



## ORDINANCE NO. 28979

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 right of  
6 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, Title 16B.02.020 requires a franchise prior to constructing a  
10 Telecommunications Facility or providing Telecommunications Services, and

11 WHEREAS the Tacoma City Charter authorizes the City to grant  
12 nonexclusive franchises for the use of City right-of-way, streets, and public  
13 property, and

14 WHEREAS the Unite Private Networks, L.L.C. (hereinafter “Grantee” or  
15 “Franchisee” or “Unite”), has owned and operated a Telecommunications Facility  
16 consisting of fiber-optic communication lines through designated public right-of-way  
17 areas within the City of Tacoma (hereinafter “City” or “Grantor”) authorized under  
18 Ordinance 27986 on June 14, 2011, and is now applying for a new franchise to  
19 continue to operate and maintain the same Telecommunications Facility, and

20 WHEREAS, the Tacoma City Council (“City Council”) has determined to  
21 grant such a franchise to Unite Private Network LLC upon those certain terms  
22 and conditions which the City Council deems necessary, and; Now, Therefore,

23  
24  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. Purpose.

The City grants this renewal of the nonexclusive limited franchise to Grantee to operate and maintain a Telecommunications Facility consisting of fiber-optic communication lines and related facilities (“Facilities”) necessary to the operation of Grantee’s business and to the health, safety, and welfare of the community as set forth Schedule I (“Franchised Area”) attached hereto. This Franchise is conditioned upon the terms and conditions contained herein and Grantee’s compliance with any applicable federal or state regulatory programs that currently exist or may hereafter be enacted by any federal or state regulatory agencies with jurisdiction over the Grantee and its use of the right-of-way. The purpose of this Franchise is to delineate the conditions relating to Grantee’s use of the public’s right-of-way, streets and property and to create a foundation for the parties to work cooperatively in the public’s best interests after this ordinance becomes effective. By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee.

Section 2. Right Conveyed.

2.1 Grantor hereby grants, under the terms and conditions contained herein, to Grantee, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware, and which is registered and authorized to transact business within the State of Washington, the right, privilege, authority, and franchise to construct, operate, maintain, remove, replace, and repair the



1 Facilities, together with all equipment and appurtenances, as may be necessary  
2 thereto, for the transmission and handling of electronic information and data,  
3 through and under those certain streets, avenues, drives, and other public lands  
4 within the City of Tacoma, as designated and more particularly described in  
5 Schedule I, which is attached hereto and expressly incorporated herein by this  
6 reference ("Franchised Area").  
7

8           2.2 This Franchise is only intended to convey a limited right and interest  
9 as to that public property and those rights of way designated on Schedule I in which  
10 the City has an actual interest. It is not a warranty of title or interest in City road  
11 rights-of-way, nor is it a warranty of Grantee's right to locate in any such area.  
12 None of the rights granted herein shall affect the City's ability to use or jurisdiction  
13 over its property, streets or rights of way.  
14

15           Section 3. Term.

16           Each of the provisions of this Franchise shall become effective upon  
17 Grantee's acceptance of the terms and conditions contained herein ("Effective  
18 Date") and shall remain in effect for ten (10) years thereafter. Subsequently, and  
19 in accordance with the terms and provisions of Tacoma Charter Article VIII, City  
20 Council may consider renewing this Franchise, at the written request of Grantee,  
21 for any additional renewal period at any time within two (2) years before the end of  
22 the Franchise's original ten (10) year term, unless either party expresses its  
23 intention in writing to terminate this Franchise at the conclusion of the original ten  
24 (10) year term.  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Section 4. Compliance with Laws Standards and Policies.

Grantee shall, in carrying out any authorized activities under the privileges granted herein, comply with all applicable federal, state and local laws of any governmental entity with jurisdiction over the Facilities. This shall include all applicable laws, rules and regulations, and published City of Tacoma policies relating to Grantee's use of City right-of-way existing at the Effective Date of this Franchise or that may be subsequently enacted, modified or amended by any governmental entity with jurisdiction over Grantee and/or the Facilities.

Section 5. Construction on Public Properties.

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.



1           5.2 All work done hereunder by Grantee or upon Grantee's direction or  
2 on Grantee's behalf shall be undertaken and completed in a workmanlike manner  
3 and in accordance with the descriptions, plans and specifications provided to, and  
4 approved by, Grantor. Grantee's activities shall be conducted in such a manner as  
5 to avoid damage or interference with other utilities, drains or other structures, and  
6 to interfere as little as possible with public travel, or other municipal uses and the  
7 free use of adjoining property so as to provide safety for persons and property.  
8 The Grantee's construction, maintenance and repairs shall be in compliance with  
9 all applicable laws and regulations of governmental agencies with jurisdiction  
10 including, without limitation the City's right-of-way restoration policy.

13           5.3 The City may condition the granting of any permit or other approval  
14 that is required under this Franchise, at any time, on any lawful condition or  
15 regulation, unless such condition or regulation is in conflict with a federal directive,  
16 as may be reasonably necessary to the management of the public right-of-way or  
17 the Grantor's property, including, by way of example and not limitation, bonding,  
18 maintaining proper distance from other utilities, protecting the continuity of  
19 pedestrian and vehicular traffic and protecting any right-of-way improvements,  
20 private facilities and public safety.

23           5.4 Whenever it shall be necessary in constructing, maintaining, repairing,  
24 relocating, removing or replacing any of the Grantee's Facilities in any street,  
25 right-of-way area, or public property, the Grantee shall without delay, as soon as is  
26 commercially reasonable, and at Grantee's sole expense, remove all debris and



1 restore the surface of the street, or public property as nearly as practicable to as  
2 good or better condition as it was in before the work began. Grantee shall replace  
3 any property corner monuments, survey reference or hubs that were disturbed or  
4 destroyed during Grantee's work in the areas covered by this Franchise. Such  
5 restoration shall be done in a manner consistent with applicable codes and laws,  
6 under the supervision of the City's Director of Public Works or his authorized  
7 designee and to the City's reasonable satisfaction and specifications. Whenever  
8 restoration is required hereunder, the restoration shall be done under a letter of  
9 credit, bond or assignment of funds in an amount appropriate to guarantee  
10 adequate restoration.  
11  
12

13         5.5 Grantee shall continuously be a member of the State of Washington  
14 one number locator service under RCW 19.122, or approved equivalent, and shall  
15 comply with all such applicable rules and regulations. Grantee shall provide  
16 reasonable notice to the City prior to commencing any work or construction under  
17 this Franchise and additionally to those owners or other persons in control of  
18 property abutting the Franchise Area when such work or construction will affect  
19 access to such property or otherwise impact such property or the private or public  
20 improvements within said area.  
21

22         5.6 Upon acceptance of this Franchise by Grantee, and as a condition  
23 of this Franchise, Grantee shall make available to the City, upon and within sixty  
24 (60) working days of the City's written request and at no cost to the City,  
25 relevant as-built plans, maps and records revealing the current location and  
26



1 condition of Grantee's Facilities within the public right-of-way and public places.

2           5.7     Nothing in this Franchise shall be deemed to impose any duty or  
3 obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans  
4 and designs or to ascertain whether Grantee's proposed or actual construction,  
5 testing, maintenance, repairs, replacement or removal is in conformance with the  
6 plans and specifications reviewed by Grantor. Grantee shall ensure any contractor  
7 working on its job sites within the Franchise Area, has a written safety plan  
8 addressing safety of all persons and property during the performance of any work  
9 therein.  
10

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

12           Grantee shall operate, test, inspect and maintain its Facilities in full  
13 compliance with all applicable laws, rules, regulations and policies as now enacted  
14 or hereafter amended, and any other current or future laws or regulations that are  
15 applicable to Grantee's Facilities.  
16

17           Section 7. INTENTIONALLY OMITTED

18           Section 8. Relocation.

19           8.1     Relocation for Public Work. Grantee shall, by a time specified by the  
20 Grantor, protect, support, temporarily disconnect, relocate, or remove any of its  
21 Facilities when required by Grantor for work in furtherance of the public health,  
22 safety, or welfare, which work includes, without limitation: traffic conditions; public  
23 safety; public right-of-way construction; public right-of-way repair (including  
24 resurfacing or widening); change of public right-of-way grade; construction,  
25  
26



1 installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks,  
2 or any other type of government-owned telecommunications or public transportation  
3 systems, public work, public facility, or improvement of any government-owned  
4 utility; public right-of-way vacation; or for any other public purpose where the work  
5 involved would be aided by the removal or relocation of the Facilities. Collectively,  
6 such matters are referred to as the “public work.”  
7

8           8.1.1 Grantee may, after receipt of written notice requesting a  
9 relocation of its facilities under section 8.1, submit to the City written alternatives  
10 to such relocation within thirty (30) calendar days of receiving the plans and  
11 specifications. The City shall evaluate such alternatives and advise Grantee in  
12 writing if one or more of the alternatives are suitable to accommodate the work  
13 that would otherwise necessitate relocation of the Facilities. If so requested by  
14 the City, Grantee shall submit additional information to assist the City in making  
15 such evaluation. The City shall give each alternative proposed by Grantee full  
16 and fair consideration but retains sole discretion to decide for itself whether to  
17 utilize its original plan or an alternative proposed by Grantee. In the event the  
18 City ultimately determines that there is no other reasonable alternative, Grantee  
19 shall relocate its Facilities as otherwise provided in this Section.  
20  
21

22           8.1.2 Grantor shall work cooperatively with Grantee in determining a  
23 viable and practical route within which Grantee may relocate its Facilities under this  
24 section 8, in order to minimize costs while meeting the public work project  
25 objectives. Upon receipt of Grantor’s notice, plans and specifications, Grantee shall  
26





1 complete relocation of its Facilities so as to accommodate the public work project at  
2 least ten (10) calendar days prior to commencement of the public work project or  
3 such other time as the parties may agree in writing.

4  
5 8.2 Notice. Except in the case of emergencies, the City shall provide  
6 written notice, describing where the public work is to be performed, at least sixty  
7 (60) days prior to the deadline by which Grantee must protect, support, temporarily  
8 disconnect, relocate or remove its Facilities. Grantee may seek an extension of the  
9 time to perform such tasks where they cannot be performed in sixty (60) days even  
10 with the exercise of due diligence, and such request for an extension shall not be  
11 unreasonably refused.  
12

13 8.3 Emergency Relocation, or Repair. In the event of an emergency, or  
14 where the Facilities create or are contributing to an imminent danger to health,  
15 safety, or property, the City may protect, support, temporarily disconnect, remove,  
16 repair or relocate any or all parts of the Facilities, without prior notice, and charge  
17 the Grantee for costs incurred.  
18

19 8.4 Relocation for Other than Public Work. The City reserves its  
20 authority to require relocation of the Facilities located within the public right-of-way,  
21 as provided for under applicable state, federal, and local law.  
22

23 8.5 Redesign Option. As an alternative to relocation, Grantee may  
24 propose an alternative design for the pending public work in order to avoid any  
25 relocation of Grantee's Facilities. Such redesign proposal shall be subject to  
26 review and approval by the City and all costs of the redesign, including, without



1 limitation, the costs actually incurred in the public work as a result of the redesign  
2 shall be solely for Grantee's account. Approval and acceptance of any such  
3 redesign proposal shall be at the sole discretion of the City.  
4

5 Section 9. INTENTIONALLY OMITTED

6 Section 10. Dispute Resolution.

7 10.1 In the event of a dispute between Grantor and Grantee arising by  
8 reason of this Franchise, or any obligation hereunder, the dispute shall first be  
9 referred to the operational officers or representatives designated by Grantor and  
10 Grantee to have oversight over the administration of this Franchise. Said officers or  
11 representatives shall meet within thirty (30) calendar days of either party's request  
12 for said meeting, whichever request is first, and the parties shall make a good faith  
13 effort to attempt to achieve a resolution of the dispute.  
14

15 10.2 In the event that the parties are unable to resolve the dispute under  
16 the procedure set forth in section 10.1, then the parties hereby agree that the  
17 matter shall be referred to mediation within Pierce County. The parties shall  
18 mutually agree upon a mediator to assist them in resolving their differences. If the  
19 parties are unable to agree upon a mediator, the parties shall jointly obtain a list of  
20 seven (7) mediators from a reputable dispute resolution organization and alternate  
21 striking mediators on that list until one remains. A coin toss shall determine who  
22 may strike the first name. If a party fails to notify the other party of which mediator  
23 it has stricken within two (2) business days, the other party shall have the option of  
24  
25  
26



1 selecting the mediator from those mediators remaining on the list. Any expenses  
2 incidental to mediation shall be borne equally by the parties.

3           10.3 If either party is dissatisfied with the outcome of the mediation, that  
4 party may then pursue any available judicial remedies in Pierce County, provided,  
5 that if the party seeking judicial redress does not substantially prevail in the judicial  
6 action, it shall pay the other party's reasonable legal fees and costs incurred in the  
7 judicial action.  
8

9           Section 11. Abandonment or Removal of Facilities.

10           In the event of abandonment or Grantee's permanent cessation of use of its  
11 Facilities, or any portion thereof within the City of Tacoma, the Grantee shall, within  
12 one hundred and eighty days (180) after the abandonment or permanent cessation  
13 of use, remove the Facilities, secure the Facilities in such a manner as to cause it  
14 to be as safe as is reasonably possible, or after petitioning the City to be allowed to  
15 do so, decommission the Facilities in place, all in compliance with applicable laws,  
16 regulations and industry standards. In the event of the removal of all or a portion  
17 of the Facilities, Grantee shall restore the Franchise Area as nearly as possible to  
18 the condition that existed prior to installation of Grantee's Facilities and in  
19 compliance with the City's right-of-way restoration policy. Such property  
20 restoration work shall be done at Grantee's sole cost and expense and to Grantor's  
21 reasonable satisfaction. If Grantee fails to remove, secure or decommission the  
22 Facilities, and/or fails to restore the Franchised Area or take such other mutually  
23 agreed upon action, Grantor may, after reasonable notice to Grantee, remove the  
24  
25  
26



1 Facilities, restore the Franchised Area or take such other action as is reasonably  
2 necessary at Grantee's expense and Grantor shall not be liable therefor. This  
3 remedy shall not be deemed to be exclusive and shall not prevent the City from  
4 seeking a judicial order directing that the Facilities be removed.  
5

6 Section 12. Nonexclusive Franchise.

7 This Franchise is nonexclusive. Grantor reserves the right to grant other  
8 franchises, easements, licenses, permits or other approvals to others, subject to  
9 the rights granted herein, provided that Grantor shall not grant any other franchise,  
10 license, permit or other approval which would substantially interfere with Grantee's  
11 use. Grantor shall notify Grantee of any proposed franchise, easement, license or  
12 permit for a utility or other structure which may be located within ten (10) feet of  
13 Grantee's Facilities, as shown on the latest map Grantee has provided the City.  
14 When the Grantor has notice that excavation, construction or other work may be  
15 undertaken within ten (10) feet of Grantee's Facilities, it shall notify Grantee so that  
16 Grantee may have the opportunity to inspect the work to see that Grantee's  
17 Facilities are not damaged. If the contractor undertaking the excavation,  
18 construction or other work is observed to have violated safety regulations, Grantor  
19 will cooperate to the extent feasible in pursuing an enforcement action to avoid  
20 third party damage to the Facilities. This provision shall not create, either expressly  
21 or implicitly, nor shall the City assume, any liability under any circumstances  
22 hereunder.  
23  
24  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Section 13. Indemnification.

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

13.2 Environmental Indemnification. Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, arising on or after the date of this Franchise, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on, from or as a result of the Facilities being in the



1 Franchise Area, or (c) other activity related to this Franchise by Grantee, its agents,  
2 contractors or subcontractors. This indemnity includes but is not limited to  
3 (a) liability for a governmental agency's costs of removal or remedial action for  
4 hazardous substances; (b) damages to natural resources caused by hazardous  
5 substances, including the reasonable costs of assessing such damages; (c) liability  
6 for any other person's costs of responding to hazardous substances; (d) liability for  
7 any costs of investigation, abatement, correction, cleanup, fines, penalties, or other  
8 damages arising under any environmental laws; and (e) liability for personal injury,  
9 property damage, or economic loss arising under any statutory or common-law  
10 theory.  
11  
12

13 13.3 Definitions.

14 13.3.1 "Hazardous Substance" means any hazardous, toxic, or  
15 dangerous substance, material, waste, pollutant, or contaminant, including all  
16 substances designated under the Resource Conservation and Recovery Act, 42  
17 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response,  
18 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials  
19 Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control  
20 Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the  
21 Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide,  
22 Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous  
23 Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics  
24 Control Act, Chapter 70.105D, RCW; all as amended from time to time; or any other  
25  
26



1 federal, state, or local statute, code or ordinance or lawful rule, regulation, order,  
2 decree, or other governmental authority as now or at any time hereafter in effect.  
3 The term shall specifically include petroleum and petroleum products. The term  
4 shall also be interpreted to include any substance which, after release into the  
5 environment, will or may reasonably be anticipated to cause death, disease,  
6 behavior abnormalities, cancer, or genetic abnormalities.  
7

8           13.3.2 "Environmental Laws" shall include the Resource Conservation  
9 and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental  
10 Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the  
11 Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal  
12 Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42  
13 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et  
14 seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et  
15 seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the  
16 Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the  
17 Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended  
18 from time to time; or any other federal, state, or local statute, code, or ordinance  
19 or federal or state administrative rule, regulation, ordinance, order, decree, or  
20 other governmental authority as now or at any time hereafter in effect pertaining  
21 to the protection of human health or the environment.  
22  
23  
24  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Section 14. Insurance, Performance Bond and Security.

14.1 During this Agreement, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of Two Million United States Dollars (\$2,000,000.00) each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured for ongoing operations and completed operations, to cover any and all insurable liability, damage, claims and loss as set forth in Section 13.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and losses as set forth in Section 13.2 above, except for liability for fines and penalties for violation of environmental laws and as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, environmental liability coverage, at a minimum covering liability from environmental incidents, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace. In the event that a deductible or self retention amount applies to the insurance herein, Grantee agrees to pay the amount of that deductible or self retention amount.

14.2 Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Facilities. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days' prior written notice to the





1 Grantor, and shall include the City of Tacoma as a named additional insured. All  
2 required liability policies shall be maintained for a period of not less than three  
3 years following termination of this Franchise.  
4

5 14.3 The indemnity and insurance provisions herein under Sections 13  
6 and 14 shall survive the termination of this Franchise and shall continue for as long  
7 as the Grantee's Facilities shall remain in or on the Franchise Area or until the  
8 parties execute a new franchise agreement which modifies or terminates these  
9 indemnity or insurance provisions.  
10

11 14.4 Performance Bond. Within thirty (30) days after the award of  
12 this Franchise, but in no event sooner than the final reading of the Franchise  
13 ordinance, Grantee shall submit to the City Attorney, which shall be filed with the  
14 appropriate City department, a performance bond running to the City, with good and  
15 sufficient surety licensed to do business in the State of Washington and approved  
16 by the City in the amount of \$15,000.00, conditioned that Grantee shall well and  
17 truly observe, fulfill, and perform each term and condition of the Franchise. In the  
18 alternative, Grantee may provide written evidence of the establishment of a Letter  
19 of Credit (also referred to as "LOC") in favor of the City, in a form and with a  
20 financial institution acceptable to the City in the amount of \$15,000.00. This LOC  
21 shall be conditioned that in the event Grantee shall fail to comply with any one or  
22 more of the provisions of this Franchise, then there shall be recoverable jointly and  
23 severally from the principal and/or surety of such LOC, any damages suffered by  
24 the Grantor as a result thereof, including the full amount of any compensation,  
25  
26



1 indemnification, or cost of removal, relocation or abandonment of Facilities as  
2 prescribed herein; said condition to be a continuing obligation for the duration of the  
3 Franchise and thereafter until Grantee has liquidated all of its obligations with the  
4 City that may have arisen from the acceptance of the Franchise by Grantee or from  
5 its exercise of any privilege herein granted. Written evidence of payment of  
6 required premiums shall be filed and maintained with the City. In lieu of the LOC,  
7 Grantee may provide for a bond, assignment of funds, or similar arrangement to be  
8 established giving the City rights substantially the same as the rights of the City in  
9 relation to the LOC, the provisions of which bond, assignment of funds, or other  
10 arrangement shall be subject to the approval of legal counsel for the City.  
11  
12

13         Neither the provisions of this section, any LOC (or other security) accepted  
14 by the City pursuant thereto, nor any damages recovered by the City thereunder  
15 shall be construed to excuse faithful performance by Grantee or to limit liability of  
16 Grantee under the Franchise or for damages, either to the full amount of the bond  
17 or otherwise, except as otherwise provided herein.  
18

19         14.5    Validity of Letter of Credit. If at any time during the term of the  
20 Franchise, the condition of the entity issuing the LOC noted in Section 14.4 shall  
21 change in such a manner as to render the LOC unsatisfactory to the City, Grantee  
22 shall replace such LOC by a LOC of like amount and similarly conditioned, issued  
23 by an entity satisfactory to the City. The City Council, from time to time, may  
24 authorize or require appropriate and reasonable adjustments in the amount of the  
25 LOC; provided, however, that prior to any required increase in the amount of the  
26



1 LOC, the City shall give Grantee at least one hundred twenty (120) days' prior  
2 notice thereof stating the exact reason for the requirement. Such reasons must  
3 demonstrate a change in Grantee's business practices or financial situation that  
4 would materially prohibit or impair its ability to comply with the terms of the  
5 Franchise or afford compliance therewith.  
6

7 Section 15. State Prohibition of Franchise Fee.

8 15.1 Fees that may be assessed under this License are subject to the  
9 limitations as set forth in RCW 35.21.860. Franchisee agrees that if this statutory  
10 prohibition is removed, the City may assess a reasonable franchise fee, to be  
11 agreed to by the parties if the statutory prohibition is removed.  
12

13 15.2 In accord with RCW 35.21.860 as presently effective, and as it may be later  
14 amended, Franchisee must pay the City an amount sufficient to recover  
15 administration expenses incurred in receiving and approving this License and  
16 processing of the application. The first \$5,000 of said expenses will be covered  
17 by the \$5,000 application fee deposited with the City. Licensee will also pay the  
18 reasonable costs of enforcing, or, as necessary, reviewing, the provisions of this  
19 License as well as costs involved with the modification, amendment, renewal, or  
20 transfer of this License, as ordered by the City's Franchise Services Manager,  
21 whether such costs result from accrued in-house staff time, or out-of-pocket  
22 expenses or administrative costs, as well as expenses of retaining independent  
23 technical, legal, or financial consultants or advisors, or whether relating to costs  
24 incurred due to initial Facility development or to future Facility expansion. The  
25  
26



1 amount of payment to be made by Licensee to cover these administrative costs is  
2 an amount determined to be reasonable by the City's Franchise Services Manager.

3           15.3 Except as expressly provided otherwise, any act that Franchisee is  
4 required to perform under this Franchise shall be performed at its cost. If  
5 Franchisee fails to perform work that it is required to perform within the time  
6 provided for performance, the City may perform the work and bill the Franchisee.  
7 The Franchisee shall pay the amounts billed within 30 days of receipt of the bill.  
8 The parties agree that any amounts paid pursuant to this section or Title 16B are  
9 not franchise fees.  
10

11           15.4 Grantee agrees that it will obtain, pursuant to the City's currently  
12 effective code and rates, any and all licenses, permits or other approvals necessary  
13 for Grantee to operate, maintain or repair its facilities in the franchised area. This  
14 shall include, by way of example only and not limitation, inspection and permit costs  
15 associated with Grantee's work in the City's right-of-way or any generally applicable  
16 taxes that the Grantor may legally levy.  
17

18           Section 16. Notice.

19           All notices, demands, requests, consents and approvals which may, or are  
20 required to be given by any party to any other party hereunder, shall be in writing  
21 and shall be deemed to have been duly given if delivered personally, sent by  
22 facsimile, sent by a nationally recognized overnight delivery service, or if mailed or  
23 deposited in the United States mail and sent by registered or certified mail, return  
24 receipt requested, postage prepaid to:  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Grantor: Jeff Lueders, Franchise Services Manager  
City of Tacoma  
1224 MLK Jr. Way  
Tacoma, WA 98405

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

Grantee: Unite Private Networks LLC  
Attn: Legal  
120 W. 12<sup>th</sup> St., 11<sup>th</sup> Floor  
Kansas City, MO 64105

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, Lease and Transfer of Franchise.

17.1 The rights granted pursuant to this Franchise are a privilege that is held in the public trust and personal to the original Franchisee. In accordance with the City of Tacoma Charter Section 8.5, no assignment, transfer, or lease of the Franchise may occur, directly or indirectly, without the prior consent of the City.

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:



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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.**

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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Section 19. Enforcement and Remedies.

19.1 Franchisee is subject to the enforcement and remedies as set forth in TMC 16B.05.100 including but not limited to revocation or forfeiture of the franchise and the penalties prescribed therein.

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

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

19.4 Termination of this Agreement shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the Facilities and restore the premises as set forth in Section 11 or TMC 16B.

Section 20. Legal Relations.

20.1 Grantee accepts any privileges granted hereunder by Grantor to the franchised public right-of-way and other public property in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of Facilities or the Facilities themselves in public property or



1 right-of-way or possible hazards or dangers arising from other uses of the public  
2 right-of-way or other public property by the City or the general public. Grantee shall  
3 remain solely and separately liable for the function, testing, maintenance,  
4 replacement and/or repair of the Facilities or other activities permitted hereunder.  
5

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

9 20.3 This franchise ordinance shall not create any duty on the City or any  
10 of its officials, employees or agents and no liability shall arise from any action or  
11 failure to act by the City or any of its officials, employees or agents in the exercise  
12 of powers reserved herein. Further, this ordinance is not intended to acknowledge,  
13 create, imply or expand any duty or liability of the Grantor with respect to any  
14 function in the exercise of its police power or for any other purpose. Any duty that  
15 may be deemed to be created in the City hereunder shall be deemed a duty to the  
16 general public and not to any specific party, group or entity.  
17  
18

19 20.4 This Franchise shall be governed by, and construed in accordance  
20 with, the laws of the State of Washington and the parties agree that, in any such  
21 action brought hereunder, except actions based on federal questions, venue shall  
22 lie exclusively in Pierce County, Washington.  
23

24 Section 21. Grantee's Acceptance.

25 This franchise ordinance shall be completely void if Grantee shall not file its  
26 unconditional acceptance of this Franchise within thirty (30) calendar days from the





1 final passage of same by the City Council. Grantee shall file its unconditional  
2 acceptance with the City's Finance Director and a copy of same with the City  
3 Attorney's Office.

4  
5 Section 22. Specific Performance.

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

15  
16 Section 23. Miscellaneous Provisions.

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

23  
24 23.2 Any modification, change or alteration to this Franchise shall only  
25 be effective if completed in a written ordinance duly approved by City Council  
26 approving said modification, change or alteration.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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 than existing or subsequent breach thereof.

23.4 Survival of Terms. Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way as provided for thru this Franchise. However, Franchisee’s obligations to the City survive the expiration of these rights according to their terms.

23.5. Open Records and Confidentiality. Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the Franchisee’s responsibility to be familiar with the Washington Public Records Act. Franchisee may specifically identify any information it considers proprietary by marking and providing said information to City in a separate envelope marked “Proprietary Information.” In the event that: (A) the City receives a request from another party to disclose any information which the Franchisee has deemed



1 proprietary, and if the City Attorney determines that said information may be subject  
2 to being disclosed; or (B) the City determines that the information should be  
3 disclosed in connection with its enforcement of any provision of Title 16B TMC, or in  
4 the exercise of its police or regulatory powers, then the City shall notify the  
5 Franchisee of the Franchisee's opportunity to seek a protective order from a court  
6 with appropriate jurisdiction. In the event an action is not commenced within ten  
7 business days, the City may disclose said information. By submitting information  
8 which the Franchisee deems proprietary or otherwise exempt from disclosure, the  
9 Franchisee agrees to defend and hold harmless the City from any claim for  
10 disclosure under the Washington Public Records Act, including, but not limited to,  
11 any expenses including out-of-pocket costs and attorneys' fees, as well as any  
12 judgment entered against the City for the attorney fees of the party requesting  
13 disclosure.

14  
15  
16           23.6 Franchisee and its employees, contractors, subcontractors, and  
17 agents shall not unlawfully discriminate in hiring, in contracting, or in the provision  
18 of services.  
19  
20  
21  
22  
23  
24  
25  
26



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

23.7 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 \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**FRANCHISE ACCEPTANCE BY GRANTEE:**

I, the undersigned official of the Unite Private Networks LLC (the “Franchisee”), am authorized to bind the Franchisee and to accept the terms and conditions of the foregoing Franchise (Ordinance No. \_\_\_\_\_), which are hereby accepted by the \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024. The foregoing date shall constitute the “Effective Date” of the Ordinance.

\_\_\_\_\_

By: \_\_\_\_\_  
Name: Charlene White  
Title: VP, Network Facilities  
Unite Private Networks LLC

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

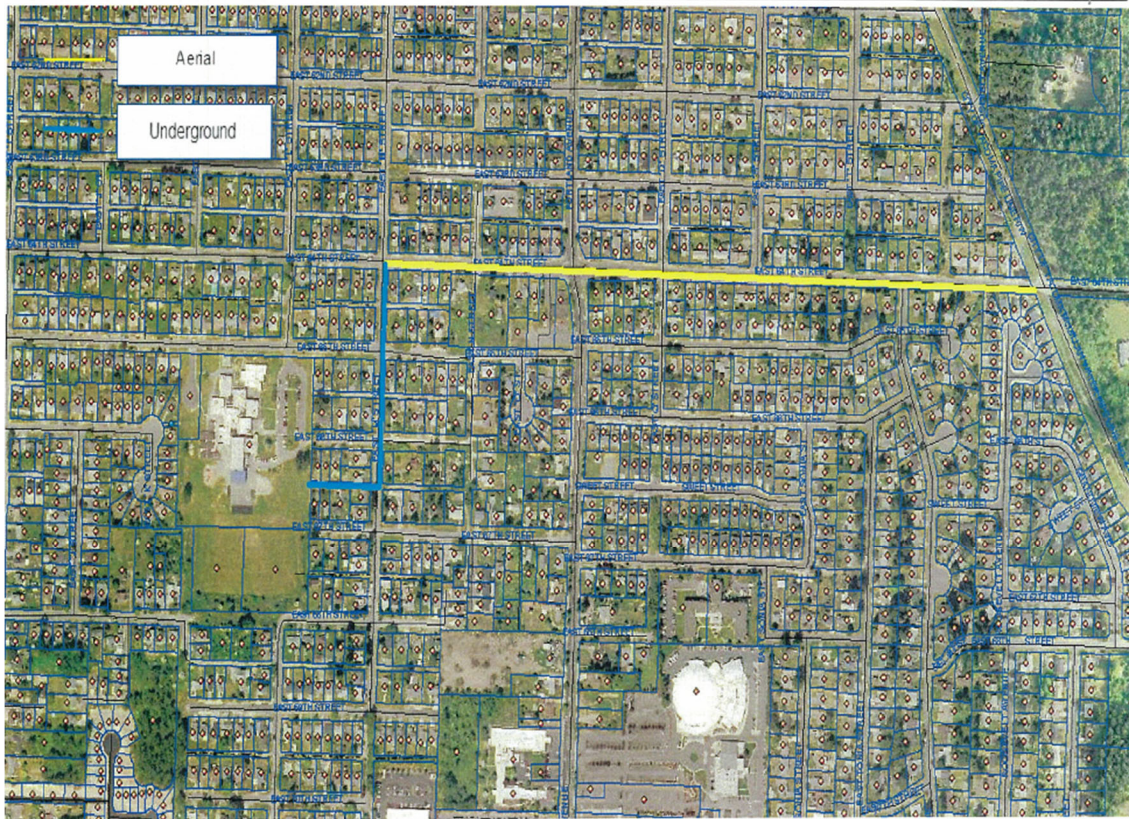
\_\_\_\_\_  
Notary Public in and for the State of \_\_\_\_\_  
My commission expires \_\_\_\_\_  
\_\_\_\_\_

Received on behalf of the City this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**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 64<sup>th</sup> 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 64<sup>th</sup> 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



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Northwest quarter of Section 27, Township 21 North,  
Range 03 East of the Willamette Meridian,

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.