



ORDINANCE NO. 27986

1 AN ORDINANCE relating to cable communications and franchise services;
2 granting the Unite Private Networks, L.L.C., a Delaware Limited Liability
3 Company, the nonexclusive right, privilege, authority, and limited
4 franchise to construct, operate, maintain, remove, replace, and repair
5 fiber-optic communications facilities in designated areas of City
6 right-of-way, together with equipment and appurtenances thereto, for the
7 transmission of data within and through those certain right-of-way areas,
8 streets, and public property within the City of Tacoma.

9 WHEREAS the Unite Private Networks, L.L.C. (hereinafter "Grantee"),
10 has applied for a nonexclusive limited franchise to operate and maintain
11 fiber-optic communication lines through certain herein designated public
12 right-of-way areas within the City of Tacoma (hereinafter "City" or "Grantor"),
13 and

14 WHEREAS the Tacoma City Charter authorizes the City to grant
15 nonexclusive franchises for the use of City right-of-way, streets, and public
16 property; Now, Therefore,

17 BE IT ORDAINED BY THE CITY OF TACOMA:

18 Section 1. Purpose.

19 The City grants this nonexclusive limited franchise to Grantee to operate
20 and maintain fiber-optic communication lines and related facilities ("Facilities")
21 necessary to the operation of Grantee's business and to the health, safety, and
22 welfare of the community. This franchise is conditioned upon the terms and
23 conditions contained herein and Grantee's compliance with any applicable
24 federal or state regulatory programs that currently exist or may hereafter be
25 enacted by any federal or state regulatory agencies with jurisdiction over the
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1 Grantee and its use of the right-of-way. The purpose of this franchise is to
2 delineate the conditions relating to Grantee's use of the public's right-of-way,
3 streets and property and to create a foundation for the parties to work
4 cooperatively in the public's best interests after this ordinance becomes
5 effective. By granting this franchise, the City is not assuming any risks or
6 liabilities therefrom, which shall be solely and separately borne by Grantee.

7 Section 2. Right Conveyed.

8 2.1 Grantor hereby grants, under the terms and conditions contained
9 herein, to Grantee, a limited liability company organized and existing under and
10 by virtue of the laws of the State of Delaware, and which is registered and
11 authorized to transact business within the State of Washington, the right,
12 privilege, authority, and franchise to construct, operate, maintain, remove,
13 replace, and repair the Facilities, together with all equipment and
14 appurtenances, as may be necessary thereto, for the transmission and handling
15 of electronic information and data, through and under those certain streets,
16 avenues, drives, and other public lands within the City of Tacoma, as
17 designated and more particularly described in Schedule I, which is attached
18 hereto and expressly incorporated herein by this reference ("Franchised Area").
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20 2.2 This franchise is only intended to convey a limited right and
21 interest as to that public property and those rights of way designated on
22 Schedule I in which the City has an actual interest. It is not a warranty of title or
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1 interest in City road rights-of-way, nor is it a warranty of Grantee's right to locate
2 in any such area. None of the rights granted herein shall affect the City's ability
3 to use or jurisdiction over its property, streets or rights of way.

4 Section 3. Term.

5 Each of the provisions of this franchise shall become effective upon
6 Grantee's acceptance of the terms and conditions contained herein ("Effective
7 Date") and shall remain in effect for ten (10) years thereafter. Subsequently,
8 and in accordance with the terms and provisions of Tacoma Charter Article VIII,
9 City Council may consider renewing this franchise, at the written request of
10 Grantee, for any additional renewal period at any time within two (2) years
11 before the end of the franchise's original ten (10) year term, unless either party
12 expresses its intention in writing to terminate this franchise at the conclusion of
13 the original ten (10) year term.
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15 Section 4. Compliance with Laws Standards and Policies.

16 Grantee shall, in carrying out any authorized activities under the
17 privileges granted herein, comply with all applicable federal, state and local
18 laws of any governmental entity with jurisdiction over the Facilities. This shall
19 include all applicable laws, rules and regulations, and published City of Tacoma
20 policies relating to Grantee's use of City right-of-way existing at the Effective
21 Date of this franchise or that may be subsequently enacted, modified or
22 amended by any governmental entity with jurisdiction over Grantee and/or the
23 Facilities.
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Section 5. Construction on Public Properties.

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5.1 This Section 5 shall apply to all construction done by Grantee in the Franchised Area. Except in the event of an emergency, Grantee shall provide Grantor at least thirty (30) calendar days' written notice prior to any alteration, repair, replacement, removal, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's Facilities or appurtenant structures on Grantor's property. Said written notice shall include, at a minimum, detailed plans and specifications, if any, and a detailed description of the proposed work and anticipated time of the work. Such work shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, Grantor's property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances.

5.2 All work done hereunder by Grantee or upon Grantee's direction or on Grantee's behalf shall be undertaken and completed in a workmanlike manner and in accordance with the descriptions, plans and specifications provided to, and approved by, Grantor. Grantee's activities shall be conducted in such a manner as to avoid damage or interference with other utilities, drains or other structures, and to interfere as little as possible with public travel, or other municipal uses and the free use of adjoining property so as to provide safety for persons and property. The Grantee's construction, maintenance and



1 repairs shall be in compliance with all applicable laws and regulations of
2 governmental agencies with jurisdiction including, without limitation the City's
3 right-of-way restoration policy.

4 5.3 The City may condition the granting of any permit or other
5 approval that is required under this Franchise, at any time, on any lawful
6 condition or regulation, unless such condition or regulation is in conflict with a
7 federal directive, as may be reasonably necessary to the management of the
8 public right-of-way or the Grantor's property, including, by way of example and
9 not limitation, bonding, maintaining proper distance from other utilities,
10 protecting the continuity of pedestrian and vehicular traffic and protecting any
11 right-of-way improvements, private facilities and public safety.

12 5.4 Whenever it shall be necessary in constructing, maintaining,
13 repairing, relocating, removing or replacing any of the Grantee's Facilities in any
14 street, right-of-way area, or public property, the Grantee shall without delay, as
15 soon as is commercially reasonable, and at Grantee's sole expense, remove all
16 debris and restore the surface of the street, or public property as nearly as
17 practicable to as good or better condition as it was in before the work began.
18 Grantee shall replace any property corner monuments, survey reference or
19 hubs that were disturbed or destroyed during Grantee's work in the areas
20 covered by this franchise. Such restoration shall be done in a manner
21 consistent with applicable codes and laws, under the supervision of the City's
22 Director of Public Works or his authorized designee and to the City's
23 reasonable satisfaction and specifications. Whenever restoration is required
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1 hereunder, the restoration shall be done under a letter of credit, bond or
2 assignment of funds in an amount appropriate to guarantee adequate
3 restoration.

4 5.5 Grantee shall continuously be a member of the State of
5 Washington one number locator service under RCW 19.122, or approved
6 equivalent, and shall comply with all such applicable rules and regulations.
7 Grantee shall provide reasonable notice to the City prior to commencing any
8 work or construction under this Franchise and additionally to those owners or
9 other persons in control of property abutting the Franchise Area when such
10 work or construction will affect access to such property or otherwise impact
11 such property or the private or public improvements within said area.
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13 5.6 Upon acceptance of this franchise by Grantee, and as a condition
14 of this Franchise, Grantee shall make available to the City, upon the City's
15 written request and at no cost to the City, within sixty (60) working days from
16 construction completion of the Facilities, relevant as-built plans, maps and
17 records revealing the current location and condition of Grantee's Facilities
18 within the public right-of-way and public places.
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20 5.7 Nothing in this franchise shall be deemed to impose any duty or
21 obligation upon Grantor to determine the adequacy or sufficiency of Grantee's
22 plans and designs or to ascertain whether Grantee's proposed or actual
23 construction, testing, maintenance, repairs, replacement or removal is in
24 conformance with the plans and specifications reviewed by Grantor. Grantee
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1 shall ensure any contractor working on its job sites within the Franchise Area,
2 has a written safety plan addressing safety of all persons and property during
3 the performance of any work therein.

4 Section 6. Operations, Maintenance, Inspection and Testing.

5 Grantee shall operate, test, inspect and maintain its Facilities in full
6 compliance with all applicable laws, rules, regulations and policies as now
7 enacted or hereafter amended, and any other current or future laws or
8 regulations that are applicable to Grantee's Facilities.

9 Section 7. INTENTIONALLY OMITTED

10 Section 8. Relocation.

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12 8.1 Relocation for Public Work. Grantee shall, by a time specified by
13 the Grantor, protect, support, temporarily disconnect, relocate, or remove any of
14 its Facilities when required by Grantor for work in furtherance of the public
15 health, safety, or welfare, which work includes, without limitation: traffic
16 conditions; public safety; public right-of-way construction; public right-of-way
17 repair (including resurfacing or widening); change of public right-of-way grade;
18 construction, installation or repair of sewers, drains, water pipes, power lines,
19 signal lines, tracks, or any other type of government-owned telecommunications
20 or public transportation systems, public work, public facility, or improvement of
21 any government-owned utility; public right-of-way vacation; or for any other
22 public purpose where the work involved would be aided by the removal or
23 relocation of the Facilities. Collectively, such matters are referred to as the
24 "public work."
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8.1.1 Grantee may, after receipt of written notice requesting a relocation of its facilities under section 8.1, submit to the City written alternatives to such relocation within thirty (30) calendar days of receiving the plans and specifications. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Grantee full and fair consideration but retains sole discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as otherwise provided in this Section.

8.1.2 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities under this section 8, in order to minimize costs while meeting the public work project objectives. Upon receipt of Grantor's notice, plans and specifications, Grantee shall complete relocation of its Facilities so as to accommodate the public work project at least ten (10) calendar days prior to commencement of the public work project or such other time as the parties may agree in writing.

8.2 Notice. Except in the case of emergencies, the City shall provide written notice, describing where the public work is to be performed, at least sixty

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1 (60) days prior to the deadline by which Grantee must protect, support,
2 temporarily disconnect, relocate or remove its Facilities. Grantee may seek an
3 extension of the time to perform such tasks where they cannot be performed in
4 sixty (60) days even with the exercise of due diligence, and such request for an
5 extension shall not be unreasonably refused.

6 8.3 Emergency Relocation, or Repair. In the event of an emergency,
7 or where the Facilities create or are contributing to an imminent danger to
8 health, safety, or property, the City may protect, support, temporarily
9 disconnect, remove, repair or relocate any or all parts of the Facilities, without
10 prior notice, and charge the Grantee for costs incurred.
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12 8.4 Relocation for Other than Public Work. The City reserves its
13 authority to require relocation of the Facilities located within the public
14 right-of-way, as provided for under applicable state, federal, and local law.

15 8.5 Redesign Option. As an alternative to relocation, Grantee may
16 propose an alternative design for the pending public work in order to avoid any
17 relocation of Grantee's Facilities. Such redesign proposal shall be subject to
18 review and approval by the City and all costs of the redesign, including, without
19 limitation, the costs actually incurred in the public work as a result of the
20 redesign shall be solely for Grantee's account. Approval and acceptance of any
21 such redesign proposal shall be at the sole discretion of the City.
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23 Section 9. INTENTIONALLY OMITTED
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Section 10. Dispute Resolution.

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2 10.1 In the event of a dispute between Grantor and Grantee arising by
3 reason of this franchise, or any obligation hereunder, the dispute shall first be
4 referred to the operational officers or representatives designated by Grantor
5 and Grantee to have oversight over the administration of this franchise. Said
6 officers or representatives shall meet within thirty (30) calendar days of either
7 party's request for said meeting, whichever request is first, and the parties shall
8 make a good faith effort to attempt to achieve a resolution of the dispute.

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10 10.2 In the event that the parties are unable to resolve the dispute
11 under the procedure set forth in section 10.1, then the parties hereby agree that
12 the matter shall be referred to mediation within Pierce County. The parties shall
13 mutually agree upon a mediator to assist them in resolving their differences. If
14 the parties are unable to agree upon a mediator, the parties shall jointly obtain a
15 list of seven (7) mediators from a reputable dispute resolution organization and
16 alternate striking mediators on that list until one remains. A coin toss shall
17 determine who may strike the first name. If a party fails to notify the other party
18 of which mediator it has stricken within two (2) business days, the other party
19 shall have the option of selecting the mediator from those mediators remaining
20 on the list. Any expenses incidental to mediation shall be borne equally by the
21 parties.
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23 10.3 If either party is dissatisfied with the outcome of the mediation,
24 that party may then pursue any available judicial remedies in Pierce County,
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1 provided, that if the party seeking judicial redress does not substantially prevail
2 in the judicial action, it shall pay the other party's reasonable legal fees and
3 costs incurred in the judicial action.

4 Section 11. Abandonment or Removal of Facilities.

5 In the event of abandonment or Grantee's permanent cessation of use of
6 its Facilities, or any portion thereof within the City of Tacoma, the Grantee shall,
7 within one hundred and eighty days (180) after the abandonment or permanent
8 cessation of use, remove the Facilities, secure the Facilities in such a manner
9 as to cause it to be as safe as is reasonably possible, or after petitioning the
10 City to be allowed to do so, decommission the Facilities in place, all in
11 compliance with applicable laws, regulations and industry standards. In the
12 event of the removal of all or a portion of the Facilities, Grantee shall restore the
13 Franchise Area as nearly as possible to the condition that existed prior to
14 installation of Grantee's Facilities and in compliance with the City's right-of-way
15 restoration policy. Such property restoration work shall be done at Grantee's
16 sole cost and expense and to Grantor's reasonable satisfaction. If Grantee fails
17 to remove, secure or decommission the Facilities, and/or fails to restore the
18 Franchised Area or take such other mutually agreed upon action, Grantor may,
19 after reasonable notice to Grantee, remove the Facilities, restore the
20 Franchised Area or take such other action as is reasonably necessary at
21 Grantee's expense and Grantor shall not be liable therefor. This remedy shall
22 not be deemed to be exclusive and shall not prevent the City from seeking a
23 judicial order directing that the Facilities be removed.
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Section 12. Nonexclusive Franchise.

1 This franchise is nonexclusive. Grantor reserves the right to grant other
2 franchises, easements, licenses, permits or other approvals to others, subject to
3 the rights granted herein, provided that Grantor shall not grant any other
4 franchise, license, permit or other approval which would substantially interfere
5 with Grantee's use. Grantor shall notify Grantee of any proposed franchise,
6 easement, license or permit for a utility or other structure which may be located
7 within ten (10) feet of Grantee's Facilities, as shown on the latest map Grantee
8 has provided the City. When the Grantor has notice that excavation,
9 construction or other work may be undertaken within ten (10) feet of Grantee's
10 Facilities, it shall notify Grantee so that Grantee may have the opportunity to
11 inspect the work to see that Grantee's Facilities are not damaged. If the
12 contractor undertaking the excavation, construction or other work is observed to
13 have violated safety regulations, Grantor will cooperate to the extent feasible in
14 pursuing an enforcement action to avoid third party damage to the Facilities.
15 This provision shall not create, either expressly or implicitly, nor shall the City
16 assume, any liability under any circumstances hereunder.
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20 Section 13. Indemnification.

21 13.1 General Indemnification. Grantee shall indemnify, defend and
22 hold harmless Grantor from any and all liability, loss, damage, cost, expense,
23 and claim whatsoever, arising on or after the date of this Agreement, whether at
24 law or in equity, arising out of or related to, directly or indirectly, the
25 construction, operation, use, location, testing, repair, maintenance, relocation,
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1 removal, abandonment or damage to Grantee's Facilities, or from the existence
2 of Grantee's Facilities and appurtenances, or for any information or other items
3 transmitted through the Facilities, from any and all causes whatsoever, except
4 to the extent they are caused by Grantor's sole negligence. If any action or
5 proceeding is brought against Grantor by reason of the Facilities, Grantee shall
6 defend the Grantor at the Grantee's sole expense, provided that, for uninsured
7 actions or proceedings, defense attorneys shall be approved by Grantor, which
8 approval shall not be unreasonably withheld.

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10 13.2 Environmental Indemnification. Grantee shall indemnify, defend
11 and save Grantor harmless from and against any and all liability, loss, damage,
12 expense, actions and claims, arising on or after the date of this franchise, either
13 at law or in equity, including, but not limited to, costs and reasonable attorneys'
14 and experts' fees incurred by Grantor in defense thereof, arising from
15 (a) Grantee's breach of any environmental laws applicable to the Facilities or
16 (b) from any release of a hazardous substance on, from or as a result of the
17 Facilities being in the Franchise Area, or (c) other activity related to this
18 franchise by Grantee, its agents, contractors or subcontractors. This indemnity
19 includes but is not limited to (a) liability for a governmental agency's costs of
20 removal or remedial action for hazardous substances; (b) damages to natural
21 resources caused by hazardous substances, including the reasonable costs of
22 assessing such damages; (c) liability for any other person's costs of responding
23 to hazardous substances; (d) liability for any costs of investigation, abatement,
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1 correction, cleanup, fines, penalties, or other damages arising under any
2 environmental laws; and (e) liability for personal injury, property damage, or
3 economic loss arising under any statutory or common-law theory.

4 13.3 Definitions.

5 13.3.1 "Hazardous Substance" means any hazardous, toxic, or
6 dangerous substance, material, waste, pollutant, or contaminant, including all
7 substances designated under the Resource Conservation and Recovery Act, 42
8 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response,
9 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous
10 Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water
11 Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C.
12 § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the
13 Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the
14 Washington Hazardous Waste management Act, Chapter 70.105 RCW; and the
15 Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as amended
16 from time to time; or any other federal, state, or local statute, code or ordinance
17 or lawful rule, regulation, order, decree, or other governmental authority as now
18 or at any time hereafter in effect. The term shall specifically include petroleum
19 and petroleum products. The term shall also be interpreted to include any
20 substance which, after release into the environment, will or may reasonably be
21 anticipated to cause death, disease, behavior abnormalities, cancer, or genetic
22 abnormalities.
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1 13.3.2 "Environmental Laws" shall include the Resource Conservation
2 and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental
3 Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the
4 Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal
5 Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42
6 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et
7 seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et
8 seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the
9 Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the
10 Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended
11 from time to time; or any other federal, state, or local statute, code, or ordinance
12 or federal or state administrative rule, regulation, ordinance, order, decree, or
13 other governmental authority as now or at any time hereafter in effect pertaining
14 to the protection of human health or the environment.
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16 Section 14. Insurance, Performance Bond and Security.
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18 14.1 During this Agreement, Grantee shall provide and maintain, at its
19 own cost, insurance in the minimum amount of Two Million United States
20 Dollars (\$2,000,000.00) each occurrence, in a form and with a carrier
21 reasonably acceptable to the Grantor, naming Grantor as an additional insured
22 for ongoing operations and completed operations, to cover any and all insurable
23 liability, damage, claims and loss as set forth in Section 13.1 above, and, to the
24 extent such coverage is reasonably available in the commercial marketplace, all
25 liability, damage, claims and losses as set forth in Section 13.2 above, except
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1 for liability for fines and penalties for violation of environmental laws and as
2 otherwise provided below. Insurance coverage shall include, but is not limited
3 to, all defense costs. Such insurance shall include, but is not limited to,
4 environmental liability coverage, at a minimum covering liability from
5 environmental incidents, subject to time element reporting requirements, and
6 such other applicable pollution coverage as is reasonably available in the
7 commercial marketplace. In the event that a deductible or self retention amount
8 applies to the insurance herein, Grantee agrees to pay the amount of that
9 deductible or self retention amount.
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11 14.2 Proof of insurance and a copy of the insurance policy, including,
12 but not limited to, coverage terms and claims procedures, shall be provided to
13 the Grantor prior to the beginning of any substantial work, testing or
14 construction or reconstruction on the Facilities. Said insurance shall contain a
15 provision that it shall not be canceled without a minimum of thirty (30) days'
16 prior written notice to the Grantor, and shall include the City of Tacoma as a
17 named additional insured. All required liability policies shall be maintained for a
18 period of not less than three years following termination of this franchise.
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20 14.3 The indemnity and insurance provisions herein under Sections 13
21 and 14 shall survive the termination of this franchise and shall continue for as
22 long as the Grantee's Facilities shall remain in or on the Franchise Area or until
23 the parties execute a new franchise agreement which modifies or terminates
24 these indemnity or insurance provisions.
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1 14.4 Performance Bond. Within thirty (30) days after the award of this
2 franchise, but in no event sooner than the final reading of the franchise
3 ordinance, Grantee shall submit to the City Attorney, which shall be filed with
4 the appropriate City department, a performance bond running to the City, with
5 good and sufficient surety licensed to do business in the State of Washington
6 and approved by the City in the amount of \$15,000.00, conditioned that Grantee
7 shall well and truly observe, fulfill, and perform each term and condition of the
8 franchise. In the alternative, Grantee may provide written evidence of the
9 establishment of a Letter of Credit (also referred to as "LOC") in favor of the
10 City, in a form and with a financial institution acceptable to the City in the
11 amount of \$15,000.00. This LOC shall be conditioned that in the event
12 Grantee shall fail to comply with any one or more of the provisions of this
13 franchise, then there shall be recoverable jointly and severally from the principal
14 and/or surety of such LOC, any damages suffered by the Grantor as a result
15 thereof, including the full amount of any compensation, indemnification, or cost
16 of removal, relocation or abandonment of Facilities as prescribed herein; said
17 condition to be a continuing obligation for the duration of the franchise and
18 thereafter until Grantee has liquidated all of its obligations with the City that may
19 have arisen from the acceptance of the franchise by Grantee or from its
20 exercise of any privilege herein granted. Written evidence of payment of
21 required premiums shall be filed and maintained with the City. In lieu of the
22 LOC, Grantee may provide for a bond, assignment of funds, or similar
23 arrangement to be established giving the City rights substantially the same as
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1 the rights of the City in relation to the LOC, the provisions of which bond,
2 assignment of funds, or other arrangement shall be subject to the approval of
3 legal counsel for the City.

4 Neither the provisions of this section, any LOC (or other security)
5 accepted by the City pursuant thereto, nor any damages recovered by the City
6 thereunder shall be construed to excuse faithful performance by Grantee or to
7 limit liability of Grantee under the franchise or for damages, either to the full
8 amount of the bond or otherwise, except as otherwise provided herein.

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10 14.5 Validity of Letter of Credit. If at any time during the term of the
11 franchise, the condition of the entity issuing the LOC noted in Section 14.4 shall
12 change in such a manner as to render the LOC unsatisfactory to the City,
13 Grantee shall replace such LOC by a LOC of like amount and similarly
14 conditioned, issued by an entity satisfactory to the City. The City Council, from
15 time to time, may authorize or require appropriate and reasonable adjustments
16 in the amount of the LOC; provided, however, that prior to any required
17 increase in the amount of the LOC, the City shall give Grantee at least one
18 hundred twenty (120) days' prior notice thereof stating the exact reason for the
19 requirement. Such reasons must demonstrate a change in Grantee's business
20 practices or financial situation that would materially prohibit or impair its ability
21 to comply with the terms of the franchise or afford compliance therewith.
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23 Section 15. Annual Franchise Fee.

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25 15.1 In consideration for granting this franchise and for the use of the
26 Franchised Area, there is hereby established an annual fee of \$3,190.00, paid



1 in United States Dollars (the "Franchise Fee"). The first installment of the
2 Franchise Fee shall be paid within three (3) weeks of the time Grantee accepts
3 this franchise and shall cover the first twelve (12) months of operation. Each
4 succeeding installment shall cover the next twelve (12) month period and shall
5 be paid upon receipt of invoice, not later than the anniversary date of this
6 franchise's Effective Date. Interest shall accrue on any late payment at the rate
7 of twelve percent (12%) per annum.

8 15.2 Grantee agrees that it will obtain, pursuant to the City's currently
9 effective code and rates, any and all licenses, permits or other approvals
10 necessary for Grantee to operate, maintain or repair its facilities in the
11 franchised area. This shall include, by way of example only and not limitation,
12 inspection and permit costs associated with Grantee's work in the City's
13 right-of-way. The franchise fee set forth in section 15.1 does not include
14 standard and customary payments associated with the City's administrative
15 expenses incurred in reviewing, licensing, permitting or granting any other
16 approvals necessary for Grantee to construct, operate, maintain or repair its
17 Facilities or for any inspection or enforcement costs related thereto.
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19 Additionally, the foregoing annual fee does not include any generally applicable
20 taxes that the Grantor may legally levy.
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22 Section 16. Notice.

23 All notices, demands, requests, consents and approvals which may, or
24 are required to be given by any party to any other party hereunder, shall be in
25 writing and shall be deemed to have been duly given if delivered personally,
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sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Grantor: Cable Communications and Franchise Services Manager
City of Tacoma
1224 MLK Jr. Way
Tacoma, WA 98405

with copy to: City Attorney
City of Tacoma
747 Market Street, #1120
Tacoma, WA 98402

Grantee: Unite Private Networks LLC
Attn: Legal
950 W. 92 Highway, Suite 203
Kearney, MO 64060

Fax: (816) 903-9401

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. Assignment and Transfer of Franchise.

17.1 In accordance with Tacoma City Charter Article VIII, Section 8.5, this franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld.



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17.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer:

17.2.1 Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer;

17.2.2 All information reasonably required by the City of a franchise applicant under Tacoma City Charter Article VIII and any applicable provisions of the Tacoma Municipal Code, as it may be amended from time to time, with respect to the proposed assignee or transferee;

17.2.3 Any other information reasonably required by the City; and,

17.2.4 An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

17.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the franchisee granted hereunder.

17.4 Any transfer or assignment of this franchise without the prior written consent of the City as set forth herein shall be void and shall result in revocation of the existing permit or franchise.



Section 18. Reservation of Police Power.

1 All the rights and privileges granted in this franchise shall be governed by
2 the terms and conditions contained herein subject to the City's reservation of all
3 its police powers to enact ordinances that are necessary to protect the health,
4 safety and welfare of the general public.
5

6 Section 19. Termination.

7 19.1 Grantor may terminate this Agreement upon the occurrence of
8 any of the following events:

9 19.1.1 If Grantee materially breaches or otherwise fails to perform,
10 comply with or otherwise observe any of the terms and conditions of this
11 franchise or fails to maintain all required licenses and approvals from federal,
12 state, and local jurisdictions, and fails to cure such breach or default within thirty
13 (30) calendar days of Grantor's providing Grantee written notice thereof, or, if
14 not reasonably capable of being cured within thirty (30) calendar days, within
15 such other reasonable period of time as the parties may agree upon; or,
16

17 19.1.2 Grantee becomes insolvent, unable or unwilling to pay its
18 debts, or is adjudged a bankrupt; or
19

20 19.1.3 Grantee fails to maintain the full amount of, or to post a
21 performance bond, letter of credit or assigned funds as required under the
22 terms of this franchise.
23

24 19.2 This Agreement shall not be terminated except upon a majority
25 vote of the City Council, after reasonable notice to Grantee and an
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1 opportunity to be heard, provided that if exigent circumstances necessitate
2 immediate termination, the hearing may be held as soon as possible after the
3 termination.

4 19.3 Grantor's right to terminate this franchise is in addition to and not
5 in limitation of any other remedy of Grantor at law or equity. Grantor's failure to
6 exercise such remedy at any time shall not waive Grantor's right to terminate or
7 assert any other remedy at law or equity for any future breach or default of
8 Grantee.

9 19.4 Termination of this franchise shall not release Grantee from any
10 liability or obligation with respect to any matter occurring prior to such
11 termination, nor shall such termination release Grantee from any obligation to
12 remove or secure the Facilities and restore the premises pursuant to Section 11
13 hereof.

14
15 Section 20. Legal Relations.

16 20.1 Grantee accepts any privileges granted hereunder by Grantor to
17 the franchised public right-of-way and other public property in an "as is"
18 condition. Grantee agrees that the City has never made any representations,
19 implied or express warranties or guarantees as to the suitability, security or
20 safety of Grantee's location of Facilities or the Facilities themselves in public
21 property or right-of-way or possible hazards or dangers arising from other uses
22 of the public right-of-way or other public property by the City or the general
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1 public. Grantee shall remain solely and separately liable for the function,
2 testing, maintenance, replacement and/or repair of the Facilities or other
3 activities permitted hereunder.

4 20.2 Grantee hereby waives immunity under Title 51 RCW in any
5 cases involving the Grantor and affirms that the Grantor and Grantee have
6 specifically negotiated this provision, to the extent it may apply.

7 20.3 This franchise ordinance shall not create any duty on the City or
8 any of its officials, employees or agents and no liability shall arise from any
9 action or failure to act by the City or any of its officials, employees or agents in
10 the exercise of powers reserved herein. Further, this ordinance is not intended
11 to acknowledge, create, imply or expand any duty or liability of the Grantor with
12 respect to any function in the exercise of its police power or for any other
13 purpose. Any duty that may be deemed to be created in the City hereunder
14 shall be deemed a duty to the general public and not to any specific party,
15 group or entity.
16

17 20.4 This franchise shall be governed by, and construed in accordance
18 with, the laws of the State of Washington and the parties agree that, in any such
19 action brought hereunder, except actions based on federal questions, venue
20 shall lie exclusively in Pierce County, Washington.
21

22 Section 21. Grantee's Acceptance.

23 This franchise ordinance shall be completely void if Grantee shall not file
24 its unconditional acceptance of this franchise within thirty (30) calendar days
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1 from the final passage of same by the City Council. Grantee shall file its
2 unconditional acceptance with the City's Finance Director and a copy of same
3 with the City Attorney's Office.

4 Section 22. Specific Performance.

5 The parties acknowledge that the covenants set forth herein are
6 essential to this franchise, and, but for the mutual agreements of the parties to
7 comply with such covenants, the parties would not have entered into this
8 franchise. The parties further acknowledge that they may not have an
9 adequate remedy at law if the other party violates such covenant. Therefore,
10 the parties shall have the right, in addition to any other rights they may have, to
11 obtain in any court of competent jurisdiction injunctive relief to restrain any
12 breach or threatened breach of or otherwise to specifically enforce any of such
13 covenants contained herein should the other party fail to perform them after
14 notice as provided herein.
15

16 Section 23. Miscellaneous Provisions.

17 23.1 All the provisions, conditions, terms and requirements contained
18 herein shall be binding upon the Grantee's successors and assigns. All of
19 Grantee's privileges, obligations, and liabilities shall inure to its successors and
20 assigns equally as if they were specifically mentioned in this franchise wherever
21 the Grantee is so mentioned.
22

23 23.2 Any modification, change or alteration to this franchise shall only
24 be effective if completed in a written ordinance duly approved by City Council
25 approving said modification, change or alteration.
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23.3 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other then existing or subsequent breach thereof.


23.4 The captions of this franchise ordinance are for convenience and reference only and in no way define, limit, or describe the scope or intent of this franchise.

Passed JUN 14 2011



Mayor

Attest:



City Clerk

Approved as to Form:



Deputy City Attorney

FRANCHISE ACCEPTANCE BY GRANTEE:

I, the undersigned official of the UNITED PULASKI NEWSBYS LLC (the "GRANTEE"), am authorized to bind the GRANTEE and to accept the terms and conditions of the foregoing franchise (Ordinance No. 27986), which are hereby accepted by the GRANTEE this 7th day of JULY, 2011. The foregoing date shall constitute the "Effective Date" of the Ordinance.

Matthew Van Hesen

By: Matthew Van Hesen
Name: Matthew Van Hesen
Title: General Counsel / CFO

Subscribed and sworn to before me this 7th day of July, 2011.



Christine E Christensen
Notary Public in and for the State of
Missouri
My commission expires
April 11, 2013

Received on behalf of the City this 14th day of July, 2011.

Eric Anderson
Name: Eric Anderson
Title: City Manager



SCHEDULE I

"Franchised Area"

Aerial Franchised Area

That portion of Southwest quarter of Section 23 and the Southeast and Southwest quarters of Section 22 and the Northwest quarter of Section 26 and the Northeast and Northwest quarters of Section 27, all in Township 21 North, Range 03 East of the Willamette Meridian, City of Tacoma, Pierce County, Washington, more particularly described as follows:

A 5.00 foot wide strip of the East 64th Street Right of Way described as:

Beginning at the intersection of the East 64th Street and the East line of the Southwest quarter of the Southwest quarter of said Section 23 and the East line of the Northwest quarter of the Northwest quarter of said section 26, which define the easterly limits of the City of Tacoma; thence Westerly, within the East 64th Street right-of-way, a distance of 4,273 feet, more or less, to a point on the Easterly margin of East "M" Street, said point hereinafter referred to as Point "A", and the Terminus of this aerial description.

Use of the immediately foregoing is conditioned upon the continued effectiveness of that certain Master Pole Attachment Agreement between Franchisee and City of Tacoma, Department of Public Utilities (d.b.a. Tacoma Power) dated June 2, 2010 (the "Pole Agreement"). Franchisee's right to use this area is expressly made subject to all terms and conditions of the Pole Agreement.

Underground Franchised Area

That portion of Southeast quarter of the Southwest quarter of Section 22 and the Northeast quarter of the Northwest quarter of Section 27, Township 21 North, Range 03 East of the Willamette Meridian,



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City of Tacoma, Pierce County, Washington, more particularly described as follows:

A 10.00 foot wide strip of the East "M" Street and alley rights-of-way described as follows:

Beginning at the above referenced Point "A"; thence southerly, within the East "M" Street right-of-way, a distance of 843 feet, more or less, to a point opposite the alley right-of-way lying between Blocks 5 and 6 within the Plat of GOLDEN ROD FIRST ADDITION TO TACOMA, as recorded in Volume 10 of Plats at Page 102, records of Pierce County Auditor; thence westerly, within said rights-of-way a distance of 350 feet, more or less, to the West line of said Plat, being the East line of property owned by the Tacoma School District #10 and currently operated as Boze Elementary School, and the Terminus of this underground description.

All situate in the City of Tacoma, County of Pierce, State of Washington.

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REQUEST FOR ORDINANCE RESOLUTION

RECEIVED

Request #: Ord./Res. #:

12933 27986

1. DATE: April 25, 2011

CITY CLERK'S OFFICE

2. SPONSORED BY: COUNCIL MEMBER(S) Information Technology (If no sponsor, enter 'N/A')

3a. REQUESTING DEPARTMENT/DIVISION/PROGRAM IT/EAS Citizen Solutions/Franchise Services
3b. 'DO PASS' FROM GPFC
3c. DID THIS ITEM GO BEFORE THE PUBLIC UTILITY BOARD?
4a. CONTACT (for questions): Jeff Lueders
4b. Person Presenting: Jeff Lueders
4c. ATTORNEY: Jeff Capell

5. REQUESTED COUNCIL DATE: May 24, 2011

Unite Private Networks LLC is waiting to begin construction for Tacoma and Puyallup Public Schools

6. SUMMARY AGENDA TITLE: (A concise sentence, as it will appear on the Council agenda.)

Limited Area Franchise between Unite Private Networks and City of Tacoma

7. BACKGROUND INFORMATION/GENERAL DISCUSSION: (Why is this request necessary? Are there legal requirements? What are the viable alternatives? Who has been involved in the process?)

Unite Private Networks LLC is seeking a Limited Area Franchise Agreement with the City of Tacoma that will allow their customers (Tacoma Public Schools and Puyallup Public Schools) to connect computer networks via fiber optic cable for the purpose of Off-Site Storage of Data for recovery in case of an emergency.

The total install will be approximately 1.3 miles and will run in both the Cities of Puyallup and Tacoma. The run in Tacoma is approximately 1/2 of the total, making the Tacoma portion less than 1 mile ending at Boze Elementary.

The franchise fee is calculated by taking the property value multiplying it by the right of way being utilized and multiplying that subtotal by a percentage (2.5%). The calculation comes directly from the Street Occupancy Permit Code (TMC 9.08) which addresses private occupancy of the public right of way.



DATE: April 25, 2011

TO: Eric Anderson, City Manager

FROM: Michelle Lewis-Hodges, Director, IT Department *MLH*

SUBJECT: Supplemental information for Council Action May 24, 2011 regarding a Limited Area Franchise Agreement with Unite Private Networks LLC

This Limited Area Franchise Agreement was briefly discussed at the end of the April 20th GPFC meeting. The decision was to provide communication via memorandum instead of discussion at the May 4th meeting. This memorandum provides information about the project and the franchise agreement benefiting Tacoma Public Schools and the Puyallup Public Schools.

Background

The Tacoma Public Schools (TPS) and the Puyallup Public Schools (PPS) have been trying to identify a location for off-site data storage to access in case of an emergency. The two school districts began discussing the possibility of joining their computer data networks for this purpose and hired Unite Private Networks LLC (UPN) to determine the feasibility, cost and project management. Unite Private Networks is now seeking a Limited Area Franchise Agreement with the City of Tacoma that will allow the installation of fiber optic cable, a portion of which will be located in the City's right of way (ROW).

Project Scope

Unite Private Networks LLC is under contract with its customers, TPS and PPS, to install approximately 1.3 miles of fiber optic cable from TPS' Boze Elementary School to PPS's ITC Data Center. The portion inside Tacoma city limits will be less than 1 mile with approximately ¼ mile installed underground with the balance mounted on existing poles.

UPN has agreed to pay \$ 3,190.00 annually as a franchise fee for the duration of the 10-year agreement. The franchise fee is calculated by taking the property value divided by the right of way being utilized and multiplying that subtotal by a percentage (2.5%). This calculation has been utilized in a similar limited area franchise agreement approved by the City Council with the Port of Tacoma in 2010.

UPN will be subcontracting the installation with a local firm SEFNCO Communications of Sumner. A review panel made up of Public Works - Environmental Services, Traffic Engineering, Engineering, Construction, Real Estate Services, Economic Development - Building and Land Use, Tacoma Water, Tacoma Power's Transmission & Distribution and Electrical Inspection, and Customer Service have reviewed and approved the plans. UPN and SEFNCO are ready to obtain permits and begin construction upon approval of this franchise agreement. UPN established a pole attachment agreement with TPU executed in June of 2010 for the aerial portion of this project.

Legal has reviewed the contract documents. Because the fiber will be owned by a third-party (UPN) and leased to the school districts, we will not need an inter-local agreement with the City of Puyallup. The City of Tacoma is approving the portion of the project that is within the City of Tacoma right-of-way (ROW).

In the three week construction timeframe, there will be minor ROW impacts along the underground portion, all areas will be restored to previous condition and temporary traffic impact during the aerial portion of the project.

UPN, as the provider, is responsible for the maintenance of the fiber optic cable. The TPU Pole Attachment agreement outlines who can work on TPU poles. The City is not responsible to maintain the fiber optic cable nor any costs associated with maintenance.

Puyallup school district is making modifications to their computer systems the first week of July. According to UPN, it is imperative that Puyallup School District has this disaster recovery system operating prior to taking their system down, as a preventive measure, and they have requested the City of Tacoma's assistance in accomplishing this goal.

Benefits

Both Tacoma and Puyallup Public Schools will benefit from this agreement, as they will be able to store data off-site in preparation for a future data recovery emergency. Unite Private Networks LLC benefits as they receive payment for their services due to leasing the fiber to their customers (TPS and PPS). This private telecom provider has negotiated in good faith and made recommended changes to their plans based on the review panel's suggestions. Approving this agreement supports the City Manager's Strategic Goal of a high-performing, open and engaged government. The city has a history of entering into franchise agreements with private companies that wish to do business in the City, and abide by our City code, and negotiated franchise agreements.

Jeff Lueders, IT/Citizen Solutions/Cable Communications & Franchise Services Manager is available to answer any questions at 253-591-5727.

Ordinance No. 27986

First Reading of Ordinance: MAY 24 2011

Final Reading of Ordinance: JUN 14 2011

Passed: JUN 14 2011

Roll Call Vote:

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Boe	X			
Mr. Campbell	X			
Mr. Fey	X			
Mr. Lonergan	X			
Mr. Manthou	X			
Mr. Mello	X			
Ms. Walker	X			
Ms. Woodards	X			
Mayor Strickland	X			

MEMBERS	AYES	NAYS	ABSTAIN	ABSENT
Mr. Boe				
Mr. Campbell				
Mr. Fey				
Mr. Lonergan				
Mr. Manthou				
Mr. Mello				
Ms. Walker				
Ms. Woodards				
Mayor Strickland				

