

**ORDINANCE NO. 41
CITY OF LIBERTY LAKE
SPOKANE COUNTY, WASHINGTON**

**AN ORDINANCE OF THE CITY OF LIBERTY LAKE, WASHINGTON, GRANTING
THE RIGHT OF FRANCHISE TO XO COMMUNICATIONS FOR OPERATION OF A
PUBLIC SERVICE BUSINESS IN THE CITY OF LIBERTY LAKE.**

WHEREAS, the City of Liberty Lake will incorporate on August 31, 2001;

WHEREAS, RCW 35.02.160 provides that any franchise or permit heretofore granted to any person, firm or corporation by the state or county, authorizing or otherwise permitting the operation of a public service business or facility is automatically cancelled upon incorporation, but that upon incorporation the City must grant such business a franchise or permit to continue such business within the City for a term of not less than the remaining term of the original franchise or permit, or seven years, whichever is the shorter;

WHEREAS, a franchise has been granted by Spokane County to Nextlink Washington, LLC., now doing business as XO Communications as set forth herein, and

WHEREAS, the City of Liberty Lake intends to allow XO Communications to continue operation under the same terms and conditions as the pre-existing franchise with Spokane County for the remaining term of the original franchise or seven years, whichever is the shorter period;

NOW, THEREFORE, the City Council of the City of Liberty Lake, Washington, do ordain as follows:

Section 1. The City of Liberty Lake hereby grants unto XO Communications a Franchise under the same terms and conditions as set forth in Spokane County Franchise No.980606. This Franchise shall expire August 31, 2008. Unless the context requires otherwise, references to Spokane County shall be construed as references to the City of Liberty Lake and references to the Board of County Commissioners shall refer to the Liberty Lake City Council. Further, all work done in the public right of way shall be pursuant to Spokane County standards unless there is a superseding City of Liberty Lake standard.

Section 2. A true and correct copy of this Franchise is attached hereto and identified as Exhibit "A".

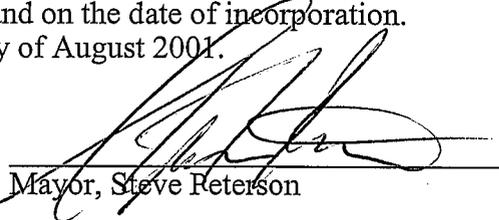
Section 3. **Official Bonds.** The Franchisee shall take all necessary steps to transfer any bonds, certificates of insurance or other security currently held by Spokane County to the City of Liberty Lake with the franchise rights granted herein not effective until such transfers are made.

Section 4. **Severability.** If any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such

invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

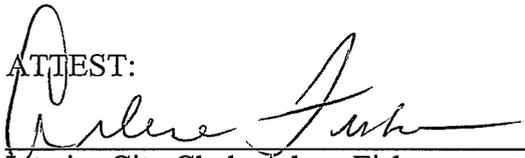
Section 5. Effective Date. This Ordinance shall be in full force and effect five (5) days after publication of the Ordinance Summary, and on the date of incorporation.

PASSED by the City Council this 14 day of August 2001.



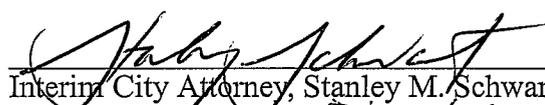
Mayor, Steve Peterson

ATTEST:



Interim City Clerk, Arlene Fisher

APPROVED AS TO FORM:



Interim City Attorney, Stanley M. Schwartz

Date of Publication: 8/23/01

Effective Date: Date of Incorporation



.After Recording Return to: Spokane County Engineer
Attn: Engineering Administration

BEFORE THE BOARD OF COUNTY COMMISSIONERS OF SPOKANE COUNTY, WASHINGTON
98 0606

IN THE MATTER OF THE APPLICATION OF THE)
NEXTLINK, WASHINGTON, LLC FOR FRANCHISE)
FOR TELECOMMUNICATION)
AND DISTRIBUTION FACILITIES IN COUNTY) **FRANCHISE**
ROADS, HIGHWAYS AND RIGHTS OF WAY)
IN SPOKANE COUNTY, WASHINGTON)

Application of **NEXTLINK**, Washington, LLC a limited liability company doing business in Washington, at Spokane, for a franchise to operate and maintain telecommunication and distribution facilities in Spokane County roads, highways and rights of way in the Spokane County, Washington, as hereinafter set forth, having come on regularly for hearing before the County Commissioners of Spokane County, Washington, on the **21st day of July, 1998**, at the hour of 5:00 p.m., under the provisions of Chapter 187, State Sessions Laws of 1937, and it appearing to the Board that notice of said hearing has been duly given as required by law, and that it is in the public interest to grant the franchise herein granted;

NOW THEREFORE:

IT IS ORDERED, that a franchise be and the same is hereby given and granted to Nextlink, doing business in the State of Washington, its successors and assigns, hereinafter referred to as the "Grantee", for a period of twenty (20) years from and after the date of the entry of this order, to construct, operate and maintain a telecommunications system in, under, along and over the following described public County roads and County property in Spokane County, Washington, to-wit:

- Township 26 North, Range 42 through 45 E.W.M., Sections 1-36**
 - Township 25 North, Range 41 E.W.M., Sections 1-36**
 - Township 25 North, Range 42 through 45 E.W.M., Sections 1-36**
 - Township 24 North, Range 41 through 43 E.W.M., Sections 1-36**
- excluding all incorporated cities within this area**



This franchise is granted upon the following express terms and conditions, to-wit:

1. DEFINITIONS

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

Definitions: For the purpose of this Franchise, the following terms, phrases, and their derivations shall have the meanings given below unless the context indicates otherwise. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular include the plural number. The word "shall" is always mandatory and not merely directory.

1. "Facility" means any tangible component of the **Nextlink Telecommunications System** including supporting structures, located in the operation of activities authorized by this Franchise. The abandonment by Grantee of any facilities as defined herein shall not act to remove the same from this definition.
2. "Franchise" means this Franchise agreement, as fully executed by the County and the Grantee.
3. "Streets", "Highways" mean the surface of, and the space above and below, any public street, road, alley or highway, within the County used or intended to be used by the general public, to the extent the County has the right to allow the Grantee to use them.
4. "County" - The County of Spokane, a municipal corporation of the State of Washington, which specifically includes all areas incorporated therein as of the effective date of this Franchise and any other areas later added thereto by annexation or other means. Also to have the meaning of an entity, depending on the context, its authorized agents, successors, and assigns.
5. "County Project" - Any public work or improvement under direction of the County Engineers.
6. "Person" - An entity or natural person.
7. "Public Works Director" - The head of the Public Works Department of the County, or in the absence thereof, the head of the Division of Engineering, or the designee of either of these individuals.
8. "Right of Way", as used herein, shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, Grantee easement, and/or road Right of Way now or hereafter held or administered by the County of Spokane.
9. "Permitting Authority" - The head of the County department authorized to process and grant permits required to perform work in the County's Right of Way, or the head of any agency authorized to perform this function on the County's behalf. Unless otherwise



indicated, all references to Permitting Authority shall include the designee of the department or agency head.

10. "Permittee" - A person who has been granted a permit by the Permitting Authority.
11. "Days" - Calendar days.
12. "Grantee" - An entity or natural person with whom this Franchise agreement is made.
13. "County Engineer" - The head of the Division of Engineering, or the designee or authorized representative of the County Engineer.
14. "Standard Specifications for Road, Bridge, and Municipal Construction" is the most current edition. Where this standard refers to "the State" substitute "the County."
15. "Product" - What the Franchise produces for consumer consumption.
16. "Construction or Construct" shall mean constructing, digging, excavating, laying, testing, operating, extending, renewing, removing, replacing, and repairing a facility
17. "Consumer" shall mean any person, persons, customer, firm, association, municipal corporation, and/or corporation that uses the product, including residential, commercial, and industrial users.
18. "Distribution System, System, and Lines" used either in the singular or plural shall mean and include the pipe lines, mains, laterals, conduits, feeders, regulators, meters, fixtures, connections, and all attachments, appurtenances and appliances necessary and incidental thereto or in any way appertaining to the distribution of the product and which are located within the County Right of Way.
19. "Maintenance, Maintaining, or Maintain" shall mean constructing, relaying, repairing, replacing, examining, testing, inspecting, removing, digging and excavating, and restoring operations incidental thereto.
20. "Telecommunications Services" means:
 - A. Services interconnecting interexchange carriers, competitive carriers, and/or wholesale telecommunications providers for the purpose of voice, video, or data transmission.
 - B. Services connecting interexchange carriers and/or competitive carriers to telephone companies providing local exchange services for the purpose of voice, video, or data transmission
 - C. Services connecting interexchange carriers or competitive carriers to any entity other than another interexchange carrier, competitive carrier, or telephone company providing local exchange services, for the purpose of voice, video, or data transmission.



D. Local, long distance and enhanced communications.

- 21. "Telecommunications System" means all wires, cables, ducts, conduits, vaults, poles and other necessary facilities owned or used by the Grantee for the purpose of providing Telecommunications Services and located in, under and above County Rights of Way, excluding ducts, conduits and vaults leased from another County Franchisee, Licensee or Permittee.

2. TIME PERIOD

The Franchise granted by this Franchise shall be for a period of twenty (20) years, commencing on the date this Franchise becomes effective; provided that Grantee shall have no rights under this Franchise unless, and until, Grantee files with the County a written consent to all terms and conditions of this Franchise Agreement, and the Franchise granted by this agreement shall be null and void if such written consent is not filed within thirty (30) days after the effective date of this Franchise. Application for extension or renewal of the term may be made no sooner than one year before expiration thereof.

3. RIGHTS GRANTED

Nextlink, its successors and assigns (hereinafter designated as the "Grantee"), shall have the right and authority to enter upon the County roads, highways and rights-of-way as herein described for the purpose of constructing and installing its Facilities (hereinafter referred to as the "system") and for repairing, operating, maintaining, removing and replacing all or any portion of its system, as approved under County permits issued by the Permitting Authority pursuant to this Franchise and applicable County resolution ordinances.

4. SUPERCEDES OTHER AGREEMENTS

This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution and acceptance hereof.

This Franchise shall also supersede and cancel any previous right or claim of Grantee to occupy the County roads as herein described.

5. ALL FACILITIES UNDER FRANCHISE

Any facilities and appurtenances in streets, alleys, and rights-of-way described in the aforementioned legal description, incidental to the Franchise system, that have been or are at any



future time acquired, leased, or utilized in any manner by Grantee are thereupon to be deemed authorized by and shall be subject to all provisions of this Franchise.

6. NOT EXCLUSIVE

This Franchise is granted upon the further express condition that it shall not be an exclusive Franchise and shall not, in any manner, prohibit the County of Spokane from granting any other Franchise over, in, along, under, below, upon, and across any of the said County roads of any kind and character or territories that may be deemed proper by the Spokane County Commissioners, and this Franchise shall not in any way prevent the County of Spokane from using the said County roads and highways of any kind and character or territories, or affect the jurisdiction over them and every part of them by the County of Spokane. The County shall retain full authoritative power to make all necessary repairs, changes, maintenance, relocations, establishment, improvement, dedication, vacation, alterations, etc., in the same and like manner as though this Franchise had never been granted.

Spokane County reserves for itself the right to so change, amend, modify, or amplify this Franchise to conform to any state statute, or County regulation, Utility Accommodation Plan, Franchise, or Right of Way regulation, as may hereafter be enacted, adopted or promulgated. And this Franchise may be terminated at any time upon ninety (90) days written notice and opportunity to remedy non-compliance to the Grantee to terminate this Franchise if the Grantee fails to comply with its terms and conditions, or if the Grantee fails to comply with such changes, amendments, modifications, or amplifications, and upon termination Spokane County shall have a lien upon all equipment and materials erected or placed under this Franchise, which lien may be enforced to reimburse Spokane County for any reasonable expenses and payments incurred in terminating this Franchise and to cure defaults by the Grantee.

The County shall have prior and superior right to the use of its roads, streets, and alleys, and Public Properties for installation and maintenance of its utilities and other governmental purposes, and should a conflict arise with the Grantee's lines, the Grantee shall, at its own expense and cost, conform to the County's utilities and other government purposes of the County. The owners of all utilities, public or private, installed in such Public Properties prior to the installation of the lines and facilities of the Grantee, shall have preference as to the positioning and location of such utilities so installed with respect to the Grantee. Such preference shall continue in the event of the necessity of relocating or changing the grade of any such Public Properties. Grantee shall pay all actual reasonable costs of and expense necessarily incurred by Grantor in the examination, inspection, and approval of all plans and specifications for, and all details of construction of, all facilities involved herein as necessary to insure conformity with the integrity of the County roads, traffic flow, and other Franchisees within the County Right of Way.

7. COUNTY'S RIGHT TO THE ROAD NOT SUPERSEDED

Spokane County, in the granting of this Franchise, does not waive any rights which it now holds or may hereafter acquire, and this Franchise shall not be construed so as to deprive Spokane County any powers, rights, or privileges which it now has, or may hereafter acquire, including the right of eminent domain, to regulate the use and control of the County roads covered by this Franchise, or to go upon any and all County roads and highways for any purpose including constructing, repairing, or improving the same in any such manner as Spokane County, or its



representatives may elect. The County shall retain full authoritative power in the same and like manner as though this Franchise had never been granted.

Nothing in this Franchise shall be construed to prevent the County from constructing facilities, grading, paving, repairing and/or altering any street, or laying down, repairing or removing facilities or constructing or establishing any other public work or improvement. All such work shall be done, insofar as practicable, so as to not obstruct, injure or prevent the unrestricted use and operation of the facilities of the Grantee under this Franchise. However, if any of the Grantee's facilities interferes with County projects, Grantee's facilities shall be removed or replaced. Any and all such removal or replacement shall be at the expense of the Grantee. Should Grantee fail to remove, adjust or relocate its facilities by the date established by the County Engineer's written notice to Grantee, the County may cause and/or effect such removal, adjustment or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the County due to Grantee's delay.

8. RELOCATION OF FACILITIES

The County shall have the right to require Grantee to change the location of its Telecommunications System within the Rights of Way when the public convenience requires such change, and the expense thereof shall be paid solely by Grantee. The County shall provide the Grantee with the standard notice given under the circumstances to other Franchisees, Licensees, or Permittees. Should Grantee fail to remove or relocate any such facilities by the date established by the County, the County may cause and/or effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all direct, indirect and/or consequential costs and expenses incurred by the County due to Grantee's delay. If other utilities or franchise holders are involved the grantee shall be responsible for it's prorata share of costs. If the County requires Grantee to relocate its facilities located within the County's Rights of Way, the County will make a reasonable effort to provide Grantee with an alternate location for its facilities within the County's Rights of Way.

Grantee's system shall be constructed and maintained in such manner as not to interfere with sewers, water pipes, or any other property of the County, or with any other pipes, wires, conduits or other facilities that may have been laid in the Rights of Way by or under the County's authority.

Upon Grantee's acquisition of any Telecommunications System Facilities in the Rights of Way, or upon any addition or annexation to the County of any area in which Grantee retains any such Facilities in the Rights of Way, the Grantee shall submit to the County a written statement describing all Facilities involved, whether authorized by Franchise or any other form of prior right, and specifying location of all such Facilities. Such Facilities shall immediately be subject to the terms of this Franchise.

During the life of this Franchise, the County reserves the right to order any Facility moved or changed as ordered and determined by the County Engineer, so as to accommodate building or other changed conditions in the vicinity.

The relocation of Grantee's facilities shall be at the sole expense of Grantee unless the County Engineer determines, after consultation with Grantee and at Grantee's request, that the benefit of such improvements or changes to the County road, highway or Right of Way inures primarily to adjacent property owners or developers and not the general public. In such case, the



County agrees to make reasonable efforts to facilitate an agreement between such owners or developers and Grantee, and where appropriate, as determined by the County Engineer, withhold approval and/or acceptance of the improvements or development until the owner or developer has entered into an agreement to pay for the costs of relocation. The County shall in no way be held liable for any damages to Grantee that may occur by reason of any of the County's improvements, changes or works above enumerated, except for damage caused by the negligence of the County, its employees or agents.

Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any Right of Way its facilities when so required by the County, provided that Grantee shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same Right of Way upon approval by the County, any facilities required to be temporarily disconnected or removed.

When relocation of Grantee's facilities are required by County projects the following procedures shall be followed unless emergency conditions dictate otherwise, as determined by the County Engineer:

1. Spokane County shall make available to Grantee a list of anticipated projects for each new budget period as soon as is reasonably practicable.
2. Spokane County shall provide to Grantee two (2) sets of preliminary plans for individual projects as soon as such plans are developed to a state of reasonable certainty, and shall advise Grantee of the anticipated start date of work on such projects.
3. Grantee shall, when requested by Spokane County in writing, locate their facilities in the field, show those locations on one set of the preliminary plans provided, and return that set to Spokane County Engineers within four weeks of receiving the written request.
4. Spokane County shall provide to Grantee final plans for such projects as soon as such plans are available and shall confirm or correct the anticipated start date of work on such projects.
5. Spokane County shall assist Grantee in determining how its facilities shall be relocated. Such assistance by Spokane County shall include, at a minimum, copies of plans (as required above) and specifications for such County projects, and information known to Spokane County as to existing survey control available for location of such County projects. Such assistance shall not subject Spokane County to any liability for the costs of relocating the subject facilities a second time if Grantee incorrectly relocated its facilities the first time.
6. When requested, Spokane County and Grantee shall meet to discuss how County projects and utility relocations can be accomplished with the least impact on the other. Spokane County's decision shall be final in such matters, but shall not be unreasonable.
7. Relocation of Grantee's facilities shall be completed in a timely manner, provided that Grantee has been given adequate notice, following the prescribed notice defined as follows:

Relocation of Grantee's facilities shall normally be accomplished ten (10) days in advance of County projects. In the event relocation of Grantee's facilities shall be done concurrently with such projects, Spokane County shall be so notified and agree to a written schedule for relocation. Compliance with such a written schedule shall be Grantee's duty. In no event shall relocation of Grantee's facilities interfere with the progression and completion of County projects.



8. If the Grantee does not relocate its facilities in a timely manner as required above, Spokane County may relocate, or cause to be relocated, such facilities of Grantee as Spokane County deems necessary, and in the manner Spokane County deems necessary, in its sole discretion. Grantee hereby indemnifies and holds Spokane County, its employees, officers, officials, and agents totally free and harmless from all and any liability which may arise from damages caused by the relocation by Spokane County of the facilities of Grantee, except to the extent such damages and liability arise from the negligence of Spokane County, its employees, officers, officials, and agents.
9. Grantee hereby indemnifies and holds harmless Spokane County, its officers, officials, and employees, from damages which may arise from Grantees' failure to relocate its facilities in accordance with the dates for completion of relocation of facilities set forth above, or any other act or omission by Grantee, its contractor(s), agents, officers, or employees related to the provisions of this Franchise.
10. It shall be conclusively presumed that Spokane County will have suffered damages as a result of exercising its rights as set forth in Item 8, above, and compensation for such damages will be difficult to ascertain, and, therefore, Grantee shall compensate Spokane County for the cost plus the administrative expense of the County to secure that relocation of Grantee's facilities by Spokane County.
11. The exercise of its rights, as set forth in Item 8, above, by Spokane County in no way relieves Grantee of completing and/or finalizing the relocation of its facilities at no expense to Spokane County if the relocation work done by Spokane County is incomplete.
12. In the event a lawsuit the party prevailing in such an action shall be allowed its legal fees and costs.
13. In the event that the Grantee does not comply with the aforementioned stipulations, the Grantee shall forfeit all rights granted under this Franchise, and said Franchise shall be null and void. Grantee shall then remove all of its Facilities from the County Right of Way. If Grantee has the right to be within County Right of Way by another method other than a Franchise the County shall use any other means at its disposal to bring the Grantee into compliance with this Franchise Document.

The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person other than the County, where the improvements to be constructed by said person are not or will not become County-owned, operated or maintained, provided that such arrangements do not unduly delay a County construction project.

9. BUILDING MOVING

Whenever any person shall have obtained permission from the County to use any Right of Way for the purpose of moving any building or other oversized structure, Grantee, upon fourteen (14) days written notice from the County, shall raise or remove, at the expense of the Permittee desiring to move the building or structure, any of Grantee's facilities that may obstruct the movement thereof;



provided, that the path for moving such building or structure is the path of least interference, as determined by the County.

10. PUBLIC RECORDS

As a condition of this Franchise, and at its sole expense, Grantee agrees to provide the County with as-built plans, potential improvement plans, field locates, maps, plats, specifications, profiles, and records. These records shall be in a digital electronic format, unless the County Engineer deems it to be a hardship to the Grantee, in which case a hard copy of the plan is acceptable. This information shall be provided between 120 and 180 days of the effective date of this Franchise and shall be updated annually unless otherwise requested by the County.

The hard copy plan form will show the vertical and horizontal location and size of all Grantee's facilities within the Right of Way using a minimum scale of one inch equals four hundred feet (1"=400'), measured from the centerline of the Right of Way.

For the digital electronic format, the information shall be in one of the following formats: Geographical Information System (GIS), AutoCad, or any other electronic format acceptable to the County. These maps shall tie into Section Corners, unless unavailable or impracticable, in that event the maps shall tie into the intersection of County Road Right of Way.

To the extent such requests are limited to specific facilities at a given location within the Franchise area in connection with the construction of any County project, Grantee shall provide to the County, upon the County's reasonable request, copies of available drawings in use by Grantee showing the location of such facilities. Grantee shall field locate its facilities in order to facilitate design and planning of County improvement projects.

Upon written request of the County, Grantee shall provide the County with the most recent update available of any plan of potential improvements to its facilities within the Franchise Area; provided, however, any such plan so submitted shall be for informational purposes only, and shall not obligate Grantee to undertake any specific improvements within the Franchise Area.

Public Disclosure Act: Grantee acknowledges that information submitted to the County is open to public inspection under the Washington Public Disclosure Act RCW 42-17. Grantee may identify information, such as trade secrets, financial records, customer information or technical information, submitted to the County as confidential. Grantee shall prominently mark any information for which it claims confidentiality with the word "Confidential" on each page of such information, prior to submitting such information to the County. The County shall treat any information so marked as confidential until the County receives any request for disclosure of such information. Within five (5) working days of receiving any such request, the County shall provide the Grantee with written notice of the request, including a copy of the request. Grantee shall have five (5) working days within which to provide a written response to the County, before the County will disclose any of the requested confidential information. The County shall retain the final decision to determine whether to release the requested confidential information, in accordance with applicable laws.

11. INCORPORATION INTO A CITY OR TOWN

Whenever any of the County roads or rights-of-way designated in this Franchise by reason of the subsequent incorporation of any city or town, or extension of the limits of any city or town, shall fall within the city or town limits, then this Franchise shall continue in respect to said roads or rights-of-way so included within said limits six (6) months after such incorporation or extension, or at such time as this franchise is assumed by the city or town; but this Franchise shall continue in force and effect as to all County roads or rights-of-way not so included within city or town limits.

12. SIGNS

Whenever it is deemed necessary for the benefit and safety of the traveling public, the County Engineer hereby reserves the right to attach and maintain upon any facility by the Grantee under this document any required traffic control devices, such as traffic signals, luminaries, and overhead suspended signs, when the use of such devices or attachments does not interfere with the use for which the facility was constructed. The County shall bear the cost of attachment and maintenance of such traffic control devices, including the reasonable cost of any extra construction beyond normal; such extra cost to be determined jointly by the County and the Grantee of this document. It is not to be construed that the County is to share in the normal cost of installation, operation, or maintenance of any of the Facilities installed under this document.

13. CONSTRUCTION

Pre-Construction:

Prior to beginning construction, Grantee shall provide the County with an initial construction schedule for work in the Rights of Way. When Grantee's construction in the Right of Way is completed, Grantee shall provide the County with a map showing the location of its installed facilities, as built. Such "as-built" maps shall be in a form acceptable to the County Engineer.

Notification of Work to be Done:

When required by the County at least ten (10) days prior to Grantee's intended construction of facilities, Grantee shall inform all residents in the affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local number which the residents may call for further information. A pre-printed door hanger may be used for this purpose.

At least forty-eight (48) hours prior to entering Right-of Way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of facilities, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by the Grantee. The Grantee shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of underground facilities (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices.

The Grantee shall notify the County Engineer's representative 48 hours prior to the beginning of construction. Grantee shall also supply the name, address, and telephone number of the contractor, if the work is to be done by other than its own forces.



Permits:

Prior to doing any work within the County Right of Way, the Grantee must apply for, and obtain, appropriate permits from the County, and give appropriate notices to any further Franchisees, Licensees, or Permittees of the County, or bureaus of the County, or other units of government owning or maintaining facilities which may be affected by the proposed excavation.

All facilities shall be installed and maintained at such locations as approved by the County through the permit process so as to least interfere with existing and planned utilities and with free passage of traffic and in accordance with the laws of the State of Washington and the Franchises and standards of the County regulating such construction. Grantee shall be responsible to obtain all permits and approvals otherwise required by the County unless expressly provided to the contrary herein. Fees associated with such permits shall be in addition to the herein Administrative Fee.

Responsibility:

All construction, maintenance, installation, relocation, abandonment, and repair of any and all Grantee's Facilities within County Rights-of-way shall, regardless of who performs installation and/or construction, be and remain the responsibility of Grantee. The Grantee, or a contractor on Grantee's behalf, shall apply for and obtain all permits necessary for installation and/or construction of any such Facilities, and for excavation and laying of any of its Facilities within County Rights of Way. Grantee shall pay all applicable fees due for County construction permits.

Post-Construction:

One year after the effective date of this Franchise, and annually thereafter, Grantee shall provide an electronic map to the County Engineer's Office, or its successor, showing the location of Grantee's facilities within the County Right of Way. The electronic Map shall be in an AutoCad or GIS format and shall be tied to either section corners or street intersections. If an electronic map is deemed a hardship by the County Engineer or Grantee, the County will accept a paper copy of a map at a scale of 100 feet per inch.

Poles in Right of Way:

In the event Grantee elects to use above ground poles, only one line of poles shall be erected or maintained hereunder, and each pole, brace, and guy pole shall be placed and maintained along said County roads and highways in such positions and at such points as approved by the County Engineer. Telephone and telegraph wires and guy wires shall, when crossing above the roadway, provide a minimum clearance in accordance with the standards set forth in the applicable "Washington State Construction Code."

The work of constructing, removing, and relocation of any and all poles, wires, or appurtenances, shall be done at the expense of the Grantee. Grantee shall not interfere with traffic upon or along any of said highways, and to the entire satisfaction and under the supervision of the County Engineer, and none of such work shall be undertaken or carried on without first obtaining a permit therefore from said County Engineer.

Restoration of Streets:

Whenever Grantee disturbs the surface of any County Right of Way for any purpose, Grantee shall promptly restore the County Right of Way to at least its prior condition, before the work



commenced to the satisfaction of the County Engineer. When any opening is made by Grantee in a hard surface pavement in any County Right of Way, Grantee shall promptly refill the opening and restore the surface in accordance with county standards and permit requirements. If Grantee excavates the surface of any County Right of Way, Grantee shall be responsible for restoration of the County Right of Way and its surface within the area affected by the excavation. The County may, after providing notice to Grantee, refill and/or repave any opening made by Grantee in the County Right of Way, and the expense thereof shall be paid by Grantee. The County reserves the right, after providing notice to Grantee, to remove and/or repair any work done by Grantee which, in the determination of the County Engineer, is inadequate. The cost thereof, including the cost of inspection and supervision, shall be paid by the Grantee. All excavations made by Grantee in the County Rights of Way shall be properly safeguarded for the prevention of accidents. All of Grantee's work under this Franchise shall be done in strict compliance with all applicable rules and regulations of the County.

PROVIDED, HOWEVER, that no such disturbance of the surface of said County Right of Way shall be done prior to obtaining a permit issued by the County Engineer, which permit shall contain specifications for the restoration of said roads to the same conditions as they were prior to such disturbance; and PROVIDED FURTHER, that said County Engineer will require a bond in a sum sufficient to guarantee to Spokane County that such Right of Way shall be restored to the same condition as it was prior to such disturbance.

During the progress of the work, the Grantee shall not unnecessarily obstruct the passage or use of the Right of Way, and shall provide the County with plans, maps, and information showing the proposed and final location of any Facilities in accord with this Franchise.

Depth of Lines:

The facilities shall be laid down as directed by the County Engineer at a depth of not less than thirty-six (36) inches below the surface of the ground along the County roads, and in such a manner as not to interfere unnecessarily with the construction of sewer and drains, nor with the grading of the County roads. All surface appurtenances to the telephone facilities shall be installed or constructed as approved by the County Engineer. No thin concrete shall be placed above any facility within the County Right of Way, without the express permission of the County Engineer.

Damage and Non-compliance:

Any and all damage, or injury, done or caused to County Right of Way, County Facilities, or any portion thereof in the construction, operation, maintenance or repair of Grantee's facilities shall be immediately repaired and reconstructed to the satisfaction of the County Engineer; and in the event the Grantee shall fail, neglect, or refuse to immediately repair and reconstruct said damage or injury to said County Right of Way or Facilities, the same may be done by the County and the cost thereof plus an administrative fee shall be immediately paid by the Grantee to the County.

If it is determined that Grantee has damaged, injured, or failed to restore the Right of Way in accordance with this Franchise, the County shall provide the Grantee with written notice including a description of actions the County believes necessary to restore the Right of Way. If the Right of Way is not restored in accord with the County's notice within ten (10) days of that notice, the County, or its authorized agent, may restore the Right of Way and Facilities. Unless the damage or injury or failure to restore the Right of Way or Facilities presented an unsafe or dangerous condition, in which case the County shall take immediate action to either make Grantee conform or perform the work or the County or its authorized agent shall do the work at the cost of the Grantee. The Grantee is responsible for all costs and expenses incurred by the County plus administrative fee for the repair and reconstruction in restoring the Right of Way and Facilities in accordance with this Franchise.



The rights granted to the County under this paragraph shall be in addition to those otherwise provided by this Franchise.

Construction Standards:

All facilities shall be laid and installed in conformity with the maps and specifications filed with the County, except in instances in which deviation may be allowed thereafter in writing by the County Engineer pursuant to application by the Grantee. All plans and specifications shall specify the class and type of material and equipment to be used, manner of excavation, construction and installation, backfill, erection of temporary structures, erection of permanent structures, and the traffic control mitigation measures as provided by the Manual on Uniform Traffic Control Devices, or similar standards as may be applicable from time to time. The plans must meet all County and Utility Accommodation Plan Standards. No such construction shall be commenced without the Grantee first securing a permit in writing from the County Engineer and notifying the County Engineer's representative at least 48 hours prior to construction. All such work shall be subject to the approval of and shall pass the inspection of the County by and through its County Engineer or other designated official.

Notwithstanding any provision herein to the contrary, any excavations and installations by the Grantee in any of the public properties within the corporate limits of the County shall be done in accordance with such reasonable rules, regulations, resolutions, and resolutions of general application now enacted or to be enacted by the Board of County Commissioners, relating to excavations in public properties of the County, and authorized by the County Engineer. Said rules, regulations, authorizations, and resolutions shall be for the purposes of fulfilling the County's public trustee role in administering the primary use and purpose of public properties, and not for relieving the Grantee of any duty, obligation, or responsibility for the competent design, construction, maintenance, and operation of its facilities. All of the County's actual reasonable administrative expenses directly related to its administration of public properties under this Franchise, shall be paid by the Grantee to the County upon invoice. Grantee is responsible for the supervision, condition, and quality of the work done, whether it is by itself or by contractors, assigns or agencies.

Construction:

1. Prior to the beginning of construction, a preconstruction conference shall be held at which the County Engineer's Representative and the Grantee and Grantee's engineer, contractor, and inspector shall be present, unless it is determined by the County Engineer or his representative that said preconstruction conference is unnecessary because of the scope of the project.
2. The Grantee agrees to schedule the work herein referred to and perform said work in such a manner as not to delay County projects.
3. All of the work shall be done under the inspection and to the satisfaction of the County Engineer, and the entire expense of said inspection shall be borne by the party or parties to whom this Franchise is granted.
4. A copy of the permit and plans must be on the job site, and protected from the elements, at all times during any of the construction authorized by said permit or Franchise.
5. Work within the Right-of Way shall be restricted to between the hours of 7 a.m. and 5 p.m., and no work shall be allowed on the Right of Way Saturday, Sunday, or holidays, unless authorized by the County Engineer. Any lane closures must be submitted for approval in advance of use. The hours of permitted closure may differ from the above noted hours.



6. Should the Grantee choose to perform the work outlined herein with other than its own forces, a representative of the Grantee shall be present at all times unless otherwise agreed to by the County Engineer's representative. All contact between the County and the Grantee's contractor shall be through the representative of the Grantee. Where the Grantee chooses to perform the work with its own forces, it may elect to appoint one of its own employees engaged in the construction as its representative. Failure to comply with this provision shall be grounds for restricting any further work by the Grantee within the County Right of Way until said requirement is met. The Grantee, at its own expense, shall adequately police and supervise all work on the above described project by itself, its contractor, subcontractor, agent, and others, so as not to endanger or injure any person or property.
7. The Grantee shall install detector tape or cable approximately 12 inches above the underground facility. The tape shall conform to the standards of the American Public Works Association Uniform Color Code.
8. During the construction and/or maintenance of this facility, the Grantee shall comply with the Manual on Uniform Traffic Control Devices for Streets and Highways. If determined necessary by the County Engineer, the Grantee shall submit a signing and traffic control plan to the County Engineer's representative for approval prior to construction or maintenance operations.
9. The shoulders, where disturbed shall be surfaced with crushed surfacing top course six inches minimum compacted depth, or as directed by the County Engineer's representative. The surface of the finished shoulder shall slope down from the edge of pavement at the rate of 0.02 foot per foot unless otherwise directed. The restored shoulder must not have any strips or Franchises less than 2 feet wide. The restored shoulder shall be surfaced with crushed surfacing top course.
10. The Grantee shall notify the County Engineer's representative upon completion of the work under this permit/Franchise so that a final inspection can be made and shall immediately furnish to the County Engineer a revised plan of the final location or relocation of its facilities if the original permit/Franchise plans have been revised during the course of construction.
11. In the event that construction and maintenance of the highway facility within the proximity of the Grantee's installation becomes necessary during the period which the Grantee will occupy a portion of the Right of Way, it is expressly understood that, upon request from the County Engineer's representative, the Grantee will promptly identify and locate by suitable field markings any and all of their underground facilities so that the County or its contractor can be fully apprised at all times of its precise location and at no cost or expense to the County or its contractor.
12. The Grantee agrees to be responsible for any construction deficiencies as a result of the roadway installation.
13. The responsibility of the Grantee for proper performance, safe conduct, and adequate policing and supervision of the project shall not be lessened or otherwise affected by the County's approval of plans, specifications or work, or by the presence at the work site of the County's representatives, or by compliance by the Grantee with any requests or recommendations made by such representatives.

Shared Use Excavation:



If, at any time, or from time to time, either Grantee or the County shall cause excavations to be made within the Franchise area, the party causing such excavation to be made shall afford the other upon receipt of a written request to do so, 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; (II) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (III) either party may deny such a request for reasons of safety.

Final Condition:

After performing any work within the County's Right of Way, Grantee shall leave every road or public highway in as good and safe condition in all respects as they were before the commencement of said work, and whenever Grantee shall discontinue the use of any pole or facility it shall immediately, upon the direction of the County Engineer, remove such unused pole or facility from said roads or abandon said facilities in place at the discretion of the County Engineer.

14. EMERGENCY

The Grantee shall prepare and file with the County an emergency management plan for responding to any spill, break, or other emergency condition. The plan shall designate responsible officials and emergency 24-hour on-call personnel and the procedures to be followed when responding to an emergency. After being notified of an emergency, Grantee shall cooperate with the County and make every effort to respond as fast as practical with action to minimize damage and to protect the health and safety of the public.

In the event the Grantee fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent imminent injury or damages to persons or property, the County may take such actions as it believes are necessary to protect persons or property and the Grantee shall be responsible to reimburse the County for its costs and any penalties.

In the event that emergency repairs are necessary, Grantee shall immediately notify the County of the need for such repairs. If the emergency occurs outside of business hours the Grantee shall contact the County Sheriff, who will contact the appropriate people. Grantee may immediately initiate such emergency repairs, and shall apply for appropriate permits the next business day following discovery of the emergency. Grantee must comply with all appropriate County Standards, the current Utility Accommodation Plan, the current "Standard Specifications for Road, Bridge & Municipal Construction," and the Franchise provisions relating to such excavations and/or construction, including the payment of permit or license fees.

15. SAFETY:

The Grantee, in accordance with applicable federal, state, and local safety rules and regulations, shall, at all times, employ ordinary care in the installation, abandonment, relocation, construction, maintenance, and/or repair, utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.



All of Grantee's facilities in the Right of Way shall be constructed and maintained in a safe and operational condition. Grantee shall follow all safety codes and other applicable regulations in the installation, operation, and maintenance of the facilities.

16. DRAINAGE:

If the work done under this Franchise interferes in any way with the drainage of the County Right of Way, the Grantee shall wholly and at its own expense make such provisions as necessary to eliminate the interference to the drainage to the satisfaction of the County Engineer.

17. PROTECTION OF MONUMENTS

Before any work is performed under this Franchise which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, and all other surveys, the Grantee shall reference all such monuments and markers. The reference points shall be so located that they will not be disturbed during the Grantee's operations under this Franchise. The method of referencing these monuments or other points to be referenced shall be approved by the County Engineer. All concrete encased recorded monuments which have been disturbed or displaced by such work shall be restored pursuant to Federal standards and specifications. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as the conditions permit, and as directed by the County Engineer. The cost of monuments or other markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments and other marker ties which have been re-established or disturbed shall be borne by the Grantee.

18. TREES

Upon approval of the County and in accordance with County Franchises, the Grantee shall have the authority to trim trees and other plant life upon and overhanging the Right of Way to prevent interference with the Grantee's facilities. The Grantee shall provide at least seven (7) days written notice to the owner of the property on which any tree or plant life Grantee desires to trim is located. Said notice may be in the form of a doorknob hanger and shall contain a contact name, address, and telephone number where the property owner can obtain information from the Grantee regarding its tree trimming plans and express concerns regarding the trimming of the trees or plant life on their property. The Grantee shall make a good faith effort to conform with property owners' requests regarding trimming trees or plant life on their property. The Grantee shall be responsible for debris removal from any trimming activities. If such debris is not removed within twenty-four (24) hours, the County may, at its sole discretion, remove such debris and charge the Grantee for the cost of removal and disposal.

19. HAZARDOUS SUBSTANCES

Grantee shall comply with all applicable state and federal laws, statutes, regulations and orders concerning Hazardous Substances relating to Grantee's Facilities in the Right of Way.

Grantee shall maintain and inspect its Facilities located in the Rights of Way. Upon reasonable notice to Grantee and in the presence of an authorized representative of Grantee, the County may inspect Grantee's facilities in the Rights of Way to determine if any release of Hazardous Substances has occurred, or may occur, from or related to Grantee's Facilities. This inspection is not to remove the burden of inspection from the Grantee on a periodic basis of its facilities for Hazardous substances, nor is to remove the responsibility of the Hazardous substance from the Grantee.

In removing or modifying Grantee's facilities as provided in this Franchise, Grantee shall also remove all residue of Hazardous Substances released by Grantee in compliance with applicable environmental clean-up standards related thereto.

Grantee agrees to forever indemnify the County against any claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the County arising out of the release or threat of release of Hazardous Substances caused by Grantee's ownership or operation of its Facilities within the County Right of Way.

20. MAINTENANCE

Grantee shall provide and put in use all Facilities necessary to control and carry Grantee's products so as to prevent injury to the County's property or property belonging to any Person within the County. Grantee, solely at its own expense, shall repair, renew, change, and improve said Facilities from time to time as may be necessary to accomplish this purpose. Grantee shall not construct its Facilities in a manner that requires any customer to install cables, ducts, conduits, or other facilities, in, under, or over the County's Rights of Way.

21. LOCATES - One-Call System

Pursuant to RCW 19.122, Grantee is responsible for becoming familiar with, and understanding, the provisions of Washington's One Call statutes. Grantee shall comply with the terms and conditions set forth in the One-Call statutes.

22. FEES

For and in consideration of the rights and privileges set forth herein, the Grantee agrees that Spokane County, to the extent authorized by law, may during the term of this Franchise, by Franchise or resolution, impose fees for the rights and privileges granted herein. Such fees shall be competitively neutral and non-discriminatory and shall be based upon reasonable costs for the administration of such Franchise as well as reasonable costs for the use of County roads or rights-of-way. The Board of County Commissioners of Spokane County agrees to provide not less than thirty (30) days written notice prior to the imposition of such fees in order to negotiate the actual fee to be assessed and payments scheduled. Nothing in this section or agreement shall be construed to



prohibit the County or its successor from imposing any license fee, tax or assessment which it is specifically authorized by law to impose.

Recovery of Costs. Nothing herein shall preclude the County from recovering any administrative costs incurred by the County in the approval of permits or in the inspection or examination of any future work by Grantee in the County Right of Way as described in accordance with applicable Franchises or laws. Grantee shall reimburse any actual costs reasonably incurred by the County in responding to emergencies involving Grantee's facilities.

23. BOND

Faithful Performance Bond:

- A. Upon the effective date of the Franchise, the Grantee shall furnish proof of the posting of a faithful performance bond running to the County, with a good corporate surety authorized to do a surety business in the State of Washington, in the penal sum of \$25,000, conditioned that the Grantee shall well and truly observe, fulfill, and perform each term and condition of the Franchise. Grantee shall pay all premiums charged for the bond, and shall keep the bond in full force and effect at all times throughout the term of the Franchise, including, if necessary, the time required for removal of all of Grantee's Facilities installed in the County's Rights of Way. The bond shall contain a provision that it shall not be terminated or otherwise allowed to expire without a prior 30 day written notice first being given to the County Engineer. The bond shall be reviewed and approved as to form by the County Attorney. This performance bond shall be in accordance with all the provisions of the current "Standard Specifications for Road, Bridge, and Municipal Construction."
- B. During the term of the Franchise, Grantee shall file with the County Engineer a duplicate copy of the bond along with written evidence of payment of the required premiums.

Construction Bond: During all times when Grantee is performing any construction work in or under the Streets requiring a street opening permit, Grantee shall post a faithful performance bond or irrevocable letter of credit, as is required for street opening permits, running to the County, with good a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the County Engineer as sufficient to ensure performance of Grantee's obligations under this Franchise. The bond shall be conditioned so that Grantee shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise, and to erect or replace any defective work or materials discovered in the replacement of the County's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the County. The bond or letter of credit shall be conditioned that the Grantee shall well and truly observe, fulfill and perform each term and condition under the Franchises for Construction and Relocation. Grantee shall pay all premiums or other costs associated with maintaining the bond or letter of credit, and shall keep the same in full force and effect at all times during the construction work. The bond or letter of credit shall provide that it may be terminated upon final approval of Grantee's construction work in or under the streets by the County Engineer which shall not be unreasonably withheld or delayed. Upon such approval, the County agrees to sign all documents necessary to release the bond in accordance with the terms of this Franchise. During the duration of the construction work, Grantee shall file with the County Engineer a copy of the bond or letter of credit, along with written evidence of the required premiums. The bond or letter of credit shall be subject to the reasonable approval of the County Engineer as to its adequacy under the requirements of this Franchise.



Recourse Against Bonds and Other Security. So long as the bond is in place, it may be utilized by the County for the following purposes, including, but not limited to, reimbursement of the County by reason of Grantee's failure to pay the County for actual costs and expenses incurred by the County to make emergency or safety or to correct Franchise violations not corrected by the Grantee after notice, and monetary remedies or damages assessed against Grantee due to default or violations of the requirements of County Franchise Agreements.

In the event Grantee has been declared to be in default by the County and if Grantee fails, within thirty (30) days of mailing of the County's default notice, to pay the County any penalties, or monetary amounts, or fails to perform any of the conditions of this Franchise, the County may thereafter obtain from the performance bond an amount sufficient to compensate the County for damages. Upon such withdrawal from the bond, the County shall notify Grantee in writing, by Certified Mail, of the amount withdrawn and date thereof.

Thirty (30) days after the County's mailing of notice of the bond forfeiture or withdrawal authorized herein, Grantee shall deposit such further bond, cash, or other security, as the County may require, which is sufficient to meet the requirements of this Franchise.

The rights reserved to the County with respect to any bond are in addition to all other rights of the County whether reserved by this Franchise or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the County may have.

24. NON-USE

In the event the rights and privileges hereby granted are not diligently exercised in the public interest, and/or in the event the Grantee shall fail for a period of one (1) year to operate its facilities, except in case of strikes, lockouts, or the destruction of the same by fire or the elements, or for any reasons beyond the control of the Grantee, this Franchise shall terminate and all of the rights and privileges granted hereunder shall cease and desist, without any further action being necessary on the part of the County; provided, that the Grantee shall have the right temporarily to discontinue use of its facilities or any part thereof for the purpose of making repairs or extensions, and shall not be liable to a forfeiture thereof if such repairs and extensions are made with reasonable diligence. When the Grantee may reasonably do so, it shall give notice of the discontinuance of service either in writing, properly addressed to the consumer, or by notice in the official newspaper of the County, or by telephone or other communication approved by the County Engineer.

25. ABANDONMENT OF FACILITIES

In the event the County declares that the Grantee's facilities must be abandoned, or if the Grantee abandons its facilities in place, those facilities abandoned must be treated at the expense of the Grantee, so as to render them completely safe and purged of hazardous materials. The Grantee shall be responsible for undertaking any environmental review required by the abandonment of such facilities, and for the payment of any costs of conducting such environmental review. The Grantee shall remove said abandoned facilities when either the Grantee or the County opens that section of Right of Way for maintenance, repair, installation, or replacement of facilities. Said removal shall be at the County's convenience and shall be done in a manner so as not to interfere with County projects.



26. CONSENT TO OWNERSHIP CHANGE

County's Written Consent Required for Assignment, Transfer, Merger, Lease or Mortgage. This Franchise shall not be sold, transferred, leased, mortgaged, assigned or disposed of in whole or in part either by sale, voluntary or involuntary merger, consolidation or otherwise, without the prior written consent of the County after appropriate public process. The County's granting of consent in one instance shall not render unnecessary any subsequent consent in any other instance.

Within ten (10) days after execution and delivery of any instrument so consented to by the County, Grantee shall file with the Auditor an executed counterpart or certified copy thereof. No sale, lease, mortgage, assignment, transfer or merger may occur until the successor, assignee or lessee has complied with the requirements of this Franchise, which requires a performance bond.

For the purpose of determining whether the County will consent to any assignment, transfer, merger, lease or mortgage, the County may inquire into the qualifications of the prospective party. The Grantee shall assist the County in any such inquiry. The County may condition any sale, assignment, transfer, merger, lease or mortgage upon such conditions as it deems appropriate.

All provisions, conditions, regulations and requirements herein contained shall be binding upon the successors and assigns of the Grantee, and all privileges as well as all obligations and liabilities of the Grantee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned.

The County's approval shall not be unreasonably withheld or delayed. Any costs associated with the County's review of any transfer proposed by the Grantee shall be reimbursed to the County by the new prospective Franchisee, if the County approves the transfer, or by the Grantee if said transfer is not approved by the County.

An assignment of this Franchise shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

Except as otherwise provided herein, the Grantee shall promptly notify the County prior to any proposed change in, or transfer of, or acquisition by any other party of control of the Grantee's company. Every change, transfer, or acquisition of control of the Grantee's company shall cause a review of the proposed transfer. In the event that the County denies its consent and such change, transfer or acquisition of control has been effected, the County may cancel the Franchise. Approval shall not be required for mortgaging purposes or if said transfer or assignment is from the Grantee to another person or entity controlling, controlled by, or otherwise under common control with the Grantee. Grantee shall notify the County of any transfers to such entities within ten (10) days of such transfers. Nothing contained herein shall be deemed to prohibit the mortgage, pledge, or assignment of tangible assets of Grantee's Facilities for the purpose of financing the acquisition of equipment for or the construction and operation of Grantee's Facilities without the County's consent, but any such mortgage, pledge or assignment shall be subject to the County's other rights contained in this Franchise.



27. NON-COMPLIANCE WITH FRANCHISE TERMS

Remedies to Enforce Compliance. In addition to any other remedy provided herein, the County reserves, and has the right to pursue any remedy to compel or force the Grantee, and/or its successors and assigns, to comply with the terms hereof. The pursuit of any right or remedy by the County shall not prevent the County from thereafter declaring a forfeiture for any reason pursuant to this Franchise.

- (a) If the Grantee shall fail to comply with any material provision of this Franchise, the County may compel compliance by serving upon the Grantee a written notice of the violation and the direction to comply within thirty (30) days from the date the order is received by the Grantee. If the Grantee is not in compliance with this Franchise after expiration of said thirty (30) day period, the County may declare an immediate forfeiture and termination of this Franchise, provided however, that if any failure to comply with this Franchise by the Grantee cannot be corrected with due diligence within said thirty (30) day period then the County shall extend the time for compliance for such time as may be reasonably necessary for the Grantee to comply, so long as the Grantee commences promptly and diligently to effect such compliance.
- (b) The notice requirements of paragraph (a) of this section shall not apply if the noncompliance of the Grantee results, in the opinion of the County, in any emergency or life-threatening condition. In such case, the County may set a period of less than thirty (30) days for the Grantee to comply and may set such conditions and specifications for compliance as the County may deem reasonable under the circumstances. In the event that the Grantee fails to comply with any time set for compliance or with any condition set for compliance under this paragraph, the County may declare an immediate forfeiture and termination of this Franchise and may take whatever steps the County deems necessary to correct the emergency condition to restore safety. In such event, the Grantee shall be liable to the County for all costs and expenses incurred in taking such corrective action.
- (c) Nothing herein shall limit the remedies available to the County in the event of noncompliance by the Grantee. The County may sue for specific performance and/or damages in addition to the remedies provided herein.
- (d) In the event this Franchise is forfeited or terminated for any reason stated herein the Grantee shall remove promptly all of its equipment and facilities and return said property to its original state as if the Grantee had never had its equipment or facilities on or within said property, at the Grantee's sole cost and expense, provided that, as an alternative to removal the County may, at the County's sole option, allow the Grantee to abandon its equipment and facilities in place.

28. DISPUTE RESOLUTION

In the event of the occurrence of any dispute between the County and Grantee arising by reason of this Resolution, or from any obligation of either party under this Resolution, that dispute shall be resolved under the terms of this Franchise which shall be the sole remedy for resolution of any such dispute.

Forfeiture:



(A) Notwithstanding anything in this franchise to the contrary, the County reserves the right to declare a forfeiture of the Franchise, and all of Grantee's rights arising hereunder, in the event that:

1. The Grantee fails to timely cure any violation of any material provision of the Franchise;
2. The Grantee is found by a court of competent jurisdiction to have practiced any fraud or deceit upon the County; or
3. There is a final determination that Grantee has failed, refused, neglected or is otherwise unable to obtain and/or maintain any permit required by any federal or state regulatory body regarding Grantee's operation of its Telecommunications System within the County.

(B) For purposes of this Section, the following are material provisions of this Franchise, allowing the County, without limitation, to exercise its rights under this Section or as set forth elsewhere in this Franchise:

1. The invalidation, failure to pay, or any suspension of Grantee's payments of Franchise fees to the County for use of the Rights of Way under this Franchise.
2. Any failure by Grantee to maintain the liability insurance required under this Franchise.
3. Any failure by Grantee to maintain the performance bond required under this Franchise.

Additional Remedies:

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

- (A) Impose a financial penalty
- (B) Suspend the Grantee's Franchise rights, until the Grantee corrects or otherwise remedies the violation.
- (C) In determining which remedy or remedies are appropriate, the County shall consider the nature of the violation, the person or persons burdened by the violation, the nature of the remedy required in order to prevent further such violations, and any other matters the County deems appropriate.

Notice and Opportunity to Cure:

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

Choice of Forum:



Any litigation between the County and the Grantee arising under or regarding this Franchise shall occur, if in the state courts, in the Spokane County Court having jurisdiction thereof, and if in the federal courts, in the United States District Court for the District of Washington.

29. NATURAL DISASTER

- A. For purposes of this subsection, the term "Force Majeure" shall mean acts of God, landslides, earthquakes, lightning, fires, hurricanes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, acts of terrorism or of the public enemy, partial or entire failure of utilities, strikes, explosions, lockouts or other industrial disturbances, insurrections, public riots or other similar events which are not reasonably within the control of the parties hereto.
- B. If the Grantee is wholly or partially unable to carry out its obligations under this Franchise as a result of Force Majeure, the Grantee shall give the County prompt notice of such Force Majeure, describing the same in reasonable detail, and Grantee's obligations under this Franchise, other than for the payment of monies due, shall not be deemed in violation or default for the duration of the Force Majeure. Grantee agrees to use its best efforts to remedy as soon as possible, under the circumstances, Grantee's inability, by reason of Force Majeure, to carry out its responsibility and duties under this Franchise.

30. NON-ENFORCEMENT BY THE COUNTY

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

31. VIOLATE TERMS

If the Grantee shall willfully violate or fail to comply with any of the provisions of this Franchise through willful and unreasonable neglect or willful and unreasonable failure to heed or comply with any notice given the Grantee under the provisions of this grant, then the said Grantee shall forfeit all rights conferred hereunder and this Franchise may be revoked or annulled by the Board of County Commissioners provided, however, that the Board of County Commissioners shall give thirty (30) days written notice of its intention to revoke or annul the Franchise during which period the Grantee shall have the opportunity to remedy the situation.

32. ENVIRONMENTAL OBLIGATIONS



Environmental Obligations of Grantee: Grantee shall comply with all environmental protection laws, rules, recommendations, and regulations of the United States and the State of Washington, and their various subdivisions and agencies as they presently exist or may hereafter be enacted, promulgated, or amended, and shall indemnify and hold the County harmless from any and all damages arising, or which may arise, or be caused by, or result from the failure of Grantee fully to comply with any such laws, rules, recommendations, or regulations, whether or not Grantee's acts or activities were intentional or unintentional. Grantee shall further indemnify the County against all losses, costs, and expenses (including legal expenses) which the County may incur as a result of the requirement of any government or governmental subdivision or agency to clean and/or remove any pollution caused or permitted by Grantee, whether said requirement is during the term of the Franchise or subsequent to its termination.

33. INDEMNIFICATION

Grantee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the County, its elected officials, employees, agents, and volunteers from any and all claims, cost and expense, judgments, cause of action, damages, loss, awards or liability to any person, including claims by Grantee's own employees to which Grantee might otherwise be immune under Title 51 RCW, arising from injury, sickness, or death of any person or damage to property of which the negligent acts or omissions of Grantee, its agents, servants, officers or employees in performing activities authorized by this Franchise. Grantee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the County, its elected officials, employees, agents, and volunteers from any and all claims, costs, judgments, awards or liability to any persons (including claims by Grantee's own employees, including those claims to which Grantee might otherwise have immunity under Title 51 RCW) arising against the County solely by virtue of the County's ownership or control of the rights of way or other public properties, by virtue of Grantee's exercise of the rights granted herein, or by virtue of the County's permitting Grantee's use of the Right of Way or other public property based upon the inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on the County's property or property over which the County has control, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise. This covenant of indemnification shall include, but not be limited by this reference, claims against the County arising as a result of the negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any Right of Way or other public place in performance of work or services permitted under this Franchise.

If final judgment is rendered against the County, its elected officials, employees, agents, and volunteers, or any of them, Grantee, its successors or assigns, shall fully satisfy said judgment within ninety (90) days.

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

Inspection or acceptance by the County of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of



indemnification. Said indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event Grantee refuses to undertake the defense of any suit or any claim, after the County's request for defense and indemnification has been made pursuant to the indemnification clauses contained herein, and Grantee's refusal is subsequently determined by a court having jurisdiction, or such other tribunal that the parties shall agree to decide the matter, to have been a wrongful refusal on the part of Grantee, then Grantee shall pay all of the County's costs and expenses for defense of the action, including reasonable attorneys' fees of recovery under this indemnification clause as well as any judgment against the County.

Should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Grantee or the County, its officers, employees and agents, Grantee's liability hereunder shall be only to the extent of Grantee's negligence. It is further specifically and expressly understood that the indemnification provided in Section 16 constitutes Grantee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

34. INSURANCE

Grantee shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from, or in connection with, any act or omission of Grantee, its agents, representatives, employees or subcontractors. The cost of such insurance shall be paid by Grantee. The County, its elected officials, employees, agents, and volunteers shall be named as additional insureds on such policy. The insurance requirements of this Section shall be in lieu of other insurance requirements requested by the County for the initial term of this Franchise.

(A) Minimum Limits of Insurance. Grantee shall maintain limits no less than:

- (1) Comprehensive General Liability: \$1,000,000 combined single limit per occurrence for bodily injury and property damage, and for those policies where aggregates are applicable, a \$5,000,000 aggregate limit.
- (2) Automobile Liability: \$1,000,000 combined single limit per accident for bodily injury and property damage.
- (3) Worker's Compensation coverage as required by the Worker's Compensation Act of the State of Washington.

Self-Insured: Any deductibles or self-insured retention must be declared and approved by the County. Payment of deductible or self-insured retention shall be the sole responsibility of Grantee. Grantee's self-insurance shall provide at least the same amount and scope of coverage for the Grantee and the County, its officers, agents and employees, as otherwise required under this Section. The adequacy of such self-insurance shall be subject to the County Attorney's review and approval. Upon Grantee's election to provide self-insurance coverage under this subsection, any failure by the Grantee to maintain adequate self-insurance shall be cause for termination of this Franchise.

The policies are to contain, or be endorsed to contain, the following provisions:



- (1) All Coverages: Each insurance required by this clause shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by Certified Mail, return receipt requested, has been given to the County.
- (2) Acceptability of Insurers: Insurance is to be placed with insurers with a Bests rating of no less than A-XIII, or with an insurer acceptable to the County.
- (3) Verification of Coverage: Grantee shall furnish the County with certificates of insurance affecting coverage required by this clause. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates are to be received and approved by the County for the term of the Franchise. The County reserves the right to inspect complete certified copies of all required insurance policies at any time.
- (4) Subcontractors: All subcontractors used by Grantee shall be insured, licensed, and bonded in the State of Washington.

Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Grantee, its agents or employees. Grantee shall provide an insurance certificate, together with an endorsement naming the County, its elected officials, employees, agents, and volunteers as additional insureds, to the County for its inspection prior to the commencement of any work or installation of any facilities pursuant to this Franchise, and such insurance shall evidence:

Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and

Commercial General Liability insurance policy, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: the operations of the Grantee, the Grantee's protective liability, blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

The insurance obtained by Grantee shall name the County, its elected officials, employees, agents, and volunteers as insureds with regard to the activities these persons perform by or on behalf of Grantee. The coverage shall contain no special limitations on the scope of protection afforded to the County, its officers, officials, employees or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Grantee's insurance shall be primary insurance for the County, its elected officials, employees, agents, and volunteers. Any insurance maintained by the County, its elected officials, employees, agents, and volunteers shall be in excess of Grantee's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the County.

The adequacy of the insurance shall be subject to the reasonable approval of the County Attorney.



Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the County, its elected officials, employees, agents, and volunteers.

For any renewal term, or portion thereof, the County reserves the right to modify the insurance requirements to conform to general insurance requirements established by the County's Risk Manager.

The insurance shall be without prejudice to coverage otherwise existing and shall name as additional insureds the County and its officers, agents, and employees. Notwithstanding the naming of additional insureds, the insurance shall protect each insured in the same manner as though a separate policy had been issued to each, but nothing herein shall operate to increase the insurer's liability as set forth elsewhere in the policy beyond the amount or amounts for which the insurer would have been liable if only one person or interest had been named as insured. The coverage must apply as to claims between insureds on the policy. The insurance shall provide that the insurance shall not be canceled or materially altered without thirty (30) days written notice first being given to the County Auditor. If the insurance is canceled or materially altered within the term of this Franchise, Grantee shall provide a replacement policy with the same terms. Grantee agrees to maintain continuous uninterrupted coverage, in the terms and amounts required, for the duration of this Franchise.

The Grantee's insurance policies shall contain a "cross liability" endorsement substantially as follows:

The inclusion of more than one Insured under this policy shall not affect the rights of any Insured as respects any claim, suit, or judgment made or brought by or for any other insured or by or for any employee of any other Insured. This policy shall protect each Insured in the same manner as though a separate policy has been issued to each, except that nothing herein shall operate to increase the company's liability beyond that amount or amounts for which the company would have been liable had only one Insured been named.

The Grantee's insurance is primary over any insurance that may be carried by Spokane County. Grantee agrees to provide proof of insurance to Spokane County for each calendar year during the term of this Franchise.

35. RENEGOTIATION

The County and Grantee hereby reserve the right to alter, amend or modify the terms and conditions of the Franchise upon written agreement of both parties to such amendment.

36. SEVERABILITY

If any section, sentence, clause or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Franchise. In the event that any of the provisions of this Franchise are held to be invalid by a court of competent jurisdiction, the County reserves the right to reconsider the grant of this Franchise and may amend, repeal, add, replace or modify any other provision of this Franchise, or may terminate this Franchise.



37. NOTICE 98 0606

Any notice provided for under this Franchise shall be sufficient if it is in writing and delivered personally to the following addressee or delivered by certified mail with a return receipt requested.

Spokane County Public Works
Division of Engineering and Roads
1026 West Broadway Avenue
Spokane, Washington 99260-0170

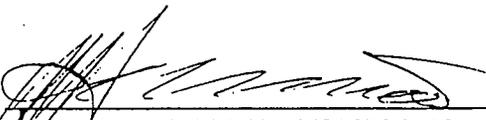
38. ACCEPTANCE

As a condition precedent to this Franchise taking effect, a written letter of full acceptance must be filed with the Clerk of the Board of County Commissioners of Spokane County and recorded with the County Auditor accepting all terms and conditions as set forth in this Franchise within thirty days from July 21st, 1998. Such acceptance shall be unqualified and shall be construed to be an acceptance of all the terms, conditions and restrictions contained in this Franchise. The Grantee's written acceptance shall include the identification of an official liaison that will act as the County's contact for all issues regarding this Franchise. The Grantee shall notify the County of any change in the identity of its liaison. A failure on the part of Grantee to file such written acceptance within such time shall be deemed an abandonment and rejection of the rights and privileges conferred hereby and this Franchise Agreement shall be null and void.

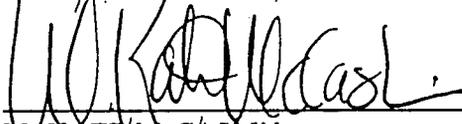
DATED at SPOKANE, WASHINGTON, this 21st day of July, 1998.



BOARD OF COUNTY COMMISSIONERS
OF SPOKANE COUNTY, WASHINGTON



PHILLIP D. HARRIS, CHAIRMAN

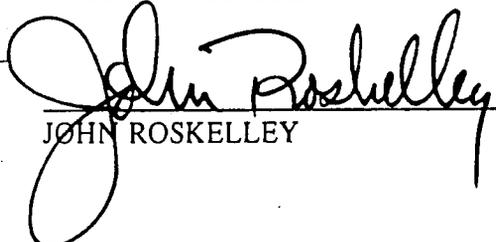


M. KATE McCASLIN

ATTEST: WILLIAM E. DONAHUE
CLERK OF THE BOARD

BY: 

DANIELA ERICKSON, DEPUTY

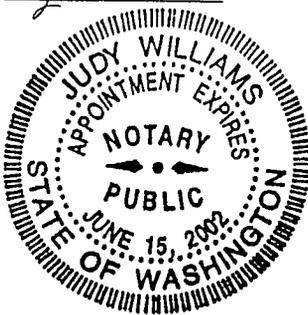


JOHN ROSKELLEY



The grantee, NEXLINK, a corporation, hereinbefore referred to, for itself, and for its successors and assigns, does accept all of the terms and conditions of the foregoing franchise.

IN WITNESS WHEREOF, it has caused these presents to be signed by Thomas Stewart this day of July 30, 1998. Subscribed and sworn be before me this 30th day of July, 1998.



Judy Williams
Notary Public in and for the State of Washington

111 East Broadway
Suite 1000
Salt Lake City, UT 84111
USA

Received By
City of Liberty Lake

JUN 17 2002

City Clerk/Treasurer
Initials 

XO Communications, Inc.



Tel 801.983.1600
Fax 801.983.1520

June 10, 2002

City of Liberty Lake
PO Box 370
Liberty Lake, WA 99109

Re: Franchise Bond between XO Washington, Inc. and Spokane County with a Dual Obligee Rider for the City of Liberty Lake, WA.

To Whom It May Concern:

XO Communications, Inc. is changing insurance companies, enclosed please find a new Franchise Bond from Greenwich Insurance Company that will supercede and replace Fireman's Fund Bond number 11119543244.

Enclosed please find a copy of the above mentioned bond with the original going to the offices of Spokane County.

If you have any questions regarding this bond transfer, please do not hesitate to contact me at 801.983.1504.

Sincerely,



Rex M. Knowles
VP, Regulatory

Enclosures

cnm

Supercedes & Replaces Fireman's Fund Bond #11119543244

LICENSE OR PERMIT BOND

Bond No. 45031634

KNOW ALL BY THESE PRESENTS, That we, XO Washington, LLC, as Principal and Greenwich Insurance Company, a California corporation, as Surety, are held and firmly bound unto Spokane County, N 811 Jefferson, Spokane, WA 99260, as Obligee, in the sum of Twenty Five Thousand and no/100 Dollars (\$25,000.00) for which sum, well and truly to be paid, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 5th day of April, 2002.

THE CONDITION OF THIS OBLIGATION IS SUCH, That WHEREAS, the Principal has been or is about to be granted a license or permit to do business as franchise agreement by the Obligee.

NOW, THEREFORE, If the Principal well and truly comply with applicable local ordinances, and conduct business in conformity therewith, then this obligation to be void; otherwise to remain in full force and effect.

PROVIDED HOWEVER:

1. This bond shall continue in force:
 - Until _____, or until the date of expiration of any Continuation Certificate executed by the Surety.
 - OR
 - Until cancelled as herein provided.
2. This bond may be cancelled by the Surety by the sending of notice in writing to the Obligee, stating when, not less than thirty days thereafter, liability hereunder shall terminate as to subsequent acts or omissions of the Principal.

XO Washington, LLC

By: [Signature]

[Signature]
Witness

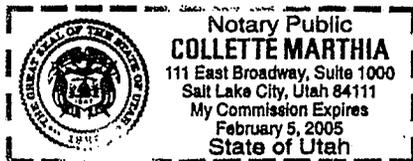
VP, Regulatory
Title

All correspondence and claims in regard to this bond should be sent to:

Greenwich Insurance Company
One Exchange Place-Suite 501
Jersey City, NJ 07302

Greenwich Insurance Company

By: [Signature]
Diane S. Loughry, Attorney-in-Fact



DUAL OBLIGEE RIDER

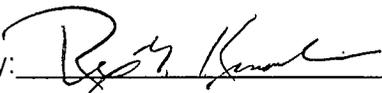
To be attached to and form a part of contract bond number 45031634 issued by the Greenwich Insurance Company on behalf of XO Washington, LLC in the amount of Twenty Five Thousand and no/100 Dollars (\$25,000.00) and dated April 5, 2002 in favor of Spokane County, WA.

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

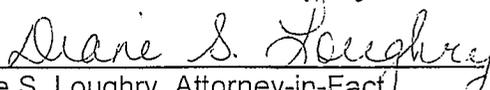
1. The City of Liberty Lake, WA is hereby added to said bond as an additional obligee.
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligees, or either of them shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligees is limited to the penal sum above stated and Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against any other party liable to the payee on the discharged obligation.

Signed, Sealed and Dated this 5th day of April, 2002.

XO Washington, LLC

By: 

Greenwich Insurance Company

By: 
Diane S. Loughry, Attorney-in-Fact

GREENWICH INSURANCE COMPANY

No. G-201-152

POWER OF ATTORNEY

Know all Men by these Presents: that GREENWICH INSURANCE COMPANY, a California corporation (the "Corporation"), with offices at 70 Seaview Avenue, Stamford, Connecticut, 06902, has made, constituted and appointed, and by these presents, does make, constitute and appoint

Joseph G. Delaney, B. Patricia Blair, Diane S. Loughry, Ronal D. Tucker

Columbia

Maryland

its true and lawful Attorney(s)-in-Fact, at ... in the State of ... and each of them to have full power to act without the other or others, to make, execute and deliver on its behalf, as surety or co-surety; bonds and undertakings given for any and all purposes, also to execute and deliver on its behalf as aforesaid renewals, extensions, agreements, waivers, consents or stipulations relating to such bonds or undertakings provided, however, that no single bond or undertaking so made, executed and delivered shall obligate the Corporation for any portion of the penal sum thereof in excess of the sum of

Five Million

5,000,000

Dollars (\$

Such bonds and undertakings for said purposes, when duly executed by said attorney(s)-in-fact, shall be binding upon the Corporation as fully and to the same extent as if signed by the President of the Corporation under its corporate seal attested by its Corporate Secretary.

This appointment is made under and by authority of certain resolutions adopted by the Board of Directors of the Corporation at a meeting duly called and held on the 5th day of April, 2000, a copy of which appears below under the heading entitled "Certificate."

This Power of Attorney is signed and sealed by facsimile under and by authority of the following resolution adopted by the Board of Directors of the Corporation by Unanimous Written Consent on September 18, 1997 (and said resolution has not since been revoked, amended or repealed:

RESOLVED, that in granting powers of attorney pursuant to certain resolutions adopted by the Board of Directors of the Corporation at a meeting duly called and held on March 11, 1996, the signature of such directors and officers and the seal of the Corporation may be affixed to any such power of attorney or any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signature or seal shall be valid and binding upon the Corporation in the future with respect to any bond or undertaking to which it is attached.

This Power of Attorney shall expire and all authority hereunder shall terminate without notice at midnight (Standard Time where said attorney(s)-in-fact is authorized to act),

June 30

20

11th May

IN WITNESS WHEREOF, the Corporation has caused these presents to be duly signed and its corporate seal to be hereunto affixed and attested this ... day of ... at Stamford, Connecticut.

(Corporate Seal)

GREENWICH INSURANCE COMPANY

ATTEST: Suraya K. Kieffer, Assistant Vice President

By: Mary A. Roddy, Vice President

STATE OF CONNECTICUT ss: Greenwich

May 01

Mary A. Roddy, Vice President

On the 11th day of May, 2001 before me personally came

Mary A. Roddy, Vice President

the corporation described in and which executed the above instrument; that (s)he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that (s)he signed his/her name thereto by like order.

(Notarial Seal)

Greenwich

CERTIFICATE

Suzanne M. Johnson My Commission Expires 12/31/04

Notary Public

STATE OF CONNECTICUT ss: Karen M. Manente

Assistant Secretary

I, the ... of GREENWICH INSURANCE COMPANY, a California corporation (the "Corporation"), hereby certify:

1. That the original power of attorney of which the foregoing is a copy was duly executed on behalf of the Corporation and has not since been revoked, amended or modified; that the undersigned has compared the foregoing copy thereof with the original power of attorney, and that the same is a true and correct copy of the original power of attorney and of the whole thereof;

2. The following are resolutions which were adopted by the Board of Directors of the Corporation by unanimous written consent on April 5, 2000 and said resolutions have not since been revoked, amended or modified:

"RESOLVED, that each of the individuals named below is authorized to make, execute, seal and deliver for and on behalf of the Corporation any and all bonds, undertakings or obligations in surety or co-surety with others:

Laura A. Shanahan

Sheila M. Kelly

Mary A. Roddy

Suraya K. Kieffer

Lynn M. Petilli

RESOLVED, FURTHER, that each of the individuals named above is authorized to appoint attorneys-in-fact for the purpose of making, executing, sealing and delivering bonds, undertakings or obligations in surety or co-surety for and on behalf of the Corporation."

3. The undersigned further certifies that the above resolutions are true and correct copies of the resolutions as so recorded and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal this 5th day of April, 2002.

(Corporate Seal)

Karen M. Manente Karen M. Manente

111 East Broadway
Suite 1000
Salt Lake City, UT 84111
USA



XO Communications, Inc.

Tel 801.983.1600
Fax 801.983.1520

Received By
City of Liberty Lake

OCT 18 2001

City Clerk/Treasurer
Initials 

October 16, 2001

City of Liberty Lake
PO Box 370
Liberty Lake, WA 99019

Re: Franchise

Dear Mr. Griffin,

Enclosed is a Dual Obligee Rider for the City of Liberty Lake including the City on XO Washington, Inc.'s bond with Spokane County.

If you have any questions, please feel free to contact us at 801.983.0013.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rex M. Knowles', written over a horizontal line.

Rex M. Knowles
VP, Regulatory

Enclosure

cnm

DUAL OBLIGEE RIDER

To be attached to and form a part of contract bond number 11119543244 issued by the Fireman's Fund Insurance Company on behalf of XO Washington, LLC in the amount of Twenty-five Thousand and No/100 Dollars (\$ 25,000.00) and dated September 30, 2001 in favor of Spokane County, WA.

In consideration of the sum of One Dollar (\$1.00), and other good and valuable consideration receipt of which is hereby acknowledged, the Undersigned hereby agree as follows:

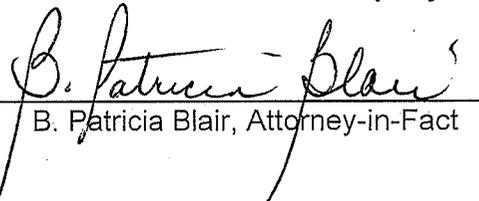
1. The City of Liberty Lake, WA is hereby added to said bond as an additional obligee.
2. The Surety shall not be liable under this bond to the Obligee, or either of them unless the said Obligees, or either of them shall make payments to the Principal strictly in accordance with the terms of the said contract as to payments, and shall perform all other obligations to be performed under said contract at the time and in the manner therein set forth.
3. No suit, action or proceeding by reason of any default whatever shall be brought on this bond after two (2) years from the day on which the final payment under said construction contract falls due.
4. Aggregate liability of Surety hereunder to Obligees is limited to the penal sum above stated and Surety, upon making payment hereunder, shall be subrogated to, and shall be entitled to an assignment of all rights of the payee with respect to the particular obligation discharged by the payment, either against principal or against any other party liable to the payee on the discharged obligation.

Signed, Sealed and Dated this 11th day of October, 2001.

XO Washington, LLC

By: 

Fireman's Fund Insurance Company

By: 
B. Patricia Blair, Attorney-in-Fact

FIREMAN'S FUND INSURANCE COMPANY

NATIONAL SURETY CORPORATION
THE AMERICAN INSURANCE COMPANY

ASSOCIATED INDEMNITY CORPORATION
AMERICAN AUTOMOBILE INSURANCE COMPANY

GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That FIREMAN'S FUND INSURANCE COMPANY, a California corporation, NATIONAL SURETY CORPORATION, an Illinois corporation, THE AMERICAN INSURANCE COMPANY, a New Jersey corporation redomesticated in Nebraska, ASSOCIATED INDEMNITY CORPORATION, a California corporation, and AMERICAN AUTOMOBILE INSURANCE COMPANY, a Missouri corporation, (herein collectively called "the Companies") does each hereby appoint JOSEPH G. DELANEY, B. PATRICIA BLAIR, DIANE S. LOUGHRY, COLUMBIA MD

their true and lawful Attorney(s)-in-Fact, with full power of authority hereby conferred in their name, place and stead, to execute, seal, acknowledge and deliver any and all bonds, undertakings, recognizances or other written obligations in the nature thereof

and to bind the Companies thereby as fully and to the same extent as if such bonds were signed by the President, sealed with the corporate seals of the Companies and duly attested by the Companies' Secretary, hereby ratifying and confirming all that the said Attorney(s)-in-Fact may do in the premises.

This power of attorney is granted under and by the authority of Article VII of the By-laws of FIREMAN'S FUND INSURANCE COMPANY, NATIONAL SURETY CORPORATION, THE AMERICAN INSURANCE COMPANY, ASSOCIATED INDEMNITY CORPORATION and AMERICAN AUTOMOBILE INSURANCE COMPANY which provisions are now in full force and effect.

This power of attorney is signed and sealed under the authority of the following Resolution adopted by the Board of Directors of FIREMAN'S FUND INSURANCE COMPANY, NATIONAL SURETY CORPORATION, THE AMERICAN INSURANCE COMPANY, ASSOCIATED INDEMNITY CORPORATION and AMERICAN AUTOMOBILE INSURANCE COMPANY at a meeting duly called and held, or by written consent, on the 19th day of March, 1995, and said Resolution has not been amended or repealed:

"RESOLVED, that the signature of any Vice-President, Assistant Secretary, and Resident Assistant Secretary of the Companies, and the seal of the Companies may be affixed or printed on any power of attorney, on any revocation of any power of attorney, or on any certificate relating thereto, by facsimile, and any power of attorney, any revocation of any power of attorney, or certificate bearing such facsimile signature or facsimile seal shall be valid and binding upon the Companies."

IN WITNESS WHEREOF, the Companies have caused these presents to be signed by their Vice-President, and their corporate seals to be hereunto affixed this 16 day of March, 1999.



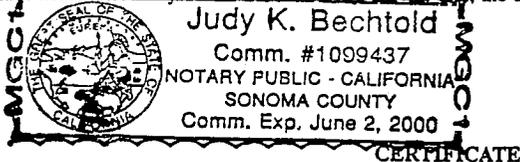
FIREMAN'S FUND INSURANCE COMPANY
NATIONAL SURETY CORPORATION
THE AMERICAN INSURANCE COMPANY
ASSOCIATED INDEMNITY CORPORATION
AMERICAN AUTOMOBILE INSURANCE COMPANY

By [Signature] Vice-President

STATE OF CALIFORNIA }
COUNTY OF MARIN } ss.

On this 16 day of March, 1999, before me personally came HAROLD N. MARSH to me known, who, being by me duly sworn, did depose and say: that he is a Vice-President of each company, described in and which executed the above instrument; that he knows the seals of the said Companies; that the seals affixed to the said instrument are such company seals; that they were so affixed by order of the Board of Directors of said companies and that he signed his name thereto by like order.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year herein first above written.



[Signature] Notary Public

STATE OF CALIFORNIA }
COUNTY OF MARIN } ss.

I, the undersigned, Resident Assistant Secretary of each company, DO HEREBY CERTIFY that the foregoing and attached POWER OF ATTORNEY remains in full force and has not been revoked; and furthermore that Article VII of the By-laws of each company, and the Resolution of the Board of Directors; set forth in the Power of Attorney, are now in force.

Signed and sealed at the County of Marin. Dated the 11th day of October, 2001.



[Signature] Resident Assistant Secretary