



ORDINANCE NO. 29050

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

12 WHEREAS, LEVEL 3 COMMUNICATIONS, LLC, a Delaware limited liability
13 company ("LEVEL 3" or "Franchisee") is a telecommunications company currently
14 involved in the business of operating a telecommunications network, and has been
15 operating this network in the City of Tacoma pursuant to a Telecommunications
16 Franchise Agreement – Ordinance No. 28214 (the "Prior Franchise"), and

17 WHEREAS, the Prior Franchise expired in 2024 by its terms, and

18 WHEREAS, LEVEL 3 has applied to the City to renew pursuant to
19 Tacoma Municipal Code 16B.02.110, and

20 WHEREAS, the City Council has determined to grant such a franchise to
21 LEVEL 3 upon those certain terms and conditions which the Council deems
22 necessary, and
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1 WHEREAS this City of Tacoma Telecommunications Franchise
2 Ordinance contains the following sections:

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1 BE IT ORDAINED BY THE CITY OF TACOMA:

2 Section 1 - DEFINITIONS. For the purposes of this Franchise, the
3 following terms, phrases, words, and their derivations shall have the meaning
4 given herein; words not defined herein which are defined in Title 16B, shall
5 have the same meaning or be interpreted as provided in Title 16B. Words not
6 defined here or in Title 16B shall be construed consistently with Title 47 of the
7 United States Code, and if not therein, they shall have their common and
8 ordinary meaning. A reference to any Title of the Tacoma Municipal Code or to
9 the City's Charter refers to the same as may be amended from time to time.
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12 1.1 "City" means the City of Tacoma, a municipal corporation of the
13 state of Washington, and all departments, divisions, and agencies thereof,
14 including Tacoma Public Utilities.
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16 1.2 "City Manager" means the City Manager or the City Manager's
17 designee.

18 1.3 "Communications Facility" means a device which, along or as part
19 of an aggregation of devices, is capable of transmitting signals from place to
20 place.
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22 1.4 "Communications System" refers to a telecommunications system.

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

3 1.6 "Customer" means any Person or entity who legally receives
4 within the corporate limits of the City any one or more of the services provided
5 by the Telecommunications System.
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7 1.7 "Facilities" or "Installations" are and refer to and include, but are
8 not limited to, plant, systems, improvements, and equipment owned, leased, or
9 otherwise used by the Franchisee, such as poles, fiber, wires, fixtures,
10 equipment, above ground and underground circuits, and conduit in public right-
11 of-way and other property necessary or convenient for the transmission and
12 distribution of communications service where such facilities are located. This
13 term, when used without a modifier, shall be considered to encompass both
14 Overhead Facilities and Underground Facilities.
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17 1.8 "Franchise" conditioned as set forth herein, and under the Tacoma
18 Municipal Code and the City Charter.

19 1.9 "Franchise Area" means that area within the present and
20 future corporate limits of Tacoma that a Franchisee is authorized to serve
21 by the terms of its Franchise or by operation of law.
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23 1.10 "Franchisee" is LEVEL 3 COMMUNICATIONS, LLC, a Delaware
24 limited liability company and is a subsidiary of Lumen Technologies, Inc., a
25 telecommunications and network services provider which receives notices at
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1 931 14th Street, Denver, CO 80202.

2 1.11 "Gross Receipts" shall have the meaning ascribed in Article VIII of
3 the City Charter or the meaning given to the phrase "Gross Revenue" as set
4 forth in Title 16 of the Tacoma Municipal Code.
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6 1.12 "Operator" when used with reference to a system, refers to a
7 Person (a) who provides service over a Communications System and directly or
8 through one or more affiliates owns a significant interest in such facility; or
9 (b) who otherwise controls or is responsible for, through any arrangement, the
10 management and operation of such a facility. A Person that operates under
11 agreement of a Telecommunications System or a specific portion of a
12 Telecommunications System to provide Telecommunications Services shall be
13 treated as an Operator for purposes of this Franchise.
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15 1.13 "Overhead Facilities" refers to electric utility and Communications
16 Facilities located above the surface of the ground, including the underground
17 supports and foundations for such Facilities.
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19 1.14 "Person" includes any individual, corporation, partnership,
20 association, joint stock company, trust, or any other legal entity, but not the City
21 for purposes hereof.
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23 1.15 "Public Right-of-Way" mean the public streets and easements
24 which, under the City Charter, the Tacoma Municipal Code, City ordinances,
25 and applicable laws, the City has authority to grant Franchises, permits, or
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1 Licenses for use thereof or has regulatory authority thereover, but expressly
2 excluding railroad right-of-way, airport, and harbor areas. Public Right-of-Way
3 for the purpose of this Franchise do not include buildings, parks, poles,
4 conduits, similar facilities, or property owned by or leased to the City, including,
5 by way of example and not limitation, structures in the Public Right-of-Way such
6 as utility poles and light poles.
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8 1.16 "System" means the Telecommunications System.

9 1.17 "Telecommunications Service" or "Service" means the
10 transmission for hire of information in electronic or optical form, including, but
11 not limited to, voice, video, or data, whether or not the transmission medium is
12 owned by the provider itself. Telecommunications Service includes telephone
13 service but does not include Cable Service or over-the-air broadcasts to the
14 public-at-large from facilities licensed by the Federal Communications
15 Commission or any successor thereto.
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18 1.18 "Telecommunications System" or "Telecommunications Facility"
19 means a tangible facility that is used to provide one or more Telecommunications
20 Services, any portion of which occupies Public Right-of-Way as defined in
21 TMC 16B.01.030. The term Telecommunications System by way of example,
22 and not limitation, includes wires, equipment cabinets, guys, conduit, other
23 supporting structures, and associated and appurtenant facilities used to transmit
24 telecommunications signals. The term Telecommunications System includes all
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1 devices mounted on light poles in the Public Right-of-Way through which
2 Telecommunications Services are originated or terminated. An open video
3 system is not a Telecommunications System to the extent that it provides only
4 video services; a Cable System is not a Telecommunications System to the
5 extent that it provides only Cable Service. The term Telecommunications Facility
6 includes any of the tangible components of a Telecommunications System which
7 occupies Public Right-of-Way.
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10 1.19. "Telephone Service" means the providing by any person of access
11 to a local telephone network, local telephone network switching service, toll
12 service, or coin telephone service, or providing telephonic, video, data, or
13 similar communication or transmission for hire via a local telephone network, toll
14 line, channel, cable, microwave, or similar communication or transmission
15 system. Telephone Service includes intrastate or interstate service, including
16 toll service, originating from, or received on, communications equipment or
17 apparatus in this State if the charge for the service is billed to a person in this
18 State. Telephone Service does not include the providing of "Competitive
19 telephone service" as defined in Tacoma Municipal Code § 6A.40.030, the
20 providing of cable television service, or the providing of broadcast services by
21 radio or television stations.
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1 1.20 "Title," when used alone in the context of referring to the Title of the
2 Tacoma Municipal Code, shall mean Title 16 (and more specifically Title 16B) of
3 the Tacoma Municipal Code.
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5 1.21 "Underground Facilities" refers to electric utility and
6 Communications Facilities located under the surface of the ground, excluding
7 the underground foundations or supports for Overhead Facilities.
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9 Section 2 - FRANCHISE.

10 2.1 Grant of Franchise. The City hereby grants to Franchisee a
11 non-exclusive Franchise which, once it becomes effective, shall authorize
12 Franchisee, to use the City's Public Right-of-Way within the Franchise Area to
13 construct, repair, and operate an underground Telecommunication
14 System to provide Telecommunication Service, and to continue using the City's
15 Public Right-of-Way as hereby authorized.
16

17 Such grant is subject to and must be exercised in strict accordance with
18 and subject to this Franchise Agreement, Title 16B and other applicable
19 provisions of the Tacoma Municipal Code, the Tacoma City Charter including
20 but not limited to the provisions set forth in Article VIII of the Charter, applicable
21 law, including by way of example and not limitation, zoning law codes and
22 permitting requirements, and this Franchise may be revoked if it is not so
23 exercised. Neither the granting of this Franchise, or any provision thereof,
24 shall constitute a waiver or bar to the exercise of any governmental right or
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1 power, police power, or regulatory power of the City as may exist at the time the
2 Franchise is issued or thereafter be obtained. No rights shall pass to the
3 Franchisee by implication. This Franchise shall constitute both a right and an
4 obligation to provide the services of the Telecommunications System as
5 required by the provisions of this Franchise.
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7 The grant of this Franchise is limited to the purpose of Franchisee
8 providing Telecommunications Service. This Franchise does not include
9 permission to provide cable service, as defined in 47 U.S.C. § 522,
10 multichannel video programming, open video systems, or uses other than
11 Telecommunications Service.
12

13 Notwithstanding the above grant to use Public Right-of-Way, no
14 Public Right-of-Way shall be used by Franchisee if the City, in its sole but
15 reasonable opinion, determines that such use is inconsistent with the terms,
16 conditions or provisions by which such Public Right-of-Way was created or
17 dedicated, or presently used under applicable laws.
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19 No Person placing a Telecommunications System in the Public
20 Right-of-Way shall unlawfully discriminate in hiring, in contracting, or in the
21 provision of Services.
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23 In the event of any conflict between a provision in this Franchise
24 and any provision of the City Charter, which Charter is incorporated herein by
25 reference, the applicable provision of the Charter shall control over any
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1 inconsistent provision of this Franchise.

2 2.2 Franchise Term. The term of the Franchise shall be ten years
3 unless terminated sooner in accordance with this Franchise, Title 16(B), or the
4 City Charter. An Operator may submit a proposal for renewal of a Franchise
5 as provided in Title 16B.02.100.
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7 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be
8 non-exclusive.
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10 2.4 Transfers, Generally.

11 A. No Transfer shall occur without the prior written notice and
12 approval of the City Council, which shall not be unreasonably withheld. A
13 Transfer is any transaction in which: (1) all or a portion of the
14 Telecommunications System is sold or assigned (2) there is any change,
15 acquisition, or direct or indirect transfer of control of the Franchisee; or (3) the
16 rights and/or obligations held by the Franchisee under the Franchise are
17 transferred, sold, assigned, or leased, in whole or in part, directly or indirectly,
18 to another party. The term "control" in subsection (2) above refers to actual
19 working control, in whatever manner exercised. It will be presumed that a
20 change in working control within the meaning of subsection (2) has occurred in
21 any case where there is a change in voting interest of 10 percent or more; or a
22 change in voting interest that results in a Person obtaining a 50 percent or
23 greater interest in Franchisee; or a change in voting interest that results in a
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1 Person that held 50 percent or greater interest reducing their interest to below
2 50 percent. A Transfer without the prior written approval of the City is a
3 substantial violation of this Franchise and shall make the Franchise subject to
4 termination by the City as provided herein and in Title 16B.
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6 B. Applications for approval of any Transfer shall be filed in
7 accordance with procedures set out in Title 16B of the Tacoma Municipal Code.
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9 C. Franchisee, shall within 60 days of the closing date of any
10 Transfer, file with the City Clerk a copy of the deed, agreement, contract,
11 mortgage, lease, SEC filing, or other written instrument evidencing such sale,
12 lease, contractual agreement, mortgage, assignment or Transfer, certified and
13 sworn to as correct by Franchisee. Every such Transfer, whether voluntary or
14 involuntary, may be deemed void and of no effect as to the effectiveness of this
15 Franchise by the City unless Franchisee files the required copy within the
16 60-day period.
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18 D. The requirements of this section shall not be deemed to
19 prohibit the use of Franchisee's property as collateral for security in financing
20 the construction or acquisition of all or part of the Telecommunications System
21 franchised hereunder provided that no such security shall purport to attach the
22 City's real property interest in the Public Right-of-Way. In addition, no such
23 arrangement may be made if it would in any respect under any condition
24 prevent the Operator or any successor from complying with the Franchise and
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1 applicable law, nor may any such arrangement permit a third party to succeed
2 to the interest of the Operator, or to own or control the Telecommunications
3 System, without the prior consent of the City. Any mortgage, pledge or lease
4 shall be subject to and subordinate to the rights of the City under this Franchise,
5 and other applicable law.

7 2.5 Change in Control-Notice and Affiliate Exception. Franchisee
8 shall promptly notify the City of any proposed change in, transfer of, or
9 acquisition by any other Person of an ownership interest in Franchisee that
10 results in a change in control of Franchisee within the meaning of Section 2.4.A.
11 However, if the proposed change in control merely results in a Transfer of
12 control from Franchisee to another entity that is 100 percent owned by a direct
13 parent of Franchisee, and such parent provided an unconditional guaranty of
14 performance of the Transferee Affiliate at the time the Franchise was issued,
15 then such Transfer shall not require the prior approval of the City so long as all
16 the conditions on affiliate Transfers set forth in Title 16B are satisfied (including,
17 without limitation, the notice requirements).

20 2.6 Revocation. In addition to any rights set out elsewhere in this
21 Franchise, the City Charter or Title 16, the City reserves the right to declare a
22 forfeiture or otherwise revoke this Franchise, and all rights and privileges
23 pertaining thereto, as provided in Title 16(B) or in the event that:
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- 1 A. Franchisee is in substantial non-compliance with this
2 Franchise; or
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4 B. Franchisee is found to have engaged in any actual or
5 attempted fraud or deceit upon the City, Persons or Customers; or
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7 C. Franchisee fails to obtain and maintain any permit required
8 by any federal or state regulatory body or by the City, relating to the
9 construction, repair and operation of the System; or
10
11 D. At any time during the term of the Franchise, Franchisee
12 fails to provide and maintain all of the securities required under this Franchise
13 including, but not limited to, the performance bond and letter of credit; fails to
14 maintain the insurance required by this Franchise; or fails to satisfy the
15 indemnity set out in this Franchise; or if Franchisee's guarantor revokes its
16 guarantee or fails to satisfy or becomes unable to satisfy its obligations
17 thereunder.
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19 E. The procedures for revocation and forfeiture shall be
20 governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked,
21 Franchisee shall be given notice and opportunity to cure at least equivalent to
22 that required by Title 16B as of the effective date of this Franchise (except in
23 those cases where notice and opportunity to cure are not required), and shall
24 be accorded at least an opportunity to be heard that provides at least the due
25 process protections required by Title 16B as of the effective date of this
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1 Franchise, which opportunities and protections are set out in Section 2.6.F.,
2 below.

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

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

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

2 2.7 Right to Purchase the System.

3 Intentionally Deleted.

4 2.8 Right to Require Removal of Property/Right to Remove Property.

5 A. Upon termination of this Franchise, Franchisee may be
6 required to remove its property from any Public Right-of-Way, and restore such
7 Right-of-Way to their same or better condition as existed just prior to such
8 removal, subject to any rights Franchisee may have to abandon property in
9 place, as set out in Title 16B. If Franchisee fails to remove property that the City
10 requires it to remove, the City may perform the work and collect the actual,
11 reasonable, and documented cost thereof from Franchisee. In the alternative,
12 the parties may mutually agree to abandon some or all of Franchisee's property
13 in place.

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

19 C. Any order by the City issued pursuant to Section 2.8.A to
20 remove Installations shall be sent by registered or certified mail to Franchisee
21 not later than 24 months following the date of Franchise termination.
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1 Removal shall be completed (except with respect to property that Franchisee is
2 permitted to abandon in place) not later than 12 months following the date of
3 notification to remove the Facilities.
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5 D. Franchisee shall file a written removal plan with the City not
6 later than 30 calendar days following the date of the receipt of any orders
7 directing removal, or any consent to removal describing the work that will be
8 performed, the manner it will be performed, and a schedule for removal by
9 location. The removal plan shall be subject to approval and regulation by the
10 City, including, without limitation, the City's Right-of-Way Restoration Policy.
11 The affected property must be restored to as good or better condition than
12 existed immediately prior to removal; and those damaged by removal must be
13 compensated for the damage.
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15 2.9 Customers' Right to Obtain Service. It shall be the right of all
16 Customers to receive all available services insofar as their financial and other
17 obligations to Franchisee are honored during the term of the Franchise or any
18 Continuation Period. In addition to the obligations established under the other
19 provisions of this Franchise, in the event that Franchisee elects to overbuild,
20 rebuild, modify, or sell the system, Franchisee shall make its best effort to
21 ensure that all Customers receive continuous uninterrupted service at rates
22 which are fair and reasonable, regardless of the circumstance.
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1 2.10 Responsibility for Costs. Except as expressly provided otherwise,
2 any act that Franchisee is required to perform under this Franchise shall be
3 performed at its cost. If Franchisee fails to perform work that it is required to
4 perform within the time provided for performance, the City may perform the
5 work and bill the Franchisee. The Franchisee shall pay the amounts billed
6 within 30 days of receipt of an itemized bill. The parties agree that any amounts
7 paid pursuant to this section or Title 16B are not franchise fees.
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9 2.11 Work of Contractors and Subcontractors. Work by contractors
10 and subcontractors is subject to the same restrictions, limitations and conditions
11 as if the work were performed by Franchisee. Franchisee shall be responsible
12 for all work performed by its contractors and subcontractors, and others
13 performing work on its behalf as if the work were performed by it and shall
14 ensure that all such work is performed in compliance with this Franchise and
15 Title 16B, and other applicable law, including without limitation, the City's Right-
16 of-Way Restoration Policy, and shall be jointly and severally liable for all
17 damages and correcting all damage caused by them. It is Franchisee's
18 responsibility to ensure that contractors, subcontractor or other Person(s)
19 performing work on Franchisee's behalf are familiar with the requirements of
20 this Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other
21 applicable laws governing the work performed by them.
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1 2.12 Survival of Terms. Upon the termination or forfeiture of the
2 Franchise, Franchisee shall no longer have the right to occupy the Public Right-
3 of-Way for the purpose of providing Telecommunications Service. However,
4 Franchisee's obligations to the City (other than the obligation to provide service
5 to Customers) survive the expiration of these rights according to their terms. By
6 way of illustration and not limitation, Sections 2.7, 2.8, 2.10, and 4 of this
7 Franchise shall continue in effect as to Franchisee notwithstanding any
8 expiration, forfeiture, or revocation of the Franchise, except to the extent that a
9 City-approved Transfer, sale, or assignment of the Telecommunications System
10 is completed, and another entity has assumed full and complete responsibility
11 for the Telecommunications System or for the relevant acts or omissions.
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14 SECTION 3 - OPERATION IN STREETS AND RIGHT-OF-WAY.

15 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the
16 terms of this Franchise and Title 16B, the City's Right-of-Way Restoration
17 Policy, and other applicable laws, construct, operate and maintain an
18 underground Telecommunications System in Public Rights-of-Way within the
19 Franchise Area, to provide Telecommunications Services. Without limiting the
20 foregoing, Franchisee expressly agrees that it will construct, operate and
21 maintain its System in compliance with the requirements of Title 16B, including
22 those governing the placement of its Telecommunications System, and with
23 other applicable City codes; and will obtain and maintain all bonds and billable
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1 work orders required by the same.

2 3.2 Construction, Operation, or Repair. Franchisee shall, in all cases,
3 comply with all lawful City ordinances and regulations now in effect or
4 hereinafter enacted regarding the acquisition of permits and such other items as
5 may be required by the City in connection with the Construction, Operation or
6 Repair of the Telecommunications System, including, without limitation, the
7 City's Right-of-Way Restoration Policy.
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9 Without limiting the foregoing, Franchisee agrees that it shall, in the
10 course of constructing, operating and maintaining its Telecommunications
11 System comply with the requirements of Title 16B and among other things:
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13 A. (1) Pursuant to RCW § 35.99.060 and after consultation
14 with the City as set forth in RCW § 35.99.060(2), Franchisee shall, with as
15 much advance notice as is feasible under the circumstances, but in no event
16 less than 90 days, except in circumstances in which there is a risk to public
17 safety, protect, support, temporarily disconnect, relocate, or remove any of its
18 property located in Public Rights-of-Way when reasonably necessary for
19 construction, alteration, repair, or improvement of the right-of-way for purposes
20 of public welfare, health, or safety. Collectively, such matters are referred to
21 below as the "public work."
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23 (2) In the event of an emergency, or where the
24 Telecommunications System creates or is contributing to an imminent danger to
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1 health, safety, or property, the City may protect, support, temporarily
2 disconnect, remove, or relocate any or all parts of the Telecommunications
3 System without prior notice, and charge the Franchisee for actual, reasonable,
4 and documented costs incurred. The City shall notify Franchisee as soon as is
5 reasonably practical, after any City action pursuant to this Section.
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7 (3) In the case of non-public work, if any Person that is
8 authorized to place Facilities in the Rights-of-Way requests Franchisee to
9 protect, support, temporarily disconnect, remove, or relocate Franchisee's
10 facilities to accommodate the construction, operation, or repair of the facilities of
11 such other Person, the Franchisee shall, after 90 days' advance written notice,
12 take action to effect the necessary changes requested. In the case of non-
13 public work or non-public projects, unless the matter is governed by a valid
14 contract or a state or federal law or regulation, or unless the Franchisee's
15 Telecommunications System was not properly installed, the reasonable cost of
16 the same shall be borne by the Person requesting the protection, support,
17 temporary disconnection, removal, or relocation and at no charge to the City,
18 even if the City makes the request for such action.
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21 (4) Franchisee shall, on the request of any Person
22 holding a valid permit issued by a governmental authority, and upon reasonable
23 notice, temporarily raise or lower its wires to permit the moving of buildings or
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1 other objects. The expense of such temporary removal or raising or lowering of
2 wires shall be paid by the Person requesting the same.

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

14 D. Franchisee must follow City-established requirements for
15 placement of Facilities in Public Rights-of-Way, including the specific location of
16 Facilities in the Public Rights-of-Way, and must in any event install Facilities in
17 a manner that minimizes interference with the use of the Public Rights-of-Way
18 by others, including others that may be installing Communications Facilities.
19 The City may require that Facilities be installed at a particular time, at a specific
20 place, or in a particular manner as a condition of access to a particular Public
21 Right-of-Way area; may deny access if Franchisee is not willing to comply with
22 the City's requirements; and may remove, or require removal of, any Facility
23 that is not installed in compliance with the requirements established by the City,
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1 or which is installed without prior City approval of the time, place, or manner of
2 installation and charge the Franchisee for all the costs associated with removal;
3 and may require Franchisee to cooperate with others to minimize adverse
4 impacts on the Public Rights-of-Way through joint trenching and other
5 arrangements.
6

7 E. Franchisee agrees that, as a condition of a permit for
8 installation of conduit, and in accordance with RCW § 35.99.070 the City may
9 require it to install conduit in excess of its reasonably foreseeable requirements
10 for the purpose of accommodating the City and/or other Franchisees and
11 Licensees where the City Manager determines it is appropriate to do so to
12 minimize disruption of public passage or infrastructure, to forestall or relieve
13 exhaustion of Right-of-Way capacity, or to protect environmentally sensitive
14 areas.
15

16
17 F. To the extent possible, Franchisee shall use conduit
18 existing at the time of permitting in installing its System.

19 G. Whenever all existing utilities are located underground in
20 an area in the City, the Franchisee must also locate its Telecommunication
21 System underground.
22

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

2 2. Whenever an electric utility opens a trench for the
3 purpose of installing or relocating Facilities, the Franchisee shall concurrently
4 relocate its Facilities underground and, if it uses the same trench, share the
5 cost.
6

7 3. The City Manager may, for good cause shown,
8 exempt a particular portion of the Telecommunication System from the
9 obligation to locate or relocate Facilities underground, where relocation is
10 impractical, or where the interest in protecting against visual blight can be
11 protected in another manner. Nothing in this Section 3.2.G prevents the City
12 from ordering the Franchisee to locate or relocate its Telecommunication
13 System underground under other provisions of the Tacoma Municipal Code as
14 permissible by law, it being the intent that the number and extent of Overhead
15 Facilities and the visual pollution resulting therefrom will, over time, be reduced
16 and eventually, to the extent feasible, be eliminated.
17

18 H. The Franchisee shall participate in conversion to
19 underground Local Improvement Districts ("LIDs"). The Franchisee, at no cost
20 to the City or abutting property owners, shall share fairly with other utilities the
21 cost of undergrounding when done through the LID process.
22

23 1. As part of its obligations under the Tacoma
24 Municipal Code, the Franchisee shall provide the preliminary cost estimate,
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1 facility conversion designs, and final cost estimates to any LID project
2 coordinator in a timely manner. At the request of an LID project coordinator, the
3 Franchisee shall perform underground construction and movement of Customer
4 connections underground (overhead reclaim), in coordination with the
5 undergrounding services provided by other LID utilities, at no cost to the City or
6 abutting property owners.
7

8 I. Franchisee shall promptly repair any and all Public
9 Rights-of-Way, public property, or private property that is disturbed or damaged
10 during the construction, operation or repair of its Telecommunications System.
11 Public property and Public Rights-of-Way must be restored in conformance with
12 the City's Right-of-Way Restoration Policy.
13

14 J. No tree trimming shall be performed without the permission
15 of the City and other affected authorities, and any tree trimming must be
16 performed in strict accordance with the City Code. Even if tree trimming is
17 authorized by the City, Franchisee is liable for any damage it causes during the
18 course of tree trimming.
19

20 K. In any dispute over the adequacy of a restoration relative to
21 this section, the Tacoma Department of Public Works Director shall in his/her
22 sole but reasonable discretion, make the final determination.
23

24 L. Franchisee shall not remove any Overhead or
25 Underground Facilities except as hereinafter provided.
26



1 (1) Franchisee shall not remove any Overhead or
2 Underground Facilities which require trenching or other opening of the
3 Rights-of-Way along the extension of the Facilities to be removed without the
4 express permission of the City. Franchisee must request permission from the
5 City to remove the Facilities at least 30 days in advance of the date Franchisee
6 proposes to begin removal.
7

8 (2) Franchisee shall remove such Overhead or
9 Underground Facilities as the City orders it to remove; provided, that the City
10 may not order removal where such removal is primarily to give economic benefit
11 or advantage to a competing provider of Telecommunications Service.
12

13 (3) Where trenching or other opening of the
14 Rights-of-Way along the extension of Facilities to be removed is required,
15 Franchisee must post bonds as the City may require to ensure that the property
16 is promptly removed, with minimum disruption. Franchisee must restore the
17 affected property in conformance with the City's Right-of-Way Restoration Policy;
18 and Franchisee must compensate those whose property it damages for the
19 damage.
20

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

3 3.3 Right To Inspect and Order Corrections. The City may inspect
4 the Telecommunications System at any time reasonable under the
5 circumstances to ensure compliance with this Franchise and applicable law,
6 including to ensure that Franchisee's Telecommunications System is
7 constructed and maintained in a safe condition. If an unsafe condition is found
8 to exist, the City, in addition to taking any other action permitted under
9 applicable law, may order Franchisee, in writing, to make the necessary repairs
10 and alterations specified therein forthwith to correct the unsafe condition on a
11 time table established by the City which is reasonable in light of the unsafe
12 condition. The City has the right to correct, inspect, administer, and repair the
13 unsafe condition if Franchisee fails to do so, and to charge the Franchisee
14 therefor.

15 3.4 Information Regarding Ongoing Work. In addition to providing
16 notice to the public of ongoing work as may be required under applicable law,
17 Franchisee shall make available information regarding any ongoing
18 construction, operation or installation of its Telecommunications System
19 sufficient to show (1) the nature of the work being performed; (2) where it is
20 performed; (3) its estimated completion date; and (4) progress to completion.



1 SECTION 4 - REGULATORY PROVISIONS.

2 4.1 Intent. The City shall have the right to administer and regulate
3 activities of this Franchise up to the fullest extent of the law. The failure to
4 reserve a particular right to regulate, or reference a particular regulation, shall
5 not be interpreted by negative implication or otherwise to prevent the
6 application of a regulation to Franchisee.
7

8 4.2 Remedies for Franchise Violations. The City has the right to
9 exercise any and all of the following remedies, singly or in combination, in the
10 event Franchisee violates any provision of this Franchise:
11

12 A. Draw upon or foreclose all or any part of any letter of credit,
13 security fund, performance bond or other security provided under this
14 Franchise; provided, however, such drawing or foreclosure shall be only in such
15 a manner and in such amount as the City reasonably determines is necessary
16 to remedy the default. Should the City take this action, Franchisee shall be
17 responsible for all direct and actual costs related to such action, including, but
18 not limited to, legal and administrative costs:
19

20 B. Commencing an action at law for monetary damages;
21 C. Commencing an action for equitable or other relief;
22 D. Declaring the Franchise to be revoked; and/or
23 E. Seeking specific performance of any provision, which
24 reasonably lends itself to such remedy.
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1 In determining which remedy or remedies for Franchisee's violation are
2 appropriate, the City may take into consideration the nature and extent of the
3 violation, the remedy needed to prevent such violations in the future, whether
4 Franchisee has a history of previous violations of the same or similar kind, and
5 such other considerations as are appropriate under the circumstances.
6 Remedies are cumulative; the exercise of one shall not foreclose the exercise
7 of others.

9 4.3 Procedure for Remedying Franchise Violations. Before imposing
10 liquidated damages, or drawing upon the performance bond, letter of credit,
11 security fund, or any other security set out in Section 6, the City shall follow the
12 procedure below.

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

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

7 C. Public Hearing. The City may schedule a public hearing to
8 investigate any alleged default. The City shall give Franchisee 20 calendar
9 days' notice of the time and place of the hearing and provide Franchisee with
10 an opportunity to be heard.
11

12 D. Action after Hearing. If the City determines after such
13 hearing that the Franchisee did not cure, or initiate steps to cure satisfactory to
14 the City, after the notice required by Section 4.3.A. was provided, then the City
15 may draw upon any performance bond, letter of credit, security fund or other
16 security, including requiring performance under the guarantee; and impose
17 liquidated damages. However, notice and opportunity to cure are not required
18 for repeat violations, or for a failure to correct a default where Franchisee knew
19 or should have known it was in default; in such cases, the performance bond,
20 security fund, letter of credit or other security may be drawn upon, the guarantor
21 required to perform and liquidated damages imposed after the hearing required
22 by Section 4.3.C.
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1 E. Liquidated Damage Amounts. Because Franchisee's
2 failure to comply with the provisions of this Franchise will result in injury to the
3 City, and because it may be difficult to estimate the extent of each such injury,
4 Franchisee and the City agree to the following liquidated damages, which
5 provisions represent the best estimate of the damages resulting from injuries of
6 specific types. The amounts of the liquidated damages set forth in this
7 Franchise are in 2022 dollars and shall be increased each year by the increase
8 in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price
9 Index for Pacific Cities and U. S. City Average for the greater Seattle area. The
10 amount of liquidated damages for all material violations of this Franchise for
11 which actual damages may not be ascertainable shall be: \$500 per day for each
12 violation for each day the violation continues. It is provided, however, that the
13 City shall allow the Franchisee a minimum of 30 days after notice to the
14 Franchisee of such neglect, failure, or refusal to comply within which to meet
15 compliance or correct performance, prior to the assessment of any liquidated
16 damages. Violations of the Tacoma Municipal Code are punishable to the
17 extent permitted therein, and to the extent permitted by state and federal law.

18 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its
19 obligations to comply promptly with any provision of this Franchise by reason of
20 any failure of the City to enforce prompt compliance, and the City's failure to
21 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's
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1 conduct.

2 4.5 Force Majeure. The Franchisee shall not be deemed in default
3 with provisions of this Franchise where performance was rendered impossible
4 by war or riots, civil disturbances, floods, or other natural catastrophes beyond
5 the Franchisee's control; the unforeseeable unavailability of labor or materials;
6 or power outages exceeding back-up power supplies. The acts or omissions of
7 Affiliates are not beyond the Franchisee's control, and the knowledge of
8 Affiliates shall be imputed to Franchisee. This Franchise shall not be revoked
9 or the Franchisee penalized for such noncompliance, provided that the
10 Franchisee takes immediate and diligent steps to bring itself back into
11 compliance and to comply as soon as possible under the circumstances with
12 this Franchise without unduly endangering the health, safety, and integrity of
13 the Franchisee's employees or property, or the health, safety, and integrity of
14 the public, Public Rights-of-Way, public property, or private property.
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18 4.6 Alternative Remedies. No provision of this Franchise shall be
19 deemed to bar the right of the City to seek or obtain judicial relief from a
20 violation of any provision of the Ordinance or any rule, regulation, requirement
21 or directive promulgated thereunder. Neither the existence of other remedies
22 identified in this Franchise nor the exercise thereof shall be deemed to bar or
23 otherwise limit the right of the City to recover monetary damages for such
24 violation by Franchisee, or to seek and obtain judicial enforcement of
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1 Franchisee's obligations by means of specific performance, injunctive relief or
2 mandate, or any other judicial remedy at law or in equity.

3 4.7 Compliance with the Laws. Franchisee shall comply with all
4 federal and state laws and regulations, including regulations of any
5 administrative agency thereof, as well as all City ordinances, resolutions, rules
6 policies and regulations heretofore or hereafter adopted or established during
7 the entire term of the Franchise; provided that, nothing herein shall prevent
8 Franchisee from challenging a provision of laws that applies only to it as an
9 impairment of contract. Nothing in this Franchise shall limit the City's right of
10 eminent domain under state law. Nothing in this Franchise shall be deemed to
11 waive the requirements of any lawful code or resolution of the City regarding
12 permits, fees to be paid, or manner of construction.

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15 SECTION 5 - REPORTING REQUIREMENTS.

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17 5.1 Reports. Franchisee shall provide reports in compliance with TMC 16.B
18 upon request of the City.

19 5.2 Open Records/Confidentiality. Unless otherwise provided by law,
20 information submitted as part of a Franchise application is open to public
21 inspection and subject to the Washington Public Records Act (Chapter 42.56
22 RCW). It is the Applicant's responsibility to be familiar with the Washington
23 Public Records Act. Applicant may specifically identify any information it
24 considers proprietary by marking and providing said information to City in a
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1 separate envelope marked "Proprietary Information." In the event that: (A) the
2 City receives a request from another party to disclose any information which the
3 applicant has deemed proprietary, and if the City Attorney determines that said
4 information may be subject to being disclosed; or (B) the City determines that
5 the information should be disclosed in connection with its enforcement of any
6 provision of Title 16B TMC, or in the exercise of its police or regulatory powers,
7 then the City shall notify the Applicant of the Applicant's opportunity to seek a
8 protective order from a court with appropriate jurisdiction. In the event an action
9 is not commenced within ten business days, the City may disclose said
10 information. By submitting information which the Applicant deems proprietary or
11 otherwise exempt from disclosure, the Applicant agrees to defend and hold
12 harmless the City from any claim for disclosure under the Washington Public
13 Records Act, including, but not limited to, any expenses including out-of-pocket
14 costs and attorneys' fees, as well as any judgment entered against the City for
15 the attorney fees of the party requesting disclosure.
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19 SECTION 6 - COMPENSATION AND FINANCIAL PROVISIONS.

20 6.1 Fees; Taxes.

21
22 A. State Prohibition of Franchise Fee. The parties understand
23 that RCW 35.21.860 currently prohibits a municipal franchise fee. Franchisee
24 agrees that if this statutory prohibition is removed, the City may assess a
25 reasonable franchise fee, to be agreed to by the parties if the statutory
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1 prohibition is removed. The parties agree that this Section 6.1(A) does not limit
2 the right of the Franchisee to challenge the franchise fee pursuant to 47 USC
3 § 253.
4

5 B. Franchisee Obligated to Pay Administrative Costs. In accord
6 with RCW 35.21.860 as presently effective, and as it may be later amended,
7 Franchisee must pay the City an amount sufficient to recover administration
8 expenses incurred in receiving and approving this Franchise, including, but not
9 limited to, the reasonable costs of outside consultants retained by the City to
10 assist in the City's consideration and processing of this Franchise application.
11 The first \$5,000 of said expenses will be covered by the \$5,000 application fee
12 deposited with the City. Franchisee will also pay the reasonable costs of
13 enforcing, or, as necessary, reviewing, the provisions of this Franchise as well as
14 costs involved with the modification, amendment, renewal, or Transfer of this
15 Franchise, as ordered by the Franchise Services Manager, whether such costs
16 result from accrued in-house staff time, or out-of-pocket expenses or administrative
17 costs, as well as expenses of retaining independent technical, legal, or financial
18 consultants or advisors, or whether relating to costs incurred due to initial System
19 development or to future System expansion. The amount of payment to be made by
20 Franchisee to cover these administrative costs is an amount determined to be
21 reasonable by the Franchise Services Manager. Such obligation further includes
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1 municipal fees related to receiving and approving permits or licenses, inspecting
2 plans and construction, or relating to the preparation of a detailed statement
3 pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt
4 of the City's billing therefor.
5

6 C. Manner of Payment; Audit. Franchisee shall make any required
7 fee payments in the form, intervals and manner requested by the City Treasurer,
8 and furnish him/her any information related to his/her revenue collection functions
9 reasonably requested. In case of audit, the City Treasurer may require Franchisee
10 to furnish a verified statement of compliance with Franchisee's obligations or in
11 response to any questions. Said certificate may be required from an independent,
12 certified public accountant, at Franchisee's expense. Franchisee agrees, upon
13 request of the Franchise Manager or City Treasurer, to promptly provide copies of
14 all documents filed with any federal, state, or local regulatory agency affecting any
15 of Franchisee's Facilities or business operations in the City of Tacoma.
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18 D. Period of Limitations. The period of limitation for recovery of
19 any fee payable hereunder shall be six years from the date on which payment
20 by Franchisee is due, subject to tolling as provided as a matter of law or equity.
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1 Unless within six years from and after the due date for a particular payment, the
2 City makes written request to review Franchisee's records with respect to such
3 fee payment (either individually or as part of a broader request) recovery shall
4 be barred with respect to such payment and the Franchising Authority shall be
5 estopped from asserting any claims whatsoever against Franchisee relating to
6 any alleged deficiencies in that particular payment.
7

8 6.2 Auditing and Financial Records. Franchisee shall manage all of
9 its operations in accordance with a policy of keeping books and records open
10 and accessible to the City. Without limiting its obligations under this Franchise,
11 Franchisee agrees that it will collect and make available books and records for
12 inspection and copying by the City in accordance with Title 16B. Franchisee
13 shall be responsible for collecting the information and producing it. Books and
14 records shall be produced to the City at the Tacoma Municipal Building, or such
15 other location as the parties may agree. Notwithstanding any provision of
16 Title 16B or this Franchise, if documents are too voluminous or for security
17 reasons cannot be produced at the Tacoma Municipal Building or mutually
18 agreeable location within the City, then the parties may mutually agree on an
19 alternative method to make the documents available to the City.
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1 Franchisee shall take all steps required, if any, to ensure that it is able to
2 provide the City all information which must be provided or may be requested
3 under Title 16B or this Franchise, including by providing appropriate Subscriber
4 privacy notices. Nothing in this section shall be read to require a Franchisee to
5 violate 47 U.S.C. § 551. Franchisee shall be responsible for redacting any data
6 that federal law prevents it from providing to the City. Records shall be kept for
7 at least six years. In addition to maintaining all records as required by
8 Title 16B, Franchisee shall maintain records sufficient to show its compliance
9 with the requirements of this Franchise, and shall produce those records within
10 30 days of a City request.
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13 Franchisee agrees to meet with a representative of the City upon request
14 to review its methodology of record-keeping, financial reporting, computing fee
15 obligations, and other procedures the understanding of which the City deems
16 necessary for understanding the meaning of reports and records.
17

18 The City agrees to request access to only those books and records, in
19 exercising its rights under this section, which it deems reasonably necessary as
20 part of a bona fide exercise of its authority over the Telecommunications
21 System under this Franchise, Title 16B or other applicable law. The City further
22 agrees that it will withhold from public disclosure those books and records made
23 available to it pursuant to this section 6.2, but only to the extent that the City
24 believes that it has the discretion to do so under state law.
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1 6.3 Performance Bond. At the same time it provides its Franchise
2 acceptance to the City, Franchisee shall provide a performance bond to ensure
3 the faithful performance of its responsibilities under this Franchise and
4 applicable law, including by way of example and not limitation, its obligations to
5 relocate and remove its facilities; and to restore City Rights-of-Way and other
6 property. The initial amount of the performance bond shall be \$250,000. The
7 amount of the bond may be changed from time to time to reflect changed risks
8 to the City or to the public. The Franchisee may be required to obtain additional
9 bonds in accordance with the City's ordinary practices. The bond shall be, in a
10 form and with a surety (authorized to do business in the state of Washington)
11 acceptable to the City's Risk Manager and in a form acceptable to the City
12 Attorney. Franchisee shall pay all premiums or costs associated with
13 maintaining the bond, and shall keep the same in full force and effect at all
14 times during the Franchise Term.

18 6.4 Indemnification by Franchisee.

19 A. In accordance with and subject to applicable law,
20 Franchisee, by accepting this Franchise, agrees to release the City from and
21 against any and all liability and responsibility in or arising out of the
22 construction, operation or maintenance of the Telecommunications Facilities,
23 and, without limiting the provisions of Section 7.4, agrees not to sue or
24 seek any money or damages from the City, its trustees, elected and appointed
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1 officials, agents, and employees in connection with the above mentioned
2 matters, except to the extent caused by the gross negligence or willful
3 misconduct of the City, its trustees, elected and appointed officials, agents, and
4 employees.
5

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

2 C. Franchisee agrees that the covenants and representations
3 relating to the indemnity provided in A-B above shall survive the
4 term/expiration/termination of this Franchise, Special Street Use Permit,
5 License, or other authorization, and continue in full force and effect as to the
6 Franchisee's responsibility to indemnify.
7

8 6.5 Franchisee Insurance.
9

10 A. Franchisee shall maintain, throughout the term of the
11 Franchise, adequate insurance to protect the City, its trustees, elected and
12 appointed officers, agents, and employees against claims and damages that
13 may arise as a result of the construction, operation or repair of the
14 Telecommunications System. The City makes no representation as to what
15 constitutes adequate insurance for Franchisee's operations. The foregoing
16 notwithstanding, Franchise must maintain at least the minimum insurance
17 coverages and amounts set forth in TMC 16B.05.090.
18

19 B. The required insurance must be obtained and maintained for
20 the entire period the Franchisee has facilities in the Public Rights-of-Way, and for
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1 six years thereafter. If the Franchisee, its contractors, or subcontractors
2 do not have the required insurance, the City may order such entities to stop
3 operations until the insurance is obtained and approved.
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5 C. Certificates of insurance, reflecting evidence of the required
6 insurance and naming the City as an additional insured with all required
7 endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies
8 described above, shall be filed with the City's Risk Manager. The certificate
9 shall be filed with the acceptance of the Franchise, and annually thereafter, and
10 as provided in E below.
11

12 D. The certificates shall contain a provision that coverages
13 afforded under these policies will not be canceled until at least 30 days' prior
14 written notice has been given to the City. Policies shall be issued by companies
15 authorized to do business under the laws of the state of Washington. Financial
16 Ratings must be no less than "A-VII" in the latest edition of "Bests Key Rating
17 Guide", published by A.M. Best Guide.
18

19 E. In the event that the insurance certificate provided indicates
20 that the insurance shall terminate or lapse during the period of the Franchise,
21 the Franchisee shall furnish, at least 30 days prior to the expiration of the date
22 of such insurance, a renewed certificate of insurance as proof that equal and
23 like coverage has been or will be obtained prior to any such lapse or termination
24 during the balance of the period of the Franchise.
25
26



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

4
5 6.6 Security Fund. Franchisee shall establish a cash security fund or
6 provide the City an irrevocable letter of credit in the amount of \$50,000, to
7 secure the payment of fees owed, to secure any other performance promised in
8 this Franchise, and to pay any taxes, fees or liens owed to the City. The letter
9 of credit shall be in a form and with an institution acceptable to the City's
10 Director of Finance and in a form acceptable to the City Attorney. Should the
11 City draw upon the cash security fund or letter of credit, it shall promptly notify
12 the Franchisee, and the Franchisee shall promptly restore the fund or the letter
13 of credit to the full required amount. The City may from time to time change the
14 amount of the required security fund/letter of credit to reflect changes in the
15 risks to the City and to the public, including delinquencies in taxes or other
16 payments to the City.
17

18
19 SECTION 7 - MISCELLANEOUS PROVISIONS.

20 7.1 Posting and Publication. Franchisee shall assume the cost of
21 posting and publication of this Franchise as such posting and publication is
22 required by law and such is payable upon Franchisee's filing of acceptance of
23 the Franchise.
24

25 7.2 Guarantee of Performance. Franchisee acknowledges that it
26



1 enters into the Franchise voluntarily in order to secure and in consideration of
2 the grant from the City of a ten-year Franchise. Performance pursuant to the
3 terms and conditions of this Franchise agreement is guaranteed by Franchisee.
4

5 7.3 Governing Law and Venue. The Franchise shall be governed by
6 and construed in accordance with the laws of the state of Washington without
7 recourse to any principles of Conflicts of Laws, except that where federal law
8 preemptively applies it shall control. Any litigation between the City and
9 Franchisee arising under or regarding this Franchise shall occur, if in the state
10 courts, in the Superior Court of Pierce County, and if in the federal courts, in the
11 United States District Court for the Western District of Washington.
12

13 7.4 No Recourse. Franchisee shall have no monetary recourse
14 whatsoever against the City or its officials, boards, commissions, agents or
15 employees for any loss, costs, expense or damage arising out of any provision
16 or requirement of Title 16B or because of the enforcement of Title 16B or the
17 City's exercise of its authority pursuant to Title 16B, this Franchise or other
18 applicable law, unless and to the extent caused by the gross negligence or
19 willful misconduct of the City, its trustees, elected and appointed officers,
20 agents, or employees.
21
22

23 7.5 Notice. Unless expressly otherwise agreed between the parties,
24 every notice, billing, or response required by this Franchise to be served upon
25 the City or Franchisee shall be in writing, and shall be deemed to have been
26



1 duly given to the required party upon actual receipt or refusal of delivery and
2 shall be sent by a nationally recognized overnight courier or by U.S. certified
3 mail, return receipt requested, postage prepaid. The notices or responses to the
4
5 City shall be addressed as follows:

6 City of Tacoma
7 Municipal Services Building
8 1224 MLK Jr Way
9 Tacoma, WA 98405
10 Attn: Franchise Services Manager

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

12 LEVEL 3 COMMUNICATIONS, LLC
13 931 14th Street
14 Denver, CO 80202
15 Attn: Director, Network Infrastructure Services
16 Attn: General Counsel

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

20 7.6 Execution. Franchisee shall execute this Ordinance through
21 signed acceptance of the Franchise granted hereunder within 30 days after the
22 date of passage of the Ordinance by the City Council. The acceptance shall be
23 submitted in the form attached hereto or other form acceptable to the City
24 Attorney and in accepting the Franchise, Franchisee warrants that it has
25 carefully read the terms and conditions of this Franchise and unconditionally
26 accepts all of the terms and conditions of this Franchise and agrees to abide by



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

The Franchise rights granted herein shall not become effective until all of the foregoing is received in acceptable form. 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



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ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _____, effective _____.

I, James Nickerson, Director of ROW & Dark Fiber of LEVEL 3 COMMUNICATIONS, LLC, and am the authorized representative to accept the above-referenced City franchise ordinance on behalf of LEVEL 3 COMMUNICATIONS, LLC.

I certify that this franchise and all terms and conditions thereof are accepted by LEVEL 3 COMMUNICATIONS, LLC without qualification or reservation.

DATED this _____ day of _____, 2025.

By _____
James Nickerson

Witness: _____