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Master R-O-W Use
Agreements

ORDINANCE NO. 1857

ORIGINAL

AN ORDINANCE OF THE CITY OF REDMOND, WASHINGTON, APPROVING A MASTER RIGHT-OF-WAY USE AGREEMENT FOR USE WITH UTILITIES AND OTHER BUSINESSES WISHING TO LOCATE AND OPERATE COMMUNICATION LINES AND OTHER FACILITIES IN CITY RIGHTS-OF-WAY, AND AUTHORIZING THE MAYOR TO EXECUTE SUCH AGREEMENTS WITH METROPOLITAN FIBER SYSTEMS/MFS COMMUNICATIONS, ELECTRIC LIGHTWAVE, METRICOM, MCI METRO AND GST TELECOM.

WHEREAS, the City has been approached by several utilities and other businesses requesting to locate and operate communication lines and other facilities in City-owned rights-of-way, and

WHEREAS, in order to take a comprehensive approach to such facilities, the Mayor and City staff established an interdepartmental task force to review and develop a consistent form agreement for use with all utilities and other businesses requesting to locate and operate such communication facilities, and

WHEREAS, upon completion of the staff review, a proposed agreement was developed and forwarded to the City Council and interested utilities and businesses, and

WHEREAS, having considered the input of the utilities and businesses involved and the interests of the City, the Council has determined to approve a master form agreement and to authorize its use for the utilities and businesses with current requests in to the City,
NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF REDMOND, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Approval of Master-Right-of-Way Use Agreement. The Master Right-of-Way Use Agreement attached to this ordinance as Exhibit A is hereby approved by the City Council for use with all utilities and other businesses seeking City permission to locate and operate communications lines and/or other communication facilities in City right-of-way.

Section 2. Authorization for Signature. The Mayor is hereby authorized to execute a Master Right-of-Way Use Agreement with each of the following utilities or businesses:

Metropolitan Fiber Systems/MFS Communications
Electric Lightwave
Metricom
MCI Metro
GST Telecom

The Master Right-of-Way Use Agreement shall be substantially in the form attached to this ordinance as Exhibit A. Each utility or business shall have a period of thirty days from the passage of this ordinance to accept the terms and conditions of the Master Right-of-Way Use Agreement, which shall not take effect until executed by both parties to the Agreement. In the event that a utility or business does not so accept within thirty days, the authorization provided in this section shall be null and void.

Section 3. Severability. If any section, sentence, clause or phrase of this ordinance 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 ordinance.

Section 4. Effective Date. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

CITY OF REDMOND


MAYOR ROSEMARIE IVES

ATTEST/AUTHENTICATED:


CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By 

FILED WITH THE CITY CLERK:	September 27, 1995
PASSED BY THE CITY COUNCIL:	October 17, 1995
SIGNED BY THE MAYOR:	October 18, 1995
PUBLISHED:	October 25, 1995
EFFECTIVE DATE:	October 30, 1995
ORDINANCE NO. <u>1857</u>	

RIGHT-OF-WAY USE AGREEMENT

THIS AGREEMENT is entered into on _____, 1995, by and between the City of Redmond ("the City") and _____ ("the User").

WHEREAS, the User has requested that the City grant it the right to install, operate and maintain a communications system within the rights-of-way of the City; and

WHEREAS, the City has the authority, and is willing to grant the rights requested subject to certain terms and conditions; and

WHEREAS, the parties desire to enter into an agreement authorizing the User to use the rights-of-way and specifying the terms and conditions under which said use may be made, NOW, THEREFORE,

THE CITY AND THE USER AGREE AS FOLLOWS:

Section 1. Authority Granted. The City hereby grants to the User, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to construct, operate, maintain, replace, and use all necessary equipment and facilities thereto for a telecommunications system, in, under, on, across, over, through, along or below the public right-of-ways, and easements which the City and the User determine allow for the installation of telecommunication facilities located in the territorial limits of the City of Redmond as they currently exist or may expand, as approved under City permits issued pursuant to this Agreement. The precise location of any and all facilities installed pursuant to this Agreement shall be approved by the City according to the street use and excavation permit process referred to in Section 6 below.

The term of this Agreement shall be for a period of five (5) years from the date the last party signs the same, unless sooner terminated as provided below, provided, that this Agreement may be renewed for an additional five (5) year term according to the following process: If the User desires to renew, the User shall notify the City not later than 180 days prior to the expiration date of this Agreement of the desire to renew and whether the User desires to renegotiate any of this Agreement's terms or desires to add or delete any terms. The City will respond to the request for renewal not later than 120 days prior the expiration date and may request renegotiation of any term or the addition or deletion of any term at that time. If the User does not request renegotiation, addition or deletion of any term and the City does not respond within the time period stated or responds in the affirmative without a request for renegotiation, addition or deletion, this Agreement shall automatically renew for the additional five (5) year period on the same terms and conditions. If the User asks to renegotiate, add or delete any term or terms, this Agreement shall not renew unless and until the City and User reach agreement. If the City responds to the User's request for renewal by requesting renegotiation, addition, or deletion of any term or terms, this Agreement shall not be renewed unless and until the City and the User reach agreement. Nothing in this paragraph prevents the parties from reaching agreement on renewal earlier than the time periods indicated.

Section 2. Non-Exclusive Grant. This Agreement shall not in any manner prevent the City from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said right-of-ways, streets, avenues or all other public lands and properties of every type and description. Such Agreement shall in no way prevent or prohibit the City from using any of said roads, streets 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 of same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new rights-of-ways, thoroughfares and other public properties of every type and description.

Section 3. Relocation of Telecommunications System Facilities.

A. The User agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect, relocate or remove from any street any of its installations when so required by the City by reason of traffic conditions or public safety, dedications of new rights-of-way and the establishment and improvement thereof, widening and improvement of existing rights-of-way, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity, provided that the User shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same street upon approval by the City, any section of cable or any other facility required to be temporarily disconnected or removed.

Upon request of the City and in order to facilitate the design of City street and right-of-way improvements, the User agrees to, at its sole cost and expense, locate and if determined necessary by the City, to excavate and expose the User's facilities for inspection so that the location of the same may be taken into account in the improvement design. The decision as to whether said facilities need to be relocated in order to accommodate the City's improvements shall be made by the City upon review of the location and construction of the User's facilities.

If the City determines that the project necessitates the relocation of the User's then existing facilities, the City shall:

1. At least one hundred and eighty (180) days prior to the commencement of such improvement project, provide the User with written notice requiring such relocation provided, however, that in the event of an emergency posing a threat to the public safety or welfare, or in the event of an emergency beyond the control of the City and which will result in severe financial consequences to the City, the City shall give the User written notice as soon as practicable; and
2. Provide the User with copies of pertinent information for such improvement project and a proposed location for the User' facilities so that the User may relocate its facilities in other City right-of-way in order to accommodate such improvement project.
3. After receipt of such notice and such pertinent information, the User shall complete relocation of its facilities at no charge or expense to the City so as to accommodate the improvement project at least ten (10) days prior to commencement of the project.

The User 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 User 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 User shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by the User full and fair

consideration, within a reasonable time so as to allow for the relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable alternative, the User shall relocate its facilities as otherwise provided in this Section. The provisions of this Section shall survive the expiration, revocation or termination of this Agreement, provided, that relocation shall not be required after expiration of this Agreement if the City consents to the User abandoning its facilities in place.

The provisions of this Section shall in no manner preclude or restrict the User 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 a City construction project.

B. The User will indemnify, hold harmless, and pay the costs of defending the City against any and all claims, suits, actions, damages or liabilities for delays on City construction projects caused by or arising out of the failure of the User to relocate its facilities in a timely manner, provided, that the User shall not be responsible for damages due to delays caused by circumstances beyond the control of the User. The indemnity provisions of this Section shall survive the expiration, revocation or termination of this Agreement.

Section 4. Undergrounding of Facilities. The undergrounding requirements of this Section shall apply where the User's facilities consist of cable or any other facilities which are capable of being placed underground. Where the User'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.

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 City right-of-way or easement in which all telephone, electric power wires and cables have been placed underground, the User 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 User acknowledges and agrees that if the City does not require the undergrounding of its facilities at the time of permit application, the City may, at any time in the future, require the conversion of the User' aerial facilities to underground installation at the User' expense as provided in Redmond Community Development Code Section 20C.20.250(05), or as such section may hereafter be amended.

Whenever the City requires the undergrounding of all aerial utilities in any area of the City which the City has the legal authority to require to underground without the payment of costs under any tariff, the User shall underground its aerial facilities in the manner specified by the City, concurrently with and in the area of all the other affected utilities. The location of any such relocated and underground utilities shall be approved by the City. The User shall underground its facilities at its own expense, but the User is encouraged to contact and agree with other affected utilities so that all costs for common trenching, common utility vaults and other costs not specifically attributable to the undergrounding of any particular facility are borne fairly and proportionately by all the utilities involved in the underground project. The provisions of this section shall survive the expiration, revocation or termination of this Agreement. Nothing in this paragraph shall be construed as requiring the City to pay any costs of undergrounding any of the User's facilities.

Section 5. The User's Maps and Records. After construction is complete, and as a condition of this Agreement, the User shall provide to the City upon request and at no cost, accurate copies of all as-built plans, maps and records.

Section 6. Work in the Right-of-Way. During any period of relocation, construction or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public right-of-ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property, and the User shall at all times post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems.

Whenever the User shall excavate in any public right-of-way, or shall commence any work within the right-of-way not requiring excavation, for the purpose of installation, construction, repair, maintenance or relocation of its cable or equipment, it shall apply to the City for a permit to do so and, in addition, shall give the City at least three (3) working days notice of the User' intent to commence work in the public right-of-way. The User shall pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this Agreement. During the progress of the work, the User shall not unnecessarily obstruct the passage or proper use of the right-of-way, and shall file as-built plans or maps with the City showing the proposed and final location of the cable or its facilities. All work by the User in any area covered by this Agreement and as described in this Section shall be performed in accordance with City of Redmond Public Works Construction Standards.

If the City has plans to improve any right-of-way to which this Agreement applies within two (2) years of the User's application for a permit to locate its facilities in such right-of-way, the User may be allowed to install its facilities above ground, to the extent feasible, until such time as the City's improvements occur, at which time the User will underground its facilities concurrent with the City's improvement project.

If either the City or the User shall at any time plan to make excavations in any area covered by this Agreement and as described in this Section, the party planning such excavation shall afford the other, upon receipt of a written request to do so, an opportunity to share such excavation, 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 both parties; and
- C. either party may deny such request for safety reasons.

The joint use provisions of this Section shall apply only to joint use by the City and the User. Nothing in this Section is intended to require the User to afford other similar users the opportunity to share the User's excavations. The provisions of this section shall survive the expiration, revocation or termination of this Agreement.

Section 7. Restoration after Construction. The User shall, after installation, construction, relocation, maintenance, removal or repair of cable/facilities within the Agreement area, restore the surface of the right-of-way and any other City facilities which may be disturbed by the work, to at least the same condition the right-of-way or facility was in immediately prior

to any such installation, construction, relocation, maintenance or repair. The Public Works Director shall have final approval of the condition of such streets and public places after restoration. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications, including, but not limited to, the City of Redmond Benchmark System's second order, first class specifications. The User 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 area at its sole cost and expense according to the time and terms specified in the permit issued by the City and in Chapter 12.08 of the Redmond Municipal Code, as the same now exists or as it may hereafter be amended or superseded. The provisions of this Section shall survive the expiration, revocation or termination by other means of this Agreement. All work by the User pursuant to this Section shall be performed in accord with City of Redmond Public Works Construction standards.

Section 8. Emergency Work -- Permit Waiver. In the event of any emergency in which any of the User's facilities located in, above or under any street, right-of-way or easement, breaks, are damaged, or if the User's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, the User shall immediately take the proper emergency measures 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 this Agreement. However, this shall not relieve the User from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose. The User shall notify the City by telephone immediately

upon learning of the emergency and the User shall apply for all required permits not later than the second succeeding day during which the Redmond City Hall is open for business.

Section 9. Dangerous Conditions, Authority for City to Abate. Whenever construction, installation or excavation of facilities authorized by this Agreement has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct the User, at the User's own expense, to take action to protect the public, adjacent public places, City property or street utilities; and such action may include compliance within a prescribed time.

In the event that the User 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 streets, or street utilities, or to maintain the lateral support thereof, or actions regarded as necessary safety precautions; and the User shall be liable to the City for the costs thereof. The provisions of this Section shall survive the expiration, revocation or termination by other means of this Agreement.

Section 10. Recovery of Costs. The User shall pay a one time administrative fee in the amount of Two Thousand Dollars (\$2,000.00) to cover the City's costs in drafting and processing this Agreement and all work related thereto. The fee shall be paid promptly after the date the User and the City execute this Agreement and this Agreement shall not become effective until payment of the fee. The User shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Agreement 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 Agreement or any ordinances relating to the subject for which a permit fee is not established, the User shall reimburse the City directly for any and all costs.

In addition to the above, the User shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving the User's communications facilities.

Finally, the User shall reimburse the City upon submittal by the City of an itemized billing by project of costs, for the User's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as the result of the presence in the right-of-way of the User's facilities. Such costs and expenses shall include but not be limited to the User's proportionate cost of City personnel assigned to oversee or engage in any work in the right-of-way as the result of the presence of the User's facility in the right-of-way. Such costs and expenses shall also include the User's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of the User's facilities or the routing or rerouting of any utilities so as not to interfere with the User's facilities. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The

billing may be on an annual basis, but the City shall provide the User with the City's itemization of costs at the conclusion of each project for information purposes.

Section 11. City's Reservation of Rights. Pursuant to Section 35.21.860 of the Revised Code of Washington (RCW), the City is precluded from imposing a fee on a telephone business as defined in RCW 82.04.065, except for administrative expenses or any applicable tax authorized by RCW 35.21.865. The City hereby reserves its right to impose a fee on the User, to the extent authorized by law, for purposes other than to recover its administrative expenses, if the User's operations are not those of a "telephone business" as defined in RCW 82.04.065; or, if the User's operations are now those of a telephone business and change in the future; or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that the User obtain a separate Agreement for its change in use, which Agreement may include provisions intended to regulate the User' operations, as allowed under applicable law.

Section 12. Indemnification. The User hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents and representatives from any and all claims, costs, judgments, awards or liability to any person, including claims by the User's own employees to which the User might otherwise be immune under Title 51 RCW, arising from injury, sickness or death of any person or damage to property of which the negligent acts or omissions of the User, its agents, servants, officers or employees in performing the activities authorized by this Agreement are the proximate cause. The User further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards or

liability to any person including claims by the User's own employees, including those claims to which the User might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way, or other public properties, by virtue of the User's exercise of the rights granted herein, or by virtue of the City's permitting the User's use of the City's rights-of-way or other public property, or based upon the City's inspection or lack of inspection of work performed by the User, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Agreement or pursuant to any other permit or approval issued in connection with this Agreement. This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of the User, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this Agreement. In the event that the User's transmission technology or facilities emit electromagnetic impulses (EMF), the User expressly agrees that this indemnity provision extends to any and all claims for injury, sickness or death of any person, including employees of the User, arising out of or caused by said emissions.

Inspection or acceptance by the City of any work performed by the User at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation, provided, that the User has been given prompt written notice

by the City of any such claim, has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim.

In the event that the User refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses 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 User, then the User shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

The obligations of the User under the indemnification provisions of this paragraph shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, agents, employees or contractors. The provisions of this section, however, are not be construed to require the User to hold harmless, defend or indemnify the City as to any claim, demand, suit or action which arises out of the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes the User's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. In the event that any court of competent jurisdiction determines that this contract is subject to the provisions of RCW 4.24.115, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein.

Notwithstanding any other provisions of this Section, the User assumes the risk of damage to its facilities located in the City's rights-of-way and easements from activities conducted by the City, its officers, agents, employees and contractors. The User releases and waives any and all claims against the City, its officers, agents, employees or contractors for damage to or destruction of the User's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees and contractors, in the public rights-of-way and easements subject to this Agreement, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any wilful or malicious action on the part of the City, its officers, agents, employees or contractors. The User further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the User's facilities as the result of any interruption of service due to damage or destruction of the User's facilities caused by or arising out of activities conducted by the City, its officers, agents, employees or contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any wilful or malicious actions on the part of the City, its officers, agents, employees or contractors.

The provisions of this Section shall survive the expiration, revocation or termination of this Agreement.

Section 13. Insurance. The User shall procure and maintain for the duration of the Agreement, 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 hereunder to the User, its agents, representatives or employees. The User shall provide an

insurance certificate, together with an endorsement naming the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds, to the City for its inspection prior to the commencement of any work or installation of any facilities pursuant to this Agreement, and such insurance certificate shall evidence:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per accident 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 \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products/completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability.

The above coverages may be provided, in part, through an umbrella policy, with the approval of the City's Risk Manager.

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 User.

The insurance policy(ies) obtained by the User shall name the City, its officers, elected officials, agents, employees, representatives, engineers, consultants and volunteers), as additional insureds with regard to activities performed by or on behalf of the User. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, elected officials, agents, employees, representatives, engineers, consultants 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 User's insurance shall be primary insurance as respects the City, its officers, officials, employees and volunteers. Any insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the User's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City. The insurance certificate shall contain language evidencing these requirements.

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

Section 14. Abandonment and Removal of the User' Cable or Telecommunication System Facilities. No cable, section of cable or other facility laid in the right-of-way by the User may be abandoned by the User without the express written consent of the City. Any plan for abandonment or removal of the User's cable and facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. The provisions of this Section shall survive the expiration, revocation or termination of this Agreement. In the event that the City allows the User to abandon any portion of its cable or facilities, the City shall be responsible for such cable or facilities and the User shall have no further obligation to maintain, relocate or remove such facilities.

Section 15. Commencement of Construction. Construction of the facilities contemplated by this Agreement shall commence no later than one year after execution of this Agreement by

both parties, provided that such time limit shall not apply to delays caused by acts of God, strikes, eminent domain litigation or other occurrences over which the User has no control.

Section 16. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Agreement, the User shall, upon the request of the City, furnish a bond executed by the User and a corporate surety authorized to do a surety business in the State of Washington in a sum to be determined by the Director of Public Works as sufficient to ensure performance of the User's obligations under this Agreement. The bond shall be conditioned so that the User shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this Agreement, and to erect or replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City.

Section 17. Modification. The City and the User hereby reserve the right to alter, amend or modify the terms and conditions of this Agreement upon written agreement of both parties to such alteration, amendment or modification.

Section 18. Forfeiture and Revocation. If the User willfully violates or fails to comply with any of the material provisions of this Agreement, or through willful misconduct or gross negligence fails to heed or comply with any notice given the User by the City under the provisions of this Agreement, then the User shall, at the election of the Redmond City Council, forfeit all rights conferred hereunder and this Agreement may be revoked, terminated or annulled by the Council after a hearing held upon reasonable notice to the User. The Council may decide, after consideration of the reasons for the User's failure to comply with the Agreement,

to allow the User additional time to cure before such termination or revocation. 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 having jurisdiction compelling the User to comply with the provisions of this Agreement and to recover damages and costs incurred by the City by reason of the User' failure to comply.

Section 19. Remedies to Enforce Compliance. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force the User 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 20. City Ordinances and Regulations. Nothing herein shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Agreement, including 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 the location, elevation, manner of construction and maintenance of any communications or cable facilities by the User, and the User shall promptly conform with all such regulations, unless compliance would cause the User to violate other requirements of law.

Section 21. Technological Changes. To address technological changes in the state-of-the-art communication services provided by the User during the term of this Agreement, the City may elect to review the User's communications facilities after 30 months in light of City needs and interests. Should such review identify a needed change in facilities or the provisions of this

Agreement, the City and the User shall meet and confer concerning the need for any such changes.

Section 22. Survival. All of the provisions, conditions and requirements of Sections 3, Relocation of Telecommunications Facilities; 4, Undergrounding of Facilities; 6, Work in the Right-of-Way; 7, Restoration after Construction; 9, Dangerous Conditions; 12, Indemnification; and 14, Abandonment and Removal of the User' Facilities, of this Agreement shall be in addition to any and all other obligations and liabilities the User may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination of this Agreement, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Agreement shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of the User and all privileges, as well as all obligations and liabilities of the User shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the User is named herein.

Section 23. Most Favored Community. In the event that the User enters into any agreement, franchise or other understanding with any other city, town or county in the state of Washington and which provides terms or conditions more favorable to the city, town, or county than those provided in this Agreement, such as, but not limited to, free or reduced fee hookups, access or service, the City of Redmond shall be entitled to request at the City's option, and the User shall be required to execute, an amendment to this Agreement which incorporates the more favorable terms and conditions.

Section 24. Non-Severability. Each term and condition of this Agreement is an integral part of the consideration given by each party and as such, the terms and conditions of this

Agreement are not severable. If any section, sentence, clause or phrase of this Agreement should be held to be invalid or unconstitutional by a court of competent jurisdiction, this Agreement shall terminate unless suitable replacement terms cannot be worked out by the parties.

Section 25. Assignment. This agreement may not be assigned or transferred without the written approval of the City, which approval shall not be unreasonably withheld or delayed, except the User may freely assign this Agreement in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. The User shall provide prompt, written notice to the City of any such assignment.

Section 26. Notice. Any notice or information required or permitted to be given to the parties under this Agreement may be sent to the following addresses unless otherwise specified:

City of Redmond
Director of Public Works
15670 N.E. 85th Street
P.O. Box 97010
Mail Stop CHPWE
Redmond, WA 98073-9710

Section 27. Entire Agreement. This Agreement constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Agreement.

CITY OF REDMOND

USER

MAYOR ROSEMARIE IVES

By: _____
Title: _____

ATTEST/AUTHENTICATED:

CITY CLERK, BONNIE MATTSON

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____