

**COLVILLE CITY COUNCIL AGENDA ITEM  
BRIEFING SHEET**

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**Meeting Date:** August 28, 2018 and September 11, 2018

**Contact:** Logan Worley, Mayor Janke

**Topic or Problem Statement:** School District Fiber Optic Franchise Agreement

The Colville School District has a fiber optic system run between the schools, which utilizes city rights of way. As part of the City of Colville Franchise Policy, the City is working to identify infrastructure in the right-of-ways that don't have franchises.

**Type of Briefing:**

Information Only     Discussion Only     Decision Needed

Information for August 28 meeting and Decision Needed September 11 meeting.

**Background of Situation:**

The Colville School District has a fiber optic system run between the schools, which utilizes city rights of way. As part of the City of Colville Franchise Policy, the City is working to identify infrastructure and systems using the right of way that need to have a Franchise. Franchises help set out terms of use for the right of way, and help the City and Franchisee by making an orderly process for work to be done.

**Goals and Objectives:** i.e., CFP, Comprehensive Plan, Safety, etc.

City Council Goal #1 – Colville is a community where people want to live and work.

City Council Goal #4 – Colville effectively delivers services.

**Evaluate Alternatives or Options/Consequences of Inaction:**

Without adoption of the Franchise, the Fiber Optic System would remain in place, but there would not be the benefits of having the franchise agreement which sets out each parties duties.

**Funding Needed and Recommended Source (BARS #):**

None.

**Attachments:**

None.

**Recommended Action with Justification:**

Adopt the Franchise agreement between the City of Colville and the Colville School District to comply with the City's Franchise Policy, and to have a Franchise which sets forth each parties' Duties and Rights.

**ORDINANCE NO. \_\_\_\_\_ N.S.**

**AN ORDINANCE OF THE CITY OF COLVILLE, WASHINGTON GRANTING TO THE COLVILLE SCHOOL DISTRICT A NON-EXCLUSIVE FRANCHISE TO LOCATE, CONSTRUCT, INSTALL, OWN, MAINTAIN, REPAIR, REPLACE, EXTEND, OPERATE AND USE THE COLVILLE SCHOOL DISTRICT FIBER OPTIC SYSTEM, IN, UPON, OVER, UNDER, ALONG, AND ACROSS THE RIGHTS OF WAY IN THE SERVICE AREA.**

**This Franchise Agreement** (“Franchise”) is between the CITY of COLVILLE, WASHINGTON, hereinafter referred to as the “Grantor”, and the Colville School District, hereinafter referred to as the “Grantee.”

This non-exclusive Franchise is for the locating of Grantee’s fiber optic cable equipment and system in the right of ways controlled by the Grantor.

WHEREAS, the City Council finds it desirable for the welfare of the Grantor and its residents that such non-exclusive franchise be granted to Grantee; and

WHEREAS, the City Council has the authority under state law to grant franchises for the use of its street rights of way; and

WHEREAS, the Grantor is willing to grant the rights requested by Grantee subject to certain terms and conditions.

**NOW, THEREFORE, THE GRANTOR AND GRANTEE AGREE AS FOLLOWS:**

**1. Definitions:**

- a. “Fiber Optic System” means all cables, wires, conduits, ducts, pedestals and any associated converter, equipment or other facilities within the City’s street rights of way, designed and constructed for the purpose of providing fiber optic service.
- b. “Franchise” means the authorization granted hereunder of a franchise, privilege, permit, license or otherwise to construct, operate and maintain a Fiber Optic System within the Service Area.
- c. “Service Area” shall mean the geographic boundaries of the Grantor.
- d. “Streets” means the public streets, avenues, highways, boulevards, concourses, driveways, bridges, tunnels, parks, parkways, waterways, alleys, all other rights-of-way and easements, and the public grounds, places or water within the geographic boundaries of Grantor.

- 2. Granting of Franchise.** The Grantor hereby grants to Grantee a non-exclusive Franchise for the use of the Streets and dedicated easements within the Service Area for the construction, operation and maintenance of the Fiber Optic System, upon the terms and conditions set forth herein.

3. **Term.** The Franchise shall be for a term of ten (10) years, commencing on the Effective Date of this Franchise as set forth in Section 11. This Franchise will be automatically extended for an additional term of ten (10) years from the expiration date as set forth in Section 11, unless either party notifies the other in writing of its desire to not exercise this automatic extension.
4. **Permits, Fees, and Construction Codes.** Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any Right-of-Way within the Service Area. The Grantor shall cooperate with the Grantee in granting any permits required, providing such grant and subsequent construction by the Grantee shall not unduly interfere with the use of such Right-of-Way. Grantee shall pay all required permit fees. The Grantee shall adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Fiber Optic System in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to other public utility companies and other entities operating in the Service Area.
5. **Use of the Streets and Dedicated Easements.**
  - a. Grantee shall have the right to use the Streets of the Grantor for the construction, operation and maintenance of the Fiber Optic System, including the right to repair, replace and enlarge and extend the Fiber Optic System, provided that Grantee shall utilize the facilities of utilities whenever practicable.
  - b. The facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric services are both underground at the time of system construction. In areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the existing aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground.
  - c. Grantee shall have the right to remove, trim, cut and keep clear of the Fiber Optic System, the trees in and along the Streets of the Grantor, but Grantee must notify the property owner affected by the work of any removal, trimming, or cutting of trees along Streets of Grantor, and seek input from the property owner affected.
  - d. Grantee in the exercise of any right granted to it by the Franchise shall, at no cost to the Grantor, promptly repair or replace any facility or service of the Grantor which Grantee damages, including but not limited to any Street or sewer, electric facility, water main, fire alarm, police communication or traffic control.
6. **Maintenance of the System.**
  - a. Grantee shall at all times employ ordinary care in the maintenance and operation of the Fiber Optic System so as not to endanger the life, health or property of any citizen of the Grantor or the property of the Grantor

- b. All construction practices and installation of equipment shall be done in accordance with all applicable sections of the National Electric Safety Code, and WSDOT code.
- c. The Fiber Optic System shall be designed, constructed and operated so as to meet any required technical standards adopted by the FCC, and Washington State.
- d. Compliance with WUTC Regulations. At all times during the term of this Franchise, Grantee shall fully comply with all applicable regulations of the Washington Utilities and Transportation Commission.

**7. Insurance/Indemnity.**

- a. The Grantee shall maintain throughout the term of the Franchise insurance in amounts at least as follows:

Workers' Compensation	Statutory Limits
Commercial General Liability	\$1,000,000 per occurrence, Combined Single Limit (C.S.L.) \$2,000,000 General Aggregate
Auto Liability including coverage on all owned, non owned hired autos	\$1,000,000 per occurrence C.S.L.
Umbrella Liability	
Umbrella Liability	\$1,000,000 per occurrence C.S.L.

- b. The Grantor shall be added as an additional insured, arising out of work performed by any contractor for Grantee, to the above Commercial General Liability, Auto Liability and Umbrella Liability insurance coverage.
- c. The Grantee shall furnish the Grantor with current certificates of insurance evidencing such coverage upon request.
- d. Grantee hereby agrees to indemnify and hold the Grantor, including its agents and employees, harmless from any claims or damages resulting from the actions of Grantee in constructing, operating or maintaining the Fiber Optic System. Grantor agrees to give the Grantee written notice of its obligation to indemnify Grantor within ten (10) days of receipt of a claim or action pursuant to this section. Notwithstanding the foregoing, the Grantee shall not be obligated to indemnify Grantor for any damages, liability or claims resulting from the willful misconduct or negligence of Grantor or for the Grantor's use of the Fiber Optic System.
- e. In the event any such claim or demand be presented to or filed with the City, 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, provided further, that in the event any suit or action be begun against the

City based upon any such claim or demand, the City shall likewise promptly notify Grantee thereof, and Grantee shall have the right, at its election and its sole cost and expense, to settle and compromise such suit or action, or defend the same at its sole cost and expense, by attorneys of its own election.

**8. Revocation.**

- a. A. If Grantee shall fail to comply with any of the provisions of this Franchise, unless otherwise provided in this Franchise, the City may serve upon Grantee written order to comply within thirty (30) days from the date such order is received by Grantee. If Grantee is not in compliance with this Franchise after expiration of the thirty (30) day period, the City may act to remedy the violation and may charge the reasonable costs and expenses of such action to Grantee. The City may act without the thirty (30) day notice in case of an emergency. If any failure to comply with this Franchise by Grantee cannot be corrected with due diligence within said thirty (30) day period, 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 works promptly and diligently to effect such compliance. If Grantee is not in compliance with this Franchise, and is not proceeding with due diligence in accordance with this section to correct such failure to comply, then the City may in addition, by ordinance and following written notice to Grantee, declare an immediate forfeiture of this Franchise. At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript and a certified copy of the findings shall be made available to the Grantee within ten (10) business days. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor de novo.
- b. Upon revocation of the Franchise, Grantee may remove the Fiber Optic System from the Streets of the Grantor, or abandon the Fiber Optic System in place.

**9. Notices, Miscellaneous.**

- a. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Franchise shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, nationally or internationally recognized courier service such as Federal Express or electronic mail communication to the designated electronic mail address provided below. Grantee shall provide thirty (30) days written notice of any changes in rates, programming services or channel positions using any reasonable written means. As set forth above, notice served upon the Grantor shall be delivered or sent to:

City of Colville  
170 S. Oak  
Colville, WA 99114

And every notice served upon Grantee shall be delivered or sent to:

Colville School District  
217 S. Hofstetter  
Colville, WA 99114

- b. All provisions of this Franchise shall apply to the respective parties, their lawful successors, transferees and assigns.
  - c. If any particular section of this Franchise shall be held invalid, the remaining provisions and their application shall not be affected thereby.
10. **Force Majeure.** The Grantee shall not be held in default under, or in noncompliance with the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Grantee's Fiber Optic System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.
11. **Effective Date.** The Franchise granted herein will take effect and be in full force from such date of acceptance by Grantee recorded on the signature page of this Franchise. The term of this Franchise shall expire ten (10) years from the Effective Date defined herein, unless extended in accordance with Section 3 of this Franchise or by the mutual agreement of the parties.
12. **Acceptance and Entire Agreement.** The Grantor and the Grantee, by virtue of the signatures set forth below, agree to be legally bound by all provisions and conditions set forth in this Franchise. The Franchise constitutes the entire agreement between the Grantor and the Grantee. No modifications to this Franchise may be made without an appropriate written amendment signed by both parties. Any determination by the Grantor regarding the interpretation or enforcement of this Franchise shall be subject to de novo judicial review.

This Ordinance shall take effect and be in force five (5) days from its passage, approval and publication.

Passed and adopted by the City Council of the City of Colville, Washington the \_\_\_ day of \_\_\_, 2018.

\_\_\_\_\_  
Mayor Louis F. Janke

Attest: \_\_\_\_\_  
Holly Pannell, MMC, PFO  
City Clerk / Human Resources Manager

Approved as to form:

\_\_\_\_\_  
City Attorney McGrane & Schuerman

Ord – Colville School District Fiber Optic Franchise

Adopted by Council on \_\_\_\_\_  
Published on \_\_\_\_\_  
Effective on \_\_\_\_\_

Accepted this \_\_\_\_ day of \_\_\_\_, 2018

Grantee: Colville School District

Signature: \_\_\_\_\_

By: \_\_\_\_\_

Position: \_\_\_\_\_