



ORDINANCE NO. 28883

1 AN ORDINANCE relating to telecommunications and franchise services;
2 granting a nonexclusive telecommunications franchise to Sprint
3 Communications Company, L.P.; providing for severability and
4 establishing an effective date.

4 WHEREAS the public rights-of-way within the City belong to the public
5 and are built and maintained at public expense for the use of the general public,
6 the primary purpose of which is public travel, and must be managed and
7 controlled consistent with that intent, and
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9 WHEREAS the use of public rights-of-way for uses unrelated to public
10 travel, such as water mains, gas pipes, pipelines, and telecommunications and
11 cable facilities, is secondary and subordinate to the primary use for travel; such
12 secondary use is permissible only when not inconsistent with the primary
13 purpose of the establishment of such public rights-of-way; and, such use as a
14 place of private business or as a main instrumentality of private business is
15 accorded in most instances as a mere privilege under state law and there is no
16 inherent right in a private individual to conduct private business in the public
17 streets, and
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19 WHEREAS the City supports efforts to establish an open, competitive
20 marketplace for telecommunications services and promotes and encourages
21 competition for voice, data, and video programming services that make the
22 latest and best technology available and keeps service prices affordable for all
23 the City residents and businesses, and
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1 WHEREAS the requirement of a performance bond or security fund
2 ensures that work done in the public rights-of-way complies with or can be
3 made to comply with requirements that ensure public safety and limit liability of
4 the City, and

5 WHEREAS insurance and indemnity requirements protect the City from
6 monetary loss in the event of the City liability due to acts of the secondary users
7 of the public rights-of-way; the City should not be exposed to liability of any kind
8 as a result of the presence in the public rights-of-way of the facilities of
9 secondary users because the secondary user controls the design, construction,
10 and installation of those facilities, profits from use of those facilities, is better
11 suited and positioned to protect against such harms, and, but for the existence
12 of those facilities, no injury would have occurred, and

14 WHEREAS the City has a substantial government interest in knowing the
15 identity of those persons with facilities in its public rights-of-way so that it may,
16 among other things: (1) provide notice of hazardous or defective conditions,
17 violations of regulatory or contractual requirements, joint trenching
18 opportunities, relocation requirements for public or private improvements;
19 (2) identify locations of facilities, or (3) identify the proper parties in the event of
20 litigation, and

23 WHEREAS the City has a substantial government interest in requiring
24 notice and approval of a transfer of the rights, duties, and obligations of those
25 persons Franchised to be in the public rights-of-way to: (1) ensure that the City
26 does not lose any legal rights or protection as a result of the transfer; (2) ensure



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that such persons are aware of and agree to comply with all rights, duties, and obligations previously agreed to; (3) ensure that companies do not simply transfer agreements to avoid complying with regulatory or contractual requirements, and (4) to ensure that the City has accurate contact information for the operator of the facilities in the public rights-of-way in the event of an emergency, and

WHEREAS the increasing demand for use of public rights-of-way is causing, and will continue to cause, local governments to expand management services and responsibilities, including more frequent inspections, repairs and re-paving, sophisticated mapping technologies and systems, and increased personnel, and

WHEREAS the recovery of administrative costs incurred by the City in preparing, considering, and awarding authorization to use, construct, or install facilities within the public rights-of-way is a cost of regulation and management of the public rights-of-way and is authorized under state and federal law, and

WHEREAS Sprint Communications Company L.P. ("Sprint") has constructed and installed telecommunications facilities within the public rights-of-way of the City and desires to be granted a current franchise by the City for such use of the public rights-of-way, and

WHEREAS, Sprint Communications Company L.P. has made application to the City of Tacoma for a telecommunications franchise to provide telecommunications services using the public rights-of-way, and



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WHEREAS, based on representations and information provided by Sprint, and in response to its request for the grant of a franchise, the City Council has determined that the grant of a nonexclusive franchise, on the terms and conditions herein and subject to applicable law, is consistent with the public interest, and

WHEREAS, the City is authorized by applicable law to grant such a nonexclusive franchise within the boundaries of the City; Now, Therefore,

BE IT ORDAINED BY The City OF TACOMA as follows:

SECTION 1. DEFINITIONS

1.1 Breach

1.2 City

1.3 Construct

1.4 Design Documents

1.5 100% Design Submittal

1.6 Direct Costs

1.7 Development Permit

1.8 Dispute

1.9 Effective Date

1.10 Emergency

1.11 Environmental Law(s)

1.12 Facility or Facilities

1.13 Franchise

1.14 Franchisee

1.15 Franchise Ordinance

1.16 Franchise Area

1.17 Hazardous Substance

1.18 Law(s)

1.19 Legal Action

1.20 Material Breach

1.21 Non-Material Breach

1.22 Noticed Party

1.23 Person

1.24 Party(ies)

1.25 Public Rights-of-Way

1.26 Public Works Director

1.27 Remedy, Remediate, and Remedial Action

1.28 Regulatory Permit



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- 1.29 Service or Telecommunications Service.....
- 1.30 Telecommunications Systems of
Telecommunications Facility
- 1.31 Transfer
- 1.32 Work.....

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3 6.2 Remedies

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7 6.6 Assessment of Liquidated Damages

8 6.7 Receivership

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14 7.4 Conditions Precedent to Work

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25 7.14 Abandonment of Facilities

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 8.9 Waiver

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 8.11 Signs

 8.12 Discriminatory Practices Prohibited

 8.13 Notice

 8.14 Survival of Terms

 8.15 Force Majeure



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8.16 Attorneys' Fees.....

8.17 Venue/Choice of Law

8.18 Publication

EXHIBITS:

A. Form of Transfer Agreement.....

B. Form of Acceptance of Franchise

C. Environmental Indemnity

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SECTION 1 - DEFINITIONS. For the purposes of this Franchise and the Exhibits attached hereto, the following terms, phrases, words and their derivations where capitalized shall have the meanings given herein. Words not defined herein shall have the meaning given in SubTitle 16B of the Tacoma Municipal Code ("TMC"), as currently constituted or hereafter amended. TMC 16B is the City of Tacoma's Telecommunications Franchise Ordinance, and is the local governing legislation for this Franchise. Words not defined herein or in TMC 16B of the Tacoma Municipal Code, shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directory. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, or



1 repealed and re-codified, then the reference shall be read to refer to the
2 renumbered or re-codified provision.

3 1.1 "Breach" shall mean any failure of a Party to keep, observe, or
4 perform any of its duties or obligations under this Franchise.

5 1.2 "City" shall mean the City of Tacoma, a First Class Charter the
6 City, operating under the laws of the State of Washington.

7 1.3 "Construct" shall mean to construct, reconstruct, install, reinstall,
8 align, realign, locate, relocate, adjust, affix, attach, remove, or support.

9 1.4 "Design Document(s)" shall mean the plans and specifications for
10 the Construction of the Facilities illustrating and describing the refinement of the
11 design of the Telecommunications System Facilities to be constructed,
12 establishing the scope, relationship, forms, size and appearance of the
13 Facilities by means of plans, sections and elevations, typical construction
14 details, location, alignment, materials, and equipment layouts. The Design
15 Documents shall include specifications that identify utilities, major material and
16 systems, Public Right-of-Way improvements, restoration and repair, and
17 establish in general their quality levels.

18 1.5 "100% Design Submittal" means a Design Document upon which
19 the Franchisee's contractors will rely in constructing the Telecommunications
20 System Facilities.

21 1.6 "Direct Costs" shall mean and include all costs and expenses to
22 the City directly related to a particular activity or activities, including by way of
23 example:
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1 i. All costs and expenses of materials, equipment, supplies,
2 utilities, consumables, goods and other items used or incorporated in
3 connection with and in furtherance of such activity or activities and any taxes,
4 insurance, and interest expenses related thereto, including costs for crews and
5 equipment;

6 ii. All costs and expenses of labor inclusive of payroll benefits,
7 non-productive time and overhead for each of the labor classifications of the
8 employees performing work for the activity and determined in accordance with
9 the City's ordinary governmental accounting procedures; and,
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11 iii. All costs and expenses to the City for any work by
12 consultants or contractors to the extent performing work for a particular activity
13 or activities, including by way of example and not limitation, engineering and
14 legal services.

15 1.7 "Development Permit" shall mean any land use or environmental
16 permit or license required from the City for a project action, including but not
17 limited to building permits, binding site plans, conditional uses, shoreline
18 substantial development permits, site plan review, permits or approvals required
19 by critical area ordinances, site-specific rezones authorized by a
20 comprehensive plan or subarea plan, but excluding the adoption or amendment
21 of a comprehensive plan, subarea plan, or development regulations except as
22 specifically included in this definition.
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24 1.8 "Dispute" shall mean a question or controversy that arises
25 between the Parties concerning the observance, performance, interpretation or
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1 implementation of any of the terms, provisions, or conditions contained in this
2 Franchise or the rights or obligations of either Party under this Franchise.

3 1.9 "Effective Date" shall mean 12:01 a.m. on the 31st day following
4 passage and approval of this Franchise by the City Council, except as provided
5 pursuant to Section 4.2 herein.

6 1.10 "Emergency" shall mean and refer to a sudden, generally
7 unexpected occurrence or set of circumstances that significantly disrupts or
8 interrupts operation of Facilities located within the Public Rights-of-Way or that
9 presents an imminent threat of harm to persons or property if immediate action
10 to perform repairs within the Public Rights-of-Way is not taken.

11 1.11 "Environmental Law(s)" means any federal, state or local statute,
12 regulation, code, rule, ordinance, order, judgment, decree, injunction or
13 common law pertaining in any way to the protection of human health or the
14 environment, including without limitation, the Resource Conservation and
15 Recovery Act, the Comprehensive Environmental Response, Compensation
16 and Liability Act, the Toxic Substances Control Act, and any similar or
17 comparable state or local law.

18 1.12 "Facility" or "Facilities" means any part or all of the facilities,
19 equipment and appurtenances of the Franchisee, whether underground or
20 overhead, located within the Public Rights-of-Way as part of the Franchisee's
21 Telecommunications System, including but not limited to: conduit, case, pipe,
22 line, fiber, cabling, equipment, equipment cabinets and shelters, vaults,
23 generators, conductors, poles, carriers, drains, vents, guy wires, encasements,
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1 sleeves, valves, wires, supports, foundations, towers, anchors, transmitters,
2 receivers, antennas, and signage.

3 1.13 "Franchise" shall mean the grant, once accepted, giving general
4 permission to the Franchisee to enter into and upon the Public Rights-of-Way
5 and to use and occupy the same for the purposes authorized herein, all
6 pursuant and subject to the terms and conditions of the Franchise Ordinance.

7 1.14 "Franchisee" shall mean Sprint Communications Company L.P., a
8 Delaware limited partnership, with its mailing address at "6220 Sprint Parkway,
9 MS: KSOPHD0101-Z2040, Overland Park, KS 66251."

10 1.15 "Franchise Ordinance" shall mean this Ordinance setting forth the
11 terms and conditions upon which the Franchisee shall be granted a Franchise.
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13 1.16 "Franchise Area" shall mean collectively or individually the Public
14 Rights-of-Way located within the city limits of Tacoma as they exist upon
15 acceptance of this Franchise.
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17 1.17 "Hazardous Substance" means any hazardous, toxic, radioactive or
18 infectious substance, material, or waste as defined, listed, or regulated under any
19 Environmental Law, and any element, compound, mixture, solution, particle, or
20 substance, which presents danger or potential danger for damage or injury to
21 health, welfare, or to the environment, including, but not limited to: those
22 substances which are inherently or potentially radioactive, explosive, ignitable,
23 corrosive, reactive, carcinogenic, or toxic; those substances which have been
24 recognized as dangerous or potentially dangerous to health, welfare, or to the
25 environment by any federal, municipal, state, city, or other governmental or
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1 quasi-governmental authority, and/or any department or agency thereof; those
2 substances which use, or have as a component thereof or therein, asbestos or
3 lead based paint; and petroleum oil and any of its fractions.

4 1.18 "Law(s)" shall mean all present and future applicable laws,
5 ordinances, rules, regulations, resolutions, Franchises, authorizations,
6 environmental standards, orders, decrees, and requirements of all federal,
7 state, city and municipal governments, the departments, bureaus, or
8 commissions thereof, authorities, boards, or officers, any national or local board
9 of fire underwriters, or any other body or bodies exercising similar functions,
10 having or acquiring jurisdiction over all or any part of the Facilities, including the
11 City acting in its governmental capacity. References to Laws shall be
12 interpreted broadly to cover government actions, however nominated, and
13 include laws, ordinances, and regulations now in force or hereinafter enacted or
14 amended.
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17 1.19 "Legal Action" for purposes of this Franchise shall mean filing a
18 lawsuit or invoking the right to Arbitration.

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20 1.20 "Material Breach" shall mean any of the following circumstances:

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- 22 • Breach of a Party's obligation to defend or indemnify the other Party;
 - 23 • If a Party attempts to evade any material provision of this Franchise or engages in any fraud or deceit upon the other Party;
 - 24 • If a Party becomes insolvent, or if there is an assignment for the benefit of either Party's creditors;
 - 25 • If the Franchisee fails to provide or maintain the insurance, bonds, cash deposit, or other security required by this Franchise;
 - 26 • A bad faith Breach;



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- A Transfer in violation of Section 2.7 (Transfer);
- Breach of Section 3.5 (Subsequent Action);
- Breach of Section 6.1 (Dispute Avoidance);
- Breach of Section 7.14 (Abandonment of Facilities);
- Any Breach that cannot practicably be cured; or
- Any non-material breach that is not cured as required pursuant to Section 6.3 herein.

1.21 “Non-Material Breach” means any breach that does not constitute a Material Breach.

1.22 “Noticed Party” shall mean the Party in receipt of notice that it is in Breach.

1.23 “Person” means and includes any individual, corporation, partnership, association, joint-stock company, limited liability company, political subdivision, public corporation, taxing district, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work on behalf of the City in the Public Rights-of-Way.

1.24 “Party(ies)” shall mean either the City or the Franchisee or both.

1.25 “Public Rights-of-Way” means the public streets and easements which, under the City Charter, the Tacoma Municipal Code, the City ordinances, and applicable laws, the City has authority to grant Franchises, permits, or Licenses for use thereof or has regulatory authority thereover, and as may be more specifically defined in the Franchise, License, or permit granting any right to or use thereof, excluding railroad rights-of-way, airport, and harbor areas. Public Rights-of-Way for the purpose of this Franchise do not include buildings, parks, poles, similar facilities, or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public



Rights-of-Way such as utility poles and light poles.

1 1.26 “Public Works Director” means and refers to the Public Works
2 Director for the City or his or her designee or such officer or person who has
3 been assigned the duties of public works director or his or her designee.
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5 1.27 “Remedy”, “Remediate” and “Remedial Action” shall have the
6 same meaning as given under the Model Toxics Control Act (Chapter 70.105D
7 RCW) and its implementing regulations (Chapter 173-340 WAC).
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9 1.28 “Regulatory Permit” means a permit issued under the regulatory
10 authority of the City that provides specific requirements and conditions for Work
11 to Construct Facilities within the Public Rights-of-Way and includes by way of
12 example and not limitation, a work order permit, construction permit, building
13 permit, street cut permit, barricade permit, street closure permit, and/or clearing
14 and grading permit.
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16 1.29 “Service” or “Telecommunications Service” shall mean the
17 transmission for hire of information in electronic or optical form, including, but
18 not limited to, voice, video, or data, whether or not the transmission medium is
19 owned by the provider itself. Telecommunications Service includes telephone
20 service, but does not include Cable Service or over-the-air broadcasts to the
21 public-at-large from facilities licensed by the FCC or any successor thereto.
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23 1.30 “Telecommunications System” of “Telecommunications Facility”
24 means a tangible facility that is used to provide one or more
25 Telecommunications Services, any portion of which occupies Public Rights-of-
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Way. The term Telecommunications System, by way of example and not
1 limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting
2 towers, poles, other supporting structures, and associated and appurtenant
3 facilities used to transmit telecommunications signals. The term
4 Telecommunications System includes all devices mounted on light poles in the
5 Public Rights-of-Way through which Telecommunications Services are
6 originated or terminated. An open video system is not a Telecommunications
7 System to the extent that it provides only video services; a Cable System is not
8 a Telecommunications System to the extent that it provides only Cable Service.
9 The term Telecommunications Facility includes any of the tangible components
10 of a Telecommunications System which occupies Public Rights-of-Way.
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13 1.31 "Transfer" means any transaction in which:

14 i. All or a portion of the Telecommunications System is sold or assigned
15 (except a sale or assignment that results in removal of a particular portion of the
16 Facility from the Public Rights-of-Way);
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18 ii. There is any change, acquisition, or direct or indirect Transfer of
19 control of the Franchisee;
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21 iii. The rights and/or obligations held by the Franchisee, Special Street
22 Use Permittee, or Licensee under the Franchise, Special Street Use Permit, or
23 License are transferred, sold, assigned, or leased, in whole or in part, directly or
24 indirectly, to another party; provided, however, that a lease of network capacity
25 to third parties shall not be considered a Transfer; or
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iv. The transfer of stock in a corporation so as to create a new
1 controlling interest constitutes a Transfer. The term “controlling interest” is not
2 limited to majority stock ownership, but includes actual working control in
3 whatever manner exercised.
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5 1.32 “Work” shall mean any and all activities of the Franchisee, or its
6 officers, directors, employees, agents, contractors, subcontractors, volunteers,
7 invitees, or licensees, within the Public Rights-of-Way to Construct the
8 Facilities.
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10 SECTION 2. FRANCHISE GRANT

11 2.1 Public Right-of-Way Use Authorized. Subject to the terms and
12 conditions of this Franchise, the City hereby grants to the Franchisee a
13 nonexclusive Franchise authorizing the Franchisee to Construct and operate its
14 Telecommunications System in, along, among, upon, across, above, over, and
15 under the Public Rights-of-Ways located within the Franchise Area.
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17 2.2 Authorized Services. The grant given herein expressly authorizes
18 the Franchisee to use the Public Rights-of-Way to provide Telecommunications
19 Service. This authorization is limited and is not intended nor shall it be construed
20 as granting the Franchisee or any other Person the right, duty or privilege to use
21 its Facilities or the Public Rights-of-Way to provide services not specifically
22 authorized therein. This Franchise shall not be interpreted to prevent the City
23 from lawfully imposing additional conditions, including additional compensation
24 conditions for use of the Public Rights-of-Way, should the Franchisee provide
25 service other than service specifically authorized herein. However, this Franchise
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1 shall not be read as a concession by the Franchisee that it needs authorization to
2 provide any services not otherwise authorized herein.

3 2.3 No rights shall pass to the Franchisee by implication. No rights
4 shall pass to the Franchisee by implication. Without limiting the foregoing and by
5 way of example, this Franchise shall not include or be a substitute for:

6 2.3.1 Any other authorization required for the privilege of
7 transacting and carrying on a business within the City that may be lawfully
8 required by the Laws of the City;

9 2.3.2 Any agreement or authorization required by the City for
10 Public Rights-of-Way users in connection with operations on or in Public
11 Rights-of-Way or public property including, by way of example and not limitation, a
12 regulatory permit; or

13 2.3.3 Any licenses, leases, easements or other agreements for
14 occupying any other property or infrastructure of the City or other Persons to
15 which access is not specifically granted by this Franchise including, without
16 limitation, agreements for placing devices on poles, light standards, in conduits, in
17 vaults, in or on pipelines, or in or on other structures or public buildings.

18 2.3.4 Any permits or other authorizations that may be required
19 under the land use code and development regulations of the City for the
20 construction of Facilities within a particular zoning district in the City, including by
21 way of example and not limitation, a conditional use permit or a variance.

22 2.4 Interest in the Public Rights-of-Way. This Franchise shall not
23 operate or be construed to convey title, equitable or legal, in the Public Rights-
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of-Way. No reference herein to a Public Right-of-Way shall be deemed to be a representation or guarantee by the City that its interest, or other right to control the use of such Public Right-of-Way, is sufficient to grant its use for such purposes. This Franchise shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give. The grant given herein does not confer rights other than as expressly provided in the grant hereof and is subject to the limitations in applicable Law. Such right may not be subdivided or subleased to a person other than the Franchisee, except as provided herein.

The Franchisee acknowledges that, where the City has an ownership interest in a Franchise Area, that ownership interest may be a determinable or other fee interest, a public right of way dedication, or a right of way easement, which may terminate when the City either: (i) ceases to use that Public Right-of-Way for Public Right-of-Way purposes; or (ii) uses such Public Right-of-Way for purposes found to be inconsistent with use of the Public Right-of-Way for Public Right-of-Way purposes, and that in such circumstances, the City's right to franchise or grant the use of any such public right-of-way, or rights under any franchise of any such Public Right-of-Way, may be subject to termination as of the date the circumstances set forth in either (i) or (ii) above, first arise (unless the Franchisee improves the quality of title to the applicable Franchise Area, or acquires additional property interests from other Persons).

The Franchisee also acknowledges that, where the City has ownership rights, those ownership rights may terminate for other reasons, such as a street



1 vacation. The Franchisee further acknowledges that the Franchisee's rights
2 under this Franchise as to any Franchise Area, are subject and subordinate to
3 all outstanding rights and encumbrances on the City's Public Rights-of-Way,
4 and any easements, other Franchise Agreements, licenses, permits or
5 agreements in effect on or before the Effective Date ;the City therefore grants to
6 the Franchisee no more right, title and interest in any Public Right-of-Way than
7 the City holds in such Public Rights-of-Way at the time of grant, and the
8 Franchisee hereby releases the City from any and all liability, cost, loss,
9 damage or expense in connection with any claims that the City lacked sufficient
10 legal title or other authority to convey the rights described herein. In case of
11 eviction of the Franchisee or the Franchisee's contractors by anyone owning,
12 claiming title to, or claiming any interest in the Franchise Area, the City shall not
13 be liable to the Franchisee or the Franchisee's contractors for any costs, losses
14 or damages of any Party.
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17 THE CITY DOES NOT WARRANT ITS TITLE OR PROPERTY
18 INTEREST IN OR TO ANY FRANCHISE AREA NOR UNDERTAKE TO
19 DEFEND THE FRANCHISEE IN THE PEACEABLE POSSESSION OR USE
20 THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.
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22 2.5 Condition of Franchise Area. The Franchisee has inspected or
23 will inspect each applicable Franchise Area, and enters upon each such
24 Franchise Area with knowledge of its physical condition and the danger inherent
25 in operations conducted in, on or near any Franchise Area. THE FRANCHISEE
26 ACCEPTS THE FRANCHISE AREA ON AN "AS-IS WITH ALL FAULTS" BASIS



1 WITH ANY AND ALL PATENT AND LATENT DEFECTS AND IS NOT
2 RELYING ON ANY REPRESENTATION OR WARRANTIES, EXPRESS OR
3 IMPLIED, OF ANY KIND WHATSOEVER FROM THE CITY AS TO ANY
4 MATTERS CONCERNING THE FRANCHISE AREA, including, but not limited
5 to the physical condition of the Franchise Area; zoning status; presence and
6 location of existing utilities; operating history; compliance by the Franchise Area
7 with Environmental Laws or other Laws and other requirements applicable to
8 the Franchise Area; the presence of any Hazardous Substances or wetlands,
9 asbestos, or other environmental conditions in, on, under, or in proximity to the
10 Franchise Area; the condition or existence of any of the above ground or
11 underground structures or improvements, including tanks and transformers in,
12 on or under the Franchise Area; the condition of title to the Franchise Area, and
13 the leases, easements, Franchises, orders, licensees, or other agreements
14 affecting the Franchise Area (collectively, the "**Condition of the Franchise**
15 **Area**").
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18 The Franchisee represents and warrants to the City that the Franchisee
19 and its contractors or subcontractors have not relied and will not rely on, and
20 the City is not liable for or bound by, any warranties, guaranties, statements,
21 representations or information pertaining to the Condition of the Franchise Area
22 or relating thereto made or furnished by the City, or any agent representing or
23 purporting to represent the City, to whomever made or given, directly or
24 indirectly, orally or in writing. THE CITY HEREBY DISCLAIMS ANY
25 REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED,
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1 AS TO THE DESIGN OR CONDITION OF THE FRANCHISE AREA, ITS
2 MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, THE
3 QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE PUBLIC RIGHT-
4 OF-WAY, OR THE CONFORMITY OF ANY PART OF THE PUBLIC RIGHT-
5 OF-WAY TO ITS INTENDED USES. THE CITY SHALL NOT BE
6 RESPONSIBLE TO THE FRANCHISEE OR ANY OF THE FRANCHISEE'S
7 CONTRACTORS FOR ANY DAMAGES RELATING TO THE DESIGN,
8 CONDITION, QUALITY, SAFETY, MERCHANTABILITY OR FITNESS FOR
9 ANY PARTICULAR PURPOSE OF ANY PART OF THE PUBLIC RIGHT-OF-
10 WAY PRESENT ON OR CONSTITUTING ANY FRANCHISE AREA, OR THE
11 CONFORMITY OF ANY SUCH PROPERTY TO ITS INTENDED USES.
12

13 2.6 Franchise Nonexclusive. This Franchise shall be nonexclusive.

14 Subject to the terms and conditions herein, the City may at any time grant
15 authorization to others to use the Public Rights-of-Way for any lawful purpose.
16

17 2.7 Transfer. The Franchisee may Transfer this Franchise, subject to
18 the requirements set forth in TMC 16B.02.050, after prior written notice to the
19 City and transferee's written commitment, substantially in the form of the
20 agreement attached hereto as Exhibit "A," and delivered to the City, that
21 transferee(s) shall thereafter be responsible for all obligations of the Franchisee
22 with respect to the Franchise and guaranteeing performance under the terms
23 and conditions of the Franchise, and that transferee(s) will be bound by all the
24 conditions of the Franchise and will assume all the obligations of its
25 predecessor. Such a Transfer shall relieve the Franchisee of any further
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obligations under the Franchise, including any obligations not fulfilled by the Franchisee's Transferee(s); provided that, the Transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, which acts or omissions occur prior to the time of the Transfer. This Franchise may not be Transferred without filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this Franchise, and paying all Direct Costs to the City related to the Transfer.

Notwithstanding the foregoing, notice to the City shall not be required for a mortgage, hypothecation or an assignment of the Franchisee's interest in the Franchise in order to secure indebtedness.

The Franchisee may, without prior written notice to the City: (i) lease the Telecommunications System, or any portion thereof, to another Person; (ii) grant an Indefeasible Right of User Interest in the Telecommunications System, or any portion thereof, to another Person; or (iii) offer or provide capacity or bandwidth in its Telecommunications System to another Person; provided that, the Franchisee at all times retains exclusive control over its Telecommunications System and remains responsible for Constructing its Facilities pursuant to the terms and conditions of this Franchise, and provided further that, the Franchisee may grant no rights to any such Person that are greater than any rights the Franchisee has pursuant to this Franchise; such Persons shall not be construed to be a third-Party beneficiary hereunder; and,



no such Person may use the Telecommunications System for any purpose not authorized herein.

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2 2.8 Street Vacation. If any Public Right-of-Way or portion thereof
3 used by the Franchisee is to be vacated during the term of this Franchise,
4 unless as a condition of such vacation the Franchisee is granted the right to
5 continue its Facilities in the vacated Public Right-of-Way, the Franchisee shall,
6 without delay or expense to the City, remove its Facilities from such Public
7 Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where
8 such removal has occurred, and place the Public Right-of-Way in such
9 condition as may be required by the City. In the event that the Franchisee
10 desires to obtain a reservation of easement through the Public Right-of-Way
11 area to be vacated, the City agrees to provide reasonable assistance in
12 obtaining such reservation. For purposes hereof, reasonable assistance does
13 not include efforts that require any monetary obligation on the City's part.

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17 2.9 Reservation of the City Use of Public Right-of-Way. Nothing in this
18 Franchise shall prevent the City from constructing sewers; grading, changing
19 grade, paving, repairing or altering any Public Right-of-Way; laying down,
20 repairing or removing water mains; or installing conduit or fiber optic cable.

21
22 SECTION 3. COMPLIANCE WITH LAWS/ORDER OF PRECEDENCE

23 3.1 Compliance with Laws. Except as provided herein pursuant to
24 Section 3.3, the Franchisee agrees to comply with all applicable Laws as now or
25 hereafter in effect, and any lawful orders from regulatory agencies or courts with
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jurisdiction over the Franchisee and its Facilities, or over the City and the Public
1 Rights-of-Way.

2 3.2 Police Powers. The Franchisee acknowledges that its rights
3 hereunder are subject to those powers expressly reserved by the City and
4 further are subject to the police powers of the City to adopt and enforce
5 ordinances necessary to protect the health, safety and welfare of the public.
6 The Franchisee agrees to comply with all lawful and applicable general
7 ordinances now or hereafter enacted by the City pursuant to such power. Such
8 powers include but are not limited to, the right to adopt and enforce applicable
9 zoning, building, permitting and safety ordinances and regulations, the right to
10 adopt and enforce ordinances and regulations relating to equal employment
11 opportunities, and the right to adopt and enforce ordinances and regulations
12 governing work performed in the Public Right-of-Way. However, this Section 3.2
13 and the granting of any Franchise, nor any provision in the Franchise Agreement
14 shall not be read or interpreted as a waiver of any governmental right or power,
15 police power, or regulatory power of the City as may exist at the time the
16 Franchise is issued or thereafter obtained or any vested rights the Franchisee
17 may have or a waiver of any rights the Franchisee may have for a Facility that
18 qualifies as a nonconforming use.
19

20 3.3 Alteration of Material Terms and Conditions. Subject to federal and
21 State preemption, the material rights, benefits, obligations, or duties as specified
22 in this Franchise may not be unilaterally altered by the City through subsequent
23 amendments to any ordinance, regulation, resolution or other enactment of the
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1 City, except within the lawful exercise of the City's police power. To the extent
2 that any subsequent amendments to any City ordinance, regulation, resolution or
3 other enactment materially impairs the Franchisee's rights under this Franchise,
4 and such material impairment cannot be resolved through the dispute resolution
5 process set forth herein (below at section 6.1 *et seq.*), the Franchisee may
6 terminate this Franchise, subject to any post-termination or post-expiration
7 obligations set forth herein and any already accrued liabilities. The City shall
8 notify the Franchisee at the address specified at section 8.13 below of any
9 amendments to TMC 16B that have been entered into the Tacoma City council
10 agenda that may materially affect the Franchisee's rights hereunder in order to
11 afford the Franchisee the opportunity to comment thereon.
12

13 3.4 Reservation of Rights/Wavier. The City shall be vested with the
14 power and right to administer and enforce the requirements of this Franchise and
15 the regulations and requirements of applicable Laws, or to delegate that power
16 and right, or any part thereof, to the extent permitted under applicable Laws, to
17 any agent, in the sole discretion of the City. The City expressly reserves all of its
18 rights, authority and control arising from any relevant provisions of federal, State
19 or local Laws granting the City rights, authority, or control over the Public Rights-
20 of-Way or the activities of the Franchisee. Nothing in this Franchise Agreement
21 shall be deemed to waive the requirements of the various codes and
22 ordinances of the City regarding Franchises, fees to be paid or manner of
23 Construction. Nothing in this Franchise shall be deemed to waive and the
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Franchisee specifically reserves the right to challenge any City ordinance,
1 regulation or resolution that conflicts with its rights under this Franchise.

2 3.5 Subsequent Action. In the event that after this Franchise
3 becomes effective, (a) there is a change in or clarification of the Law which
4 changes, broadens, or clarifies the authority or obligations of the City or the
5 Franchisee with respect to any act permitted or authorized under this Franchise,
6 or (b) the State of Washington or any agency thereof or any agency of the
7 Federal government requires the Franchisee or the City to act in a manner
8 which is inconsistent with any provisions of this Franchise, or (c) any term,
9 article, section, subsection, paragraph, provision, condition, clause, sentence, or
10 other portion of this Franchise, or its application to any person or circumstance,
11 shall be held to be illegal, invalid, or unconstitutional for any reason by any court
12 or agency of competent jurisdiction, or (d) TMC 16B of the Tacoma Municipal
13 Code is, in whole or in part, repealed and re-codified, and either Party
14 reasonably believes that such repeal and re-codification in whole or in part
15 results in the City's unilateral alteration of material rights, benefits, obligations,
16 or duties as specified in this Franchise beyond the lawful exercise of the City's
17 police power, or (e) because of a change in circumstances, the City or the
18 Franchisee believe that amendments to this Franchise are necessary or
19 appropriate; then the City and the Franchisee agree to enter into good faith
20 negotiations to amend this Franchise so as to enable the City and the
21 Franchisee to address, in a manner reasonably acceptable to the City and the
22 Franchisee, such change or other development which formed the basis for the
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1 negotiations. The City and the Franchisee recognize that the purpose of the
2 negotiations would be to preserve, to the maximum extent consistent with
3 applicable Laws, the intent, scope and purpose of this Franchise.

4 If the terms of this Franchise are materially altered due to changes in or
5 clarifications in governing Laws or due to agency rule making or other action,
6 then the Parties shall negotiate in good faith to reconstitute this Franchise in a
7 way consistent with then-applicable Law in a form that, to the maximum extent
8 possible, is consistent with the original scope, intent and purpose of the City
9 and the Franchisee and preserves the benefits bargained for by each Party.

10
11 3.6 Change in Form of Government. Any change in the form of
12 government of the City shall not affect the validity of this Franchise. Any
13 governmental unit succeeding the City shall, without the consent of the
14 Franchisee, succeed to all of the rights and obligations of the City provided in
15 this Franchise.

16 SECTION 4. ACCEPTANCE

17
18 4.1 Acceptance. Within thirty (30) days after the passage and approval
19 of this Franchise by the City Council, this Franchise shall be accepted by the
20 Franchisee by filing with the City Clerk during regular business hours, or such
21 other person as may be designated by the City, three originals of this Franchise
22 with its original signed and notarized written acceptance of all of the terms,
23 provisions and conditions of this Franchise in conformance with Exhibit "B,"
24 together with the following, if required herein:
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1 4.1.1 Payment in readily available funds of the administrative
2 costs for issuance of the Franchise in conformance with the requirements of
3 Section 5.7 herein.

4 4.1.2 Submission of proof of financial security in accordance with
5 Section 5.4 herein.

6 4.1.3 Payment of the costs of publication of this Franchise
7 Ordinance in conformance with the requirements of Sections 5.7.7 and 8.18
8 herein.

9 In the event that the thirtieth day falls on a Saturday, Sunday or legal
10 holiday during which the City is closed for business, the filing date shall fall on the
11 business day following such Saturday, Sunday or legal holiday.

12 4.2 Failure to Timely File Acceptance. Except as provided in Section
13 4.4 below, the failure of the Franchisee to timely file its written acceptance shall be
14 deemed a rejection by the Franchisee of this Franchise, and this Franchise shall
15 then be void. In the event that the Franchisee timely files its written acceptance
16 but fails to timely comply with the applicable requirements of sections 4.1.1
17 through 4.1.3, this Franchise shall be voidable in the sole discretion of the City
18 Manager without further action required by the City Council or the consent of the
19 Franchisee. The Franchise shall be voidable until such time as the Franchisee
20 complies with all of the applicable requirements of sections 4.1.1 through 4.1.3.
21 No opportunity to cure or public hearing is required to void the Franchise pursuant
22 to this Section 4.2 by giving written notice of the same to the Franchisee.
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1 4.3 Term. The term of this Franchise shall commence on the
2 Effective Date and shall continue in full force and effect for a period of ten (10)
3 years, unless sooner terminated, revoked or rendered void. This Franchise
4 may be renewed for a subsequent term in accordance with the terms and
5 conditions set forth in TMC 16B.02.100 and the City Charter.

6 4.4 Effect of Acceptance. By accepting the Franchise the Franchisee:

7 4.4.1 Accepts and agrees to comply with and abide by all of the
8 lawful terms and conditions of this Franchise;

9 4.4.2 Acknowledges and accepts the City's legal right to grant
10 this Franchise;

11 4.4.3 Intentionally Omitted;

12 4.4.4 Agrees that, to the best of its knowledge obtained through
13 customary due diligence exercised in entering into this Franchise, no provision,
14 condition or term of the Franchise at the time of the Effective Date was
15 unlawful, unreasonable, arbitrary, void, or unenforceable;

16 4.4.5 Agrees that it enters into this Franchise freely and
17 voluntarily, without any duress or coercion, after free and full negotiations, after
18 carefully reviewing all of the provisions, conditions, and terms of this Franchise
19 Agreement, and after consulting with counsel;

20 4.4.5 Acknowledges and agrees that it has carefully read the
21 terms and conditions of this Franchise; it accepts all of the terms and conditions
22 of this Franchise; it agrees to abide by the same; it has relied upon its own
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1 investigation of all relevant facts; it has had the assistance of counsel; it was not
2 induced to accept a Franchise; and, that the Franchise represents the entire
3 agreement between the Franchisee and the City to the extent not inconsistent
4 with State or Federal law.

5 4.4.6 Warrants that the Franchisee has full right and authority to
6 enter into and accept this Franchise in accordance with the terms hereof, and
7 by entering into or performing this Franchise, the Franchisee is not in violation
8 of its charter or by-laws, or any law, regulation, or agreement by which it is
9 bound or to which it is subject.
10

11 4.4.7 Warrants that acceptance of this Franchise by the
12 Franchisee has been duly authorized by all requisite Board action, that the
13 signatories for the Franchisee hereto are authorized to sign the Franchise
14 acceptance, and that the joinder or consent of any other party, including a court,
15 trustee, or referee, is not necessary to make valid and effective the execution,
16 delivery, and performance of this Franchise.
17

18 4.5 Effect of Expiration/Termination. Upon expiration or termination
19 of the Franchise without renewal or other authorization, the Franchisee shall no
20 longer be authorized to operate the Facilities within the Franchise Area and
21 shall, to the extent it may lawfully do so, cease operation of the Facilities.
22

23 Forthwith thereafter, except as provided in this Section, or as otherwise
24 provided by ordinance, the Franchisee shall: (1) remove its Facilities from the
25 Public Rights-of-Way and restore the Public Rights-of-Way to such condition as
26 the City may reasonably require all at the Franchisee's expense; (2) sell its



1 Facilities to another entity authorized to operate Facilities within the Franchise
2 Area (which may include the City) upon the City's approval, to the extent the
3 City may lawfully require its approval; or (3) abandon any Facilities in place in
4 the Public Rights-of-Way upon written notice to the City of the Franchisee's
5 intent to so do. If, within ninety (90) days of the City's receipt of the
6 Franchisee's notice of abandonment, the City determines that the safety,
7 appearance, or use of the Public Rights-of-Way would be adversely affected,
8 the Facilities specified by the City, and if not specified, all such Facilities must
9 be removed by the Franchisee by a date reasonably specified by the City in
10 light of the amount of work to be performed. In the event of failure by the
11 Franchisee to properly perform such work, then the City may, after thirty (30)
12 days' written notice to the Franchisee, perform the work and collect the actual
13 and reasonable costs thereof.

15 SECTION 5. PROTECTION OF THE CITY AND PUBLIC

16 5.1 Limitation of Liability

17 5.1.1 INDEMNITY/RELEASE/DEFENSE. EXCEPT AS MAY BE
18 OTHERWISE PROVIDED PURSUANT TO SECTION 5.2 OF THIS
19 FRANCHISE WITH RESPECT TO ENVIRONMENTAL LIABILITY, TO THE
20 FULLEST EXTENT PERMITTED BY LAW, THE FRANCHISEE SHALL
21 RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND
22 THE CITY'S SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES,
23 OFFICERS (ELECTED OR APPOINTED), EMPLOYEES, AND AGENTS
24 (COLLECTIVELY, "**INDEMNITEES**") FOR, FROM, AND AGAINST ANY AND
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1 ALL CLAIMS, LIABILITIES, FINES, PENALTIES, COSTS, DAMAGES,
2 DECREES, LOSSES, LIENS, CAUSES OF ACTION OF WHATSOEVER KIND
3 OF NATURE, SUITS, DEMANDS, JUDGMENTS, LOSSES, COSTS AND
4 EXPENSES (INCLUDING, WITHOUT LIMITATION, COURT COSTS,
5 REASONABLE ATTORNEYS' FEES, AND REASONABLE COSTS OF
6 INVESTIGATION, REMOVAL AND REMEDIATION, AND GOVERNMENTAL
7 OVERSIGHT COSTS), ENVIRONMENTAL OR OTHERWISE (COLLECTIVELY
8 "**LIABILITIES**") OF ANY NATURE, KIND, OR DESCRIPTION, OF ANY
9 PERSON OR ENTITY SUSTAINED BY THE CITY OR ANY THIRD PARTY, TO
10 THE EXTENT ARISING OUT OF:
11

- 12 5.1.1.1 THIS FRANCHISE;
- 13 5.1.1.2 ANY RIGHTS OR INTERESTS GRANTED
14 PURSUANT TO THIS FRANCHISE;
- 15 5.1.1.3 THE FRANCHISEE'S OCCUPATION AND
16 USE OF THE PUBLIC RIGHTS-OF-WAY;
- 17 5.1.1.4 THE FRANCHISEE'S OPERATION OF THE
18 TELECOMMUNICATIONS SYSTEM;
- 19 5.1.1.5 THE PRESENCE OF THE
20 TELECOMMUNICATIONS SYSTEM WITHIN THE PUBLIC RIGHTS-OF-WAY;
- 21 5.1.1.6 THE ENVIRONMENTAL CONDITION AND
22 STATUS OF THE PUBLIC RIGHTS-OF-WAY CAUSED BY, AGGRAVATED
23 BY, OR CONTRIBUTED TO, IN WHOLE OR IN PART, BY THE FRANCHISEE
24 OR ITS CONTRACTORS, SUBCONTRACTORS, OR AGENTS;
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5.1.1.7 ANY ACT OR OMISSION OF THE

FRANCHISEE OR THE FRANCHISEE'S CONTRACTORS,
SUBCONTRACTORS, AGENTS AND SERVANTS, OFFICERS OR
EMPLOYEES ARISING OUT OF THE ONGOING AND COMPLETED
OPERATIONS OF THE FRANCHISE OR MAINTENANCE/REPAIR OF ITS
TELECOMMUNICATIONS SYSTEM; OR

5.1.1.8 THE CITY'S PERMITTING THE

FRANCHISEE'S USE OF THE CITY'S PUBLIC RIGHTS-OF-WAY OR OTHER
PUBLIC PROPERTY.

(THE ONLY LIABILITIES WITH RESPECT TO WHICH THE
FRANCHISEE'S OBLIGATION TO INDEMNIFY THE INDEMNITEES DOES
NOT APPLY ARE: (1) LIABILITIES TO THE EXTENT PROXIMATELY
CAUSED BY THE NEGLIGENCE OR INTENTIONAL MISCONDUCT OF AN
INDEMNITEE AND THAT HAVE NO CAUSAL RELATIONSHIP WITH THE
FRANCHISEE'S PRESENCE IN THE PUBLIC RIGHTS-OF-WAY; OR (2)
LIABILITIES THAT BY LAW THE INDEMNITEES CANNOT BE INDEMNIFIED
FOR.)

This covenant of indemnification shall include, but not be limited by this
reference, to Liabilities arising, (1) as a result of the acts or omissions of the
Franchisee, its agents, servants, officers, or employees in barricading,
instituting trench safety systems, or providing other adequate warnings of any
excavation, construction, or work in any Public Rights-of-Way or other public
place in performance of work or services permitted under this Franchise; (2)



1 solely by virtue of the City's ownership or control of the Public Rights-of-Way or
2 other public properties; and (3) solely by virtue of the City's inspection or lack of
3 inspection of Work in the Public Rights-of-Way.

4 The fact that the Franchisee carries out any activities under this Franchise
5 through independent contractors shall not constitute an avoidance of or defense to
6 the Franchisee's duties of defense and indemnification under this Section 5.1.

7
8 5.1.2 Tender of Defense. Upon written notice from the City to the
9 Franchisee, the Franchisee agrees to assume the defense of lawsuits, claims or
10 other proceedings brought against any Indemnitee by any entity, relating to any
11 matters covered by this Franchise for which the Franchisee has an obligation to
12 assume liability for and/or save and hold harmless any Indemnitee, and the
13 Franchisee shall pay all costs incident to such defense, including, but not
14 limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal
15 expenses, settlement payments, and amounts paid in satisfaction of judgments.
16 Further, said indemnification obligations shall extend to claims that are not
17 reduced to a suit and any claims which may be compromised prior to the
18 culmination of any litigation or the institution of any litigation. The City has the
19 right to defend and may participate in the defense of a claim and, in any event, the
20 Franchisee may not agree to any settlement of claims financially affecting the City
21 without the City's prior written approval which shall not be unreasonably withheld,
22 conditioned or delayed. If separate representation to fully protect the interests of
23 both Parties is necessary, such as a conflict of interest between the City and the
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1 counsel selected by the Franchisee to represent the City arises, the Franchisee
2 shall select additional counsel having no conflict with the City.

3 5.1.3 Refusal to Accept Tender. In the event the Franchisee
4 refuses the tender of defense in any suit or any claim, said tender having been
5 made pursuant to the indemnification clauses contained herein, and said refusal
6 is subsequently determined by a court having jurisdiction (or such other tribunal
7 that the Parties shall agree to decide the matter), to have been a wrongful
8 refusal on the part of the Franchisee, then the Franchisee shall pay all of the
9 City's costs for defense of the action, including all reasonable expert witness
10 fees and reasonable attorneys' fees and the reasonable costs of the City,
11 including reasonable attorneys' fees of recovering under this indemnification
12 clause.

13 5.1.4 Title 51 Waiver. THE FRANCHISEE WAIVES IMMUNITY
14 UNDER RCW TITLE 51 AND AFFIRMS THAT THE CITY AND THE
15 FRANCHISEE HAVE SPECIFICALLY NEGOTIATED THIS PROVISION, AS
16 REQUIRED BY RCW 4.24.115, TO THE EXTENT IT MAY APPLY.

17 5.1.5 Inspection. Inspection or acceptance by the City of any
18 Work performed by the Franchisee at the time of completion of construction
19 shall not be grounds for avoidance of any of these covenants of indemnification.
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23 5.2 Environmental Liability. See attached Exhibit "C."

24 5.3 Insurance Requirements. See Attached Exhibit "D."

25 5.4 Financial Security. See Attached Exhibit "E."
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5.5 Contractors/Subcontractors. The Franchisee’s contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by the City code or regulations, or other applicable Law. If no such requirements are set forth in the City code or regulations, the Franchisee’s contractors and subcontractors shall comply with the requirements set forth in attached Exhibit “F.”

5.6 Liens. In the event that any City property becomes subject to any claims for mechanics’, artisans’, or materialmen’s liens, or other encumbrances chargeable to or through the Franchisee which the Franchisee does not contest in good faith, the Franchisee shall promptly, and in any event within 30 days, cause such lien claim or encumbrance to be discharged or released of record (by payment, posting of bond, court deposit, or other means), without cost to the City, and shall indemnify the City against all costs and expenses (including attorneys’ fees) incurred in discharging and releasing such claim of lien or encumbrance. If any such claim or encumbrance is not so discharged and released, the City may pay or secure the release or discharge thereof at the expense of the Franchisee after first giving the Franchisee five business days’ advance notice of its intention to do so. Nothing herein shall preclude the Franchisee’s or the City’s contest of a claim for lien or other encumbrance chargeable to or through the Franchisee or the City, or of a contract or action upon which the same arose.



5.7 Financial Conditions.

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5.7.1 Franchise Fees. During the term of this Franchise, should federal and/or state Law change or the statutory prohibition or limitation upon assessment of Franchise fees be invalidated, amended, or modified allowing revenues derived by the Franchisee from any Services provided by the Franchisee using the Franchise Area to be subject to a Franchise fee or other fee in lieu of a Franchise fee that was otherwise prohibited or limited on the Effective Date, the City and the Franchisee shall negotiate a reasonable Franchise fee or other fee in lieu of a Franchise fee, consistent with federal and/or state Law. The fee shall be comparable to fees received by the City from other users of the rights of way that pay franchise fees to the City.

5.7.2 Reimbursement of Direct Costs of Issuance, Renewal, Amendment and Administration. The Franchisee shall reimburse the City for the City's Direct Costs relating to the issuance, renewal, amendment (if requested by or for the benefit of the Franchisee) and administration of this Franchise and any Regulatory Permit issued hereunder.

5.7.3 Reimbursement of Direct Costs of Design Review and Inspection. The City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of Public Rights-of-Way and are separate and distinct from the approvals, inspections, and fees that may be required pursuant to a Regulatory Permit. Therefore, the Franchisee shall reimburse the City for its Direct Costs



1 of approvals and inspections, to the extent that such Direct Costs are not
2 included in the costs for issuance of and compliance with the Regulatory
3 Permit. Approvals and inspection, by way of example and not limitation, include
4 review of design documents and inspection for compliance with Standards and
5 100% Design Submittal.

6 5.7.4 Reimbursement of Direct Costs of Altering Public

7 Rights-of-Way. The Franchisee shall reimburse the City for the Direct Costs
8 incurred by the City in planning, designing, constructing, installing, repairing or
9 altering any City infrastructure, structure, or facility as the result of the actual or
10 proposed presence in the Public Right-of-Way of the Franchisee's Facilities.
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12 Such costs and expenses shall include, but not be limited to, the Direct Costs of
13 City personnel and contractors utilized to oversee or engage in any work in the
14 Public Rights-of-Way as the result of the presence of the Franchisee's Facilities
15 in the Public Rights-of-Way, and any time spent reviewing construction plans in
16 order to accomplish the relocation of the Franchisee's Facilities. As a condition
17 of payment by the Franchisee, all billings will be itemized so as to specifically
18 identify the Direct Costs and expenses for each project for which the City claims
19 reimbursement.
20

21 5.7.5 The Franchisee's Responsibility for Costs. Except as

22 expressly provided otherwise in this Franchise, any act that the Franchisee, its
23 contractors, or subcontractors are required to perform under this Franchise
24 shall be performed at their sole cost and expense.
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5.7.6 The Franchisee's Work Performed by the City. Any work

performed by the City that the Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. The Franchisee shall be obligated to pay the Direct Costs to the City of performing such work.

5.7.7 Costs to be Borne by the Franchisee. The Franchisee shall

reimburse the City for all costs of publication of this Franchise, and any notices prior to any public hearing regarding this Franchise, contemporaneous with its acceptance of this Franchise.

5.7.8 Taxes and Fees. Nothing contained in this Franchise

Agreement shall exempt the Franchisee from the Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on the Franchisee. Any fees, charges, and/or fines provided for in the City Municipal Code or any other City ordinance, and any compensation charged and paid for the Public Rights-of-Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from the Franchisee.

5.7.9 Itemized Invoice. As a condition of payment by the

Franchisee of Direct Costs payable by the Franchisee under this Franchise, the City shall submit an itemized billing so as to specifically identify the Direct Costs



1 incurred by the City for each project for which the City claims reimbursement. A
2 charge for the actual cost incurred in preparing the billing may also be included
3 in said billing.

4 5.7.10 Time for Payment. All non-contested amounts owing shall
5 be due and paid within thirty (30) days of receipt of an itemized invoice.

6 5.7.11 Overdue Payments. Any amounts payable under this Franchise by the
7 Franchisee which shall not be paid upon the due date thereof, shall bear
8 interest at the rate set forth in Subtitle 16B TMC.

9 5.7.12 Contesting charges. Except as otherwise provided at
10 Subtitle 16B, the Franchisee may contest all or parts of amounts owed within
11 thirty (30) days of receipt of any invoice in accordance with the following
12 process. The City will investigate the Franchisee's contest and will make
13 appropriate adjustments to the invoice, if necessary, and resubmit the invoice to
14 the Franchisee. The Franchisee shall pay any amounts owing as itemized in
15 the resubmitted invoice which amounts shall be due within thirty (30) days of
16 receipt of the resubmitted invoice. However, the Franchisee does not waive its
17 rights to further dispute resolution processes pursuant to Section 6.1 of this
18 Franchise. Submittal of a dispute over amounts owing pursuant to Section 6.1
19 does not relieve the Franchisee of its obligation to pay amounts due under the
20 resubmitted invoice.
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24 5.7.13 Receivables. Either Party hereto may assign any
25 monetary receivables due them under this Franchise; provided, however, such
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transfer shall not relieve the assignor of any of its rights or obligations under this Franchise.

SECTION 6. ENFORCEMENT AND REMEDIES.

6.1 Dispute Avoidance/Mediation.

6.1.1 Communication and Discussion. The Parties are fully committed to working with each other throughout the term of this Franchise and agree to communicate regularly with each other at all times so as to avoid or minimize Disputes. The Parties agree to act in good faith to prevent and resolve potential sources of conflict before they escalate into a Dispute. The Parties each commit to resolving a Dispute in an amicable, professional, and expeditious manner.

The Parties further agree that in the event a Dispute arises, they will, as a condition precedent to taking Legal Action, attempt to resolve any such Disputes through discussions between representatives of each Party as set forth in this Section 6.1.

6.1.2 Representatives. If a Dispute cannot be resolved through discussions by each Party's representative, upon the request of either Party, each Party shall each designate a senior representative ("Senior Representative"), and the Senior Representatives for the Parties shall meet as soon as conveniently possible, but in no case later than thirty (30) days after such a request is made, to attempt to resolve the Dispute. Prior to any meetings between the Senior Representatives, the Parties will exchange relevant information that will assist the Parties in resolving the dispute.



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6.1.3 Mediation. If the Parties are unable to resolve the dispute under the procedure set forth in this Section, the Parties hereby agree that the matter shall be referred to mediation. Either Party may request mediation upon a determination by that Party that the Parties are unable to resolve the Dispute pursuant to Section 6.1.2 herein. 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. Unless the Parties agree otherwise, mediation shall commence in no case later than thirty (30) days after a mediator is selected. Any expenses incidental to mediation shall be borne equally by the Parties.

6.1.4 Intent. The obligations of this Section 6.1 are not intended and shall not be construed to prevent either Party from assessing liquidated damages, issuing an order to cure an alleged Non-Material Breach, or taking Corrective Action. The intent of the Parties is to require compliance with this Section 6.1 before either Party may commence a Legal Action in a court of proper jurisdiction.



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6.2 Remedies. The Parties have the right to seek any and all of the

following remedies, singly or in combination, in the event of Material Breach:

6.2.1 Specific Performance. Each Party shall be entitled to specific performance of each and every obligation of the other Party under this Franchise without any requirement to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that either Party would not have an adequate remedy at law for the commission of a Material Breach hereunder.

6.2.2 Injunction. Each Party shall be entitled to restrain, by injunction, the actual or threatened commission or attempt of a Material Breach and to obtain a judgment or order specifically prohibiting a violation or breach of this Franchise without, in either case, being required to prove or establish that such Party does not have an adequate remedy at law. The Parties hereby waive the requirement of any such proof and acknowledge that the other Party would not have an adequate remedy at law for the commission of a Material Breach hereunder.

6.2.3 Alternative Remedies. Except as otherwise provided herein, 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 either Party to commence an action for equitable or other relief, and/or proceed against the other Party and any guarantor for all direct monetary damages,



1 costs and expenses arising from the Material Breach and to recover all such
2 damages, costs and expenses, including reasonable attorneys' fees.

3 6.2.4 Damages. Except as otherwise provided or limited herein,
4 Franchisee shall not bring a Legal Action for damages, commence an action at
5 law for monetary damages, impose liquidated damages, or seek other equitable
6 relief.

7 Remedies are cumulative; the exercise of one shall not foreclose the
8 exercise of others. No provision of this Franchise shall be deemed to bar either
9 Party from seeking appropriate judicial relief. Neither the existence of other
10 remedies identified in this Franchise nor the exercise thereof shall be deemed to
11 bar or otherwise limit the right of either Party to recover monetary damages, as
12 allowed under applicable law, or to seek and obtain judicial enforcement by
13 means of specific performance, injunctive relief, mandate, or any other remedy at
14 law or in equity. The City specifically does not, by any provision of this Franchise,
15 waive any right, immunity, limitation, or protection otherwise available to the City,
16 its officers, officials, City Council, Boards, commissions, agents, or employees
17 under federal, state, or local law.

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20 6.3 Right to Cure Breach.

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22 6.3.1 Notice. If a Party believes that the other Party is in Non-
23 Material Breach, such Party shall give written notice to the Noticed Party stating
24 with reasonable specificity the nature of the alleged Non-Material Breach. The
25 Noticed Party shall have thirty (30) days from the receipt of such notice to:
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6.3.1.1 Respond to the other Party, contesting that Party's

assertion that a Non-Material Breach has occurred, and request a meeting in accordance with Section 6.1; or

6.3.1.2 Cure the Non-Material Breach; or

6.3.1.3 Notify the other Party that the Noticed Party cannot cure the Non-Material Breach within the thirty (30) day period, because of the nature of the Non-Material Breach. In the event the Non-Material Breach cannot be cured within the thirty (30) day period, the Noticed Party shall promptly take all reasonable steps to cure the Non-Material Breach and notify the other Party in writing and in detail as to the exact steps that will be taken and the projected completion date. In such case, the other Party may set a meeting to determine whether additional time beyond the thirty (30) day period is indeed needed, and whether the Noticed Party's proposed completion schedule and steps are reasonable.

6.3.2 Communication. If the Noticed Party does not cure the alleged Non-Material Breach within the cure period stated above, or denies the alleged Non-Material Breach, the Parties shall meet in accordance with Section 6.1 to attempt to resolve the Dispute.

6.3.3 Time to Cure. When specifying the time period for cure, the Party giving notice shall take into account the nature and scope of the alleged Non-Material Breach, the nature and scope of the work required to cure the Non-Material Breach, whether the Non-Material Breach has created or will allow to continue an unsafe condition, the extent to which delay in implementing a cure



1 will result in adverse financial consequences or other harm to the Party giving
2 notice, and whether delay in implementing a cure will result in a violation of Law
3 or breach of contract.

4 6.3.4 Failure to Cure. If the Noticed Party fails to promptly
5 commence and diligently pursue cure of a Non-Material Breach to completion to
6 the reasonable satisfaction of the Party giving notice and in accordance with the
7 agreed upon time line or the time provided for in the Notice of Breach, then the
8 Non-Material Breach shall become a Material Breach.

9 6.4 Material Breach. In the event of a Material Breach, no opportunity
10 to cure shall be required. If the Material Breach has arisen as a result of a failure
11 to cure a Non-Material Breach, and the Parties have previously mediated the
12 Dispute pursuant to Section 6.1 herein, the Parties are not obligated to further
13 utilize the Dispute resolution process set forth at Section 6.1 before taking Legal
14 Action to remedy the Material Breach created as a result of the failure to cure.
15 Notwithstanding anything to the contrary contained herein, a Transfer resulting
16 from the sale of stock that is not within the control of the Franchisee's
17 management shall not constitute a Material Breach unless the Franchisee has
18 failed to comply with the requirements set forth in TMC 16B.02.050.

19 6.5 Termination/Revocation. In addition to the remedies available to the
20 Parties as provided at Law, in equity or in this Franchise: (a) the City may revoke
21 this Franchise and rescind all rights and privileges associated with this Franchise
22 in accordance with TMC 16B.05.100, and/or (b) the Franchisee may terminate
23 this Franchise upon written notice to the City. In the event that the Franchisee
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1 seeks to terminate this Franchise pursuant to the foregoing, any obligations
2 regarding removal or other appropriate decommissioning of the Franchisee's
3 Facilities shall remain in effect, and such termination shall not obviate any other
4 obligations or liabilities incurred by the Franchisee prior to such termination.

5 6.6 Assessment of Liquidated Damages.

6 6.6.1 Because it may be difficult to ascertain or quantify the harm
7 to the City in the event of a Breach of this Franchise by the Franchisee, the
8 Parties agree to liquidated damages as a reasonable estimation of the actual
9 economic losses resulting from a Breach of those provisions of this Franchise set
10 forth at Section 6.6.7 herein. To the extent that the City elects to assess
11 liquidated damages as provided in this Franchise, such damages shall be the
12 City's sole and exclusive remedy for recovery of compensatory damages resulting
13 from such Breach and shall not exceed a time period of one hundred eighty (180)
14 days. Nothing in this subsection is intended to preclude the City from exercising
15 any other right or remedy with respect to a Breach that continues past the time the
16 City stops assessing liquidated damages for such Breach.

17 6.6.2 Prior to assessing any liquidated damages, the City shall
18 follow the procedures set forth in this Franchise that provide the Franchisee
19 proper notice and a right to cure.
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21 6.6.3 With the exception of failure to comply with a stop work order
22 pursuant to Section 7.5.7 herein, the City shall not assess any liquidated damages
23 if the Franchisee has cured or commenced to and completes the cure under the
24 enforcement provisions of Article 6 of this Franchise. In the event the Franchisee
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1 fails to cure, the City may assess liquidated damages and shall inform the
2 Franchisee in writing of the assessment. The Franchisee shall have thirty (30)
3 days to pay the damages. The City may immediately begin assessing liquidated
4 damages upon issuance of a stop work order in the event that the Franchisee, or
5 its contractors or subcontractors, fails to comply with such stop work order.

6 6.6.4 The first day for which liquidated damages may be assessed,
7 if there has been no cure after the end of the applicable cure period, shall be the
8 day that the Franchisee received the notice of Breach.

9 6.6.5 The Franchisee may appeal (by pursuing Legal Action) any
10 assessment of liquidated damages upon paying the assessment and shall not be
11 required to comply with the requirements of Section 6.1.

12 6.6.6 The liquidated damages amount may be adjusted by the
13 City every five years from the date of execution of this Franchise, to take into
14 account cumulative inflation.

15 6.6.7 Pursuant to the requirements outlined herein, liquidated
16 damages shall not exceed the following amounts: one hundred dollars (\$100.00)
17 per day for failure to comply with the requirements of the following Sections: 4.5
18 (Expiration/Termination), 5.3 (Insurance), 5.4 (Financial Security); 7.5.3 (Work
19 Subject to Inspection); 7.7.2 (Compliance Inspection); five hundred dollars
20 (\$500) per day for the first two days for failure to comply with the requirements of
21 7.5.7 (Stop Work Order), and one thousand dollars (\$1,000) per day for each day
22 thereafter; and one hundred dollars (\$100.00) per day for any Material Breaches
23 or defaults not previously listed.
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1 6.6.8 It is not the City's intention to subject the Franchisee to
2 liquidated or monetary damages, fines, forfeitures, or termination of the
3 Franchise for violations of the Franchise where the violation was a good faith
4 error that resulted in no or minimal negative impact to the City, or where strict
5 performance would result in practical difficulties and hardship to the Franchisee
6 which outweighs the benefit to be derived by the City. The City may not collect
7 both liquidated damages and actual damages for the same violation.

8 The Franchisee shall not be: (1) obligated to pay these liquidated
9 damages; or (2) held to violation if the noncompliance is "beyond the control" of
10 the Franchisee as that term is defined in Section 8.15 herein.

11 6.7 Receivership. At the option of the City, subject to applicable law
12 and lawful orders of courts of jurisdiction, this Franchise may be revoked after the
13 appointment of a receiver or trustee to take over and conduct the business of the
14 Franchisee whether in a receivership, reorganization, bankruptcy or other action
15 or proceeding, unless:

16 6.7.1 The receivership or trusteeship is timely vacated; or

17 6.7.2 The receiver or trustee has timely and fully complied with all
18 the terms and provisions of this Franchise, and has remedied all defaults under
19 the Franchise. Additionally, the receiver or trustee shall have executed an
20 agreement duly approved by the court having jurisdiction, by which the receiver or
21 trustee assumes and agrees to be bound by each and every term, provision, and
22 limitation of this Franchise.

23 SECTION 7. CONDITIONS UPON USE OF PUBLIC RIGHTS-OF-WAY



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7.1 Regulatory Permit. If the Franchisee has submitted an application for a Regulatory Permit to perform work in the Public Right-of-Way, the City shall, to the extent practicable, consider such application contemporaneously with the design review requirements hereunder.

7.1.1 Design Review/Approval. Design Review shall not commence until such time as the above required information has been received by the City and the City has received complete 100% Design Documents for its review and approval.

The Regulatory Permit shall not be approved until such time as the City has completed its review and approval pursuant to this Section 7.1 and its design review and approval pursuant to Section 7.2 herein. The City will take action to approve, approve with conditions, or deny the application with thirty (30) days of receipt of a complete application.

7.2 Submission/Approval of Design Submittal.

7.2.1 Submission. At the time of application for a Regulatory Permit, or in the event that the Franchisee seeks to alter or change the location of the Facilities in a Franchise Area, the Franchisee shall provide the City with 100% Design submittal for review and approval of any Telecommunications System Construction, alteration or change of location within the Franchise Area.

7.2.2 Use of Public Rights-of-Way. Within parameters reasonably related to the City's role in protecting the public health, safety, and welfare and



1 except as may be otherwise preempted by Law, the City may require that
2 Facilities be installed at a particular time, at a specific place or in a particular
3 manner as a condition of access to the Franchise Area and may deny access if
4 the Franchisee is not willing to comply with such requirements; and, may remove,
5 or require removal of, any Facility that is not installed in compliance with the
6 requirements established by the City or which is installed without prior City
7 approval of the time, place, or manner of installation.

8 7.2.3 Approval of Plans. Work may not commence without prior
9 approval by the City of the 100% Design Submittal as submitted by the
10 Franchisee. Such design review by the City is for the purpose of protecting the
11 City's interest in the Public Rights-of-Way. The City may review and approve the
12 Franchisee's 100% Design Documents with respect to:

13 7.2.3.1 Location/Alignment/Depth;
14 7.2.3.2 The manner in which the Facility is to be installed;
15 7.2.3.3 Measures to be taken to preserve safe and free
16 flow of traffic;
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18 7.2.3.4 Structural integrity, functionality, appearance,
19 compatibility with and impact upon roadways, bridges, sidewalks, planting
20 strips, signals, traffic control signs, intersections, or other facilities and
21 structures in the Public Rights-of-Way;
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23 7.2.3.5 Ease of future road maintenance, and appearance
24 of the roadway;
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7.2.3.6 Compliance with applicable Standards and codes;

and

7.2.3.7 Compliance and compatibility with the City's six-year transportation plan, capital improvements plan, and with the regional transportation improvement plans.

7.2.4 The Public Works Director may further review the application and submittals, including 100% Design Submittal, to determine and ensure:

- (1) compatibility of the proposed use with the primary use of the Public Rights-of-Way for transportation;
- (2) that the proposed use will not present a danger to or interfere with public travel upon the Public Rights-of-Way;
- (3) that the Public Rights-of-Way are protected and preserved;
- (4) that there exists sufficient capacity within the Public Rights-of-Way to accommodate the proposed Facilities;
- (5) that the proposed Facilities will not impair present or planned future operation or construction of sanitary sewer, storm sewer, water, electric, cable and municipally-owned, or other telecommunication utility systems;
- (6) that the proposed Facilities will not impair present or planned future improvements within the Franchise Area or present or planned future transportation needs; and
- (7) compliance with the requirements of the Standards/Codes set forth at Section 7.3.

The Public Works Director may include special conditions as are necessary for the protection, preservation, and management of the Public Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any improvements, equipment, and devices in such Public Rights-of-Way, and for providing for the proper restoration of such Public



1 Rights-of-Way and to protect the public and the continuity of pedestrian or
2 vehicular traffic; provided that, the City is prohibited from imposing conditions for
3 the purpose of regulating the business activities or operations of the Franchisee.

4 It is not the purpose of the design review to determine compliance
5 with the City's land use code or development regulations applicable to the
6 development of land.

7 7.3 Compliance with Standards/Codes. Except as may be preempted
8 by federal or state Laws, all Facilities shall conform to and all Work shall be
9 performed in compliance with the following "Standards" as now or may be
10 hereafter revised, updated, amended, or re-adopted:

11 7.3.1 Road and Bridge Standards. The current and any
12 subsequent edition of the Standard Specifications for Road, Bridge and
13 Municipal Construction as prepared by the Washington State Department of
14 Transportation ("WSDOT") and the Washington State Chapter of American
15 Public Works Association ("APWA"); the most current version of the APWA
16 Amendments to Division One, and the most current version of the City of Tacoma
17 Amendments thereto.

18 7.3.2 MUTCD. The Washington State Department of
19 Transportation Manual of Uniform Traffic Control Devices ("MUTCD");

20 7.3.3 Special Conditions. Requirements and standards set forth
21 as special conditions in any permit or other required approval, subject to the
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1 Franchisee's right to challenge the unlawful imposition of any such special
2 condition;

3 7.3.4 City Regulations. Regulations adopted by the City Engineer
4 or Public Works Director establishing standards for placement of Facilities in
5 Public Rights-of-Way, including, by way of example and not limitation, the
6 specific location of Facilities in the Public Rights-of-Way. This shall also include
7 any road design standards that the City shall deem necessary to provide
8 adequate protection to the Public Rights-of-Way, its safe operation, appearance,
9 and maintenance;

10 7.3.5 Other Regulatory Requirements. Applicable requirements of
11 federal or state governmental authorities that have regulatory authority over the
12 placement, construction, or design of the Franchisee's Facilities;

13 7.3.6 Industry Standards. All Facilities shall be durable and
14 Constructed in accordance with good engineering practices and standards
15 promulgated by the government and industry for placement, Construction,
16 design, materials, and operation of the Franchisee's Facilities;

17 7.3.7 Safety Codes and Regulations. The Franchisee's Facilities
18 and Work shall comply with all applicable federal, State and City safety
19 requirements, rules, regulations, Laws and practices. By way of illustration and
20 not limitation, the Franchisee shall comply with the National Electrical Safety Code
21 and the Occupational Safety and Health Administration (OSHA) Standards; and
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23 7.3.8 Building Codes. The Franchisee's Facilities and Work shall
24 comply with all applicable City building codes.
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1 7.4 Conditions Precedent to Work. Except as may be otherwise
2 required by applicable City code, rule, regulation, or Standard, the Franchisee
3 shall comply with the following as a condition precedent to Work:

4 7.4.1 Regulatory Permits Required. Prior to performing any Work
5 in the Public Right-of-Way requiring a Regulatory Permit, the Franchisee shall
6 apply for, and obtain, in advance, such appropriate Regulatory Permits from the
7 City as are required by ordinance or rule. The Franchisee shall pay all generally
8 applicable and lawful fees for the requisite City Regulatory Permits.

9 7.4.2 Compliance with Franchise. The Franchisee shall be in
10 material compliance with the Franchise, including by way of example and not
11 limitation, payment of fees invoiced to the Franchisee for the City's
12 reimbursable costs and expenses related to review and approval of the
13 Regulatory Permit, proof of insurance, and proof of financial security.

14 7.5 Work in the Public Rights-of-Way.

15 7.5.1 Least Interference. Work in the Public Rights-of-Way shall
16 be done in a manner that does not unnecessarily hinder or obstruct the free use of
17 the Public Rights-of-Way or other public property and which causes the least
18 interference with the rights and reasonable convenience of property owners,
19 businesses and residents along the Public Rights-of-Way. The Franchisee's
20 Facilities shall be designed, located, aligned and Constructed so as not to
21 disturb or impair the use or operation of any street improvements, utilities, and
22 related facilities of the City or the City's existing lessees, licensees,
23 Franchisees, franchisees, easement beneficiaries, or lien holders, without prior
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written consent of the City or the Parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date. The Franchisee's Facilities shall be designed, located, aligned, and Constructed in such a manner so as not to interfere with any planned utilities. For purposes of this Section, "planned" shall mean utilities which the City intends to construct in the future, which intent is evidenced by the inclusion of said utility project in the current and approved capital investment program plan, capital facilities plan, comprehensive utility plan, transportation improvement plan, Comprehensive Plan, or other written construction or planning schedule approved by the City.

7.5.2 Prevent Injury/Safety. All Work shall be performed in a manner consistent with high industry standards.

7.5.3 Work Subject to Inspection. The City may observe or inspect the Work, or any portion thereof, at any time to ensure compliance with this Franchise, applicable Law, the applicable approved 100% Design Submittal, the Standards, and to ensure the Work is not being performed in an unsafe or dangerous manner.

7.5.4 Publicizing Work.

7.5.4.1 Notice to Private Property Owners. Except in the case of an Emergency, the Franchisee shall give reasonable advance notice to private property owners and tenants of Work on or adjacent to such private property if the City or the Franchisee reasonably anticipates such Work will materially disturb or disrupt the use of such private property.



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7.5.4.2 Notice to the Public. Except in the case of an

Emergency, the Franchisee shall notify the public prior to commencing any significant planned Construction that the Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

7.5.4.3 Additional Requirements. Work shall be publicized

as the City may direct, from time to time, in accordance with written procedures established by the City Manager and on file with the City Clerk pursuant to TMC Subtitle 16B. The publication of Work may be used to notify the public and operators of other Telecommunications Systems of the impending work, in order to minimize inconvenience and disruption to the public. The cost of publication shall be borne by the Franchisee.

7.5.5 Work of Contractors and Subcontractors. The Franchisee's

contractors and subcontractors performing Work in the Franchise Area shall be licensed and bonded in accordance with the City's and State's applicable regulations and requirements. Any contractors or subcontractors performing Work within the Public Rights-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the work were performed by the Franchisee. The 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



1 and other applicable laws, and shall be jointly and severally liable for all
2 damages and correcting all damage caused by them. It is the Franchisee's
3 responsibility to ensure that contractors, subcontractors or other Persons
4 performing work on the Franchisee's behalf are familiar with the requirements of
5 this Franchise and other applicable laws governing the work performed by
6 them.

7 7.5.6 Emergency Permits. In the event of an emergency, the
8 Franchisee may perform emergency work in the Public Rights-of-Way without
9 first securing a Regulatory Permit for such emergency work, provided that:
10 (1) the Franchisee notifies the City at either (253) 591-5249 (Real Property
11 Services) or (253) 591-5727 (Franchise Management) of the emergency
12 requiring the performance of such Work prior to commencing such Work and
13 provides the type and location of such Work; (2) the Franchisee applies for a
14 Regulatory Permit on the first business day following commencement of such
15 Work; and (3) the Franchisee, at its sole cost and expense, makes its Work
16 performed in the Public Rights-of-Way available for inspection to determine
17 compliance with state and local laws, rules, and regulations applicable to such
18 Work.
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22 7.5.7 Stop Work. On notice from the City that any Work does not
23 comply with the Franchise, the approved 100% Design Documents for the
24 Work, the Standards, or other applicable Law, or is being performed an unsafe
25 or dangerous manner as reasonably determined by the City, the non-compliant
26 Work may immediately be stopped by the City. The stop work order shall be, in



1 writing, given to the Person doing the Work and be posted on the work site, and
2 shall indicate the nature of the alleged violation or unsafe condition, and establish
3 conditions under which work may be resumed. If so ordered, the Franchisee
4 shall cease and shall cause its contractors and subcontractors to cease such
5 activity until the City is satisfied that the Franchisee is in compliance. If an
6 unsafe condition is found to exist, the City, in addition to taking any other action
7 permitted under applicable Law, may order the Franchisee to make the necessary
8 repairs and alterations specified therein forthwith to correct the unsafe condition
9 by a time the City establishes. The City has the right to inspect, repair and correct
10 the unsafe condition if the Franchisee fails to do so following the Franchisee's
11 receipt of written notice from the City, and to reasonably charge the Franchisee,
12 unless the unsafe condition is due to the negligent or intentional acts of the City.

14 7.5.8 Dedication of City Utilities/Public Improvements. Upon
15 substantial completion of Construction of the Facilities and any related
16 restoration of or improvements to or within the Public Rights-of-Way, including,
17 without limitation, curbs, gutters, sidewalks, underlayment, roadway surface,
18 pipe, connectors, catch basins, or any part thereof that will be dedicated to City
19 ownership (collectively "Dedicated Improvements"), and upon satisfaction of
20 other applicable conditions of the City and this Franchise, the Franchisee shall
21 submit a written request to the City for a final inspection and acceptance of
22 dedication of all Dedicated Improvements. The written request shall certify that
23 the Work is substantially complete. The Work will be deemed to be
24 "substantially complete" when:
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7. 5.8.1 Complete record drawings are provided to the City;

7. 5.8.2 The Franchisee has completely and accurately identified within the record drawings the Dedicated Improvements;

7. 5.8.3 The Dedicated Improvements are functioning to the satisfaction of the City, and when appropriate, operationally tested;

7. 5.8.4 The Franchisee has warranted in writing that the Work is completed in conformance with the 100% Design Documents approved by the City; except for punch list items which do not substantially prevent the use of the Dedicated Improvements or any component thereof for the purposes intended;

7. 5.8.5 No other acts are necessary to assign ownership of any and all Dedicated Improvements to the City free and clear of all liens and encumbrances;

7. 5.8.6 The Franchisee has assigned to the City any and all manufacturer warranties of the Dedicated Improvements, if any; and

7. 5.8.7 The Franchisee, or its contractors or subcontractors, warrant the Dedicated Improvements to be free from defects in design, manufacture and construction for a period of one year from the date that such Dedicated Improvements are accepted by the City. This warranty shall not operate to waive, alter or diminish any rights the City may otherwise have under this Franchise, at law, or in equity.



1 Upon receipt of the Franchisee's request for final inspection and
2 dedication, the City shall within twenty (20) business days thereafter arrange for
3 a final inspection. If the City determines that the Work with regard to the
4 Dedicated Improvements is not substantially complete, it shall promptly provide
5 the Franchisee with a written statement indicating in adequate detail in what
6 respects the Franchisee has failed to substantially complete the Work or any
7 component thereof or is otherwise in default and what measures or acts will be
8 necessary, in the opinion of the City, for the Franchisee to take or perform in
9 order to substantially complete such Work. Upon receipt of such detailed
10 statement from the City, the Franchisee shall undertake to complete the Work,
11 cure the alleged default in a manner responsive to the stated reasons for
12 disapproval, or the Franchisee may submit to dispute resolution pursuant to
13 Section 6.1 herein, the issue of whether the City has unreasonably withheld its
14 acceptance.
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17 When the City is satisfied that the Work related to the Dedicated
18 Improvements is substantially complete, it will by ordinance, resolution or other
19 lawful means accept ownership of such Dedicated Improvements and thereafter
20 become responsible for maintenance, repair, and replacement of the same.
21

22 7.6 Alterations. Except as may be shown in the 100% Design
23 Submittal approved by the City or the record drawings, or as may be necessary
24 to respond to an Emergency, the Franchisee and the Franchisee's contractors
25 and subcontractors may not make any material alterations to the Franchise
26 Area or permanently affix anything to the Franchise Area, without the City's



1 prior written consent. Material alteration shall include by way of example and
2 not limitation, a change in the dimension or height of the above ground Facilities
3 or the addition of or change in configuration of an antenna. If the Franchisee
4 desires to either change the location of any Facilities or otherwise materially
5 deviate from the approved design of any of the Facilities, the Franchisee shall
6 submit such change to the City in writing for its approval pursuant to Section 7.2
7 of this Franchise. The Franchisee shall have no right to commence any such
8 alteration change until after the Franchisee has received the City's approval of
9 such change in writing.
10

11 7.7 General Conditions.

12 7.7.1 Right-of-Way Meetings. Subject to receiving advance notice,
13 the Franchisee will make reasonable efforts to attend and participate in meetings
14 of the City regarding Public Rights-of-Way issues that may impact the
15 Telecommunications System.
16

17 7.7.2 Compliance Inspection. The Franchisee's Facilities shall be
18 subject to the City's right of periodic inspection upon at least twenty-four (24)
19 hours notice, or, in case of an Emergency, upon demand without prior notice, to
20 determine compliance with the provisions of this Franchise or other applicable
21 Law over which the City has jurisdiction. The Franchisee shall respond to
22 requests for information regarding its Telecommunications System as the City
23 may from time to time issue to determine compliance with this Franchise,
24 including requests for information regarding the Franchisee's plans for
25 Construction and the purposes for which the Facility is being constructed.
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7.7.3 One Call. If the Franchisee places Facilities underground, the Franchisee shall, at its own expense, continuously be a member of the State of Washington one number locator service under Chapter 19.122 RCW, or an approved equivalent, and shall comply with all such applicable rules and regulations. The Franchisee shall locate and field mark its Facilities for the City at no charge.

7.7.4 Graffiti Removal. Within 48 hours after notice from the City, the Franchisee shall remove any graffiti on any part of its Telecommunications System, including, by way of example and not limitation, equipment cabinets. If the Franchisee fails to do so, the City may remove the graffiti and bill the Franchisee for the cost thereof.

7.7.5 Dangerous Conditions, Authority for the City to Abate. Whenever Construction of Facilities has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining Public Right-of-Way, street, or public place, or endangers the public, any utilities, or City-owned property, the City may reasonably require the Franchisee to take action to protect the Public Right-of-Way, the public, adjacent public places, City-owned property, streets, and/or utilities. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if Emergency conditions exist which require immediate action, the City may, to the extent it may lawfully do so, take such actions as are necessary to protect the Public Right-of-Way, the public, adjacent public



1 places, the City-owned property, streets, and/or utilities, to maintain the lateral
2 support thereof, or actions regarded as necessary safety precautions; and the
3 Franchisee shall be liable to the City for the reasonable costs thereof.

4 7.7.6 No Duty. Notwithstanding the right of the City to inspect
5 the Work, issue a stop work order, and order or make repairs or alterations, the
6 City has no duty or obligation to observe or inspect, or to halt Work on, the
7 applicable Facilities, it being solely the Franchisee's responsibility to ensure that
8 the Facilities are Constructed and operated in strict accordance with this
9 Franchise, the approved 100% Design Submittal, the Standards, and applicable
10 Law. Neither the exercise nor the failure by the City to exercise any right set
11 forth in this Article 7 shall alter the liability allocation set forth in this Franchise.
12

13 7.7.7 Roadside Hazard. All of the Franchisee's Facilities shall be
14 kept by the Franchisee at all times in a safe and hazard-free condition. The
15 Franchisee shall ensure that Facilities within the Public Rights-of-Way do not
16 become or constitute an unacceptable roadside obstacle and do not interfere
17 with or create a hazard to maintenance of and along the Public Rights-of-Way.
18 In such event, or in the event that the City determines that a Facility within the
19 Public Rights-of-Way has become or constitutes an unacceptable roadside
20 obstacle or may interfere with or create a hazard to maintenance of and along
21 the Public Rights-of-Way, the Franchisee shall:
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24 7.7.7.1 If the hazard results from disrepair, repair the
25 Facility to a safe condition;
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7.7.7.2 Relocate the Facility to another place within the Public Rights-of-Way or underground;

7.7.7.3 Convert the Facility to a break-away design;

7.7.7.4 Crash-protect the Facility;

7.7.7.5 Relocate the Facility to another location off the Public Rights-of-Way; or

7.7.7.6 In the event that the Facility is screened from view (i.e., not readily visible from all directions by persons standing at ground level), remove or trim vegetation in and around the Facility.

The Franchisee, at all times, shall employ the standard of care attendant to the risks involved and shall install and maintain in use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public or to the Franchisee's agents or employees. The Franchisee, at its own expense, shall repair, renew, change, and improve its Facilities from time to time as may be necessary to accomplish this purpose. The Franchisee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such Work in or affecting such Public Rights-of-Way or property. All excavations made by the Franchisee in the Public Rights-of-Way shall be properly safeguarded for the prevention of accidents.

7.7.8 Verification of Alignment/Depth. Upon the reasonable request and prior written notice, in non-Emergency situations at least thirty (30)



1 days notice by the City and in order to facilitate the location, alignment, and
2 design of Public Improvements, the Franchisee agrees to locate, and if
3 reasonably determined necessary by the City, to excavate and expose portions
4 of its Facilities for inspection so that the location of same may be taken into
5 account in the improvement design, PROVIDED that, the Franchisee shall not
6 be required to excavate and expose its Facilities unless the Franchisee's record
7 drawings and maps of its Facilities submitted pursuant to Section 7.11 of this
8 Franchise are reasonably determined by the City to be inadequate for purposes
9 of this paragraph.
10

11 7.8 Facility Relocation at Request of the City.

12 7.8.1 Public Project. The City may require the Franchisee to alter,
13 adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way
14 when reasonably necessary for construction, alteration, repair, or improvement of
15 any portion of the Public Rights-of-Way for purposes of public welfare, health, or
16 safety ("Public Improvements"). Such Public Improvements include, by way of
17 example but not limitation, Public Rights-of-Way construction; Public
18 Rights-of-Way repair (including resurfacing or widening); change of Public
19 Rights-of-Way grade; construction, installation or repair of sewers, drains, water
20 pipes, power lines, signal lines, communication lines, or any other type of
21 government-owned communications, utility or public transportation systems,
22 public work, public facility, or improvement of any government-owned utility;
23 Public Rights-of-Way vacation; and the Construction of any Public Improvement
24 or structure by any governmental agency acting in a governmental capacity. All
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1 relocations of Facilities under this Franchise shall be accomplished in compliance
2 with TMC 10.22.180 or any successor provision thereto.

3 7.8.2 Alternatives. If the City requires the Franchisee to relocate
4 its Facilities located within the Public Rights-of-Way, the City shall make a
5 reasonable effort to provide the Franchisee with an alternate location within the
6 Public Rights-of-Way. The Franchisee may, after receipt of written notice
7 requesting a relocation of its Facilities, submit to the City written alternatives to
8 such relocation. The City shall evaluate such alternatives and advise the
9 Franchisee in writing if one or more of the alternatives are suitable to
10 accommodate the work which would otherwise necessitate relocation of the
11 Facilities. If so requested by the City, the Franchisee shall submit additional
12 information to assist the City in making such evaluation. The City shall give each
13 alternative proposed by the Franchisee full and fair consideration, within a
14 reasonable time, so as to allow for the relocation work to be performed in a timely
15 manner. In the event the City ultimately determines, in its sole discretion, that
16 there is no other reasonable alternative, the Franchisee shall relocate its
17 Facilities as otherwise provided in this Section. In the event that the City
18 reasonably determines that it does not have available resources to evaluate the
19 Franchisee's proposal, the City shall not be obligated to further consider such
20 proposal unless and until the Franchisee funds the additional costs to the City to
21 complete its evaluation.
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25 7.8.3 Notice. The City shall notify the Franchisee as soon as
26 practicable of the need for relocation and shall specify the date by which



1 relocation shall be completed. Except in case of Emergency, such notice shall
2 be no less than one hundred and eighty (180) days and shall include
3 engineering/construction plans to the extent such are available at the time. In
4 calculating the date that relocation must be completed, the City shall consult
5 with the Franchisee and consider the extent of Facilities to be relocated, the
6 service requirements, and the construction sequence for the relocation, within
7 the overall project construction sequence and constraints, to safely complete
8 the relocation. The Franchisee shall complete the relocation by the date
9 specified, unless the City, or a reviewing court, establishes a later date for
10 completion, after a showing by the Franchisee that the relocation cannot be
11 completed by the date specified using best efforts and meeting safety and
12 service requirements.
13

14 Notice required under this provision shall be sent to:

15 Sprint Communications Company L.P.
16 Attn: Real Estate Department, ROW Manager
17 6220 Sprint Parkway, MS: KSOPHD0101-Z2040
18 Overland Park, KS 66251

19
20 7.8.4 Coordination of Work. The Franchisee acknowledges and
21 understands that any delay by the Franchisee in performing the work to alter,
22 adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way
23 may delay, hinder, or interfere with the work performed by the City and its
24 contractors and subcontractors in furtherance of construction, alteration, repair,
25 or improvement of the Public Rights-of-Way, and result in damage to the City,
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1 including but not limited to, damages from delay. The Franchisee shall
2 cooperate with the City and its contractors and subcontractors to coordinate
3 such Franchisee Work to accommodate the Public Improvement project and
4 project schedules to avoid delay, hindrance of, or interference with such project.

5 7.8.5 Failure to Comply. Should the Franchisee fail to alter, adjust,
6 protect in place or relocate any Facilities ordered by the City to be altered,
7 adjusted, protected in place, or relocated, within the time prescribed by the City,
8 given the nature and extent of the Work, or if it is not done to the City's
9 reasonable satisfaction, the City may, to the extent the City may lawfully do so,
10 cause such work to be done and bill the reasonable cost of the work to the
11 Franchisee, including all reasonable costs and expenses incurred by the City due
12 to the Franchisee's delay. In such event, the City shall not be liable for any
13 damage to any portion of the Franchisee's Telecommunications System. In
14 addition to any other indemnity set forth in this Franchise, the Franchisee will
15 indemnify, hold harmless, and pay the costs of defending the City from and
16 against any and all claims, suits, actions, damages, or liabilities for delays on
17 Public Improvement construction projects caused by, or arising out of, the failure
18 of the Franchisee to adjust, modify, protect in place, or relocate its Facilities in a
19 timely manner; provided that, the Franchisee shall not be responsible for
20 damages due to delays caused by the City. The City's right to perform such work
21 is not intended to be and shall not be construed as an obligation.
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25 7.8.6 Assignment of Rights. In addition to any other rights of
26 assignment the City may have, the City may from time to time assign or transfer to



its contractors or subcontractors its rights under Sections 7.8 or 7.10 of this Franchise to require the Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way. The Franchisee acknowledges and consents to such assignment(s)/transfer(s) and agrees that it is bound by all lawful orders issued by such assignee(s) of the City under color of authority of such assignment(s)/transfer(s) as though such orders had been issued by the City under the terms and conditions of this Franchise. Such assignment/transfer is an assignment/transfer of the City's contract rights under this Franchise and shall not in any way be interpreted or construed as an assignment, transfer, delegation, or relinquishment of the City's rights under its police powers to require the Franchisee to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way.

7.8.7 Reimbursement for Costs. Notwithstanding the cost allocation provisions set forth in this Franchise, the Franchisee does not waive its right(s) to and shall be entitled to seek reimbursement of its relocation costs as may be otherwise specifically set forth and authorized by Law.

7.9 Movement of Facilities for Others.

7.9.1 Private Benefit. If any alteration, adjustment, temporary relocation, or protection in place of the Telecommunications System is required solely to accommodate the Construction of facilities or equipment that are not part of a Public Improvement project, the Franchisee shall, after at least ninety (90) days advance written notice, take action to effect the necessary changes requested by the responsible entity; provided that: (a) the Party requesting the



1 same pays for the Franchisee's reasonable direct and indirect costs associated
2 with the requested work; (b) the alteration, adjustment, relocation, or protection in
3 place is reasonably necessary to accommodate such work; (c) the Person
4 requesting the alteration, adjustment, relocation, or protection in place considers
5 alternatives in the same manner as provided at Section 7.8.2; and (d) such
6 alteration, adjustment, or relocation is not requested for the purpose of obtaining a
7 competitive advantage over the Franchisee.

8 7.9.2 Temporary Changes for Other Franchisees. At the request
9 of any Person holding a valid franchise, and upon reasonable advance notice, the
10 Franchisee shall temporarily raise, lower or remove its Facilities as necessary to
11 accommodate the moving of a building, vehicle, equipment or other item. The
12 expense of such temporary changes must be paid by the franchise holder. The
13 Franchisee shall be given not less than fifteen (15) days' advance notice to
14 arrange for such temporary Facility changes.
15

16 7.10 Movement of Facilities During Emergencies.

17 7.10.1 Immediate Threat. In the event of an unforeseen event,
18 condition, or circumstance that creates an immediate threat to the public safety,
19 health, or welfare, the City shall have the right to require the Franchisee to shut
20 down, relocate, remove, replace, modify, or disconnect the Franchisee's Facilities
21 located in the Public Rights-of-Way at the expense of the Franchisee without
22 regard to the cause or causes of the immediate threat except as provided herein.
23

24 7.10.2 Emergency. In the event of an Emergency, or where a
25 Facility creates or is contributing to an imminent danger to health, safety, or
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1 property, the City retains the right and privilege to protect, support, temporarily
2 disconnect, remove, or relocate any or all parts of the Telecommunications
3 System located within the Public Rights-of-Way, as the City may determine to
4 be necessary, appropriate or useful in response to any public health or safety
5 Emergency and charge the Franchisee for costs incurred.

6 7.10.3 Notice. During Emergencies the City shall endeavor to, as
7 soon as practicable, provide notice to the Franchisee of such Emergency at a
8 designated Emergency response contact number, to allow the Franchisee the
9 opportunity to respond and rectify the problem without disrupting utility service. If
10 after providing notice, there is no prompt response, the City may protect, support,
11 temporarily disconnect, remove, or relocate any or all parts of the
12 Telecommunications System located within the Public Rights-of-Way which
13 constitutes, contributes to or interferes with resolving the Emergency.
14

15 7.10.4 Limitation on Liability. The City shall not be liable for any
16 direct, indirect, or any other such damages suffered by any person or entity of
17 any type as a direct or indirect result of the City's actions under this Section,
18 except to the extent that the Emergency was caused by the City's negligence or
19 intentional misconduct.
20

21 7.11 Record of Installations

22 7.11.1 Map/Record Drawing of Telecommunications System.

23 Upon request by the City, the Franchisee shall provide the City with the most
24 accurate and available maps and record drawings in a form and content
25 prescribed by the City, reflecting the horizontal and vertical location and
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1 configuration of its Telecommunications System within the Public Rights-of-Way
2 and upon City property in a format acceptable to the City. The Franchisee shall
3 provide the City with updated record drawings and maps upon request. As to
4 any such record drawings and maps so provided, the Franchisee does not
5 warrant the accuracy thereof and to the extent the location of the
6 Telecommunications System is shown; such Telecommunications System is
7 shown in its approximate location.

8 7.11.2 Planned Improvements. Upon written request of the City,
9 the Franchisee shall provide the City with the most recent update available of
10 any planned improvements to its Telecommunications System, to the extent
11 such plans do not contain confidential or proprietary information or such
12 information can be redacted; provided, however, any such plan submitted shall
13 be for informational purposes only and shall not obligate the Franchisee to
14 undertake any specific improvements, nor shall such plan be construed as a
15 proposal to undertake any specific improvements.

16 7.11.3 Maps/Record Drawings of Improvements. After Construction
17 involving the locating or relocating of Facilities, the Franchisee shall provide the
18 City with accurate copies of all record drawings and maps showing the horizontal
19 and vertical location and configuration of all located or relocated Facilities within
20 the Public Rights-of-Way. These record drawings and maps shall be provided at
21 no cost to the City, and shall include hard copies and digital copies in a format
22 specified by the City. As to any such record drawings and maps so provided, The
23 Franchisee does not warrant the accuracy thereof, and to the extent the location
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of the Telecommunications System is shown, such Telecommunications System
1 is shown in its approximate location.

2 7.12 Restoration of Public Rights-of-Way, Public and Private Property

3 7.12.1 Restoration after Construction. The Franchisee shall, after
4 completion of Construction of any part of its Telecommunications System, leave
5 the Public Rights-of-Way and other property disturbed thereby, in as good or
6 better condition in all respects as it was in before the commencement of such
7 Construction. The Franchisee agrees to promptly complete restoration work to
8 the reasonable satisfaction of the City in compliance with the City's Right-of-
9 Way Restoration Policy.
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12 7.12.2 Notice. If the Franchisee's Work causes unplanned,
13 unapproved, or unanticipated disturbance of or alteration or damage to Public
14 Rights-of-Way or other public or private property, the Franchisee shall promptly
15 notify the property owner within twenty-four (24) hours.
16

17 7.12.3 Duty to Restore. If the Franchisee's Work causes
18 unplanned, unapproved, or unanticipated disturbance of or alteration or damage
19 to the Public Rights-of-Way or other public property, it shall promptly remove any
20 obstructions therefrom and restore such Public Rights-of-Way to the standards
21 set forth in the City's Right-of-Way Restoration Policy and public property to the
22 reasonable satisfaction of the City to as good or better a condition as existed
23 before the Work was undertaken, unless otherwise directed by the City. The
24 Franchisee shall complete the restoration work within forty-eight (48) hours or as
25 authorized by the City's Public Works Director.
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7.12.4 Temporary Restoration. If weather or other conditions do

not allow the complete restoration required by this Section, the Franchisee shall temporarily restore the affected Public Right-of-Way or public property. The Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

7.12.5 Survey Monuments. All survey monuments which are

disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state, and local standards and specifications.

7.12.6 Approval. The Public Works Director shall be responsible

for observation and final approval of the condition of the Public Rights-of-Way and City property following any restoration activities therein. The Franchisee is responsible for all testing and monitoring of restoration activities.

7.12.7 Warranty. The Franchisee shall warrant any restoration

work performed by the Franchisee in the Public Rights-of-Way or on other public property for one (1) year, unless a longer period is required by the Municipal Code or any generally applicable ordinance or resolution of the City. If restoration is not satisfactorily and timely performed by the Franchisee, the City may, after prior notice to the Franchisee, or without notice where the disturbance or damage may create a risk to public health or safety, cause the repairs to be made and recover the reasonable cost of those repairs from the Franchisee. Within thirty (30) days of



1 receipt of an itemized list of those costs, including the costs of labor, materials,
2 and equipment, the Franchisee shall pay the City.

3 7.12.8 Restoration of Private Property. When the Franchisee
4 does any Work in the Public Right-of-Way that affects, disturbs, alters, or
5 damages any adjacent private property, it shall, at its own expense, be
6 responsible for restoring such private property to the reasonable satisfaction of
7 the private property owner.

8 7.13 Approvals. Nothing in this Franchise shall be deemed to
9 impose any duty or obligation upon the City to determine the adequacy or
10 sufficiency of the Franchisee's Design Documents or to ascertain whether the
11 Franchisee's proposed or actual Construction is adequate or sufficient or in
12 conformance with the 100% Design Submittal reviewed and approved by the
13 City. No approval given, inspection made, review completed, or supervision
14 performed by the City pursuant to or under authority of this Franchise, shall
15 constitute or be construed as a representation or warranty express or implied by
16 the City that such item reviewed, approved, inspected, or supervised complies
17 with applicable Laws or this Franchise or meets any particular Standard, code,
18 or requirement, or is in conformance with the approved 100% Design Submittal,
19 and no liability shall attach with respect thereto. The City approvals and
20 inspections, as provided herein, are for the sole purpose of protecting the City's
21 rights as the owner and/or manager of the Public Rights-of-Way and shall not
22 constitute any representation or warranty, express or implied, as to the
23 adequacy of the design or Construction of the Facilities or Telecommunications
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System, suitability of the Franchise Area for Construction, or any obligation on the part of the City to insure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Telecommunications System.

7.14 Abandonment of Facilities. The Franchisee may abandon in place any Facilities in the Public Rights-of-Way upon written notice to the City and in accordance with TMC 10.22.190.

SECTION 8 MISCELLANEOUS

8.1 Headings. Titles to articles and sections of this Franchise are not a part of this Franchise and shall have no effect upon the construction or interpretation of any part hereof.

8.2 Entire Agreement. This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchise shall not be altered, modified, or added to except in writing signed by the City and the Franchisee and approved by the City in the same manner as the original Franchise was approved, except as provided for in Section 4.3.



1 8.3 Incorporation of Exhibits. All exhibits attached hereto at the time of
2 execution of this Franchise, or in the future as contemplated herein, are hereby
3 incorporated by reference as though fully set forth herein.

4 8.4 Calculation of Time. All periods of time referred to herein shall
5 include Saturdays, Sundays, and legal holidays in the State of Washington,
6 except that if the last day of any period falls on any Saturday, Sunday, or legal
7 holiday in the State of Washington, the period shall be extended to include the
8 next day which is not a Saturday, Sunday, or legal holiday in the State of
9 Washington; provided that, the Effective Date shall be determined as provided
10 at Section 4.3 of this Franchise.
11

12 8.5 Time Limits Strictly Construed. Whenever this Franchise sets forth a
13 time for any act to be performed by the Franchisee, such time shall be deemed to
14 be of the essence, and any failure of the Franchisee to perform within the allotted
15 time may be considered a Breach of this Franchise.
16

17 8.6 No Joint Venture. It is not intended by this Franchise to, and nothing
18 contained in this Franchise shall, create any partnership, joint venture, or
19 principal-agent relationship or other arrangement between the Franchisee and
20 the City. Neither Party is authorized to, nor shall either Party act toward third
21 Persons or the public in any manner which would indicate any such relationship
22 with the other. The Parties intend that the rights, obligations, and covenants in
23 this Franchise and the collateral instruments shall be exclusively enforceable by
24 the City and the Franchisee, their successors, and assigns. No term or
25 provision of this Franchise is intended to be, or shall be, for the benefit of any
26



1 Person not a Party hereto, and no such Person shall have any right or cause of
2 action hereunder, except as may be otherwise provided herein. Further, the
3 Franchisee is not granted any express or implied right or authority to assume or
4 create any obligation or responsibility on behalf of or in the name of the City.
5 Nothing in this Section 8.6 shall be construed to prevent an assignment as
6 provided for at Section 7.8.6 of this Franchise.

7 8.7 Approval Authority. Except as may be otherwise provided by Law or
8 herein, any approval or authorization required to be given by the City, shall be
9 given by the City Manager (or his/her successor), or by the City Manager's
10 designee.
11

12 8.8 Binding Effect upon Successors and Assigns. All of the provisions,
13 conditions, and requirements contained in this Franchise shall further be binding
14 upon the heirs, successors, executors, administrators, receivers, trustees, legal
15 representatives, and assigns of the Franchisee; and all privileges, as well as all
16 obligations and liabilities of the Franchisee shall inure to its heirs, successors,
17 and assigns equally as if they were specifically mentioned wherever the
18 Franchisee is named herein.
19

20 8.9 Waiver. No failure by either Party to insist upon the performance of
21 any of the terms of this Franchise or to exercise any right or remedy
22 consequent upon a Breach thereof, shall constitute a waiver of any such Breach
23 or of any of the terms of this Franchise. The terms of this Franchise are to be
24 kept, observed, or performed by both Parties, and no breach thereof shall be
25 waived, altered, or modified except by a written instrument executed by the
26



1 injured Party. No waiver of any Breach shall affect or alter this Franchise, but
2 each of the terms of this Franchise shall continue in full force and effect with
3 respect to any other then existing or subsequent Breach thereof. No waiver of
4 any default of the defaulting Party hereunder shall be implied from any omission
5 by the injured Party to take any action on account of such default if such default
6 persists or is repeated, and no express waiver shall affect any default other
7 than the default specified in the express waiver and then only for the time and
8 to the extent therein stated. One or more waivers by the injured Party shall not
9 be construed as a waiver of a subsequent Breach of the same covenant, term,
10 or conditions.
11

12 8.10 Severability. If any word, article, section, subsection, paragraph,
13 provision, condition, clause, sentence, or its application to any person or
14 circumstance (collectively referred to as "Term"), shall be held to be illegal,
15 invalid, or unconstitutional for any reason by any court or agency of competent
16 jurisdiction, such Term declared illegal, invalid, or unconstitutional shall be
17 severable and the remaining Terms of the Franchise shall remain in full force
18 and effect unless to do so would be inequitable or would result in a material
19 change in the rights and obligations of the Parties hereunder. In the event that
20 such Term shall be held or otherwise mutually agreed to by the City and the
21 Franchisee to be illegal, invalid, or unconstitutional, the Parties shall reform the
22 Franchise pursuant to Section 3.5 herein.
23
24

25 8.11 Signs. No signs or advertising shall be permitted in the Franchise
26 Area except as may be required by Law or as may be allowed by the City for the



1 protection of the public health, safety, and welfare, to the extent it has authority to
2 do so.

3 8.12 Discriminatory Practices Prohibited. Throughout the term of this
4 Franchise, the Franchisee shall not unlawfully discriminate in hiring, in contracting,
5 or in the provision of Services and shall fully comply with all equal employment
6 and nondiscrimination provisions of applicable Law.

7 8.13 Notice. Any notice required or permitted to be given hereunder
8 shall be in writing, unless otherwise expressly permitted or required, and shall
9 be deemed effective either (i) upon hand delivery to the person then holding the
10 office shown on the attention line of the address below, or, if such office is
11 vacant or no longer exists, to a person holding a comparable office, or (ii) when
12 delivered by a nationally recognized overnight mail delivery service, to the Party
13 and at the address specified below, or (iii) on the third business day following
14 its deposit with the United States Postal Service, first class and certified or
15 registered mail, return receipt requested, postage prepaid, properly sealed, and
16 addressed as follows:
17
18

19 **The Franchisee's address:** Sprint Communications Company L.P.
20 Attn: Real Estate Department, ROW Manager
21 Physical
22 6220 Sprint Pkwy
23 MS: KSOPHD0101-Z2040
24 Overland Park, KS 66251

25 **The City's Address:** City of Tacoma - Jeff Lueders
26 Attn: Franchise Services Manager
1224 MLK JR WAY
Tacoma, WA. 98402



1 disasters, floods, tornadoes, earthquakes, unusually severe weather conditions,
2 employee strikes and unforeseen labor conditions, The Franchisee shall not be
3 deemed in Breach of provisions of this Franchise.

4 If the Franchisee believes that circumstances beyond its control or by
5 reason of a force majeure occurrence have prevented or delayed its compliance
6 with the provisions of this Franchise, the Franchisee shall provide documentation
7 as reasonably required by the City to substantiate the Franchisee's claim. The
8 Franchisee shall have a reasonable time, under the circumstances, to perform the
9 affected obligation under this Franchise or to procure a substitute for such
10 obligation which is satisfactory to the City; provided that, the Franchisee shall
11 perform to the maximum extent it is able to perform and shall take reasonable
12 steps within its power to correct such cause(s) in as expeditious a manner as
13 possible, provided that the Franchisee takes immediate and diligent steps to
14 bring itself back into compliance and to comply as soon as possible under the
15 circumstances with the Franchise without unduly endangering the health,
16 safety, and integrity of the Franchisee's employees or property, or the health,
17 safety, and integrity of the public, Public Rights-of-Way, public property, or
18 private property.

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22 8.16 Attorneys' Fees. In the event a suit, action, arbitration, or other
23 proceeding of any nature whatsoever, whether in contract or in tort or both, is
24 instituted to enforce any word, article, section, subsection, paragraph, provision,
25 condition, clause, or sentence of this Franchise or its application to either Party
26 or circumstance, the prevailing Party shall be entitled to recover from the losing



1 Party its reasonable attorneys', paralegals', accountants', and other experts'
2 fees and all other fees, costs, and expenses actually incurred and reasonably
3 necessary in connection therewith, as allowed by Washington law and as
4 determined by the judge or arbitrator at trial or arbitration, as the case may be,
5 or on any appeal or review, in addition to all other amounts provided by Law.
6 This provision shall cover costs and reasonable attorneys' fees related to or
7 with respect to proceedings in Federal Bankruptcy Courts, including those
8 related to issues unique to bankruptcy law. This provision shall not apply to
9 dispute resolution proceedings under section 6.1 of this Franchise and shall not
10 apply to the extent that the suit, action, arbitration, or other proceeding is brought
11 to interpret any term, condition, provision, section, article, or clause of this
12 Franchise.
13

14 8.17 Venue/Choice of Law. This Franchise shall be governed and
15 construed exclusively in accordance with the laws of the State of Washington
16 without recourse to any principles of Conflicts of Laws. Any action brought
17 relative to enforcement of this Franchise, or seeking a declaration of rights,
18 duties, or obligations herein, shall be initiated in the Superior Court of Pierce
19 County, and shall not be removed to a federal court, except as to claims over
20 which such Superior Court has no jurisdiction. Removal to federal court shall be
21 to the Federal Court of the Western District of Washington.
22

23 8.18 Publication. This ordinance, or a summary thereof, shall be
24 published in the official newspaper of the City, the expense of which shall be
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borne by the Franchisee, and shall take effect and be in full force in accordance
1 with Section 4.3 herein.

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3 Passed _____

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5 _____
Mayor

6 Attest:

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8 _____
City Clerk

9
10 Approved as to form:

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13 _____
City Attorney

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EXHIBIT "A"

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(Form of Transfer Agreement)

THIS TRANSFER AGREEMENT ("Agreement") is made this ____ day of _____, 20____, by and between:

1. PARTIES.

1.1 City of Tacoma, a municipal corporation of the state of Washington ("City").

1.2 _____ ("Franchisee").

1.3 _____ ("Transferee").

RECITALS

WHEREAS the City has issued a single Franchise (the "Franchise") to the Franchisee, which was authorized on the ____ day of _____, 20____, pursuant to Ordinance No. _____, and

WHEREAS the Franchisee has reached an agreement with Transferee on a *(describe transaction, example: conveyance of benefited property)*

_____ with the Transferee, to *(example: acquire from Franchisee its facilities and equipment located in the Public Rights-of-Way)*

_____, and

WHEREAS the Franchisee and the Transferee have requested that the City approve a transfer of the Franchise from the Franchisee to the Transferee, and

WHEREAS, as a result of the transfer of the Franchise, the Transferee will assume all rights, duties, and obligations that the Franchisee has under the Franchise, will be responsible for full compliance with the Franchise, will meet or exceed all applicable and lawful federal, state, and local requirements, and



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WHEREAS, relying on the representations made by the Transferee and the Franchisee, the City, on the ___ day of _____, 20___, has, pursuant to Resolution No. _____ and the Franchise, approved the transfer upon the terms and conditions as stated herein;

NOW, THEREFORE, in consideration of the City's approval of the transfer, subject to the terms and conditions of this Agreement, THE PARTIES DO HEREBY AGREE as follows:

2. TRANSFER. Transfer of the Franchise shall be effective upon the following conditions precedent:

2.1 Receipt by the City of the fully executed acceptance of franchise and performance guarantee attached hereto as Exhibit A-1 together with all required certificates of insurance, security fund and performance bond.

2.2 Payment to the City of the Transfer fees.

2.3 The date of closing of the sale/conveyance of the property benefited by this franchise and/or the Facilities located in the franchise area or upon a date as mutually agreed to by the City, the Franchisee and the Transferee as follows: _____

3. ACCEPTANCE OF FRANCHISE OBLIGATIONS.

3.1 The Franchisee and the Transferee hereby accept, acknowledge, and agree that neither the proposed transaction between the Franchisee and the Transferee nor the City's approval of this agreement shall diminish or affect the existing and continuing commitments, duties, or obligations, present, continuing, and future, of the Franchisee and the Transferee embodied in the Franchise.

3.2 The Transferee and the Franchisee agree that neither the transfer nor the City's approval of this Agreement and the resulting transfer shall in any respect relieve the Franchisee, or any of its successors in interest, of any obligation or liability arising from acts or omissions occurring prior to the transfer of the franchise, whether known or unknown, or the consequences thereof.

3.3 The transfer is not intended and shall not be construed to authorize the Franchisee to take any position or exercise any right that could not have been exercised prior to the transfer.



1 3.4 Notwithstanding anything to the contrary herein, the Transferee
2 shall not be responsible for any of the Franchisee's financial liabilities and
obligations under the franchise or pursuant to the City code, rules, and
regulations that accrued before the transfer of the Franchise.

3 3.5 The City waives none of its rights with respect to the Franchisee's
4 or the Transferee's compliance with the terms, conditions, requirements, and
5 obligations set forth in the Franchise. The City's approval of this agreement
6 shall in no way be deemed a representation by the City that the Franchisee is in
compliance with all of the Franchisee's obligations under the Franchise.

7 3.6 The Franchisee and the Transferee acknowledge and agree that
8 the City's approval and acceptance of this agreement and the resulting transfer
9 is made in reliance upon the representations, documents, and information
provided by the Franchisee and the Transferee in connection with the request
for transfer.

10 **4. MISCELLANEOUS PROVISIONS.**

11 4.1 Conditions Precedent. The Agreement shall be effective and
12 binding upon the signatories once it has been signed by all signatories;
13 provided that, within 30 days of execution of the Agreement by all of the
14 signatories, the Transferee has provided to the City the following: (1) all fees
15 required for this transfer; (2) its acceptance of the franchise in substantially the
16 form of the document attached hereto as Exhibit A-1; (3) its insurance certificate
in conformance with the requirements of the Franchise; (4) a performance bond
or cash deposit in conformance with the requirements of the Franchise.

17 4.2 Entire Agreement. The Agreement constitutes the entire
18 agreement of the Parties with respect to the matters addressed herein. No
19 statements, promises, or inducements inconsistent with the Agreement made
by any Party shall be valid or binding, unless in writing and executed by all
Parties.

20 4.3 Binding Acceptance. The Agreement shall bind and benefit the
21 Parties hereto and their respective heirs, beneficiaries, administrators,
22 executors, receivers, trustees, successors, and assigns, and the promises and
23 obligations herein shall survive the expiration date hereof. Any purported
transfer of the Agreement is void without the express written consent of the
signatories.

24 4.4 Severability. In the event that the Agreement shall, to any extent,
25 be held to be invalid, preempted, or unenforceable, the remainder hereof shall
26 be valid in all other respects and continue to be effective.



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4.5 Defined Terms. Terms not defined in this Agreement shall have the same meaning as given in the Franchise.

4.6 Governing Law. The Agreement shall be governed in all respects by the laws of the state of Washington.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the day and year first written above.

CITY

FRANCHISEE

By: City Manager/Administrator

By: _____
Title: _____

TRANSFeree

By: _____
Title: _____



TRANSFER EXHIBIT A-1

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Acceptance of Franchise and Performance Guarantee

Franchise issued pursuant to Ordinance No. _____ and accepted

_____,

20____; Transfer authorized pursuant to Resolution No. _____, effective

_____,

20____.

I, _____, am the
_____, and (am the authorized
representative to) accept the above-referenced Franchise on behalf of
_____. I certify that this Franchise and all
terms and conditions thereof are accepted by _____,
without qualification or reservation and that _____
unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____



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STATE OF _____ |
CITY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of _____, a _____ corporation,) to be the free and voluntary act of such corporation/individual for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name
Notary public in and for the state of _____, residing at _____
My appointment expires : _____



EXHIBIT "B"

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(Acceptance of Franchise)

Franchise issued pursuant to Ordinance No. _____.

I, _____, am the
_____, and (am the authorized
representative to) accept the above-referenced Franchise on behalf of Sprint
Communications Company, LP I certify that this Franchise and all terms and
conditions thereof are accepted by Sprint Communications Company, LP,
without qualification or reservation and that Sprint Communications Company,
LP unconditionally guarantee(s) performance of all such terms and conditions.

DATED this _____ day of _____, 20____.

By _____
Its _____

Tax Payer ID# _____



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STATE OF _____ |
CITY OF _____ | ss.

I certify that I know or have satisfactory evidence that _____ is the person who appeared before me, and said person acknowledged that said person signed this instrument, on oath stated that said person was authorized to execute the instrument and acknowledged it (as the _____ of Sprint Communications Company, LP (a limited partnership,) to be the free and voluntary act of such partnership for the uses and purposes mentioned in the instrument.

Dated this _____ day of _____, _____.

(Signature of Notary)

Print Name

Notary public in and for the state of _____, residing at _____

My appointment expires: _____



EXHIBIT "C"

1 (*Environmental Indemnity*)

2 1. Duty to Indemnify/Release/Defend. The Franchisee assumes the risk that
3 Hazardous Substances or other adverse matters may affect the Franchise Area
4 that were not revealed by Franchisee's inspection and indemnifies, holds
5 harmless, shall defend, and hereby waives, releases, and discharges forever
6 the City and the City's elected and appointed officers, employees, trustees, and
7 agents (collectively, "**Indemnitees**") from any and all present or future claims or
8 demands, and any and all damages, losses, injuries, liabilities, causes of
9 actions (including, but not limited to, causes of action in tort), costs, and
10 expenses (including, but not limited to fines, penalties, and judgments, and
11 attorneys' fees) of any and every kind or character, known or unknown, which
12 the Franchisee might have asserted or alleged against Indemnitees arising from
13 or in any way related to the Condition of the Franchise Area or alleged
14 presence, use, storage, generation, manufacture, transport, release, leak, spill,
15 disposal or other handling of any Hazardous Substances in, on or under the
16 Franchise Area (the "**Franchisee Losses**"), except as may be limited below.
17 The Franchisee Losses shall include but not be limited to (a) the cost of any
18 investigation, removal, or Remedial Action (defined below) that is required by
19 any Environmental Law, that is required by judicial order or by order of or
20 agreement with any governmental authority, or that is necessary or otherwise is
21 reasonable under the circumstances, (b) losses for injury or death of any
22 person, and (c) losses arising under any Environmental Law enacted after the
23 date hereof. Except as may be limited below, the Franchisee Losses
24 specifically include losses sustained by the City to remove, close, Remediate,
25 reimburse or take other actions requested or required by any governmental
26 agency concerning any Hazardous Substances on the Franchise Area.
Notwithstanding the above, the Franchisee Losses waived, released, and
discharged hereunder by the Franchisee shall be limited to the incremental
cost, over and above the City's cost to investigate, mitigate, and remediate a
pre-existing environmental condition within the Franchise Area, as it existed
immediately prior to the Work that, and only to the extent which it in fact,
exacerbated those costs and shall not include losses as a result of releases or
contamination caused by the acts of the City after the Effective Date.

22 2. Discovery Within Franchise Area. In the event that the Work of the
23 Franchisee in, on, and upon the Franchise Area results in the discovery of the
24 presence of Hazardous Substances ("**Discovered Matters**") in, on, or upon the
25 areas excavated or otherwise opened or exposed by Franchisee within the
26 Franchise Area (the "**Excavated Areas**"), the Franchisee shall (a) immediately
notify the City (and, in addition to the City, may notify the applicable agency or
agencies with jurisdiction to address Hazardous Substances in, on, or upon the
Franchise Area (each an "**Environmental Authority**"), and (b) take whatever



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other independent reporting action, to an Environmental Authority, that is required of the Franchisee by applicable Environmental Law as it relates to the Discovered Matters in the Excavated Areas. In the event that, as a result of such discovery, an agency with jurisdiction to address Hazardous Substances in, on, or upon the Franchise Area ("**Environmental Authority**") orders, obtains a judgment or court order requiring, or otherwise exercises its authority to require Remedial Actions to be taken by the City or the Franchisee, or the Franchisee decides to undertake Remedial Actions independently or enter into a consent order or consent decree with an Environmental Authority, then in such event, the Franchisee agrees to indemnify, defend, and hold the City harmless from and against the cost of all Remedial Actions which are required by the Environmental Authority within the Excavated Areas under the applicable Environmental Laws with respect to the Discovered Matters; provided, however, the City, subject to the provisions of Section 3 below, shall be solely responsible for all necessary Remedial Actions which are required by the Environmental Authority within other portions of the Franchise Area (outside the Excavated Areas) under the applicable Environmental Laws with respect to the Discovered Matters.

Release by the Franchisee. In the event the Franchisee's Work, in, on or upon the Franchise Area within the Excavated Areas results in a release (as determined under applicable Environmental Laws) of Hazardous Substances which were, before such activities, confined to areas within the Excavated Areas, but which after such activities by the Franchisee are released beyond the Excavated Areas, and if the release is caused in whole or in part by the Franchisee, then the Franchisee shall indemnify, defend and hold the City harmless from the costs of all necessary Remedial Actions which are required under the applicable Environmental Laws, to the extent of the Franchisee's share of the liability for the release. The Franchisee's liability for the release may, inter alia, be determined by the Franchisee's admission of the same, or as determined by a final non-appealable decision by a court of competent jurisdiction, or as provided in a final non-appealable administrative order issued by the Environmental Authority, or by a consent decree entered by the Franchisee and the Environmental Authority.



EXHIBIT "D"

(Insurance Requirements)

1
2 1 General Requirement. Commencing upon the Effective Date, the
3 Franchisee must have adequate insurance at all times while the Franchisee owns
4 or operates Facilities in the Public Rights-of-Way, to protect the City against
5 claims for death or injuries to Persons or damages to property or equipment which
6 in any way relate to, arise from, or are connected with this Franchise or Site
7 Specific Permit, or involve the Facilities, Franchisee, its agents, representatives,
8 contractors, subcontractors, and their employees.

9 2 Minimum Insurance Limits. The Franchisee shall maintain the
10 following minimum insurance coverages and limits:

11 2.1 Commercial General Liability: insurance to cover liability,
12 bodily injury, and property damage. The Commercial General Liability insurance
13 shall be written on an occurrence basis and shall provide coverage for any and
14 all costs, including defense costs, and losses and damages resulting from
15 personal injury, bodily injury and death, property damage, products liability, and
16 completed operations. Such insurance shall include broad form and blanket
17 contractual coverage, including coverage for the Franchise as now or hereafter
18 amended. Coverage must be written with the following limits of liability:

19 \$5,000,000 per occurrence,
20 \$10,000,000 general aggregate and
21 \$2,000,000 products/completed operations aggregate.

22 The coverage amounts set forth may be met by a combination of underlying and
23 umbrella policies so long as in combination the limits equal or exceed those
24 stated.

25 2.2 Automobile Liability: shall include owned, hired, and non-
26 owned vehicles on an occurrence basis with coverage of at least \$2,000,000
per occurrence.

 2.3 Workers Compensation Insurance: shall be maintained
during the life of this Franchise to comply with statutory limits for all employees,
and in the case any work is sublet, the Franchisee shall require its contractors
and subcontractors similarly to provide workers' compensation insurance for all
the employees. The Franchisee shall also maintain, during the life of this
policy, employer's liability insurance with limits of \$1,000,000 each occurrence.
Subcontractors shall be required to carry Workers' Compensation insurance
with limits in compliance with statutorily required amounts.



1 2.4 Railroad Track Exclusion. Whenever maintenance,
2 construction or demolition work will be performed or whenever any part of the
3 telecommunications system will be located within 50 feet of a railroad track, the
4 Franchisee shall receive the Rail Operator's approval prior to performing said
5 work, in a form and with limits required by such Rail Operator.

6 3 Endorsements. The Franchisee's Commercial General Liability
7 insurance policies are to contain, or be endorsed to contain, the following:

8 3.1 The Franchisee's insurance coverage shall be primary
9 insurance with respect to the City. Any insurance, self-insurance, or insurance
10 pool coverage maintained by the City shall be in excess of the Franchisee's
11 insurance and shall not contribute to it.

12 3.2 The Franchisee, through policy endorsement, shall waive
13 its rights of subrogation against the City for all claims and suits.

14 3.3 That the coverage shall apply separately to each insured
15 against whom a claim is made or suit is brought, except with respect to the
16 limits of the insurer's liability.

17 3.4 The Franchisee's insurance shall name the City as an
18 additional insured, and other Persons to whom the City is obligated under
19 separate agreement or by Law, to protect or insure as an additional insured, from
20 and against Liabilities arising out of the Franchisee's ongoing and completed
21 operations of the Franchise or construction/repair of its Telecommunications
22 System, provided the City provides the Franchisee with notice of any other
23 Persons to be included as additional insureds in writing.

24 3.5 The Franchisee's insurance shall include a requirement that
25 the "railroad exclusion" be deleted or may include, in the alternative, ISO
26 endorsement CG 24 17.

 3.6 The insurance coverages shall not be canceled without
thirty (30) days written notice, first being given to the City. If the insurance is
canceled, the Franchisee shall provide a replacement policy.

 4 Acceptability of Insurers. Each insurance policy obtained
pursuant to this Franchise shall be issued by financially sound insurers who
may lawfully do business in the State of Washington with a financial strength
rating at all times during coverage of no less than an "A-" and in a financial size
category of no less than "VII", in the latest edition of "Best's Rating Guide"
published by A.M. Best Company. In the event that at any time during
coverage, the insurer does not meet the foregoing standards, the Franchisee



shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards.

1
2 5 Verification of Coverage. The Franchisee shall furnish the City with
3 signed certificates of insurance and a copy of the amendatory endorsements,
4 including, but not necessarily limited to, the additional insured endorsement,
5 evidencing the Automobile Liability, Commercial General Liability, and Umbrella or
6 Excess insurance of the Franchisee upon acceptance of this Franchise. The
7 certificate for each insurance policy is to be signed by a Person authorized by that
8 insurer to bind coverage on its behalf. The certificate for each insurance policy
9 must be on standard forms or on such forms as are consistent with standard
10 industry practices. The Franchisee hereby warrants that its insurance policies
11 satisfy the requirements of this Franchise.

8 6 Omitted.

9
10 7 No Limitation. The Franchisee's maintenance of insurance policies
11 required by this Franchise shall not be construed to excuse unfaithful performance
12 by the Franchisee or limit the liability of the Franchisee to the coverage provided in
13 the insurance policies, or otherwise limit the City's recourse to any other remedy
14 available at law or in equity.

13 8 Modifications of Coverages and Limits. The City reserves the
14 right, during the term of the Franchise, to require any other insurance coverage
15 or adjust the policy limits as it deems reasonably necessary utilizing sound risk
16 management practices and principals based upon the loss exposures. Prior to
17 imposing such additional coverage or adjusting existing required coverages or
18 limits, the City shall provide reasonable notice to the Franchisee and an
19 opportunity to provide comments, and the City shall review and consider such
20 comments that are timely made. Upon receipt of notice of any modification to
21 coverages and limits, the Franchisee may unilaterally terminate this agreement
22 by written notification to the City.



EXHIBIT "E"

(Financial Security)

1 Performance Bond.

1.1 The Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of \$50,000 to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable Laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Rights-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs, and keeping the Franchisee's insurance in full force.

1.2 The performance bond shall be in a form with terms and conditions reasonably acceptable to the City and reviewed and approved by the City Attorney, which approval will not be unreasonably withheld, conditioned or delayed.

1.3 The performance bond shall be with a surety with a rating no less than "A-VII" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.

1.4 The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If the Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require the Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.

1.5 The Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by the Franchisee, or limit the liability of the Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.

1.6 The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) the experiences of the Parties regarding the Franchisee's compliance with its obligations under the Franchise, and (4) issuance of Site Specific Permits for installation of new Facilities. Prior to the adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.



2 Restoration Bond.

1 2.1 Unless otherwise provided in a Regulatory Permit issued
2 by the City for work within the Public Right-of-Way, or by City ordinance, code,
3 rule, regulation or Standards, the City may require the Franchisee to enter into
4 a performance agreement, secured by a restoration bond written by a corporate
5 surety acceptable to the City equal to at least ten percent (10%) of the
6 estimated cost of restoring the Public Rights-of-Way to their pre-construction
7 condition in accordance with Section 7.12 of the Franchise. Such restoration
8 bond shall be deposited before construction is commenced. Such restoration
9 bond may be required, when the City determines that the Performance and
10 Payment Bond or cash deposit/letter of credit is not sufficient to protect the
11 interests of the City for Permitted Work.

12 2.2 Said restoration bond, or a separate bond acceptable to the
13 City, shall warrant all such restoration work for a period of two (2) years.

14 2.3 In the event that a bond issued to meet the requirements of
15 this Section is canceled by the surety, after proper notice and pursuant to the
16 terms of said bond, the Franchisee shall, prior to expiration of said bond, be
17 responsible for obtaining a replacement bond which complies with the terms of
18 this Section.

19 2.4 The performance agreement shall guarantee, to the
20 satisfaction of the City:

- 21 2.4.1 Timely completion of construction;
- 22 2.4.2 Construction in compliance with applicable approved
23 plans, Utility Permits, technical codes, and Standards;
- 24 2.4.3 Proper location of the Facilities as approved by the
25 City;
- 26 2.4.4 Restoration of the Public Rights-of-Way and other
public or private property disrupted, damaged, or otherwise affected by the
construction. The performance agreement shall warrant said restoration work
for a period of two (2) years;
- 2.4.5 The submission of "record" drawings after
completion of the Work; and



1 2.4.6 Timely payment and satisfaction of all claims,
2 demands, liens for labor, material, or services provided in connection with the
3 work.

4 3 Security Fund

5 3.1 The Franchisee shall establish and provide to the City a cash
6 deposit or irrevocable letter of credit from a local financial institution satisfactory to
7 the City finance Director, in a form and content approved by the City Attorney, and
8 in the amount of Fifty thousand dollars (\$50,000). Such Irrevocable letter of credit
9 shall be established as security for the full and faithful performance of all of its
10 responsibilities under this Franchise and applicable Laws, including, by way of
11 example but not limited to, its obligations to relocate and remove its Facilities, to
12 restore the Public Right-of-Way and other property when damaged or disturbed,
13 and to reimburse the City for its costs,

14 3.2 The cash deposit or letter of credit shall then be maintained at
15 that above amount throughout the term of this Franchise.

16 3.3 Upon a Material Breach, the cash deposit/letter of credit may be
17 drawn upon by the City for purposes including, but not limited to, the following:

18 3.3.1 Failure of the Franchisee to pay the City sums due
19 under the terms of this Franchise;

20 3.3.2 Reimbursement of costs and expenses borne by the
21 City to correct Franchise violations not corrected by the Franchisee; and

22 3.3.3 Monetary remedies or damages assessed against the
23 Franchisee as provided in this Franchise.

24 3.4 Within three (3) days of a withdrawal from the Security Fund,
25 the City shall mail, by certified mail, return receipt requested, written notification
26 of the amount, date, and purpose of such withdrawal to the Franchisee.

 3.5 Within thirty (30) days following notice that a withdrawal from
the cash deposit/letter of credit has occurred, Franchisee shall restore the cash
deposit/letter of credit to the full amount set forth above. If at the time of a
withdrawal from the Security Fund by the City, the amounts available are
insufficient to provide the total payment towards which the withdrawal is
directed, the balance of such payment shall continue as the obligation of the
Franchisee to the City until it is paid.



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3.6 Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Franchisee within sixty (60) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.

3.7 Failure to maintain or restore the security fund or letter of credit shall constitute a Breach of the Franchise.

3.8 In the event the Franchisee believes that the letter of credit was drawn upon improperly, the Franchisee shall give notice to the City and the City and the Franchisee shall refer the Dispute to the Dispute Resolution process set forth at Section 6.1 of this Franchise.

3.9 The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by applicable Law, and no action, proceeding, or exercise of a right with respect to such Security Fund or letter of credit will affect any other right the City may have. Neither the filing of a letter of credit with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.



EXHIBIT "F"

(Contractor/Subcontractor Insurance Requirements)

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2 1 General Requirement. Prior to commencing and during the period of
3 Work performed within the Public Franchise Area, the Franchisee's contractors
4 and subcontractors (hereafter the "Contractors") must have in place adequate
5 insurance to protect the City against claims for death or injuries to Persons, or
6 damages to property or equipment which in any way relate to, arise from, or are
7 connected with the Work.

8 2 Minimum Insurance Limits. The Contractors shall maintain the following
9 minimum insurance coverages and limits:

10 2.1 Commercial General Liability: insurance to cover liability,
11 bodily injury, and property damage. The Commercial General Liability insurance
12 shall be written on an occurrence basis, with an aggregate limit location
13 endorsement for the Franchise Area, and shall provide coverage for any and all
14 costs, including defense costs, and losses and damages resulting from
15 personal injury, bodily injury and death, property damage, products liability, and
16 completed operations. Coverage must be written with the following limits of
17 liability:

18 \$1,000,000 per occurrence,
19 \$2,000,000 general aggregate and
20 \$2,000,000 products/completed operations aggregate.

21 2.2 Automobile Liability: shall include owned, hired, and non-
22 owned vehicles on an occurrence basis with coverage of at least \$1,000,000
23 per occurrence.

24 2.3 Workers Compensation Insurance: shall be maintained during
25 the period of such Work to comply with statutory limits for all employees.

26 3 Endorsements. Commercial General Liability insurance policies are to
contain, or be endorsed to contain, the following:

 3.1 The Contractor's insurance coverage shall be primary
insurance with respect to the City. Any insurance, self-insurance, or insurance
pool coverage maintained by the City shall be in excess of the Contractor's
insurance and shall not contribute to it.

 3.2 The Contractor, through policy endorsement, shall waive its
rights of subrogation against the City for all claims and suits.



1 3.3 That the coverage shall apply separately to each insured
2 against whom a claim is made or suit is brought, except with respect to the
3 limits of the insurer's liability.

4 3.4 The Contractor's insurance shall name the City as an
5 additional insured, and other Persons to whom the City is obligated under
6 separate agreement or by Law, to protect or insure as an additional insured, from
7 and against Liabilities arising out of Work performed in the Public Rights-of-Way
8 under a grant of authority of the City.

9 3.5 The Contractor's insurance shall include a requirement that the
10 "railroad exclusion" be deleted or may include, in the alternative, ISO
11 endorsement CG 24 17.

12 3.6 The insurance coverages and limits provided herein shall not
13 be canceled, nor the intention not to renew be stated so as to be out of
14 compliance with the requirements herein without thirty (30) days written notice,
15 first being given to the City. If the insurance is canceled or reduced in
16 coverage, Franchisee shall provide a replacement policy.

17 4 Acceptability of Insurers. Each insurance policy required herein shall
18 be issued by financially sound insurers who may lawfully do business in the
19 State of Washington with a financial strength rating at all times during coverage
20 of no less than an "A-" and in a financial size category of no less than "VII", in
21 the latest edition of "Best's Rating Guide" published by A.M. Best Company. In
22 the event that at any time during coverage, the insurer does not meet the
23 foregoing standards, the Contractor shall give prompt notice to the City and
24 shall seek coverage from an insurer that meets the foregoing standards.

25 5 Verification of Coverage. The Franchisee shall furnish the City with the
26 Contractors' signed certificates of insurance and a copy of the amendatory
endorsements, including, but not necessarily limited to, the additional insured
endorsement, evidencing the Automobile Liability, and Commercial General
Liability policies of the Contractors. The certificate for each insurance policy is to
be signed by a Person authorized by that insurer to bind coverage on its behalf.
The certificate for each insurance policy must be on standard forms or on such
forms as are consistent with standard industry practices.

 6 Deductible. Commercial General Liability Insurance policies and
coverage required herein may include a reasonable deductible; provided,
however, that if the Contractor elects to include any deductible, the Contractor
shall itself directly cover, in lieu of insurance, any and all the City Liabilities that
would otherwise in accordance with the provisions of these requirements be
covered by the Contactor's insurance if the Contractor elected not to include a



deductible. Such direct coverage by the Contractor shall be in an amount equal to the amount of the Contractor's actual deductible.

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2 7 No Limitation. The Contractor's maintenance of insurance policies
3 required by herein shall not be construed to excuse unfaithful performance by the
4 Franchisee or limit the liability of the Franchisee or the Contractor to the coverage
5 provided in the insurance policies, or otherwise limit the City's recourse to any
6 other remedy available at law or in equity.

7 8 Modifications of Coverages and Limits. The City reserves the right,
8 during the term of the Franchise, to require any other insurance coverage or
9 adjust the policy limits as it deems reasonably necessary utilizing sound risk
10 management practices and principals based upon the loss exposures. Prior to
11 imposing such additional coverage or adjusting existing required coverages or
12 limits, the City shall provide reasonable notice to the Franchisee and an
13 opportunity to provide comments, and the City shall review and consider such
14 comments that are timely made. Upon receipt of notice of any modification to
15 coverages and limits, the Franchisee may unilaterally terminate this agreement
16 by written notification to the City.
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