

8.10 Survival of Terms. Upon the expiration, termination, revocation, or forfeiture of the Master Use Permit, the Permittee shall no longer have the right to occupy the Master Use Permit Area. However, the Permittee's obligations under this Master Use Permit to the City shall survive the expiration, termination, revocation, or forfeiture of these rights according to its terms for so long as the Permittee's System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, the Permittee transfers ownership of all Facilities in the Master Use Permit Area to a third-party, or the Permittee abandons said Facilities in place, all as provided herein.

8.11 Force Majeure. In the event Permittee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to, acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, unusually severe weather conditions, employee strikes and unforeseen labor conditions not attributable to Permittee's employees, Permittee shall not be deemed in Breach of provisions of this Master Use Permit and shall not be liable for delay damages. If Permittee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Master Use Permit, Permittee shall provide documentation as reasonably required by the City to substantiate the Permittee's claim. Permittee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Master Use Permit or to procure a substitute for such obligation which is satisfactory to the City.

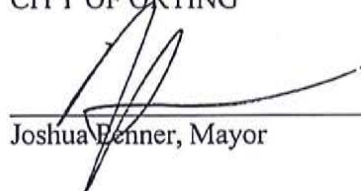
8.12 Attorneys' Fees. In case either City or Permittee shall bring suit under this Permit, the substantially prevailing party shall recover all legal costs, including but not limited to reasonable attorneys' and expert witness fees which shall be determined and taxed by the court as part of the costs of such action. All covenants, agreements, terms, and conditions contained in this Lease shall apply to and be binding upon City and Lessee and their respective heirs, executors, administrators, successors, and assigns.

8.13 Venue/Choice of Law. This Master Use Permit shall be governed by and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Master Use Permit, or seeking a declaration of rights, duties or obligations herein, shall be initiated in the Superior Court of Pierce County. Removal to federal court shall be to the Federal Court of the Western District of Washington.

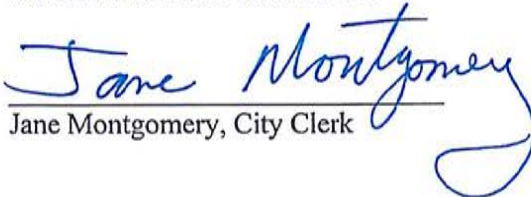
**Section 2. Effective Date.** This ordinance, or a summary thereof, shall be published in the official newspaper of the City, and shall take effect and be in full force in accordance with Article 4.3 herein.

**ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 10TH DAY OF JULY 2019, AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 10TH DAY OF JULY 2019.**


CITY OF ORTING

  
\_\_\_\_\_  
Joshua Penner, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Jane Montgomery, City Clerk

Approved as to form:

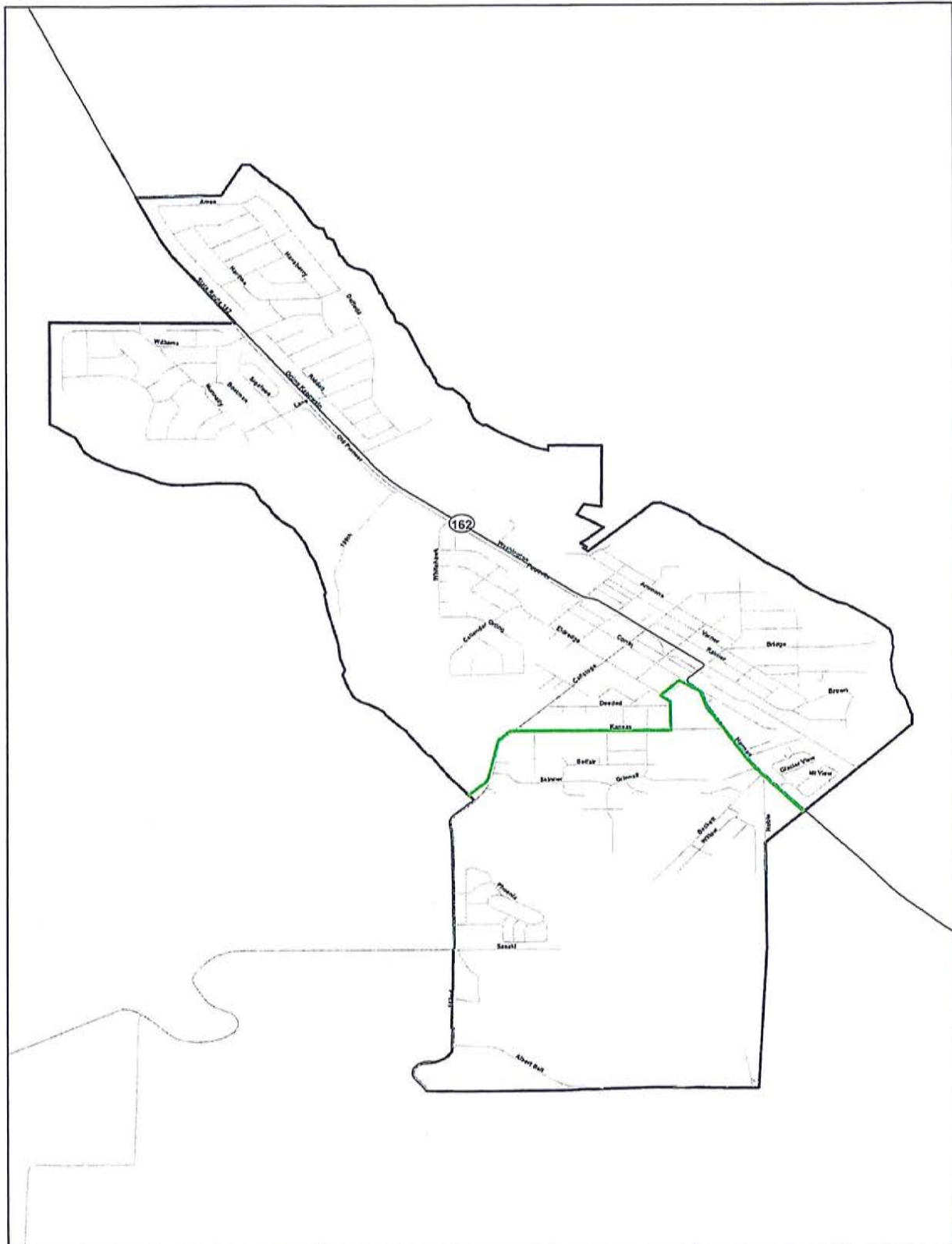
  
\_\_\_\_\_  
Charlotte A. Archer, City Attorney

Filed with the City Clerk: 6.29.19  
First reading: 6.29.19  
Passed by the City Council: 7.30.19  
Ordinance No. 2019-1046  
Date of Publication: 7.22.19  
Effective: 8.10.19

**EXHIBIT A**  
**Master Use Permit Area**



**MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services  
License Area Planned Fiber Routes  
City of Orting, WA**



 Aerial Planned - 7,408 Linear Ft.

 Orting

Final design not yet completed, thus routes subject to change.

Confidentiality Statement: Verizon/MCImetro Confidential and Proprietary. May Contain Trade Secrets, or Sensitive Commercial or Financial Information. Any Unauthorized Review, Use, Disclosure, Distribution, or Copying is Prohibited.

Data Source: VZB  
Projection: GCS\_WGS\_1984  
Map Created: 05/06/2018  
Map Created By: Robert Durkin



**EXHIBIT B**

**MCImetro  
Acceptance Form**

Date : 07-12-2019

City of Orting  
City Clerk's Office  
110 Train Street SE  
Orting, WA 98360

Re: Ordinance No. 2019-1046, Adopted on 07-10-2019


Dear City Clerk:

In accordance with and as required by City of Orting Ordinance No. 2019-1046 passed by the City Council and approved by the Mayor on 07-10-2019 (the "Ordinance"), MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services hereby accepts all of the terms, conditions, and obligations to be complied with or performed by it under the Ordinance.

Sincerely,

MCImetro Access Transmission Services Corp. d/b/a Verizon Access Transmission Services

By:

  
Signature

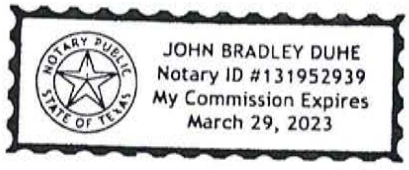
ROBERT J. HAYES  
Name  
Title SR. MGR. Netw. ENG.

STATE OF ~~WASHINGTON~~ TEXAS )  
 ) ss.  
COUNTY OF ~~PIERCE~~ DALLAS )

On this day personally appeared before me ROBERT J. HAYES,  
to me known to be the individual described in and who executed the within and foregoing  
instrument, and acknowledged that he/she signed the same as his/her free and voluntary act  
and deed, for the uses and purposes therein described.

WITNESS my hand and official seal hereto affixed this 12<sup>th</sup> day of  
July, 2019.

  
(Notary Signature)



JOHN BRADLEY DUHE  
(Printed Name of Notary)  
NOTARY PUBLIC in and for the State of  
Washington

Residing at: DALLAS, TX

My commission expires: 3/29/2023