



ORDINANCE NO. 29019

1 AN ORDINANCE granting a non-exclusive franchise to Zayo Group, LLC, a
2 Delaware limited liability company, to construct, operate, and repair a
3 telecommunications system throughout the City of Tacoma; setting forth
4 provisions, terms and conditions of the grant of franchise; specifically
5 making such grant subject to the provisions of Title 16B and Title 10 of
6 the Tacoma Municipal Code, as well as the Tacoma City Charter;
7 providing for City regulation of the Telecommunications System;
8 prescribing liquidated damages and certain other remedies for violation
9 of franchise provisions in addition to those specified pursuant to the
10 Municipal Code and the City of Tacoma Charter.

11 WHEREAS, Zayo Group, LLC, a Delaware limited liability company ("Zayo"
12 or "Franchisee") is a telecommunications company currently involved in the
13 business of operating a telecommunications network utilizing fiber optic technology,
14 and has been operating this network in the City of Tacoma pursuant to a
15 Telecommunications Franchise Agreement – Ordinance No. 28124 and later
16 amended through Ordinance No. 28199, and

17 WHEREAS, as part of such network, Zayo currently operates a system of
18 fiber optic cable, a portion of which passes through the City as a result of Zayo's
19 predecessors in interest, Metromedia Fiber Network Services, Inc. and AboveNet,
20 Inc. (Zayo acquired AboveNet, Inc. through its wholly owned subsidiary Viola Sub,
21 Inc.; AboveNet had previously acquired Metromedia Fiber as of January, 2006),
22 Metromedia Fiber Network Services, Inc. having originally been granted a non-
23 exclusive franchise for the use of City right-of-way on May 23, 2000, pursuant to
24 City Ordinance No. 26623 (the "Prior Franchise"), and
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WHEREAS, the Prior Franchise expired on February 28, 2023, by its terms, but has been in extended holdover status pursuant to a Tolling (Letter) Agreement, and

WHEREAS, Zayo has applied to the City to renew pursuant to Tacoma Municipal Code 16B.02.110 with an effective date retroactive to the expiration date of the Prior Franchise, and

WHEREAS, the City Council has determined to grant such a franchise to Zayo upon those certain terms and conditions which the Council deems necessary due to the unique nature of fiber optic cable, and

WHEREAS this City of Tacoma Telecommunications Franchise Ordinance contains the following sections:

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BE IT ORDAINED BY THE CITY OF TACOMA:

1 Section 1 - DEFINITIONS. For the purposes of this Franchise, the
2 following terms, phrases, words, and their derivations shall have the meaning
3 given herein; words not defined herein which are defined in Title 16B, shall
4 have the same meaning or be interpreted as provided in Title 16B. Words not
5 defined here or in Title 16B shall be construed consistently with Title 47 of the
6 United States Code, and if not therein, they shall have their common and
7 ordinary meaning. A reference to any Title of the Tacoma Municipal Code or to
8 the City's Charter refers to the same as may be amended from time to time.
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11 1.1 "City" means the City of Tacoma, a municipal corporation of the
12 state of Washington, and all departments, divisions, and agencies thereof,
13 including Tacoma Public Utilities.

14 1.2 "City Manager" means the City Manager or the City Manager's
15 designee.
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17 1.3 "Communications facility" means a device which, along or as part
18 of an aggregation of devices, is capable of transmitting signals from place to
19 place.
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21 1.4 "Communications system" refers to a telecommunications system.

22 1.5 "Construction, operation, or repair" and similar formulations of this
23 term mean the named actions interpreted broadly, encompassing, among other
24 things, installation, extension, maintenance, replacement, or components,
25 relocation, undergrounding, grading, site preparation, adjusting, testing, make-
26 ready, and excavation.



1.6 "Customer" means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by the Telecommunications System.

1.7 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by the Franchisee, such as poles, fiber, wires, fixtures, equipment, above ground and underground circuits, and conduit in public right-of-way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located. This term, when used without a modifier, shall be considered to encompass both Overhead Facilities and Underground Facilities.

1.8 "Franchise" conditioned as set forth herein, and under the Tacoma Municipal Code and the City Charter.

1.9 "Franchise Area" means that area within the present and future corporate limits of Tacoma that a Franchisee is authorized to serve by the terms of its Franchise or by operation of law.

1.10 "Franchisee" is Zayo Group, LLC, a Delaware limited liability company, with its home office at 1401 Wynkoop Street, Suite 500, Denver, Colorado, 80202, legal@zayo.com.

1.11 "Gross Receipts" shall have the meaning ascribed in Article VIII of the City Charter or the meaning given to the phrase "Gross Revenue" as set forth in Title 16 of the Tacoma Municipal Code.



1.12 "Operator" when used with reference to a system, refers to a
1 Person (a) who provides service over a Communications System and directly or
2 through one or more affiliates owns a significant interest in such facility; or
3 (b) who otherwise controls or is responsible for, through any arrangement, the
4 management and operation of such a facility. A Person that operates under
5 agreement of a Telecommunications System or a specific portion of a
6 Telecommunications System to provide Telecommunications Services shall be
7 treated as an Operator for purposes of this Franchise.
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10 1.13 "Overhead Facilities" refers to electric utility and Communications
11 Facilities located above the surface of the ground, including the underground
12 supports and foundations for such Facilities.

13 1.14 "Person" includes any individual, corporation, partnership,
14 association, joint stock company, trust, or any other legal entity, but not the City
15 for purposes hereof.
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17 1.15 "Public Right-of-Way" mean the public streets and easements
18 which, under the City Charter, the Tacoma Municipal Code, City ordinances,
19 and applicable laws, the City has authority to grant Franchises, permits, or
20 Licenses for use thereof or has regulatory authority thereover, but expressly
21 excluding railroad right-of-way, airport, and harbor areas. Public Right-of-Way
22 for the purpose of this Franchise do not include buildings, parks, poles,
23 conduits, similar facilities, or property owned by or leased to the City, including,
24 by way of example and not limitation, structures in the Public Right-of-Way such
25 as utility poles and light poles.
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1.16 "System" means the Telecommunications System.

1.17 "Telecommunications Service" or "Service" means the transmission for hire of information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Telecommunications Service includes telephone service but does not include Cable Service or over-the-air broadcasts to the public-at-large from facilities licensed by the Federal Communications Commission or any successor thereto.

1.18 "Telecommunications System" or "Telecommunications Facility" means a tangible facility that is used to provide one or more Telecommunications Services, any portion of which occupies Public Right-of-Way. The term Telecommunications System by way of example, and not limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other supporting structures, and associated and appurtenant facilities used to transmit telecommunications signals. The term Telecommunications System includes all devices mounted on light poles in the Public Right-of-Way through which Telecommunications Services are originated or terminated. An open video system is not a Telecommunications System to the extent that it provides only video services; a Cable System is not a Telecommunications System to the extent that it provides only Cable Service. The term Telecommunications Facility includes any of the tangible components of a Telecommunications System which occupies Public Right-of-Way.



1.19. "Telephone Service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone service, or providing telephonic, video, data, or similar communication or transmission for hire via a local telephone network, toll line, channel, cable, microwave, or similar communication or transmission system. Telephone Service includes intrastate or interstate service, including toll service, originating from, or received on, communications equipment or apparatus in this State if the charge for the service is billed to a person in this State. Telephone Service does not include the providing of "Competitive telephone service" as defined in Tacoma Municipal Code §6A.40.030, the providing of cable television service, or the providing of broadcast services by radio or television stations.

1.20 "Title," when used alone in the context of referring to the Title of the Tacoma Municipal Code, shall mean Title 16 (and more specifically Title 16B) of the Tacoma Municipal Code.

1.21 "Underground Facilities" refers to electric utility and Communications Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.

Section 2 - FRANCHISE.

2.1 Grant of Franchise. The City hereby grants to Franchisee a non-exclusive Franchise which, once it becomes effective, shall authorize Franchisee, to use the City's Public Right-of-Way within the Franchise Area to construct, repair, and operate an underground fiber optic Telecommunication



System to provide Telecommunication Service, and to continue using the City's Public Right-of-Way as hereby authorized.

Such grant is subject to and must be exercised in strict accordance with and subject to this Franchise Agreement, Title 16B and other applicable provisions of the Tacoma Municipal Code, the Tacoma City Charter including but not limited to the provisions set forth in Article VIII of the Charter, applicable law, including by way of example and not limitation, zoning law codes and permitting requirements, and this Franchise may be revoked if it is not so exercised. Neither the granting of this Franchise, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the Franchise is issued or thereafter be obtained. No rights shall pass to the Franchisee by implication. This Franchise shall constitute both a right and an obligation to provide the services of the Telecommunications System as required by the provisions of this Franchise.

The grant of this Franchise is limited to the purpose of Franchisee providing Telecommunications Service. This Franchise does not include permission to provide cable service, as defined in 47 U.S.C. § 522, multichannel video programming, open video systems, or uses other than Telecommunications Service.

Notwithstanding the above grant to use Public Right-of-Way, no Public Right-of-Way shall be used by Franchisee if the City, in its sole but reasonable opinion, determines that such use is inconsistent with the terms,



conditions or provisions by which such Public Right-of-Way was created or dedicated, or presently used under applicable laws.

No Person placing a Telecommunications System in the Public Right-of-Way shall unlawfully discriminate in hiring, in contracting, or in the provision of Services.

In the event of any conflict between a provision in this Franchise and any provision of the City Charter, which Charter is incorporated herein by reference, the applicable provision of the Charter shall control over any inconsistent provision of this Franchise.

2.2 Franchise Term. The term of the Franchise shall be ten years unless terminated sooner in accordance with this Franchise, Title 16(B), or the City Charter. An Operator may submit a proposal for renewal of a Franchise as provided in Title 16B.02.100.

2.3 Franchise Non-Exclusive. The Franchise granted herein shall be non-exclusive.

2.4 Transfers, Generally.

A. No Transfer shall occur without the prior written notice and approval of the City Council, which shall not be unreasonably withheld. A Transfer is any transaction in which: (1) all or a portion of the Telecommunications System is sold or assigned (2) there is any change, acquisition, or direct or indirect transfer of control of the Franchisee; or (3) the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly,



to another party. The term "control" in subsection (2) above refers to actual working control, in whatever manner exercised. It will be presumed that a change in working control within the meaning of subsection (2) has occurred in any case where there is a change in voting interest of 10 percent or more; or a change in voting interest that results in a Person obtaining a 50 percent or greater interest in Franchisee; or a change in voting interest that results in a Person that held 50 percent or greater interest reducing their interest to below 50 percent. A Transfer without the prior written approval of the City is a substantial violation of this Franchise and shall make the Franchise subject to termination by the City as provided herein and in Title 16B.

B. Applications for approval of any Transfer shall be filed in accordance with procedures set out in Title 16B of the Tacoma Municipal Code.

C. Franchisee, shall within 60 days of the closing date of any Transfer, file with the City Clerk a copy of the deed, agreement, contract, mortgage, lease, SEC filing, or other written instrument evidencing such sale, lease, contractual agreement, mortgage, assignment or Transfer, certified and sworn to as correct by Franchisee. Every such Transfer, whether voluntary or involuntary, may be deemed void and of no effect as to the effectiveness of this Franchise by the City unless Franchisee files the required copy within the 60-day period.

D. The requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Telecommunications System



franchised hereunder provided that no such security shall purport to attach the City's real property interest in the Public Right-of-Way. In addition, no such arrangement may be made if it would in any respect under any condition prevent the Operator or any successor from complying with the Franchise and applicable law, nor may any such arrangement permit a third party to succeed to the interest of the Operator, or to own or control the Telecommunications System, without the prior consent of the City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other applicable law.

2.5 Change in Control-Notice and Affiliate Exception. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by any other Person of an ownership interest in Franchisee that results in a change in control of Franchisee within the meaning of Section 2.4.A. However, if the proposed change in control merely results in a Transfer of control from Franchisee to another entity that is 100 percent owned by a direct parent of Franchisee, and such parent provided an unconditional guaranty of performance of the Transferee Affiliate at the time the Franchise was issued, then such Transfer shall not require the prior approval of the City so long as all the conditions on affiliate Transfers set forth in Title 16B are satisfied (including, without limitation, the notice requirements).

2.6 Revocation. In addition to any rights set out elsewhere in this Franchise, the City Charter or Title 16, the City reserves the right to declare a



forfeiture or otherwise revoke this Franchise, and all rights and privileges
1 pertaining thereto, as provided in Title 16(B) or in the event that:

2 A. Franchisee is in substantial non-compliance with this
3 Franchise; or
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5 B. Franchisee is found to have engaged in any actual or
6 attempted fraud or deceit upon the City, Persons or Customers; or

7 C. Franchisee fails to obtain and maintain any permit required
8 by any federal or state regulatory body or by the City, relating to the
9 construction, repair and operation of the System; or
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11 D. At any time during the term of the Franchise, Franchisee
12 fails to provide and maintain all of the securities required under this Franchise
13 including, but not limited to, the performance bond and letter of credit; fails to
14 maintain the insurance required by this Franchise; or fails to satisfy the
15 indemnity set out in this Franchise; or if Franchisee's guarantor revokes its
16 guarantee or fails to satisfy or becomes unable to satisfy its obligations
17 thereunder.
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19 E. The procedures for revocation and forfeiture shall be
20 governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked,
21 Franchisee shall be given notice and opportunity to cure at least equivalent to
22 that required by Title 16B as of the effective date of this Franchise (except in
23 those cases where notice and opportunity to cure are not required), and shall
24 be accorded at least an opportunity to be heard that provides at least the due
25 process protections required by Title 16B as of the effective date of this
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Franchise, which opportunities and protections are set out in Section 2.6.F.,
below.

F. (1) Where, after notice and providing the Franchisee an opportunity to be heard (if such opportunity is timely requested by a Franchisee), the City finds that there has been an act or omission that would justify revocation of the Franchise, the City may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. However, the Franchise may only be revoked if the Franchisee (a) was given written notice of the default; and (b) 30 days to cure the default; and (c) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days. The required written notice may be given before the City conducts the proceeding required by this paragraph. No opportunity to cure is required for repeated violations, and fraud shall be deemed incurable.

(2) Notwithstanding the foregoing, the City may declare a Franchise forfeited without opportunity to cure when the Franchisee: (a) stops providing service it is required to provide in the Franchise (b) Transfers without the prior consent of the City as required in the Franchise; (c) fails to pay the Franchise application/administrative fees owed hereunder; or (d) defrauds or attempts to defraud the City or Franchisee's customers. However, Franchisee shall have the right to receive 30 days' prior notice of an intent to declare a Franchise forfeited, and shall have the opportunity to show cause why the Franchise should not be forfeited.



(3) Notwithstanding the foregoing, the Franchise will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 120-day period, if: (a) such assignment, receivership or trusteeship has been vacated; or (b) such assignee, receiver or trustee has fully complied with the terms and conditions of Title 16B and this Franchise and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of Title 16B and this Franchise. However, in the event of foreclosure or other judicial sale of any of the facilities, equipment or property of a Franchisee, the City may revoke this Franchise, following a public hearing before the City Council, by serving notice upon the Franchisee and the successful bidder at the sale, in which event the Franchise and all rights and privileges of this Franchise will be revoked and will terminate 30 calendar days after serving such notice, unless: (a) the City has approved the Transfer of the Franchise to the successful bidder; and (b) the successful bidder has covenanted and agreed with the City to assume and be bound by the terms and conditions of this Franchise and Title 16B.

2.7 Right to Purchase the System.

A. In the event the City has declared a forfeiture for cause or otherwise validly revoked this Franchise as provided herein, or in the event of



1 expiration of the initial term of this Franchise without this Franchise being
2 renewed or extended (referred to below collectively as a "termination"),
3 Franchisee shall remove its Facilities from the Public Right-of-Way under
4 Section 2.8, unless the City elects to purchase the Facilities as provided in
5 Section 2.7.B.

6 B. In the event the City has declared a forfeiture for cause or
7 otherwise validly revoked this Franchise as provided herein, or in the event of
8 expiration of the initial term of this Franchise without this Franchise being
9 renewed or extended as provided in Section 2.2 (referred to below collectively
10 as a "termination"), the City shall have an option upon the termination of the
11 Franchise to purchase that portion of the Telecommunications System located
12 in the Right-of-Way owned by the Franchisee, whether termination is, or is not,
13 for cause. This option requires Franchisee to convey the Telecommunications
14 System or such portion thereof as the City may choose to purchase free and
15 clear of any encumbrances, along with (1) all equipment, Facilities, tools,
16 vehicles and real/personal property interests necessary for the
17 Telecommunications System's operation, free and clear of any encumbrances;
18 (2) Customer lists and billing records; (3) all repair records, maps, and
19 equipment and Facilities records (including records identifying equipment that is
20 being used in the field, warranties with respect to such equipment and the like);
21 (4) and such other properties, contract rights or intangibles as may be normally
22 conveyed in order to permit a buyer to take over and continue the operations of
23 a seller with minimal disruption to Customers; provided, that nothing herein
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shall require the City to accept or pay for any contract that it does not wish to assume. Franchisee is not required to convey portions of the Telecommunications System located outside the City which are essential to Franchisee's operations in other communities, and which were so identified on the inventory provided pursuant to Section 2.7.A. This option also requires Franchisee to sell the Telecommunications System, or such portion thereof as the City may choose to purchase at an equitable price, if the Franchise is terminated for cause. If Franchisee's request for a Franchise renewal is denied, the option requires Franchisee to sell the Telecommunications System, or such portion thereof as the City may choose to purchase, at fair market value, determined on the basis of the value of the Telecommunications System as a going concern (taking into account such property used and useful in providing service within the City that is not to be conveyed) and with no value allocated to the Franchise itself.

C. The City may exercise its Section 2.7.B option rights in the following manner: the City will first give Franchisee written notice of its intent to purchase the Telecommunications System or a portion of the Telecommunications System and request an inventory of the System or portion specified in the City of Tacoma. Thereafter, Franchisee shall have 60 days to produce the requested inventory and the City shall have up to 180 days after receiving the inventory to notify Franchisee that it intends to continue with the exercise of its right to purchase the Telecommunications System or a portion of the Telecommunications System. Within 90 days of the date the City notifies



Franchisee of its intent to exercise the option, or by such other time as the parties may separately agree, the parties shall meet to establish a price that comports with the requirements of Section 2.7.B. If the parties are unable to agree to a price within 180 days after the City notifies Franchisee that the City intends to exercise its purchase option, either party may require the price to be set by appraisal by sending the other party notice that it wishes to have the price set by appraisal. Within 45 days of the date that notice is submitted, each party may appoint one appraiser. If each party appoints an appraiser, the two appraisers shall appoint a third appraiser; if only a single appraiser is appointed (whether by mutual agreement or because of the failure of a party to timely nominate an appraiser) that appraiser shall be the sole appraiser. The appraiser or appraisers shall establish a price for the System or portion thereof that the City desires to purchase in accordance with Section 2.7.B. This appraisal determination shall be final and non-appealable. The City shall have 120 days after the decision of the appraisers to notify Franchisee that it wishes to conclude the transaction; if it does not so notify Franchisee, the option shall be deemed terminated. If the City gives the notice required by the preceding paragraph, the parties will thereafter promptly sign all necessary documents required to close the transaction; provided, however, that the City may make conclusion of the transaction conditional upon any necessary voter approval of any bond funding for acquisition of all or a part of the System and, if applicable, the successful sale of the bonds.



The City and Franchisee will share equally the costs associated with any appraiser that is jointly appointed (by them or by the appraisers each selects); the City will bear costs associated with any appraiser that it separately appoints and Franchisee will bear costs associated with any appraiser that it separately appoints.

D. (1) Nothing in this section or in any other section of this Franchise shall prevent the City's exercise of its rights under the Tacoma City Charter. Included within the rights granted under Tacoma's Charter is the right to purchase or condemn Franchisee's property within the Franchised Area at any time, which right is expressly set out in Section 8.1(c) of the Charter as follows:

"to acquire by purchase or condemnation, for the use of the City itself or its inhabitants, all of the property of the grantee within the public streets, alleys, or places at a fair and just value, which shall not include any valuation of the franchise, right, or privilege, which shall thereupon be terminated."

(2) Likewise, nothing in this section or in any other section of this Franchise shall be read to limit the City's right to acquire the Telecommunications System through exercise of any right of eminent domain under state law.

(3) Nothing in this section shall be read to limit the City's right to acquire the Telecommunications System as a result of abandonment.

E. In the event the City purchases, acquires, takes over, or holds all or parts of the System, the City shall have the right without limitation to assign, sell, lease, or otherwise transfer its interest in all or parts of the System



to any other Person or entity, including any other Franchisee of a

1 Telecommunications System, on whatever terms the City deems appropriate.

2 2.8 Right to Require Removal of Property/Right to Remove Property.

3 A. Upon termination of this Franchise, Franchisee may be
4 required to remove its property from any Public Right-of-Way, and restore such
5 Right-of-Way to their same or better condition as existed just prior to such
6 removal, subject to any rights Franchisee may have to abandon property in
7 place, as set out in Title 16B. If Franchisee fails to remove property that the City
8 requires it to remove, the City may perform the work and collect the cost thereof
9 from Franchisee. The actual cost thereof, including direct and indirect
10 administrative costs, shall be a lien upon all plant and property of Franchisee
11 effective upon filing of the lien with the Pierce County Auditor.

12 B. To the extent any portion of the System in the Public Right-
13 of-Way or on any other public property is not removed by the Operator within 12
14 months of the later of the end of the Franchise term or any Continuation Period,
15 the property will be deemed abandoned and shall become the property of the
16 City if the City wishes to own it.

17 C. Any order by the City issued pursuant to Section 2.8.A to
18 remove Installations shall be sent by registered or certified mail to Franchisee
19 not later than 24 months following the date of Franchise termination. Removal
20 shall be completed (except with respect to property that Franchisee is permitted
21 to abandon in place) not later than 12 months following the date of notification
22 to remove the Facilities.



D. Franchisee shall file a written removal plan with the City not later than 30 calendar days following the date of the receipt of any orders directing removal, or any consent to removal describing the work that will be performed, the manner it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City, including, without limitation, the City's Right-of-Way Restoration Policy. The affected property must be restored to as good or better condition than existed immediately prior to removal; and those damaged by removal must be compensated for the damage.

E. The purchase option provided for in Section 2.7 does not affect the City's authority to require Franchisee to remove its Telecommunications System upon Franchise termination, as provided in this section and Title 16B, nor does it affect the City's right to assume ownership of any portion of the Telecommunications System that is abandoned. Within 60 days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances.

2.9 Customers' Right to Obtain Service. It shall be the right of all Customers to receive all available services insofar as their financial and other obligations to Franchisee are honored during the term of the Franchise or any Continuation Period. In addition to the obligations established under the other provisions of this Franchise, in the event that Franchisee elects to overbuild, rebuild, modify, or sell the system, Franchisee shall make its best effort to



ensure that all Customers receive continuous uninterrupted service at rates which are fair and reasonable, regardless of the circumstance.

2.10 Responsibility for Costs. Except as expressly provided otherwise, any act that Franchisee is required to perform under this Franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Franchisee. The Franchisee shall pay the amounts billed within 30 days of receipt of an itemized bill. The parties agree that any amounts paid pursuant to this section or Title 16B are not franchise fees.

2.11 Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and Title 16B, and other applicable law, including without limitation, the City's Right-of-Way Restoration Policy, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractor or other Person(s) performing work on Franchisee's behalf are familiar with the requirements of this Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other applicable laws governing the work performed by them.



2.12 Survival of Terms. Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Right-of-Way for the purpose of providing Telecommunications Service. However, Franchisee's obligations to the City (other than the obligation to provide service to Customers) survive the expiration of these rights according to their terms. By way of illustration and not limitation, Sections 2.7, 2.8, 2.10, and 4 of this Franchise shall continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to the extent that a City-approved Transfer, sale, or assignment of the Telecommunications System is completed, and another entity has assumed full and complete responsibility for the Telecommunications System or for the relevant acts or omissions.

SECTION 3 - OPERATION IN STREETS AND RIGHT-OF-WAY.

3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of this Franchise and Title 16B, the City's Right-of-Way Restoration Policy, and other applicable laws, construct, operate and maintain an underground fiber optic Telecommunications System in Public Rights-of-Way within the Franchise Area, to provide Telecommunications Services. Without limiting the foregoing, Franchisee expressly agrees that it will construct, operate and maintain its System in compliance with the requirements of Title 16B, including those governing the placement of its Telecommunications System, and with other applicable City codes; and will obtain and maintain all bonds and billable work orders required by the same.



3.2 Construction, Operation, or Repair. Franchisee shall, in all cases, comply with all lawful City ordinances and regulations now in effect or hereinafter enacted regarding the acquisition of permits and such other items as may be required by the City in connection with the construction, operation or repair of the Telecommunications System, including, without limitation, the City's Right-of-Way Restoration Policy.

Without limiting the foregoing, Franchisee agrees that it shall, in the course of constructing, operating and maintaining its Telecommunications System comply with the requirements of Title 16B and among other things:

A. (1) Franchisee shall, with as much advance notice as is feasible under the circumstances, but in no event less than 90 days, except in circumstances in which there is a risk to public safety, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned Communications System, public work, public project, public facility, or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Telecommunications System. Collectively, such matters are referred to below as the "public work."



(2) In the event of an emergency, or where the Telecommunications System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System without prior notice, and charge the Franchisee for costs incurred. The City shall notify Franchisee as soon as is reasonably practical, after any City action pursuant to this Section.

(3) In the case of non-public work, if any Person that is authorized to place Facilities in the Rights-of-Way requests Franchisee to protect, support, temporarily disconnect, remove, or relocate Franchisee's facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after 90 days' advance written notice, take action to effect the necessary changes requested. In the case of non-public work or non-public projects, unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Franchisee's Telecommunications System was not properly installed, the reasonable cost of the same shall be borne by the Person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action.

(4) Franchisee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense



of such temporary removal or raising or lowering of wires shall be paid by the
1 Person requesting the same.

2 B. The Franchisee's obligation to construct, operate, and repair
3 its Telecommunications System in compliance with all laws, ordinances,
4 departmental rules and regulations and practices affecting such System, includes,
5 by way of example, and not limitation, the obligation to construct, operate and
6 repair in accordance with zoning codes, safety codes and City construction
7 standards, including the most current version of the Standard Specifications for
8 Road, Bridge and Municipal Construction, as prepared by the Washington State
9 Department of Transportation (WSDOT) and the Washington State Chapter of
10 American Public Works Association (APWA); the most current version of the
11 APWA Amendments to Division One, and the most current version of the City of
12 Tacoma Amendments thereto. In addition, the construction, operation, and repair
13 shall be performed in a manner consistent with high industry standards. The
14 Franchisee shall exercise reasonable care in the performance of all its activities
15 and shall use commonly accepted methods and devices for preventing failures
16 and accidents that are likely to cause damage, injury, or nuisance to the public or
17 to property. In the event that Franchisee's work or other use of the Public Right-
18 of-Way causes damage to any City facility, Franchisee shall bear the cost of
19 repairing, or replacing as necessary, such City facility.
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24 C. Franchisee's construction, operation, or repair of its
25 Telecommunications System shall not commence until all required permits have
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1 been properly filed for and obtained from the proper City officials and all
2 required permits and associated fees paid. In any permit so issued, the City
3 may impose, as a condition of the granting of the permit, such conditions and
4 regulations as may be necessary to the management of the Public
5 Rights-of-Way, including, by way of example and not limitation, for the purpose
6 of protecting any structures in the Public Rights-of-Way, maintaining proper
7 distance from other utilities, for the proper restoration of such Public
8 Rights-of-Way and structures, and for the protection of the City and the public
9 and the continuity of pedestrian and vehicular traffic.
10

11 D. Franchisee must follow City-established requirements for
12 placement of Facilities in Public Rights-of-Way, including the specific location of
13 Facilities in the Public Rights-of-Way, and must in any event install Facilities in
14 a manner that minimizes interference with the use of the Public Rights-of-Way
15 by others, including others that may be installing Communications Facilities.
16 The City may require that Facilities be installed at a particular time, at a specific
17 place, or in a particular manner as a condition of access to a particular Public
18 Right-of-Way area; may deny access if Franchisee is not willing to comply with
19 the City's requirements; and may remove, or require removal of, any Facility
20 that is not installed in compliance with the requirements established by the City,
21 or which is installed without prior City approval of the time, place, or manner of
22 installation and charge the Franchisee for all the costs associated with removal;
23 and may require Franchisee to cooperate with others to minimize adverse
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impacts on the Public Rights-of-Way through joint trenching and other
arrangements.

E. Franchisee agrees that, as a condition of a permit for installation of conduit, and in accordance with RCW § 35.99.070 the City may require it to install conduit in excess of its reasonably foreseeable requirements for the purpose of accommodating the City and/or other Franchisees and Licensees where the City Manager determines it is appropriate to do so to minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of Right-of-Way capacity, or to protect environmentally sensitive areas.

F. To the extent possible, Franchisee shall use conduit existing at the time of permitting in installing its System.

G. Whenever all existing utilities are located underground in an area in the City, the Franchisee must also locate its Telecommunication System underground, including Telecommunication System Facilities, such as drops, which cross private property.

1. Whenever the owners of poles locate or relocate underground within an area of the City, the Franchisee shall concurrently relocate its Facilities underground at its own cost.

2. Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities, the Franchisee shall concurrently relocate its Facilities underground and, if it uses the same trench, share the cost.



3. The City Manager may, for good cause shown,
exempt a particular portion of the Telecommunication System from the
obligation to locate or relocate Facilities underground, where relocation is
impractical, or where the interest in protecting against visual blight can be
protected in another manner. Nothing in this Section 3.2.G prevents the City
from ordering the Franchisee to locate or relocate its Telecommunication
System underground under other provisions of the Tacoma Municipal Code, it
being the intent that the number and extent of Overhead Facilities and the
visual pollution resulting therefrom will, over time, be reduced and eventually, to
the extent feasible, be eliminated.

H. The Franchisee shall participate in conversion to
underground Local Improvement Districts ("LIDs"). The Franchisee, at no cost
to the City or abutting property owners, shall share fairly with other utilities the
cost of undergrounding when done through the LID process.

1. As part of its obligations under the Tacoma
Municipal Code, the Franchisee shall provide the preliminary cost estimate,
facility conversion designs, and final cost estimates to any LID project
coordinator in a timely manner. At the request of an LID project coordinator, the
Franchisee shall perform underground construction and movement of Customer
connections underground (overhead reclaim), in coordination with the
undergrounding services provided by other LID utilities, at no cost to the City or
abutting property owners.



I. Franchisee shall promptly repair any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, operation or repair of its Telecommunications System. Public property and Public Rights-of-Way must be restored in conformance with the City's Right-of-Way Restoration Policy.

J. No tree trimming shall be performed without the permission of the City and other affected authorities, and any tree trimming must be performed in strict accordance with the City Code. Even if tree trimming is authorized by the City, Franchisee is liable for any damage it causes during the course of tree trimming.

K. In any dispute over the adequacy of a restoration relative to this section, the Tacoma Department of Public Works Director shall in his/her sole but reasonable discretion, make the final determination.

L. Franchisee shall not remove any Overhead or Underground Facilities except as hereinafter provided.

(1) Franchisee shall not remove any Overhead or Underground Facilities which require trenching or other opening of the Rights-of-Way along the extension of the Facilities to be removed without the express permission of the City. Franchisee must request permission from the City to remove the Facilities at least 30 days in advance of the date Franchisee proposes to begin removal.

(2) Franchisee shall remove such Overhead or Underground Facilities as the City orders it to remove; provided, that the City



may not order removal where such removal is primarily to give economic benefit or advantage to a competing provider of Telecommunications Service.

(3) Where trenching or other opening of the Rights-of-Way along the extension of Facilities to be removed is required, Franchisee must post bonds as the City may require to ensure that the property is promptly removed, with minimum disruption. Franchisee must restore the affected property in conformance with the City's Right-of-Way Restoration Policy; and Franchisee must compensate those whose property it damages for the damage.

(4) Subject to the City's rights to purchase the Telecommunications System, Franchisee may voluntarily remove any Overhead or Underground Facilities from the streets which have been installed in such a manner that they can be removed without trenching or other opening of the Rights-of-Way.

3.3 Right To Inspect and Order Corrections. The City may inspect the Telecommunications System at any time reasonable under the circumstances to ensure compliance with this Franchise and applicable law, including to ensure that Franchisee's Telecommunications System is constructed and maintained in a safe condition. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a time table established by the City which is reasonable in light of the unsafe



condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do so, and to charge the Franchisee therefor.

3.4 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Franchisee shall make available information regarding any ongoing construction, operation or installation of its Telecommunications System sufficient to show (1) the nature of the work being performed; (2) where it is performed; (3) its estimated completion date; and (4) progress to completion.

SECTION 4 - REGULATORY PROVISIONS.

4.1 Intent. The City shall have the right to administer and regulate activities of this Franchise up to the fullest extent of the law. The failure to reserve a particular right to regulate, or reference a particular regulation, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation to Franchisee.

4.2 Remedies for Franchise Violations. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event Franchisee violates any provision of this Franchise:

A. Draw upon or foreclose all or any part of any letter of credit, security fund, performance bond or other security provided under this Franchise; provided, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the default. Should the City take this action, Franchisee shall be



responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs:

- B. Commencing an action at law for monetary damages;
- C. Commencing an action for equitable or other relief;
- D. Declaring the Franchise to be revoked; and/or
- E. Seeking specific performance of any provision, which reasonably lends itself to such remedy.

In determining which remedy or remedies for Franchisee's violation are appropriate, the City may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Franchisee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances.

Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

4.3 Procedure for Remedying Franchise Violations. Before imposing liquidated damages, or drawing upon the performance bond, letter of credit, security fund, or any other security set out in Section 6, the City shall follow the procedure below.

A. Notice of Violation. In the event that the City believes that Franchisee has not complied with the terms of this Franchise, the City shall notify Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.



B. Franchisee's Right to Cure or Respond. Except as

provided in Section 4.3.D., Franchisee shall have 30 days from the receipt of notice described above to (a) respond to the City contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the 30-day period, initiate steps to remedy such default as promptly as possible. The duty to cure includes the duty to cure all harms caused by the acts or omissions of Franchisee. At the end of the 30-day period, Franchisee shall notify the City in writing of the steps it has taken to cure the default, if any; if the cure is not complete, the reason it is not complete and the projected date for completion; and if the default is disputed, the complete basis for that contention.

C. Public Hearing. The City may schedule a public hearing to investigate any alleged default. The City shall give Franchisee 20 calendar days' notice of the time and place of the hearing and provide Franchisee with an opportunity to be heard.

D. Action after Hearing. If the City determines after such hearing that the Franchisee did not cure, or initiate steps to cure satisfactory to the City, after the notice required by Section 4.3.A. was provided, then the City may draw upon any performance bond, letter of credit, security fund or other security, including requiring performance under the guarantee; and impose liquidated damages. However, notice and opportunity to cure are not required for repeat violations, or for a failure to correct a default where Franchisee knew or should have known it was in default; in such cases, the performance bond,



security fund, letter of credit or other security may be drawn upon, the guarantor required to perform and liquidated damages imposed after the hearing required by Section 4.3.C.

E. Liquidated Damage Amounts. Because Franchisee's failure to comply with the provisions of this Franchise will result in injury to the City, and because it may be difficult to estimate the extent of each such injury, Franchisee and the City agree to the following liquidated damages, which provisions represent the best estimate of the damages resulting from injuries of specific types. The amounts of the liquidated damages set forth in this Franchise are in 2022 dollars and shall be increased each year by the increase in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City Average for the greater Seattle area. The amount of liquidated damages for all material violations of this Franchise for which actual damages may not be ascertainable shall be: \$500 per day for each violation for each day the violation continues. It is provided, however, that the City shall allow the Franchisee a minimum of 30 days after notice to the Franchisee of such neglect, failure, or refusal to comply within which to meet compliance or correct performance, prior to the assessment of any liquidated damages.

4.4 Failure to Enforce. Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance, and the City's failure to



enforce shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

4.5 Force Majeure. The Franchisee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control; the unforeseeable unavailability of labor or materials; or power outages exceeding back-up power supplies. The acts or omissions of Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. This Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

4.6 Alternative Remedies. No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Ordinance or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by Franchisee, or to seek and obtain judicial enforcement of



Franchisee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

4.7 Compliance with the Laws. Franchisee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all City ordinances, resolutions, rules policies and regulations heretofore or hereafter adopted or established during the entire term of the Franchise; provided that, nothing herein shall prevent Franchisee from challenging a provision of laws that applies only to it as an impairment of contract. Nothing in this Franchise shall limit the City's right of eminent domain under state law. Nothing in this Franchise shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid, or manner of construction.

SECTION 5 - REPORTING REQUIREMENTS.

5.1 Franchisee shall provide reports in compliance with TMC 16.B upon request of the City.

5.2 Open records/confidentiality. Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the Applicant's responsibility to be familiar with the Washington Public Records Act. Applicant may specifically identify any information it considers proprietary by marking and providing said information to City in a separate envelope marked "Proprietary Information." In the event that: (A) the City receives a request from another party to disclose any information which the



applicant has deemed proprietary, and if the City Attorney determines that said information may be subject to being disclosed; or (B) the City determines that the information should be disclosed in connection with its enforcement of any provision of Title 16B TMC, or in the exercise of its police or regulatory powers, then the City shall notify the Applicant of the Applicant's opportunity to seek a protective order from a court with appropriate jurisdiction. In the event an action is not commenced within ten business days, the City may disclose said information. By submitting information which the Applicant deems proprietary or otherwise exempt from disclosure, the Applicant agrees to defend and hold harmless the City from any claim for disclosure under the Washington Public Records Act, including, but not limited to, any expenses including out-of-pocket costs and attorneys' fees, as well as any judgment entered against the City for the attorney fees of the party requesting disclosure.

SECTION 6 - COMPENSATION AND FINANCIAL PROVISIONS.

6.1 Fees; Taxes.

A. State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee. Franchisee agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee, to be agreed to by the parties if the statutory prohibition is removed. The parties agree that this Section 6.1(A) does not limit the right of the Franchisee to challenge the franchise fee pursuant to 47 USC § 253.



1 B. Franchisee Obligated to Pay Administrative Costs. In accord
2 with RCW 35.21.860 as presently effective, and as it may be later amended,
3 Franchisee must pay the City an amount sufficient to recover administration
4 expenses incurred in receiving and approving this Franchise, including, but not
5 limited to, the reasonable costs of outside consultants retained by the City to
6 assist in the City's consideration and processing of this Franchise application.
7 The first \$5,000 of said expenses will be covered by the \$5,000 application fee
8 deposited with the City. Franchisee will also pay the reasonable costs of
9 enforcing, or, as necessary, reviewing, the provisions of this Franchise as well as
10 costs involved with the modification, amendment, renewal, or Transfer of this
11 Franchise, as ordered by the Franchise Services Manager, whether such costs
12 result from accrued in-house staff time, or out-of-pocket expenses or administrative
13 costs, as well as expenses of retaining independent technical, legal, or financial
14 consultants or advisors, or whether relating to costs incurred due to initial System
15 development or to future System expansion. The amount of payment to be made by
16 Franchisee to cover these administrative costs is an amount determined to be
17 reasonable by the Franchise Services Manager. Such obligation further includes
18 municipal fees related to receiving and approving permits or licenses, inspecting
19 plans and construction, or relating to the preparation of a detailed statement
20 pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt
21 of the City's billing therefor.
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23 C. Manner of Payment; Audit. Franchisee shall make any required
24 fee payments in the form, intervals and manner requested by the City Treasurer,
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and furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit, the City Treasurer may require Franchisee to furnish a verified statement of compliance with Franchisee's obligations or in response to any questions. Said certificate may be required from an independent, certified public accountant, at Franchisee's expense. All audits will take place on Franchisee's premises or offices furnished by Franchisee, which shall be a location within the City of Tacoma or other mutually agreeable place; however, the Franchisee must agree to pay the associated costs. Franchisee agrees, upon request of the City Treasurer, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the City Treasurer on the same day as filed, postage prepaid, affecting any of Franchisee's Facilities or business operations in the City of Tacoma.

D. Period of Limitations. The period of limitation for recovery of any fee payable hereunder shall be six years from the date on which payment by Franchisee is due, subject to tolling as provided as a matter of law or equity. Unless within six years from and after the due date for a particular payment, the City makes written request to review Franchisee's records with respect to such fee payment (either individually or as part of a broader request) recovery shall be barred with respect to such payment and the Franchising Authority shall be estopped from asserting any claims whatsoever against Franchisee relating to any alleged deficiencies in that particular payment.



6.2 Auditing and Financial Records. Franchisee shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. Without limiting its obligations under this Franchise, Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with Title 16B. Franchisee shall be responsible for collecting the information and producing it. Books and records shall be produced to the City at the Tacoma Municipal Building, or such other location as the parties may agree. Notwithstanding any provision of Title 16B or this Franchise, if documents are too voluminous or for security reasons cannot be produced at the Tacoma Municipal Building or mutually agreeable location within the City, then the Franchisee may produce the material at another central location, provided it also agrees to pay the additional reasonable costs incurred by the City in reviewing the materials.

Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under Title 16B or this Franchise, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require a Franchisee to violate 47 U.S.C. § 551. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City. Records shall be kept for at least six years. In addition to maintaining all records as required by Title 16B, Franchisee shall maintain records sufficient to show its compliance with the requirements of this Franchise, and shall produce those records within 30 days of a City request.



Franchisee agrees to meet with a representative of the City upon request to review its methodology of record-keeping, financial reporting, computing fee obligations, and other procedures the understanding of which the City deems necessary for understanding the meaning of reports and records.

The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary as part of a bona fide exercise of its authority over the Telecommunications System under this Franchise, Title 16B or other applicable law. The City further agrees that it will withhold from public disclosure those books and records made available to it pursuant to this section 6.2, but only to the extent that the City believes that it has the discretion to do so under state law.

6.3 Performance Bond. At the same time it provides its Franchise acceptance to the City, Franchisee shall provide a performance bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including by way of example and not limitation, its obligations to relocate and remove its facilities; and to restore City Rights-of-Way and other property. The initial amount of the performance bond shall be \$100,000. The amount of the bond may be changed from time to time to reflect changed risks to the City or to the public. The Franchisee may be required to obtain additional bonds in accordance with the City's ordinary practices. The bond shall be, in a form and with a surety (authorized to do business in the state of Washington) acceptable to the City's Risk Manager and in a form acceptable to the City Attorney. Franchisee shall pay all premiums or costs associated with



maintaining the bond, and shall keep the same in full force and effect at all
1 times during the Franchise Term.

2 6.4 Indemnification by Franchisee.

3 A. In accordance with and subject to applicable law,
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5 Franchisee, by accepting this Franchise, agrees to release the City from and
6 against any and all liability and responsibility in or arising out of, or by reason of,
7 or resulting from or of the negligent acts, errors, or omissions of the Franchisee
8 during the construction, operation or maintenance of the Telecommunications
9 System, and, without limiting the provisions of Section 7.4, agrees not to sue or
10 seek any money or damages from City in connection with the above mentioned
11 matters.
12

13 B. In accordance with and subject to applicable law,
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15 Franchisee agrees to indemnify and hold harmless the City, its trustees, elected
16 and appointed officers, agents, and employees, from and against any and all
17 claims, demands, or causes of action of whatever kind or nature, and the
18 resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,
19 damages, orders, judgments, or decrees, sustained by the City or any third
20 party arising out of, or by reason of, or resulting from or of the acts, errors, or
21 omissions of the Franchisee, or its agents, independent contractors or
22 employees related to or in any way arising out of the construction, operation,
23 repair, or relocation of the Telecommunications System unless and to the extent
24 caused by the negligence or willful misconduct of the City, its trustees, elected
25 and appointed officers, agents, or employees. With respect to any action
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brought by any employee of Franchisee against the City, Franchisee waives immunity under Title 51 RCW for the sole and limited purpose of effectuating its obligations to indemnify, hold harmless, and defend the City under this clause and affirms that the City and Franchisee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

C. Franchisee agrees that the covenants and representations relating to the indemnity provided in A-B above shall survive the term/expiration/termination of this Franchise, Special Street Use Permit, License, or other authorization, and continue in full force and effect as to the Franchisee's responsibility to indemnify.

6.5 Franchisee Insurance.

A. Franchisee shall maintain, throughout the term of the Franchise, adequate insurance to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the construction, operation or repair of the Telecommunications System. The City makes no representation as to what constitutes adequate insurance for Franchisee's operations. The foregoing notwithstanding, Franchise must maintain at least the minimum insurance coverages and amounts set forth in TMC 16B.05.090.

B. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way, and for six years thereafter. If the Franchisee, its contractors, or subcontractors



do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

C. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured with all required endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in E below.

D. The certificates shall contain a provision that coverages afforded under these policies will not be canceled until at least 30 days' prior written notice has been given to the City. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial Ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise, the Franchisee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Franchise.

F. The City shall reserve the right to require any other insurance coverage it deems necessary during the term of the Franchise, depending upon the exposures.



6.6 Security Fund. Franchisee shall establish a cash security fund or provide the City an irrevocable letter of credit in the amount of \$50,000, to secure the payment of fees owed, to secure any other performance promised in this Franchise, and to pay any taxes, fees or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Finance and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, it shall promptly notify the Franchisee, and the Franchisee shall promptly restore the fund or the letter of credit to the full required amount. The City may from time to time change the amount of the required security fund/letter of credit to reflect changes in the risks to the City and to the public, including delinquencies in taxes or other payments to the City.

SECTION 7 - MISCELLANEOUS PROVISIONS.

7.1 Posting and Publication. Franchisee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Franchisee's filing of acceptance of the Franchise.

7.2 Guarantee of Performance. Franchisee acknowledges that it enters into the Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Franchisee.

7.3 Governing Law and Venue. The Franchise shall be governed by and construed in accordance with the laws of the state of Washington without



1 recourse to any principles of Conflicts of Laws, except that where federal law
2 preemptively applies it shall control. Any litigation between the City and
3 Franchisee arising under or regarding this Franchise shall occur, if in the state
4 courts, in the Superior Court of Pierce County, and if in the federal courts, in the
5 United States District Court for the Western District of Washington.

6 7.4 No Recourse. Without limiting such immunities as the City or
7 other Persons may have under applicable law, Franchisee releases the City
8 from and against any and all liability and responsibility in or arising out of the
9 Franchisee's construction, operation, or maintenance of the
10 Telecommunications Facilities. Franchisee agrees not to sue or seek any
11 monetary damages from City, its trustees, elected and appointed officers,
12 agents, and employees in connection the Franchisee's construction, operation,
13 or maintenance of the Telecommunications Facilities. Franchisee shall have no
14 monetary recourse whatsoever against the City or its officials, boards,
15 commissions, agents or employees for any loss, costs, expense or damage
16 arising out of any provision or requirement of Title 16B or because of the
17 enforcement of Title 16B or the City's exercise of its authority pursuant to
18 Title 16B, this Franchise or other applicable law, unless and to the extent
19 caused by the negligence or willful misconduct of the City, its trustees, elected
20 and appointed officers, agents, or employees. .

21 7.5 Notice. Unless expressly otherwise agreed between the parties,
22 every notice, billing, or response required by this Franchise to be served upon
23 the City or Franchisee shall be in writing, and shall be deemed to have been
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25
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duly given to the required party upon actual receipt or refusal of delivery and shall be sent by a nationally recognized overnight courier or by U.S. certified mail, return receipt requested, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma
Municipal Services Building
1224 MLK Jr Way
Tacoma, WA 98405
Attn: Franchise Services Manager

The notices or responses to Franchisee shall be addressed as follows:

Zayo Group, LLC
Attn: Legal - Underlying Rights
1401 Wynkoop Street, Suite 500
Denver, CO 80202

For Emergencies
Network Operations Center & Repair
Phone: 888-404-9296
Email: zayoncc@zayo.com

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than two addresses.

7.6 Execution. Franchisee shall execute this Ordinance through signed acceptance of the Franchise granted hereunder within 30 days after the date of passage of the Ordinance by the City Council. The acceptance shall be submitted in the form attached hereto or other form acceptable to the City Attorney and in accepting the Franchise, Franchisee warrants that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of this Franchise and agrees to abide by



the same and acknowledges that it has relied upon its own investigation of all
relevant facts, that it has had the assistance of counsel, that it was not induced
to accept a Franchise, and that this Franchise represents the entire agreement
between Franchisee and the City, and that Franchisee accepts all risks related
to the interpretation of this Franchise. The countersigned Ordinance and
acceptance shall be returned to the City accompanied by: evidence of
insurance; a payment for publication costs; billable work order deposit, and
security deposit (or the letter of credit).



1 The Franchise rights granted herein shall not become effective until all of the
2 foregoing is received in acceptable form. In the event Franchisee fails to submit
3 the countersigned Ordinance and acceptance as provided for herein, or fails to
4 provide the required accompanying documents and payments, within the time
5 limits set forth in this section, the grant of the Franchise shall be null and void.

6 Passed _____

8 _____
9 Mayor

10 Attest:

11 _____
12 City Clerk

13 Approved as to form:

14 _____
15 Deputy City Attorney
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ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _____, effective _____.

I, Rebekah Melody, am the Director, Underlying Rights and Government Relations – North America of Zayo Group, LLC, and am the authorized representative to accept the above-referenced City franchise ordinance on behalf of Zayo Group, LLC.

I certify that this franchise and all terms and conditions thereof are accepted by Zayo Group, LLC without qualification or reservation.

DATED this _____ day of _____, 2025.

By _____
Rebekah Melody
Its Director, Underlying Rights & Government
Relations

Witness: _____