

ORDINANCE NO. 2286

AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON, GRANTING UNTO TIME WARNER TELECOM OF WASHINGTON, LLC, (“Time Warner Telecom”), A DELAWARE LIMITED LIABILITY CORPORATION, ITS SUCCESSORS AND ASSIGNS, FOR THE RIGHT, PRIVILEGE, AUTHORITY AND NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A TELECOMMUNICATIONS SYSTEM IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON.

WHEREAS Time Warner Telecom of Washington, LLC (“Time Warner Telecom”) has requested that the City Council grant it a nonexclusive franchise, and

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties (RCW 35A.47.040),

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Franchise Granted. Pursuant to RCW 35A.47.040, the City of MOUNTLAKE TERRACE, a Washington municipal corporation (hereinafter the “City”), hereby grants to Time Warner Telecom, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period often (10) years, beginning on the effective date of this ordinance, set forth in Section 27 herein (this “Franchise”). This Franchise shall grant Time Warner Telecom the right, privilege and authority to construct, operate, maintain, replace, use, acquire, lease and sell all necessary facilities for a telecommunications system, in, under, on, across, over, through, along or below the public rights-of-way located in the City, as approved under City permits issued pursuant to this Franchise. Time Warner Telecom agrees that upon its decision to provide service within the City of Mountlake Terrace, that they shall provide reasonable notice to the City and it is understood and agreed that Time Warner Telecom shall be subject to Article IV of Chapter 12.20, Mountlake Terrace Municipal Code, and any other applicable provision relating to nonrestrictive franchise agreements. Public "rights-of-way" as used herein means all public streets, roads, alleys and highways of the City as now or hereafter laid out, platted, dedicated or improved. "Facilities" as used herein means a fiber-optic cable system, with all necessary cables, wires, conduits, ducts, pedestals, antennae, electronics, and other necessary appurtenances, within the public rights-of-way of the City; provided that new utility poles for overhead wires or cabling are specifically excluded. Equipment enclosures with air conditioning or other noise generating equipment are also excluded from permitted "Facilities."

Section 2. Non-exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent the City from granting other or further franchises in, along, over, through, under, below or across any of said tight-of-ways. Such

franchise shall in no way prevent or prohibit the City from using any of said road, 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. Location of Initial Telecommunication Facilities. Time Warner Telecom is creating a fiber optic network, consisting partially of facilities within the City. Without limiting Time Warner Telecom's right to expand the Facilities without amending this Franchise, the initial route will be located along, or generally along, 212th Street, SW, as shown on Exhibit 1 attached hereto.

Section 4. Relocation of Fiber-Optics Telecommunications System Facilities.

4.1 Time Warner Telecom 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 government agency acting in a governmental capacity, provided that Time Warner Telecom 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 required to be temporarily disconnected or removed.

4.2 Any condition or requirement imposed by the City upon any person or entities (including, without limitation, any condition or requirement imposed by the City pursuant to any contract or in conjunction with approvals for permit for zoning, land use, construction or development) which reasonably necessitates the relocation of Time Warner Telecom's Facilities within the franchise area shall be a required relocation for purposes of subsection 4.1 above so long as said condition is being imposed for the benefit of the City and not for the sole benefit of said person or entity.

4.3 If the City determines that the project necessitates the relocation of Time Warner Telecom's then existing Facilities, the City shall:

- A. At least ninety (90) days prior to the commencement of such improvement project, provide Time Warner Telecom with written notice requesting such relocation; and
- B. Provide Time Warner Telecom with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Time Warner Telecom's Facilities so that Time Warner Telecom may relocate its Facilities in other City right-of-way in order to accommodate such improvement project.

C. After receipt of such notice and such plans and specifications, Time Warner Telecom shall complete relocation of its Facilities at least ten (10) days prior to commencement of the City's project at no charge or expense to the City. Relocation shall be accomplished in such a manner as to accommodate the City's project.

4.4 Time Warner Telecom 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 Time Warner Telecom in writing as soon as practicable 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, Time Warner Telecom shall submit at its sole cost and expense additional information to reasonably assist the City in making such evaluation. The City shall give each alternative proposed by Time Warner Telecom full and fair consideration and within a reasonable time so as to allow for relocation work to be performed in a timely manner. In the event the City ultimately determines that there is no other reasonable and feasible alternative, Time Warner Telecom shall relocate its Facilities as otherwise provided in this Section. In no event shall Time Warner Telecom be responsible for any more than the pro rata cost of relocating Time Warner Telecom's Facilities. The provisions of this Section shall survive the expiration or termination of this Franchise agreement.

4.5 The provisions of this Section shall in no manner preclude or restrict Time Warner Telecom 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.

Section 5. Undergrounding of Facilities. Except as specifically authorized by permit of the City, Time Warner Telecom 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 City ordinance. Time Warner Telecom 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, in accordance with City ordinance, require the conversion of Time Warner Telecom's aerial Facilities to underground installation at Time Warner Telecom's expense.

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

Section 6. Maps and Records. After construction is complete, and as a condition of this Franchise, Time Warner Telecom shall provide to the City upon request and at no cost, a copy of all as-built plans, maps and records revealing the final location and condition of its Facilities within the public right-of-ways and public places.

Section 7. Excavations. During any period of relocation, construction or maintenance, all work performed by Time Warner Telecom or its contractors shall be accomplished in a safe and workmanlike manner, so as to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Time Warner Telecom 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 Time Warner Telecom shall excavate in any public right-of-way 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 five (5) working days prior notice of its intent to commence work in the public right-of-way. In no case shall any work commence within any public right-of-way without a permit, except as otherwise provided in this franchise ordinance.

If either the City or Time Warner Telecom shall at any time plan to make excavations in any area covered by this Franchise and as described in this Section, the party planning such excavation shall afford the other, upon receipt of 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 or if the intended uses of the trench are deemed to be incompatible by the party causing the excavation to be made.

The provisions of this Section shall survive the expiration or termination of this Franchise agreement.

Section 8. Restoration after Construction. Time Warner Telecom shall, after abandonment approved under Section 15 herein, or installation, construction, relocation, maintenance or repair of its Facilities within the franchise area, restore the surface of the right-of-way to the same condition the property was in immediately prior to any such installation, construction, relocation, maintenance or repair, ordinary wear and tear excepted and damage not caused by Time Warner Telecom excepted. All concrete encased monuments which have been disturbed or displaced by

such work shall be restored pursuant to all federal, state and local standards and specifications. Time Warner Telecom agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the franchise area at its sole cost and expense. All work performed by Time Warner Telecom and discretion exercised by the City under this Section shall be in accordance with the City Municipal Code and the City's Design and Construction standards. The provisions of this Section shall survive the expiration, revocation or termination by other means of this Franchise.

Section 9. Emergency Work - Permit Waiver. In the event of any emergency in which any of Time Warner Telecom's Facilities located in or under any street breaks, becomes damaged, or if Time Warner Telecom's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Time Warner Telecom 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 Franchise. However, this shall not relieve Time Warner Telecom from the requirement of obtaining any permits necessary for this purpose, and Time Warner Telecom shall apply for all such permits not later than the next succeeding day during which the Mountlake Terrace City Hall is open for business.

Section 10. Dangerous Conditions, Authority for City to Abate. Whenever the construction, installation or excavation of facilities authorized by this Franchise has caused or materially contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endanger the public, an adjoining public place, street utilities or City property, the Community Development Director may direct Time Warner Telecom, at Time Warner Telecom's own expense, to take actions 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 Time Warner Telecom fails or refuses to promptly take the written actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Time Warner Telecom to request Time Warner Telecom affect the immediate repair, 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 Time Warner Telecom shall be liable to the City for the reasonable and documented costs thereof. The provisions of this Section shall survive the expiration, revocation or termination of this Franchise.

Section 11. Recovery of Costs. Time Warner Telecom shall pay a filing fee for the City's administrative costs in drafting and processing this Franchise agreement and all work related thereto. Time Warner Telecom shall further be subject to all lawful permit fees associated with activities undertaken by Time Warner Telecom through the authority granted in this franchise ordinance or under the laws of the City. Where the City incurs costs and expenses for review, inspection or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Time Warner Telecom shall pay such reasonable costs and expenses directly to the City within 60 days of

submittal by the City of an itemized billing by project of such costs. In addition to the above, Time Warner Telecom shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Time Warner Telecom's cable and Facilities within 60 days of submittal by the City of an itemized billing by project of such costs. All City reimbursable fees and costs shall be in accordance with RCW 35.21.860, as long as Time Warner Telecom remains a telephone business as defined in RCW 82.04.065.

Section 12. Parties' Reservation of Rights. Pursuant to Section 35.21.860 of the Revised Code of Washington (RCW), the City is precluded from imposing a franchise fee on a telephone business as defined in RCW 82.04.065, except for administrative expenses or any tax authorized by RCW 35.21.865. Time Warner Telecom hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.04.065. As a result, the City will not impose a franchise fee under the terms of this ordinance, other than as described herein.

However, the City hereby reserves its right to impose a franchise fee on Time Warner Telecom for purposes other than to recover its administrative expenses, if Time Warner Telecom's operations as authorized by this Franchise change so that not all uses of the Franchise are those of a "telephone business" as defined in RCW 82.04.065; or, if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Time Warner Telecom obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Time Warner Telecom's operations, as allowed under applicable law. Time Warner Telecom reserves the right to contest on the basis of federal, state, or municipal law the City's imposition of a fee on Time Warner Telecom or the requirement that Time Warner Telecom obtain a separate franchise.

The parties further understand that Time Warner Telecom may in the future provide service to customers within the City of Mountlake Terrace. The parties understand that RCW 35.21.870 currently limits the rate of city tax upon telephone business activities to six percent (6%) of gross receipts, unless a higher rate is approved by a vote of the people. The parties agree however that nothing in this Franchise shall limit the City's power of taxation as may now or hereafter exist. Time Warner Telecom stipulates and agrees that should its business activities be subject to taxation that Time Warner Telecom shall pay to the City the rate then applicable to such services under the City's telephone business tax ordinance; provided, however, that in the event Time Warner Telecom leases all or a part of its Facilities to another entity whose business operations are subject to taxation, Time Warner Telecom shall have no obligation to collect or remit any taxes imposed on such business operations. This provision does not limit the City's power to amend the telephone business tax ordinance as may be permitted by law.

Section 13. Indemnification. Time Warner Telecom hereby releases and covenants not to bring suit with respect to, 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 Time Warner Telecom's own employees for which Time Warner Telecom might otherwise be immune under Title 51 RCW, for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of Time Warner Telecom, its agents, servants, officers or employees in the performance of this

Franchise, and any rights granted hereunder, except to the extent such claims, costs, judgments, awards or liability were caused by the negligence of the City, its officers, employees, agents or representatives; provided that in the event any claim herein indemnified against be presented to or filed with the City, the City shall promptly notify Time Warner Telecom thereof and Time Warner Telecom shall have the right, at its election and at its sole cost and expense to settle and compromise such claim, and provided further that if any suit or action is filed against the City based on any such claim, the City shall likewise promptly notify Time Warner Telecom thereof, and Time Warner Telecom shall have the right, at its election and at its sole cost and expense to settle and compromise such claim, or defend the same at its sole cost and expense, by attorneys of its own election. This indemnification shall not apply in the event of any claim otherwise indemnified against is caused by the willful, malicious or criminal act of the City, its officers, employees, agents or representatives.

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

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

Notwithstanding the foregoing, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of Time Warner Telecom and the City, its officers, employees and agents, Time Warner Telecom's liability hereunder, including liability for costs of defense, shall be only to the extent of Time Warner Telecom's negligence. It is further specifically and expressly understood that the indemnification provision provided herein constitutes Time Warner Telecom's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this Section shall survive the expiration or termination of this Franchise agreement.

Section 14. Insurance. Time Warner Telecom shall procure and maintain for the duration of the franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Time Warner Telecom, its agents, representative or employees. Time Warner Telecom shall provide a copy of a Certificate of Insurance to the City for its inspection prior to the adoption of this franchise ordinance, and such insurance certificate shall evidence a policy of insurance that includes:

- A. Automobile Liability insurance with limits no less than \$1,000,000 Combined Single Limit per occurrence for bodily injury and property damage; and
- B. Commercial General Liability insurance, written on an occurrence basis with limits no less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate for personal injury, bodily injury and property damage. Coverage shall include but not be limited to: blanket contractual; products and completed operations; broad form property damage; explosion, collapse and underground (XCU); and employer's liability (maximum \$500,000 each accident).

Any self-insured retentions must be declared to and approved by the City. Payment of deductibles or self-insured retentions shall be the sole responsibility of Time Warner Telecom. The insurance policies obtained by Time Warner Telecom shall name the City (its officers, employees and volunteers) as an additional insured with regard to activities performed by or on behalf of Time Warner Telecom. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees 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. Time Warner Telecom's insurance shall be primary insurance as respects the City, its officers, employees, agents, and volunteers. Any insurance maintained by the City, its officers, employees, agents or volunteers shall be excess of Time Warner Telecom'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, or canceled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City. In addition, Time Warner Telecom shall provide the City with at least thirty (30) days prior written notice of any reduction in coverage or limits below the levels required herein.

Section 15. Abandonment No cable, section of cable or other equipment laid in the street by Time Warner Telecom may be abandoned by Time Warner Telecom without the express written consent of the City. Any plan for abandonment or removal of Time Warner Telecom's cable Facilities must be first approved by the Community Development 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 franchise agreement.

Section 16. Bonds. Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this Franchise, Time Warner Telecom shall furnish such bonds executed by Time Warner Telecom and a corporate surety authorized to do a surety business in the State of Washington, in a sum to be set and approved by the Community Development Director, as are required under the City's Design and Construction Standards, Mountlake Terrace Municipal Code Chapter 12.20, as amended, and other applicable permit requirements.

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

Section 18. Forfeiture and Revocation. If, within thirty (30) days after written notice and a hearing, the City Council finds that Time Warner Telecom has failed to cure a willful violation of any of the material provisions of this Franchise, or through willful misconduct or gross negligence failed to heed or comply with any notice given Time Warner Telecom by the City under the provisions of this Franchise, then the Council may revoke or annul all rights conferred to Time Warner Telecom under this Franchise. Nothing in this provision in any way limits, alters or revokes Time Warner Telecom's right to challenge findings of the Council or otherwise enforce its rights in a court of competent jurisdiction.

Section 19. Remedies to Enforce Compliance. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Time Warner Telecom to comply with the provisions of this Ordinance and to recover damages and reasonable costs incurred by the City by reason of Time Warner Telecom's failure to comply. In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel or force Time Warner Telecom 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 restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, 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 City ordinance regulations the location, elevation, manner of construction and maintenance of any fiber optic cable or cable Facilities by Time Warner Telecom, and Time Warner Telecom shall promptly conform with all such regulations, unless compliance would cause Time Warner Telecom to violate other requirements of law. Notwithstanding the above, said regulations shall not require that Time Warner Telecom alter the location, elevation or manner of construction of its' Facilities after proper installation of its Facilities unless otherwise required to do so under the terms of this Franchise. In the event of a conflict between the provisions of this Franchise and any other ordinance(s) enacted under the City's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein. Further, both parties agree to comply with all federal, state, county and municipal laws and ordinances or regulations in performance of this Franchise.

Section 21. Cost of Publication. The cost of the publication of this Ordinance shall be borne by Time Warner Telecom.

Section 22. Acceptance. Within sixty days after the passage and approval of this Ordinance, this Franchise may be accepted by Time Warner Telecom by its filing with the City Clerk a written

acceptance thereof. Failure of Time Warner Telecom to so accept this Franchise within said period of time shall be deemed a rejection thereof by Time Warner Telecom, and the rights and privileges herein granted shall, after the expiration of the sixty-day period, absolutely cease, unless the time period is extended by ordinance duly passed for that purpose.

Section 23. Survival. All of the provisions, conditions and requirements of Sections 3, Relocation of Telecommunication Facilities; 4, Undergrounding of Facilities; 6, Excavation; 7, Restoration after Construction; 9, Dangerous Conditions; 12, Indemnification; and 14, Abandonment of Time Warner Telecom's Facilities, of this Franchise shall be in addition to any and all other obligations and liabilities Time Warner Telecom may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to Time Warner Telecom for the use of the areas mentioned in Section 1 herein, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this franchise Ordinance shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Time Warner Telecom and all privileges, as well as all obligations and liabilities of Time Warner Telecom shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Time Warner Telecom is named herein.

Section 24. Assignment; Notice of Acquisition or Sale. This agreement may not be assigned or transferred without the written approval of the City, except Time Warner Telecom 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. Time Warner Telecom shall provide prompt, written notice to the City of any such assignment.

Notwithstanding any other provisions in this Section 24, Time Warner Telecom may, without the prior written consent of the City (i) lease the Facilities, or any portion thereof, to another entity or individual; (ii) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another entity or individual; or (iii) offer or provide capacity or bandwidth from the Facilities to another entity or individual; PROVIDED THAT Time Warner Telecom at all times retains exclusive control over the Facilities and remains responsible for locating, maintaining, repairing, relocating, and removing its Facilities pursuant to the terms and conditions of this Ordinance. In the case of transfer or assignment as security by mortgage or other security instrument, in whole or in part, to secure indebtedness, consent shall not be required unless and until the secured party elects to realize upon the collateral, and shall not be unreasonably withheld. Time Warner Telecom shall provide written notice to the City within thirty (30) days after any such assignment for security.

Time Warner Telecom shall notify City within thirty (30) days after any acquisition by Time Warner Telecom of ownership of additional Facilities, and after any sale by Time Warner Telecom of any Facilities.

Section 25. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement shall be sent to the following addresses unless otherwise specified:

City Clerk City of Mountlake Terrace 23204 - 58th Ave. W Mountlake Terrace, WA 98043-4629	Vice President - Regulatory Time Warner Telecom of Washington, LLC 520 SW Sixth Avenue, Suite 300 Portland, OR 97204
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Section 26. 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, unless such invalidity or unconstitutionality materially alters the rights, privileges, duties or obligations hereunder, in which event either party may request renegotiation of those remaining terms of this Franchise materially affected by such courts' ruling.

Section 27. 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 (5) days after passage and publication.

Passed by the City Council of the City of Mountlake Terrace this 18th day of June, 2001, and signed in authentication of its passage this 18th day of June, 2001.

//s// _____
MAYOR DAVID GOSSETT

ATTEST:

//s// _____
Mavis L.Fey
CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By://s// _____
Gregory G. Schrag

ACCEPTANCE OF FRANCHISE

THE UNDERSIGNED authorized representative of Time Warner Telecom of Washington, LLC, (Time Warner Telecom) hereby declares on behalf of Time Warner Telecom, the acceptance of the nonexclusive franchise to Time Warner Telecom, approved by the Mountlake Terrace City Council on June 18, 2001, by the adoption of Mountlake Terrace City Ordinance No. 2286.

DATED THIS 19th day of June, 2001

Time Warner Telecom of Washington, LLC

BY://s// _____
Brian Thomas

Its: Vice-President, Regulatory