

After Recording Return To:

X  
Torchie Corey, City Clerk  
City of Snohomish  
116 Union Avenue  
Snohomish, WA 98290

**Grantor:** City of Snohomish  
**Grantee:** Snohomish School District  
**Tax Account No.:** Not Applicable  
**Legal Description:** Sections, Townships, and Ranges covered listed in § 1.5, page 4.  
**Ref. # of Docs. Affected:** N/A  
**Document Title:** An Ordinance Granting a Nonexclusive Franchise Authorizing Limited Use of Public Road Rights-of-Way in Snohomish County, Washington, to Snohomish School District

**CITY OF SNOHOMISH  
ORDINANCE 2237**

**AN ORDINANCE OF THE CITY OF SNOHOMISH, WASHINGTON,  
GRANTING A NONEXCLUSIVE FRANCHISE AUTHORIZING  
LIMITED USE OF CITY RIGHTS-OF-WAY TO THE SNOHOMISH  
SCHOOL DISTRICT**

**WHEREAS**, the Snohomish School District has applied to the City of Snohomish for a nonexclusive franchise to install fiber optic lines in the City's rights-of-way; and

**WHEREAS**, the Washington State Constitution's grant of police power and RCW 35A.47.040 authorize cities to grant franchises for use of public rights-of-way; and

**WHEREAS**, a franchise is a legislative authorization to use public rights-of-way and actual construction and activities in the rights-of-way will be subject to administratively approved right-of-way use permits after review of specific plans; and

**WHEREAS**, the City Council has considered the report of City staff, which recommends that the subject franchise be granted; and

**WHEREAS**, the City Council finds it to be in the public interest to grant a franchise authorizing use of public rights-of-way for installation of fiber optic lines by the Snohomish School District;

**NOW, THEREFORE, THE CITY COUNCIL OF SNOHOMISH, WASHINGTON,  
DO ORDAIN AS FOLLOWS:**

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### Section 1. Franchise Granted - Term and Scope.

1.1 Pursuant to RCW 35A.47.040, the City of Snohomish (hereinafter the "City"), hereby grants to the Snohomish School District, its successors, and assigns (hereinafter the "Franchisee"), subject to the terms and conditions in the City Code and this franchise ordinance, a non-exclusive franchise to install fiber optic lines in City rights-of-way.

1.2 The term of this franchise shall be for a period of five (5) years, beginning on the effective date of this franchise, unless terminated, revoked, or modified under the provisions of this franchise. This franchise shall be automatically renewed for additional five (5) year terms,

up to a total of fifteen (15) years from the effective date of this franchise, UNLESS, not less than sixty (60) days prior to the termination of the current term or extension, the City gives notice of its intention to renegotiate the terms or conditions of the franchise, in which case, the franchise shall not renew unless and until the City and the Franchisee reach agreement on terms and conditions acceptable to both parties. If the City and the Franchisee are unable to reach agreement on new terms and conditions, the franchise shall terminate and the Franchisee shall remove its facilities from the City rights-of-way unless otherwise allowed under section 12.

1.3 This franchise grants the Franchisee the right, privilege, and authority to locate, construct, operate, maintain, replace, and use its facilities, including all necessary equipment and facilities appurtenant thereto (referred to as “facilities”), for fiber optic facilities in, on, across, over, along, under, or through City rights-of-way, subject to the terms and conditions of City right-of-way use permits. “City rights-of-way” as used herein means City streets, roads, ways, or alleys of the City as described in the attached Exhibit A. This franchise merely authorizes the Franchisee to occupy and use said City rights-of-way, and nothing contained herein shall be construed to grant or convey any right, title, or interest in or to such public rights-of-way to the Franchisee.

## **Section 2. Non-Exclusive Franchise Grant.**

2.1 This franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, on, across, over, along, under, or through any rights-of-way. Such franchise shall in no way prevent or prohibit the City from using any of said streets, rights-of-way, or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication, or vacation of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description.

2.2 All of the Franchisee’s facilities located and operated within the right-of-way and all work undertaken on any right-of-way shall be done in such a manner so as to not interfere with the public use of the City right-of-way for transportation and other governmental purposes, the construction and maintenance of other authorized facilities or improvements, public or private, nor the operation, maintenance, or improvement of any City right-of-way or other public properties. Owners, public or private, of any authorized facilities installed prior to construction and/or installation of Franchisee’s facilities shall have preference as to positioning and location of their facilities, subject to the authority of the Public Works Director or designee to direct position and location of all facilities in the right-of-way.

## **Section 3. Right-of-Way Use Permit Required for All Work in Right-of-Way.**

3.1 No work within City right-of-way shall be commenced until a right-of-way use permit has been issued by the City pursuant to Ch. 12.12 SMC for a site-specific location or installation, including, but not limited to, relocations. In addition to the terms and conditions of this franchise, all work shall be performed in accordance with the current City standards, the approved plans and specifications, and the terms and conditions of the right-of-way use permit

and other permits and approvals necessary to accomplish the work or otherwise applicable (e.g., lane closure or road detour permits). The Franchisee shall remain solely responsible for compliance with all applicable laws, regulations, codes, and standard plans and specifications in the design and construction of Franchisee's facilities.

3.2 In addition to any criteria set forth in Ch. 12.12 SMC and other City regulations, standards, and specifications, the Public Works Director or designee shall apply the following criteria in reviewing proposed routes and in the issuance, conditioning, or denial of a right-of-way use permit:

- A. the capacity of the public rights-of-way to accommodate the Franchisee's proposed facilities;
- B. the capacity of the public rights-of-way to accommodate additional utility, cable, telecommunications, or other public facilities if the right-of-way use permit is granted;
- C. the damage or disruption, if any, to public or private facilities, improvements, service, travel, or landscaping if the right-of-way use permit is granted;
- D. the public interest in minimizing the cost and disruption of construction within the public rights-of-way, including, but not limited to, coordination with future utility installation or City improvement projects;
- E. recent construction and/or improvements to the right-of-way and/or proposed construction and/or improvements to the right-of-way which is proposed for location of facilities;
- F. the availability of alternate routes, locations, and/or methods of construction or installation for the proposed facilities, including, but not limited to, whether other routes are preferred; and
- G. whether the Franchisee has received all requisite licenses, certificates, and authorizations from applicable federal, state, and local agencies with jurisdiction over the activities proposed by the Franchisee.

3.3 During any period of relocation, construction, or maintenance, all work performed by the Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. The Franchisee shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction, including, but not limited to, RCW 39.04.180 for the construction of trench safety systems.

3.4 Before any work which may affect any existing monuments or markers of any nature relating to subdivisions, plats, roads, or other surveys is performed under this franchise, Franchisee shall reference all such monuments and markers. Reference points shall be so located that they will not be disturbed during Franchisee's operations under this franchise. The method of referencing monuments or other points to be referenced shall be approved by the Public Works Director or designee. The replacement of all such monuments or markers disturbed during construction shall be made as expeditiously as conditions permit, and as directed by the Public Works Director or designee, to federal, state, and local standards. The cost of monuments or markers lost, destroyed, or disturbed, and the expense of replacement of approved monuments

shall be borne by Franchisee. A complete set of reference notes for monument and other ties shall be filed with the City.

3.5 If the Franchisee shall at any time plan to make excavations in any area covered by this franchise, the Franchisee shall, upon receipt of a written request to do so, provide an opportunity to share such excavation and coordinate utility locations or right-of-way improvements with the City or other franchised entities, PROVIDED THAT:

- A. such joint use shall not unreasonably delay the work of the party causing the excavation to be made;
- B. such joint use shall be arranged and accomplished on terms and conditions satisfactory to the parties; and
- C. the parties may deny such request for safety reasons.

**Section 4. Emergency Work - Permit Waiver.**

In the event of any emergency in which any of the Franchisee's facilities located in, above, or under any right-of-way breaks, becomes damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take such measures as are necessary to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by City code and this franchise. However, this shall not relieve the Franchisee from the requirement of obtaining any permits necessary for this purpose, and the Franchisee shall apply for all such permits not later than the next business day.

**Section 5. Compliance with Applicable Laws.**

5.1 Franchisee shall comply with all federal, state, and local laws, rules, and regulations applicable to any work, facility, or operation of the Franchisee relating to City rights-of-way during the period of this franchise.

5.2 All work performed by the Franchisee within the public right-of-way and all of Franchisee's facilities located within the public right-of-way shall comply with the comprehensive plan, zoning code, and development regulations of the City. Franchisee's facilities may require additional project permits and approvals under City land use codes and development regulations.

5.3 All work shall be performed by the Franchisee in a manner to avoid or minimize impacts on critical areas contained within the City right-of-way. Prior to commencing any work in a critical area as defined by Ch. 14.255 SMC, the Franchisee shall comply with all requirements of any applicable provision of the City Code and shall obtain any and all necessary permits and approvals required. The granting of this franchise shall in no way relieve the Franchisee from its responsibility for avoiding "take" of any threatened or endangered species as defined by the Endangered Species Act of 1973, 16 USC § 1531, et seq., as amended, in the performance of any work authorized by this franchise and any right-of-way use permits.

**Section 6. Restoration of Right-of-Way.**

6.1 The Franchisee shall, after any excavation, installation, construction, relocation, maintenance, repair, abandonment approved under Section 12 herein, or removal of its facilities within the right-of-way, restore the surface of the right-of-way to at least the same condition the property was in immediately prior to any such excavation, installation, construction, relocation, maintenance, repair, abandonment, or removal and comply with all restoration conditions of applicable permits or approvals.

6.2 The Public Works Director or designee shall have final approval to determine that the condition of such roads and public places after restoration meets the requirements. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the right-of-way or other affected areas at its sole cost and expense.

**Section 7. Maps and Records of Facility Location.**

After construction is complete, and as a condition of this franchise, the Franchisee shall provide to the City upon request and at no cost, a copy of all as-built plans, maps, and records revealing the final location and condition of its facilities within the public rights-of-way and public places.

**Section 8. Relocation of Facilities.**

8.1 The Franchisee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate, or remove from any right-of-way any of its facilities when so required by the City by reason of traffic conditions, public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, right-of-way vacations, change or establishment of road grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity; PROVIDED that the Franchisee shall generally have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the Public Works Director or designee, any facilities required to be temporarily disconnected or removed. This Section applies to all of Franchisee's facilities wheresoever situated within the public right-of-way, regardless of whether the Franchisee's facilities were previously located therein through an easement or other property interest prior to the property becoming public right-of-way.

8.2 Upon the request of the City and in order to facilitate City right-of-way improvements, the Franchisee agrees to locate, at its sole cost and expense, and, if reasonably determined necessary by the City, at its sole cost and expense, to excavate and expose portions of its facilities for inspection so that the location of the facilities may be taken into account in the improvement design; PROVIDED, that Franchisee shall not be required to excavate and expose its facilities for inspection unless the Franchisee's as-built plans and maps of its facilities submitted pursuant to Section 7 of this franchise are reasonably determined by the Public Works Director or designee to be inadequate for the purposes of evaluating improvements. The decision to relocate Franchisee's facilities in order to accommodate road improvements shall be made by the Public Works Director or designee upon review of the location and construction of the Franchisee's facilities. Where additional costs accrue to the City during maintenance,

operation, or improvement of public facilities related to avoidance of damage or accommodation of the Franchisee's facilities, Franchisee agrees to pay the City the full amount of additional costs, if any, resulting from the Franchisee's facilities as identified by the City.

8.3 Any condition or requirement imposed by the City upon any person or entity (including, without limitation, any condition or requirement imposed pursuant to any contract or in conjunction with approvals for permits for zoning, land use, construction, or development) which reasonably necessitates the relocation of the Franchisee's facilities within the franchise area shall be a required relocation for purposes of subsections 8.1 and 8.2 above.

8.4 If the City determines that a project necessitates the relocation of the Franchisee's then-existing facilities, the City shall:

- A. At least ninety (90) days prior to the commencement of such improvement project, provide the Franchisee with written notice requiring such relocation; PROVIDED, that in the event of an emergency posing a threat to public safety, health, or welfare, in the event of an emergency beyond the control of the City and which will result in adverse financial consequences to the City, or where the Franchisee's facilities could not reasonably have been located or anticipated to require relocation, the City shall give the Franchisee written notice as soon as practicable; and
- B. Provide the Franchisee with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for the Franchisee's facilities so that the Franchisee may relocate its facilities in other City rights-of-way in order to accommodate such improvement project.
- C. After receipt of such notice and such plans and specifications, the Franchisee shall complete relocation of its facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the City's project. In the event of an emergency, the Franchisee shall relocate its facilities within the time period specified by the Public Works Director or designee.

8.5 The Franchisee may, after receipt of written notice requesting a relocation of its facilities, submit to the City written alternatives to such relocation. The City shall evaluate such alternatives and advise the Franchisee in writing if one or more of the alternatives is suitable to accommodate the work, which would otherwise necessitate relocation of the facilities. If so requested by the City, the Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the Franchisee full and fair consideration. In the event the City ultimately determines that there is no other reasonable or feasible alternative, the Franchisee shall relocate its facilities as otherwise provided in this Section.

8.6 The provisions of this Section shall in no manner preclude or restrict the Franchisee from making any arrangements it may deem appropriate when responding to a request for relocation of its facilities by any person or entity other than the City, where the facilities to be constructed

by said person or entity are not or will not become City-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay any City construction projects.

8.7 Franchisee shall be responsible for timely relocation of its facilities and coordination of relocation with the City or the contractor for the project. The Franchisee shall be fully responsible for the costs of any delays to City projects resulting from relocations of the Franchisee's facilities. Franchisee shall hold harmless, indemnify, and defend the City against all claims, lawsuits, or damages caused in whole or in part by location or relocation of Franchisee's facilities, including, but not limited to, problems, accommodations, and delays, and including negligent or intentional acts or omissions of the Franchisee, its agents, officers, and employees, as more fully set forth in Section 14 of this franchise ordinance.

### **Section 9. Undergrounding of Facilities.**

9.1 The undergrounding requirements of this Section shall apply where the Franchisee's facilities consist of cable or any other facilities which are capable of being placed underground. Where the Franchisee's facilities consist of antennae or other facilities which are required to remain above ground in order to be functional, this Section shall not apply.

9.2 In any area of the City in which there are no aerial facilities other than antennae or other facilities required to remain above ground in order to be functional, or in any area in which telephone, electric power wires, or other cables have been placed underground, the Franchisee shall not be permitted to erect poles or to run or suspend wires, cables, or other facilities thereon, but shall lay such wires, cables, or other facilities underground in the manner required by the City. The Franchisee acknowledges and agrees that, even if the City does not require the undergrounding of its facilities at the time of right-of-way use permit application, the City may, at any time in the future, require the conversion of the Franchisee's aerial facilities to underground installation at the Franchisee's expense.

9.3 Whenever the City may require the undergrounding of the aerial facilities in any area of the City, the Franchisee shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of the other affected facilities. Where other facilities are present or proposed and involved in the undergrounding project, the Franchisee shall only be required to pay its fair share of common costs borne by all facilities, in addition to the costs specifically attributable to the undergrounding of the Franchisee's own facilities. "Common costs" shall include necessary costs not specifically attributable to the installation or undergrounding of any particular facility, such as costs for common trenching and utility vaults. "Fair share" shall be determined for a project on the basis of the number and size of the Franchisee's facilities being installed or undergrounded in comparison to the total number and size of all other utility facilities being installed or undergrounded.

### **Section 10. Maintenance of Facilities.**

10.1 The Franchisee shall maintain its facilities in accordance with accepted standards of practice.



10.2 The Franchisee shall take necessary steps to maintain a reasonably clear area around all objects permitted and installed within City right-of-way. A minimum of five (5) feet of clearance will be maintained around each object so as to provide clear visibility for City operations and maintenance. If the Franchisee intends to use chemical sprays to control or kill weeds and brush, the City must grant prior approval at least annually. The City may limit or restrict the types, amounts, and timing of applications if a significant negative impact on the aesthetics of the area is anticipated, provided such limitations or restrictions are not in conflict with State law governing utility right-of-way maintenance.

10.3 The Franchisee agrees that it will not cause nor permit in any manner, including negligent or intentional acts or omissions, release of any hazardous substance, waste, or pollutant or contaminant into or upon any City right-of-way contrary to any State or federal law or local regulation with respect thereto. Franchisee shall notify the Washington State Department of Ecology and the City in writing immediately upon any such release. Franchisee shall indemnify, hold harmless, defend, and covenant not to sue the City, from and against any and all claims, actions, or suits in equity or at law and any judgments, damages, awards, penalties, or fines, including reasonable attorneys' fees and costs incurred in the defense thereof, arising out of the release or spill of any such hazardous materials, dangerous waste, or pollutant within the City right-of-way or on private property. Franchisee shall be responsible for completely cleaning up and remediating, as required by any government agency, any and all hazardous materials, dangerous waste, or pollutants released or spilled within the City right-of-way or on private property. The City shall be entitled to indemnification by Franchisee for all costs incurred by it as the result of any release or spill of such materials by Franchisee, its agents, officials, officers, and employees.

10.4 Upon any release or spill of any such substance mentioned herein, the City may give notice of intent to immediately terminate this franchise and, where it deems necessary to protect the public health, safety, and welfare, the City may immediately take whatever steps it deems necessary and advisable to contain, clean up, or remediate the release or spill. The City shall be entitled to repayment from the Franchisee of any costs or expenses incurred in responding to such a release or spill by Franchisee, its agents, officials, officers, and/or employees.

**Section 11. Dangerous Conditions, Authority for City to Abate.**

11.1 Whenever the Franchisee's excavation, construction, installation, relocation, maintenance, repair, abandonment, or removal of facilities authorized by this franchise has caused or contributed to a condition that substantially impairs, in the opinion of the Public Works Director or designee, the lateral support of the adjoining road or public place, or endangers the public, an adjoining public place, City streets, or other City facilities or property, the Public Works Director or designee may direct the Franchisee, at the Franchisee's own expense, to take actions to protect the public, adjacent public places, or City streets, property, or facilities, and such action may include compliance within a prescribed time.

11.2 In the event that the Franchisee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the City may enter upon the property and take such actions as are

necessary to protect the public, the adjacent public places, or City streets, property, or facilities, or to maintain the lateral support thereof, or actions necessary to ensure the public safety, and the Franchisee shall be liable to the City for the costs thereof.

**Section 12. Abandonment of the Franchisee’s Facilities.**

12.1 No facilities located in the right-of-way by the Franchisee may be abandoned in place by the Franchisee without the express agreement and written consent of the City. Any plan for abandonment or removal of the Franchisee’s facilities must be first approved by the Public Works Director or designee, and all necessary permits must be obtained prior to such work.

12.2 In the event Franchisee decides to discontinue using and abandons any of its facilities, or the City reasonably determines, after making good faith attempts to contact the Franchisee to ascertain the status of the facilities, that Franchisee has discontinued using and abandoned any facilities, or that the facilities should be abandoned, or both parties have negotiated in good faith but no franchise has been obtained therefore upon expiration of this franchise, or within one hundred eighty (180) days after any termination of this franchise, Franchisee shall, at its sole cost and as directed by the City, purge its facilities of any product and hazardous or other additive substances rendering them safe in accordance with applicable law or standards deemed appropriate by the City. Abandoning facilities in place shall not relieve the Franchisee of the obligation and/or costs to remove or alter such facilities in the event the City determines and requests Franchisee, in writing, to remove or alter such facilities as is necessary for the installation, operation, or maintenance of any City street or related utilities or facilities, including, but not limited to, drainage facilities, or for the health and safety of the public, in which case the Franchisee shall perform such work in a timely manner at no cost to the City. In the event Franchisee does not perform such work within a reasonable time following written notice from the City, the City may do, order, or have done, any and all work on such abandoned facilities, and the Franchisee, upon demand, shall pay to the City all costs of such work. Franchisee shall be responsible for any environmental review required for the abandonment of any facility and payment of any costs of such environmental review.

**Section 13. Fees, Compensation for Use of Rights-of-Way, and Taxes.**

13.1 The Franchisee shall be subject to all permit fees associated with activities undertaken through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this franchise or any ordinances relating to the subject for which a permit fee is not established, the Franchisee shall pay the reasonable actual costs and expenses directly to the City.

13.2 The Franchisee hereby warrants that its use of the public right-of-way under this franchise is only for fiber optic lines to connect the Franchisee’s facilities and not for use as a telephone business, cable operator, or an operator of an open video system. The compensation for use of public right-of-way under the terms of this franchise ordinance shall be as described in Subsection 13.3.

13.3 The Franchisee hereby agrees to provide to City, the exclusive right of use (the “License”) in two strands in specified segments of the fiber optic cables in the School District System, as agreed by the Parties.

13.4 The Franchisee acknowledges that it may be subject to State and local taxes, including personal property tax. The Franchisee shall keep such tax accounts current as a special condition of this franchise agreement.

**Section 14. Hold Harmless and Indemnification.**

14.1 The Franchisee shall assume the risk of, be liable for, and pay all damage, loss, cost, and expense of any party arising out of the Franchisee’s use of the right-of-way, to the extent of the Franchisee’s negligent actions, errors, omissions, or breach of any obligations. The Franchisee hereby releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless the City, its elected and appointed officials, officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person, including claims by the Franchisee’s own employees for which the Franchisee might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property to the extent caused by or arising out of the negligent acts or omissions of the Franchisee, its agents, servants, officers, or employees in the performance of this franchise, and any rights granted hereunder.

14.2 The Franchisee shall hold harmless from and indemnify the City, its elected and appointed officials, officers, employees, and volunteers, against all claims, demands, losses, suits, actions, costs, counsel fees, litigation costs, expenses, damages, judgments, or decrees by reason of damage to any property or business and/or any death, injury, or disability to or of any person or party of any nature arising out of or suffered, directly or indirectly, in whole or in part, that result from the actions, errors, omissions, or breach of any common law, statutory, regulatory, or contractual obligations in connection with the activities of the Franchisee, its sub-contractors, assigns, agents, contractors, or employees, under this franchise, any permit under City Code, or in connection with the use of the right-of-way; PROVIDED that nothing herein shall require the Franchisee to hold harmless from and indemnify the City, its elected and appointed officials, officers, employees, and volunteers, against claims, demands, or suits based solely upon the negligence of the City, its elected and appointed officials, officers, employees, and volunteers; and PROVIDED FURTHER, that if the claims, demands, or suits are caused by or result from the concurrent negligence of (a) the City, its elected and appointed officials, officers, employees, and volunteers and (b) the Franchisee, its sub-contractors, assigns, agents, contractors, or employees, and involve those actions covered by RCW 4.24.115, this indemnity provision, with respect to liability for damages arising out of bodily injury to persons or damage to property based upon such concurrent negligence, shall be valid and enforceable only to the extent of the Franchisee’s negligence or the negligence of their sub-contractors, assigns, agents, contractors, or employees, except as limited below. This indemnification provision constitutes the Franchisee’s waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

14.3 The Franchisee further agrees to process and defend at its own expense all claims, demands, or suits at law or equity arising in whole or in part from the actions, errors, omissions,

or breach of any obligations of the Franchisee, its sub-contractors, assigns, agents, contractors, or employees, arising out of or in connection with any activities related to this franchise or the Franchisee's use of the right-of-way. The Franchisee's duty to assume the defense and to pay all expenses thereof shall apply to all claims or allegations of negligence where any duty to provide indemnification in whole or in part potentially applies, whether or not the injuries or damages are ultimately found to be due to the negligence of the Franchisee arising out of the franchise or any use of the right-of-way.

14.4 In the event that the Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification provision contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the Franchisee, then the Franchisee shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and reasonable attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

14.5 Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance by the Franchisee of any of its obligations under this Section.

#### **Section 15. Limitation of City Liability.**

Administration of this franchise shall not be construed to create the basis for any liability on the part of the City, its elected and appointed officials, officers, employees, and agents for any injury or damage from the failure of the Franchisee to comply with the provisions of this franchise; by reason of any plan, schedule, or specification review, inspection, notice and order, permission, or other approval or consent by the City; for any action or inaction thereof authorized or done in connection with the implementation or enforcement of this franchise by the City; or for the accuracy of plans submitted to the City.

#### **Section 16. Insurance.**

16.1 The Franchisee shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted by this franchise and right-of-way use permits to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide a certificate of insurance to the City for its inspection prior to the adoption of this franchise ordinance, and such insurance shall include:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$5,000,000 aggregate for personal injury, bodily injury, and property damage. Coverage shall include, but not be limited to: blanket contractual; products and

completed operations; broad form property damage; explosion, collapse, and underground (XCU); and employer's liability; and

- C. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

16.2 The insurance policies obtained by the Franchisee shall name the City (its elected and appointed officers, officials, employees, agents, and volunteers) as an additional insured with regard to activities performed by or on behalf of the Franchisee. The coverage shall contain no special limitations on the scope of protection afforded to the City, its elected and appointed officers, officials, employees, agents, or volunteers. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance as respects the City, its elected and appointed officers, officials, employees, agents, and volunteers. Any insurance maintained by the City, its elected and appointed officials, officers, employees, agents, or volunteers shall be excess of the Franchisee's insurance and shall not contribute with it. Failure on the part of the Franchisee to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five business days notice to the Franchisee to correct the breach, immediately terminate the agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand.

16.3 The complete policy with all endorsements shall be provided to the City upon request. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductible or self-insured retention shall be the sole responsibility of the Franchisee. Proof of all insurance shall be in a form acceptable to the City Attorney. Any insurance provider shall be authorized to do business in Washington. If the Franchisee is self-insured, Franchisee shall provide such information as required by the City Attorney sufficient to demonstrate its ability to meet the requirements of this Section. All insurance documentation shall be submitted and reviewed by the City Attorney prior to final execution of the franchise.

16.4 Any failure to comply with the reporting provisions of the policies required herein shall not affect coverage provided to the City, its elected and appointed officials, officers, employees, agents, or volunteers.

### **Section 17.**

### **Section 18. Modification.**

The City hereby reserves the right to alter, amend, or modify the terms and conditions of this franchise upon written agreement of both parties to such alteration, amendment, or modification. Nothing in this Section shall affect the right of the City to modify the terms and conditions of this franchise in accordance with any other Section of this franchise, including, but not limited to, Sections 1, 26, and 27.

### **Section 19.**

**Section 20. Vacation.**

20.1 If the City vacates all or a portion of any City right-of-way which is subject to this franchise, the City Council may, at its option and by giving thirty (30) days' written notice to the Franchisee, terminate this franchise with reference to any City right-of-way so vacated, and the City shall not be liable for any damages or loss to the Franchisee by reason of such termination.

20.2 Whenever a City right-of-way or any portion thereof is vacated upon a finding that it is not useful and the public will be benefited by the vacation, the City may retain an easement with respect to the vacated land for the construction, repair, and maintenance of public utilities and services which at the time of the vacation are specifically authorized or are physically located on a portion of the land being vacated, but only in accordance with the provisions of Ch. 35.79 RCW or Ch. 12.48 SMC, as now existing or hereafter amended. It shall be the responsibility of the Franchisee to request that the City Council specifically include a provision retaining an easement with respect to any proposed Council action on a particular vacation. The City shall not be liable for any damages or loss to the Franchisee by reason of any such vacation.

**Section 21. Assignment.**

21.1 This franchise may not be leased, sold, transferred, assigned, or disposed of, in whole or in part, in any manner without the prior written consent of the City Council. The assignment shall not become effective until the City receives the written acceptance of terms and conditions and the proof of required insurance and other required performance securities in the name of the assignee/new franchisee.

**Section 22. Termination, Revocation, and Forfeiture.**

22.1 If the Franchisee defaults on any term or condition of this franchise, the City Council may terminate this franchise. Upon termination for any cause, all rights of the Franchisee granted hereunder or under any right-of-way use permit shall cease, and the Franchisee shall immediately commence to remove its facilities from the roads and rights-of-way.

22.2 If the Franchisee willfully violates or fails to comply with any of the provisions of this franchise, or through willful misconduct or gross negligence fails to heed or comply with any notice given the Franchisee by the City under the provisions of this franchise, then the Franchisee shall, at the election of the City Council, forfeit all rights conferred hereunder and this franchise may be revoked or annulled by the Council after a hearing held upon notice to the Franchisee.

22.3 In the event that the use of all or any part of the Franchisee's facilities is discontinued for any reason, including, but not limited to, discontinuance, obsolescence, or abandonment of the facility, or the abandonment, termination, expiration, revocation, or forfeiture of this franchise, the Franchisee is solely responsible for the removal and proper disposal of all facilities. The Franchisee is not entitled to abandon any facilities in place without the City's prior written consent in accordance with Section 12 of this franchise. The Franchisee shall restore the City rights-of-way from which any facilities have been removed in accordance with Section 6 of this franchise.

**Section 23. Remedies to Enforce Compliance.**

The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the Superior Court or other court, tribunal, or agency having competent jurisdiction compelling the Franchisee to comply with the provisions of this franchise and to recover damages and costs incurred by the City by reason of the Franchisee's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a forfeiture or revocation for breach of the conditions herein.

**Section 24. Nonwaiver of Rights or Remedies.**

Failure of the City to exercise any rights or remedies under this franchise shall not be a waiver of any obligation by the City and shall not prevent the City from pursuing that right at any future time.

**Section 25. Records.**

The Franchisee shall maintain adequate records to document obligations performed under this franchise. The City shall have the right to review the Franchisee's records, at reasonable times, with regard to the subject matter of this franchise, upon reasonable notice. The right to review records shall last for six (6) years from the termination date of this franchise, including any extensions or renewals. In addition to the maps and records of facility location under Section 7, the Franchisee shall provide the City, upon the City's request, with copies of records of construction, maintenance, operation, inspections, or regulatory compliance for all facilities subject to this franchise as deemed necessary by the City to manage the City rights-of-way, facilities, or other property, or to protect the public health, safety, and welfare.

**Section 26. City Ordinances and Regulations - Reservation of Police Power.**

Nothing in this franchise shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including, but not limited to, any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to control by appropriate regulations, including design standards, and utility accommodation policies, the location, elevation, manner of construction, and maintenance of any facilities of the Franchisee within the right-of-way or affecting the right-of-way, and the Franchisee shall promptly conform with all such regulations, unless compliance would cause the Franchisee to violate other requirements of law. In the event of a conflict between the regulatory provisions of this franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the regulatory provisions set forth herein.

**Section 27. Eminent Domain, Powers of the People.**

This franchise is subject to the power of eminent domain and the right of the City Council or the people acting for themselves through the initiative or referendum to repeal, amend, or modify the

franchise in the interest of the public. In any proceeding under eminent domain, the franchise itself shall have no value.

**Section 28. Survival.**

All of the provisions, conditions, and requirements of Sections 3, Right-of-Way Use Permit Required for All Work in Right-of-Way; 6, Restoration of Right-of-Way; 8, Relocation of Facilities; 9, Undergrounding of Facilities; 11, Dangerous Conditions, Authority for City to Abate; 12, Abandonment of the Franchisee's Facilities 14, Hold Harmless and Indemnification; 25, Records; and 29, Governing Law and Stipulation of Venue, of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the City at common law, by statute, or by contract, and shall survive the expiration, revocation, termination, or forfeiture of the City's franchise to the Franchisee as defined in Section 1 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations, and requirements contained in this franchise ordinance shall further be binding upon the successors and assigns of the Franchisee, and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

**Section 29. Governing Law and Stipulation of Venue.**

This franchise and use of public rights-of-way shall be governed by the laws of the State of Washington, unless preempted by federal law. The Franchisee agrees to be bound by the laws of the State of Washington, unless preempted by federal law, and subjected to the jurisdiction of the Courts of the State of Washington. Any action relating to this franchise must be brought in the Superior Court of Washington for Snohomish County, or in the case of a federal action, the United States District Court for the Western District of Washington at Seattle, unless an administrative agency has primary jurisdiction.

**Section 30. Severability.**

If any section, sentence, clause, or phrase of this franchise or its application to any person or entity should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this franchise nor its application to any other person or entity.

**Section 31. Notice and Emergency Contact.**

Any notice or information required or permitted to be given to the parties under this franchise agreement may be sent to the following addresses unless otherwise specified:

CITY OF SNOHOMISH  
116 Union Avenue  
Snohomish, WA 98290  
Attn. Steve Schuller  
Phone: (360) 568-3115

Snohomish School District  
1601 Avenue D  
Snohomish, WA 98290  
Executive Director of Technology  
Phone: (360) 563-7272



The Franchisee shall also provide the City a current emergency contact name (or title) and phone number available 24 hours a day, seven days a week. The Franchisee shall promptly notify the City of any change in the notice address or emergency contact name (or title) and phone number.

**Section 32. Acceptance.**

Within thirty (30) days after the passage and approval of this Ordinance, this franchise may be accepted by the Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise within said period of time shall be deemed a rejection thereof by the Franchisee, and the rights and privileges herein granted shall, after the expiration of the thirty (30) day period, absolutely cease and terminate, unless the time period is extended by ordinance duly passed for that purpose.

**Section 33. Effective Date.**

This ordinance shall take effect only upon satisfaction of the following conditions, but not sooner than five (5) days after signature by the Mayor (or five days after the ordinance is otherwise enacted): (1) the Franchisee signs a copy of this franchise and returns it to the City Council within the time provided in Section 32; (2) the Franchisee presents to the City acceptable evidence of insurance and security as required in this franchise; and (3) the Franchisee pays all applicable processing costs and fees set forth in Subsection 13.1 above.

**ADOPTED** by the City Council and **APPROVED** by the Mayor this 19<sup>th</sup> day of June, 2012.

CITY OF SNOHOMISH

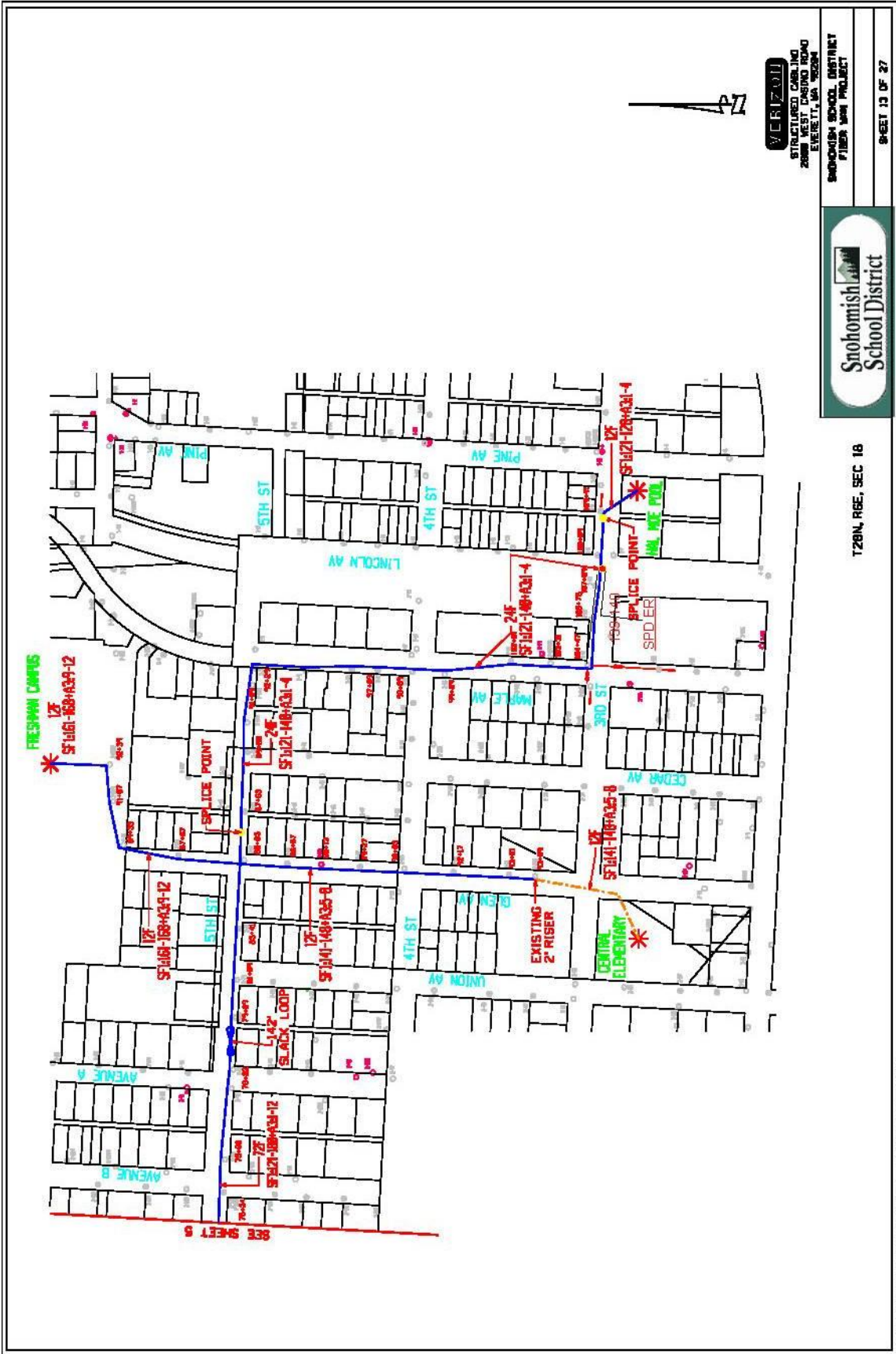
\_\_\_\_\_  
KAREN GUZAK, MAYOR

ATTEST:

\_\_\_\_\_  
TORCHIE COREY, CITY CLERK

Approved as to Form:

\_\_\_\_\_  
GRANT K. WEED, CITY ATTORNEY



**VERIZON**  
 STRUCTURED CABLING  
 2088 WEST CASINO ROAD  
 EVERETT, WA 98201  
 SNOHOMISH SCHOOL DISTRICT  
 FIBER MAIN PROJECT

SHEET 13 OF 27



T28N, REE, SEC 18

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**ACCEPTANCE:**

The Provisions of this franchise are agreed to and hereby accepted. By accepting this franchise, the Snohomish School District unconditionally covenants and agrees to perform and be bound by each and all of the terms and conditions imposed by the ordinances and regulations of the City of Snohomish and this franchise.

Dated: July 18, 2012

\_\_\_\_\_

By: \_\_\_\_\_

Printed Name: William A. Mester

Title: Superintendent

**CERTIFICATION OF COMPLIANCE WITH CONDITIONS AND EFFECTIVE DATE:**

I certify that I have received confirmation that: (1) the Franchisee returned a signed copy of this franchise to the City Council within the time provided in Section 32; (2) the Franchisee has presented to the City acceptable evidence of insurance and security as required in Section 16 of this franchise; and (3) the Franchisee has paid all applicable processing costs and fees set forth in Subsection 13.1 of the franchise ordinance.

**THE EFFECTIVE DATE OF THIS FRANCHISE ORDINANCE IS:**

July 19, 2012

By: \_\_\_\_\_

Name: Torchie Corey

Title: City Clerk