



# ORDINANCE NO. 28956

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

12 WHEREAS, Ziplly Fiber Pacific, LLC, dba Ziplly Fiber, a limited liability  
 13 company (“Ziplly Fiber” or “Franchisee”) is a telecommunications company  
 14 involved in the business of operating telecommunications networks utilizing  
 15 fiber optic technology, and has applied for a Franchise to install, operate, and  
 16 maintain a telecommunications network in the City of Tacoma, and,

17 WHEREAS, the City Council has determined to grant such a franchise to  
 18 Ziplly upon those certain terms and conditions which the Council deems  
 19 necessary due to the unique nature of fiber optic cable, and

20 WHEREAS this City of Tacoma Telecommunications Franchise  
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BE IT ORDAINED BY THE CITY OF TACOMA:

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

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

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

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

1.4 "Communications system" refers to a telecommunications system.

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



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

1.7 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by the Franchisee, such as poles, fiber, wires, fixtures, equipment, above ground and underground circuits, and conduit in public rights-of-way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located. This term, when used without a modifier, shall be considered to encompass both Overhead Facilities and Underground Facilities.

1.8 "Franchise" conditioned as set forth herein, and under the Tacoma Municipal Code and the City Charter.

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

1.10 "Franchisee" is Zply Fiber Pacific, LLC dba Zply Fiber, a limited liability company, with its home office at 135 Lake Street South, Suite 155, Kirkland, WA 98033.

1.11 "Gross Receipts" shall have the meaning ascribed in Article VIII of the City Charter or the meaning given to the phrase "Gross Revenue" as set forth in Title 16 of the Tacoma Municipal Code.



1.12 "Operator" when used with reference to a system, refers to a  
1 Person (a) who provides service over a Communications System and directly or  
2 through one or more affiliates owns a significant interest in such facility; or  
3 (b) who otherwise controls or is responsible for, through any arrangement, the  
4 management and operation of such a facility. A Person that operates under  
5 agreement of a Telecommunications System or a specific portion of a  
6 Telecommunications System to provide Telecommunications Services shall be  
7 treated as an Operator for purposes of this Franchise.  
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10 1.13 "Overhead Facilities" refers to electric utility and Communications  
11 Facilities located above the surface of the ground, including the underground  
12 supports and foundations for such Facilities.

13 1.14 "Person" includes any individual, corporation, partnership,  
14 association, joint stock company, trust, or any other legal entity, but not the City  
15 for purposes hereof.  
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17 1.15 "Public Rights-of-Way" mean the public streets and easements  
18 which, under the City Charter, the Tacoma Municipal Code, City ordinances,  
19 and applicable laws, the City has authority to grant Franchises, permits, or  
20 Licenses for use thereof or has regulatory authority thereover, but expressly  
21 excluding railroad rights-of-way, airport, and harbor areas. Public  
22 Rights-of-Way for the purpose of this Franchise do not include buildings, parks,  
23 poles, conduits, similar facilities, or property owned by or leased to the City,  
24 including, by way of example and not limitation, structures in the Public  
25 Rights-of-Way such as utility poles and light poles.  
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1.16 "System" means the Telecommunications System.

1 1.17 "Telecommunications Service" or "Service" means the  
2 transmission for hire of information in electronic or optical form, including, but  
3 not limited to, voice, video, or data, whether or not the transmission medium is  
4 not limited to, voice, video, or data, whether or not the transmission medium is  
5 owned by the provider itself. Telecommunications Service includes telephone  
6 service but does not include Cable Service or over-the-air broadcasts to the  
7 public-at-large from facilities licensed by the Federal Communications  
8 Commission or any successor thereto.

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

2.1 Grant of Franchise. The City hereby grants to Franchisee a  
22 non-exclusive Franchise which, once it becomes effective, shall authorize  
23 Franchisee, to use the City's Public Rights-of-Way within the Franchise Area to  
24 construct, repair, and operate an underground fiber optic Telecommunication  
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1 System to provide Telecommunication Service, and to continue using the City's  
2 Public Rights-of-Way as hereby authorized.

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



1 by which such Public Rights-of-Way was created or dedicated, or presently  
2 used under applicable laws.

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

6 In the event of any conflict between a provision in this Franchise  
7 and any provision of the City Charter, which Charter is incorporated herein by  
8 reference, the applicable provision of the Charter shall control over any  
9 inconsistent provision of this Franchise.  
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11 2.2 Franchise Term. The term of the Franchise shall be ten years  
12 unless terminated sooner in accordance with this Franchise, Title 16(B), or the  
13 City Charter.

14 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be  
15 non-exclusive.  
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17 2.4 Transfers, Generally.

18 A. No Transfer shall occur without the prior written notice and  
19 approval of the City Council, which shall not be unreasonably withheld. A  
20 Transfer is any transaction in which: (1) all or a portion of the  
21 Telecommunications System is sold or assigned (2) there is any change,  
22 acquisition, or direct or indirect transfer of control of the Franchisee; or (3) the  
23 rights and/or obligations held by the Franchisee under the Franchise are  
24 transferred, sold, assigned, or leased, in whole or in part, directly or indirectly,  
25 to another party. The term "control" in subsection (2) above refers to actual  
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1 working control, in whatever manner exercised. It will be presumed that a  
2 change in working control within the meaning of subsection (2) has occurred in  
3 any case where there is a change in voting interest of 10 percent or more; or a  
4 change in voting interest that results in a Person obtaining a 50 percent or  
5 greater interest in Franchisee; or a change in voting interest that results in a  
6 Person that held 50 percent or greater interest reducing their interest to below  
7 50 percent. A Transfer without the prior written approval of the City is a  
8 substantial violation of this Franchise and shall make the Franchise subject to  
9 termination by the City as provided herein and in Title 16B.  
10

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

13 C. Franchisee, shall within 60 days of the closing date of any  
14 Transfer, file with the City Clerk a copy of the deed, agreement, contract,  
15 mortgage, lease, SEC filing, or other written instrument evidencing such sale,  
16 lease, contractual agreement, mortgage, assignment or Transfer, certified and  
17 sworn to as correct by Franchisee. Every such Transfer, whether voluntary or  
18 involuntary, may be deemed void and of no effect as to the effectiveness of this  
19 Franchise by the City unless Franchisee files the required copy within the  
20 60-day period.  
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22 D. The requirements of this section shall not be deemed to  
23 prohibit the use of Franchisee's property as collateral for security in financing  
24 the construction or acquisition of all or part of the Telecommunications System  
25 franchised hereunder provided that no such security shall purport to attach the  
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1 City's real property interest in the Public Right-of-Way. In addition, no such  
2 arrangement may be made if it would in any respect under any condition  
3 prevent the Operator or any successor from complying with the Franchise and  
4 applicable law, nor may any such arrangement permit a third party to succeed  
5 to the interest of the Operator, or to own or control the Telecommunications  
6 System, without the prior consent of the City. Any mortgage, pledge or lease  
7 shall be subject to and subordinate to the rights of the City under this Franchise,  
8 and other applicable law.

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

20           2.6    Revocation. In addition to any rights set out elsewhere in this  
21 Franchise, the City Charter or Title 16, the City reserves the right to declare a  
22 forfeiture or otherwise revoke this Franchise, and all rights and privileges  
23 pertaining thereto, as provided in Title 16(B) or in the event that:  
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- 1 Franchise; or
- 2 B. Franchisee is found to have engaged in any actual or
- 3 attempted fraud or deceit upon the City, Persons or Customers; or
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- 5 C. Franchisee fails to obtain and maintain any permit required
- 6 by any federal or state regulatory body or by the City, relating to the
- 7 construction, repair and operation of the System; or
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- 9 D. At any time during the term of the Franchise, Franchisee
- 10 fails to provide and maintain all of the securities required under this Franchise
- 11 including, but not limited to, the performance bond and letter of credit; fails to
- 12 maintain the insurance required by this Franchise; or fails to satisfy the
- 13 indemnity set out in this Franchise; or if Franchisee's guarantor revokes its
- 14 guarantee or fails to satisfy or becomes unable to satisfy its obligations
- 15 thereunder.
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- 17 E. The procedures for revocation and forfeiture shall be
- 18 governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked,
- 19 Franchisee shall be given notice and opportunity to cure at least equivalent to
- 20 that required by Title 16B as of the effective date of this Franchise (except in
- 21 those cases where notice and opportunity to cure are not required), and shall
- 22 be accorded at least an opportunity to be heard that provides at least the due
- 23 process protections required by Title 16B as of the effective date of this
- 24 Franchise, which opportunities and protections are set out in Section 2.6.F.,
- 25 below.
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1 F. (1) Where, after notice and providing the Franchisee an  
2 opportunity to be heard (if such opportunity is timely requested by a  
3 Franchisee), the City finds that there has been an act or omission that would  
4 justify revocation of the Franchise, the City may make an appropriate reduction  
5 in the remaining term of the Franchise or revoke the Franchise. However, the  
6 Franchise may only be revoked if the Franchisee (a) was given written notice of  
7 the default; and (b) 30 days to cure the default; and (c) the Franchisee failed to  
8 cure the default, or to propose a schedule for curing the default acceptable to  
9 the City where it is impossible to cure the default in 30 days. The required  
10 written notice may be given before the City conducts the proceeding required by  
11 this paragraph. No opportunity to cure is required for repeated violations, and  
12 fraud shall be deemed incurable.

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

25 (3) Notwithstanding the foregoing, the Franchise will  
26 automatically terminate by force of law 120 calendar days after an assignment



1 for the benefit of creditors or the appointment of a receiver or trustee to take  
2 over the business of the Franchisee, whether in a receivership, reorganization,  
3 bankruptcy assignment for the benefit of creditors, or other action or  
4 proceeding. However, the Franchise may be reinstated within that 120-day  
5 period, if: (a) such assignment, receivership or trusteeship has been vacated;  
6 or (b) such assignee, receiver or trustee has fully complied with the terms and  
7 conditions of Title 16B and this Franchise and has executed an agreement,  
8 approved by any court having jurisdiction, assuming and agreeing to be bound  
9 by the terms and conditions of Title 16B and this Franchise. However, in the  
10 event of foreclosure or other judicial sale of any of the facilities, equipment or  
11 property of a Franchisee, the City may revoke this Franchise, following a public  
12 hearing before the City Council, by serving notice upon the Franchisee and the  
13 successful bidder at the sale, in which event the Franchise and all rights and  
14 privileges of this Franchise will be revoked and will terminate 30 calendar days  
15 after serving such notice, unless: (a) the City has approved the Transfer of the  
16 Franchise to the successful bidder; and (b) the successful bidder has  
17 covenanted and agreed with the City to assume and be bound by the terms and  
18 conditions of this Franchise and Title 16B.  
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21           2.7    Right to Purchase the System.

22                   A.       In the event the City has declared a forfeiture for cause or  
23 otherwise validly revoked this Franchise as provided herein, or in the event of  
24 expiration of the initial term of this Franchise without this Franchise being  
25 renewed or extended (referred to below collectively as a "termination"),  
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1 Franchisee shall remove its Facilities from the Public Rights-of-Way under  
2 Section 2.8, unless the City elects to purchase the Facilities as provided under  
3 Section 2.7.B.

4 B. In the event the City has declared a forfeiture for cause or  
5 otherwise validly revoked this Franchise as provided herein, or in the event of  
6 expiration of the initial term of this Franchise without this Franchise being  
7 renewed or extended as provided in Section 2.2 (referred to below collectively  
8 as a "termination"), the City shall have an option upon the termination of the  
9 Franchise to purchase that portion of the Telecommunications System owned  
10 by the Franchise located in the Right-of-Way, whether termination is, or is not,  
11 for cause. This option requires Franchisee to convey the Telecommunications  
12 System or such portion thereof as the City may choose to purchase free and  
13 clear of any encumbrances, along with (1) all equipment, Facilities, tools,  
14 vehicles and real/personal property interests necessary for the  
15 Telecommunications System's operation, free and clear of any encumbrances;  
16 (2) Customer lists and billing records; (3) all repair records, maps, and  
17 equipment and Facilities records (including records identifying equipment that is  
18 being used in the field, warranties with respect to such equipment and the like);  
19 (4) and such other properties, contract rights or intangibles as may be normally  
20 conveyed in order to permit a buyer to take over and continue the operations of  
21 a seller with minimal disruption to Customers; provided, that nothing herein  
22 shall require the City to accept or pay for any contract that it does not wish to  
23 assume. Franchisee is not required to convey portions of the  
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1 Telecommunications System located outside the City which are essential to  
2 Franchisee's operations in other communities, and which were so identified on  
3 the inventory provided pursuant to Section 2.7.A. This option also requires  
4 Franchisee to sell the Telecommunications System, or such portion thereof as  
5 the City may choose to purchase at an equitable price, if the Franchise is  
6 terminated for cause. If Franchisee's request for a Franchise renewal is denied,  
7 the option requires Franchisee to sell the Telecommunications System, or such  
8 portion thereof as the City may choose to purchase, at fair market value,  
9 determined on the basis of the value of the Telecommunications System as a  
10 going concern (taking into account such property used and useful in providing  
11 service within the City that is not to be conveyed) and with no value allocated to  
12 the Franchise itself.

14 C. The City may exercise its Section 2.7.B option rights in the  
15 following manner: the City will first give Franchisee written notice of its intent to  
16 purchase the Telecommunications System or a portion of the  
17 Telecommunications System and request an inventory of the System or portion  
18 specified in the City of Tacoma. Thereafter, Franchisee shall have 60 days to  
19 produce the requested inventory and the City shall have up to 180 days after  
20 receiving the inventory to notify Franchisee that it intends to continue with the  
21 exercise of its right to purchase the Telecommunications System or a portion of  
22 the Telecommunications System. Within 90 days of the date the City notifies  
23 Franchisee of its intent to exercise the option, or by such other time as the  
24 parties may separately agree, the parties shall meet to establish a price that  
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1 comports with the requirements of Section 2.7.B. If the parties are unable to  
2 agree to a price within 180 days after the City notifies Franchisee that the City  
3 intends to exercise its purchase option, either party may require the price to be  
4 set by appraisal by sending the other party notice that it wishes to have the  
5 price set by appraisal. Within 45 days of the date that notice is submitted, each  
6 party may appoint one appraiser. If each party appoints an appraiser, the two  
7 appraisers shall appoint a third appraiser; if only a single appraiser is appointed  
8 (whether by mutual agreement or because of the failure of a party to timely  
9 nominate an appraiser) that appraiser shall be the sole appraiser. The  
10 appraiser or appraisers shall establish a price for the System or portion thereof  
11 that the City desires to purchase in accordance with Section 2.7.B. This  
12 appraisal determination shall be final and non-appealable. The City shall have  
13 120 days after the decision of the appraisers to notify Franchisee that it wishes  
14 to conclude the transaction; if it does not so notify Franchisee, the option shall  
15 be deemed terminated. If the City gives the notice required by the preceding  
16 paragraph, the parties will thereafter promptly sign all necessary documents  
17 required to close the transaction; provided, however, that the City may make  
18 conclusion of the transaction conditional upon any necessary voter approval of  
19 any bond funding for acquisition of all or a part of the System and, if applicable,  
20 the successful sale of the bonds.  
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24           The City and Franchisee will share equally the costs associated with any  
25 appraiser that is jointly appointed (by them or by the appraisers each selects);  
26 the City will bear costs associated with any appraiser that it separately appoints



1 and Franchisee will bear costs associated with any appraiser that it separately  
2 appoints.

3 D. (1) Nothing in this section or in any other section of this  
4 Franchise shall prevent the City's exercise of its rights under the Tacoma City  
5 Charter. Included within the rights granted under Tacoma's Charter is the right  
6 to purchase or condemn Franchisee's property within the Franchised Area at  
7 any time, which right is expressly set out in Section 8.1(c) of the Charter as  
8 follows:

9 "to acquire by purchase or condemnation, for the use of the  
10 City itself or its inhabitants, all of the property of the grantee  
11 within the public streets, alleys, or places at a fair and just  
12 value, which shall not include any valuation of the franchise,  
13 right, or privilege, which shall thereupon be terminated."

14 (2) Likewise, nothing in this section or in any other  
15 section of this Franchise shall be read to limit the City's right to acquire the  
16 Telecommunications System through exercise of any right of eminent domain  
17 under state law.

18 (3) Nothing in this section shall be read to limit the City's  
19 right to acquire the Telecommunications System as a result of abandonment.

20 E. In the event the City purchases, acquires, takes over, or  
21 holds all or parts of the System, the City shall have the right without limitation to  
22 assign, sell, lease, or otherwise transfer its interest in all or parts of the System  
23 to any other Person or entity, including any other Franchisee of a  
24 Telecommunications System, on whatever terms the City deems appropriate.  
25

26 2.8 Right to Require Removal of Property/Right to Remove Property.



1           A.     Upon termination of this Franchise, Franchisee may be  
2 required to remove its property from any Public Rights-of-Way, and restore  
3 such Rights-of-Way to their same or better condition as existed just prior to  
4 such removal, subject to any rights Franchisee may have to abandon property  
5 in place, as set out in Title 16B. If Franchisee fails to remove property that the  
6 City requires it to remove, the City may perform the work and collect the cost  
7 thereof from Franchisee. The actual cost thereof, including direct and indirect  
8 administrative costs, shall be a lien upon all plant and property of Franchisee  
9 effective upon filing of the lien with the Pierce County Auditor.  
10

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

17           C.     Any order by the City issued pursuant to Section 2.8.A to  
18 remove Installations shall be sent by registered or certified mail to Franchisee  
19 not later than 24 months following the date of Franchise termination. Removal  
20 shall be completed (except with respect to property that Franchisee is permitted  
21 to abandon in place) not later than 12 months following the date of notification  
22 to remove the Facilities.  
23

24           D.     Franchisee shall file a written removal plan with the City not  
25 later than 30 calendar days following the date of the receipt of any orders  
26 directing removal, or any consent to removal describing the work that will be



1 performed, the manner it will be performed, and a schedule for removal by  
2 location. The removal plan shall be subject to approval and regulation by the  
3 City, including, without limitation, the City's Right-of-Way Restoration Policy.  
4 The affected property must be restored to as good or better condition than  
5 existed immediately prior to removal; and those damaged by removal must be  
6 compensated for the damage.

7 E. The purchase option provided for in Section 2.7 does not  
8 affect the City's authority to require Franchisee to remove its  
9 Telecommunications System upon Franchise termination, as provided in this  
10 section and Title 16B, nor does it affect the City's right to assume ownership of  
11 any portion of the Telecommunications System that is abandoned. Within  
12 60 days of a request by the City, the Franchisee shall execute such documents  
13 as may be required to convey such abandoned property to the City free and  
14 clear of all encumbrances.  
15

16  
17 2.9 Customers' Right to Obtain Service. It shall be the right of all  
18 Customers to receive all available services insofar as their financial and other  
19 obligations to Franchisee are honored during the term of the Franchise or any  
20 Continuation Period. In addition to the obligations established under the other  
21 provisions of this Franchise, in the event that Franchisee elects to overbuild,  
22 rebuild, modify, or sell the system, Franchisee shall make its best effort to  
23 ensure that all Customers receive continuous uninterrupted service at rates  
24 which are fair and reasonable, regardless of the circumstance.  
25  
26



1           2.10 Responsibility for Costs. Except as expressly provided otherwise,  
2 any act that Franchisee is required to perform under this Franchise shall be  
3 performed at its cost. If Franchisee fails to perform work that it is required to  
4 perform within the time provided for performance, the City may perform the  
5 work and bill the Franchisee. The Franchisee shall pay the amounts billed  
6 within 30 days of receipt of the bill. The parties agree that any amounts paid  
7 pursuant to this section or Title 16B are not franchise fees.

8           2.11 Work of Contractors and Subcontractors. Work by contractors  
9 and subcontractors is subject to the same restrictions, limitations and conditions  
10 as if the work were performed by Franchisee. Franchisee shall be responsible  
11 for all work performed by its contractors and subcontractors, and others  
12 performing work on its behalf as if the work were performed by it and shall  
13 ensure that all such work is performed in compliance with this Franchise and  
14 Title 16B, and other applicable law, including without limitation, the City's Right-  
15 of-Way Restoration Policy, and shall be jointly and severally liable for all  
16 damages and correcting all damage caused by them. It is Franchisee's  
17 responsibility to ensure that contractors, subcontractor or other Person(s)  
18 performing work on Franchisee's behalf are familiar with the requirements of  
19 this Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other  
20 applicable laws governing the work performed by them.

21           2.12 Survival of Terms. Upon the termination or forfeiture of the  
22 Franchise, Franchisee shall no longer have the right to occupy the Public  
23 Rights-of-Way for the purpose of providing Telecommunications Service.



1 However, Franchisee's obligations to the City (other than the obligation to  
2 provide service to Customers) survive the expiration of these rights according to  
3 their terms. By way of illustration and not limitation, Sections 2.7, 2.8, 2.10, and  
4 4 of this Franchise shall continue in effect as to Franchisee notwithstanding any  
5 expiration, forfeiture, or revocation of the Franchise, except to the extent that a  
6 City-approved Transfer, sale, or assignment of the Telecommunications System  
7 is completed, and another entity has assumed full and complete responsibility  
8 for the Telecommunications System or for the relevant acts or omissions.

9  
10 SECTION 3 - OPERATION IN STREETS AND RIGHTS-OF-WAY.

11 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the  
12 terms of this Franchise and Title 16B, the City's Right-of-Way Restoration  
13 Policy, and other applicable laws, construct, operate and maintain an  
14 underground fiber optic Telecommunications System in Public Rights-of-Way  
15 within the Franchise Area, to provide Telecommunications Services. Without  
16 limiting the foregoing, Franchisee expressly agrees that it will construct, operate  
17 and maintain its System in compliance with the requirements of Title 16B,  
18 including those governing the placement of its Telecommunications System,  
19 and with other applicable City codes; and will obtain and maintain all bonds and  
20 billable work orders required by the same.

21  
22  
23 3.2 Construction, Operation, or Repair. Franchisee shall, in all cases,  
24 comply with all lawful City ordinances and regulations now in effect or  
25 hereinafter enacted regarding the acquisition of permits and such other items as  
26 may be required by the City in connection with the construction, operation or



1 repair of the Telecommunications System, including, without limitation, the  
2 City's Right-of-Way Restoration Policy.

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

6 A. (1) Franchisee shall, with as much advance notice as is  
7 feasible under the circumstances, but in no event less than 90 days, except in  
8 circumstances there is a risk to public safety, protect, support, temporarily  
9 disconnect, relocate, or remove any of its property when required by the City by  
10 reason of traffic conditions; public safety; Public Rights-of-Way construction;  
11 Public Rights-of-Way repair (including resurfacing or widening); change of  
12 Public Rights-of-Way grade; construction, installation or repair of sewers,  
13 drains, water pipes, power lines, signal lines, tracks, or any other type of  
14 government-owned Communications System, public work, public project, public  
15 facility, or improvement or any government-owned utility; Public Rights-of-Way  
16 vacation; or for any other purpose where the work involved would be aided by  
17 the removal or relocation of the Telecommunications System. Collectively,  
18 such matters are referred to below as the "public work."  
19

20  
21 (2) In the event of an emergency, or where the  
22 Telecommunications System creates or is contributing to an imminent danger to  
23 health, safety, or property, the City may protect, support, temporarily  
24 disconnect, remove, or relocate any or all parts of the Telecommunications  
25 System without prior notice, and charge the Franchisee for costs incurred. The  
26





1 City shall notify Franchisee as soon as is reasonably practical, after any City  
2 action pursuant to this Section

3 (3) In the case of non-public work, if any Person that is  
4 authorized to place Facilities in the Rights-of-Way requests Franchisee to  
5 protect, support, temporarily disconnect, remove, or relocate Franchisee's  
6 facilities to accommodate the construction, operation, or repair of the facilities of  
7 such other Person, the Franchisee shall, after 90 days' advance written notice,  
8 take action to effect the necessary changes requested. In the case of non-  
9 public work or non-public projects, unless the matter is governed by a valid  
10 contract or a state or federal law or regulation, or unless the Franchisee's  
11 Telecommunications System was not properly installed, the reasonable cost of  
12 the same shall be borne by the Person requesting the protection, support,  
13 temporary disconnection, removal, or relocation and at no charge to the City,  
14 even if the City makes the request for such action.

15  
16  
17 (4) Franchisee shall, on the request of any Person  
18 holding a valid permit issued by a governmental authority, temporarily raise or  
19 lower its wires to permit the moving of buildings or other objects. The expense  
20 of such temporary removal or raising or lowering of wires shall be paid by the  
21 Person requesting the same.

22  
23 B. The Franchisee's obligation to construct, operate, and  
24 repair its Telecommunications System in compliance with all laws, ordinances,  
25 departmental rules and regulations and practices affecting such System,  
26 includes, by way of example, and not limitation, the obligation to construct,



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operate and repair in accordance with zoning codes, safety codes and City construction standards, including the most current version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation (WSDOT) and the Washington State Chapter of American Public Works Association (APWA); the most current version of the APWA Amendments to Division One, and the most current version of the City of Tacoma Amendments thereto. In addition, the construction, operation, and repair shall be performed in a manner consistent with high industry standards. The Franchisee shall exercise reasonable care in the performance of all its activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property. In the event that Franchisee's work or other use of the Public Right-of-Way causes damage to any City facility, Franchisee shall bear the cost of repairing, or replacing as necessary, such City facility.

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



1 distance from other utilities, for the proper restoration of such Public  
2 Rights-of-Way and structures, and for the protection of the City and the public  
3 and the continuity of pedestrian and vehicular traffic.

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

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

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

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

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

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

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

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

6 I. The Franchisee shall participate in conversion to  
7 underground Local Improvement Districts ("LIDs"). The Franchisee, at no cost  
8 to the City or abutting property owners, shall share fairly with other utilities the  
9 cost of undergrounding when done through the LID process.

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

18 J. Franchisee shall promptly repair any and all Public  
19 Rights-of-Way, public property, or private property that is disturbed or damaged  
20 during the construction, operation or repair of its Telecommunications System.  
21 Public property and Public Rights-of-Way must be restored in conformance with  
22 the City's Right-of-Way Restoration Policy.  
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1 K. No tree trimming shall be performed without the permission  
2 of the City and other affected authorities, and any tree trimming must be  
3 performed in strict accordance with the City Code. Even if tree trimming is  
4 authorized by the City, Franchisee is liable for any damage it causes during the  
5 course of tree trimming.

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

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

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

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

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

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

10  
11 3.3 Right To Inspect and Order Corrections. The City may inspect the  
12 Telecommunications System at any time reasonable under the circumstances  
13 to ensure compliance with this Franchise and applicable law, including to  
14 ensure that Franchisee's Telecommunications System is constructed and  
15 maintained in a safe condition. If an unsafe condition is found to exist, the City,  
16 in addition to taking any other action permitted under applicable law, may order  
17 Franchisee, in writing, to make the necessary repairs and alterations specified  
18 therein forthwith to correct the unsafe condition on a timetable established by  
19 the City which is reasonable in light of the unsafe condition. The City has the  
20 right to correct, inspect, administer, and repair the unsafe condition if  
21 Franchisee fails to do so, and to charge the Franchisee therefor.  
22

23  
24 3.4 Information Regarding Ongoing Work. In addition to providing  
25 notice to the public of ongoing work as may be required under applicable law,  
26 Franchisee shall make available information regarding any ongoing



1 construction, operation or installation of its Telecommunications System  
2 sufficient to show (1) the nature of the work being performed; (2) where it is  
3 performed; (3) its estimated completion date; and (4) progress to completion.

4 SECTION 4 - REGULATORY PROVISIONS.

5 4.1 Intent. The City shall have the right to administer and regulate  
6 activities of this Franchise up to the fullest extent of the law. The failure to  
7 reserve a particular right to regulate, or reference a particular regulation, shall  
8 not be interpreted by negative implication or otherwise to prevent the  
9 application of a regulation to Franchisee.  
10

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

14 A. Draw upon or foreclose all or any part of any letter of credit,  
15 security fund, performance bond or other security provided under this  
16 Franchise; provided, however, such drawing or foreclosure shall be only in such  
17 a manner and in such amount as the City reasonably determines is necessary  
18 to remedy the default. Should the City take this action, Franchisee shall be  
19 responsible for all direct and actual costs related to such action, including, but  
20 not limited to, legal and administrative costs:  
21

22 B. Commencing an action at law for monetary damages;

23 C. Commencing an action for equitable or other relief;

24 D. Declaring the Franchise to be revoked; and/or  
25  
26





1 E. Seeking specific performance of any provision, which  
2 reasonably lends itself to such remedy.

3 In determining which remedy or remedies for Franchisee's violation are  
4 appropriate, the City may take into consideration the nature and extent of the  
5 violation, the remedy needed to prevent such violations in the future, whether  
6 Franchisee has a history of previous violations of the same or similar kind, and  
7 such other considerations as are appropriate under the circumstances.

8 Remedies are cumulative; the exercise of one shall not foreclose the exercise  
9 of others.

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

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

20  
21 B. Franchisee's Right to Cure or Respond. Except as  
22 provided in Section 4.3.D., Franchisee shall have 30 days from the receipt of  
23 notice described above to (a) respond to the City contesting the assertion of  
24 noncompliance, or (b) to cure such default or, in the event that by the nature of  
25 the default such default cannot be cured within the 30-day period, initiate steps  
26 to remedy such default as promptly as possible. The duty to cure includes the



1 duty to cure all harms caused by the acts or omissions of Franchisee. At the  
2 end of the 30-day period, Franchisee shall notify the City in writing of the steps  
3 it has taken to cure the default, if any; if the cure is not complete, the reason it is  
4 not complete and the projected date for completion; and if the default is  
5 disputed, the complete basis for that contention.

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

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

21 E. Liquidated Damage Amounts. Because Franchisee's  
22 failure to comply with the provisions of this Franchise will result in injury to the  
23 City, and because it may be difficult to estimate the extent of each such injury,  
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1 Franchisee and the City agree to the following liquidated damages, which  
2 provisions represent the best estimate of the damages resulting from injuries of  
3 specific types. The amounts of the liquidated damages set forth in this  
4 Franchise are in 2012 dollars and shall be increased each year by the increase  
5 in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price  
6 Index for Pacific Cities and U. S. City Average for the greater Seattle area. The  
7 amount of liquidated damages for all material violations of this Franchise for  
8 which actual damages may not be ascertainable shall be: \$500 per day for each  
9 violation for each day the violation continues. It is provided, however, that the  
10 City shall allow the Franchisee a minimum of 30 days after notice to the  
11 Franchisee of such neglect, failure, or refusal to comply within which to meet  
12 compliance or correct performance, prior to the assessment of any liquidated  
13 damages.  
14

15           4.4    Failure to Enforce. Franchisee shall not be relieved of any of its  
16 obligations to comply promptly with any provision of this Franchise by reason of  
17 any failure of the City to enforce prompt compliance, and the City's failure to  
18 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's  
19 conduct.  
20

21           4.5    Force Majeure. The Franchisee shall not be deemed in default  
22 with provisions of this Franchise where performance was rendered impossible  
23 by war or riots, civil disturbances, floods, or other natural catastrophes beyond  
24 the Franchisee's control; the unforeseeable unavailability of labor or materials;  
25 or power outages exceeding back-up power supplies. The acts or omissions of  
26



1 Affiliates are not beyond the Franchisee's control, and the knowledge of  
2 Affiliates shall be imputed to Franchisee. This Franchise shall not be revoked  
3 or the Franchisee penalized for such noncompliance, provided that the  
4 Franchisee takes immediate and diligent steps to bring itself back into  
5 compliance and to comply as soon as possible under the circumstances with  
6 this Franchise without unduly endangering the health, safety, and integrity of  
7 the Franchisee's employees or property, or the health, safety, and integrity of  
8 the public, Public Rights-of-Way, public property, or private property.

9  
10 4.6 Alternative Remedies. No provision of this Franchise shall be  
11 deemed to bar the right of the City to seek or obtain judicial relief from a  
12 violation of any provision of the Ordinance or any rule, regulation, requirement  
13 or directive promulgated thereunder. Neither the existence of other remedies  
14 identified in this Franchise nor the exercise thereof shall be deemed to bar or  
15 otherwise limit the right of the City to recover monetary damages for such  
16 violation by Franchisee, or to seek and obtain judicial enforcement of  
17 Franchisee's obligations by means of specific performance, injunctive relief or  
18 mandate, or any other judicial remedy at law or in equity.

19  
20 4.7 Compliance with the Laws. Franchisee shall comply with all  
21 federal and state laws and regulations, including regulations of any  
22 administrative agency thereof, as well as all City ordinances, resolutions, rules  
23 policies and regulations heretofore or hereafter adopted or established during  
24 the entire term of the Franchise; provided that, nothing herein shall prevent  
25 Franchisee from challenging a provision of laws that applies only to it as an  
26



1 impairment of contract. Nothing in this Franchise shall limit the City's right of  
2 eminent domain under state law. Nothing in this Franchise shall be deemed to  
3 waive the requirements of any lawful code or resolution of the City regarding  
4 permits, fees to be paid, or manner of construction.

5 SECTION 5 - REPORTING REQUIREMENTS.

6 5.1 Franchisee shall provide reports in compliance with TMC 16.B upon  
7 request of the City.

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

6 SECTION 6 - COMPENSATION AND FINANCIAL PROVISIONS.

7 6.1 Fees; Taxes.

8 A. State Prohibition of Franchise Fee. The parties understand  
9 that RCW 35.21.860 currently prohibits a municipal franchise fee. Franchisee  
10 agrees that if this statutory prohibition is removed, the City may assess a  
11 reasonable franchise fee, to be agreed to by the parties if the statutory  
12 prohibition is removed. The parties agree that this Section 6.1(A) does not limit  
13 the right of the Franchisee to challenge the franchise fee pursuant to 47 USC §  
14 253.  
15

16 B. Franchisee Obligated to Pay Administrative Costs. In  
17 accord with RCW 35.21.860 as presently effective, and as it may be later  
18 amended, Franchisee must pay the City an amount sufficient to recover  
19 administration expenses incurred in receiving and approving this Franchise,  
20 including, but not limited to, the reasonable costs of outside consultants  
21 retained by the City to assist in the City's consideration and processing of this  
22 Franchise application. The first \$5,000 of said expenses will be covered by the  
23 \$5,000 application fee deposited with the City. Franchisee will also pay the  
24 reasonable costs of enforcing, or, as necessary, reviewing, the provisions of this  
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Franchise as well as costs involved with the modification, amendment, renewal, or  
1 Transfer of this Franchise, as ordered by the Franchise Services Manager,  
2 whether such costs result from accrued in-house staff time, or out-of-pocket  
3 expenses or administrative costs, as well as expenses of retaining independent  
4 technical, legal, or financial consultants or advisors, or whether relating to costs  
5 incurred due to initial System development or to future System expansion. The  
6 amount of payment to be made by Franchisee to cover these administrative costs  
7 is an amount determined to be reasonable by the Franchise Services Manager.  
8 Such obligation further includes municipal fees related to receiving and approving  
9 permits or licenses, inspecting plans and construction, or relating to the  
10 preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees  
11 must be paid within 30 days of receipt of the City's billing therefor.  
12

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

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

14 6.2 Auditing and Financial Records. Franchisee shall manage all of  
15 its operations in accordance with a policy of keeping books and records open  
16 and accessible to the City. Without limiting its obligations under this Franchise,  
17 Franchisee agrees that it will collect and make available books and records for  
18 inspection and copying by the City in accordance with Title 16B. Franchisee  
19 shall be responsible for collecting the information and producing it. Books and  
20 records shall be produced to the City at the Tacoma Municipal Building, or such  
21 other location as the parties may agree. Notwithstanding any provision of  
22 Title 16B or this Franchise, if documents are too voluminous or for security  
23 reasons cannot be produced at the Tacoma Municipal Building or mutually  
24 agreeable location within the City, then the Franchisee may produce the  
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1 material at another central location, provided it also agrees to pay the additional  
2 reasonable costs incurred by the City in reviewing the materials.

3 Franchisee shall take all steps required, if any, to ensure that it is able to  
4 provide the City all information which must be provided or may be requested  
5 under Title 16B or this Franchise, including by providing appropriate Subscriber  
6 privacy notices. Nothing in this section shall be read to require a Franchisee to  
7 violate 47 U.S.C. § 551. Franchisee shall be responsible for redacting any data  
8 that federal law prevents it from providing to the City. Records shall be kept for  
9 at least six years. In addition to maintaining all records as required by  
10 Title 16B, Franchisee shall maintain records sufficient to show its compliance  
11 with the requirements of this Franchise, and shall produce those records within  
12 30 days of a City request.

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

19 The City agrees to request access to only those books and records, in  
20 exercising its rights under this section, which it deems reasonably necessary as  
21 part of a bona fide exercise of its authority over the Telecommunications  
22 System under this Franchise, Title 16B or other applicable law. The City further  
23 agrees that it will withhold from public disclosure those books and records made  
24 available to it pursuant to this section 6.2, but only to the extent that the City  
25 believes that it has the discretion to do so under state law.  
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6.3 Performance Bond. At the same time it provides its Franchise acceptance to the City, Franchisee shall provide a performance bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including by way of example and not limitation, its obligations to relocate and remove its facilities; and to restore City Rights-of-Way and other property. The initial amount of the performance bond shall be \$300,000. The amount of the bond may be changed from time to time to reflect changed risks to the City or to the public. The Franchisee may be required to obtain additional bonds in accordance with the City's ordinary practices. The bond shall be, in a form and with a surety (authorized to do business in the state of Washington) acceptable to the City's Risk Manager and in a form acceptable to the City Attorney. Franchisee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times during the Franchise Term.

6.4 Indemnification by Franchisee.

A. Franchisee, by accepting this Franchise, agrees to release the City from and against any and all liability and responsibility in or arising out of, or by reason of, or resulting from or of the negligent acts, errors, or omissions of the Franchisee during the construction, operation or maintenance of the Telecommunications System, and, without limiting the provisions of Section 7.4, agrees not to sue or seek any money or damages from City in connection with the above mentioned matters.



1 B. Franchisee agrees to indemnify and hold harmless the City,  
2 its trustees, elected and appointed officers, agents, and employees, from and  
3 against any and all claims, demands, or causes of action of whatever kind or  
4 nature, and the resulting losses, costs, expenses, reasonable attorneys' fees,  
5 liabilities, damages, orders, judgments, or decrees, sustained by the City or any  
6 third party arising out of, or by reason of, or resulting from or of the acts, errors,  
7 or omissions of the Franchisee, or its agents, independent contractors or  
8 employees related to or in any way arising out of the construction, operation,  
9 repair, or relocation of the Telecommunications System provided that this  
10 provision shall not apply to the extent that the claims, demands, or causes of  
11 action, resulting losses, costs, expenses, attorneys' fees, liabilities, damages,  
12 orders, judgments, or decrees result from the sole negligence of the City, its  
13 trustees, elected and appointed officers, agents, or employees. With respect to  
14 any action brought by any employee of Franchisee against the City, Franchisee  
15 waives immunity under Title 51 RCW for the sole and limited purpose of  
16 effectuating its obligations to indemnify, hold harmless, and defend the City  
17 under this clause and affirms that the City and Franchisee have specifically  
18 negotiated this provision, as required by RCW 4.24.115, to the extent it may  
19 apply.  
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23 C. Except for third party claims covered under the indemnification  
24 provisions in this Franchise, in no event shall either party be liable to the other  
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1 party for any incidental, special, punitive, or consequential damages arising out  
2 of or in connection with this Franchise.

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

8 6.5 Franchisee Insurance.

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

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

22 C. Certificates of insurance, reflecting evidence of the required  
23 insurance and naming the City as an additional insured with all required  
24



1 endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies  
2 described above, shall be filed with the City's Risk Manager. The certificate  
3 shall be filed with the acceptance of the Franchise, and annually thereafter, and  
4 as provided in E below.

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

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

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

18 6.6 Security Fund. Franchisee shall establish a cash security fund or  
19 provide the City an irrevocable letter of credit in the amount of \$50,000, to  
20 secure the payment of fees owed, to secure any other performance promised in  
21 this Franchise, and to pay any taxes, fees or liens owed to the City. The letter  
22 of credit shall be in a form and with an institution acceptable to the City's  
23 Director of Finance and in a form acceptable to the City Attorney. Should the  
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1 City draw upon the cash security fund or letter of credit, it shall promptly notify  
2 the Franchisee, and the Franchisee shall promptly restore the fund or the letter  
3 of credit to the full required amount. The City may from time to time change the  
4 amount of the required security fund/letter of credit to reflect changes in the  
5 risks to the City and to the public, including delinquencies in taxes or other  
6 payments to the City.

7 SECTION 7 - MISCELLANEOUS PROVISIONS.

8 7.1 Posting and Publication. Franchisee shall assume the cost of  
9 posting and publication of this Franchise as such posting and publication is  
10 required by law and such is payable upon Franchisee's filing of acceptance of  
11 the Franchise.  
12

13 7.2 Guarantee of Performance. Franchisee acknowledges that it  
14 enters into the Franchise voluntarily in order to secure and in consideration of  
15 the grant from the City of a ten-year Franchise. Performance pursuant to the  
16 terms and conditions of this Franchise agreement is guaranteed by Franchisee.  
17

18 7.3 Governing Law and Venue. The Franchise shall be governed by  
19 and construed in accordance with the laws of the state of Washington without  
20 recourse to any principles of Conflicts of Laws, except that where federal law  
21 preemptively applies it shall control. Any litigation between the City and  
22 Franchisee arising under or regarding this Franchise shall occur, if in the state  
23 courts, in the Superior Court of Pierce County and if in the federal courts, in  
24 the District Court for the Western District of Washington.  
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1 7.4 No Recourse. Without limiting such immunities as the City or  
2 other Persons may have under applicable law, Franchisee shall have no  
3 monetary recourse whatsoever against the City or its officials, boards,  
4 commissions, agents or employees for any loss, costs, expense or damage  
5 arising out of any provision or requirement of Title 16B or because of the  
6 enforcement of Title 16B or the City's exercise of its authority pursuant to  
7 Title 16B, this Franchise or other applicable law.

8 7.5 Notice. Unless expressly otherwise agreed between the parties,  
9 every notice, billing, or response required by this Franchise to be served upon  
10 the City or Franchisee shall be in writing, and shall be deemed to have been  
11 duly given to the required party five business days after having been posted in a  
12 properly sealed and correctly addressed envelope when hand delivered or  
13 sent by mail, postage prepaid. The notices or responses to the City shall be  
14 addressed as follows:  
15

16  
17 City of Tacoma  
18 Municipal Services Building  
19 1224 MLK Jr Way  
20 Tacoma, WA 98405  
21 Attn: Franchise Services Manager

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

23 Ziplly Fiber Pacific, LLC dba Ziplly Fiber  
24 Attn: Jessica Epley, VP – Regulatory & External Affairs  
25 135 Lake Street South, Suite 155  
26 Kirkland, WA 98033

With A Copy To:

Wholesail Networks, LLC and affiliates DBA: Ziplly Fiber  
135 Lake Street South, Suite 155



Kirkland, WA 98033

1           The City and Franchisee may designate such other address from time to  
2 time by giving written notice to the other, but notice cannot be required to more  
3 than one address, and the address must be within the state, except by mutual  
4 agreement.  
5

6           7.6 Execution. Franchisee shall execute Ordinance thru signed  
7 acceptance of the Franchise granted hereunder within 30 days after the date of  
8 passage of the Ordinance by the City Council. The acceptance shall be  
9 submitted in the form attached hereto or other form acceptable to the City  
10 Attorney and in accepting the Franchise, Franchisee warrants that it has  
11 carefully read the terms and conditions of this Franchise and unconditionally  
12 accepts all of the terms and conditions of this Franchise and agrees to abide by  
13 the same and acknowledges that it has relied upon its own investigation of all  
14 relevant facts, that it has had the assistance of counsel, that it was not induced  
15 to accept a Franchise, that this Franchise represents the entire agreement  
16 between Franchisee and the City, and that Franchisee accepts all risks related  
17 to the interpretation of this Franchise. The countersigned Ordinance and  
18 acceptance shall be returned to the City accompanied by: evidence of  
19 insurance; a payment for publication costs; billable work order deposit, and  
20 security deposit (or the letter of credit).  
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24           The Franchise rights granted herein shall not become effective until all of  
25 the foregoing is received in acceptable form. In the event Franchisee fails to  
26 submit the countersigned Ordinance and acceptance as provided for herein, or





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fails to provide the required accompanying documents and payments, within the time limits set forth in this section, the grant of the Franchise shall be null and void.

Passed \_\_\_\_\_

Mayor: \_\_\_\_\_

Attest: City Clerk

\_\_\_\_\_

Approved as to form

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



ACCEPTANCE OF CITY FRANCHISE

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Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, 2024.

I, George Baker Thomson, Jr., am the Vice President, Associate General Counsel, of Ziplly Fiber Pacific, LLC dba Ziplly Fiber and am the authorized representative to accept the above-referenced City franchise ordinance on behalf of Ziplly Fiber Pacific, LLC, dba Ziplly Fiber.

I certify that this franchise and all terms and conditions thereof are accepted by Ziplly Fiber Pacific dba Ziplly Fiber without qualification or reservation.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

By \_\_\_\_\_  
Its VP/Associate General Counsel