

CITY OF MILLWOOD, WASHINGTON

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILLWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ELECTRIC LIGHTWAVE, LLC, FOR THE PURPOSE OF PROVIDING NONCABLE TELECOMMUNICATION SERVICES IN AND TO THE CITY; AND PROVIDING FOR OTHER MATTERS RELATED THERETO.

WHEREAS, RCW 35A.47.040 authorizes the City of Millwood (the "City") to permit and regulate non-exclusive franchises for the use of public streets, bridges or other public ways, structures or places above or below the surface of the ground for railroads and other routes and Facilities for public conveyances, for poles, conduits, tunnels, towers and structures, pipes and wires and appurtenances thereof for transmission and distribution of electrical energy, signals and other methods of communication, for gas, steam and liquid fuels, for water, sewer and other private and publicly owned and operated Facilities for public service; and

WHEREAS, pursuant to RCW 35A.47.040, no ordinance granting any non-exclusive franchise shall be adopted or passed by the Council of the City (the "Council") on the day of its introduction nor for five (5) days thereafter, nor at any other than a regular meeting nor without first being submitted to the City attorney, nor without having been granted by the approving vote of at least a majority of the Council, nor without being published at least once in a newspaper of general circulation in the City before becoming effective; and

WHEREAS, Electric Lightwave, LLC (the "Grantee") is a limited liability company organized under the laws of the State of Delaware and is a wholly-owned subsidiary of Integra Telecom Holdings, Inc.; and

WHEREAS, Grantee is engaged in the business of providing noncable Telecommunication service for customers consistent with applicable laws and regulations, and the City has determined it is in the interest of persons and businesses in this jurisdiction to have access to Grantee's services;

WHEREAS, Grantee has requested renewal of its expired Temporary License Agreement dated July 7, 1997, and after negotiations with Grantee, the City has determined that it is in the best interest of the City and its residents to renew and grant a Franchise Agreement with Grantee; and,

WHEREAS, the City has, following required and reasonable notice, conducted a full public hearing, affording all persons concerned with the analysis and consideration of the technical ability, financial condition, legal qualifications and general character of the Grantee; and,

WHEREAS, the City has determined that it is in the best interests of the City to renew and grant the Franchise Agreement to the Grantee to provide Telecommunication service within the confines of the City and on the terms and conditions hereinafter set forth; and,

WHEREAS, the Grantee has agreed to be bound by the conditions hereinafter set forth;

NOW, THEREFORE, in consideration of this Franchise Agreement, the Grantee hereby promises to comply with the provisions of this Franchise Agreement. In consideration of the Grantee's promises, the City hereby grants a franchise as hereinafter set forth below:

THE CITY OF MILLWOOD DOES ORDAIN:

ELECTRIC LIGHTWAVE, LLC TELECOMMUNICATIONS (NONCABLE) FRANCHISE

- Section 1. Definitions
- Section 2. Parties, grant
- Section 3. Limits on permission
- Section 4. Effective Date, Term
- Section 5. General provisions

- Section 6. Plans; Locate, Relocate
- Section 7. Grantee to restore affected areas
- Section 8. Information, good engineering, inspections
- Section 9. Limited access, no obstruction, accommodation
- Section 10. Undergrounding
- Section 11. Facilities for City Use
- Section 12. Liability; No duty
- Section 13. Insurance
- Section 14. Taxes, fees
- Section 15. Franchise Agreement administration
- Section 16. Additional

Section 1. Definitions

“Administering officer” is the designee of the Mayor who administers this Franchise Agreement.

“Cable television service” means the one-way transmission to subscribers of video programming and other programming service and subscriber interaction, if any, that is required for the selection or use of the video programming or other programming service.

“City” means the City of Millwood and its legal successors.

“Facility” or “Facilities” means all of the plant, equipment, fixtures, appurtenances, and other related property necessary to furnish and deliver Telecommunication service, including but not limited to lines, towers, poles, wires, cables, ducts, conduits, vaults, manholes, amplifiers, appliances, and attachments necessary or incidental to the provision of Telecommunication service, but not above ground pedestals or other special installations in the Public Right-of-Way absent written permission of the Administering officer.

“Franchise Agreement” shall mean the nonexclusive right and authority to construct, maintain, and operate Telecommunication service Facilities through use of Public Rights-of-way in the City pursuant to a contractual agreement approved by the City Council pursuant to this Ordinance No. ___ and executed by the City and Grantee and in accordance with any and all applicable laws, regulations, rules and ordinances.

“Municipal infrastructure” means the road bed and road area, street and sidewalk paving, curbing, associated drainage Facilities, bike paths and other construction or improvements pertaining to public travel. It further includes municipal water and sewer lines or other municipal utility Facilities, as well as municipal traffic signal, street lighting and communications Facilities in the Right-of-Way or other areas or easements open for municipal use. It further includes skywalks, street trees, plants, shrubs, lawn and other ornamental or beautification installations owned by the City in the Right-of-Way or other ways open for public travel or municipal use, and accepted for municipal management or control as such. The definition is intended to encompass any municipal physical plant, fixtures, appurtenances or other Facilities located in or near the Right-of-Way or areas or easements opened and accepted for municipal use.

“Public Right-of-Way” or “Right-of-Way” shall mean the surface of and the space above and below any public street, right-of-way, road, highway, freeway, lane, path, court, sidewalk, parkway, drive alley, court, easement, or similar property interest now or hereafter dedicated and opened by the City for the purpose of public travel or public utilities. In the case of any grant of authority or permission by the City to a Telecommunication service provider however, this term shall not exceed the scope of the City’s interests or power to extend such grant.

“Telecommunication service” means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means for hire, sale, or resale to the general public. For the purpose of this definition, “information” means knowledge or intelligence represented by any form of writing, signs, signals, pictures, sounds, or any other symbols. For purposes of this definition, “Telecommunication service” excludes the

over-the-air transmission of broadcast television or broadcast radio signals and "cable service" as defined in 42 USC 522 (5) or other distribution of multichannel video programming.

Section 2. Parties, grant

A. This Franchise Agreement is between the City of Millwood as Grantor, hereafter also "City", and Electric Lightwave, LLC as Grantee, hereafter also "Grantee." Grantee is a Delaware limited liability company whose home office is 1201 NE Lloyd Blvd., Ste. 500, Portland, Oregon 97232. Any notice sent hereunder shall be sent: To the City, at City of Millwood, 9103 E. Frederick Ave., Millwood, Washington 99206 Attention: City Clerk; and to Grantee, at Electric Lightwave, LLC 1201 NE Lloyd Blvd., Ste. 500, Portland, Oregon 97232 Attention: General Counsel.

B. In return for promises made and subject to the stipulations and conditions stated, the City grants to Grantee the nonexclusive right and privilege to have, acquire, construct, reconstruct, use, operate and maintain Facilities to provide Telecommunication service to the public in the City and/or to transport Telecommunication services through the City and for no other purpose, subject to applicable law, including but not limited to the Millwood Municipal Code, and to the conditions and restrictions as hereinafter provided. This grant expressly does not include permission to use the Public Right-of-Way for Cable television service. The grant is by way of general permission to occupy the Right-of-Way, and not in place of specific location permits. In accepting this Franchise Agreement, Grantee stipulates and agrees to the City's authority to issue and require the Franchise Agreement and stipulates and agrees to the other terms and conditions hereof. No privilege or power of eminent domain is bestowed on Grantee by this Franchise Agreement.

C. The grant of authority for use of the City's Public Rights-of-way, as conferred in herein, is not exclusive and does not establish priority for use over other franchise holders, permit holders and the City's own use of Public Rights-of-way or any other real or personal property that the City owns or in which the City has a legal interest. Nothing in this Franchise Agreement shall affect the right of the City to grant to any other person or entity any other franchise, similar or not, or right to occupy and use Public Rights-of-way or any part thereof.

D. Grantee shall at all times comply with all applicable state and federal laws, regulations and rules regarding telecommunications. Compliance shall not preclude a lawful challenge.

Section 3. Limits on permission

A. Should the City determine Grantee is using this Franchise Agreement beyond its purpose or providing Cable television service(s) or performing other business functions beyond the scope of permission extended in the Public Right-of-Way, the City reserves the right to cancel and/or revoke this Franchise Agreement and, in addition to any other rights set forth herein, require Grantee to follow any applicable requirements to obtain a cable franchise or other franchise from the City.

B. Permission granted is in the nature of a quitclaim of any interest or authority the City has to make the grant, without warranty of authority by the City to the Grantee. It does not extend beyond the Right-of-Way, to areas such as buildings or private areas not reserved for general utility access. Grantee is solely responsible to make its own arrangements for any access needed to such places. Permission granted is nonexclusive. Grantee stipulates that the City may grant similar permission to others. The City additionally reserves the right to engage in any lawful municipal function, whether or not including any line of business engaged in by Grantee.

C. The grant of permission from the City does not extend to municipal buildings or other City owned or leased structures or premises held in a proprietary or ownership capacity. For such locations, Grantee should make specific written lease arrangements directly with the City for such building or other structure or area, all arrangements to be approved in accord with applicable requirements of the City and law.

Section 4. Effective Date, Term

This Franchise Agreement is effective as of the effective date of this Ordinance No. 412 and shall expire nine (9) years thereafter; PROVIDED, that it shall not be effective unless and until the written acceptance of this Ordinance No. 412 by the Grantee, signed by its proper officers, shall be filed with the City Clerk within thirty (30) days of enactment; FURTHER PROVIDED, the City retains any and all rights to terminate and/or revoke the Franchise Agreement for cause, abandonment, or because of breach of any material promise, condition or stipulation stated herein.

Section 5. General provisions

A. Grantee will operate and provide services in accordance with all applicable federal, state, and local laws, rules, regulations and decisions and federal and state agencies that have jurisdiction over Grantee, including but not limited to the Federal Communication Commission and Washington Utilities and Transportation Commission.

B. Grantee will maintain a toll free public telephone number 24 hours a day, seven days a week for customer access, personally staffed at least during normal business hours. Grantee will provide safe and reliable services to its customers at rates that are fair and reasonable, in accordance with all applicable laws and regulations. Grantee agrees to be accessible to its customers and responsive to customer needs .

C. Notwithstanding any other provision set forth in this Franchise Agreement, Grantee will coordinate its activities with other utilities and users of permitted areas to avoid unnecessary cutting, damage or disturbance to the Public Right-of-Way and other permitted areas, and to conduct its planning, design, installation, construction and repair operations to maximize the life and usefulness of the paving and City or public infrastructure. Grantee agrees that its uses in the City are subordinate to municipal infrastructure needs and uses, the general public travel and access uses and the public convenience, except as may be otherwise required by law. Grantee shall minimize or avoid any hazard, danger or inconvenience to Municipal infrastructure needs and uses, public travel, and the public convenience.

D. Grantee will maintain membership with the Inland Empire Utility Coordinating Council (IEUCC) or other similar or successor organization designated to coordinate underground fixture locations and installations. Grantee is familiar with chapter 19.122 RCW, Washington State's "Underground Utilities" statute. Grantee will familiarize itself with local procedures, custom and practice relating to the one-call locator service program, and will see to it that its contractors or others working in the Right-of-Way on Grantee's behalf are similarly well informed.

Section 6. Plans; Locate, Relocate

A. Grantee's plans for construction or installation shall be submitted to the Administering officer as requested under such advance notification as the Administering officer may reasonably require, with a copy of such plans to the Administering officer and any other information requested by the City. Grantee promises that all its installations shall be placed in the standard location for telephone conduit or overhead lines, as determined by local regulation, custom and practice, or as designated by the Administering officer. Above-ground pedestals or other above ground structures besides telephone poles and related guy wire supports are subject to separate review and approval by the Administering officer, in addition to other Franchise Agreement requirements.

B. The City reserves the right to change, regrade, relocate, or vacate the Public Right-of-Way and/or skywalk over the Right-of-Way at no expense or liability to the City. The City agrees to give Grantee preliminary notice of any such request ("initial notice date"). Grantee must submit design plans within sixty (60) days of an initial notice date, with relocation to be accomplished within ninety (90) days of the initial notice date or thirty days of the City's final approval of Grantee's design plan, whichever is later. In addition, the City may work with Grantee to give additional advance notice as may be reasonable under the circumstances or to extend additional time, considering the nature and size of the project and other factors. Upon expiration of the time limits specified, Grantee will relocate, remove, or reroute its Facilities, as

ordered by the Administering officer, at its sole expense and liability, including handling any third party claims, such as service interruption. This provision prevails over any other in the event of conflict or ambiguity. In case of emergency, the notice period may be shortened, giving reasonable consideration also for Grantee's needs.

C. Under the provisions of RCW 35.99.060, the Administering officer may require Grantee to relocate its Facilities within the Right-of-Way, when reasonably necessary for construction, alteration, repair, or improvement of the Right-of-Way for purposes of public welfare, health, or safety. The same terms and timelines as exists in Section 6(B) of this Franchise Agreement shall apply for the relocation contemplated in this Section 6(C).

D. Grantee shall complete the relocation by the date specified by the Administering officer, unless extended by said official after a showing by Grantee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements. As provided in RCW 35.99.60, Grantee may not seek reimbursement for its relocation expenses from the City except for City requested relocations where Grantee has paid for the relocation cost of the same Facilities in the Right-of-Way at the request of the City within the past five (5) years, in which case the Grantee's share of the cost of relocation will be paid by the City when the City is requesting the relocation.

E. As provided by RCW 35.99.060, where a project is primarily for private benefit, the private party or parties shall reimburse the cost of relocation in the same proportion to their contribution to the costs of the project. However, Grantee understands that the City has no obligation to collect such reimbursement and enforcement of any such rights shall be solely by Grantee. Upon stipulation of all parties, the Administering officer may arbitrate any dispute referenced in this Section 6(E) or refer the matter to the City Hearing Examiner, provided, costs of the same as may be assessed by the City shall be borne by the participants. Grantee is not otherwise precluded from recovering costs associated with relocation, consistent with applicable state or federal law, where it does not directly or indirectly create additional liability or expense to the City.

F. The Administering officer may require the relocation of all or any part of the Facilities at Grantee's expense at any location when the safety, health or welfare of the public requires such relocation, and the expense thereof shall be paid by the Grantee. Where the City determines to abandon or vacate any right or way or other permitted area, it is the Grantee's responsibility to resolve any question of Grantee's continued occupancy or use of such areas directly with the owner of such areas.

G. All work authorized and required hereunder shall be done in a safe, thorough and workmanlike manner and in accordance with applicable law, rule, regulation, or policy, including but not limited to City Code. All equipment shall be durable and installed and maintained in accordance with good engineering practices and comply with applicable law, including but not limited to the City Code. The Grantee shall, at its own expense, participate in the Call Before You Dig Program required under applicable state law.

H. Should Grantee fail to remove or relocate any Facilities as required herein, the City may effect such removal or relocation, and the expense thereof shall be paid by Grantee, including all costs and expenses incurred by the City due to Grantee's delay.

I. Prior to commencing any construction work in the Right-of-Way or other public property, Grantee shall apply for, and obtain, in advance, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for protecting any structures in such Right-of-Way, and for providing for the proper restoration of such Right-of-Way and to protect the public and the continuity of pedestrian or vehicular traffic. Grantee shall pay all generally applicable fees for the requisite City permits.

Section 7. Grantee to restore affected areas

Subject to Section 6 of this Franchise Agreement as it may apply, whenever Grantee damages or disturbs any location in or near the Right-of-Way or other permitted area, Grantee will promptly restore the same to its original or better condition at Grantee's expense, as required by the Administering officer. Grantee will restore and patch all surfaces cut in accord with the

City's generally applicable Pavement Cut Policy, to maintain and preserve the useful life thereof. Any damage or disturbance to Facilities, fixtures or equipment of the City or others shall be promptly repaired. Pavement restorations shall be maintained in good condition and repair by Grantee until such time as the area is resurfaced or reconstructed. If Grantee fails or delays for more than thirty (30) days in performing any obligation here or elsewhere in the Franchise Agreement, the City may proceed to correct the problem and bill Grantee for the expense, upon such reasonable notice as determined by the Administering officer under the circumstances.

Section 8. Information, good engineering, inspections

A. Grantee will supply information requested by the Administering officer such as installation inventory, locates of existing or planned Facilities, maps, plans, operational data, and as-built drawings of Grantee's installations or other information. The information shall be in a format compatible with City operations. Grantee is responsible for defending any public record requests as it may desire.

B. Grantee property and Facilities shall be constructed, operated and maintained according to good and accepted industry practices. In connection with the civil works of Grantee's system, such as trenching, paving, compaction and locations, Grantee promises to comply with the American Public Works Association Standard Specifications, the edition being that in current use by the City, together with the City's Supplemental Specifications thereto, all as now or hereafter amended. Grantee promises its system shall comply with the applicable federal, state and local laws, and the National Electric Safety Code and Washington Electrical Construction Code, where applicable. Grantee will familiarize itself with the City of Millwood's Specifications and other Right-of-Way installation and location requirements of the City and make reasonable effort to be familiar with updates or changes thereto.

Section 9. Limited access, no obstruction, accommodation

A. The City reserves the right to limit or exclude Grantee's access to a specific route, Public Right-of-Way or other location when, in the reasonable judgment of the Administering officer, there is inadequate space, a pavement cutting moratorium, subject to the requirements of applicable law, unnecessary damage to public property, public expense, inconvenience, interference with City utilities, or for any other reasonable cause determined by the Administering officer, provided, it shall do so consistent with the Federal Telecommunications Act of 1996 and RCW 35.99.050 as applicable.

B. Grantee must raise any concerns under the aforementioned laws or other applicable laws that it believes limit the City's authority or Grantee's obligations to the City pertaining to this Franchise Agreement at the time such issue is first known or should have been reasonably known by Grantee.

C. Grantee will not interfere with Municipal infrastructure uses of the Right-of-Way or other permitted areas. Grantee shall maintain a minimum underground horizontal separation of five (5) feet from City water facilities and ten (10) feet from aboveground City water facilities unless modified in writing; PROVIDED, that for development in new areas, the City, together with Grantee and other utility purveyors or authorized users of the Right-of-Way, will develop and follow the Administering officer's reasonable determination of a consensus for guidelines and procedures for determining specific utility locations, subject additionally to this Franchise Agreement. Subject to Section 6 of this Franchise Agreement, the City may require Grantee to make reasonable accommodation for public or third party needs in the construction of Grantee Facilities in the Right-of-Way as, in the judgment of the Administering officer, are necessary to preserve the condition of, or reduce the interference with, such Right-of-Way, and a reasonable apportionment of any expenses of any such accommodation; PROVIDED, that this Franchise Agreement creates no third party beneficial interests. Notwithstanding the foregoing, it remains the responsibility of the Grantee to anticipate and avoid conflicts with other Right-of-Way occupants or users, other utilities, franchisees, or permittees. The City assumes no responsibility for such conflicts.

Section 10. Undergrounding

The City reserves the right to develop a policy on undergrounding and to require Grantee's participation therein, as a condition of Grantee's new installation or major maintenance or restoration construction activities of overhead facilities under this Franchise Agreement. The purpose of this Section 10 is to recognize and preserve the City's control over uses of the Public Right-of-Way, consistent with the municipal policy favoring undergrounding of overhead lines for aesthetic reasons.

Section 11. Facilities for City Use

A. For the life of this Franchise Agreement, whenever Grantee constructs, relocates or places ducts or conduits in the Public Right-of-Way, Grantee will provide the City with additional duct or conduit and related structures necessary to access the conduit, subject to RCW 35.99.070 as it may apply.

B. Grantee agrees to notify the Administering officer at least sixty (60) days prior to opening a trench or placing overhead lines at any location to allow the parties to implement Section 11(A) herein. As to all matters encompassed in this Section 11, the parties further agree to do anything required by law to maintain the effectiveness of such arrangements and to negotiate in good faith any matters not otherwise fully resolved. Each party acknowledges receipt of good and adequate consideration for all matters encompassed in this Section 11.

Section 12. Liability; No duty

A. Grantee waives all claims, direct or indirect, for loss or liability, whether for property damage, bodily injury or otherwise, against the City arising out of Grantee's enjoyment of Franchise Agreement or permit privileges. Grantee will indemnify and hold harmless the City, its boards, officers, agents and employees from any and all claims, accidents, losses, or liabilities arising from or by reason of any act, occurrence or omission of the Grantee, whether singularly or jointly with others, its representatives, permittees, employees or contractors, in the construction, operation, use, or maintenance of any of the Grantee's property or Facilities, and/or enjoyment of any privileges granted by this Franchise Agreement, or because of Grantee's performance or failure to perform any Franchise Agreement obligations.

B. Grantee accepts that access to any area related to this Franchise Agreement is furnished "as is." The City has made no assessment or guarantee as to its suitability for Grantee's needs or compatibility of Grantee's uses with other needs. Grantee waives immunity under Title 51 RCW in any cases involving the City and affirms that the City and Grantee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply. This waiver has been mutually negotiated.

C. It is not the intent of this Ordinance No. 412 to acknowledge, create, or expand any duty or liability of the City for any purpose. Any City duty nonetheless deemed created shall be a duty to the general public and not to any specific party, group, or entity.

Section 13. Insurance and Bond

A. During the term of this Franchise Agreement, the Administering officer may review the relative risk of Grantee's installation and operations and direct changes to insurance and liability protections and bond requirements as he may require. Upon the granting of this Franchise Agreement and unless so modified, annually Grantee shall furnish satisfactory evidence of commercial general liability insurance and maintain the same in good standing, with limits of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, with the City of Millwood named as an additional insured.

B. Any Grantee insurance policy or approved self insurance arrangements addressing requirements of this Franchise Agreement shall be primary to any City insurance coverage or, in the event the City is self insured, any Grantee policy shall afford first dollar protection coverage for risks included in Grantee's operations. On or before December 15th of each year and at the time of granting this Franchise Agreement, as a condition of Franchise Agreement validity, Grantee shall file with the Administering officer proof of continued insurance coverage, at least

in the amounts required in this Section 13, through a certificate of insurance, including the additional insured endorsement indicating City coverage required herein and a provision that said coverage may not be cancelled or reduced without at least thirty (30) days written notice to the City.

C. The Grantee agrees to the following bonding requirements:

1. Before undertaking any of the work authorized by this Franchise Agreement, Grantee shall furnish an ongoing performance bond executed by Grantee and a corporate surety authorized to do surety business in the State of Washington, in a sum to be set and approved by the Administering officer as reasonably sufficient to ensure performance of Grantee's obligations under this Franchise Agreement. The bond shall be conditioned so that Grantee shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Franchise Agreement, and to restore or replace any defective work or materials discovered within a period of one (1) year from the final City inspection date of any such restoration. Grantee may meet the obligations of this Section 13(C) with one (1) or more bonds issued by a surety with an A VII Best's rating or better. In the event that a bond furnished pursuant to this Section 13(C) is canceled by the surety, after proper notice and pursuant to the terms of said bond, Grantee shall, prior to the expiration of said bond, procure a replacement bond that complies with the terms of this Section 13(C).

2. With respect to undertaking any of the work authorized by this Franchise Agreement, in the event Grantee fails to perform its obligations under this Franchise Agreement and further fails to cure any deficiency within a reasonable period of time after receipt of written notice of such deficiency by the City, then the City may use any bond(s) furnished by Grantee pursuant to Section 13(C) to cure such deficiency. Neither the amount of such bond(s) nor the City's use thereof shall limit the City's full recovery from Grantee of costs incurred by the City to cure such deficiency.

3. In the event the City makes use of such bond(s) furnished by Grantee pursuant to Section 13(C), the City shall promptly provide written notice of same to Grantee. Within thirty (30) days of receipt of such notice, Grantee shall replenish or replace such bond(s) as provided in Section 13(C).

4. The bond shall not require the consent of the Grantee prior to the collection by the City of any amounts covered by the bond.

5. The rights reserved to the City by this Section 13(C) are in addition to other rights of the City whether reserved by this Franchise Agreement or authorized by law, and no action, proceeding, or exercise of right under this Section 13(C) shall constitute an election or waiver of any rights or other remedies the City may have.

Section 14. Taxes, fees

A. At the time this Franchise Agreement is granted, no franchise fee may be assessed for telephone business operations in accord with RCW 35.21.860. If RCW 35.21.860 is amended or modified to allow the City to assess Grantee a franchise fee, the City shall be entitled to assess a franchise fee to the fullest extent available and the parties will amend or modify this Franchise Agreement to reflect such assessment.

B. If Grantee operates a Cable television service anytime during the term of this Franchise Agreement, the City shall be entitled to assess Grantee a fee of five percent (5%) of Grantee's annual gross revenues in the City, pursuant to 47 U.S.C. § 542 and Millwood Municipal Code § 5.04.120, on the same or similar terms as the City assesses any other franchisee for Cable television service in the City.

C. Nothing in this Franchise Agreement shall otherwise limit the City's power to tax or recover any lawful expenses in connection with this Franchise Agreement. Grantee agrees to pay all taxes as due and any lawful expenses within forty-five (45) days of billing pursuant to this Franchise Agreement. Failure to pay within forty-five (45) days after demand by the City and exhaustion of any applicable remedies is a material breach of this Franchise Agreement.

D. The City reserves the right to audit any books or records required to enforce any lawful tax, fee or expense to be paid by Grantee. All audits will take place on Grantee's premises or offices furnished by Grantee, which shall be a location within the City of Millwood or by mutually accepted other arrangements. Grantee agrees that no later than sixty (60) days after receiving written request from the City Treasurer, Grantee shall provide to the City copies of all documents filed with any federal, state, or local regulatory agency, affecting any of Grantee's Facilities or business operations in the City of Millwood. Any information provided by Grantee to City shall be subject to public disclosure under the Public Records Act, chapter 42.56 RCW.

Section 15. Franchise Agreement administration

Questions of application or interpretation of this Franchise Agreement shall be determined by the Administering officer or a court of competent jurisdiction. Said officer may issue enforcement orders, promulgate rules and procedures as deemed necessary and grant exceptions or waivers, which shall be revocable only if set forth in writing. Nothing in the Franchise Agreement limits the City's police or regulatory power in general or over its Right-of-Way or other franchised areas. For the performance of all Franchise Agreement obligations, time is of the essence. All City acts under this Franchise Agreement are discretionary, guided by considerations of the public health, safety, aesthetics and convenience.

Section 16. Additional

A. Any assignment of use or occupancy privileges requires written consent of the City in the manner originally granted. No capital stock may ever be issued based on any permission to use or occupy the Right-of-Way or other permitted areas or the value thereof. In any condemnation proceeding brought by the City, no Grantee of any permission, permit or franchise under this chapter or otherwise shall ever be entitled to receive any return thereon, or its value.

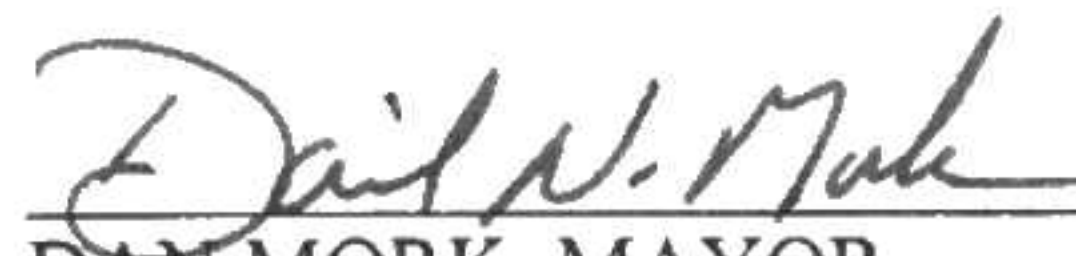
B. This Franchise Agreement may be revoked by resolution of the City Council because of any material breach by Grantee, after giving at least thirty (30) days notice to Grantee and opportunity to cure. No forbearance by the City of any term or condition of this Franchise Agreement shall ever comprise a waiver or estoppel of the City's right to enforce said term or condition. Grantee may surrender its Franchise Agreement to the City upon sixty (60) days written notice to the Administering officer, subject to acceptance by the City, by a resolution of the City Council.

C. Upon termination, surrender or expiration of the Franchise Agreement, Grantee may be required to remove all its Facilities as ordered by the Administering officer or otherwise render the same safe as the Administering officer reasonably determines.

D. Grantee understands that this Franchise Agreement applies to itself as well as all third party users, assigns, successors or any other entity approved in writing by the City and that receives Franchise Agreement privileges derived from permission extended by the city to Grantee herein and Grantee shall assure that any contracts with such users, assigns, successors or entities so provide. Additionally, Grantee accepts full responsibility with said users, assigns, successors, or entities, jointly and severally, to the City for full performance of all Franchise Agreement obligations.

E. This Franchise Agreement is governed by the laws of the State of Washington, and venue for any litigation arising out of or in connection with privileges extended herein is stipulated to be in Spokane County.

ADOPTED by the City Council of the City of Millwood, Washington, at a regular meeting thereof, held this 2nd day of May, 2011.


DAN MORK, MAYOR

Attest:

Thomas G. Richardson
Thomas G. Richardson, City Clerk

STATE OF WASHINGTON)
)ss:
County of Spokane)

Thomas Richardson, being first duly sworn on oath deposes and says:

I am the Deputy Clerk of the City of Millwood, Washington, and the foregoing ordinance entitled "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MILLWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO ELECTRIC LIGHTWAVE, LLC, FOR THE PURPOSE OF PROVIDING NONCABLE TELECOMMUNICATION SERVICES IN AND TO THE CITY; AND PROVIDING FOR OTHER MATTERS RELATED THERETO" is the true and correct copy of the City of Millwood's Ordinance numbered 412 and that the same was posted and published according to law.

Thomas Y. Buchanan

SUBSCRIBED AND SWORN TO BEFORE ME THIS 2nd DAY OF MAY, 2011.



W. R. Peterson

Notary Public in and for the
State of Washington, residing at Spokane.
My Commission expires 5/7/2014

Comes now Electric Lightwave, LLC, for itself and for its successors and assigns, does accept, without qualification, all of the terms and conditions of the foregoing Franchise granted to it by the City of Millwood, Spokane County, State of Washington, under Ordinance No. 412, approved _____, 2011.

Electric Lightwave, LLC
By: _____
Print Name: _____
Its: _____

We hereby acknowledge receipt of the Formal Acceptance by Electric Lightwave, LLC of that certain Electric Lightwave, LLC telecommunications (noncable) Franchise granted to said company by the City of Millwood, Spokane County, State of Washington, under Ordinance No. 412, said Acceptance being duly signed by _____, _____ of the company on _____, 2011.

City of Millwood
By: _____
Title: _____, 2011.