

ORDINANCE NO. _____

AN ORDINANCE GRANTING TO GORGE NETWORKS, INC., AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE & MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF MORO, OREGON

WHEREAS, Gorge Networks, Inc., an Oregon Corporation provides Telecommunications services within the City of Moro, Oregon; and

WHEREAS, Franchisee has requested a Telecommunications Franchise pursuant to local ordinances relating to Telecommunications in the public rights of way, and the City of Moro desires to allow such a Franchise.

NOW, THEREFORE, the City of Moro, Oregon, ordains as follows:

This **FRANCHISE AGREEMENT (“Franchise”)** is made by and between the City of Moro, an Oregon municipal corporation (“**City**”) and Gorge Networks, Inc., an Oregon Corporation (“**Franchisee**”). In consideration of mutual conditions and covenants hereinafter described, the City and Franchisee hereby agree as follows:

Section 1: Definitions.

City: The City of Moro, Oregon.

Franchisee: Gorge Networks, Inc., an Oregon Corporation.

Franchise Fee: The fee assessed by the City to Grantee as a license-use fee, in consideration of Grantee’s privilege to operate its Telecommunications Network within the City’s Rights-of-Way, determined in amount as a percentage of Grantee’s Gross Revenues.

Gross Revenues: Revenues received by Franchisee from the use of its Telecommunications Network within the City for the provision of Telecommunications Service, less net uncollectibles, and excluding proceeds or monies received by Franchisee from (a) the sale of bonds, securities or stocks, or (b) mortgages or other evidence of indebtedness. Gross revenues shall include revenues from the use, rental, or lease of Franchisee’s Telecommunications Network for the provision of Telecommunications Service within the City, except when those revenues have been paid to the Franchisee by another franchisee of the City and the paid revenues are used in the calculation of the franchise fee for the operations of the other franchisee within City limits. Any net uncollectibles, bad debts or other accrued amounts deducted from Gross Revenues shall be included in Gross Receipts at such time as they are actually collected.

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

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

Telecommunications Network: infrastructure owned by Franchisee utilizing one or more facilities located within the City's rights-of-way, including, but not limited to, lines, poles, anchors, wires, cables, conduit, laterals, and other appurtenances, necessary and convenient to the provision of Telecommunications Service.

Telecommunications Service: the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used.

Section 2: Grant of Franchise. The City hereby grants to Franchisee, its successors and assigns as authorized herein, a nonexclusive right, privilege, authority and franchise to erect, construct, operate, repair and maintain in, over, under, upon, along, and over the City's Rights-of-way, its lines, poles, anchors, wires, cables, conduits, laterals and other necessary and convenient fixtures and equipment, for the purposes of constructing, operating and maintaining a competitive Telecommunications Network within the City. Before Franchisee may use or occupy any bridge, Franchisee shall first obtain permission from the City to do so and shall comply with any special condition(s) the City desires to impose on such use or occupation provided such special condition(s) is administered consistent with the provisions of Section 6 of this Franchise. All facilities maintained by the Franchisee within the City on the date of acceptance of this Franchise shall be deemed covered by and in full compliance with this Franchise, and their location at such time hereby is approved; provided, however, that should any such facilities not be in compliance with all applicable specifications and standards set by federal, state or local statutes and regulations in effect on the date of acceptance of this Franchise, Franchisee shall within a reasonable time period take actions necessary to bring such facilities into compliance with such regulations unless the City specifically waives the requirement as to a particular defect or class of defects.

Section 3: Franchise Not Exclusive. The Franchise granted herein (the "Franchise") is not exclusive, and shall not be construed as any limitation upon the right of the City to grant to other persons or corporations, including itself, rights, privileges or authority the same as, similar to or different from the rights, privileges or authority herein set forth, in the same or other Rights-of-way, by franchise, permit or otherwise; provided, however, that any such grant shall be done in a competitively neutral and non-discriminatory manner with respect to the rights, privileges and authorities afforded Franchisee.

Section 4: Term and Termination. (a) This Franchise shall become effective after its enactment, upon the date the Franchisee files with the City Recorder an unconditional acceptance of all provisions of this Franchise. If the Franchisee fails to file such written acceptance within the thirty (30) days after the date the Franchise is enacted, then this Franchise shall be of no further force or effect. If accepted by the Franchisee, the right, privilege, authority and franchise herein granted, and the obligations herein assumed, shall continue for a period of ten (10) years, unless sooner terminated as provided by this Franchise or renewed by written agreement of the parties.

(b) This Franchise shall continue for a period of ten (10) years, at which time the parties may renew the Franchise for an additional ten (10) years, upon written agreement signed by both parties. Upon termination or expiration of the Franchise, and absent the grant of a new franchise to Franchisee, Franchisee shall, within one hundred eighty (180) days, remove all its facilities from the City's Rights-of-way. During such period, Franchisee shall remit to the City any payments due under this Franchise, as if this Franchise were in full force and effect. Should Franchisee fail to remove its facilities within such one hundred eighty (180) day period, the City may do so, and Franchisee shall immediately remit to the City the costs of such removal.

Section 5: No Limitation of City Authority. (a) Except as provided in Section 6 below, nothing in this Franchise shall in any way be construed or interpreted to prevent, or in any way limit, the City from:

(i) modifying or performing any work in its rights-of-way, or granting other franchises for use of rights-of-way, or of adopting general ordinances regulating use of or activities in the rights-of-way, or of otherwise abrogating or limiting any rights, privileges or property interest the City now has in its rights-of-way, whether now owned or hereinafter acquired; and

(ii) exercising with regard to this Franchise and the Franchisee, all authority to manage its rights-of-way or otherwise exercise its police powers now or hereafter granted to the City by state statutes or the City charter.

(b) The Telecommunications Network of the Franchisee shall be placed so that they do not interfere unreasonably with the use by the City and the public of the streets and bridges and in accordance with any generally-applicable specifications adopted by the City governing the location of similar facilities. The City reserves the right to require Franchisee to relocate its Telecommunications Facilities in the interest of public convenience, necessity, health, safety or welfare at no cost to the City. Within a reasonable period of time after written notice, Franchisee shall promptly commence the relocation of its Telecommunications Facilities. Before requiring a relocation of Telecommunications Facilities, the City shall, with the assistance of Franchisee, make a reasonable effort to identify a reasonable alignment for the relocated Telecommunication Facilities within the Rights of Way of the City. The City shall assign or otherwise transfer to Franchisee all rights it may have to recover the cost for relocation work and shall support the efforts of Franchisee to obtain reimbursement.

(c) Franchisee shall not be obligated to pay the cost of any relocation that is required or made a condition of a private development. If the removal or relocation of facilities is caused directly or otherwise by an identifiable development of property in the area, or is made for the convenience of a customer, Franchisee may charge the expense of removal or relocation to the developer or customer. For example, Franchisee shall not be required to pay relocation costs in connection with a road widening or realignment where the road project is made a condition or caused by a private development. The City agrees that it shall reasonably cooperate with Franchisee's efforts to collect funds from such customers as described in this Section.

(d) The compensation required by Section 11 of this Franchise to be paid by the Franchisee to the City shall be a credit against all Rights-of-way rental or occupancy charges and all license, occupation, business or excise taxes that the City may now or hereafter impose upon

the Franchisee. Nothing contained in this Franchise shall give the Franchisee any credit against (1) any ad valorem property tax now or hereafter levied against Franchisee's real or personal property within the City, (2) against any local improvement assessment or (3) reimbursement or indemnity paid to the City.

Except as otherwise required by law, and subject to the requirements of Section 6 herein, nothing in this Franchise shall be construed to limit the right of the City to require the Franchisee to pay charges imposed by the City in connection with the issuing of a permit, making of an inspection, or performing any other regulatory service for or in connection with the Franchisee or its facilities, whether pursuant to this Franchise or any ordinance or resolution now in effect or hereafter adopted by the City.

Section 6: Competitively Neutral Application. The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of telecommunications services operating within the City. Any requirement imposed on Franchisee that is determined not in compliance with this Section 6 shall be unenforceable against Franchisee.

Section 7: Construction, Maintenance and Repair of Infrastructure.

(a) The Telecommunications Network shall at all times be maintained in a safe, substantial and workmanlike manner.

(b) The location, construction, extension, installation, maintenance, removal and relocation of the Telecommunications Network shall conform to the requirements of state and federal statutes and regulations adopted pursuant thereto in force at the time of such work.

(c) For the purpose of carrying out Section 7, the City may provide such reasonable specifications relating to the location, installation, maintenance and removal of Franchisee's facilities as may be necessary or convenient for public safety or the orderly development of the City. In furtherance of these goals, the City may amend and add to such specifications from time to time.

(d) Franchisee shall install its Telecommunications Network in accordance with the City's generally applicable aboveground and underground utility facility placement policies in effect no less than sixty (60) days prior to installation. No existing attachments to utility poles by Franchisee shall be required to be replaced with new or existing facilities underground; *provided*, however, that at such time as the City adopts policies and requirements permitting or requiring the underground installation of telecommunications facilities Franchisee shall fully comply with such policies and requirements provided they are imposed on all carriers in a competitively neutral and nondiscriminatory manner.

(e) If required by the City and consistent with the requirements of Section 12, the Franchisee shall file with the City maps showing the location of any construction, extension or relocation of any of portion of its Telecommunications Network and shall obtain from the City prior to commencement of work confirmation that Franchisee's plans are consistent with the City's generally applicable aboveground and underground utility facility placement policies. City acknowledges that maps provided by Franchisee are filed voluntarily, that they may and most likely will contain confidential and secret information and City agrees to treat them accordingly and protect them from disclosure to the extent required by Section 12 of this Franchise. The City may require the Franchisee to obtain a permit before commencing construction, extension or relocation of any of its Telecommunications Network.

(f) Subject to the provisions of this Franchise, the Franchisee may make necessary excavations for the purpose of installing, maintaining and operating its Telecommunications Network. Except in emergencies, prior to making an excavation in the traveled portion of any street and bridge when required by the City, in an untraveled portion of any street or bridge, the Franchisee shall obtain from the City approval of the excavation and of its location.

(g) Except as provided in this section, when any excavation is made by the Franchisee, the Franchisee shall promptly restore the affected portion of the street or bridge to the same condition in which it was prior to the excavation. The restoration shall be done in strict compliance with City specifications, requirements and regulations in effect at the time of such restoration. If the Franchisee fails to restore promptly the affected portion of a street or bridge to the same condition in which it was prior to the excavation, the City may make the restoration and the cost of making the restoration, including the cost of inspection, supervision and administration, shall be paid by the Franchisee.

(h) The City may require that any excavation made by the Franchisee in any street or bridge be filled and the surface replaced by the City and that the cost thereof, including the cost of inspection, supervision and administration, shall be paid by the Franchisee.

(i) The Franchisee may, at its own expense, trim trees which overhang the streets, bridges and public places in the manner and to the extent necessary to provide adequate clearance and safety for its facilities. Except in an emergency, no trimming shall be undertaken without giving the adjacent property owner ten (10) days prior notice in order to give him a reasonable opportunity to accomplish the trimming himself at his own expense. All trimming shall be carried on in strict conformity with any regulations heretofore or hereafter established by the City. The City may require that any tree trimming necessary to provide adequate clearance and safety for the facilities of the Franchisee be performed by the City, and that the cost thereof, including the cost of inspection, supervision and administration, shall be allocated pro-rata among all service providers (telecommunications or otherwise and including Franchisee) benefiting from such activities by the City. Franchisee agrees to pay its pro-rate allocation of such reasonably incurred costs.

Section 8: Insurance. (a) General. At all times during the term of this Franchise, Franchisee, at its own cost and expense, shall provide the insurance specified in this section.

(b) Evidence Required. Within thirty (30) days of the effective date of this Franchise, Franchisee shall provide the City with a certificate of insurance executed by an authorized representative of the insurer or insurers, evidencing that Franchisee's insurance complies with this section.

(c) Notice of Cancellation, Reduction, or Material Change in Coverage. Policies shall include a provision requiring written notice by the insurer or insurers to the City not less than thirty (30) calendar days prior to cancellation, reduction, or material change in coverage. If insurance coverage is canceled, reduced or materially changed, Franchisee shall, prior to the effective date of such cancellation, reduction or material change, obtain the coverage required under this section, and provide the City with documentation of such coverage. Franchisee shall be responsible to indemnify the City as required by Section 10.

(d) Insurance Required. During the term of this contract, Franchisee shall maintain in force, at its own expense, the following insurance:

(1) Workers' Compensation Insurance for all subject workers in compliance with ORS 656.017; and

(2) General Liability Insurance with a combined single limit, or the equivalent, of not less than \$2,000,000 for each person, for each occurrence of bodily injury and property damage, and \$3,000,000 in the aggregate, which coverages shall include contractual liability coverage for the indemnity provided under this contract, and naming the City, its officials, officers, employees and agents as additional insureds with respect to Franchisee's activities pursuant to this Franchise; provided, however, that if at any time during the term of this Franchise the amounts herein provided are less than those provided under the Oregon Tort Claims Act, or any successor statute, Franchisee will increase the amounts of coverage to amounts not less than those provided under such Act or successor statute.

Section 9: Transfers and Change in Control. (a) This Franchise shall not be sold, leased, assigned or otherwise transferred, nor shall any of the rights or privileges herein granted or authorized be leased, assigned, mortgaged, sold or transferred, either in whole or in part, nor shall title hereto, either legal or equitable, or any right, interest or property herein, pass to or vest in any person, except the Franchisee, either by act of the Franchisee or by operation of law, without the consent of the City, expressed in writing, such consent not to be unreasonably withheld. If the Franchisee wishes to transfer this Franchise, the Franchisee shall give the City written notice of the proposed transfer, and shall request consent of the transfer by the City.

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

(ii) Franchisee, upon any transfer as heretofore described, shall within sixty (60) days thereafter file with the City a certified statement evidencing the transfer and an acknowledgment by the transferee that it agrees to be bound by the terms and conditions contained in this Franchise.

(b) The requirements of this section shall not be deemed to prohibit the use of the Franchisee's property as collateral for security in financing the construction or acquisition of all or part of a Telecommunications System of the Franchisee or any affiliate of the Franchisee. The Telecommunications Network franchised hereunder, including portions thereof used as collateral, shall at all times continue to be subject to the provisions of this Franchise. The requirements of this section shall not be deemed to prohibit sale of tangible assets of the Franchisee in the ordinary conduct of the Franchisee's business without the consent of the City. The requirements of this section shall not be deemed to prohibit, without the consent of the City,

a transfer to a transferee whose primary business is Telecommunications System operation and having a majority of its beneficial ownership held by the Franchisee, a parent of the Franchisee, or an affiliate, a majority of whose beneficial ownership is held by a parent of the Franchisee.

Section 10: Indemnification. Subject to the limitations of the Oregon Tort Claims Act, the Oregon Constitution and the Charter of the City of Moro, Oregon, Franchisee shall indemnify, defend and hold harmless City, and City's officials, officers, agents and employees, against any and all claims, demands, causes of action, suits, proceedings, damages, costs, reasonable attorney's fees or liabilities (Claims) arising out of, pertaining to, or occurring through the exercise of, the rights and privileges retained by, granted to, or exercised by Franchisee pursuant to this Franchise. Notwithstanding any provision hereof to the contrary, Franchisee shall not be obligated to indemnify, defend or hold the City harmless (a) to the extent any claim, demand or lien arises out of or in connection with any negligent or willful misconduct of the City or any of its officers, agents or employees; or (b) if the City notifies Franchisee that a conflict of interest exists between Franchisee and the City with respect to the claim, demand or lien. Each party shall give to the other notice in writing of any such Claims within twenty (20) days of the date that party receives notice of any such Claims. Neither party shall settle, compromise or take any action prejudicial to the other's defense of or interest in such Claims without the express written consent of the other.

Section 11: Compensation.

(a) Franchise Fee. In consideration of permission to use the Rights-of-Way of the City for the construction, operation, and maintenance of its Telecommunications Network and to defray the costs of Franchise regulation, the Franchisee shall pay to City an amount equal to seven percent (7%) of the Franchisee's Gross Revenues as a license-use fee, and does not include taxation of revenues from internet access services while prohibited by law. ("Franchise Fee").

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

(c) Payment of Franchise Fees. Payments due under this provision shall be computed and paid quarterly for the preceding quarter, as of April 30, July 31, October 31 and January 31. Not later than the date of each payment, the Franchisee shall file with the City a written statement, in a form satisfactory to the City and signed under penalty of perjury by an officer of the Franchisee, identifying in detail the amount of Gross Revenue received by the Franchisee, the computation basis and method, for the quarter for which payment is made.

(d) Interest; No Accord. Late Franchise Fee payments will be subject to late fees calculated on the basis of nine percent (9%) per annum of the amount past due. No acceptance of any payment shall be construed as accord that the amount paid is in fact the correct amount,

nor shall such acceptance of payment be construed as a release of any claim City may have for further or additional sums payable under the provisions of this Franchise. All amounts paid shall be subject to audit and recomputation by City.

Section 12: Right to Inspect Records.

(a) In order to manage the Franchisee's use of rights-of-way pursuant to this Franchise, and to determine and verify the amount of compensation due to the City under this Franchise, the Franchisee shall provide, upon request, the following information in such form as may be reasonably required by the City: the amount collected by the Franchisee from users of Telecommunications Service provided by Franchisee via its Telecommunications Network; the character and extent of the Telecommunications Service rendered therefore to them; and any other related financial information required for the exercise of any other lawful right of Franchisee under this Franchise. The information or a signed statement verifying that no such information exists, along with any further directly related data which may be required by the City to adequately understand the information, shall be furnished by the Franchisee to the City within thirty (30) days of when the City provides notice requesting such information, at the Franchisee's cost and expense. Franchisee shall maintain on file at an office in Oregon, maps and operational data pertaining to its operations in the City. If requested to do so, the Franchisee shall furnish to the City, without charge and within a reasonable time, maps showing the location of the Telecommunications Network of the Franchisee in specified areas of the City. The City agrees that such information is confidential and that the City will use such information only for the purpose of managing its rights-of-way, determining compliance with the terms of this Franchise, and verifying the adequacy of Franchisee's fee payments. The City further agrees to protect such information from disclosure to third parties to the maximum extent allowed by Oregon law.

Section 13: Right to Perform Franchise Fee Audit or Review; Default.

(a) In addition to all rights granted under Section 12, the City shall have the right to have performed, a formal audit or a professional review of the Franchisee's books and records by an independent private auditor, for the sole purpose of determining the Gross Revenues of the Franchisee generated through the provision of Telecommunications Services under this Franchise and the accuracy of amounts paid as Franchise Fees to the City by the Franchisee; provided, however, that any audit or review must be commenced not later than three (3) years after the date on which Franchise Fees for any period being audited or reviewed were due. The cost of any such audit or review shall be borne by the City, except that if it is established that the Franchisee has made underpayment of the greater of \$1,000 or two percent (2%) or more of the total Franchise Fees due during the year or years subject to the audit required by this Franchise, then the Franchisee shall, within thirty (30) days of being requested to do so by the City, reimburse the City for the full cost of the audit or review. The City agrees to protect from disclosure to third parties, to the maximum extent allowed by Oregon law, any information obtained as a result of its rights pursuant to this Section, or any compilation or other derivative works created using information obtained pursuant to the exercise of its rights hereunder.

(b) If the formal audit or a professional review of the Franchisee's books and records conducted pursuant to this Section 13 indicates that there has been a transfer of revenues from the Franchisee to any other entity such that such amounts that should have been calculated as part of the Franchise Fee have not been so calculated and have not been previously paid or have

not been paid within ninety (90) days after written notice of the City to the Franchisee, then an event of default under the agreement shall have occurred.

Section 14: Right to Inspect Construction. The City or its representatives shall have the right to inspect all construction or installation work performed pursuant to this Franchise and to make such tests as it shall find necessary to ensure compliance with the terms of this Franchise and other pertinent provisions of law relating to management of the City's rights-of-way.

Section 15: Right to Require Removal of Property. At the expiration of the term of this Franchise, or the last renewal thereof, or upon forfeiture or revocation as provided for herein, the City shall have the right to require the Franchisee to remove, at Franchisee's own expense, all or any part of its Telecommunications Network from Rights-of-way within the Franchise area. If the Franchisee fails to do so within one hundred eighty (180) days after receipt of notice from the City, the City may perform the work and collect the cost thereof from the Franchisee. Notwithstanding the other provisions of this Section, the Franchisee, by written notice to the City, may elect to abandon underground cable in place, in which event the Franchisee shall have no further obligation hereunder as to the abandoned cable; except that the City may nevertheless, by written notice, require the Franchisee to remove cable, at Franchisee's own expense, as deemed necessary by the City to provide space for other authorized uses or to accomplish or enable the accomplishment of other public purposes.

Section 16: Limited Waiver of Sovereign Immunity; Venue. (a) The City may have sovereign or other immunities that might prevent or impair enforcement or enjoyment of the terms of this Franchise. Without making a general waiver, limitation or modification of such sovereign or other immunity, the City hereby expressly grants, in favor of Franchisee, a limited, non-assignable waiver of its immunities for claims arising under this Franchise, it being the intent of the parties that the waivers herein provided shall result in the terms and conditions of this Franchise being enforced in a competitively neutral manner.

(b) Venue for any proceeding brought to enforce any term or condition of this Franchise shall be the Circuit Court for Sherman County, Oregon; provided, however, that should any proceeding be brought in a federal forum, such proceeding shall be brought in the U.S. District Court of Oregon in Pendleton, Oregon, with the parties stipulating to trial in Pendleton, Oregon.

(c) Notwithstanding any applicable statute of limitations or other law, these limited waivers of sovereign immunity shall expire when all obligations under this Franchise have been fully and completely performed, or the passage of twenty-four months from the termination of this Franchise, whichever is later.

Section 17: Limitation of Liability. The Franchisee agrees that the City shall not be liable for any indirect, special, or consequential damages, or any lost profits, arising out of any provision or requirement contained herein, or, in the event this Franchise, or any part hereof, is determined or declared to be invalid.

Section 18: Compliance With Applicable Laws. Franchisee shall comply with all applicable federal, state, and local laws, ordinances, and regulations, whether now in existence or hereinafter enacted. Nothing contained in this Franchise shall be construed as authorizing the

Franchisee, its officers, employees or agents, to violate any federal, state or local law, whether now in existence or hereinafter enacted, including, by way of illustration but not of limitation, any provision of Oregon anti-trust law, ORS 646.750-646.836, or the Oregon Unlawful Trade Practices Act, ORS 646.650-646.652. Nothing contained in this section shall be construed as requiring Franchisee to comply with any federal, state or local law that is repealed or otherwise rendered unenforceable subsequent to the adoption of this Franchise.

Section 19: Revocation.

(a) General. In addition to any rights set out elsewhere in this document, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, under the following circumstances:

(1) The failure of the Franchisee, after thirty (30) days written notice and demand in writing, to perform promptly and completely each and every material term, condition and obligation imposed upon it under or pursuant to this Franchise;

(2) the Franchisee becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;

(3) the Franchisee is found to have engaged in fraud or deceit upon the City or any other persons;

(4) the Franchisee fails to obtain and maintain any permit required by any federal or state regulatory body for the construction, maintenance and operation of its telecommunications system; provided, however, that the Franchisee shall be allowed a reasonable time to cure any failure to obtain any material to the operation of Franchisee's telecommunications system or the City's management of its rights-of-way; or,

(5) the Franchisee fails to maintain the full amount of its insurance as required under the terms of this Franchise.

(b) Upon the occurrence of one of the events set forth above, the City shall have the right to terminate this Franchise provided (1) Franchisee is afforded thirty (30) days written notice of the City's intent to terminate the Franchise; and, (2) Franchisee is afforded the opportunity to contest such proposal to terminate in a public hearing before the City Council prior to the Council taking action on such termination proposal. No termination of this Franchise shall be effective unless approved by resolution of the City Council. In the event that the Franchisee believes that the City has improperly declared a forfeiture of this Franchise, the Franchisee may file such proceeding as is appropriate in a court of competent jurisdiction to determine whether the City has properly declared a forfeiture. If a forfeiture is lawfully declared by a court of competent jurisdiction, all rights of the Franchisee shall immediately be divested without a further act upon the part of the City.

Section 20: Notice. Any notice provided for under this Franchise shall be sufficient if in writing and (1) delivered personally to the other party or deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; (2) sent overnight by commercial air courier; or (3) sent by facsimile transmission, provided receipt of such facsimile is confirmed, in writing, on the first business day following the date of transmission. Notice shall be sent to the following address, or such other address as each party may specify in writing:

<p>To the City:</p> <p>City Administrator City of Moro P.O. Box 231 Moro, OR 97039 Phone: 541-565-3535 Facsimile: 541-565-3535</p>	<p>To the Franchisee:</p> <p>Contracts Management Gorge Networks, Inc. 616 Industrial Street, #401 Hood River, OR 97031 Phone: Facsimile:</p>
---	--

Notice shall be deemed effective upon the earliest date of actual delivery; three business days after deposit in the U.S. mail as provided herein; one business day after shipment by commercial air courier; or the same day as transmitted by facsimile, provided transmission of such facsimile is confirmed in writing as provided herein.

Section 21: Captions. The captions to sections of this Franchise are intended solely to facilitate reading and reference of the sections and provisions contained herein, and shall not affect the meaning or interpretation of any section or provision of this Franchise.

Section 22: Severability. The provisions of this Franchise are severable; if any section, subsection, sentence or clause shall be found by a court of competent jurisdiction to be invalid, unconstitutional or is clearly and specifically preempted by federal or state laws, the remaining sections, subsections, sentences, or clauses shall remain in full force and effect, unless the effect of such invalidity, unconstitutionality or preemption effects a material alteration in the benefit of a party's bargain contained herein. Should any provision be declared invalid or unconstitutional, or be preempted, the parties shall enter into negotiations within ten (10) days of final judgment or effective date of the law regarding any such matter, and make a good faith effort to reform or replace such provision or part thereof with a valid and enforceable provision that comes as close as possible to providing the parties the benefit of its bargain as originally expressed herein.

Section 23: Waiver. (a) The City is vested with the power and authority to reasonably regulate and manage its rights-of-way in a competitively neutral and non-discriminatory manner and in the public interest. Franchisee shall not be relieved of its obligations to comply with any provision of this Franchise by reason of the failure of the City to enforce prompt compliance, nor does the City waive or limit any of its rights under this Franchise by reason of such failure or neglect.

(b) No provision of this Franchise will be deemed waived unless such waiver is in writing and signed by the party waiving its rights. However, if Franchisee gives written notice of a failure or inability to cure or comply with a provision of this Franchise, and the City fails to object within a reasonable time after receipt of such notice, such provision shall be deemed waived.

(c) All remedies and penalties under this Franchise, including termination, are cumulative, and the recovery or enforcement of one is not a bar to the recovery or enforcement of any other such remedy or penalty. The remedies and penalties contained in this Franchise, including termination, are not exclusive and the City and Franchisee reserves the right to enforce

the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity.

In confirmation of their consent and agreement to the terms and conditions contained in this Franchise and intending to be legally bound hereby, the party's legally-authorized representatives have executed this Franchise as of the dates written below.

ADOPTED by the Moro City Council this ____ day of _____, 2019.

Perry Thurston, Mayor

ATTEST:

Erik Glover, City Administrator

ACCEPTED BY GORGE NETWORKS, INC. (FRANCHISEE):

By: _____

Name: _____

Title: _____

Date: _____