

ORDINANCE NO. _____

AN ORDINANCE granting a non-exclusive franchise to SQF, LLC dba Verta, to construct, operate, and repair a telecommunications system throughout the City of Tacoma; setting forth provisions, terms and conditions of the grant of franchise; specifically making such grant subject to the provisions of Title 16B and Title 10 of the Tacoma Municipal Code, as well as the Tacoma City Charter; providing for City regulation of the Telecommunications System; prescribing liquidated damages and certain other remedies for violation of franchise provisions in addition to those specified pursuant to the Municipal Code and the City of Tacoma Charter.

WHEREAS, SQF, LLC dba Verta, a limited liability company ("SQF, LLC dba Verta" or "Franchisee") is a telecommunications company involved in the business of operating telecommunications networks utilizing fiber optic and wireless technology, and as a part of expanding such network has applied for a Franchise to install, operate, and maintain its telecommunications network in the City of Tacoma, and,

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

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

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BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1 - DEFINITIONS. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein; words not defined herein which are defined in Title 16B, shall have the same meaning or be interpreted as provided in Title 16B. Words not defined here or in Title 16B shall be construed consistently with Title 47 of the United States Code, and if not therein, they shall have their common and ordinary meaning. A reference to any Title of the Tacoma Municipal Code or to the City's Charter refers to the same as may be amended from time to time.

1.1 "City" means the City of Tacoma, a municipal corporation of the state of Washington, and all departments, divisions, and agencies thereof, including Tacoma Public Utilities.

1.2 "City Manager" means the City Manager or the City Manager's designee.

1.3 "Communications facility" means a device which, along or as part of an aggregation of devices, is capable of transmitting signals from place to place.

1.4 "Communications system" refers to a telecommunications system.

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

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

1.7 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by the Franchisee, such as antennas, transmitters, receivers, equipment boxes, equipment cabinets, backup power supplies, power transfer switches, cut-off switches, electric meters, coaxial cables, poles, fiber cables, wires, telecom demarcation boxes, and related fixtures, equipment, above ground and underground circuits, and conduit in, ~~on, over, through, across,~~ ~~above, along or below~~ public rights-of-way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located. This term, when used without a modifier, shall be considered to encompass both Overhead Facilities and Underground Facilities.

1.8 "Franchise" refers to the authorization granted by the City to an Operator of a Telecommunications System conditioned as set forth herein, and under the Tacoma Municipal Code and the City Charter.

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

1.10 "Franchisee" is SQF, LLC dba Verta, a limited liability company, with its home office at 16 Middle Street - Floor 4, Portland, ME 04101-5161.

1.11 "Gross Receipts," for the purposes of this Franchise, means any and all receipts or income received directly or indirectly by Franchisee which is derived from the operation of its System in the City, less uncollectibles. Gross Receipts shall include, by way of example and not limitation, revenues from its Telecommunications Service, all fees, late fees, installation and connection fees, upgrade and downgrade fees, and rental fees. The term Gross Receipts shall not include and taxes on services furnished by Franchisee imposed by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit, nor shall the term include any wholesale services provided by Franchisee upon which fees or taxes have already been levied within the City.

1.12 "Operator" when used with reference to a system, refers to a Person (a) who provides service over a Communications System and directly or through one or more affiliates owns a significant interest in such facility; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility. A Person that operates under agreement of a Telecommunications System or a specific portion of a Telecommunications System to provide Telecommunications Services shall be treated as an Operator for purposes of this Franchise.

1.13 "Overhead Facilities" refers to electric utility and Communications Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.

1.14 "Person" includes any individual, corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City for purposes hereof.

1.15 "Public Rights-of-Way" mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant Franchises, permits, or Licenses for use thereof or has regulatory authority thereover, but expressly 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, conduits, 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.

1.16 "System" means the Telecommunications System.

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

1.18 "Telecommunications System" or "Telecommunications Facility" means a tangible facility that is used to provide one or more Telecommunications Services, any portion of which occupies Public Right-of-Way. The term

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

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

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

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

Section 2 - FRANCHISE.

2.1 Grant of Franchise. The City hereby grants to Franchisee a non-exclusive Franchise which, once it becomes effective, shall authorize Franchisee, to use the City's Public Rights-of-Way within the Franchise Area to construct, maintain, repair, and operate a fiber optic and wireless Telecommunication System to provide Telecommunication Service and internet access, and to use the City's Public Rights-of-Way as hereby authorized.

Such grant is subject to and must be exercised in strict accordance with and subject to this Franchise Agreement, applicable federal law, applicable laws of the state of Washington, Title 16B and other applicable provisions of the Tacoma Municipal Code, the Tacoma City Charter including but not limited to the provisions set forth in Article VIII of the Charter, applicable law, including by way of example and not limitation, zoning law codes and permitting requirements, and this Franchise may be revoked under Section 2.5 if it is not so exercised. Neither the granting of this Franchise, or any provision thereof, shall constitute a waiver or bar to the exercise of any governmental right or power, police power, or regulatory power of the City as may exist at the time the

Franchise is issued or thereafter be obtained. No rights shall pass to the Franchisee by implication. This Franchise shall constitute both a right and an obligation to provide the services of the Telecommunications System as required by the provisions of this Franchise.

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

Notwithstanding the above grant to use Public Rights-of-Way, no Public Rights-of-Way shall be used by Franchisee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions or provisions by which such Public Rights-of-Way was created or dedicated, or presently used under applicable laws.

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

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

2.2 Franchise Term. The term of the Franchise shall be ten years (commencing on the Effective Date defined in Section 7.6 below) unless

terminated sooner in accordance with this Franchise, Title 16(B), or the City Charter. An Operator may submit a proposal for renewal of a Franchise in conformance with TMC 16B.02.100.

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

2.4 Transfers, Generally.

A. No Transfer shall occur without the prior written notice and approval of the City Council, which shall not be unreasonably withheld. A Transfer is any transaction in which: (1) all or a portion of the Telecommunications System is sold or assigned (2) there is any change, acquisition, or direct or indirect transfer of control of the Franchisee; or (3) the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party. The term "control" in subsection (2) above refers to actual working control, in whatever manner exercised. It will be presumed that a change in working control within the meaning of subsection (2) has occurred in any case where there is a change in voting interest of 10 percent or more; or a change in voting interest that results in a Person obtaining a 50 percent or greater interest in Franchisee; or a change in voting interest that results in a Person that held 50 percent or greater interest reducing their interest to below 50 percent. A Transfer without the prior written approval of the City is a substantial violation of this Franchise and shall make the Franchise subject to termination by the City as provided herein and in Title 16B.

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

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

D. The requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Telecommunications System franchised hereunder provided that no such security shall purport to attach the City's real property interest in the Public Right-of-Way. In addition, no such arrangement may be made if it would in any respect under any condition prevent the Operator or any successor from complying with the Franchise and applicable law, nor may any such arrangement permit a third party to succeed to the interest of the Operator, or to own or control the Telecommunications System, without the prior consent of the City. Any mortgage, pledge or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other applicable law.

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

2.6 Revocation. In addition to any rights set out elsewhere in this Franchise, the City Charter or Title 16, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, as provided in Title 16(B) or in the event that:

- A. Franchisee is in substantial non-compliance with this Franchise; or
- B. Franchisee is found to have engaged in any actual or attempted fraud or deceit upon the City, Persons or Customers; or
- C. Franchisee fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction, repair and operation of the Telecommunications System; or

D. At any time during the term of the Franchise, Franchisee fails to provide and maintain all of the securities required under this Franchise including, but not limited to, the performance bond and letter of credit; fails to maintain the insurance required by this Franchise; or fails to satisfy the indemnity set out in this Franchise; or if Franchisee's guarantor revokes its guarantee or fails to satisfy or becomes unable to satisfy its obligations thereunder.

E. The procedures for revocation and forfeiture shall be governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee shall be given notice and opportunity to cure at least equivalent to that required by Title 16B as of the effective date of this Franchise (except in those cases where notice and opportunity to cure are not required), and shall be accorded at least an opportunity to be heard that provides at least the due process protections required by Title 16B as of the effective date of this Franchise, which opportunities and protections are set out in Section 2.6.F., below.

F. (1) Where, after notice and providing the Franchisee an opportunity to be heard (if such opportunity is timely requested by a Franchisee), the City finds that there has been an act or omission that would justify revocation of the Franchise, the City may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. However, the Franchise may only be revoked if the Franchisee (a) was given written notice of the default; and (b) 30 days to cure the default; and (c) the Franchisee failed to

cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days. The required written notice may be given before the City conducts the proceeding required by this paragraph. No opportunity to cure is required for two (2) or more uncured violations of the same material provision of the Franchise within a calendar year, and fraud which shall be deemed incurable.

(2) Notwithstanding the foregoing, the City may declare a Franchise forfeited without opportunity to cure when the Franchisee: (a) stops providing service it is required to provide in the Franchise (b) Transfers without the prior consent of the City as required in the Franchise; (c) defrauds or attempts to defraud the City or Franchisee's customers. Notwithstanding the provisions of TMC 16B.05.100.C.2, if Franchisee fails to timely pay any undisputed Franchise application/administrative fees or other fees owed hereunder or under Title 16B, before the City can initiate any termination or forfeiture of rights, Franchisee shall be provided with 30 days' prior written notice and an opportunity to cure the failure to pay. However, Franchisee shall have the right to receive 30 days' prior notice of an intent to declare a Franchise forfeited, and shall have the opportunity to show cause why the Franchise should not be forfeited.

(3) Notwithstanding the foregoing, the Franchise will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization,

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

2.7 Intentionally Deleted.

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

A. Upon termination of this Franchise, Franchisee may be required to remove its property from any Public Rights-of-Way, and restore such Rights-of-Way to their same or better condition as existed just prior to such removal, subject to any rights Franchisee may have to abandon property in place, as set out in Title 16B. If Franchisee fails to remove property that the

City requires it to remove, the City may perform the work and collect the cost thereof from Franchisee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Franchisee effective upon filing of the lien with the Pierce County Auditor.

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

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

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

existed immediately prior to removal; and those damaged by removal must be compensated for the damage.

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

2.9 Customers' Right to Obtain Service. It shall be the right of all Customers to receive all available services insofar as their financial and other obligations to Franchisee are honored during the term of the Franchise or any Continuation Period.

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

2.11 Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions

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

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

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

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

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

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

A. (1) Franchisee shall, with as much advance notice as is feasible under the circumstances, but in no event less than 90 days, except in circumstances there is a risk to public safety, protect, support, temporarily

disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned Communications System, public work, public project, public facility, or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Telecommunications System. Collectively, such matters are referred to below as the "public work."

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

(3) In the case of non-public work, if any Person that is authorized to place Facilities in the Rights-of-Way requests Franchisee to protect, support, temporarily disconnect, remove, or relocate Franchisee's facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after 90 days' advance written notice, take action to effect the necessary changes requested. In the case of non-

public work or non-public projects, unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Franchisee's Telecommunications System was not properly installed, the reasonable cost of the same shall be borne by the Person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action.

(4) Franchisee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same.

B. The Franchisee's obligation to construct, operate, and repair its Telecommunications System in compliance with all laws, ordinances, departmental rules and regulations and practices affecting such System, includes, by way of example, and not limitation, the obligation to construct, operate and repair in accordance with zoning codes, safety codes and City construction standards, including the most current version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation (WSDOT) and the Washington State Chapter of American Public Works Association (APWA); the most current version of the APWA Amendments to Division One, and the most current version of the City of Tacoma Amendments thereto. In addition, the construction, operation, and repair shall be performed in a manner consistent

with high industry standards. The Franchisee shall exercise reasonable care in the performance of all its activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property. In the event that Franchisee's work or other use of the Public Right-of-Way causes damage to any City facility, Franchisee shall bear the cost of repairing, or replacing as necessary, such City facility.

C. Franchisee's construction, operation, or repair of its Telecommunications System shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid. In any permit so issued, the City may impose, as a condition of the granting of the permit, such conditions and regulations as may be necessary to the management of the Public Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any structures in the Public Rights-of-Way, maintaining proper distance from other utilities, for the proper restoration of such Public Rights-of-Way and structures, and for the protection of the City and the public and the continuity of pedestrian and vehicular traffic.

D. Franchisee must follow City-established requirements for placement of Facilities in Public Rights-of-Way, including the specific location of Facilities in the Public Rights-of-Way, and must in any event install Facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Communications Facilities.

The City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Public Right-of-Way area; may deny access if Franchisee is not willing to comply with the City's requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation and charge the Franchisee for all the costs associated with removal; and may require Franchisee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements consistent with requirements the City imposes on other similarly situated franchisees or users of the Public Rights-of-Way.

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

F. If the City requires the Franchisee to install additional conduit for city use pursuant to RCW 35.99.070, Franchisee may recover costs as provided for therein.

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

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

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

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

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

I. The Franchisee shall participate in conversion to underground Local Improvement Districts ("LIDs"). The Franchisee, at no cost

to the City or abutting property owners, shall share fairly with other utilities the cost of undergrounding when done through the LID process.

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

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

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

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

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

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

(2) Franchisee shall remove such Overhead or Underground Facilities as the City orders it to remove; provided, that the City may not order removal where such removal is primarily to give economic benefit or advantage to a competing provider of Telecommunications Service.

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

(4) Subject to the City's rights to purchase the Telecommunications System, Franchisee may voluntarily remove any Overhead or Underground Facilities from the streets which have been installed

in such a manner that they can be removed without trenching or other opening of the Rights-of-Way.

3.3 Right to Inspect and Order Corrections. The City may inspect the Telecommunications System at any time reasonable under the circumstances to ensure compliance with this Franchise and applicable law, including to ensure that Franchisee's Telecommunications System is constructed and maintained in a safe condition. If Franchisee's representatives are not on-site performing work on the Telecommunications System, whenever feasible, the City shall give reasonable advance notice of its intent to inspect so that Franchisee may have a representative present during the inspection. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a timetable established by the City which is reasonable in light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do so, and to charge the Franchisee therefor.

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

SECTION 4 - REGULATORY PROVISIONS.

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

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

A. Draw upon or foreclose all or any part of any letter of credit, security fund, performance bond or other security provided under this Franchise; provided, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the default. Should the City take this action, Franchisee shall be responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs:

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

In determining which remedy or remedies for Franchisee's violation are appropriate, the City may take into consideration the nature and extent of the

violation, the remedy needed to prevent such violations in the future, whether Franchisee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

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

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

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

not complete and the projected date for completion; and if the default is disputed, the complete basis for that contention.

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

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

E. Liquidated Damage Amounts. Because Franchisee's failure to comply with the provisions of this Franchise will result in injury to the City, and because it may be difficult to estimate the extent of each such injury, Franchisee and the City agree to the following liquidated damages, which provisions represent the best estimate of the damages resulting from injuries of specific types. The amounts of the liquidated damages set forth in this

Franchise are in 2025 dollars and shall be increased each year by the increase in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City Average for the greater Seattle area. The amount of liquidated damages for all material violations of this Franchise for which actual damages may not be ascertainable shall be: \$1000 per day for each violation for each day the violation continues. It is provided, however, that the City shall allow the Franchisee a minimum of 30 days after notice to the Franchisee of such neglect, failure, or refusal to comply within which to meet compliance or correct performance, prior to the assessment of any liquidated damages.

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

4.5 Force Majeure. The Franchisee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes beyond the Franchisee's control; the unforeseeable unavailability of labor or materials; or power outages exceeding back-up power supplies. The acts or omissions of Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. This Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the

Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

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

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

waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid, or manner of construction.

SECTION 5 - REPORTING REQUIREMENTS.

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

5.2 Open records/confidentiality. Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the Applicant's responsibility to be familiar with the Washington Public Records Act. Applicant may specifically identify any information it considers proprietary by marking and providing said information to City in a separate envelope marked "Proprietary Information." In the event that: (A) the City receives a request from another party to disclose any information which the applicant has deemed proprietary, and if the City Attorney determines that said information may be subject to being disclosed; or (B) the City determines that the information should be disclosed in connection with its enforcement of any provision of Title 16B TMC, or in the exercise of its police or regulatory powers, then the City shall notify the Applicant of the Applicant's opportunity to seek a protective order from a court with appropriate jurisdiction. In the event an action is not commenced within ten business days, the City may disclose said information. By submitting information which the Applicant deems proprietary or otherwise exempt from disclosure, the Applicant agrees to defend and hold harmless the City from any claim for disclosure under the Washington Public Records Act, including, but not limited to, any expenses including out-of-pocket

costs and attorneys' fees, as well as any judgment entered against the City for the attorney fees of the party requesting disclosure.

SECTION 6 - COMPENSATION AND FINANCIAL PROVISIONS.

6.1 Fees; Taxes.

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

B. Franchisee Obligated to Pay Administrative Costs. In accord with RCW 35.21.860 as presently effective, and as it may be later amended, Franchisee must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist in the City's consideration and processing of this Franchise application. The first \$5,000 of said expenses will be covered by the \$5,000 application fee deposited with the City. Franchisee will also pay the reasonable costs of enforcing, or, as necessary, reviewing, the provisions of this Franchise as well as costs involved with the modification, amendment, renewal, or Transfer of this Franchise, as ordered by the Franchise Services Manager, whether such costs result from accrued inhouse staff time, or out- of- -pocket

expenses or administrative costs, as well as expenses of retaining independent technical, legal, or financial consultants or advisors, or whether relating to costs incurred due to initial System development or to future System expansion. The amount of payment to be made by Franchisee to cover these administrative costs is an amount determined to be reasonable by the Franchise Services Manager. Such obligation further includes municipal fees related to receiving and approving permits or licenses, inspecting plans and construction, or relating to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt of the City's billing therefor.

C. Manner of Payment; Audit. Franchisee shall make any required fee payments in the form, intervals and manner requested by the City Treasurer, and furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit, the City Treasurer may require Franchisee to furnish a verified statement of compliance with Franchisee's obligations or in response to any questions. Said certificate may be required from an independent, certified public accountant, at Franchisee's expense. All audits will take place on Franchisee's premises or offices furnished by Franchisee, which shall be a location within the City of Tacoma or other mutually agreeable place; however, the Franchisee must agree to pay the associated costs. Franchisee agrees, upon request of the Franchise Manager or City Treasurer, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the City Treasurer on the same day as

filed, postage prepaid, affecting any of Franchisee's Facilities or business operations in the City of Tacoma.

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

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

material at another central location, provided it also agrees to pay the additional reasonable costs incurred by the City in reviewing the materials.

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

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

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

however, provide notice to Franchisee of any request for such books and records provided that Franchisee has clearly marked all applicable pages of such books and records as CONFIDENTIAL or PROPRIETARY. If Franchisee fails to so mark the books and records, the City, upon request, may release said books and records without the need to satisfy the notice requirements above and the Franchisee expressly waives its right to allege any kind of civil action or claim against the City pertaining to the release of said records. In the event the City receives a request for disclosure, determines in its legal judgment that no applicable exemption to disclosure applies, and Franchisee has complied with the requirements herein to mark all content considered to be confidential or proprietary, the City agrees to provide Franchisee ten (10) days written notice of impending release. Should legal action thereafter be initiated by the Franchisee to enjoin or otherwise prevent such release, all expense of any such litigation shall be borne by Franchisee, including any damages, attorneys fees or costs awarded by reason of having opposed disclosure. The City shall not be liable for any release where notice was provided and the Franchisee took no action to oppose the release of information. Notice of any proposed release of information pursuant to Chapter 42.56 RCW, shall be provided to the Franchisee using the information set forth in section 7.5.

6.3 Performance Bond. At the same time it provides its Franchise acceptance to the City, Franchisee shall provide a performance bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including by way of example and not limitation, its obligations to

relocate and remove its facilities; and to restore City Rights of- Way and other property. The initial- amount of the performance bond shall be \$300,000. The amount of the bond may be changed from time to time to reflect changed risks to the City or to the public. The Franchisee may be required to obtain additional bonds in accordance with the City's ordinary practices. The bond shall be, in a form and with a surety (authorized to do business in the state of Washington) acceptable to the City's Risk Manager and in a form acceptable to the City Attorney. Franchisee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the Franchise Term.

6.4 Indemnification by Franchisee.

A. In accordance with and subject to applicable law, Franchisee, by accepting this Franchise, agrees to release the City from and against any and all liability and responsibility in or arising out of the construction, operation or maintenance of the Telecommunications Facilities, and, without limiting the provisions of Section 7.4, agrees not to sue or seek any money or damages from the City, its trustees, elected and appointed officials, agents, and employees in connection with the above mentioned matters, except to the extent caused by the sole negligence or willful misconduct of the City, its trustees, elected and appointed officials, agents, and employees, or the City's violation of any of the terms of this Franchise or any applicable laws.

B. Franchisee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Franchisee, or its agents, independent contractors or employees related to or in any way arising out of the construction, operation, repair, or relocation of the Telecommunications System provided that this provision shall not apply to the extent that the claims, demands, or causes of action, resulting losses, costs, expenses, attorneys' fees, liabilities, damages, orders, judgments, or decrees result from the sole negligence or willful misconduct of the City, its trustees, elected and appointed officers, agents, or employees. With respect to any action brought by any employee of Franchisee against the City, Franchisee waives immunity under Title 51 RCW for the sole and limited purpose of effectuating its obligations to indemnify, hold harmless, and defend the City under this clause and affirms that the City and Franchisee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

C. Except for third party claims covered under the indemnification provisions in this Franchise, in no event shall either party be liable to the other party for any incidental, special, punitive, or consequential

damages arising out of or in connection with this

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

6.5 Franchisee Insurance.

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

B. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way, and for six years thereafter. If the Franchisee, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

C. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured with all required endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies

described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in E below.

D. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial Ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

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

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

6.6 Security Fund. Franchisee shall establish a cash security fund or provide the City an irrevocable letter of credit in the amount of \$50,000, to secure the payment of fees owed, to secure any other performance promised in this Franchise, and to pay any taxes, fees or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Finance and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, it shall promptly notify

the Franchisee, and the Franchisee shall promptly restore the fund or the letter of credit to the full required amount. The City may from time to time change the amount of the required security fund/letter of credit to reflect changes in the risks to the City and to the public, including delinquencies in taxes or other payments to the City.

SECTION 7 - MISCELLANEOUS PROVISIONS.

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

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

7.3 Governing Law and Venue. The Franchise shall be governed by and construed in accordance with the laws of the state of Washington without recourse to any principles of Conflicts of Laws, except that where federal law preemptively applies it shall control. Any litigation between the City and Franchisee arising under or regarding this Franchise shall occur, if in the state courts, in the Superior Court of Pierce County and if in the federal courts, in the District Court for the Western District of Washington.

7.4 No Recourse. Without limiting such immunities as the City or other Persons may have under applicable law, Franchisee shall have no

monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of Title 16B or because of the enforcement of Title 16B or the City's exercise of its authority pursuant to Title 16B, this Franchise or other applicable law, except to the extent Franchisee's Telecommunication System is damaged by the sole negligence or willful misconduct of the City or its representatives or caused by or arising from the City's violation of this Franchise or any applicable laws.

7.5 Notice. Unless expressly otherwise agreed between the parties, every notice, billing, or response required by this Franchise to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

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

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

SQF, LLC dba Verta
re: Tacoma Telecommunications Franchise Agreement
16 Middle Street
Portland, ME 04101-5161

Copies to:

Sunny Ausink, Wireless Policy Group LLC
22500 SE 64th Place, Suite #130
Issaquah, WA 98027

The City and Franchisee may designate such other address from time to time by giving written notice to the other, but notice cannot be required to more than one address, and the address must be within the state, except by mutual agreement.

7.6 Execution. Franchisee shall execute Ordinance thru signed acceptance of the Franchise granted hereunder within 30 days after the date of passage of the Ordinance by the City Council. The acceptance shall be submitted in the form attached hereto or other form acceptable to the City Attorney and in accepting the Franchise, Franchisee warrants that it has carefully read the terms and conditions of this Franchise and unconditionally accepts all of the terms and conditions of this Franchise and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a Franchise, that this Franchise represents the entire agreement between Franchisee and the City, and that Franchisee accepts all risks related to the interpretation of this Franchise. The countersigned Ordinance and acceptance shall be returned to the City accompanied by: evidence of insurance; a payment for publication costs; billable work order deposit, and security deposit (or the letter of credit).

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

Passed _____

Mayor: _____

Attest: City Clerk

Approved as to form

Deputy City Attorney

ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _____, effective _____, 2025

I, Joshua Broder, am the CEO and President of SQF, LLC dba Verta and am the authorized representative to accept the above-referenced City franchise ordinance on behalf of SQF, LLC dba Verta.

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

DATED this _____ day of _____, 2025.

By _____
Its _____
SQF, LLC dba Verta