



ORDINANCE NO. 28179

1 AN ORDINANCE relating to cable communications and franchise services;
2 granting LightSpeed Networks, Inc., an Oregon corporation dba: LSN, the
3 nonexclusive right, privilege, authority, and limited franchise to construct,
4 operate, maintain, remove, replace, and repair fiber-optic communications
5 facilities in designated areas of City right-of-way, together with equipment
6 and appurtenances thereto, for the transmission of data within and through
7 those certain right-of-way areas, streets, and public property within the City
8 of Tacoma.

9 WHEREAS LSN (hereinafter "Grantee"), has applied for a nonexclusive
10 limited franchise to operate and maintain fiber-optic communication lines through
11 certain herein designated public right-of-way areas within the City of Tacoma
12 (hereinafter "City" or "Grantor"), and

13 WHEREAS the Tacoma City Charter authorizes the City to grant
14 nonexclusive franchises for the use of City right-of-way, streets, and public
15 property; Now, Therefore,

16 BE IT ORDAINED BY THE CITY OF TACOMA:

17 Section 1. PURPOSE.

18 The City grants this nonexclusive limited franchise to Grantee to operate
19 and maintain fiber-optic communication lines and related facilities ("Facilities")
20 necessary to the operation of Grantee's business and to the health, safety, and
21 welfare of the community. This franchise is conditioned upon the terms and
22 conditions contained herein and Grantee's compliance with any applicable federal
23 or state regulatory programs that currently exist or may hereafter be enacted by
24 any federal or state regulatory agencies with jurisdiction over the Grantee and its
25 use of the right-of-way. The purpose of this franchise is to delineate the conditions
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1 relating to Grantee's use of the public's right-of-way, streets and property and to
2 create a foundation for the parties to work cooperatively in the public's best
3 interests after this ordinance becomes effective. By granting this franchise, the
4 City is not assuming any risks or liabilities therefrom, which shall be solely and
5 separately borne by Grantee.

6 Section 2. RIGHT CONVEYED.

7 2.1 Grantor hereby grants, under the terms and conditions contained
8 herein, to Grantee, a corporation organized and existing under and by virtue of the
9 laws of the State of Oregon, and which is registered and authorized to transact
10 business within the State of Washington, the right, privilege, authority, and
11 franchise to construct, operate, maintain, remove, replace, and repair the Facilities,
12 together with all equipment and appurtenances, as may be necessary thereto, for
13 the transmission and handling of electronic information and data, through and
14 under those certain streets, avenues, drives, and other public lands within the City
15 of Tacoma, as designated and more particularly described in Schedule I, which is
16 attached hereto and expressly incorporated herein by this reference ("Franchised
17 Area").
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20 2.2 This franchise is only intended to convey a limited right and
21 interest as to that public property and those rights of way designated on Schedule I
22 in which the City has an actual interest. It is not a warranty of title or interest in
23 City road rights-of-way, nor is it a warranty of Grantee's right to locate in any such
24 area. None of the rights granted herein shall affect the City's ability to use, or
25 jurisdiction over its property, streets or rights-of-way.
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Section 3. TERM.

1 Each of the provisions of this franchise shall become effective upon
2 Grantee's acceptance of the terms and conditions contained herein ("Effective
3 Date") and shall remain in effect for ten (10) years thereafter. Subsequently, and
4 in accordance with the terms and provisions of Tacoma Charter Article VIII, City
5 Council may consider renewing this franchise, at the written request of Grantee, for
6 any additional renewal period at any time within two (2) years before the end of the
7 franchise's original ten (10) year term, unless either party expresses its intention in
8 writing to terminate this franchise at the conclusion of the original ten (10) year
9 term.
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12 Section 4. COMPLIANCE WITH LAWS STANDARDS AND POLICIES.

13 Grantee shall, in carrying out any authorized activities under the privileges
14 granted herein, comply with all applicable federal, state and local laws of any
15 governmental entity with jurisdiction over the Facilities. This shall include all
16 applicable laws, rules and regulations, and published City of Tacoma policies
17 relating to Grantee's use of City right-of-way existing at the Effective Date of this
18 franchise or that may be subsequently enacted, modified or amended by any
19 governmental entity with jurisdiction over Grantee and/or the Facilities.
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22 Section 5. CONSTRUCTION ON PUBLIC PROPERTIES.

23 5.1 This Section 5 shall apply to all construction done by Grantee in
24 the Franchised Area. Except in the event of an emergency, Grantee shall provide
25 Grantor at least thirty (30) calendar days' written notice prior to any alteration,
26 repair, replacement, removal, or other substantial activity, other than routine



1 inspections and maintenance, by Grantee, its agents, employees or contractors on
2 Grantee's Facilities or appurtenant structures on Grantor's property. Said written
3 notice shall include, at a minimum, detailed plans and specifications, if any, and a
4 detailed description of the proposed work and anticipated time of the work. Such
5 work shall only commence upon the issuance of applicable permits by the City,
6 which permits shall not be unreasonably withheld or delayed. In the event of an
7 emergency requiring immediate action by Grantee for the protection of the
8 Facilities, Grantor's property or other persons or property, Grantee may take such
9 action upon such notice to Grantor as is reasonable under the circumstances.
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11 5.2 All work done hereunder by Grantee or upon Grantee's direction
12 or on Grantee's behalf shall be undertaken and completed in a workmanlike
13 manner and in accordance with the descriptions, plans and specifications provided
14 to, and approved by, Grantor. Grantee's activities shall be conducted in such a
15 manner as to avoid damage or interference with other utilities, drains or other
16 structures, and to interfere as little as possible with public travel, or other municipal
17 uses and the free use of adjoining property so as to provide safety for persons and
18 property. The Grantee's construction, maintenance and repairs shall be in
19 compliance with all applicable laws and regulations of governmental agencies with
20 jurisdiction including, without limitation the City's right-of-way restoration policy.
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23 5.3 The City may condition the granting of any permit or other
24 approval that is required under this Franchise, at any time, on any lawful condition
25 or regulation, unless such condition or regulation is in conflict with a federal
26 directive, as may be reasonably necessary to the management of the public right-



1 of-way or the Grantor's property, including, by way of example and not limitation,
2 bonding, maintaining proper distance from other utilities, protecting the continuity
3 of pedestrian and vehicular traffic and protecting any right-of-way improvements,
4 private facilities and public safety.

5 5.4 Whenever it shall be necessary in constructing, maintaining,
6 repairing, relocating, removing or replacing any of the Grantee's Facilities in any
7 street, right-of-way area, or public property, the Grantee shall without delay, as
8 soon as is commercially reasonable, and at Grantee's sole expense, remove all
9 debris and restore the surface of the street, or public property as nearly as
10 practicable to as good or better condition as it was in before the work began.

11 Grantee shall replace any property corner monuments, survey reference or hubs
12 that were disturbed or destroyed during Grantee's work in the areas covered by
13 this franchise. Such restoration shall be done in a manner consistent with
14 applicable codes and laws, under the supervision of the City's Director of Public
15 Works or his authorized designee and to the City's reasonable satisfaction and
16 specifications. Whenever restoration is required hereunder, the restoration shall
17 be done under a letter of credit, bond or assignment of funds in an amount
18 appropriate to guarantee adequate restoration.
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21 5.5 Grantee shall continuously be a member of the State of
22 Washington one number locator service under RCW 19.122, or approved
23 equivalent, and shall comply with all such applicable rules and regulations.
24 Grantee shall provide reasonable notice to the City prior to commencing any work
25 or construction under this Franchise and additionally to those owners or other
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1 persons in control of property abutting the Franchise Area when such work or
2 construction will affect access to such property or otherwise impact such property
3 or the private or public improvements within said area.

4 5.6 Upon acceptance of this franchise by Grantee, and as a
5 condition of this franchise, Grantee shall make available to the City, upon the City's
6 written request and at no cost to the City, within sixty (60) working days from
7 completion of construction of the Facilities, relevant as-built plans, maps and
8 records revealing the current location and condition of Grantee's Facilities within
9 the public right-of-way and public places.

10 5.7 Nothing in this franchise shall be deemed to impose any duty or
11 obligation upon Grantor to determine the adequacy or sufficiency of Grantee's
12 plans and designs or to ascertain whether Grantee's proposed or actual
13 construction, testing, maintenance, repairs, replacement or removal is in
14 conformance with the plans and specifications reviewed by Grantor. Grantee shall
15 ensure any contractor working on its job sites within the Franchise Area, has a
16 written safety plan addressing safety of all persons and property during the
17 performance of any work therein.

18 Section 6. OPERATIONS, MAINTENANCE, INSPECTION AND TESTING.

19 Grantee shall operate, test, inspect and maintain its Facilities in full
20 compliance with all applicable laws, rules, regulations and policies as now enacted
21 or hereafter amended, and any other current or future laws or regulations that are
22 applicable to Grantee's Facilities.

23 Section 7. INTENTIONALLY OMITTED



Section 8. RELOCATION.

1 8.1 Relocation for Public Work. Grantee shall, by a time specified by
2 the Grantor, protect, support, temporarily disconnect, relocate, or remove any of its
3 Facilities when required by Grantor for work in furtherance of the public health,
4 safety, or welfare, which work includes, without limitation: traffic conditions; public
5 safety; public right-of-way construction; public right-of-way repair (including
6 resurfacing or widening); change of public right-of-way grade; construction,
7 installation or repair of sewers, drains, water pipes, power lines, signal lines,
8 tracks, or any other type of government-owned telecommunications or public
9 transportation systems, public work, public facility, or improvement of any
10 government-owned utility; public right-of-way vacation; or for any other public
11 purpose where the work involved would be aided by the removal or relocation of
12 the Facilities. Collectively, such matters are referred to as the “public work.”
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14 8.1.1 Grantee may, after receipt of written notice requesting a
15 relocation of its facilities under Section 8.1, submit to the City written alternatives to
16 such relocation within thirty (30) calendar days of receiving the plans and
17 specifications. The City shall evaluate such alternatives and advise Grantee in
18 writing if one or more of the alternatives are suitable to accommodate the work that
19 would otherwise necessitate relocation of the Facilities. If so requested by the
20 City, Grantee shall submit additional information to assist the City in making such
21 evaluation. The City shall give each alternative proposed by Grantee full and fair
22 consideration, but retains sole discretion to decide for itself whether to utilize its
23 original plan or an alternative proposed by Grantee. In the event the City ultimately
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determines that there is no other reasonable alternative, Grantee shall relocate its
1 Facilities as otherwise provided in this Section.

2 8.1.2 Grantor shall work cooperatively with Grantee in
3 determining a viable and practical route within which Grantee may relocate its
4 Facilities under this Section 8, in order to minimize costs while meeting the public
5 work project objectives. Upon receipt of Grantor's notice, plans and specifications,
6 Grantee shall complete relocation of its Facilities so as to accommodate the public
7 work project at least ten (10) calendar days prior to commencement of the public
8 work project or such other time as the parties may agree in writing.
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11 8.2 Notice. Except in the case of emergencies, the City shall
12 provide written notice, describing where the public work is to be performed, at least
13 sixty (60) days prior to the deadline by which Grantee must protect, support,
14 temporarily disconnect, relocate or remove its Facilities. Grantee may seek an
15 extension of the time to perform such tasks where they cannot be performed in
16 sixty (60) days even with the exercise of due diligence, and such request for an
17 extension shall not be unreasonably refused.
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19 8.3 Emergency Relocation, or Repair. In the event of an
20 emergency, or where the Facilities create or are contributing to an imminent
21 danger to health, safety, or property, the City may protect, support, temporarily
22 disconnect, remove, repair or relocate any or all parts of the Facilities, without prior
23 notice, and charge the Grantee for costs incurred.
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8.4 Relocation for Other than Public Work. The City reserves its authority to require relocation of the Facilities located within the public right-of-way, as provided for under applicable state, federal, and local law.

8.5 Redesign Option. As an alternative to relocation, Grantee may propose an alternative design for the pending public work in order to avoid any relocation of Grantee's Facilities. Such redesign proposal shall be subject to review and approval by the City and all costs of the redesign, including, without limitation, the costs actually incurred in the public work as a result of the redesign shall be solely for Grantee's account. Approval and acceptance of any such redesign proposal shall be at the sole discretion of the City.

8.6 Grantor acknowledges that Grantee's obligations under Section 8 of this franchise are subject to the provisions of RCW 35.99.060.

Section 9. INTENTIONALLY OMITTED

Section 10. DISPUTE RESOLUTION.

10.1 In the event of a dispute between Grantor and Grantee arising by reason of this franchise, or any obligation hereunder, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this franchise. Said officers or representatives shall meet within thirty (30) calendar days of either party's request for said meeting, whichever request is first, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

10.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in Section 10.1, then the parties hereby agree that



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the matter shall be referred to mediation within Pierce County. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

10.3 If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies in Pierce County, provided, that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 11. ABANDONMENT OR REMOVAL OF FACILITIES.

In the event of abandonment or Grantee's permanent cessation of use of its Facilities, or any portion thereof within the City of Tacoma, the Grantee shall, within one hundred and eighty (180) days after the abandonment or permanent cessation of use, remove the Facilities, secure the Facilities in such a manner as to cause them to be as safe as is reasonably possible, or after petitioning the City to be allowed to do so, decommission the Facilities in place, all in compliance with applicable laws, regulations and industry standards. In the event of the removal of all or a portion of the Facilities, Grantee shall restore the Franchise Area as nearly



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as possible to the condition that existed prior to installation of Grantee's Facilities and in compliance with the City's right-of-way restoration policy. Such property restoration work shall be done at Grantee's sole cost and expense and to Grantor's reasonable satisfaction. If Grantee fails to remove, secure or decommission the Facilities, and/or fails to restore the Franchised Area or take such other mutually agreed upon action, Grantor may, after reasonable notice to Grantee, remove the Facilities, restore the Franchised Area or take such other action as is reasonably necessary at Grantee's expense and Grantor shall not be liable therefor. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.

Section 12. NONEXCLUSIVE FRANCHISE.

This franchise is nonexclusive. Grantor reserves the right to grant other franchises, easements, licenses, permits or other approvals to others, subject to the rights granted herein, provided that Grantor shall not grant any other franchise, license, permit or other approval which would substantially interfere with Grantee's use. Grantor shall notify Grantee of any proposed franchise, easement, license or permit for a utility or other structure which may be located within ten (10) feet of Grantee's Facilities, as shown on the latest map Grantee has provided the City. When the Grantor has notice that excavation, construction or other work may be undertaken within ten (10) feet of Grantee's Facilities, it shall notify Grantee so that Grantee may have the opportunity to inspect the work to see that Grantee's Facilities are not damaged. If the contractor undertaking the excavation, construction or other work is observed to have violated safety regulations, Grantor



1 will cooperate to the extent feasible in pursuing an enforcement action to avoid
2 third party damage to the Facilities. This provision shall not create, either expressly
3 or implicitly, nor shall the City assume, any liability under any circumstances
4 hereunder.

5 Section 13. INDEMNIFICATION.

6 13.1 General Indemnification. Grantee shall indemnify, defend and
7 hold harmless Grantor from any and all liability, loss, damage, cost, expense, and
8 claim whatsoever, arising on or after the date of this Agreement, whether at law or
9 in equity, arising out of or related to, directly or indirectly, the construction,
10 operation, use, location, testing, repair, maintenance, relocation, removal,
11 abandonment or damage to Grantee's Facilities, or from the existence of Grantee's
12 Facilities and appurtenances, or for any information or other items transmitted
13 through the Facilities, from any and all causes whatsoever, except to the extent
14 they are caused by Grantor's sole negligence. If any action or proceeding is
15 brought against Grantor by reason of the Facilities, Grantee shall defend the
16 Grantor at the Grantee's sole expense, provided that, for uninsured actions or
17 proceedings, defense attorneys shall be approved by Grantor, which approval shall
18 not be unreasonably withheld.

19 13.2 Environmental Indemnification. Grantee shall indemnify,
20 defend and save Grantor harmless from and against any and all liability, loss,
21 damage, expense, actions and claims, arising on or after the date of this franchise,
22 either at law or in equity, including, but not limited to, costs and reasonable
23 attorneys' and experts' fees incurred by Grantor in defense thereof, arising from
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1 (a) Grantee's breach of any environmental laws applicable to the Facilities or
2 (b) from any release of a hazardous substance on, from or as a result of the
3 Facilities being in the Franchise Area, or (c) other activity related to this franchise
4 by Grantee, its agents, contractors or subcontractors. This indemnity includes but
5 is not limited to (a) liability for a governmental agency's costs of removal or
6 remedial action for hazardous substances; (b) damages to natural resources
7 caused by hazardous substances, including the reasonable costs of assessing
8 such damages; (c) liability for any other person's costs of responding to hazardous
9 substances; (d) liability for any costs of investigation, abatement,
10 correction, cleanup, fines, penalties, or other damages arising under any
11 environmental laws; and (e) liability for personal injury, property damage, or
12 economic loss arising under any statutory or common-law theory.
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14 13.3 Definitions.

15 13.3.1 "Hazardous Substance" means any hazardous, toxic,
16 or dangerous substance, material, waste, pollutant, or contaminant, including all
17 substances designated under the Resource Conservation and Recovery Act, 42
18 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response,
19 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials
20 Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control
21 Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the
22 Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide,
23 Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous
24 Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics
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1 Control Act, Chapter 70.105D, RCW; all as amended from time to time; or any
2 other federal, state, or local statute, code or ordinance or lawful rule, regulation,
3 order, decree, or other governmental authority as now or at any time hereafter in
4 effect. The term shall specifically include petroleum and petroleum products. The
5 term shall also be interpreted to include any substance which, after release into the
6 environment, will or may reasonably be anticipated to cause death, disease,
7 behavior abnormalities, cancer, or genetic abnormalities.

8 13.3.2 "Environmental Laws" shall include the Resource
9 Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive
10 Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et
11 seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the
12 Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act,
13 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et
14 seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et
15 seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the
16 Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the
17 Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended
18 from time to time; or any other federal, state, or local statute, code, or ordinance or
19 federal or state administrative rule, regulation, ordinance, order, decree, or other
20 governmental authority as now or at any time hereafter in effect pertaining to the
21 protection of human health or the environment.
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Section 14. INSURANCE, PERFORMANCE BOND AND SECURITY.

1 14.1 During the effective period of this franchise, Grantee shall
2 provide and maintain, at its own cost, insurance in the minimum amount of Two
3 Million United States Dollars (\$2,000,000.00) each occurrence, in a form and with
4 a carrier reasonably acceptable to the Grantor, naming Grantor as an additional
5 insured for ongoing operations and completed operations, to cover any and all
6 insurable liability, damage, claims and loss as set forth in Section 13.1 above, and,
7 to the extent such coverage is reasonably available in the commercial
8 marketplace, all liability, damage, claims and losses as set forth in Section 13.2
9 above, except for liability for fines and penalties for violation of environmental laws
10 and as otherwise provided below. Insurance coverage shall include, but is not
11 limited to, all defense costs. Such insurance shall include, but is not limited to,
12 environmental liability coverage, at a minimum covering liability from environmental
13 incidents, subject to time element reporting requirements, and such other
14 applicable pollution coverage as is reasonably available in the commercial
15 marketplace. In the event that a deductible or self-retention amount applies to the
16 insurance herein, Grantee agrees to pay the amount of that deductible or self-
17 retention amount.

21 14.2 Proof of insurance and a copy of the insurance policy,
22 including, but not limited to, coverage terms and claims procedures, shall be
23 provided to the Grantor prior to the beginning of any substantial work, testing or
24 construction or reconstruction on the Facilities. Said insurance shall contain a
25 provision that it shall not be canceled without prior written notice as specified in the
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1 policy provisions, to the Grantor, and shall include the City of Tacoma as a named
2 additional insured. All required liability policies shall be maintained for a period of
3 not less than three years following termination of this franchise.

4 14.3 The indemnity and insurance provisions herein under
5 Sections 13 and 14 shall survive the termination of this franchise and shall
6 continue for as long as the Grantee's Facilities shall remain in or on the Franchise
7 Area or until the parties execute a new franchise agreement which modifies or
8 terminates these indemnity and/or insurance provisions.

9 14.4 Performance Bond. Within thirty (30) days after the award of
10 this franchise, but in no event sooner than the final reading of the franchise
11 ordinance, Grantee shall submit to the City Attorney, which shall be filed with the
12 appropriate City department, a performance bond running to the City, with good
13 and sufficient surety licensed to do business in the State of Washington and
14 approved by the City in the amount of \$50,000, conditioned that Grantee shall well
15 and truly observe, fulfill, and perform each term and condition of the franchise.
16 The performance bond shall cover any damages suffered by the Grantor as a
17 result of this franchise, including the full amount of any compensation,
18 indemnification, or cost of removal, relocation or abandonment of Facilities as
19 prescribed herein; said condition to be a continuing obligation for the duration of
20 the franchise and thereafter until Grantee has liquidated all of its obligations with
21 the City that may have arisen from the acceptance of the franchise by Grantee or
22 from its exercise of any privilege herein granted. Written evidence of payment of
23 required premiums shall be filed and maintained with the City.
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Neither the provisions of this section, any bond, nor any damages recovered
1 by the City thereunder shall be construed to excuse faithful performance by
2 Grantee or to limit liability of Grantee under the franchise or for damages, either to
3 the full amount of the bond or otherwise, except as otherwise provided herein.
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5 Section 15. ANNUAL FRANCHISE FEE.

6 15.1 In consideration for granting this franchise and for the use of
7 the Franchised Area, there is hereby established an annual fee of \$9,510.25, paid
8 in United States Dollars (the "Franchise Fee"). The first installment of the
9 Franchise Fee shall be paid within three (3) weeks of the time Grantee accepts this
10 franchise and shall cover the first twelve (12) months of operation. Each
11 succeeding installment shall cover the next twelve (12) month period and shall be
12 paid upon receipt of invoice, not later than the anniversary date of this franchise's
13 Effective Date. Interest shall accrue on any late payment at the rate of twelve
14 percent (12%) per annum.
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17 15.2 Grantor acknowledges that any fees charged hereunder must
18 comply with the provisions of RCW 35.21.860. The City further acknowledges that
19 Grantee reserves any right it may have to contest or challenge fees imposed by
20 Grantor to the extent that Grantee feels such imposition is unlawful under the
21 provisions of this franchise or any applicable federal or state law.
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23 15.3 Grantee agrees that it will obtain, pursuant to the City's
24 currently effective code and rates, any and all licenses, permits or other approvals
25 necessary for Grantee to operate, maintain or repair its Facilities in the Franchise
26 Area. This shall include, by way of example only and not limitation, inspection and



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permit costs associated with Grantee's work in the City's right-of-way. The annual fee set forth in Section 15.1 does not include standard and customary payments associated with the City's administrative expenses incurred in reviewing, licensing, permitting or granting any other approvals necessary for Grantee to construct, operate, maintain or repair its Facilities or for any inspection or enforcement costs related thereto. Additionally, the foregoing annual fee does not include any generally applicable taxes that the Grantor may legally levy.

Section 16. Notice.

All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Grantor: Cable Communications and Franchise Services Manager
City of Tacoma
1224 MLK Jr. Way
Tacoma, WA 98405

with copy to: City Attorney
City of Tacoma
747 Market Street, #1120
Tacoma, WA 98402

Grantee: LSN
Contracts Administration
921 SW Washington St., Suite #370
Portland, OR 97205



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or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. ASSIGNMENT AND TRANSFER OF FRANCHISE.

17.1 In accordance with Tacoma City Charter Article VIII, Section 8.5, this franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld.

17.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer:

17.2.1 Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer;

17.2.2 All information reasonably required by the City of a franchise applicant under Tacoma City Charter Article VIII and any applicable provisions of the Tacoma Municipal Code, as it may be amended from time to time, with respect to the proposed assignee or transferee;

17.2.3 Any other information reasonably required by the City;
and,



1 17.2.4 An application fee which shall be set by the City, plus
2 any other costs actually and reasonably incurred by the City in processing and
3 investigating the proposed assignment or transfer.

4 17.3 No transfer shall be approved unless the assignee or transferee
5 has at least the legal, technical, financial, and other requisite qualifications to carry
6 on the activities of the franchisee granted hereunder.

7 17.4 Any transfer or assignment of this franchise without the prior
8 written consent of the City as set forth herein shall be void and shall result in
9 revocation of the existing permit or franchise.
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11 Section 18. RESERVATION OF POLICE POWER.

12 All the rights and privileges granted in this franchise shall be governed by
13 the terms and conditions contained herein subject to the City's reservation of all its
14 police powers to enact ordinances that are necessary to protect the health, safety
15 and welfare of the general public.
16

17 Section 19. TERMINATION.

18 19.1 Grantor may terminate this Agreement upon the occurrence of
19 any of the following events:

20 19.1.1 If Grantee materially breaches or otherwise fails to
21 perform, comply with or otherwise observe any of the terms and conditions of this
22 franchise or fails to maintain all required licenses and approvals from federal, state,
23 and local jurisdictions, and fails to cure such breach or default within thirty (30)
24 calendar days of Grantor's providing Grantee written notice thereof, or, if not
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26



1 reasonably capable of being cured within thirty (30) calendar days, within such
2 other reasonable period of time as the parties may agree upon; or,

3 19.1.2 Grantee becomes insolvent, unable or unwilling to pay
4 its debts, or is adjudged a bankrupt; or

5 19.1.3 Grantee fails to maintain the full amount of, or to post a
6 performance bond, letter of credit or assigned funds as required under the terms of
7 this franchise.

8 19.2 This Agreement shall not be terminated except upon a majority
9 vote of the City Council, after reasonable notice to Grantee and an opportunity to
10 be heard, provided that if exigent circumstances necessitate immediate
11 termination, the hearing may be held as soon as possible after the termination.
12

13 19.3 Grantor's right to terminate this franchise is in addition to and
14 not in limitation of any other remedy of Grantor at law or equity. Grantor's failure to
15 exercise such remedy at any time shall not waive Grantor's right to terminate or
16 assert any other remedy at law or equity for any future breach or default of
17 Grantee.
18

19 19.4 Termination of this franchise shall not release Grantee from any
20 liability or obligation with respect to any matter occurring prior to such termination,
21 nor shall such termination release Grantee from any obligation to remove or secure
22 the Facilities and restore the premises pursuant to Section 11 hereof.
23

24 Section 20. LEGAL RELATIONS.

25 20.1 Grantee accepts any privileges granted hereunder by Grantor
26 to the franchised public right-of-way and other public property in an "as is"



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condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of Facilities or the Facilities themselves in public property or right-of-way or possible hazards or dangers arising from other uses of the public right-of-way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function, testing, maintenance, replacement and/or repair of the Facilities or other activities permitted hereunder.

20.2 Grantee hereby waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply.

20.3 This franchise ordinance shall not create any duty on the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved herein. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City hereunder shall be deemed a duty to the general public and not to any specific party, group or entity.

20.4 This franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that, in any such action brought hereunder, except actions based on federal questions, venue shall lie exclusively in Pierce County, Washington.



Section 21. GRANTEE'S ACCEPTANCE.

1 This franchise ordinance shall be completely void if Grantee shall not file its
2 unconditional acceptance of this franchise within thirty (30) calendar days from the
3 final passage of same by the City Council. Grantee shall file its unconditional
4 acceptance with the City's Finance Director and a copy of same with the City
5 Attorney's Office.
6

7 Section 22. SPECIFIC PERFORMANCE.

8 The parties acknowledge that the covenants set forth herein are essential to
9 this franchise, and, but for the mutual agreements of the parties to comply with
10 such covenants, the parties would not have entered into this franchise. The parties
11 further acknowledge that they may not have an adequate remedy at law if the other
12 party violates such covenant. Therefore, the parties shall have the right, in
13 addition to any other rights they may have, to obtain in any court of competent
14 jurisdiction injunctive relief to restrain any breach or threatened breach of or
15 otherwise to specifically enforce any of such covenants contained herein should
16 the other party fail to perform them after notice as provided herein.
17
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19 Section 23. MISCELLANEOUS PROVISIONS.

20 23.1 All the provisions, conditions, terms and requirements
21 contained herein shall be binding upon the Grantee's successors and assigns. All
22 of Grantee's privileges, obligations, and liabilities shall inure to its successors and
23 assigns equally as if they were specifically mentioned in this franchise wherever
24 the Grantee is so mentioned.
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23.2 Any modification, change or alteration to this franchise shall only be effective if completed in a written ordinance duly approved by City Council approving said modification, change or alteration.

23.3 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other than existing or subsequent breach thereof.



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23.4 The captions of this franchise ordinance are for convenience

and reference only and in no way define, limit, or describe the scope or intent of
this franchise.

Passed _____

Mayor

Attest:

City Clerk

Approved as to Form:

Deputy City Attorney



FRANCHISE ACCEPTANCE BY GRANTEE:

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I, the undersigned official of LightSpeed Networks, Inc. dba: LSN ("LSN"), am authorized to bind LSN and to accept the terms and conditions of the foregoing franchise (Ordinance No. _____), which are hereby accepted by the _____ this _____ day of _____, 2013. The foregoing date shall constitute the "Effective Date" of the Ordinance.

By: _____
Name: Michael Weidman
Title: CEO & President LSN

Subscribed and sworn to before me this _____ day of _____, 20__.

Notary Public in and for the State of _____

My commission expires _____

Received on behalf of the City this _____ day of _____, 20__.

Name: _____
Title: _____



SCHEDULE I

"Franchised Area"

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3 That portion of Section 38, Township 20 North, Range 3 East of the Willamette
4 Meridian, City of Tacoma, Pierce County, Washington, more particularly described
5 as follows:

6 A 10.00 foot wide strip of the Court "E" Street, 9th Street and Court "D" Street
7 rights-of-way described as follows:

8 Beginning at the above referenced Point "A"; thence South, within the Court "D"
9 Street right-of-way, a distance of 145 feet, more or less, to the Southwest Corner
10 of Court "E" Street and 9th Street intersection, thence East, within the 9th Street
11 right-of-way, a distance of 340 feet, more or less, to the Southeast Corner of 9th
12 Street and Court "D" Street intersection, thence South, within the Court "D" Street
13 right-of-way, a distance of 20 feet, more or less, to an existing CenturyLink Vault
14 and the Terminus of this underground description.

15 All situate in the City of Tacoma, County of Pierce, State of Washington.
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