



**ORDINANCE NO. 3071**

**AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO TW TELECOM OF WASHINGTON LLC, TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE.**

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**WHEREAS,** tw telecom of washington, llc ("TWTC" or "Franchisee") has requested that the City Council grant it a non-exclusive telecommunications franchise for the installation, operation, maintenance, repair and removal of a fiber optic telecommunications system within the City's rights-of-way; and

**WHEREAS,** RCW 35A.11.020 grants the City broad authority to regulate the use of the public right-of-way; and

**WHEREAS,** pursuant to RCW 35A.47.040, the City is authorized to grant one or more non-exclusive franchises for use of public streets, roads, bridges and other public rights-of-way, above and below the surface of the ground, for poles, conduits, tunnels, towers, structures, pipes, wires and appurtenances and other facilities for the transmission and distribution of electrical energy, signals and other methods of communication; and

**WHEREAS,** the City has determined that it is in the best interests of the City and in the best interests of the health, safety, and welfare of the Lynnwood community and the general public to grant this non-exclusive Franchise to TWTC; now therefore,

**THE CITY COUNCIL OF THE CITY OF LYNNWOOD DO ORDAIN AS FOLLOWS:**

**SECTION 1. DEFINITIONS.**

For purposes of this Ordinance, the following words, terms and phrases shall have the meanings stated in this section. 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.

**1.1** "Affiliate" means any corporate entity that TWTC owns or controls, is owned or controlled by, or is under common ownership with TWTC. Any entity in which TWTC has ownership of 5% or more of the equity ownership, (either voting, control or value), or in which TWTC has actual working control, in whatever manner exercised, will also be deemed an Affiliate. Both the entity owned or controlled, and the entity owning or controlling, shall be considered Affiliates of each other.

**1.2** "City" means the City of Lynnwood, Washington and all the territory within its present and future boundaries and including any area over which the City exercises jurisdiction.

**1.3** "Communications Service" means any telecommunications services, telecommunications capacity, or dark fiber, provided by the Franchisee using its Facilities, either directly or by its Affiliates, including, but not limited to, the transmission of voice, data or other electronic information, by wire, optical cable, or other similar means. For purposes of this subsection, "information" means knowledge or intelligence represented by writing, signs, signals, pictures, sounds or any other symbols. For purposes of this Franchise, Communications Service excludes wireless communications, over-the-air transmission of broadcast television, and broadcast radio signals. Further, Communications Services shall not include the provision of cable services or open video services as defined in the Communications Act of 1934, as amended, for which a separate franchise would be required.

**1.4** "Facilities" means the Franchisee's fiber-optic cable system constructed and operated within the City's Right-of-Ways, including all cables, amplifiers, conductors, lines, wires, conduits, ducts, manholes, pedestals, and any associated converters, equipment or other appurtenances and facilities, for the purpose of providing Communications Services under this Franchise.

**1.5** "FCC" means the Federal Communications Commission, or any successor governmental agency.

**1.6** "Franchise" means the non-exclusive rights, privileges and authority granted to Franchisee to use its Facilities in the City's Rights-of-Way pursuant to this Ordinance.

**1.7** "Person" means any individual, corporation, partnership, association, joint venture or organization of any kind and the lawful trustee, successor, assignee, transferee or personal representative thereof.

**1.8** "Right-of-Way" means the surface of, and any space above or below, any land previously or hereafter acquired by or dedicated to the public or the City for purposes in whole or in part of pedestrian or vehicular travel, including but not limited to public streets, roads, highways, avenues, lanes, alleys, bridges, sidewalks, easements and similar public property located within the Service Area.

**1.9** "Service Area" means the present municipal boundaries of the City and shall include any future additions thereto by annexation or other legal means.

## **SECTION 2. GRANT.**

### **2.1 Grant of a Non-Exclusive Franchise.**

2.1.1 The City hereby grants to Franchisee the non-exclusive right, privilege and authority to use and occupy the Rights-of-Way for the purpose of providing Communications Services, including without limitation the right to lawfully install, remove, construct, erect, operate, use, maintain, relocate and repair Facilities in, along, under and across the Rights-of-Way subject to the terms and conditions of this Ordinance. In order to provide any other services over the Facilities, the Franchisee shall be required to obtain any additional governmental authorizations required by law.

2.1.2 In exercising its rights under this Ordinance, Franchisee shall comply with all lawfully enacted City Codes, ordinances, standards, procedures and regulations; provided that, in the event of conflict, the provisions of this Franchise shall control. The provisions of this Franchise are subject to the lawful exercise of the City's police powers upon reasonable notice to Franchisee. In accepting this Franchise, the Franchisee acknowledges that its rights hereunder are subject to the police power of the City to adopt and enforce, from time to time and in the manner it deems reasonable, general ordinances necessary for the safety, health and welfare of the public. This Franchise shall not be interpreted to prevent the City from imposing additional lawful conditions, including additional compensation conditions for use of the Rights-of-Way, should Franchisee provide service other than Communications Service. Franchisee agrees to comply with all applicable laws that are now or may in the future be enacted by the City pursuant to such police power.

2.1.3 The authority granted herein to Franchisee is a limited authorization to occupy and use the Rights-of-Way for providing Communications Services, and shall not include or be a substitute for:

a. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City, including but not limited to a City business license; or

b. Any permit, agreement, or authorization that may be required by the City for Right-of-Way users in connection with operations on or in the Right-of-Way or public property, such as street cut permits.

2.1.4 This Franchise only conveys limited rights and interests as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest, nor does it provide the Franchisee with any representation as to any location of a City Right-of-Way or the nature of the City's interest in any Right-of-Way. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Right-of-Way, or upon private property without the owner's consent, or upon any public or privately owned utility poles or conduits is granted herein.

2.1.5 Nothing in this Franchise is a bar to the imposition of any lawful condition with respect to the Franchisee's delivery of any services other than Communications Services, nor does this Franchise relieve the Franchisee from obtaining authorization from the City for providing any other such services.

2.1.6 This Franchise shall not be construed as to deprive the City of any rights or privileges which it now has or may hereafter have to regulate the use and control of the Rights-of-Way, and public property. Nothing in this Franchise shall limit nor expand the City's right of eminent domain under State law. If at any time the City exercises its authority to vacate all or any portion of any Right-of-Way, the City shall not be liable for any damages or loss to Franchisee by reason of such vacation. The City may, upon ninety (90) days written notice to Franchisee, terminate this Franchise with respect to such vacated area.

2.1.7 The City specifically reserves the right to grant, at any time, such additional franchises for other similar systems as it deems appropriate provided, however, such additional grants shall not operate to materially modify, revoke, or terminate any rights previously granted to Franchisee. The grant of any additional franchise shall not of itself be deemed to constitute a modification, revocation, or termination of rights previously granted to Franchisee

2.1.8 This Franchise does not establish any priority for the use of the Rights-of-Way by Franchisee or by any present or future franchisees or other permit holders. In the event of any dispute as to the priority of use of the Rights-of-Way, the first priority shall be to the public generally, the second priority to the City in the performance of its various functions, and thereafter, as between franchisees and other permit holders, as reasonably determined by the City in the exercise of its powers, including the police power and other powers reserved to and conferred on it by the State of Washington.

2.1.9 To the extent that any of the Rights-of-Way within the Franchise Area are a part of the State highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation

regulations, Franchisee shall comply with said requirements in addition to local ordinances and other applicable regulations.

## **2.2 Term of Franchise.**

The term of this Franchise shall be for a period of ten (10) years from the date of acceptance as set forth in Section 8.6 (Acceptance), unless sooner terminated or revoked as herein provided. This Franchise shall not renew unless and until the City and Franchisee reach agreement on a renewal and said agreement is approved by ordinance of the City Council. In the event that agreement is not reached, this Franchise shall terminate at the end of the then current term. Nothing in this Section prevents the parties from reaching agreement on renewal provisions earlier than the conclusion of any then current term.

## **2.3 Non-Exclusive.**

This Franchise shall be non-exclusive, and subject to all prior rights, interests, easements or licenses granted by the City or its predecessors to any Person to use any property, Right-of-Way, easement, right interest, or license. The City may at any time grant authorization to use the Right-of-Way for any purpose not incompatible with the Franchisee's authority under this Franchise and for such additional franchises as the City deems appropriate.

## **2.4 Effect of Acceptance.**

By accepting this Franchise, the Franchisee acknowledges and accepts the City's legal right to issue and enforce the Franchise; accepts and agrees to comply with each and every provision of this Franchise; and agrees that the Franchise was granted pursuant to processes and procedures consistent with applicable law.

## **SECTION 3. GENERAL RIGHT OF WAY USE AND CONSTRUCTION.**

### **3.1 Use of Rights-of-Way.**

Franchisee shall not erect, install, construct, repair, replace or maintain its Facilities in such a fashion as to unduly burden the present or future use of the City's Rights-of-Way. If the City in its reasonable judgment determines that any portion of the Franchisee's Facilities is an undue burden, City shall provide notice to Franchisee. Following reasonable advance written notice of not less than thirty (30) days, Franchisee at its expense shall modify its Facilities or take such other actions as the City may determine are in the public interest to remove or alleviate the burden, and Franchisee shall do so within the time period established by the City, unless the City agrees to an extension of time. Franchisee may, subject to the terms of this Franchise, erect, install, construct, repair, replace, reconstruct and retain in, on, over, under, upon, across and along the

Rights-of-Way within the City such lines, cables, conductors, ducts, conduits, vaults, manholes, amplifiers, appliances, pedestals, attachments and other appurtenances and equipment as are necessary to the provision of its Communications Services.

### **3.2 Construction or Alteration.**

Franchisee shall in all cases comply with all lawful City laws, resolutions and regulations regarding the acquisition of permits and/or such other items as may be reasonably required in order to construct, alter or maintain its Facilities and to provide Communications Services. All work authorized and required under this Franchise shall be accomplished in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with good engineering practices.

### **3.3 Non-Interference.**

Franchisee shall exert commercially reasonable efforts to construct and maintain its Facilities so as not to interfere with other use of the Rights-of-Way. Franchisee shall, where possible, in the case of above ground lines or facilities, make use of existing poles and other facilities available to Franchisee.

### **3.4 Consistency with Designated Use.**

Notwithstanding any other provision of this Franchise, no Right-of-Way shall be used by the Franchisee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Right-of-Way was created or dedicated, or presently used under City, State or local laws.

### **3.5 Undergrounding.**

Franchisee shall place underground, at Franchisee's expense unless stated otherwise, all of its Facilities which are located or are to be located above or within the Rights-of-Way of the City in the following cases:

(a) All other existing utilities are required to be placed underground by statute, resolution, policy or other regulation;

(b) Franchisee is unable to get pole clearance;

(c) Underground easements are obtained from developers of new residential areas; and

(d) When required by ordinances, resolutions, regulations, or policy of the City or applicable State or federal law.

3.5.1 Whenever the City may require the undergrounding of aerial utilities, Franchisee shall underground its aerial Facilities in the manner specified by the City, concurrently with and in the area of the other affected utilities. The location of any such relocated and underground Facilities shall be approved by the City, following consultation with the Franchisee. Where other utilities are present and involved in the undergrounding project, Franchisee shall only be required to pay its fair share of the common costs borne by all utilities, in addition to the costs specifically attributable to the undergrounding of Franchisee's Facilities. "Common costs" shall include necessary costs not specifically attributable to the undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of all other utility facilities being undergrounded.

3.5.2 If an ordinance is passed creating a local improvement district which involves placing underground utilities including Franchisee's Facilities which are then located overhead, Franchisee shall participate in such underground project and shall remove poles, cables, overhead wires and other facilities within such district if requested to do so and place such facilities underground. If such undergrounding of Franchisee's Facilities is part of such a project, the costs thereof shall be included in such local improvement district.

3.5.3 If those areas and portions of the City where the transmission or distribution facilities of the utility(ies) providing telephone service and the utility(ies) providing electric service are underground or hereafter are placed underground, then the Franchisee shall likewise construct, operate and maintain all of its transmission and distribution facilities underground. Amplifiers and connectors in Franchisee's transmission and distribution lines may be in appropriate housing upon or above the surface of the ground in locations approved by the City. Upon sufficient notice, work shall be done at the same time as other facilities that are placed underground and all work shall be done consistent with City regulations and to minimize impact on streets and neighborhoods.

3.5.4 Franchisee shall use conduit or its functional equivalent to the greatest extent possible for undergrounding, except that drops from pedestals to Franchisee's customer's homes and for cable on other private property where the owner requests that conduit not be used. Cable and conduit shall be utilized which meets the highest industry standards for electronic performance and resistance to interference or damage from environmental factors. Franchisee shall use, in conjunction with other utility companies or providers, common trenches for underground construction wherever available.

### **3.6 Construction in Right-of-Way.**

In cases where Franchisee's Facilities will be placed underground, whenever it is possible and reasonably and financially practicable to joint trench or share bores and cuts, Franchisee shall work with other providers (such as telecommunications, cable, gas, or electric utilities), licensees, permittees, and franchisees to reduce as far as possible the number of Right-of-Way disturbances.

### **3.7 Maintenance and Restoration.**

3.7.1 Restoration. In case of disturbance of any Right-of-Way or public improvement, Franchisee shall, at its own cost and expense and in accordance with the requirements of the City, restore such Right-of-Way or public improvement to substantially the same condition as existed before the work involving such disturbance took place, less ordinary wear and tear, as determined by the City and in accordance with any applicable City public works construction standards. All requirements of this Section pertaining to public property shall also apply to the restoration of private easements and other private property. Franchisee shall perform all restoration work promptly. If Franchisee fails, neglects or refuses to make restorations as required under this Section, then the City may (but is not required to) do such work or cause it to be done, and Franchisee shall pay the cost thereof to the City within 30 days of the City providing an itemized list of the costs and expenses incurred in performing such work. If Franchisee causes any damage to private property in the process of restoring facilities, Franchisee shall repair such damage, ordinary wear and tear excepted. Franchisee shall warrant any restoration work performed under this Franchise for a period of two years.

3.7.2 Maintenance. Franchisee shall maintain all above ground improvements that it places on City Rights-of-Way pursuant to this Franchise. In order to avoid interference with the City's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone of five feet on all sides of such improvements. If Franchisee fails to comply with this provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby.

3.7.3 Disputes. In any dispute over the adequacy of restoration or maintenance under this Section, the City's Public Works Department shall have the authority, in the exercise of its reasonable discretion, to determine the adequacy of the restoration or maintenance.

### **3.8 Relocation.**

3.8.1 City Property. If during the term of the Franchise the City or any government entity elects or requires a third party, or if the City or other governmental entity determines that it is necessary, to alter, repair, realign, abandon, improve, vacate, reroute or change the grade of any street, public way or other public property; or to construct, maintain or repair any public improvement; or to replace, repair install, maintain, or otherwise alter any cable, wire conduit, pipe, line, pole, wire-holding

structure, or other facility, including a facility used for the provision of utility or other services or transportation of drainage, sewage or other liquids, Franchisee shall, upon request, except as otherwise hereinafter provided, at its sole expense remove or relocate as necessary its poles, wires, cables, underground conduits, vaults, pedestals, manholes and any other facilities which it has installed.

3.8.2 Utilities and Other Franchisees. If during the term of the Franchise another entity which holds a franchise or any utility requests Franchisee to remove or relocate such facilities to accommodate the construction, maintenance or repair of the requesting party's facilities, or their more efficient use, or pursuant to an agreement between Franchisee and such requesting party to "make ready" the requesting party's facilities for use by others, or because Franchisee is using a facility which the requesting party has a right or duty to remove, Franchisee and such requesting party shall mutually negotiate the actions required in connection with the relocation or removal. The companies involved shall decide among themselves who is to bear the cost of removal or relocation, provided that the City shall not be liable for such costs.

3.8.3 Notice to remove or relocate. Any utility, other franchisee, or City request to Franchisee to remove or relocate its facilities shall give Franchisee reasonable advance written notice of no less than ninety (90) days to Franchisee advising Franchisee of the date or dates removal or relocation is to be undertaken; provided that the City may provide whatever notice is reasonable under the circumstances in emergencies or in cases where public health and safety or property is immediately endangered.

3.8.4 Failure by Franchisee to remove or relocate. If Franchisee fails, neglects or refuses to remove or relocate its facilities as directed by the City; or in emergencies or where public health and safety or property is endangered, the City may do such work or cause it to be done, and the cost thereof to the City shall be paid by Franchisee. If Franchisee fails, neglects or refuses to remove or relocate its facilities as directed by another franchisee or utility, that franchisee or utility may do such work or cause it to be done, and if Franchisee would have been required to pay for the cost of performing such work under the provisions of this Agreement, the cost thereof to the party performing the work or having the work performed shall be paid by Franchisee.

3.8.5 If in the sole but reasonable opinion of the City Public Works Director, damage to the public Right-of-Way resulting from damage or disturbance during the construction, operation or maintenance of the Franchisee's Facilities requires immediate repair, the City may perform such repairs, at the cost of the Franchisee. In such event, the City will endeavor to notify the Franchisee of the immediate repairs needed. The Franchisee shall pay to the City the City's costs, including administrative costs related to such repairs within thirty (30) days of the date of written notice of the costs to the Franchisee.

3.8.6 Procedure for removal of Facilities. Franchisee shall not remove any underground facilities which requires trenching or other opening of the streets along the facilities to be removed, except as hereinafter provided. Franchisee may remove any underground facilities from the streets which have been installed in such a manner that it can be removed without trenching or other opening of the streets. Subject to applicable law, Franchisee shall remove, at its sole cost and expense, any underground facilities by trenching or opening of the streets along the extension thereof or otherwise which is ordered to be removed by the City based upon a determination, in the sole discretion of the City, that removal is required in order to eliminate or prevent a hazardous condition. Underground cable and conduit in the streets that is not removed shall be deemed abandoned and title thereto shall vest in the City at no cost to the City.

### **3.9 Movement of Buildings.**

Franchisee shall, on the request of any person holding a building moving permit issued by the City, temporarily raise or lower its wires to permit the moving of such building. Franchisee shall be entitled to ninety (90) days; notice to arrange the raising or lowering of the wires. Franchisee may charge a reasonable fee no greater than its actual costs incurred in raising or lowering its wires, for this service to the person or entity holding a building permit and may request that the costs be paid in advance.

### **3.10 City Right to Inspect and Cost recovery.**

The City shall have the right to inspect all work performed by Franchisee in, on or above City Rights-of-Way, whether during the performance of such work or after completion so long as such inspection does not disrupt Franchisee's system operation. To the extent that the City is required to perform any inspections, maintenance or repairs to City streets, Right-of-Way or other City property due to Franchisee's use thereof, the City shall be entitled to recover the costs and expenses incurred therefore from Franchisee and such costs and expenses shall be payable on demand. In the event that the City incurs any costs or expenses for designing, installing, repairing or altering any City facilities that would not have occurred but for Franchisee's exercise of the rights granted under this Franchise, the City may bill Franchisee for reimbursement of such costs and expenses and such shall be immediately due and payable to the City. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against any Franchise Fee to be paid to the City by the Franchisee.

### **3.11 Construction Standards.**

3.11.1 All work authorized or required under this Franchise shall be done in a safe, thorough and workmanlike manner. All installations of equipment shall be durable and installed in accordance with sound professional engineering practices. Prior to commencement of construction or any work being performed in any Right-of-Way, all of such work shall be conducted pursuant to engineering plans submitted by the

Franchisee to the City for review and approval, which may be conditional approval, by the City Public Works Department. Franchisee shall take prompt corrective action if it or the City finds that any Facilities not operating as expected, or if it or the City finds that facilities and equipment do not comply with the requirements of this Franchise or applicable law, the Lynnwood Municipal Code or any permit requirements.

3.11.2 Franchisee shall comply with all applicable City construction and other codes, ordinances and regulations, including without limitation, all building and zoning codes.

3.11.3 Any erection of poles, antennae, wires, cables, and other installations, upon the poles of the Franchisee located in the Right of Way or upon the poles of others located in the Right of Way, shall be done only in accordance with a plan or maps first to be submitted and approved by the City or other person designated by the City. Antenna supporting structures (towers) shall be designed for the proper loading as specified by the Electronics Industries Association (EIA), as those specifications may be amended from time to time. Antenna supporting structures (towers) shall be painted, lighted, erected and maintained in accordance with all applicable rules and regulations of the Federal Aviation Administration and all other applicable federal, State, and local codes or regulations. Any repair work or replacement work performed in the Right of Way shall be done under the supervision of the City and only after permission from the City is received.

3.11.4 Prior to placing any underground facilities, Franchisee shall join and maintain membership in good standing with the Utility Coordinating Council One Call Center or other similar or successor organization which is designated to coordinate underground equipment locations and installations. Franchisee represents that it is familiar with Chapter 19.122 RCW (Washington State's "Underground Utilities" statute), and understands and will comply with local procedures and practices relating to the one call locator service program.

3.11.5 Franchisee shall comply with any generally applicable ordinances, rules, regulations, and policies of the City regarding geographic information systems mapping for users of the Right-of-Way; provided, that all similarly situated users of the Right-of-Way must also comply.

### **3.12 Notice of Construction.**

The City may establish requirements for advance notification to residents adjacent to the proposed construction areas to be provided by the Franchisee, and Franchisee shall comply with such advance notification requirements.

### **3.13 Safety Requirements.**

3.13.1 The Franchisee shall, at all times, employ reasonable care and shall install and maintain and use commonly accepted methods for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment and connection in, over, under, and upon the streets, sidewalks, alleys and public ways or places of the Service Area, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, State, and City safety requirements, rules, regulations, laws and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair or removal of its Facilities. By way of illustration and not limitation, Franchisee shall also comply with the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards.

3.13.2 If an unsafe condition is found to exist, the City agrees to give Franchisee notice of such condition and afford Franchisee a reasonable opportunity to repair the same. If Franchisee fails to start to make the necessary repairs and alterations within the time frame specified by the City, then the City may make such repairs or contract for them to be made. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Franchisee. The Franchisee shall pay to the City all of the City's costs, including administrative costs, incurred as a result of circumstances herein within thirty (30) days of the date of the written notice of the costs that is delivered to the Franchisee. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against any Franchise Fee to be paid to the City by the Franchisee. If the Franchisee fails to comply with the time frames herein, this Franchise shall terminate without further action required.

### **3.14 Permits Required for Construction.**

3.14.1 Prior to doing any work in the City, Franchisee shall apply for, and obtain, appropriate permits from the City. As part of the permitting process, the City may impose such conditions and regulations as are necessary for the purpose of protecting any Rights-of-Way, the proper restoration of Rights-of-Way and structures, the protection of the public, and the continuity of pedestrian or vehicular traffic, or as may be required by law, ordinance, codes or regulations. Such conditions may also include requiring the provision of a construction schedule and maps showing the location of the facilities to be installed in the Right-of-Way. Franchisee shall pay all applicable fees for the requisite City permits, reviews and/or approvals required of or received by Franchisee. In the event that emergency repairs are necessary, Franchisee shall immediately notify the City of the need for such repairs. Franchisee shall apply for appropriate permits within two (2) working days after discovery of the emergency. During emergencies, the City may move Franchisee's Facilities without prior notice.

3.14.2 Before commencing any construction work exceeding Ten Thousand Dollars (\$10,000.00) in cost, Franchisee shall, if requested by the City, provide a

construction bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including without limitation, its duty to restore City streets and other property. The amount of the construction bond shall be at least one hundred twenty-five percent (125%) of the estimated project cost. The bond shall be in a form and with a surety acceptable to the City. Franchisee shall pay all premiums and costs associated with obtaining the bond, and shall keep the bond in full force and effect until the completion of the construction project, including all restoration of public and private property. Upon completion of the construction, the City shall return the original bond to the Franchisee.

3.14.3 In the event of any emergency in which any of Franchisee's Facilities break or are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, the Franchisee shall immediately take proper emergency measures to repair its Facilities, to cure or remedy the dangerous condition, without first applying for and obtaining City permits otherwise required for said work; provided, that the Franchisee shall immediately notify the City of said condition and of the emergency work, and shall obtain all necessary permits as promptly as possible after the emergency work is performed, and in any event no later than the second business day following the discovery of the condition requiring the emergency work.

### **3.15 Tree Trimming.**

In cases of emergency, the Franchisee shall notify the City of its intent to trim trees or other natural growth necessary to access and maintain its Facilities immediately upon determining that such an emergency exists and prior to engaging in such activity. Upon receipt of such notice, the City may inspect such circumstance prior to the removal of the emergency condition. In non-emergency conditions, Franchisee may, at its own expense, trim trees or other natural growth overhanging any of its installed Facilities to prevent branches from coming in contact with the Franchisee's wires, cables, or other equipment upon twenty (20) day notice of the actual trees and other natural growth that is intended to be affected in non-emergency situations, and upon approval of the City Public Works Department, which shall not be unreasonably withheld. Nothing herein grants the Franchisee any authority to act on behalf of the City or to enter upon any private property, or to trim any tree or natural growth not owned by the City. The Franchisee shall be solely responsible and liable for any damage to any third parties trees or natural growth, and in addition to the terms and conditions of Section 7, the Franchisee shall indemnify, defend and hold harmless the City from claims of any nature arising from any act or negligence of the Franchisee with regard to tree and or natural growth trimming, damage and/or removal. Franchisee shall reasonably compensate the City or the property owner for any damage caused by such trimming, damage or removal. The Franchisee, may, at their own discretion, but in a manner and of a style approved by the City or property owner provide replacement of any trees or shrubbery damaged as a result of actions taken by the Franchisee in lieu of compensation.

### **3.16 Temporary Disconnection.**

The City may direct the Franchisee to temporarily disconnect, relocate, or bypass any equipment of the Franchisee in order to complete street construction or modification, install and remove underground utilities, or for other reasons of public safety and efficient operation of the City. Such removal, relocation or other requirement shall be at the sole expense of the Franchisee.

### **3.17 Access to Open Trenches.**

3.17.1 The Franchisee shall be entitled to reasonable access to open utility trenches, provided that such access does not interfere with the City's placement of utilities or increase the cost to the City thereby. The Franchisee shall pay to the City the actual cost to the City resulting from providing the Franchisee access to an open trench, including without limitation the pro rata share of the costs of access to an open trench and any costs associated with the delay of the completion of a public works project.

3.17.2 The City shall use reasonable efforts to include the Franchisee in any platting process within the City, to exercise reasonable efforts to include as a condition of issuing a permit for open trenching to any utility or developer that (a) the utility or developer give the Franchisee at least ten (10) business days advance written notice of the availability of the open trench and (b) that the utility or developer provide the Franchisee with reasonable access to the open trench. Any such recovery of City costs or reimbursements of such costs shall not be an off-set or credit against any Franchise Fee to be paid to the City by the Franchisee. The City's non-compliance with this Section shall not be a breach or default by the City of this Franchise.

### **3.18 Reservation of Rights.**

Nothing in this Franchise shall limit, waive, release or terminate any rights or interests of the City in its property and/or Right-of-Way, including but not limited to the City retaining all right to sewer, plank, pave, grade, alter, repair, vacate, and improve and/or work upon, under, or above any public Rights-of-Way, and, further the City shall retain its right to grant Franchise rights or similar rights to others, and the City shall not be liable for damage resulting to the Franchisee by reason of or as a result of the performance of such work or by the exercise of such rights by the City.

## **SECTION 4. PAYMENTS TO CITY.**

### **4.1 Recovery of Costs.**

4.1.1 Franchisee shall pay an administrative fee to the City for the City's administrative, legal, and other costs incurred in drafting and processing this Franchise

and all work related thereto, in an amount up to \$2,520. No construction permits shall be issued for the installation of Facilities authorized hereby until such time as the City has received payment of the administrative fee.

4.1.2 Franchisee shall be subject to all standard permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, City staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to the City. In addition to the above, Franchisee shall, within thirty days (30) upon receipt of a request from the City, reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Franchisee's Facilities. Franchisee shall reimburse the City within sixty (60) days of submittal by the City of an itemized billing for incurred costs, itemized by project, for the Franchisee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to the Franchisee's proportionate cost of City personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of the Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include the Franchisee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with the Franchisee's Facilities.

#### **4.2 City's Reservation of Rights.**

4.2.1 Pursuant to RCW 35.21.860, the City is precluded from imposing a franchise fee on a "telephone business" as defined in RCW 82.16.010, or a "service provider" as defined in RCW 35.99.010, for use of the Right-of-Way, excepting actual administrative expenses directly related to the franchise or any tax authorized by state law. Franchisee hereby warrants that its operations as authorized under this Franchise are those of a "telephone business" as defined in RCW 82.16.010 or a "service provider" as defined in RCW 35.99.010. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein.

4.2.2 Franchise acknowledges that its operation within the City may constitute a telephone business subject to the utility tax imposed pursuant to Title 3 of the Lynnwood Municipal Code. Franchisee shall pay any and all utility tax due to the City in accordance with the provisions of the City code. Franchisee understands that RCW 35.21.870 currently limits the rate of city tax to six percent (6%) of gross receipts from telephone business activities, unless a higher rate is otherwise approved. The parties agree however that nothing in this Franchise shall limit the City's power of taxation as

may now or hereafter exist. Franchisee stipulates and agrees that should its business activities be subject to taxation that Franchisee shall pay to the City the rate then applicable to such services under the City's utility tax code, and consistent with state and federal law. This provision does not limit the City's power to amend the City's utility tax code as may be permitted by law.

4.2.3 The City reserves its right to impose a franchise fee, in accordance with state or federal law, on Franchisee for purposes other than to recover its administrative expenses, if Franchisee's operations as authorized by this Franchise change such that Franchisee's activities are not those of a "telephone business" as defined in RCW 82.16.010 and Franchisee is not a "service provider" as defined in RCW 35.99.010, and if there are no statutory prohibitions on the imposition of such fees.

#### **4.3 Acceptance of Payment.**

No acceptance of any payment by the City shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim which the City may have for further or additional sums payable under the provisions of this Section. Franchisee's payment to the City shall not be construed as an acknowledgement by the Franchisee that the amount paid is the correct amount and Franchisee reserves the right to subsequently seek to recover any amount of such payments in the event of an erroneous overpayment or for other lawful reasons. The costs of such verification shall be borne solely by the Franchisee.

#### **4.4 Audits.**

No more than twice per year, the City may conduct an independent audit, on a non-contingent fee basis, of the Franchisee's books and records to verify the accuracy of any payments made to the City under this Franchise, including but not limited to any utility tax. Any additional amount due to the City shall be paid within fourteen (14) calendar days of the City submitting an undisputed invoice for such sum, and if such sum shall exceed three percent (3%) of the total payment which the audit determines should have been paid for any calendar year, the Franchisee shall pay the City's reasonable out of pocket costs of the audit.

In addition to the forgoing, the City, upon thirty (30) days written notice to the Franchisee, shall have the right to inspect, upon reasonable notice, the books and records of the Franchisee for the purpose of determining the accuracy and completeness of the financial reports. Other records that may be required by the City include, but are not limited to, annual financial statements and customer data. Any audit or such examination shall be done in a professional manner during reasonable business hours and following not less than 30 days' notice to Franchisee.

#### **4.5 Interest and Penalties on Late Payments.**

In the event that any payment due to the City under this Franchise, except for utility taxes which shall be governed by applicable provisions of the City code, is not received by the City by the date due, (1) interest shall be charged from such date at the rate of twelve percent (12%) per annum, and (2) in addition, Franchisee shall pay the City an amount equal to five percent (5%) of the amount not paid by the date due.

#### **4.6 Taxes and Assessments.**

The payments required under this Franchise shall be in addition to any and all taxes, levies or other assessments which are now or hereafter required to be paid by businesses or utilities by any law of the City, the State or the federal government, including, without limitation, sales, use, utilities and business and occupation taxes, business license fees or other payments. Nothing stated herein shall limit Franchisee's obligation to pay lawful and applicable local, state or federal taxes, and payment of fees under this Franchise shall not exempt Franchisee from payment of any other lawfully imposed license fee, permit fee, tax, or other charge on the business, occupation, property or income of Franchisee.

### **SECTION 5. FRANCHISE RENEWAL, EXTENSION AND TRANSFER.**

#### **5.1 Transfer of Franchise.**

5.1.1 This Franchise may not be assigned or transferred (including by operation of law) without the written approval of the City, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the above, Franchisee may, upon thirty (30) days' notice to the City, freely assign this Franchise in whole or in part to an Affiliate, including without limitation a parent or subsidiary organization or as part of any corporate financing, reorganization or refinancing; provided, that the assignee or transferee must have the legal, technical, financial and other requisite qualifications to own, hold and operate the Franchisee's Facilities for the purpose of providing Communications Services. The Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this Franchise. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. No assignment or transfer of this Franchise shall be deemed to occur based on the public trading of the Franchisee's stock.

5.1.2 Franchisee may, without the prior written consent of the City: (i) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another entity; or (ii) offer or provide capacity or bandwidth from the Facilities to another

person; provided, that Franchisee at all times retains exclusive control over the Facilities and remains responsible for locating, servicing, repairing, relocating, or removing its Facilities pursuant to the terms of this Franchise and remains in compliance with this Franchise.

5.1.3 Notwithstanding the above, Franchisee may, without the prior written consent of the City, lease the capacity or bandwidth to another telecommunications provider; provided, that Franchisee shall furnish the City in advance with a copy of any such proposed lease or agreement and the proposed lessee or person shall comply with all of the requirements of this Franchise and the City code; and further provided, that the lessee's obligation to comply with the requirements of this Franchise shall not apply to the leasing of dark fiber for general business purposes, unless such lease is for all or substantially all of the Facilities.

## **5.2 Franchise Renewal.**

The City and the Franchisee agree that any proceedings undertaken by the City that relate to the renewal of the Franchisee's Franchise shall be governed by and comply with applicable federal, state and local laws, ordinances, and regulations or as otherwise agreed to by the parties.

## **SECTION 6. VIOLATIONS; ENFORCEMENT.**

### **6.1 Enforcement.**

6.1.1 Notice of Violation. In the event that the City believes that the Franchisee has not complied with any terms of the Franchise, the City, at its sole election may informally discuss the matter with Franchisee. If discussions do not lead to resolution of the problem or if the City elects not to informally discuss the matter with the Franchisee, the City shall issue a written Notice of Violation to the Franchisee, stating with particularity the alleged breach, violation or other non-compliance.

6.1.2 Franchisee's Right to Cure or Respond. The Franchisee shall have thirty (30) days from receipt of the Notice of Violation to (i) respond to the City, contesting the asserted breach, violation or non-compliance and requesting a meeting as provided in section 6.2.1 (ii) cure such default, or (iii) in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the estimated date that they will be completed.

**6.2 Franchisee Contests Non-compliance.** 6.2.1 If the Franchisee timely notifies the City that it contests the asserted breach, violation or non-compliance and requests a meeting with the City, the Mayor shall hold a meeting with the Franchisee within

fourteen (14) days, provided that said timeframe may be extended at the sole discretion of the Mayor.

6.2.2 If after such meeting, the Mayor determines that the Franchisee is in breach, violation or non-compliance with the Franchise, then the Mayor shall notify the Franchisee of his/her decision in writing, stating the grounds of the breach, violation, or non-compliance and revoking the Franchise. Said revocation shall be effective immediately after the delivery of the written notice to the Franchisee.

6.2.3 After receiving the Mayor's decision, the Franchisee may request a public hearing before the City Council as to whether or not a violation, breach or non-compliance with the Franchise has occurred. Said request must be made in writing, stating with specificity the reasons why the Franchisee believes that the alleged non-compliance has not occurred, and delivered to the City Clerk within fourteen (14) days of receipt of the Mayor's decision.

6.2.4 If the Franchisee does not request a public hearing before the City Council under Section 6.2.3 above, at the next available meeting, the City Council shall pass an ordinance declaring the Franchise revoked and terminated, and any security or bonds shall be forfeited to the City. If the Franchisee does request a public hearing before the City Council under Section 6.2.3 above, the City Clerk shall cause the public hearing to be held at the next available City Council meeting, provided that the Franchisee shall be provided at least ten (10) business days notice of such hearing.

6.2.5 At the City Council public hearing, the City shall have the burden of proof that a violation, breach or non-compliance with the Franchise has occurred, and must demonstrate that a preponderance of evidence supports the conclusion that there is a violation or breach of the Franchise and that such violation or breach was not timely cured as required in this Franchise.

6.2.6 The City Council's decision following the close of the public hearing shall be made based upon a majority of the City Council present at the City Council meeting. In the event of a tie vote, the decision of the Mayor shall be deemed to be upheld as the decision of the City Council.

6.2.7 If the City Council upholds the Mayor's decision that the Franchisee is in breach, violation or non-compliance, then the City Council shall immediately pass an ordinance declaring the Franchise revoked and terminated, and any security or bonds shall be forfeited to the City. Said revocation ordinance shall include findings of fact and conclusions derived from those facts which support the decision of the City Council; provided, that the City Council may adopt the findings and conclusions of the Mayor.

6.2.8 The Franchisee shall be bound by the decision of the City Council, unless an appeal is filed to a court of competent jurisdiction within thirty (30) days of the date of the Council's decision.

### **6.3 Failure to Timely Cure.**

If the Franchisee has not contested the asserted breach, violation or non-compliance and fails to timely cure the breach, violation or non-compliance under Section 6.1.2 above, then in addition to any other remedy at law or equity, or provided for in this Franchise, the City may revoke the Franchise. Said revocation shall be effective immediately after the delivery of a written notice of revocation executed by the Mayor stating the grounds of the breach, violation, or non-compliance with the Franchise. If the Franchisee has contested the asserted breach, violation or non-compliance and the City has determined, as provided in Section 6.2, that the Franchisee is in breach, violation or non-compliance, Franchisee shall cure the breach, violation or non-compliance within thirty (30) days from receipt of the City's decision, or within thirty (30) days from the issuance of a final non-appealable order by a court of competent jurisdiction, or in the event that, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the City of the steps being taken and the estimated date that they will be completed. If Franchisee fails to timely cure the breach, violation or non-compliance as provided in this Section 6.3 after receiving the City's decision or following an appeal, then in addition to any other remedy at law or equity, or provided for in this Franchise, the City may revoke the Franchise. Said revocation shall be effective immediately after the delivery of a written notice of revocation executed by the Mayor stating the grounds of the breach, violation, or non-compliance with the Franchise.

### **6.4 Removal.**

6.4.1 If the Franchise has been terminated, revoked, canceled, or has expired, and Franchisee has not exercised its rights, if any, to contest the termination or revocation, the City may give Franchisee written notice to remove its Facilities from the City's Rights-of-Way or it may, in the City's sole discretion, allow Franchisee to abandon the system in place if the Franchisee requests in writing to abandon its Facilities in place. Within ten (10) days of receiving the City's notice, in the event that the City requires removal of the Facilities, the Franchisee agrees to commence removal of its system and to proceed diligently with such removal. Work shall be completely done one hundred-eighty (180) days from notice to complete such work. Prior to the commencement of such work, the Franchisee shall submit to the City a performance bond in the amount of one hundred fifty percent (150%) of the estimated cost of removal and the restoration required by this Franchise. Upon the completion of such work, the City shall return the original bond to the Franchisee.

6.4.2 If the Franchisee fails to remove any of its property as provided herein, the City may elect to cause such removal and may recover its reasonable costs and expenses from Franchisee, including its reasonable attorney's fees and costs incurred in recovering such costs and expenses.

## **6.5 Effective Abandonment.**

Any property of the Franchisee remaining in place ninety (90) days after the termination or expiration of the Franchise may be considered permanently abandoned unless the Franchisee is actively using the property for itself or its customers and is otherwise acting in compliance with this Franchise. Upon abandonment of the property of the Franchisee in place the property shall become that of the City, and the Franchisee shall submit to the City Clerk an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

## **SECTION 7. FINANCIAL AND INSURANCE REQUIREMENTS.**

### **7.1 Indemnity and Hold Harmless.**

7.1.1 General Indemnification. The Franchisee shall indemnify, defend and hold the City, its officers, officials, employees, agents and consultants ("City"), harmless from and against any and all liabilities, claims, fees, costs and damages, whether to person or property, or expense of any type or nature which may occur to the City or to any third party, including without limitation reasonable attorneys' fees, experts' fees and other costs, by reason of the construction, operation, maintenance, repair and alteration of Franchisee's Facilities by Franchisee or any other act done under this Franchise by Franchisee, its employees or agents, except to the extent that such liabilities, claims, fees, costs and damages are caused by the negligence of the City.

7.1.2 Relocation Indemnification. To the extent not covered by the indemnity requirements of Section 7.1.1, Franchisee shall indemnify, defend and hold the City harmless from and against any and all liabilities, claims, fees, costs and damages, whether to person or property, or expense of any type or nature which may occur to the City or any third party, including without limitation reasonable attorneys' fees, experts' fees and other costs, arising out of, or resulting from, directly or indirectly, Franchisee's failure to remove, adjust, or relocate any of its Facilities in the Right-of-Way in a timely manner in accordance with any relocation required by the City under this Franchise, except to the extent that such liabilities, claims, fees, costs and damages are caused by the negligence of the City.

7.1.3 Procedures and Defense. In any case in which suit or action is instituted against the City by reason of damages or injury caused in whole or in part by an act or omission of Franchisee, the City shall cause written notice thereof to be given to the

Franchisee and Franchisee thereupon shall have the duty to appear and defend in any such suit or action, without cost or expense to the City. The City may participate in the defense of a claim, at its sole expense, and in any event, Franchisee may not agree to any settlement of claims financially affecting the City without the City's prior written consent, which consent shall not be unreasonably withheld. The City shall not agree to any settlement of claims without the prior written consent of Franchisee.

7.1.4 Inspection or acceptance by the City of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Ordinance. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

## **7.2 Insurance.**

7.2.1 General Requirement. During the entire term of this Franchise, the Franchisee shall have and maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy, in protection of the City, its officers, elected officials, boards, commissioners, agents, employees, and consultants, in a company and a form satisfactory to the City, protecting the City and all persons against liability for loss or damage or personal injury, death and property damage, and errors or omissions, occasioned by the operations of Franchisee under such Franchise.

7.2.2 Minimum Insurance Limits. Franchisee shall maintain in full force and effect at its own cost and expense each of the following policies of insurance:

- A. Comprehensive General Liability Insurance with limits of no less than Five Million Dollars (\$5,000,000) per occurrence and Five Million Dollars (\$5,000,000.00) excess liability, aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; premises; operations; independent contractors; stop gap liability; personal injury; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.
- B. Commercial Automobile Liability Insurance with minimum combined single limits of Three Million Dollars (\$3,000,000) per occurrence and Five Million Dollars (\$5,000,000) excess liability with respect to each of Franchisee's owned, hired and non-owned vehicles assigned to or used in the operation of the Facilities in the City.

- C. Professional Liability: One Million Dollars (\$1,000,000) per claim for all professionals employed or retained by Franchisee to perform services under this Franchise
- D. Worker's Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

7.2.3 Franchisee's insurance coverage shall be primary insurance with respect to the City. Any insurance or self insurance maintained by the City shall be in excess to the Franchisee's insurance. A certificate of insurance acceptable to the City shall be filed with the City Clerk. The company shall be approved by the state insurance Commissioner pursuant to Title 48 RCW, and have at least an A- Best Rating.

7.2.4 Each policy of insurance shall provide that a written notice of cancellation shall be delivered to the City thirty (30) days in advance of the effective date thereof. If the insurance is cancelled or materially altered so as to be out of compliance with the requirements of this section, Franchisee shall provide a replacement policy. Franchisee shall maintain continuous, uninterrupted insurance coverage, in at least the amounts required, for the duration of the Franchise term, and in the case of Commercial General Liability, for at least one year after expiration of this Franchise.

7.2.5 Franchisee may utilize primary and umbrella liability insurance policies to satisfy insurance policy limits required herein.

### **7.3 Performance Bond.**

7.3.1 If requested by the City, no later than the effective date of this Franchise, Franchisee shall establish and provide to the City, as security for the faithful performance of all of the requirements of this Franchise, a performance bond, from a surety or financial institution acceptable to the City, in the amount of Ten Thousand Dollars (\$10,000). The performance bond may be drawn upon by the City for purposes, including but not limited to the following: (1) failure of Franchisee to pay the City sums due under the terms of this Franchise; (2) reimbursement of costs born by the City to correct Franchise violations not corrected by Franchisee; and (3) monetary remedies or damages assessed against Franchisee due to default or breach of Franchise requirements.

7.3.2 The City shall give Franchisee written notice of any withdrawal under this section upon such withdrawal. Within seven (7) days following receipt of such notice, Franchisee shall restore the performance bond to the amount required under this Franchise. Franchisee's maintenance of the bond shall not be construed to excuse performance of obligations under the Franchise, or to limit the liability of Franchisee or otherwise limit the City's recourse to any other remedy available at law or equity.

## **SECTION 8. MISCELLANEOUS TERMS**

### **8.1 Confirmation of Consistency with Federal Provisions.**

If any portion of this Franchise ordinance is deemed to be inconsistent with the Act or any federal or state rule or regulation now existing or hereinafter adopted, then to the extent of the inconsistency, the Act or rule or regulation shall control for so long, but only for so long, as such rule or regulation shall remain in effect, and the remaining provisions of this Franchise ordinance shall not thereby be affected. If that rule or regulation allows existing franchises to not be affected, then there shall be no effect to this Franchise. If federal law changes, whether through legislative or rule-making action or court or administrative interpretation during the term of this Franchise, then this Franchise ordinance shall be considered modified to be consistent with such federal law changes.

### **8.2 Severability.**

Each section, subsection, or other portion of this Ordinance shall be severable and the invalidity of any section, subsection, or other portion shall not invalidate the remainder.

### **8.3 Notice.**

Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

**CITY OF LYNNWOOD:**

City of Lynnwood  
City Clerk  
19100 44th Ave W  
Lynnwood, WA 98036

**FRANCHISEE:**

**tw telecom of washington llc**  
Attn: Sr. VP & General Counsel  
10475 Park Meadows Drive  
Littleton, CO 80124

With a copy to:  
tw telecom of washington llc  
Attn: VP – Regulatory  
10475 Park Meadows Drive  
Littleton, CO 80124

Notice shall be deemed given upon actual receipt or refusal of delivery and shall be sent by personal delivery, United States Certified Mail, return receipt requested, or by overnight delivery.

#### **8.4 Entire Franchise.**

This Franchise and its acceptance constitutes the entire terms between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties. Any amendment to this Franchise shall only occur by mutual written agreement of the parties and amendment of this Ordinance.

#### **8.5 Reserved Rights.**

The City reserves all rights and powers under its police powers and powers conferred by federal, state or local law. In particular the City reserves the right to alter, amend, or repeal its municipal code as it determines shall be conducive to the health, safety and welfare of the public, or otherwise in the public interest. The City agrees that by accepting this Franchise, Franchisee has not waived its right to object to the application to it of actions by the City pursuant to its reserved rights or police powers.

Both the City and the Franchisee expressly reserve all rights they may have under law to the maximum extent possible; neither the City nor the Franchisee shall be deemed to have waived any federal or state constitutional or statutory rights they may now have or may acquire in the future by entering into this agreement.

#### **8.6 Franchise Acceptance.**

Within sixty (60) days of the effective date of this ordinance, Franchisee shall execute and return to the City three Franchisee Acceptance forms, attached to this Ordinance. The executed Franchise Acceptances shall be returned to the City accompanied by performance bonds, security funds, and evidence of insurance, all as provided in this Ordinance. In the event Franchisee fails to accept this Franchise, or fails to provide the required documents and/or funds, by said date, this Franchise shall be null and void and Franchisee shall have no rights or privileges hereunder.

#### **8.7 Effective Date.**

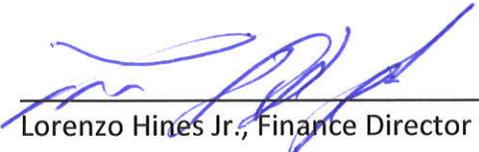
This Franchise ordinance shall be effective upon passage, approval and publication as provided by law; provided, however, that if Franchisee does not accept this Franchise and comply with all conditions for such acceptance set forth herein prior to the effective date, this Franchise ordinance shall be null and void.

PASSED BY THE CITY COUNCIL this 14th day of July, 2014.

APPROVED:

  
\_\_\_\_\_  
Nicola Smith, Mayor

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
Lorenzo Hines Jr., Finance Director

APPROVED AS TO FORM:

  
\_\_\_\_\_  
 Rosemary Larson, City Attorney

FILED WITH ADMINISTRATIVE SERVICES:	07/11/2014
PASSED BY THE CITY COUNCIL:	07/14/2014
PUBLISHED:	07/19/2014
EFFECTIVE DATE:	07/24/2014
ORDINANCE NUMBER:	3071

**FRANCHISEE ACCEPTANCE**

**tw telecom of washington llc**, for itself and for its successors and assigns, hereby accepts and agrees to be bound by all lawful terms, conditions and provisions of the Franchise attached hereto and incorporated by this reference. **tw telecom of washington llc** expressly acknowledges that in accepting this Franchise it did so relying on its own investigation and understanding of the power and authority to grant this Franchise.

ACCEPTED this 30 day of July, 2014.

**tw telecom of washington, llc**  
by: tw telecom holdings inc.  
its sole member

Signature: Tina Davis  
Name: Tina Davis  
Senior Vice President  
and General Counsel  
Title: \_\_\_\_\_



On the, 14th day of July, 2014 the City Council of the City of Lynnwood, Washington, passed ordinance 3071. A summary of the content of this ordinance, consisting of the title, provides as follows:

**ORDINANCE NO. 3071**

**AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO TW TELECOM OF WASHINGTON LLC, TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE AND SUMMARY PUBLICATION.**

The full text of this ordinance will be mailed upon request.

DATED this 19<sup>th</sup> day of July, 2014.

  
\_\_\_\_\_  
Lorenzo Hines Jr., Finance Director



**LYNNWOOD**  
WASHINGTON

## **CERTIFICATE**

I, the undersigned, Lorenzo Hines Jr., the duly appointed City Clerk of the City of Lynnwood, Washington, hereby certify that the Ordinance hereto attached is a full, true and correct copy of Ordinance No. 3071 of the City of Lynnwood, Washington, entitled as follows:

**AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO TW TELECOM OF WASHINGTON LLC, TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE AND SUMMARY PUBLICATION.**

That said ordinance was passed by the Council on July 14, 2014 of said City and was published and posted according to law; that said ordinance was duly published in the official newspaper of said City on July 19, 2014.

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Lorenzo Hines, Jr., City Clerk of the  
City of Lynnwood, Washington



On the 14th day of July, 2014 the City Council of the City of Lynnwood, Washington, passed ordinances: 3069, 3070 and 3071. A summary of the content of these ordinances, consisting of the title, provides as follows:

**ORDINANCE NO. 3069**

AN ORDINANCE AMENDING THE COMPREHENSIVE ARTERIAL AND STREET PLAN FOR THE CITY OF LYNNWOOD; ADOPTING A SIX YEAR COMPREHENSIVE TRANSPORTATION PROGRAM: 2015-2020 FOR THE CITY OF LYNNWOOD TO BE FILED WITH THE DIRECTOR OF HIGHWAYS AND THE TRANSPORTATION IMPROVEMENT BOARD; PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE, AND FOR SUMMARY PUBLICATION.

**ORDINANCE NO. 3070**

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, ADOPTING MODIFICATIONS TO THE 2013-2014 BUDGET; PROVIDING FOR TRANSMITTAL OF THE BUDGET MODIFICATION TO THE STATE; AND PROVIDING FOR SEVERABILITY, AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

**ORDINANCE NO. 3071**

AN ORDINANCE OF THE CITY OF LYNNWOOD, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO TW TELECOM OF WASHINGTON LLC, TO INSTALL, OPERATE, MAINTAIN, REPAIR AND REMOVE A FIBER OPTIC TELECOMMUNICATIONS SYSTEM WITHIN THE CITY; PRESCRIBING RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT TO THE FRANCHISE; AND PROVIDING FOR AN EFFECTIVE DATE AND SUMMARY PUBLICATION.

The full text of this ordinance will be mailed upon request. DATED this 19th day of July, 2014.

Lorenzo Hines Jr., Finance Director

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