

1 Sponsored by: Councilmember Roger Bush
2 Requested by: County Executive/Public Works and Utilities

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5
6 **ORDINANCE NO. 2009-77**
7
8

9 **An Ordinance of the Pierce County Council Finding the Proposed Non-**
10 **Exclusive Telecommunications Franchise to Electric**
11 **Lightwave L.L.C. d/b/a Integra Telecom, for a**
12 **Telecommunications Network in Pierce County, to be in the**
13 **Public Interest; Setting Forth Terms and Conditions**
14 **Accompanying the Granting of the Telecommunications**
15 **Franchise; Providing for the Regulation of cconstruction,**
16 **Operation, Maintenance, and Use of the Network;**
17 **Prescribing Remedies for the Violation of the Provisions of**
18 **the Franchise; and Authorizing the County Executive to**
19 **Enter into the Franchise Agreement.**
20

21 **Whereas**, Elective Lightwave L.L.C., doing business in the State of Washington,
22 has applied for a non-exclusive telecommunication franchise to construct, operate, and
23 maintain telecommunications facilities upon, in, under, across, along, and over certain
24 County roads, highways, and other County Property in Pierce County, Washington as
25 hereinafter set forth; and
26

27 **Whereas**, said application came on regularly for hearing before the Pierce
28 County Council on the date set forth below under the provisions of Chapter 36.55,
29 Revised Code of Washington and Chapter 12.34, Pierce County Code; and
30

31 **Whereas**, it appears to the Council that notice of said hearing has been duly
32 given as required by law and that it is in the public interest to grant the Franchise; **Now**
33 **Therefore**,

34
35 **BE IT ORDAINED by the Council of Pierce County:**
36

37 Section 1. The Pierce County Council hereby finds that the Telecommunications
38 Franchise, a copy of which is attached hereto and incorporated herein by reference as
39 Exhibit A is in the public interest.
40
41
42
43
44
45
46
47



DISTRIBUTION:

ELECTRIC LIGHTWAVE, FRANCHISEE (attn: Dean Ryland)
FIRE MARSHAL, WAYNE WIENHOLZ (e-mail)
PW&U, JERRY WEST
PW&U, JULIE KLONTZ (e-mail)
PW&U, AUDREY HOUSTON (e-mail)
PW&U, TOBY RICKMAN (e-mail)
PALS, CHUCK KLEEBERG (via e-mail to Sean Gaffney)
PALS, TONI FAIRBANKS (e-mail)
PALS, CAROL JOHNSON (e-mail)
PALS, KATHY MASON (e-mail)
B&F, PAT KENNEY
B&F, AARON BEMILLER (e-mail)
EXEC, AL ROSE (e-mail)
RCC, BILL OLTMAN (e-mail) (cc: Sue Merritt)
SUSAN LONG, CODE REVISOR
LIBRARY
LAW LIBRARY
MUNICIPAL RESEARCH & SERVICES CENTER (e-mail)
STATE EXAMINER
BOOK

11/30/2009 jms
Date/initials

RECORDING NO.: 200911230015

DATE RECORDED: 11/23/2009 8:40:38 AM

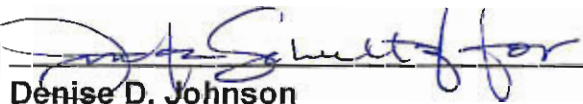
1 Section 2. The Pierce County Council hereby authorizes the County Executive
2 to enter into the attached franchise agreement, authorizing Electric Lightwave L.L.C.
3 d/b/a Integra Telecom to construct, operate, and maintain a telecommunications
4 facilities system in, across, under, upon, along, and over County roads, rights-of-way,
5 highways, and County property in Pierce County, Washington as described below:
6

7 All County roads lying within Townships 19 North through 22 North, inclusive, of
8 Range 1 West, Willamette Meridian, and all County roads lying within Townships
9 15 North through 22 North, inclusive, of Ranges 1 East through Range 9 East,
10 Willamette Meridian, and lying within the boundaries of Pierce County,
11 Washington.
12

13 PASSED this 13 day of October, 2009.
14

15 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

16
17
18
19 

20 **Denise D. Johnson**
21 Clerk of the Council



22 **Roger Bush**
23 Council Chair

24 

25 **Pat McCarthy**
26 Pierce County Executive

27 Approved Vetoed , this
28 26 day of October,
29 2009.
30

31 Dates of Publication of

32 Notice of Public Hearing: September 23 + 30, 2009

33
34 Effective Date of Ordinance: November 5, 2009



WIRELESS TELECOMMUNICATIONS FRANCHISE AGREEMENT

ARTICLE I – DEFINITIONS

Section 1. General Interpretation.

For the purpose of this Franchise, and except as defined specifically below, the terms, phrases, words and their derivations herein shall have the meaning given in the Telecommunications Ordinance. Words not otherwise defined shall be given their common and ordinary meaning. When consistent with the context, words used in the singular number include the plural number, words in the plural number include the singular number, and words used in the present tense include the future tense.

Section 2. Specific Definitions.

- A. **"Agency"** means any governmental agency or quasi-governmental agency other than the County, including the FCC and the WUTC.
- B. **"County"** means the County of Pierce, Washington, and its lawful designees.
- C. **"County Property"** means any real property owned by the County whether in fee or other ownership, estate or interest.
- D. **"Effective Date"** means the date identified in Article XXII, Section 4 herein.
- E. **"Facilities"** means the equipment and facilities used in the provision of Services hereunder to be installed and operated by Grantee.
- F. **"Fee"** means any assessment, license, charge, fee, imposition, tax (but excluding any utility users' tax or occupation tax), or levy lawfully imposed by any governmental body.
- G. **"Franchise"** means the non-exclusive authorization granted herein and pursuant to the Telecommunications Ordinance to use County rights-of-way to construct, operate, and maintain Grantee's Facilities to provide service in County.
- H. **"Franchised Service Area"** means the unincorporated County limits.
- I. **"Grantee"** means Electric Lightwave L.L.C. d/b/a Integra Telecom, and its agents, employees, lawful transferees, successors, and/or assigns.
- J. **"Laws"** means any and all judicial decisions and any and all federal, state and local statutes, constitutions, ordinances, resolutions, regulations, rules, tariffs, administrative orders, certificates, orders, or other requirements of the County or other Agency having jurisdiction over the parties to this Franchise, in effect at the time of execution of this Franchise and thereafter.
- K. **"Month"** means a calendar month.
- L. **"Person"** means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association.



- 1 M. **"Provision"** means any clause, condition, covenant, qualification, restriction, reservation,
2 term, or other stipulation in this Franchise that defines or otherwise controls, establishes, or
3 limits the performance required or permitted by this Franchise. All provisions, whether
4 covenants or conditions, shall be deemed to be both covenants and conditions.
5
6 N. **"Public Facility"** means any tower, water tower, building, pole or other structure which the
7 County owns or controls.
8
9 O. **"Public Way"** means and includes the surface of and space above and below any real
10 property in the County in which the County has an ownership interest or interest as trustee
11 for the public, including but not limited to, all public streets, highways, roads, alleys,
12 sidewalks, tunnels, viaducts, bridges, subways or skyways or any other public place or
13 property under control of the County, and any public or utility easements established,
14 dedicated, or devoted for public utility purposes.
15
16 P. **"Rights-of-Way"** means all County Property and Public Ways, located within any road
17 right-of-way, outside incorporated cities and towns and not designated as state highways,
18 which have been opened and used as public ways of travel and have been maintain by the
19 County as opened County roads.
20
21 Q. **"Services"** means the Wireless Telecommunications Services provided through or in
22 connection with the network constructed, operated and maintained by Grantee, as
23 authorized herein.
24
25 R. **"Wireless Telecommunications Network" or "Network"** means all of Grantee's Facilities
26 used in the provision of Services in County, taken together as a unified system.
27
28 S. **"Telecommunications Ordinance" or "Ordinance"** means Pierce County Code Chapter
29 12.34 which sets forth terms and conditions applicable to any and all franchised cable and
30 telecommunications providers making use of public rights-of-way in County.
31

32 ARTICLE II – FRANCHISE

33 Section 1. Grant of Wireless Telecommunications Franchise.

- 34 A. Grant of Franchise. Subject to obtaining any permits as are required under the County's
35 Charter or Code or other applicable Laws (and subject to Grantee obtaining any additional
36 necessary agreements, approvals, or authorizations from any entity which owns poles or
37 any other third party rights), the County hereby grants on a non-exclusive basis as provided
38 in Pierce County Code (PCC) 12.34.420, authorization for Grantee to attach, install,
39 operate, maintain, remove, reattach, reinstall, relocate, upgrade and replace Facilities
40 within the Rights-of-Way in unincorporated Pierce County for the purposes of providing
41 Services to Persons located within or outside the limits of the County. Exhibit I represents
42 the initial phase of the location of the network which Grantee intends to install. Any work
43 performed pursuant to the rights granted under this Franchise may, at the County's option,
44 be subject to the prior review and approval of the Director of Public Works and Utilities.
45 During the term of this Franchise, the location of Facilities installed by Grantee or its
46 designee shall be disclosed, in writing, to the County by Grantee within ten days before its
47 installation, removal, or relocation. Such disclosures shall be incorporated in Exhibit I by
48 way of a modification to this Franchise Agreement and shall not change except upon
49 submittal of a revised Exhibit I, and a written request for a modification of the number
50 and/or location of such Facilities. Revised Exhibit I and request for modification shall be
51 subject to the review and approval of the Director of Public Works and Utilities. This
52



1 Franchise grants authority to construct and maintain Facilities in Public Ways. This
2 Franchise is granted pursuant to the terms and conditions contained in Chapter 12.34 PCC.
3 All provisions of Chapter 12.34 PCC, except as may be explicitly set-forth in this
4 Agreement, are hereby incorporated by reference.

5
6 B. Compliance. The County has determined that this Franchise, taken as a whole, offers no
7 more or less favorable terms than those required of existing similarly situated Grantee(s) in
8 County.

9
10 C. Costs Related to Exercise of Franchise. Any and all rights expressly granted to Grantee
11 under this Franchise shall be exercised at Grantee's sole cost and expense, shall be
12 subject to the prior and continuing right of the County to use any and all parts of the Rights-
13 of-Way or Public Facilities or property, non-exclusively or concurrently, with any other
14 Person, and further shall be subject to County's police powers and all deeds, easements,
15 dedications, conditions, covenants, restrictions, encumbrances and claims of title which
16 may affect the Rights-of-Way, or Public Facilities now or hereafter existing. Nothing in this
17 Franchise shall be deemed to grant, convey, create, or vest a real property interest in land
18 to or in Grantee, including any fee or leasehold interest or easement rights.

19
20 D. No Interference. Except as expressly permitted by applicable Laws or this Franchise, in the
21 performance and exercise of its rights and obligations under this Franchise, Grantee shall
22 not interfere in any manner with the existence and operation of any and all private property
23 and Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial or
24 underground electric and telephone wires, cable television and other telecommunications,
25 utility and municipal property without the express written approval of the owner or owners of
26 the affected property or properties. The County shall ensure that a similar binding obligation
27 of non-interference is imposed upon all other grantees occupying the Rights-of-Way.
28 Further the County will assist in resolving disputes among occupiers of the Rights-of-Way.
29 In the event Grantee experiences any prohibited interference, Grantee shall notify the
30 County of such interference and the County and Grantee shall then work cooperatively to
31 eliminate such interference. In resolving such disputes, the County shall give priority to the
32 occupant who was first in time at the particular location where the interference is being
33 experienced, unless doing so would impose undue hardship upon the newcomer.

34
35 E. Compliance with Laws. Grantee shall comply with all Laws in the exercise and
36 performance of its rights and obligations under this Franchise. If required by Law, Grantee
37 shall obtain all required approvals from the appropriate governing authorities.

38
39 **Section 2. Acceptance of Franchise.**

40 A. Franchise Acceptance Procedures. This Franchise and the rights, privileges, and authority
41 granted hereby shall take effect provided that Grantee complies with the acceptance
42 procedures detailed herein.

43
44 B. Grantee to Have No Recourse. Except as provided in this Franchise, the County shall not
45 be liable, unless directly and proximately caused by the willful, intentional or malicious acts
46 of the County, for any damage to or loss of any facility within the Right-of-Way as a result of
47 or in connection with any public works, public improvements, construction, excavation,
48 grading, filling, or work of any kind in the Right-of-Way by or on behalf of the County.

49
50 C. Acceptance of Power and Authority of County. Grantee expressly acknowledges by
51 acceptance of this Franchise that:



- 1 (1) It has relied upon its own investigation and understanding of the power and authority
2 of the County to grant and enforce the Franchise;
3 (2) It has not been induced to enter into this Franchise arrangement by any
4 understanding or promise or other statement, whether verbal or written, by or on
5 behalf of the County concerning any term or condition of the Franchise that is not
6 specifically included herein;
7 (3) It has carefully read the terms and conditions contained herein and of the Ordinance
8 and that Grantee is willing to and does accept all the obligations of such terms and
9 conditions to the extent not inconsistent with state or federal law.

10
11 **Section 3. Limitations on Authority.**

- 12 A. Subject to Other Requirements. Grantee's right to operate and maintain its Wireless
13 Telecommunications Network is subject to the terms, conditions, and requirements of
14 Chapter 12.34 PCC, this Franchise, the County Charter and Code, and all applicable Laws,
15 and Grantee's right to construct, erect, install or modify its Wireless Telecommunications
16 Network is specifically subject to the requirement that Grantee obtain Permits as set forth in
17 Chapter 12.34 PCC; and obtain all required permits for, and otherwise comply with, all
18 applicable land use and zoning regulations which control development on property
19 contiguous to the right-of-way containing the proposed Facilities site.
20
21 B. After-Acquired Facilities. Grantee expressly acknowledges and agrees, by acceptance of
22 this Franchise, that Facilities and appurtenances in Public Ways which are subsequently
23 acquired by the Grantee and which (if acquired prior to this original Franchise grant) would
24 have been subject to this Franchise and the permitting authority related thereto shall be
25 subject to the Provisions of this Franchise and all Permits related thereto.
26
27 C. Privileges Must be Specific. No privilege or exemption is granted or conferred by this
28 Franchise except as may be specifically prescribed.
29

30 **Section 4. Non-Exclusive Franchises.**

31 This Franchise is non-exclusive pursuant to Section 12.34.420 PCC. County reserves the right
32 to grant additional Franchises to any Person at any time. Any Franchise granted pursuant to
33 the Telecommunications Ordinance shall confer and impose substantially similar rights and
34 obligations on functionally equivalent services.
35

36 **Section 5. Amendments.**

37 This Franchise may be amended only upon the mutual written consent of County and Grantee.
38

39 **Section 6. Service of Notice.**

40 Except as otherwise specifically provided herein, any notices required or permitted to be given
41 under this Franchise shall be deemed to be properly served when deposited with the United
42 States Postal Service, postage paid, certified or registered mail, addressed to the party to
43 receive same, or at such other address of which the party to receive the notice shall have
44 designated in the Franchise.
45

46 NOTICES TO THE County shall be addressed to all of the following:

47 Pierce County Executive's Office
48 930 Tacoma Avenue South, Room 737
49 Tacoma, WA 98402-2100
50
51



1 With Copy to:
2 Pierce County Public Works and Utilities
3 Tacoma Mall Plaza
4 2702 South 42nd Street, Ste 201
5 Tacoma, WA 98409-7322

6
7 Clerk of Pierce County Council
8 930 Tacoma Avenue South, Room 1046
9 Tacoma, WA 98402

10
11 NOTICES TO THE COMPANY shall be addressed to all of the following:

12 Electric Lightwave, L.L.C.
13 ATTN: Department of Law & Policy
14 1201 NE Lloyd Blvd, Suite 500
15 Portland, OR 97232
16 Phone: 503-453-8000
17 Facsimile: 503-453-8221

18
19 With Copy to:
20 Manager, OSP Engineering
21 1201 NE Lloyd Blvd, Ste 500
22 Portland, OR 97232
23
24

25 **Section 7. Franchise Review.**

26 A. Regular Review. The County may initiate periodic reviews of Grantee's Franchise
27 performance. Such reviews shall occur no more than once every three years beginning on
28 the third anniversary of the effective date of this Franchise. However, there shall be no
29 remedies or presumptions resulting from the County's failure to conduct any such periodic
30 reviews. Either County or Grantee may submit proposals for modification of Franchise
31 obligations during such review or at any other time during the term of the Franchise;
32 provided that any such modification shall become effective only upon the mutual written
33 consent of both the County and Grantee.

34
35 C. Other Review. Nothing herein shall be construed to prohibit the County and the Grantee
36 from engaging in a continuous review of the performance of Grantee, and County may
37 initiate or Grantee request a public hearing on any issue related to compliance with the
38 Franchise or any Permit related thereto.
39

40 **ARTICLE III - TERM OF FRANCHISE**

41
42 This Franchise shall be in full force and effect, unless sooner terminated pursuant to the
43 Ordinance or the terms and conditions contained herein, for a period of fifteen years from the
44 Effective Date. In addition, the Grantee may terminate this Franchise at any time upon at least
45 thirty (30) days written notice to the County.
46

47 **ARTICLE IV - FEES AND CONSIDERATION**

48
49 **Section 1.** In consideration for the use of the Right-of-Way, Grantee shall provide an annual
50 payment for each of its Facilities placed in the Right-of-Way. The amount of the annual
51 payment for the calendar year 2008 shall be as follows:



- 1 (1) Five thousand nine hundred seventy two dollars (\$5,972) for each separate support
2 structure (such as a monopole or lattice tower), together with any associated
3 equipment cabinets, in the Right-of-Way;
- 4 (2) Three thousand five hundred eighty three dollars (\$3,583) for Grantee's wireless
5 antennas placed on the support structure of another entity lawfully occupying the
6 Right-of-Way, together with associated equipment cabinets, or
- 7 (3) Two thousand three hundred eighty eight dollars (\$2,388) for Grantee's wireless
8 antennas alone placed on the support structure of another entity lawfully occupying the
9 Right-of-Way.

10
11 **Section 2.** The annual payment provided for in Section 1 shall be adjusted annually
12 beginning January 1, 2010 by the United States Department of Labor Bureau of Labor Statistic's
13 ("BLS") Consumer Price Index – All Urban Consumers ("CPI-U") for the Seattle-Tacoma-
14 Bremerton, Washington Region, index base period 1982-1984=100, with 2009 as the base year.
15 If the BLS changes the indexing region during the term of this Franchise, annual adjustments
16 will be based on the region geographically closest to the Seattle-Tacoma-Bremerton Region.
17

18 **Section 3.** In the event one or more of the Grantee's Facilities are out of service due to a
19 relocation pursuant to Article IX, the County shall give the Grantee a credit equal to the prorated
20 value of the time the Facility or Facilities are out of service on the next year's annual payment.
21

22 **Section 4.** The amount of the annual payment for any partial year shall be prorated.
23

24 **Section 5.** Grantee's payment obligation with regard to any Facility shall terminate upon
25 removal of that Facility from the Right-of-Way. The County shall refund to Grantee within sixty
26 (60) days of receiving notice of removal and restoration, the prorated portion of the annual
27 payment for each removed Facility.
28

29 **Section 6.** Grantee shall provide notice to the County when permitting another wireless
30 communications provider to collocate on Grantee's facilities.
31

32 **ARTICLE V - FACILITIES OR NETWORK ABANDONMENT**

33
34 In the event that any Facilities are no longer placed in service for a period of one hundred eighty
35 (180) consecutive days or more, Grantee shall promptly notify the County. Upon ninety (90)
36 days written notice from the County, Grantee shall promptly remove such Facility or Facilities
37 and restore the Right-of-Way to its condition prior to the placement of the Facilities, all at the
38 Grantee's sole cost and expense.
39

40 Regardless of whether Grantee has notified the County of abandonment, in case of actual
41 abandonment the county may remove the facilities upon 90 days written notice and grantee will
42 be responsible for the costs of removal. If Grantee fails to remove the Facilities and restore the
43 Right-of-Way as required by the County, the County shall be entitled to remove the Facilities
44 and restore the Right-of-Way at Grantee's sole cost and expense.
45

46 **ARTICLE VI - REPAIR AND REPLACEMENT OF DAMAGES**

47
48 Grantee is responsible for locating and avoiding all utilities within the Right-of-Way or in private
49 property and is responsible for any costs to repair or replace any damage caused by the
50 construction or location of Facilities, to the reasonable satisfaction of the County.
51

52 **ARTICLE VII - REIMBURSEMENT**



1 Grantee shall reimburse the County within ninety (90) days after receipt of an invoice for all
2 reasonable amounts paid and costs incurred by the County in relation to this Franchise for
3 enforcement thereof. Such costs shall not include ordinary expenses for administration of the
4 Franchise, but shall be limited to those reasonably incurred by the County as a result of
5 Grantee's failure to comply with requirements of this Franchise. Except in cases of emergency,
6 the County shall advise Grantee of the cost thereof in advance of performing any work for which
7 it will seek reimbursement from Grantee.

8 9 **ARTICLE VIII - DEFAULT**

10
11 Grantee shall be in default under this Franchise upon the occurrence of any of the following
12 events:

- 13
14 1. Grantee's violation of material terms or provisions of Chapter 12.34 PCC, this
15 Franchise, or any applicable Laws.
- 16
17 2. Grantee's failure to pay reimbursements for County-incurred costs relating to this
18 Franchise or the Fees or any other payments required hereunder when due, and such
19 failure continues for thirty (30) days after written notice is given to Grantee, provided
20 the County shall not be required to give written notice more than twice during any
21 twelve Month period. After notice has been given twice during any twelve Month
22 period, Grantee shall be deemed to be in default, without the requirement of notice and
23 the opportunity to cure, for any subsequent failure to pay amounts due hereunder
24 during the same calendar year if such failure continues for thirty (30) days after the
25 same becomes due.
- 26
27 3. Upon Grantee's failure to perform any other obligation under this Franchise or cure any
28 failure of performance within thirty days after notice of such failure or demand for cure
29 is given by the County to Grantee (or, if such failure of performance is not curable
30 within thirty days in the determination of County, if the defaulting party fails to
31 commence such cure within thirty days and fails to thereafter diligently pursue such
32 cure to completion).
- 33
34 4. Grantee becomes insolvent, liquidates, is adjudicated as bankrupt, makes an
35 assignment for the benefit of creditors, invokes any provision of law for the relief of
36 debtors, or initiates any proceeding seeking protection from its creditors.

37 38 **ARTICLE IX - REMOVAL AND RELOCATION OF FACILITIES**

39 40 **Section 1. Facilities Relocation.**

41 Upon the receipt of a demand by the County, within ninety (90) days, or in the event of an
42 emergency, upon such shorter notice period as the County deems reasonable under the
43 circumstances, Grantee, at its sole cost and expense, shall remove or relocate any Facilities, if
44 and when the removal or relocation of such Facilities is made necessary by the County acting
45 pursuant to any lawful governmental or proprietary purpose, including, without limitation,
46 engaging in any lawful change of grade, alignment or width of any Rights-of-Way in the County
47 pursuant to any concern regarding health, safety and welfare, or in the installation or
48 replacement of any street light pole.

49 50 **Section 2. Relocation Costs.**

51 Whenever the removal or relocation of Facilities is required under this Franchise or otherwise by
52 order of County, and such removal or relocation shall cause the Rights-of-Way to be damaged,



1 Grantee, at its sole cost and expense, shall promptly repair and return the Rights-of-Way, in
2 which the Facilities is located, to the same condition as existed prior to such work in the
3 determination of County. If Grantee fails to comply with this requirement, then the County shall
4 have the option of performing or causing to be performed such reasonable and necessary work
5 and charge Grantee for the actual cost incurred by County. Upon the receipt of a demand for
6 payment by the County, Grantee shall reimburse the County for such costs within ninety (90)
7 days.

8
9 **Section 3. Relocation for Third Parties.**

10
11 If during the term of this Franchise any person or entity other than Pierce County (hereinafter
12 "Third Party") requests the relocation of Grantee's Facilities to accommodate work within the
13 Rights-of-Way to be undertaken by or on behalf of such Third Party, and the County determines
14 that such relocation of Grantee's Facilities is in the public interest and is necessary, then the
15 County may, in its discretion, grant such Third Party request. In such event, upon written notice
16 to the Grantee from the County, Grantee shall, at the expense of the Third Party upon terms
17 acceptable to Grantee, relocate its Facilities within the Franchise Area to accommodate the
18 work of such Third Party.

19
20 **ARTICLE X - INSURANCE**

21
22 **Section 1. Insurance Requirement.**

23 A. Insurance Certificate. Grantee shall obtain insurance of a quality and amounts as required
24 in Section 12.34.630 PCC, and as detailed below and shall file the required original
25 certificate(s) of insurance with the County, subject to the County's prior approval, which
26 shall clearly state:

- 27 (1) Policy number; name of insurance company; name, address, and telephone number of
28 the agent or authorized representative; name, address, and telephone number of
29 insured; project name and address; policy expiration date; and specific coverage
30 amount; and
31 (2) That thirty days prior written notice of cancellation is required to the County; and
32 (3) That Grantee's insurance is primary with respect to any other valid or collectible
33 insurance that the County may possess, including any self-insured retentions the
34 County may possess, and any other insurance the County does possess shall be
35 considered excess insurance only and shall not be required to be contributory with this
36 insurance.

37
38 B. Coverage. Grantee shall maintain liability insurance in amounts as detailed in Subsection
39 D. Such liability insurance shall be kept in full force and effect by a Grantee during the term
40 of this Franchise, or until of all Grantee's Facilities have been removed from the Right-of-
41 Way should such removal be required by the County or undertaken by the Grantee,
42 whichever is later. Any contractors of Grantee performing on behalf of Grantee pursuant to
43 this Franchise shall also be insured as required herein and name County as an additional
44 insured.

45
46 C. Failure to Procure. Grantee acknowledges and agrees, by acceptance of this Franchise,
47 that failure to procure or maintain the required insurance shall constitute a material breach
48 of this Franchise and that the County may immediately suspend operations under the
49 Franchise, terminate the Franchise, or, at its discretion, procure or renew such insurance to
50 protect the County's interests and be reimbursed by such Grantee for all premiums paid in
51 connection therewith.



1 D. Insurance Amounts. The Grantee shall maintain throughout the term of this Franchise, or
2 until all Grantee's Facilities are removed from the Rights-of-Way, whichever is longer,
3 Workers' Compensation coverage and liability insurance in the minimum amounts of:

4 1. Commercial General Liability insurance - public liability including premises, products,
5 and complete operations.

6 (a) Bodily injury liability - \$2,000,000 each occurrence,

7 (b) Property damage liability - \$2,000,000 each occurrence, or

8 (c) In lieu of (a) and (b) above, bodily injury and property damage combined -
9 \$2,000,000 single limit.

10 2. Commercial - Automobile Liability Insurance including owned, non-owned, and hired
11 vehicles.

12 (a) Bodily injury liability - \$1,000,000 each occurrence and \$3,000,000 for each
13 occurrence,

14 (b) Property damage liability - \$1,000,000 each occurrence,

15 (c) In lieu of (a) and (b) above, bodily injury and property damage combined -
16 \$3,000,000 single limit.

17 3. Workers' Compensation within statutory limits and employer's liability insurance with
18 limits of not less than \$1,000,000 or coverage by Worker's Compensation Act of
19 Washington Account #977,636-02.

20
21 E. General. Grantee agrees that with respect to the above required insurance contracts,
22 related certificates will contain the following required provisions:

23 (1) The County shall be named as additional insured as to all applicable coverage.

24 (2) Contracts shall provide for thirty day notices to the County prior to cancellation,
25 revocation, non-renewal, or material change.

26
27 **Section 2. Policy Limitations.**

28 "Cross liability," "severability of interest" or "separation of insureds" clauses shall be made a part
29 of the commercial general liability and business automobile liability policies.

30
31 **Section 3. Mailing of Insurance Certificate.**

32 The certificate(s) of insurance reflecting the above requirements and notices shall be mailed to:

33 Mark Maenhout, Acting Risk Manager

34 Pierce County Risk Management Department

35 955 Tacoma Avenue South, Suite 303

36 Tacoma, WA 98402-2160

37
38 **Section 4. Insurance Provider.**

39 Any insurance provider of Grantee shall be admitted and authorized to do business in
40 Washington and shall be rated at least A minus: X in A.M. Best and Company's Insurance
41 Guide.

42
43 **ARTICLE XI - COUNTY'S RIGHT TO ACT**

44
45 In the event Grantee fails to perform any obligation, after notice and opportunity to cure, under
46 this Franchise the County shall have the right, but no obligation or duty, to take action that
47 Grantee has failed to take, after giving at least thirty days notice, or such longer period if
48 established elsewhere in this Franchise, in advance of taking such action, except in the event of
49 an emergency, as determined by the County, in which case no advance notice shall be
50 required. In the event County takes such action, Grantee shall promptly pay to the County upon
51 demand, the sum or sums expended or incurred by the County to take such action. Any such



1 action taken by the County shall not by itself constitute a waiver by the County of Grantee's
2 default or the County's remedies on account of such default.

3
4 **ARTICLE XII - TERMINATION OF FRANCHISE**

5 **Section 1. Termination.**

6 In addition to the Provisions of Section 12.34.646 PCC, this Franchise may be terminated upon
7 a default hereof as provided in this Franchise. A termination of this Franchise because of
8 Grantee's default shall not prejudice any other remedy for breach of contract, damages, non-
9 payment or otherwise, which the County has under this Franchise or under law.

10
11 **Section 2. Notice.**

12 This Franchise may be terminated by the County in accordance with the Provisions of Sections
13 12.34.648 and 12.34.650 PCC after notice, an opportunity to cure, and a hearing as provided
14 therein.

15
16 **Section 3. Time to Cure.**

17 Upon notice of a violation or default under this Franchise, Grantee shall have thirty days in
18 which to cure such violation or default. The time for Grantee to correct any violation, default or
19 liability, shall be extended by County if the necessary action to correct such violation, default or
20 liability is of such a nature or character as to require more than thirty days within which to
21 perform, provided Grantee provides written notice that it requires more than thirty days to
22 correct such violations or defaults liability, commences the corrective action within the thirty
23 days period, and thereafter uses reasonable diligence to correct the violation, default, or liability.

24
25 **Section 4. Removal.**

26 Upon termination of this Franchise for any reason, Grantee shall remove all of its Network and
27 related Facilities, personal property, and any other improvements installed by Grantee and
28 restore all property to the same condition existing prior to usage by Grantee within one hundred
29 eighty (180) days following termination. In the event Grantee fails to do so, the County may
30 remove Grantee's Facilities, personal property, and improvements and charge Grantee the
31 reasonable expense of removal and restoration. Except as provided herein, Grantee shall be
32 deemed to have abandoned to the County at no cost or expense to County any of its Facilities,
33 personal property or other improvements which it has failed to remove from the Rights-of-way
34 within the one hundred eighty (180) days following termination. Grantee shall further reimburse
35 to the County pursuant to Article VII for all costs of cleanup associated with any leakage or
36 contamination from such facilities whether such leakage or contamination occurs prior to or in
37 the course of such removal.

38
39 **Section 5. Lesser Sanctions.**

40 Additionally, the County may impose a lesser sanction pursuant to Section 12.34.652 PCC.

41
42 **ARTICLE XIII - GENERAL TERMS**

43
44 **Section 1. Reports and Records of the Grantee.**

45 Reports Required. Grantee shall supply, upon request and at no cost, any information,
46 including maps requested by the County Executive, County Engineer, or Director of
47 Transportation as it relates to the physical aspects of Grantee's facilities in the Rights-of-Way.
48 Said information may be requested in hard copy and/or electronic format compatible with
49 County's databases, including a GIS system if compatible with Grantee's existing system.



1 **Section 2. Enforcement and Administration by County.**

2 The County, through the office of the County Executive, shall have continuing regulatory
3 jurisdiction and supervision over the occupancy of the Rights-of-Way pursuant to this Franchise,
4 and may from time to time adopt such reasonable rules and regulations as it may deem
5 necessary; provided that, any County permits or approvals for Facilities shall be governed by
6 the applicable County ordinances, rules, and regulations in effect at the time Grantee submits a
7 complete application for such permits and other approvals.

8
9 **Section 3. Failure to Enforce.**

10 The Grantee shall not be excused from complying with any of the terms and conditions of this
11 Franchise by any failure of the County upon one or more occasions to insist upon or to seek
12 compliance with any of such terms or conditions.

13
14 **ARTICLE XIV - INSPECTION**

15
16 The County maintains the right to inspect, at Grantee's expense, all of Grantee's facility
17 installations in the Rights-of-Way for ROW management and life-safety issues, but not including
18 the visual or aesthetic impacts of any facility for which a valid zoning permit has been issued. In
19 addition, the County Engineer may require Grantee to furnish certification from Grantee's
20 engineer (so long as such engineer's certifications are accepted by the Washington State
21 Department of Transportation or the Federal Rural Utilities Service and if such certifications are
22 not so acceptable, then by an independent, qualified engineer) that the facilities are constructed
23 and operated in accordance with good engineering practice and are reasonably secure against
24 damage and injury.

25
26 **ARTICLE XV - PERMITS, INITIAL SERVICE AREA**
27 **AND CONSTRUCTION STANDARDS**
28

29 **Section 1. Initial Service Area and General Standards.**

30 A. Permits. Grantee shall comply with Section 12.34.600 PCC. In addition thereto, Grantee
31 shall apply for a construction Permit prior to beginning any work in a Public Way or Right-of-
32 Way generally including the opening of any street in the County, and shall comply with
33 Chapters 12.34 and 12.32 PCC. No work, other than emergency work, shall commence
34 without such Permit pursuant to Section 12.34.710 PCC. Emergency repairs shall be made
35 immediately with notice to the County no later than five business days after the repair is
36 initiated. Grantee shall further comply with Sections 12.34.700, 12.34.705, and 12.34.715
37 PCC, which generally apply to construction standards, construction codes, utility Right-of-
38 Way permits, and applications.

39
40 B. Network Planning. The Grantee and the County shall make reasonable good faith efforts to
41 advise each other of plans and programs, both long and short range, for the placement of
42 Facilities in Rights-of-Way, and other Public Property which might affect the other party or
43 require its coordination.

44
45 C. Limited Access. The County reserves the right to limit or exclude Grantee's access to a
46 specific route, public right-of-way, or other location when there is inadequate space, a
47 pavement cutting moratorium, unnecessary damage to public property, interference with
48 County utilities, or for any other reason determined by the County Executive or designee, or
49 the County Engineer to be necessary for management and preservation of the Rights-of-
50 Way.



1
2 D. Facilities Siting and Placement. Grantee will comply with Sections 12.34.725, 12.34.730
3 and 12.34.735 PCC and shall obtain a Permit pursuant to the Ordinance for each separate
4 Facility requiring work or construction in Rights-of-Way, and shall comply with all terms of
5 such Permit(s). Additionally, the siting of all of Grantee's facilities located within the Right-
6 of-Way shall comply with the zoning code and development regulations and construction-
7 related permits, e.g., building, electrical, etc., in effect at the time of the submittal of a
8 complete application to the designated county department, which control development on
9 property contiguous to that portion of any right-of-way on which Grantee proposes to site
10 Facilities. Grantee's Facilities may require additional project permits and approvals under
11 County land use codes and development regulations.
12

13 E. Additional Accommodations. In addition, the County Executive or designee may determine,
14 in the exercise of reasonable discretion, when and where reasonable accommodations shall
15 be made by Grantee to the County for public needs or, where requested, other third party
16 needs, how such accommodation should be made, and a reasonable apportionment of any
17 expenses of the same; PROVIDED, that this Franchise creates no third
18 party beneficial interests or enforceable contractual right to require the County to order such
19 accommodation; PROVIDED FURTHER, that the additional accommodations contemplated
20 by this section may not include any requirement that Grantee make provisions to
21 accommodate collocation on any of its Facilities. Notwithstanding the foregoing, it remains
22 the responsibility of the Grantee to anticipate and avoid conflicts with other right-of-way
23 occupants or users, other utilities, franchises or permittees. Except as provided in Article II,
24 Section 1(D), the County assumes no responsibility for such conflicts.
25

26 F. Notice of Work. Grantee shall provide notice of non-emergency work as provided in
27 Sections 12.34.606, 12.32.110, and 12.04.030 PCC. The Grantee shall provide notice of
28 emergency work as provided in Article XV, Section A, above.
29

30 G. Coordination of Construction Activities. Work shall be coordinated in accordance with
31 Sections 12.34.640 and 12.32 PCC.
32

33 **ARTICLE XVI - INDEMNIFICATION**

34 **Section 1. Indemnification.**

35 Except for the negligence or intentional misconduct of Pierce County, its employees and agents,
36 the Grantee agrees to defend, indemnify, and hold harmless Pierce County, its appointed and
37 elected officers and employees, from and against all damages, losses and expenses, including
38 reasonable attorneys' fees and costs of suit or defense, arising out of, resulting from, or alleged
39 to arise out of or result from the acts, omissions, failure to act, or misconduct of the Grantee or
40 its affiliates, officers, employees, agents, contractors, or subcontractors in the construction,
41 operation, maintenance, repair, or removal of its facilities and in providing or offering services
42 over the Facilities, or from physical contact with facilities or supporting structures, whether such
43 acts or omissions are authorized, allowed, or prohibited under this Franchise or the Ordinance.
44
45

46 If the claim, suit, or action for injuries, death, or damages as provided for in the preceding
47 paragraphs of this contract is caused by or results from the concurrent negligence of

- 48 (a) The indemnitee or the indemnitee's agents or employees and
49 (b) The indemnitor or the indemnitor's agents or employees, the indemnity provisions
50 provided for in the preceding paragraphs of this contract shall be valid and enforceable
51 only to the extent of the indemnitor's negligence.
52



1 Grantee specifically and expressly waives any immunity under Industrial Insurance Title 51
2 RCW, and acknowledges that this waiver was mutually negotiated by the parties herein.

3
4 **Section 2. No Responsibility for Loss.**

5 The County shall not be responsible for any damages, losses, or liability of any kind arising from
6 the issuance or approval by the County of a permit, license, or franchise to any third party.

7
8 **Section 3. Breach.**

9 The waiver of any breach or violation of any Provision of this Franchise shall not be deemed to
10 be a waiver or a continuing waiver of any subsequent breach or violation of the same or any
11 other Provision of this Franchise.

12
13 **Section 4. Intervention.**

14 If the County otherwise has the right to intervene, Grantee expressly acknowledges and agrees,
15 by acceptance of this Franchise, not to oppose such intervention by the County in any suit or
16 proceeding to which the Grantee is a party related to the Franchise.

17
18 **ARTICLE XVII - BONDS**

19
20 **Section 1. Bond Requirement.**

21 Pursuant to Section 12.34.638 PCC, during construction of new or additional facilities in the
22 rights-of-way, Grantee shall furnish a Bond or other surety acceptable to the County equal to at
23 least 100% of the estimated cost of restoring the rights of way to substantially the same
24 condition as existed prior to Grantee's construction, or such other amount as may be
25 determined to be appropriate by the County Engineer under Chapter 12.32 PCC for the
26 particular class of work being permitted.

27
28 **Section 2. Rights Cumulative.**

29 The rights reserved by County with respect to the restoration surety are in addition to all other
30 rights County may have under the Ordinance or a Franchise or any other law.

31
32 **Section 3. Performance Required.**

33 Neither the Provisions of this Section nor any surety accepted by the County pursuant thereto,
34 nor any damages recovered by the County thereunder shall be construed to excuse faithful
35 performance by a Grantee or limit the liability of a Grantee for damages, either to the full amount
36 of the surety or otherwise. The rights reserved by the County with respect to the sureties herein
37 are in addition to all other rights and remedies the County may have under this Franchise or any
38 other law.

39
40 **Section 4. Change in Surety.**

41 If, at any time during the effective period of the Restoration Bond, the condition of the corporate
42 surety shall change in such a manner as to render the bond unsatisfactory to the Pierce County
43 Risk Manager, the Grantee shall replace such surety by a surety of like amount, similarly
44 conditioned, issued by a corporate surety satisfactory to the Risk Manager.

45
46 **ARTICLE XVIII - PROOF OF INSURANCE**

47
48 Grantee shall furnish proof to the County Executive that a satisfactory insurance policy has
49 been obtained. A certificate of insurance shall be filed and maintained with the County Risk
50 Manager.



ARTICLE XIX - ASSIGNMENT OR TRANSFER OF GRANT

Section 1. Transferee Must Be Signatory.

Grantee may transfer, assign and/or dispose of this Franchise at any time with notice to, but without obtaining consent from, the County; PROVIDED, that in no event shall a transfer, assignment, or disposal of ownership or control be effective without the transferee acknowledging the obligations under the Ordinance, becoming a signatory to this Franchise and assuming all rights and obligations hereunder, and assuming all other rights and obligations of the transferor to the County.

ARTICLE XXI - CHARTER LANGUAGE ADDED

Grantee acknowledges that Pierce County Charter Section 9.20 Franchises provides in part: "All franchises shall be subject to the right of the Council, or the people acting for themselves through the referendum, to repeal for cause, amend, or modify the franchise in the interest of the public".

ARTICLE XXII - MISCELLANEOUS

Section 1. Previous Rights Abandoned.

This Franchise supersedes any and all other rights, privileges, powers, immunities, and authorities owned, possessed, controlled, or exercisable pursuant to any previous Franchise granted to Grantee in the County.

Section 2. Severability.

If any section, subsection, sentence, clause, phrase, or portion of this Franchise is for any reason held to be invalid or unconstitutional by any court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions thereof. In such event, the parties mutually agree to make any amendments to this Franchise or other applicable agreements necessary to effectuate the intention of this Franchise. In the event that such amendments are barred by any legal requirements governing any party, the parties shall use their best efforts to otherwise avoid prejudice to the respective parties' interests, and to implement changes to effectuate the intent in entering into this Franchise. Should the County, in its sole discretion, determine that the severed portions substantially alter the Franchise so that the original intent and purpose of this Franchise no longer exists, the County may, in its discretion, terminate this Franchise without cost or penalty.

Section 3. Applicable Law.

The Franchise is governed by the Laws of the State of Washington, and venue for any enforcement litigation shall be in Pierce County Superior Court. In case of conflict or ambiguity between this Franchise and Grantee's Request or Application, this Franchise shall be controlling.

Section 4. Effective Date.

The Provisions of this Franchise shall be effective upon the written acceptance of this Franchise by the Grantee, signed by its proper officers, and filed with the Clerk of the Pierce County Council within thirty days of execution of the Franchise by the County Executive, and recorded with the Pierce County Auditor in accordance with RCW 36.55.080.



1 **Section 5. Limitation.**

2 Unless explicitly stated in the Franchise, nothing in this Franchise shall be construed or
3 interpreted in any manner as limiting, relinquishing, or waiving any rights of ownership enjoyed
4 by the County in any Rights-of-Way or any Public Facilities, or in any manner limiting,
5 relinquishing, or waiving the County's control over the operation and maintenance of the Rights-
6 of-Way or any Public Facilities or in any manner limiting, relinquishing, or waiving lawful
7 governmental authority that the County possesses to manage the public Rights-of-Way.

8
9 **Section 6. Non-Waiver.**

10 Excuse by County of strict performance of any Provision of this Franchise shall not be a waiver
11 or prejudice the County's right to require strict performance of the same or any other Provision
12 in the future.

13
14 **Section 7. Integration.**

15 This Franchise contains the entire understanding between the parties with respect to the subject
16 matter herein. There are no representations, agreements, or understandings (whether written
17 or oral) between or among the parties relating to the subject matter of this Franchise which are
18 not fully expressed herein. The Telecommunications Ordinance, all Exhibits referred to in this
19 Franchise, and any addenda, attachments, and schedules which may, from time to time, be
20 referred to in any duly executed amendment to this Franchise, are by such reference
21 incorporated in this Franchise and shall be deemed to be a part of this Franchise.

22
23 **Section 8. Franchise Subject to Future Ordinance(s).**

24 Grantee acknowledges that the County may develop additional rules, regulations, and
25 specifications for the use of the Rights-of-Way and/or Public Facilities, and Grantee agrees that
26 such rules, regulations, and specifications, when finalized and to the extent not preempted by
27 federal or state law, shall govern Grantee's activities hereunder as if they were in effect at the
28 time this Franchise was executed by the County; provided that, any County land use or
29 construction-related (e.g. building, electrical, etc.) permits or approvals for Facilities shall be
30 governed by the applicable County ordinances, rules and regulations in effect at the time
31 Grantee submits a complete application for such permits and other approvals, and once
32 granted, such permits or approvals for siting Facilities shall not be revoked or modified except
33 pursuant to PCC 18.140.060.

34
35 **Section 9. No Warranties.**

36 Grantee shall be responsible for obtaining all necessary approvals, authorizations, and
37 agreements from any party or entity and it is acknowledged and agreed that the County is
38 making no representation, warranty, or covenant whether any of such approvals, authorizations,
39 or agreements are required or have been obtained by Grantee from any Person or entity.

40
41 **Section 10. Recording.**

42 This Franchise shall be recorded with the Pierce County Auditor as provided in RCW 36.55.080.
43 The Provisions and terms of this Franchise are agreed to and hereby accepted. County and
44 Grantee each respectively represent that their signatory is duly authorized and has full right,
45 power and authority to execute this Franchise.

46
47 **Section 11. Acceptance.**

48 The Grantee shall provide full acceptance of this Franchise and all its terms and conditions, by
49 filing a signed copy of the Franchise with the designated County official. This requirement shall
50 be a condition precedent to the Franchise taking effect. If Grantee does not provide a signed
51 copy of the Franchise as set forth in this Section, this Franchise shall be null and void.



1 **Section 12. Authorization.**

2 The undersigned respectively represent and warrant that its signatory is a duly authorized and
3 empowered to sign this Franchise Agreement.

4
5 IN WITNESS WHEREOF, the parties hereto have caused this Franchise
6 Agreement to be executed as of the 26 day of October, 2009.

7
8 COUNTY OF PIERCE

9
10
11 By Patrice J. McCarthy
12 Patrice J. McCarthy
13 Its COUNTY EXECUTIVE
14 *A. post*

15
16
17
18
19
20 Attest:

21 Electric Lightwave LLC accepts and agrees to comply with all terms and
22 conditions of this Franchise.

23
24
25 Dean Ryland
26 Name

27 Dean Ryland
28 VP of Administration

29
30 Title

31
32 ELI
33 Company, Corporate Name, or Individual

34
35
36 11-9-09
37 Date

38
39
40 Attest:

41
42 Jennifer Johnson
43
44

