CITY OF NORTH BONNEVILLE
ORDINANCE NO.1128
INTERNET SERVICE PROVIDER FRANCHISE AGREEMENT

AN ORDINANCE OF THE CITY OF NORTH BONNEVILLE, WASHINGTON, GRANTING TO GORGE NETWORKS, INC., GRANTING A LICENSE TO CONSTRUCT, OPERATE AND MAINTAIN A CABLE SUBSCRIBER SYSTEM FOR INTERNET ACCESS THROUGHOUT THE CITY OF NORTH BONNEVILLE; AND PROVIDING FOR RELATED ISSUES.

WHEREAS, the City Of North Bonneville (hereinafter the "city") is authorized to grant, renew and deny franchise for the installation, operation and maintenance of internet systems within the city's boundaries by virtue of federal and state statutes, the city's police powers, and the city's authority over its public rights of way; and

WHEREAS, GORGE NETWORKS, INC., an Oregon Corporation (hereinafter "Gorgenet") has applied to the City Council for a franchise to construct, and operate and maintain an cable internet system within the City; and

WHEREAS, the City hereby finds that it would serve the public interest of the citizens of the City to approve the Gorgenet cable internet franchise subject to the terms and conditions hereinafter set forth;

NOW THEREFORE THE CITY COUNCIL OF THE CITY OF NORTH BONNEVILLE DO HEREBY ORDAIN, AS FOLLOWS:

That a nonexclusive cable internet franchise be granted to Gorgenet, under the terms and conditions as hereinafter set forth.

Section 1. Definitions:
For the purpose of this resolution, the following terms, phrases, words, abbreviations, and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural include the singular and words in the singular include the plural. The word "shall" is always mandatory and not merely directory.

- Cable Internet System means a facility consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide Internet Service to multiple Subscribers within a community. This term does not include a facility that serves only certain residents in one or more multiple unit dwellings under common ownership, control, or management, unless such facility or facilities uses any public right-of-way.

- Person shall mean any person, firm, partnership, association, corporation, company or organization of any kind.

- Standard Installation shall mean any installation to a single-family residence located up to 125 feet from the existing distribution system.

- Street shall mean any street, alley, lane, sidewalk or other public place of the city.

- Subscriber shall mean an authorized recipient lawfully receiving Cable Internet Service.

- Reasonable Notice shall mean the following: Unless otherwise defined herein, reasonable notice means the delivery of written notice to the other party at least 30 days prior to the action proposed of the alleged defect, situation or default. In the event of any emergency that poses an immediate risk of harm to the health, safety, welfare or property of the residents of the city, reasonable notice shall be construed to mean written or verbal notice of the action, condition or defect or situation as soon as practicable under the circumstances.

Section 2. Grant of Franchise

The nonexclusive right is hereby granted to Gorgenet for the term and subject to the terms, conditions, and limitations hereinafter stated, to use, to construct, operate and maintain in, upon, and along the streets, alleys, lanes and public places of the City now laid out or dedicated, and all extensions thereof, and additions thereto a Cable Internet System and for any and all other lawful purposes except as otherwise hereinafter provided.

Section 3. Area of Operation

Gorgenet shall have the right to use, to construct, operate and maintain in, upon, and along the streets, alleys, lanes and public places of the City, poles, wires, cables, underground conduits, manholes, and other conductors and fixtures necessary for the maintenance and operation in the city of a Cable Internet System as such locations as are reasonably suitable and convenient for the purposes of Gorgenet and the city, subject to all Federal, State and local permitting requirements, any private property rights and the lawful exercise of the police power heretofore or hereafter granted to the city.

Gorgenet will make standard installations to all residences and commercial establishments located within the City in the following manner: Gorgenet will calculate the cost of construction to provide service to any such area upon the request of any residents of such area. The residents requesting service will pay in advance of such construction in equal amounts.

The city agrees that any grant of additional franchises by the city to any other entity to provide the services similar to those provided by Gorgenet pursuant to this agreement and over which the city has regulatory authority similar to the city's regulatory authority over Gorgenet, shall cover the entire territorial area of the city and shall not be on terms and conditions (including, without limitation, the franchise fee) more favorable or less burdensome to the grantee of any such additional franchise than those which are set forth herein.

Extensions into new subdivisions shall be at partial expense of the developer of the subdivision. As of the effective date of this resolution, and notwithstanding the provisions of any other of section of this franchise, the minimum improvements which a developer shall make or agree to make, at its sole cost, shall include provision for the cable internet service available to each separate lot within the subdivision. The developer may engage the franchised cable internet operator within the city to perform the foregoing construction or may engage an independent contractor of its choice to do so. If an independent contractor is engaged, construction shall be subject to final approval of the franchised cable internet operator within the city. The city council shall have authority to promulgate such policy or policies as it deems are required to effect the implementation of this section.

Section 4. Acceptance; Effective Date; Term

After the city has taken final action to approve the granting of this franchise; Gorgenet will file its acceptance with city by countersigning this franchise. Such acceptance will acknowledge that Gorgenet agrees to be bound by and to comply with the provisions contained herein.

The franchise granted herein will take effect and be in full force after final passage by the City, subject to the acceptance provided in paragraph A and shall continue in full force and effect for a period of 20 years (hereinafter the "Term"), through December 31, 2040.

Section 5. Conditions on use of Streets and Roads

Trimming/Cutting Trees.

Gorgenet shall have the right, subject to any utility and/or private property rights, to trim and keep clear of its poles, wires, cables, underground conduits, manholes and other conductors and fixtures, the trees in and along the Streets. In the exercise of such right, Gorgenet shall not cut or otherwise injure any trees to any greater extent than is reasonably necessary. No trees greater than one-inch caliper in size may be removed without prior city approval.

Section 6. Restoring Streets.

Gorgenet shall comply with all Washington dig laws (RCW ch.19.122) prior to any trenching or digging activity in the city rights of way. In the event of any damage to city property, Gorgenet shall reconstruct or repair any street, sewer, gas or water pipe disturbed or destroyed by the exercise of any right granted to

Gorgenet by this franchise, in a manner reasonably satisfactory to the city. In the event that the city determines that Gorgenet has not made such reconstruction or repair in a reasonably satisfactory manner, the city, after giving Gorgenet notice and opportunity to correct such failure, shall have the right to carry out such reconstruction or repair, and Gorgenet shall reimburse the city in full for all city expenses incurred (including, without limitation, labor, overhead, equipment rental values, materials, consumables, and administrative costs) by the city in carrying out all or part of such reconstruction or repair.

Section 7. Safety.
Gorgenet shall at all times employ ordinary care and shall install and maintain in use commonly accepted methods and device for preventing failure and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, under, and upon the Streets, shall at all times be kept and maintained in a safe, suitable, substantial condition, and in good order and repair. Any opening or obstruction in the streets shall be guarded and protected at all times by placement of adequate barriers, the bounds of which will be clearly designated by warning lights.

Section 8. Compliance with Applicable Laws.
Gorgenet shall install and maintain its cables, fixtures and other equipment in accordance with applicable law including any pertinent subdivision restrictions, and the applicable section of the National Electric Safety Code as revised during the Term and in such manner as shall not interfere with any installations of the city or of any public utility serving the city. The city acknowledges that as of the effective date of this Franchise, Gorgenet's existing cables and other like facilities are in compliance with this provision.

Section 9. Inspection.
The City shall have the right to inspect all construction or installation work performed in, under and upon the Streets, subject to the provisions of this franchise and make such inspections as it shall find necessary to insure compliance with the terms of this franchise.

Section 10. Location of Distribution Lines – Underground Cable.
Use of the poles previously used for the distribution system is prohibited; all cable shall be installed underground in a manner to be approved by the city public works director. Gorgenet shall provide the City with as-built CAD drawings in a format suitable for inclusion in the County GIS mapping system, showing the location and identity of all of Gorgenet's infrastructure within city rights of way and buildings.

For all new residential and commercial structures, the developer of such structure shall provide at their sole costs and expense, in accordance with Gorgenet's current specifications, all conduits and trenches to building points of entry, from the boundary of the development.

Section 11. Moving of Gorgenet Property.
Gorgenet will, upon reasonable notice from the city, protect, support, temporarily disconnect or relocate its property in the same Street when required by the city or state by reason of traffic conditions, public safety, street closing or abandonment, highway or street construction, change or establishment of street grade, or any other types of structures or improvements. The city may, in its sole discretion, accept a tender of such property by an affirmative vote of its City Council.

Section 12. Construction and Operation
All installation and maintenance of electronic equipment will be durable and installed in accordance with the applicable sections of the current edition of the National Electric Safety Code and all State and local codes where applicable. All work shall be performed at Gorgenet's sole expense.

All working facilities, conditions, and procedures used or occurring during construction and maintenance of the Cable Internet System shall comply with the standards of the Occupational Safety and Health Administration.

Construction, installation and maintenance of the Cable Internet System shall be performed in an orderly and workmanlike manner, using best industry practices, and in close coordination with public and private utilities serving the city following accepted construction procedures and practices and working through existing committees and organizations.

Any antenna structure used in the Cable Internet System shall comply with construction, marking and lighting of antenna structures required by city ordinances, the United States Department of Transportation and Federal Aviation Administration.

Gorgenet will not intentionally interfere with the internet reception of persons not served by Gorgenet, nor will the Cable Internet System interfere with, obstruct or hinder in any manner, the operation of the various utilities serving the residents within the confines of the city.

Section13. Conduct of Operations
Gorgenet will render efficient Internet Service, make repairs promptly, and interrupt service only for good cause and for the shortest time possible. Gorgenet will use reasonable efforts to assure that such interruptions will occur during periods of minimum system use.

Gorgenet shall comply with all Federal Communications Commission rules and regulations, both present and future.

Section14. Public Service Connections

Gorgenet shall make available internet connections to municipally owned buildings, and libraries, consistent with the terms of the Equipment Purchase and Sale Agreement between the Parties.

Section 15. Insurance and Indemnification

By its acceptance of this franchise, Gorgenet specifically agrees that it will pay all damages and penalties which the city may legally be required to pay which result from any negligent operation of the Cable Internet System on the part of Gorgenet. These damages or penalties shall include, but shall not be limited to, damages arising out of copyright infringements, and all other damages arising out of the installation, operation, or maintenance of the Cable Internet System authorized herein, whether or not any act or omission complained of is authorized, allowed, or prohibited by the franchise.

Gorgenet will indemnify and defend the city, its officers and employees, from and against any and all claims, demands, actions, suits, and proceedings by others, and against all liability to others, arising out of the negligence of Gorgenet in the construction and operation of its Cable Internet System in the city, provided that the city gives Gorgenet prompt notice in writing of any such claims, demands, actions, suits and proceedings, without limitations. Defense of claims shall be by counsel reasonably acceptable to the city and at no cost to the city.

The city, to the extent provided by the statutory and common law of the State of Washington and by the Constitution of the State of Washington, will be responsible for acts of negligence or breach of obligation committed by the city for which the city is legally responsible, subject to any and all defenses and limitation of liability provided by law. This provision does not and shall not be construed as a waiver, relinquishment or abrogation of the statutory limitation of liability available to the city. This paragraph in no way waives the city's limited right of sovereign limitation of protection under the applicable statutory limitation of liability available to municipalities generally in this state.

Gorgenet shall maintain in full force and effect for the term of this franchise, at Gorgenet's expense, a comprehensive liability insurance policy with the city named as an insured, written by a company authorized to do business in the State of Washington, protecting the city against liability for loss, personal injury and property damage occasioned by the operation of the Cable Internet System by Gorgenet, in an amount not less than $1,000,000. Evidence in the form of a certificate of insurance shall be provided to the city upon request.

Section 16. Unauthorized Connections or Modifications

It is unlawful for any person to make any connection, extension, or division whether physically, acoustically, inductively, electronically, or otherwise with or to

any segment of the Cable Internet System for any purpose whatsoever, without the express consent of Gorgenet.

It is unlawful for any person to willfully interfere, tamper, remove, obstruct or damage any part, segment or content of the Cable Internet System for any purpose whatsoever.

Any person convicted of a violation of this section will be subject to the maximum penalty allowed by Federal, State and local law. The city agrees to cooperate with Gorgenet in the prosecution of any such violations.

Section 17. Records and Reports

Copies of all petitions, applications and communications submitted by Gorgenet and directly related to Gorgenet's Franchise to the Federal Communications Commission, Securities and Exchange Commission or Agency having jurisdiction in respect to any matters affecting cable television operations authorized pursuant to this franchise, shall be submitted to the city upon written request.

The city shall have the right, at its own expense and upon at least 10 working days prior written notice, to inspect at Gorgenet's offices during normal business hours, all books and records directly related to Gorgenet's utility tax and Gorgenet's proof of performance tests. To the extent protected and/or exempted by the Washington Public Records Act and other related laws and statutes, the city will not disclose to the public or to competitors of Gorgenet any commercial or financial information reviewed by the City pursuant to this franchise agreement.

Section 18 Franchise Renewal

Upon completion of the Term, this franchise will automatically renew for another 20-year term unless the City gives notice of termination of the franchise prior to the end of the initial Term.

Section 19. Transfer of Franchise

Gorgenet shall not transfer this Franchise to another party, person, or entity, except to a company controlling, controlled by or under common control with Gorgenet, without first receiving the prior written consent of the city, which shall not be unreasonably withheld. Provided however, the city reserves the right to review the financial stability and performance of any proposed buyer, transferee or grantee and to withhold consent if, in the determination of the city, such proposed transfer would not be in the best interests of the city.

Section 20. Termination; Cancellation

In addition to all other rights and powers pertaining to the city by virtue of this franchise or otherwise, the city reserves the right, after reasonable notice to Gorgenet identifying a deficiency with an opportunity to cure any alleged franchise violation, and to be heard before city council, to terminate and cancel

this franchise and all rights and privileges of Gorgenet hereunder in the event that Gorgenet:

- Willfully fails to reasonably carry out any material provision of this franchise or any material rule, order, or determination of the city pursuant to this franchise.
- Becomes insolvent, unable or unwilling to pay its debts, or is adjudicated bankrupt.

Such termination and cancellation shall be by resolution duly adopted after 60 days' notice to Gorgenet and shall in no way affect any of the city's rights under this franchise or any provision of law.

In the event of termination, Gorgenet agrees to promptly remove all of its personal property. If Gorgenet fails to remove its property within sixty (60) days of the termination, Gorgenet agrees all of its interests in the property will be forfeited to the city, and the city may seek recovery of its costs to remove the property in excess of the value thereof.

Section 21. Force Majeure

With respect to any provision of this franchise the violation or noncompliance with which could result in the imposition of a financial penalty, forfeiture or other sanction upon Gorgenet, such violation or noncompliance shall be excused where such violation or noncompliance is the result of Acts of God, war, civil disturbance, strike, labor unrest, or other events, the occurrence of which was not reasonably foreseeable by Gorgenet or is beyond Gorgenet's reasonable control.

Section 22. Miscellaneous

The right is hereby reserved by the city to adopt, in addition to the provision contained herein and in existing applicable resolutions, such additional regulation, as it shall find necessary in the exercise of its police power.

If any section, subsection, sentence, clause, phrase or portion of the franchise is for any reason held invalid or unconstitutional by any court of competent jurisdiction such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

The city acknowledges that acceptance of the terms and conditions of this Franchise will not constitute, or be deemed to constitute, a waiver, either expressed or implied, by Gorgenet of any constitutional or legal right which Gorgenet may have or may be subsequently determined to have, either by subsequent legislation or court decisions. The city acknowledges that Gorgenet hereby reserves its rights under applicable Federal and State constitutions and law.

All notices or correspondence to be served upon the city or Gorgenet by the other party shall be in writing and delivered by first class mail, postage prepaid or by facsimile or by a national express mail service. Notices or correspondence to the city shall be addressed as follows:

Mayor
City of North Bonneville
P.O. Box 7
North Bonneville, WA 98639

Notices or correspondence to Gorgenet shall be addressed as follows:
GORGE NETWORKS, INC.
Attn: Dan Bubb President
PO Box 1107
Hood River, OR 97031

The City or Gorgenet may designate such other address or addresses from time to time by giving written notice to the other as set forth above.

23. Prior Inconsistency.
All resolutions or parts of resolutions, inconsistent with this resolution, to the extent of such inconsistency, are hereby repealed.

24. Attorney Fees and costs.
In the event either party shall commence litigation concerning this agreement, the prevailing party shall be entitled to its reasonable attorney fees and costs of suit, including all fees and costs on appeal.

PASSED IN REGULAR SESSION this ____ day of _____, 2020

_____
Mayor

ATTEST:

_____
Clerk / Treasurer

APPROVED AS TO FORM:

_____
Attorney

GORGE NETWORKS, INC., hereby accepts the within Franchise and agrees to be bound by and comply with provisions contained herein.

_____

Dan Bubb, its President