



## ORDINANCE NO. 28888

1 AN ORDINANCE relating to a cable system that provides cable service to the  
2 City; authorizing the Mayor or the Mayor's designee to approve the  
transfer of control of the cable franchise.

3 WHEREAS, Rainier Connect North, LLC ("Franchisee") currently holds a  
4 cable franchise ("Franchise") granted by the City, and

5  
6 WHEREAS, the Franchisee owns, operates and maintains a cable system  
7 in the City ("System") pursuant to the terms of the Franchise, and

8 WHEREAS, the City received from Mashell, Inc. ("Transferor") and  
9 Alphaboost Purchaser, LLC ("Transferee") a Federal Communications Commission  
10 Form 394 - Application for Franchise Authority Consent to Assignment or Transfer  
11 of Control of Cable Television Franchise, ("Application") dated January 19, 2023,  
12 and  
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14 WHEREAS, on February 7, 2023, the City received new attachments to  
15 the Application, replacing attachments A, B and C originally filed with the  
16 Application, and  
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18 WHEREAS, on February 13, 2023, the City sent a request for supplemental  
19 information to the Application and on February 23, 2023, the City received a  
20 response from the Transferor, and

21 WHEREAS, on February 28, 2023, the City sent a request for supplemental  
22 financial information to the Transferor and on March 10, 2023, the City received a  
23 response from the Transferor and the Transferee, and  
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25 WHEREAS, federal law and the Tacoma Municipal Code ("TMC") at Section  
26 16A.03.060 require that the City shall have one hundred twenty (120) days upon



receipt of a completed Application to act upon such transfer request unless  
1 agreement is reached to extend the date, and

2 WHEREAS, the City has determined that the Application was complete on  
3 March 10, 2023, and the 120 day deadline for City action on the Application is  
4 July 8, 2023, and  
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6 WHEREAS, Section 2.8 of the Franchise and Section 16A.03.060 of the  
7 TMC require the City's advance written consent prior to a transfer of the Franchise,  
8 and

9 WHEREAS, the Application includes a copy of an Agreement and Plan of  
10 Merger, dated December 6, 2022, ("Agreement") seeking the City's consent to the  
11 proposed transfer of the Franchise, and  
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13 WHEREAS, under the Agreement Transferor will remain the direct owner  
14 of Franchisee, and the Transferee will be the direct owner of the Transferor  
15 ("Transaction"), and  
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17 WHEREAS, as a result of the Transaction, the Transferor and the Transferee  
18 have requested consent from the City to the transfer of the Franchise, and

19 WHEREAS, the City has reviewed the Transaction and the requested  
20 transfer as well as: a) the legal, technical, and financial qualifications of the  
21 Transferor and the Transferee; b) the potential impact of the Transaction on cable  
22 services in the City; c) the Franchisee's compliance with the Franchise and the  
23 TMC; d) whether approval of the Transaction would adversely affect cable  
24 subscribers, the public, or the City's interest under the Franchise, the TMC or other  
25 applicable law, and  
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WHEREAS, based on information provided by the Transferor and the Transferee, and on the information received by the City, the City has elected to approve the Transaction subject to certain conditions as set forth herein; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. All of the above recitals are hereby incorporated by reference as if fully set forth herein.

Section 2. The Franchise is in full force and effect and the Franchisee is the lawful holder of the Franchise.

Section 3. The City is not presently aware of any default by the Franchisee to comply with the terms, conditions, requirements, and obligations set forth in the Franchise, notwithstanding such, the City's approval of the Transaction shall in no way be deemed a representation by the City that the Franchisee, or its successors in interest are in compliance with the obligations under the Franchise. The City does not waive its rights with respect to the Franchisee's compliance with the terms, conditions, requirements, and obligations set forth in the Franchise and other applicable law, including the City's right to compel the Franchisee, or its successors in interest, to comply with the provisions of the Franchise.

Section 4. The Franchisee will remain the lawful holder of the Franchise after completion of the Transaction.

Section 5. The City hereby consents and approves of the Transaction subject to:



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a. Within sixty (60) Days of the closing date of the Transaction the Franchisee shall file with the City Clerk a copy of the agreement or other written instrument evidencing such transfer has been completed, certified and sworn to as correct by the Franchisee.

b. The Transferor or the Transferee shall, within thirty (30) days of the date of adoption of this Ordinance, fully reimburse City for all of City's reasonable costs and expenses in connection with the City's review of the Transaction, including without limitation, all costs incurred by the City for attorneys retained by City to assist in the review as well as any applicable notice and publication costs ("Reimbursement").

i. The Reimbursement shall not be deemed to be "Franchise Fees" within the meaning of Section 622 of the Cable Act (47 U.S.C. § 542), nor shall the Reimbursement be deemed to be (i) "payments in kind" or any involuntary payments chargeable against the Franchise Fees to be paid to the City by the Franchisee pursuant to the Franchise.

Section 6. In the event the Transaction contemplated by the foregoing ordinance is not completed, for any reason, the City's consent shall not be effective. If any of the conditions set forth herein are not met, the City's consent to the proposed Transaction shall be null and void and of no effect.

Section 7. This Ordinance may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Ordinance delivered by e-mail



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or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Ordinance.

Section 8. This Ordinance shall take effect and continue and remain in effect from and after the date of its passage, approval, and adoption.

Section 9. That the City Clerk, in consultation with the City Attorney, is authorized to make necessary corrections to this ordinance, including, but not limited to, the correction of scrivener's/clerical errors, references, ordinance numbering, section/subsection numbers, and any references thereto.

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

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Deputy City Attorney



**AGREEMENT AND ACCEPTANCE**

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Mashell, Inc. and Alphaboost Purchaser, LLC hereby accept Ordinance No. \_\_\_\_\_ (“Ordinance”), agree to be bound by the terms and conditions of the ordinance and the terms and conditions of the Franchise referenced within the Ordinance (“Franchise”), abide by and accept all lawful terms of Title 16A of the Tacoma Municipal Code, and assume the obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the Franchisee under Title 16A of the Tacoma Municipal Code and the Franchise for all purposes, including renewal.

Dated this \_\_\_ day of \_\_\_\_\_ 2023.

**MASHELL, INC.**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated this \_\_\_ day of \_\_\_\_\_ 2023.

**ALPHABOOST PURCHASER, LLC**

By: \_\_\_\_\_

Its: \_\_\_\_\_