ORDINANCE NO. 2019-989

AN ORDINANCE OF THE CITY OF DEER PARK, WASHINGTON APPROVING A RIGHT-OF-WAY USE FRANCHISE WITH KNIGHTCOM, INC., A WASHINGTON FOR PROFIT CORPORATION ("Knightcom"); CONTAINING A SEVERABILITY PROVISION AND SETTING AN EFFECTIVE DATE.

WHEREAS, Kinghtcom, Inc., a Washington for profit corporation ("Knightcom"), has applied to the City of Deer Park, Washington for a right-of-way use franchise for the purpose of constructing facilities within the City to provide communication and telecommunications service; and

WHEREAS, Knightcom has deposited with the City the sum of $3,000.00 for the purpose of paying for the City staff, City legal fees, and the cost of recording the Ordinance associated with negotiating the Franchise Agreement that is the subject of this Ordinance; and

WHEREAS, the authorized representative of Knightcom has executed this Ordinance approving the same on behalf of Knightcom; and

WHEREAS, City staff have reviewed the Ordinance and determined that passage of this Ordinance is in the best interests of the citizens of the City of Deer Park; and

WHEREAS, the Mayor and City Council of the City of Deer Park have reviewed the Ordinance and determined it is consistent with the recommendation of City staff and that passage of this Ordinance is in the best interests of the citizens of the City of Deer Park; now, therefore,

THE CITY COUNCIL OF THE CITY OF DEER PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. The Right-of-Way Franchise attached hereto and marked as Exhibit "A" designating Kightcom, Inc., a Washington for profit corporation ("Knightcom") (pages 1 - 14) and Appendix 1 (one page), is hereby approved and made a part of this Ordinance as if set forth in full herein.

Section 2. If any section, sentence, clause, or phrase of this Ordinance shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 3. This Ordinance shall take effect and be in full force five (5) days after this Ordinance or a summary thereof consisting of the title is published.

Section 4. The City Clerk is hereby directed to record an original of this Ordinance with the Spokane County Auditor after this Ordinance is in full force and effect and provide a copy of the recorded original Ordinance to Knightcom.

APPROVED:

_____
TIMOTHY VERZAL, MAYOR

ATTEST/AUTHENTICATED:

_____
DEBY CRAGUN, CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

BY: _____
CHARLES D. ZIMMERMAN

FILED WITH THE CITY CLERK	:	11 Oct. 2019
PASSED BY THE CITY COUNCIL	:	16 Oct. 2019
PUBLISHED	:	_____
EFFECTIVE DATE	:	_____
ORDINANCE NO.	:	_____

CERTIFICATE OF APPROVAL

Certificate of Approval of the terms of the City of Deer Park Ordinance No. 2019-989, approving a Right-of-Way Franchise with Knightcom, Inc. a Washington for profit corporation ("Knightcom") as set forth in the Ordinance and Exhibit "A" and Appendix 1 to Exhibit "A" to the Ordinance.

The undersigned, on behalf of Knightcom as Grantee, hereby accepts all of the terms and conditions of the Franchise as set forth in City of Deer Park, Washington Ordinance No. _____, together with Exhibit "A" to the Ordinance and Appendix 1 to Exhibit "A" to the Ordinance, as the authorized signator for Knightcom, the Franchisee and Grantee as stated in the Ordinance.

_____
Douglas Knight,
President, Knightcom, Inc.

STATE OF WASHINGTON)
) ss.
COUNTY OF Spokane)

I certify that I know or have satisfactory evidence that Douglas Knight is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the authorized signator of Knightcom, Inc., a Washington for profit corporation ("Knightcom"), to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 10/11/2019

Janice M. Long
Notary Public
Print Name Janice M. Long
My commission expires ~~[illegible]~~ 5-11-23

(Use this space for notarial stamp/seal)

JANICE M LONG
Notary Public
State of Washington
Commission # 71138
My Comm. Expires May 11, 2023

EXHIBIT "A"

TERMS AND CONDITIONS OF FRANCHISE

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1. Scope and Duration

Knightcom, Inc., a Washington for profit corporation, (otherwise known as "Knightcom"), its successors and assigns, (hereinafter called "Grantee") are hereby granted a franchise to set, erect, install, place, lay, construct, extend, support, attach, connect, maintain, repair, replace, enlarge, operate and use communication and telecommunication systems and facilities including, but not limited to poles and towers, wires, lines, conduits, cables, braces, guys, anchors and vaults, , together with any and all other equipment, appliances, attachments, appurtenances and other items necessary, convenient, or in any way appertaining to any and all of the foregoing, whether the same be located over or underground (collectively, "Facilities") in, upon, over, under, along, across and through the City of Deer Park Roads and Rights of-way as the same exist now or may hereafter be modified by annexations. (such Roads and rights-of-way

being hereafter referred to at times as the "Franchise Area"), for a period of fifteen (15) years, all in accord with the Ordinance granting this Franchise, all applicable provisions of City of Deer Park Codes, Ordinances, Resolutions, and Policies whether specifically referred to or not, and this **Exhibit "A"**; provided that, notwithstanding the City's continued right to enact codes and ordinances, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this **Exhibit "A"**), the terms and conditions of this Franchise shall govern and control.

2. Definition of Terms

CITY	City of Deer Park, Washington
CITY COUNCIL MEMBERS	City of Deer Park Council Members
CITY DIRECTOR	City of Deer Park Director of Community Services or his/her designee.
FACILITIES	Knightcom's system of cables, wires, conduits, ducts, pedestals, and any associated converter, equipment, or facilities within the Franchise Area designed or constructed for the purpose of providing Communication Service or Telecommunication Service, whether the same be located overhead or underground.
FRANCHISE	The terms and conditions of this Franchise, as set forth in this Exhibit A. In accordance with City, State, and Federal Laws
FRANCHISE AREA	The City of Deer Park, Washington Right-of-Ways and Roads
GRANTEE	Knightcom, its successors and assigns, and any other person named in any permit as permittee, and any successor to any rights or interests of a permittee under a permit or in property installed on the Right-of-Way pursuant to a permit.
CONSTRUCTION WORK TECHNICAL STANDARDS	Design standards and specifications are attached as Appendix 1.
PERMIT	A document including any license, permit, or franchise, authorizing specified use of City rights-of-way and granted under the

	provisions of this Franchise.
RIGHT-OF-WAY	All property in which the City has any form of ownership or title and which is held for public road, or right-of-way purposes, regardless of whether or not any road or facility exists thereon or whether or not it is used, improved, or maintained for public travel.
ROADWAY or ROAD	The portion of the Right-of-Way, within the outside limits of the side slopes (shoulder to shoulder) or between curb lines, used for vehicular travel.

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

Prior to commencing any work within the Franchise Area on any City Road or Right-of-Way, the Grantee shall comply with and obtain all necessary permits to do such work.

To the extent that work is permitted under a then-existing permit, issued by the City, further permits are not required. Grantee shall pay all costs and expenses incurred by the City in reviewing plans and specifications, as and to the extent required by applicable provisions of the City of Deer Park codes or ordinances.

4. **Performance of Work**

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

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

If and to the extent Grantee reasonably determines that action on Grantee's part is necessary to respond to an emergency situation involving Grantee's Facilities within the Franchise Area, and such action would otherwise require the notice specified above, the City hereby waives the requirement that Grantee give such notice as a prerequisite to undertaking such activity; provided, however, Grantee

shall notify the City Director, verbally or in writing, as soon as practicable and no later than 24 hours following the emergency if the Roadway shoulders, embankment or cut slopes, or drainage facilities are disturbed.

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

C. Any work which disturbs any soil, surface, or structure of any City Roadway or Right-of-Way shall be controlled by applicable design standards and specifications of the City, and City codes and ordinances. Grantee, at its expense, shall restore such surface or other facility to at least the same condition as it was in immediately prior to such disturbance (or make provisions therefore), all to the reasonable satisfaction of the City Director. The City Director may cause to be done, at the expense of the Grantee, all work necessary to render any City Roadway or Right-of-Way safe where a condition which is dangerous to life, health, or property is created by Grantee as a result of work undertaken by Grantee within the Franchise Area or where Grantee fails to restore any surface or other facility within the Franchise Area as required in this paragraph, but in each case only if Grantee does not promptly take corrective action after receiving written notice from the City Director regarding such condition or failure.

D. All work within the Franchise Area shall be done in accordance with the current City standards in a thorough, professional, and workmanlike manner with minimum interference in public use of the City Roadway. Where any work includes opening of trenches and/or ditches and/or tunneling under a City Road or Right-of-Way, Grantee shall take all reasonable precautions necessary to protect and guard the public from any condition caused by the work. Subject to Section 8, below, and specifically the rights of Grantee with respect to third parties under Section 8(C), if any line, or other Facility of Grantee is located such that, in the opinion of the City Director, any hazard to travel of the public is created, Grantee shall relocate the line, or other facility at its expense upon request of the City Director. Grantee shall be liable for any damages, including any costs incurred by the City in remedying any failure to provide adequate traffic controls and protection to members of the public and their property.

E. Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed by Grantee within the Franchise Area under this Franchise, Grantee shall reference all such monuments and markers. Reference points shall be so located that they will not be disturbed during Grantee's operations under this Franchise. The method of referencing monuments or other points to be referenced shall be approved by the City Director. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit and as directed by the City Director. The cost of monuments or

markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments shall be borne by the Grantee. A complete set of reference notes for monument and other ties shall be filed with the City.

F. All work undertaken by Grantee within the Franchise Area shall be performed by the Grantee in compliance with all applicable Federal, State, and City laws, regulations, and policies (including, without limitation, applicable environmental and land use laws and regulations); provided that, notwithstanding the City's continued right to enact codes and ordinances, in the event of any conflict or inconsistency of such codes and ordinances with the terms and conditions of this Franchise (including, without limitation, this **Exhibit "A"**), the terms and conditions of this Franchise shall govern and control.

G. Grantee accepts that the City will require all new construction of Grantee's Facilities to the greatest extent reasonably practical to be placed underground. The City may grant waivers to this requirement when other existing utilities and/or like service providers are already located aboveground in the Franchise Area location where Grantee proposes to locate new facilities.

5. **Aesthetic/Scenic Considerations**

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

B. Refuse and debris resulting from the installation or maintenance of the Facilities by Grantee shall be promptly removed once the work is completed.

6. **Maintenance of Facilities**

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

7. **Hazardous Wastes, Substances**

Grantee agrees that it will not negligently or intentionally cause the release of any hazardous substance, waste, or pollutant or contaminant (as defined by applicable law) into or upon any City Road or Right-of-Way in violation of any state or federal law with respect thereto.

Grantee shall notify the City in writing of any such illegal release. Grantee shall be completely liable for any and all consequences of such illegal release, including liability under any federal or state statute or at common law. Grantee shall indemnify and hold the City harmless, as provided in paragraph 10, from any and all liability resulting from such an illegal release and shall have full responsibility for completely cleaning up, as required by any government agency, any and all contamination from such release. The City shall be entitled to full contribution for all costs incurred by it as the result of any release of such materials by Grantee in violation of any state or federal law. Upon any such illegal release of a hazardous substance by Grantee, the City may enter the Franchise Area and take whatever steps it deems appropriate to cure the consequences of any such release, all at the expense of the Grantee, but only if Grantee does not promptly take corrective action after receiving written notice from the City Director.

8. **Relocation**

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

(a) provide Grantee, within a reasonable time prior to the commencement of the Road or Right-of-Way project, written notice requesting the relocation; and

(b) provide Grantee with reasonable plans, timetables and specifications for such Road or Right-of-Way project.

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

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

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

C. Whenever (a) any public or private development within the Franchise Area, other than a public right of way improvement of the type described in Section 8(A), above, requires the relocation of Grantee's Facilities within the Franchise Area to accommodate such development; or (b) the City requires the relocation of Grantee's Facilities within the Franchise Area for the benefit of any person or entity other than the City, then in such event, Grantee shall have the right as a condition of such relocation, to require such developer, person or entity to make payment to Grantee, at a time and upon terms acceptable to Grantee, for any and all costs and expenses incurred by Grantee in the relocation of Grantee's Facilities.

D. Any condition or requirement imposed by the City upon any person or entity, other than Grantee, that requires the relocation of Grantee's Facilities shall be a required relocation for purposes of Section 8(C), above (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals or permits for zoning, land use, construction or development).

E. Nothing in this Section 8 shall require Grantee to bear any cost or expense in connection with the location or relocation of any Facilities then existing pursuant to easement or such other rights not derived from this Franchise.

F. Grantee shall continuously provide the City a current map of the location of Grantee's Facilities within the City. In the event that at any time during the period of this Franchise the City shall elect to alter or change the grade of any Right-of-Way, the Grantee, upon reasonable notice by the City, shall begin removing and/or relocating as necessary, its poles, wires, cables, underground conduits, manholes and other fixtures at the Grantee's expense, provided, if Grantee's wires, cable, or other fixtures are placed within or attached to conduit, poles, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, Grantee shall undertake such removal or relocation in cooperation with the public utility at Grantee's expense. If Grantee fails or refuses to act within ninety days (90), of notice from the City, the City shall have the power to remove or abate the same at the expense of the Grantee. If the City shall improve such streets, avenues, sidewalks, paths, alleys, roads, highways, rights-of-way or other City properties, Grantee shall on written notice by City officials, at its own expense, replace its lines or system as may be in or

through the improved sub-grade of such improvement, with such materials as shall conform to or exceed the applicable standards of the City and industry for use in such streets, avenues, sidewalks, alleys, roads, highways, rights-of-way or other City properties; provided, that if a readjustment or relocation is necessitated for a reason other than the above enumerated City purposes, the person, firm or private corporation or entity requesting such readjustment or relocation shall pay Grantee the actual costs; provided further, that in the event the City should require such readjustment or relocation in connection with any improvement or project funded, wholly or in part by state or federal funds, the City shall make an effort to include the costs for relocation in its funding applications where it meets funding agency requirements, and if successful, the City will reimburse Grantee for invoice costs eligible under the funding program as funds are available.

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

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

B. All installation, operation, maintenance, and repair by the Grantee of its Facilities on any City Road or Right-of-Way within the Franchise Area shall be done so as not to unreasonably interfere with installation, construction, operation, maintenance, or repair of other utilities, drains, ditches, structures, or other improvements permitted upon such Road or Right-of-Way, subject to the preference and priority rules set forth below. Owners, public or private, of any such facilities installed prior to construction and/or installation of the Facilities of Grantee, shall have preference as to positioning and location of such facilities. Likewise, Grantee's Facilities shall have preference as to positioning and location over any such other facilities that are installed after the construction and/or installation of the Facilities of Grantee. Such preference shall continue if relocation is required as a result of any construction relocation, realignment, and/or change of grade by the City.

10. **Insurance and Security**

A. For the period after the assignment of this Franchise by Company Name to the Utility Assignee under Section 18, below, the following insurance provisions shall apply:

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

$2,000,000.00 per occurrence

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

All insurance policies will be issued on an occurrence basis. Claims made policies are unacceptable. Grantee shall maintain coverage for the duration of this Franchise. Grantee shall provide the City annually a signed certificate of insurance naming the City of Deer Park as an additional insured. Proof of all insurance shall be in a form acceptable to the City, and all conditions and requirements of insurance stated in this clause 10.A shall be satisfied prior to commencement of construction. All insurance documentation shall be submitted and reviewed by the City of Deer Park's person(s) responsible for Risk Management prior to commencement of construction.

The City, in its sole discretion, may require additional bond or deposit. Acceptance by the City of any work performed by the Grantee at the time of completion shall not be a ground for avoidance of this covenant. The insurance required under this section may be through an established recognized utility insurance pool of which the Grantee is insured and which is approved by the City. Approval by the City shall not be unreasonably withheld.

11. **Hold Harmless and Indemnity**

A. The Grantee shall defend, indemnify and hold harmless the City, its appointed and elected officials, agents, and employees, against all third party claims, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees on account of any injury or damage to the person or property of another, to the extent such injury or damage is caused by the negligence, willful misconduct, or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of Grantee, Grantee's employees, agents, or subcontractors, in exercising the rights granted to Grantee in this Franchise.

B. For the avoidance of doubt, for those provisions of this Franchise which a court of competent jurisdiction determines are subject to RCW 4.24.115, then, in the event of damages arising out of bodily injury to persons or damage to property caused by or resulting from the concurrent negligence of the City, its appointed and elected officials, agents or employees, and the Grantee or the Grantee's agents or

employees, the Grantee's liability to hold harmless and indemnify the City is enforceable only to the extent of the Grantee's negligence.

C. The Grantee's obligation shall include, but not be limited to, investigating, adjusting, and defending all claims alleging loss from any negligent act, error, or omission or from any breach of any common law, statutory or other delegated duty pursuant to this Franchise of the Grantee or its employees, agents, or subcontractors.

D. The obligations of Grantee under the indemnification provisions of this Section shall apply regardless of whether liability for damages arises out of bodily injury to persons or damages to property, except to the extent that such claims, actions, damages, costs, expenses, and attorneys fees were caused by the comparative, contributory or sole negligence or willful misconduct of the City of Deer Park.

E. In the event any claim or demand be presented to or filed with the City by reason of the above-mentioned causes, the City shall promptly notify Grantee thereof, and Grantee shall have the right, at its election and at its sole cost and expense, to settle and compromise such claim or demand. In case suit or action is brought against the City of Deer Park for damages arising out of or by reason of the above-mentioned causes, the City shall promptly notify Grantee thereof and the Grantee will, upon notice to it of the commencement of said action, settle, compromise or defend the same at its sole cost and expense, and in case judgment shall be rendered against the City in suit or action, the Grantee will fully satisfy said judgment within ninety (90) days after suit or action shall have finally been determined. In the event Grantee refuses a tendered defense by the City pursuant to section 11 of this Franchise and if Grantee's refusal is subsequently determined by a Court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter) to have been a wrongful refusal, then Grantee shall pay all of the City's reasonable costs for defense of the action including all legal costs, witness fees and attorney fees and indemnify the City for any settlement made by the City of the wrongfully refused claim or demand.

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

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

12. **Reservation of Police Power**

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

13. Applicable Laws

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

14. Eminent Domain, Powers of the People

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

15. Vacation

If the City vacates all or a portion of any City Road or Right-of-Way which is subject to this Franchise, and said vacation is for the purpose of acquiring the fee or other property interest in said Road or Right-of-Way for the use of the City in either its proprietary or governmental capacity, the City Council may, at its option and by giving thirty (30) days written notice to the Grantee, terminate this Franchise with reference to any City Road or Right-of-Way so vacated and, in its vacation procedure, reserve and grant an easement to Grantee for Grantee's Facilities, and the City shall not be liable for any damages or loss to the Grantee by reason of such termination.

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

16. Termination

A. If Grantee defaults on any term or condition of this Franchise, the City may serve upon Grantee a written order to so comply within sixty (60) days from the date such order is received by Grantee. If Grantee is not in compliance with this Franchise after expiration of said sixty (60) day period, the City may, by ordinance, declare an immediate forfeiture of this Franchise; provided, however, if any failure to comply with this Franchise by Grantee cannot be corrected with due diligence within said sixty (60) day period (Grantee's obligation to comply and to proceed with due diligence being subject to unavoidable delays and events beyond its control), then the time within which Grantee may so comply shall be extended for such time as may be reasonably necessary and so long as Grantee commences promptly and diligently to effect such compliance. Upon such termination, all rights of the Grantee hereunder shall cease. Should any action or proceeding be commenced to enforce any of the provisions of this Franchise, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, not limited to taxable costs, and reasonable attorney's fees.

B. In the event that the use of all or any part of Grantee's Facilities is permanently discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of the Facilities, or the abandonment, termination, or expiration of this Franchise, the Grantee is solely responsible for the removal and proper disposal of the abandoned/surplus Facilities within the Franchise Area. The Grantee is not entitled to abandon any Facilities in place without the City's prior express agreement and written consent. The Grantee shall restore the City Roads and Rights-of-way from which such facilities have been removed to the same or equal conditions as before.

C. Upon the expiration of this Franchise for any reason other than a default by Grantee or abandonment of the Facilities, the Grantee shall have the first and preferential right to take and receive such authority upon similar terms and conditions.

17. **Assignment**

All terms and conditions of this Franchise are burdens upon the successors and assigns of Grantee, and all privileges as well as all obligations and liabilities of the Grantee inure to its successors and assigns equally as if they were specifically mentioned wherever the Grantee is mentioned. Neither this Franchise nor any interest therein shall be sold, transferred, or assigned without the prior written consent of the City which consent shall not be unreasonably withheld or delayed; provided, however, that Grantee may at any time, without the consent of the City, assign and transfer this Franchise and all of its rights and interest in and to this Franchise to any regulated utility (the "Utility Assignee"). For the avoidance of doubt, upon any assignment of this Franchise by Grantee to a Utility Assignee, Grantee shall remain liable for all obligations and liabilities arising under or in any way pertaining to this Franchise prior to the effective date of such assignment, and shall be discharged and released of all obligations and liabilities to the

City arising under or in any way pertaining to this Franchise after the effective date of such assignment. Further, notwithstanding the foregoing, the Utility Assignee shall have the right, without the consent of or notice to the City, to mortgage its rights, benefits and privileges in and under this Franchise.

18. **Effective Date**

This Franchise shall be effective upon the effective date of the Ordinance passed by the City Council approving this Franchise; PROVIDED, that Grantee, prior to City Council approval, has signed its approval on an original of this Ordinance and placed it on file with the City Clerk.

19. **Severability**

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

20. **Limitation of Liability**

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

21. **Hazardous Conditions**

Whenever any conditions or operations caused by any activity undertaken by Grantee pursuant to this Franchise have become a hazard to life and limb, endanger property or public resources, or adversely affect the safety, use, or stability of a public way or drainage channel, the City Director shall notify the Grantee in writing of the property upon which the condition or operation is located, or other person or agent in control of said property, and direct them to repair or eliminate such condition or operation within the period specified therein so as to eliminate the hazard and be in conformance with the requirements of this Franchise.

Should the City Director have reasonable cause to believe that the situation is so adverse as to preclude written notice, he/she may take the measures necessary to eliminate the hazardous situation, provided that he/she shall first make a reasonable effort to notify the Grantee before acting. In such instance, the Grantee (responsible for the creation of the hazardous situation) shall be responsible for the payment of any reasonable costs incurred. If costs are incurred and

the hazardous situation has been created in conjunction with or as a result of an operation for which a bond has been posted pursuant to this Franchise or any other City authority, the City Director shall have the authority to forfeit the bond or other security to recover the costs incurred.

22. **Miscellaneous**

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

23. **Notices**

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

1) City of Deer Park Public Works Department
316 E Crawford, PO Box F
Deer Park, WA 99006
Attn: Director of Community Services

2) Grantee:

Company Name:

Knightcom, Inc.
2601 East 6th Street
Deer Park, WA 99006
Attn: Douglas Knight

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

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

APPENDIX 1

Construction Work Technical Standards

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

Grantee shall specify the type of construction by submitting plans showing the class of material and the manner in which the work is to be accomplished. All such materials and equipment shall be of the highest quality and the manner of excavation, fills, construction, installation, erection of temporary structures, traffic turnouts, road obstruction, barricades, etc., shall meet with provisions of the City polices, and shall require approval of the City Director. Signing, barricades, and traffic control in the vicinity of the work shall strictly conform to provisions of "the Manual on Uniform Traffic Control Devices for Street and Highways." Grantee shall pay to the City all applicable fees and charges prescribed by City of Deer Park law or policy.

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

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

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

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