

RESOLUTION NO. 3063

RESOLUTION DIRECTING CITY STAFF TO PUBLISH AN UNDERLYING PROPOSED RESOLUTION IN THE CITY'S DESIGNATED OFFICIAL NEWSPAPER AS NOTICE OF THE CITY'S INTENT TO GRANT A NONEXCLUSIVE FRANCHISE FOR TELECOMMUNICATIONS FACILITIES TO CONSOLIDATED COMMUNICATIONS OF WASHINGTON COMPANY, LLC, ON DECEMBER 12, 2023

WHEREAS, the entity known as Consolidated Communications of Washington Company, LLC, desires to obtain a nonexclusive franchise from the City of Selah so that it can locate telecommunications facilities, both underground and above ground, within rights-of-way owned by the City; and

WHEREAS, state law – specifically RCW 35A.47.040 – authorizes the City to grant nonexclusive franchises for such purpose; and

WHEREAS, a proposed six-page Telecommunications Franchise Agreement has been prepared, its terms are acceptable to City staff, City staff intends to present to the City Council on December 12, 2023, a Resolution that – if approved – will authorize the Mayor to sign the Agreement and thereby grant the franchise; and

WHEREAS, in an effort to satisfy the prerequisites established by RCW 35A.47.040 (2nd ¶), City staff intends to publish a copy of the proposed Resolution in the City's designated official newspaper, and the City Council agrees that such publishing should occur;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that City staff is hereby directed to publish a copy of the underlying proposed Resolution – which, if approved, would authorize the Mayor to sign the Telecommunications Franchise Agreement and thereby grant the franchise – in the City's designated official newspaper.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 28th day of November, 2023.

Sherry Raymond
Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski
Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Rob Case
Rob Case, City Attorney

RESOLUTION NO. _____

[PROPOSED] RESOLUTION AUTHORIZING THE MAYOR OF SELAH TO SIGN A SIX-PAGE TELECOMMUNICATIONS FRANCHISE AGREEMENT WITH CONSOLIDATED COMMUNICATIONS OF WASHINGTON COMPANY, LLC, THAT GRANTS A NONEXCLUSIVE FRANCHISE FOR TELECOMMUNICATIONS FACILITIES

WHEREAS, the entity known as Consolidated Communications of Washington Company, LLC, desires to obtain a nonexclusive franchise from the City of Selah so that it can locate telecommunications facilities, both underground and above ground, within rights-of-way owned by the City; and

WHEREAS, state law – specifically RCW 35A.47.040 – authorizes the City to grant nonexclusive franchises for such purpose; and

WHEREAS, a proposed six-page Telecommunications Franchise Agreement has been drafted and its terms are acceptable to City staff; and

WHEREAS, the City Council finds that good cause exists to authorize the Mayor to sign the Agreement and to thus grant the franchise;

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, that the Mayor is authorized to sign the six-page Telecommunications Franchise Agreement and to thus grant the franchise.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF SELAH, WASHINGTON, this 12th day of December, 2023.

Sherry Raymond, Mayor

ATTEST:

Dale E. Novobielski, Clerk/Treasurer

APPROVED AS TO FORM:

Rob Case, City Attorney

[As noted above, this is a proposed Resolution. The City Council has not yet voted as to whether or not to authorize the Mayor to sign the Agreement. A vote is contemplated to occur during the next regularly-scheduled meeting of the City Council on December 12, 2023. A copy of this proposed Resolution is being published pursuant to RCW 35A.47.040 (2nd ¶). A copy of the proposed Telecommunications Franchise Agreement can be obtained from the City upon request.]

Resolution No. _____

TELECOMMUNICATION FRANCHISE AGREEMENT

This Telecommunications Franchise Agreement (“AGREEMENT” or “FRANCHISE”) is entered into by and between **Consolidated Communications of Washington Company, LLC** (“FRANCHISEE”) and the municipal corporation of the **City of Selah, Washington** (“CITY”).

RECITALS

WHEREAS the CITY also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the needs within the CITY for all parcels located within the CITY. The coordination, planning, and management of the CITY’S rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

WHEREAS, the CITY has determined that the development of a comprehensive plan for rights-of-way use, and management is the most effective means for managing the current use of rights-of-way and ensuring prudent and appropriate decisions concerning the use of rights-of-way in the future; and

WHEREAS, FRANCHISEE has determined that it is in its best interests to move forward with the installation and maintenance of telecommunications facilities within the public rights-of-way of CITY.

NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:

Section 1. Non-exclusive Franchise Granted. CITY hereby grants to FRANCHISEE, subject to the conditions prescribed in this AGREEMENT, the franchise rights and authority to construct, replace, repair, monitor, maintain, use, and operate the equipment and facilities necessary for telecommunication service crossing, within the CITY-owned rights-of-way (“FRANCHISE AREA”).

Such franchise rights and authority shall not be deemed to be exclusive to FRANCHISEE and shall in no way prohibit or limit the CITY’S ability to grant other franchises, permits, or rights along, over, or under the areas to which this FRANCHISE has been granted to FRANCHISEE; provided that, any other franchise(s) do not unreasonably interfere with FRANCHISEE’S exercise of its franchise rights and authority. This FRANCHISE shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent, the CITY from using the FRANCHISE AREA or affect the CITY’S jurisdiction over any area in any way.

Section 2. Authority. The CITY’S Director of Public Works or his/her designee is hereby granted the authority to administer and enforce the terms and provisions of this FRANCHISE and may develop such rules, policies, and procedures, as he/she deems necessary to carry out the provisions contained herein.

Section 3. Construction Provisions and Standards. The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this FRANCHISE:

- A. **Permit Required** - No construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the FRANCHISE AREA without first obtaining a permit to perform such work from CITY'S Public Works Department.
- B. **Coordination** - All work and inspection shall be coordinated with the Engineering Division of CITY'S Public Works Department to ensure consistency with CITY'S infrastructure, CITY'S future capital improvement projects, all developer improvements, and pertinent codes and franchises.
- C. **Construction Standards** - Any construction, installation, maintenance, and restoration activities performed by or for FRANCHISEE within the FRANCHISE AREA shall be conducted and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic. All construction, installation, maintenance, traffic control and restoration activities shall be conducted so as to conform to CITY'S most-current standards in effect at the time that such activities take place, and as may detailed in a Manual on Accommodating Utilities.
- D. **Undergrounding** - The parties agree that this FRANCHISE does not limit the CITY'S authority under federal law, state law or local ordinance, to require the undergrounding of utilities or other facilities. FRANCHISEE shall not be required to convert existing facilities or install new facilities underground in any areas where other service providers (e.g., power, cable, telecommunications, etc.) have aerial facilities.
- E. **Removal or Abandonment** - Upon the removal from service of any telecommunication components or other associated structures, facilities and amenities, FRANCHISEE shall comply with all applicable standards and requirements prescribed by CITY'S Public Works Department for the removal or abandonment of said structures and telecommunication service facilities.
- F. **"One-Call" Location & Liability** – CITY will not locate private infrastructure. The "One-Call" locate will be the responsibility of the FRANCHISEE.
- G. **As-Built Plans Required** - FRANCHISEE shall present as-built plans to be inspected and approved by CITY'S Public Works Director or his/her designee.
- H. **Protect Public Interest** - FRANCHISEE understands and agrees that the Selah Municipal Code incorporates provisions necessary to protect the public interest and investment with regard to utilization of CITY-owned roads and rights-of-way.
- I. **Relocation** - Whenever CITY determines that it is necessary for any of FRANCHISEE'S facilities, or for other system components, to be moved or relocated to accommodate the construction, or enhancement of any CITY-owned public amenity in the FRANCHISE AREA, CITY shall notify FRANCHISEE in writing of such determination, and FRANCHISEE shall promptly submit plans for such relocation. Within ninety (90) days of the approval by CITY of the plans for relocation, FRANCHISEE shall relocate those facilities or structures designated by CITY. The costs of moving or relocating FRANCHISEE facilities

or structures, including but not limited to costs for design, engineering and construction is the responsibility of FRANCHISEE.

Section 4. Franchise Compliance.

- A. Franchise Violations** - The failure by FRANCHISEE to comply fully with any of the provisions of this AGREEMENT may result in a written notice from CITY, which describes the violation(s) and requests remedial action within thirty (30) days of receipt of such notice. If FRANCHISEE has not attained full compliance at the end of the thirty (30) day period following receipt of the violation notification, CITY may declare an immediate termination of all franchise rights and authority, provided that full compliance was reasonably possible within that thirty (30) day period. The demonstration of due diligence on the part of FRANCHISEE may be grounds for the grant of an extension in the period during which compliance is to be attained; provided that, FRANCHISEE continues to pursue correction of any violation(s) of the AGREEMENT that are or were noted by CITY.
- B. Emergency Actions** - If any of FRANCHISEE'S actions, or any failure by FRANCHISEE to act, to correct a situation caused by FRANCHISEE is deemed by CITY to create a threat to life or property, CITY may order FRANCHISEE to immediately correct said situation threat or, at CITY'S discretion, CITY may undertake measures to correct said situation threat itself; provided that, when possible, CITY shall notify FRANCHISEE of said threat and give FRANCHISEE an opportunity to correct said threat before undertaking such measures itself. FRANCHISEE shall be liable for all costs, expenses, and damages attributable to the correction of such an emergency situation as undertaken by CITY to the extent that such situation was caused by FRANCHISEE, and shall further be liable for all costs, expenses, and damages resulting to CITY from such situation and any reimbursement of such costs to CITY shall be made within thirty (30) days of written notice of the completion of such action or determination of damages by CITY. The failure by FRANCHISEE to take appropriate action to correct a situation caused by FRANCHISEE and identified by CITY as a threat to public or private safety or property shall be considered a violation of this FRANCHISE and each day that such a situation continues to exist and FRANCHISEE fails to take appropriate action to abate said situation shall be regarded as a separate violation.
- C. Other Remedies** - Nothing contained in this FRANCHISE shall limit CITY'S available remedies in the event if FRANCHISEE fails to comply with the provisions of this FRANCHISE, including but not limited to, CITY'S right to sue for specific performance and/or damages.
- D. Removal of System** - In the event that this FRANCHISE is terminated as a result of violation(s), FRANCHISEE shall at its sole expense, promptly remove all components and facilities, provided that, CITY, at its discretion, may allow FRANCHISEE to abandon its facilities in place.

Section 5. Insurance. FRANCHISEE shall present to CITY proof that FRANCHISEE has general liability insurance in the amount of one million dollars (\$1,000,000) in the single event and two million dollars (\$2,000,000) in the aggregate.

Section 6. Other Permits & Approvals. Nothing in this FRANCHISE shall relieve FRANCHISEE from any obligation to obtain approvals or necessary permits from applicable federal, state, and CITY authorities for all activities in the FRANCHISE AREA.

Section 7. FRANCHISEE'S Successors. The rights, privileges, benefits, title, or interest provided by this FRANCHISE shall automatically transfer to any assign(s) or successor(s) in interest of FRANCHISEE and, in such event, each instance of the word and reference to the position of "Franchisee" within this AGREEMENT shall henceforth be read, construed and interpreted as stating the name of the successor(s).

Section 8. Franchise Term. The franchise rights and authority granted by this FRANCHISE shall remain in full force and effect for a period of fifteen (15) years from the effective date of this FRANCHISEE and will be renegotiable at the end of that time.

Section 9. Administrative Fees. (NOT APPLICABLE)

Section 10. Franchise Fee. (NOT APPLICABLE)

Section 11. Capacity for CITY Use. As long as FRANCHISEE is in compliance and good standing with CITY, any new expansion into a new service area within the City of Selah will be subject to substantially the same terms and conditions set forth in this FRANCHISE and such permission will be given within sixty (60) days following notice by FRANCHISEE to CITY'S Public Works Director. However, if FRANCHISEE is not in compliance and good standing with CITY, prior to expanding into a new service area within the City of Selah, FRANCHISEE shall contact CITY'S Public Works Department and provide notice of the proposed area of expansion and negotiations shall then occur between FRANCHISEE and CITY on specific public benefit projects within the proposed expanded service area. FRANCHISEE and CITY will agree on the specific public benefit within the proposed expanded service area prior to FRANCHISEE obtaining a right-of-way use permit for action within the expanded service area.

Section 12. Notices. Any notices to be served upon CITY or FRANCHISEE shall be delivered to the following addresses respectively:

CITY:
City of Selah
ATTN: City Administrator
ATTN: City Attorney
115 West Naches Ave.
Selah, WA 98942

FRANCHISEE:
Consolidated Communications of Washington, LLC
ATTN: Contracts Department
2116 South 17th St.
Mattoon, IL 61938

Section 13. Claims for Damages. In the construction, installation, repair, operation, and maintenance of its structures and facilities, FRANCHISEE shall use reasonable and appropriate precautions to avoid damage to persons or property. FRANCHISEE shall indemnify, hold harmless, and also defend CITY and its officers, agents, employees, insurers and liability risk pools from all claims, actions or damages of every kind or description, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation or property to the extent caused in part or in whole by any negligent act or omission of FRANCHISEE, its officers, agents, employees and contractors, carried on in the furtherance of the rights, benefits, and privileges granted to FRANCHISEE by this FRANCHISE. In the event any claim or demand is presented to or filed with the CITY which gives rise to FRANCHISEE'S obligation(s) pursuant to this section, CITY shall within a reasonable time notify FRANCHISEE thereof and FRANCHISEE shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which CITY is named as a party, and which suit or action is based on a claim or demand which gives rise to FRANCHISEE'S obligation(s) pursuant to this section, CITY shall promptly notify FRANCHISEE thereof, and FRANCHISEE shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, FRANCHISEE may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require FRANCHISEE to: (i) protect and save CITY harmless from any claims, actions, or damages; (ii) settle or compromise any claim, demand, suit, or action; (iii) appear in or defend any suit or action; or, (iv) pay any judgment or reimburse the CITY'S costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the sole negligence of CITY. To the extent of any concurrent negligence between FRANCHISEE and CITY, FRANCHISEE'S obligations under this section shall only extend to its own share of negligence or fault. CITY shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege, and authority granted by or exercised pursuant to this FRANCHISE when CITY determines that such participation is required to protect the interests of CITY or the public. Such participation by CITY shall be at CITY'S sole cost and expense.

Section 14. Severability. If any section, sentence, clause, or phrase of this FRANCHISE is held to be invalid or unconstitutional by a court of competent jurisdiction, CITY may, at its sole discretion, deem the entire FRANCHISE to be affected and thereby nullified. However, in the event that a determination is made that a section, sentence, clause, or phrase in this FRANCHISE is invalid or unconstitutional, CITY may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this FRANCHISE; provided that, if CITY elects to enforce the remaining provisions of the FRANCHISE, FRANCHISEE shall have the option to terminate the FRANCHISE.

Section 15. Indemnification. FRANCHISEE, and each of its successors and assigns, agrees and covenants to indemnify and hold harmless CITY from and against any and all liability, loss, cost, damages, whether to persons or property, or expense of any type or nature, including reasonable attorney's fees and expert witness fees, to the extent it arises from any negligent act or omission or willful misconduct of FRANCHISEE or one of its successors or assigns, arising from or connected to work under this FRANCHISE; provided however, that in case any suit or action is instituted against CITY by reason of any such damage or injury, CITY shall: (i) cause written notice thereof to be given unto FRANCHISEE; (ii) provide all reasonably requested assistance in defense or settlement of such claim at FRANCHISEE'S expense; and, (iii) retain the right to control the defense of settlement or such claims.

Section 16. Effective Date. This FRANCHISE shall take effect and be in full force and effect after approval of the City of Selah City Council via a Resolution.

Section 17. Other Conditions: (None)

This FRANCHISE is not valid until accepted and signed by FRANCHISEE.

DATED this ____ day of _____, ____, at Selah, Washington.

City

By: _____

Name: _____
[Title]

Date: _____

Consolidated Communications of Washington Company, LLC
UBI No. 604-378-974

By: _____

Name: _____
[Title]

Date: _____