

After Recording Return To:

NoaNet
5802 Overlook Avenue NE
Tacoma, WA 98466
Attn: Greg Marney

CITY OF WAITSBURG, WASHINGTON

Franchise No. 2011-991

Applicant/Grantee: NORTHWEST OPEN ACCESS NETWORK, a Washington non-profit mutual corporation (“NoaNet”).

Type of Facilities: as described in the attached Exhibit “A”

This agreement applies to all Public Rights of Way within the City of Waitsburg.

Northwest Open Access Network
 (“NoaNet”)
5802 Overlook Avenue NE
Tacoma, WA 98466
Applicant Name

Chris Walker
NoaNet
422 W. Riverside #501
Spokane, WA 99201
Contact Person

5802 Overlook Avenue NE
Tacoma, WA 98466
Notice Address

Ordinance No.: 2011-991
Effective Date: 11/16/2011
Expiration Date: 11/16/2046

EXHIBIT “A”

CITY OF WAITSBURG TERMS AND CONDITIONS OF FRANCHISE

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1. Scope and Duration

Northwest Open Access Network, a Washington nonprofit mutual corporation ("Otherwise known as NoaNet"), its successors and assigns (hereinafter called "Grantee") are hereby granted a franchise to set, erect, install, place, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use communication and telecommunication systems and facilities systems, including, but not limited to poles and towers (with or without crossarms), wires, lines, conduits, cables, braces, guys, anchors and vaults, and communication systems, together with any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or under ground (collectively, "Facilities") in, upon, over, under, along, across and through the City of Waitsburg roads and rights-of-way falling within the area described on the attached Appendix 1 (such roads and rights-of-way being hereafter referred to at times as the "Franchise Area"), for a period of thirty-five (35) years, all in accord with the ordinance granting this Franchise, all applicable provisions of City of Waitsburg Codes and Ordinances, whether specifically referred to or not, and this **Exhibit "A"**; provided that, notwithstanding the City's continued right to enact codes and ordinances, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this **Exhibit "A"**), the terms and conditions of this Franchise shall govern and control.

2. Definition of Terms

CITY WIDE (BLANKET) RIGHT-OF-WAY PERMIT	A single permit granted to a franchised entity to cover a series of activities in rights-of-way within the entire city.
CITY	City of Waitsburg.
CITY COUNCIL	Waitsburg City Council.
PUBLIC WORKS DIRECTOR	City of Waitsburg Public Works Director
CITY ROAD STANDARDS	Existing City of Waitsburg road-building standards.
FRANCHISE	The terms and conditions of this franchise agreement, as set forth in this Exhibit A, in accordance with City, State, and Federal Laws, including, but not limited to, RCW 35.99, RCW 35A.47.040 , RCW 35.21.860, et. seq., and RCW 82.04.065.
GRANTEE	Northwest Open Access Network ("NoaNet"), its successors and assigns, and any other person named in any permit as permittee, and any successor to any rights or interests of a permittee under a permit or in property installed on the right-of-way pursuant to a permit.

MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD)	Latest edition of the MUTCD, Manual on Uniform Traffic Control Devices for Streets and Highways, U.S. Department of Transportation, Federal Highway Administration.
MAP OF DEFINITE LOCATION – for new construction not pre-existing facilities.	Construction plans; plans and specifications; design standards and specifications.
PERMIT	A document including any license, permit, or franchise, authorizing specified use of city rights-of-way and granted under the provisions of this franchise and city code.
RESTORATION	A general term denoting replacing, repairing, or otherwise restoring the right-of-way to same or equal condition as before any change or construction began thereon.
FACILITIES	NoaNet’s system of cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or facilities within the Franchise Area designed or constructed for the purpose of providing Communication Service or Telecommunication Service, whether the same be located overhead or underground.

RIGHT-OF-WAY	All property falling within the area described on the attached Appendix 1 in which the City has any form of ownership or title and which is held for public road, right-of-way or other public purposes, regardless of whether or not any road or facility exists thereon or whether or not it is used, improved, or maintained for public travel.
ROADWAY	The portion of the right-of-way, within the outside limits of the side slopes (shoulder to shoulder) or between curb lines, used for vehicular travel.
TRAFFIC CONTROL	A general term more specifically defined in the MUTCD.

3. **Permits, Plans, and Specifications**

Prior to commencing any work within the Franchise Area on any city road or right-of-way, the Grantee shall comply with and obtain all necessary permits to do such work. Permits required may include, but are not limited to, Right-of-Way Use Permits, Approach Permits, Conditional Use Permits, Haul Road Permits and/or any other County, State or Federal Permit required.

Permits can require: the position, depth, and location of Facilities to be constructed

within the Franchise Area at that time and their positions in relation to any involved city road and their locations within the right-of-way. These plans, all drawn to scale, shall be known as the "map of definite location". Specifications can include class and type of materials and equipment to be used, manner of excavation, construction, installation, and backfill; location of temporary and permanent structures to be erected; description of road facilities which will be disturbed and plans for their restoration; traffic controls; traffic turnouts and detours; road obstructions; and such other details as are required by the Public Works Director.

To the extent that work is permitted under a then-existing permit issued by the City in connection with a previous application, the detailed plans and specifications stated above are not required. Grantee shall pay all costs and expenses incurred by the City in reviewing plans and specifications, as and to the extent required by applicable provisions of the City of Waitsburg Municipal Code.

4. **Performance of Work**

A. No work on any City road or right-of-way shall be commenced until all necessary permits have been obtained and a set of plans and specifications, reviewed, approved, and endorsed by the City Public Works Director, has been returned to the Grantee.

All work shall be performed in accordance with the approved plans and specifications, and shall be subject to inspection and incremental approval by the Public Works Director. Grantee shall pay all reasonable costs and expenses incurred by the City in inspecting and approving the work, as and to the extent required by applicable provisions of the City of Waitsburg Municipal Code. Grantee shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of Grantee's Facilities within the Franchise Area. The Grantee shall notify the Public Works Director at a minimum of 48 hours prior to starting any construction activity.

If and to the extent Grantee reasonably determines that action on Grantee's part is necessary to respond to an emergency situation involving Grantee's Facilities within the Franchise Area, and such action would otherwise require the notice specified above, the City hereby waives the requirement that Grantee give such notice as a prerequisite to undertaking such activity; provided, however, Grantee shall notify the City Public Works Director, verbally or in writing, as soon as practicable and no later than three (3) business days following the emergency if the roadway shoulders, embankment or cut slopes, or drainage facilities are disturbed.

B. Grantee's Facilities within the Franchise Area shall be laid in substantial conformance with the map of definite location except where deviations are allowed in writing by the Public Works Director pursuant to application by Grantee, in which case Grantee shall file a corrected map of definite location.

C. Any work which disturbs any soil, surface, or structure of any City road or right-of-way shall be controlled by applicable design standards and specifications of the City, and applicable provisions of the existing City of Waitsburg road building standards. Grantee, at its expense, shall restore such surface or other facility to at

least a condition the same as it was in immediately prior to such disturbance (or make provisions therefor), all to the reasonable satisfaction of the Public Works Director. The Public Works Director may cause to be done, at the expense of the Grantee, all work necessary to render any City road or right-of-way safe where a condition which is dangerous to life, health, or property is created by Grantee as a result of work undertaken by Grantee within the Franchise Area or where Grantee fails to restore any surface or other facility within the Franchise Area as required in this paragraph, but in each case only if Grantee does not promptly take corrective action after receiving thirty (30) days written notice from the Public Works Director regarding such condition or failure.

- D. All work within the Franchise Area shall be done in a thorough, professional, and workmanlike manner with minimum interference in public use of the City road or right-of-way. Where any work includes opening of trenches and/or ditches and/or tunneling under a City road or right-of-way, Grantee shall take all reasonable precautions necessary to protect and guard the public from any condition caused by the work. Grantee shall conform to the MUTCD, including directing traffic, signs, and barricades. Subject to Section 8, below, and specifically the rights of Grantee with respect to third parties under Section 8(C), if any line, or other facility of Grantee is located that, in the opinion of the City Public Works Director, any hazard to travel of the public is created, Grantee shall relocate the line, or other facility at its expense upon request of the City Public Works Director. Grantee shall be liable for any damages, including any costs incurred by the City in remedying any failure to provide adequate traffic controls and protection to members of the public and their property.
- E. Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed by Grantee within the Franchise Area under this Franchise, Grantee shall reference all such monuments and markers. Reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing monuments or other points to be referenced shall be approved by the City Public Works Director. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by City Public Works Director. The cost of monuments or markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments shall be borne by the Grantee. A complete set of reference notes for monument and other ties shall be filed with the City.
- F. All work undertaken by Grantee within the Franchise Area shall be performed by the Grantee in compliance with all applicable Federal, State, laws and City ordinances regulations, and policies (including, without limitation, applicable environmental and land use laws and regulations); provided that, notwithstanding the City's continued right to enact codes and ordinances, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this **Exhibit "A"**), the terms and conditions of this Franchise shall govern and control.

5. **Aesthetic/Scenic Considerations**

- A. If Grantee intends to use pesticides within the Franchise Area to control or kill weeds and brush in scenic areas, prior approval must be granted by the City at least annually (which approval shall not be unreasonably withheld or delayed). The City may limit or restrict the types, amounts, and timing of applications if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.
- B. Refuse and debris resulting from the installation or maintenance of the Facilities by Grantee shall be promptly removed once the work is completed.

6. **Maintenance of Facilities**

The City will not assume responsibility for damage to the Grantee's property and various objects that are placed in City roads and rights-of-way. The Grantee will maintain its above-ground Facilities within the Franchise Area so as not to unreasonably interfere with City maintenance or free and safe passage of traffic.

7. **Hazardous Wastes, Substances**

Grantee agrees that it will not negligently or intentionally cause the release of any hazardous substance, waste, or pollutant or contaminant (as defined by applicable law) into or upon any City road or right-of-way in violation of any state or federal law with respect thereto. Grantee shall notify the City and the State Department of Ecology in writing of any such illegal release. Grantee shall be completely liable for any and all consequences of such illegal release, including liability under any federal or state statute or at common law. Grantee shall indemnify and hold the City harmless, as provided in Section 11, from any and all liability resulting from such an illegal release and shall have full responsibility for completely cleaning up, as required by any government agency, any and all contamination from such release. The City shall be entitled to full contribution for all costs incurred by it as the result of any release of such materials by Grantee in violation of any state or federal law. Upon any such illegal release of a hazardous substance by Grantee, the City may enter the Franchise Area and take whatever steps it deems appropriate to cure the consequences of any such release, all at the expense of the Grantee, but only if Grantee does not promptly take corrective action after receiving written notice from the Public Works Director.

8. **Relocation**

A. Facilities shall be located to minimize need for later adjustment to accommodate future roadway improvement and to permit access to servicing such installations with minimum interference to roadway traffic. If the City causes any City road or right-of-way to be constructed, improved, relocated, realigned, or otherwise changed within the Franchise Area; including traffic controls, drainage, and illumination; or if any part of such road or right-of-way becomes a state highway and relocation or readjustment is directed by the State Director of Transportation so as to reasonably necessitate relocation of any Facility of the Grantee on such road or right-of-way within the Franchise Area (in any case for purposes other than those described in Section 8(C), below), the City will:

- (a) provide Grantee, within a reasonable time prior to the commencement

of the road or right-of-way project, written notice requesting the relocation; and

- (b) provide Grantee with reasonable plans, timetables and specifications for such road or right-of-way project.

After receipt of such notice and such plans, timetables and specifications, Grantee shall relocate such Facilities within the Franchise Area at no charge to the City. If the City requires the subsequent relocation of any Facilities within five (5) years from the date of relocation of such Facilities pursuant to this Section or within five (5) years after the original installation of the Facilities, the City shall bear the entire cost of such subsequent relocation. The City will also provide Grantee a copy of its six year road transportation improvement program.

- B. The City Public Works Director shall have the final approval of the relocation schedule. Grantee shall be responsible for timely compliance with Facility relocation and coordinate with the City or the City's contractor.

The construction, operations, maintenance, and repair of Grantee's Facilities authorized by this Franchise shall not preclude City, its agents, or its contractors from blasting, grading, excavating, or doing necessary road work contiguous to the said Facilities of the Grantee, provided that the Grantee shall be given forty-eight (48) hours notice of said blasting or other work, and provided further that the foregoing shall be subject to all other provisions of this Franchise and shall not substantially or unreasonably impair the rights granted to Grantee under this Franchise.

- C. Whenever (a) any public or private development within the Franchise Area, other than a public right of way improvement of the type described in Section 8(A), above, requires the relocation of Grantee's Facilities within the Franchise Area to accommodate such development; or (b) the City requires the relocation of Grantee's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, Grantee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.
- D. Any condition or requirement imposed by the City upon any person or entity, other than Grantee, that requires the relocation of Grantee's Facilities shall be a required relocation for purposes of Section 8(C), above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).
- E. Nothing in this Section 8 shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

9. **Non-Exclusive/Other Occupants**

- A. This Franchise is not exclusive. It shall not prohibit the City from granting other

franchises or permits for use of any City roads or rights-of-ways or parts thereof. Subject to this Franchise, Grantee shall not prevent or prohibit the City from constructing, altering, maintaining, or using any of said roads or rights-of-way, or affect its jurisdiction over them or any part of them, the City having full power to make all necessary changes, relocations, repairs, maintenance, etc., of the same as the City may deem fit.

- B. All installation, operation, maintenance, and repair by the Grantee of its Facilities on any City road or right-of-way within the Franchise Area shall be done so as not to unreasonably interfere with installation, construction, operation, maintenance, or repair of other utilities, drains, ditches, structures, or other improvements permitted upon such road or right-of-way, subject to the preference and priority rules set forth below. Owners, public or private, of any such facilities installed prior to construction and/or installation of the Facilities of Grantee, shall have preference as to positioning and location of such facilities. Likewise, Grantee's Facilities shall have preference as to positioning and location over any such other facilities that are installed after the construction and/or installation of the Facilities of Grantee.

10. **Insurance and Security**

For the period after the assignment of this Franchise by City to the Grantee under Section 18, below, the following insurance provisions shall apply:

Prior to the effective date of this franchise and during its life, the Grantee shall obtain and maintain continuously liability insurance necessary to comply with the hold harmless agreement herein with limits of liability not less than:

\$1,000,000.00 per occurrence

The City Public Works Director may further determine that Business Auto Liability Insurance may also be required. Such insurance shall include City of Waitsburg, its officers, elected officials, agents, and employees as an additional insured and shall not be reduced or cancelled without thirty days written prior notice to the City. Such insurance, in its provision for additional insured, shall include a provision indicating:

“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. The policy shall protect each insured in the same manner as though a separate policy had been issued to each except that nothing herein shall operate to increase the company’s liability beyond the amount or amounts for which the insurer would have been liable had only one insured been named.”

All insurance policies will be issued on an occurrence basis. Claims made policies are unacceptable. Grantee shall maintain coverage for the duration of this Franchise. Grantee shall provide the City annually a signed certificate of insurance naming the City of Waitsburg as an additional insured. Proof of all insurance shall be in a form acceptable to the City, and all conditions and requirements of insurance stated in this Section 10 shall be satisfied prior to commencement of construction. All insurance documentation shall be

submitted and reviewed by the Waitsburg City Clerk prior to commencement of construction.

The County may require additional bond, deposit or security from Grantee or Grantee's contractors and subcontractors. Acceptance by the County of any work performed by the Grantee at the time of completion shall not be a ground for avoidance of this covenant.

In lieu of the insurance requirements set forth in this Section 10, the insurance required under this section may be through a self-insurance fund under which Grantee is insured.

11. **Hold Harmless and Indemnity**

- A. The Grantee shall defend, indemnify and hold harmless the City, its appointed and elected officials, agents, and employees, against all third party claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees on account of any injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence, willful misconduct, or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of Grantee, Grantee's employees, agents, or subcontractors, in exercising the rights granted to Grantee in this Franchise. The obligations of Grantee under the indemnification provisions of this Section shall not apply to the extent that such third party claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees arise out of the comparative, contributory, or sole negligence, or willful misconduct of the City.
- B. For the avoidance of doubt, for those provisions of this Franchise which a court of competent jurisdiction determines are subject to RCW 4.24.115, then, in the event of damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the City, its appointed and elected officials, agents or employees, and the Grantee or the Grantee's agents or employees, the Grantee's liability to hold harmless and indemnify the City is enforceable only to the extent of the Grantee's negligence.
- C. The Grantee's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from any negligent act, error, or omission or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of the Grantee or its employees, agents, or subcontractors.
- D. In the event any claim or demand be presented to or filed with the City by reason of the above-mentioned causes, the City shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand. In case suit or action is brought against City of Waitsburg for damages arising out of or by reason of the above-mentioned causes, the City shall promptly notify Grantee thereof and the Grantee will, upon notice to it of the commencement of said action, settle, compromise or defend the same at its sole cost and expense, and in case judgment shall be rendered against the City in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after suit or action shall have finally been determined, if determined adversely to City of Waitsburg. In the event Grantee refuses a tendered defense by the City pursuant to this Section 11 of this Franchise and if 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, then Grantee shall pay all of the City's reasonable costs for defense of the action including all legal costs, witness fees and attorney fees and indemnify the City for any settlement made by the City of the wrongfully refused claim or demand.

E. Solely to the extent required for the City to enforce Grantee's indemnification obligations under this Section 11, Grantee waives its immunity under RCW Title 51; provided that the foregoing waiver shall not in any way preclude Grantee from raising such immunity as a defense against any claim brought against Grantee by any of its employees. This waiver has been mutually negotiated by the parties.

F. The provisions of this Section 11 shall survive the expiration or termination of this agreement.

12. **Reservation of Police Power**

In granting this Franchise, the City does not waive any of its police powers to regulate the use of City roads or rights-of-way in the interest of public health, safety, and general welfare; provided, however, that the City shall adopt ordinances and regulations in a manner consistent with the terms of this Franchise.

13. **Applicable Laws**

Grantee shall comply with all federal, state, and local laws, rules, and regulations applicable to any work, facility, or operation of Grantee upon City roads or rights-of-way during the life of this Franchise.

14. **Eminent Domain, Powers of the People**

This Franchise is subject to the power of eminent domain and its existence shall not preclude the City from acquiring by condemnation, in accordance with applicable law, all or a portion of Grantee's Facilities within the Franchise Area for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the Franchise Area conferred by this Franchise. Nothing herein, however, is intended to or will limit any severance damages arising out of any impact of any such condemnation on the NoaNet Project or related Facilities.

15. **Vacation**

If the City vacates all or a portion of any road or right-of-way which is subject to this Franchise, and said vacation is for the purpose of acquiring the fee or other property interest in said road or right-of-way for the use of the City in either its proprietary or governmental capacity, the City Council may, at its option and by giving ninety (90) days written notice to the Grantee, terminate this Franchise with reference to any city road or right-of-way so vacated and, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities, and the City shall not be liable for any damages or loss to the Grantee by reason of such termination.

Whenever a City road or right-of-way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the City may retain an easement in respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time of the vacation are specifically authorized under Section 3 above, or physically located on a portion of the land being vacated. In such event, the City shall also, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities. The City shall not otherwise be liable for any damages or loss to the Grantee by reason of any such vacation.

16. **Termination**

- A. If Grantee defaults on any term or condition of this Franchise, the City may serve upon Grantee a written order to so comply within sixty (60) days from the date such order is received by Grantee. If Grantee is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by Grantee cannot be corrected with due diligence within said sixty (60) day period (Grantee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee commences promptly and diligently to effect such compliance. Upon such termination, all rights of the Grantee hereunder shall cease. Should any action or proceeding be commenced to enforce any of the provisions of this Franchise, the substantially prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.
- B. In the event that the use of all or any part of Grantee's Facilities is permanently discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of the Facilities, or the abandonment, termination, or expiration of this Franchise, the Grantee is solely responsible for the removal and proper disposal of the abandoned/surplus Facilities within the Franchise Area. The Grantee is not entitled to abandon any Facilities in place without the City's prior express agreement and written consent. The Grantee shall restore the City roads and rights-of-way from which such facilities have been removed to the same or equal conditions as before.
- C. Upon the expiration of this Franchise for any reason other than a default by Grantee or abandonment of the Facilities, the Grantee shall have the first and preferential right to take and receive such authority upon similar terms and conditions.

17. **Assignment**

All terms and conditions of this Franchise are burdens upon the successors and assigns of Grantee, and all privileges as well as all obligations and liabilities of the Grantee inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned. Neither this Franchise nor any interest therein shall be sold, transferred, or assigned without the prior written consent of the City which consent shall not be unreasonably withheld or delayed; provided, however, that

Grantee (including, without limitation, NoaNet, may at any time, without the consent of the City, assign and transfer this Franchise and all of its rights and interest in and to this Franchise to National Telecommunications Information Administration (“NTIA”) or any other regulated utility (the "Utility Assignee"). For the avoidance of doubt, upon any assignment of this Franchise by Grantee to a Utility Assignee, Grantee shall remain liable for all obligations and liabilities arising under or in any way pertaining to this Franchise prior to the effective date of such assignment, and shall be discharged and released of all obligations and liabilities to the City arising under or in any way pertaining to this Franchise after the effective date of such assignment. Further, notwithstanding the foregoing, the NTIA or Utility Assignee shall have the right, without the consent of or notice to the City, to mortgage its rights, benefits and privileges in and under this Franchise for the benefit of bondholders. For the avoidance of doubt, The City understands that Grantee will be using funds under a Federal Grant under the Broadband Technology Opportunities Program (“BTOP”) to finance acquisition of this franchise and/or the construction, purchase and/or installation of broadband facilities and equipment to be located in the City right of way. Pursuant to BTOP, Grantee holds its interest in the franchise and the broadband facilities and equipment located in the City as trustee for the Federal Agency administering that program, specifically NTIA, and Grantee may record a public notice of such federal interest. The consent of the City is hereby expressly given for Grantee to assign its interest in the franchise to NTIA if required to do so under the rules and regulations of BTOP provided that the City receives satisfactory written confirmation of such requirement.

18. **Effective Date**

This Franchise shall be effective immediately after approval by the City Council and provided that Grantee within thirty (30) days of notification of such approval has signed a copy thereof and returned it to the City Clerk.

19. **Severability**

If any provision of this Franchise or its application to any person or circumstance is held to be invalid, such decision shall not affect the validity of the remaining portions of this Franchise or its application to other persons or circumstances.

20. **Limitation of Liability**

Administration of this Franchise shall not be construed to create the basis for any liability on the part of the City, its appointed and elected officials, and employees for any injury or damage from the failure of the Grantee to comply with the provisions of this Franchise; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this Franchise by the City, or for the accuracy of plans submitted to the City.

21. **Hazardous Conditions**

Whenever any conditions or operations caused by any activity undertaken by Grantee pursuant to this Franchise have become a hazard to life and limb, endanger property or public resources, or adversely affect the safety, use, or stability of a public way or

drainage channel, the City Public Works Director shall notify the Grantee in writing of the property upon which the condition or operation is located, or other person or agent in control of said property, and direct them to repair or eliminate such condition or operation within the period specified therein so as to eliminate the hazard and be in conformance with the requirements of this Franchise.

Should the City Public Works Director have reasonable cause to believe that the situation is so adverse as to preclude written notice, he/she may take the measures necessary to eliminate the hazardous situation, provided that he/she shall first make a reasonable effort to notify the Grantee, in writing, before acting. In such instance, the Grantee (responsible for the creation of the hazardous situation) shall be responsible for the payment of any actual and reasonable costs incurred. If costs are incurred and the hazardous situation has been created in conjunction with or as a result of an operation for which a bond has been posted pursuant to this title or any other City authority, the City Public Works Director shall have the authority to forfeit the bond or other security to recover the costs incurred.

22. **Miscellaneous**

This Franchise may be amended only by written instrument, signed by both parties, which specifically states that it is an amendment to this Franchise and is approved and executed in accordance with the laws of the State of Washington.

23. **Notices**

Notices provided for in this Franchise shall be sent to the following addresses:

1) City of Waitsburg
PO Box 35
147 Main Street
Waitsburg, WA 99361

with a copy to:

Kristian E. Hedine
Waitsburg City Attorney
2225 Isaacs Avenue, Suite A
Walla Walla, WA 99362

2) Grantee:

If to Company Name:

NoaNet
5802 Overlook Avenue NE
Tacoma, WA 98466
Attn: Greg Marney

with a copy to:

NoaNet

422 W. Riverside Drive #501
Spokane, WA 99201
Attn: Chris Walker

The Grantee shall promptly notify the Waitsburg's City Clerk of any change in notice address.

25. **Governing Law and Stipulation of Venue**

City of Waitsburg Ordinance 2011-991

The Grantee hereby agrees to be bound by the laws of the State of Washington and subjected to the jurisdiction of the State of Washington. The parties hereby stipulate that this Franchise shall be governed by the laws of the State of Washington and that any lawsuit regarding this contract must be brought in Walla Walla County, Washington, or in the case of a federal action, in the United States District Court for the Eastern District of Washington at Spokane, Washington.

APPENDIX 1

Franchise Area Boundaries

Entire City of Waitsburg

APPENDIX 2

Construction Work Technical Standards

Grantee shall submit drawings for the construction work, if required by the City of Waitsburg Public Works Director. Drawings shall be to a working scale, showing position and location of work. Names or number and width of roads, streets, etc., showing their location in plats, or subdivisions of sections, township and range, showing the relative position of such work to existing utilities, constructed, laid installed or erected upon such roads, streets or public places.

Grantee shall specify the type of construction by submitting plans showing the material and the manner in which the work is to be accomplished. All such materials, equipment and the manner of excavation, fills, construction, installation, erection of temporary structures, traffic turnouts, road obstruction, barricades shall be of the highest quality. , Signing, barricades, and traffic control in the vicinity of the work shall strictly conform to provisions of “the Manual on Uniform Traffic Control Devices for Street and Highways.” Grantee shall pay to the City all applicable fees and charges prescribed by City Code.

The location, type of work, materials, and equipment used, manner of erection or construction, safeguarding of public traffic during work or after doing same, mode of operation and manner of maintenance of project petitioned for, shall be approved by the City Public Works Director prior to start of work and shall be subject to inspection of the City Public Works Director so as to assure proper compliance with the terms of this Franchise.

Grantee shall leave all roads, streets, alleys, public places, and structures after installation and operation or removal of utility, in a good and safe condition in all respects as same were in before commencement of work by Grantee.

In case of any damage to any roads, streets, public places, structures or public property of any kind on account of said work by Grantee, Grantee will repair said damage at its own sole cost and expense.

The City of Public Works Director, his agents or representative may do, order, or have done any and all work considered necessary to restore to a safe condition any street, alley, public place or structure which is in a condition dangerous to a life, or property resulting from Grantee's Facilities within the Franchise Area or its installation as permitted herein, and upon demand Grantee shall pay to the County all costs of such work and material.

CERTIFICATE OF ACCEPTANCE

The undersigned grantee hereby accepts all the terms and conditions of this franchise as set forth in **Exhibit "A"** for him/herself and for his/hers heirs, executors, administrators, successors and assigns, being

Franchise No. 2011-991

DATED AT _____, this 16th day of November 2011

(Company or Organization)

Subscribed and sworn to before me
this _____

(authorizing signature of applicant)

Notary Public
In and for _____

(Type or print name and title)

(address)
