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11-24-08  
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**ORDINANCE NO. 475**

08-145

**AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, AMENDING ORDINANCE NO. 348, A FRANCHISE AGREEMENT BETWEEN THE CITY OF WOODINVILLE, WASHINGTON, AND THE NORTHSORE SCHOOL DISTRICT #417 RELATING TO A NETWORK OF FIBER OPTIC CABLES WITHIN PUBLIC RIGHTS-OF-WAY OF THE CITY OF WOODINVILLE AND TO RIGHT-OF-WAY USE AUTHORIZATION. BY AMENDMENT OF SECTION 1 AND SECTION 6 THEREOF; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR SUMMARY PUBLICATION AND AN EFFECTIVE DATE.**

**WHEREAS**, the Northshore School District #417 (hereinafter "NSD") is a quasi-municipal corporation authorized to construct, own and operate telecommunications facilities for certain educational and other governmental purposes; and

**WHEREAS**, the City of Woodinville, Washington ("City") is a Code city that owns and manages certain rights-of-way and performs other municipal functions; and

**WHEREAS**, the City through Ordinance No. 231 has adopted chapter 12.30 of the Woodinville Municipal Code (WMC) (the "Right-of-Way Use Ordinance") to regulate use of the right-of-way for certain telecommunications and other purposes; and

**WHEREAS**, the City through Ordinance No. 348 granted a franchise to NSD to install, operate and maintain a network of fiber optic cables within certain designated public rights of way of the City of Woodinville which prescribe certain rights, duties, services to the City, terms and condition with respect thereto; and

**WHEREAS**, NSD has proposed an amendment to the franchise agreement to amend the Definitions and Services to the City; and

**WHEREAS**, the City Council understands that the purpose of the new services is to provide fiber links for other governmental agencies and to take advantage of the technological opportunities and conveniences that such a system would allow; and

**WHEREAS**, the conditions resulting from the new services to the City have been considered by the City, and

**WHEREAS**, the City Council has determined that it is in the best interest of the City to grant the amendment;

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF WOODINVILLE, WASHINGTON, DOES ORDAIN AS FOLLOWS:**

**Section 1. Amendment of Section 1 of Ordinance No. 348.** Section 1 Definitions, is hereby amended to provide in its entirety as follows:

Definitions. For the purposes of this Agreement, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the WMC unless another definition is specified below.

a. "Communication Service" shall mean any Telecommunications Services or Telecommunications Facilities provided by NSD for purposes of connecting and providing communications among various NSD-owned schools and facilities, and other governmental facilities. Communication Services shall not include the sale or resale to the public of any services.

b. "Communication Facilities", "Communication System" or "Facilities" shall mean NSD's fiber optic cables and attendant structures constructed and operated within the City's Public Way. A general description of the Facilities currently planned is set forth in Exhibit A, attached hereto and incorporated by this reference.

c. "Dark Fibers" or "Dark Fiber" shall mean fiber optic strands provided without electronics or optronics, and which are not "lit" or activated.

d. "Indefeasible Right of Use" or "IRU" shall mean an exclusive indefeasible right of use for the term of this franchise agreement for the purposes described herein, in the Additional Cable as defined herein, and as granted in this Agreement, provided that the IRU's granted hereunder do not provide the City with any ownership interest in or other rights to physical access to, control of, modifications of, the Additional Cable in any manner, or the use of the Additional Cable except as expressly set forth herein.

e. "Public Way" shall mean the surface of, and any space above or below, any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive circle, or other Public Right-of-Way, including, but not limited to, public utility easements, utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by the City. Public Way shall also mean any easement now or hereafter held by the City for the purpose of public travel, or for utility or public service use.

f. "Service Area" shall mean the area within the City's corporate boundaries together with the area served by NSD, as the same may be amended from time to time.

**Section 2. Amendment of Section 6 of Ordinance No. 348.** Section 6 Services to the City of Ordinance No. 348, is hereby amended to provide in its entirety as follows:

Services to City: In consideration for the use of the right-of-way, NSD shall provide, and allow the following types of connections to or use of the Communication Facilities by the City, in lieu of an annual payment for each approved Facility shown on Exhibit A, subject to the terms and conditions herein:

1) NSD shall install additional fiber optic cable ("Additional Cable") from its Communication Facilities (a) to the City of Woodinville City Hall ("City Hall"); (b) to the City's Rotary Community Park/Skate Park ("Park"); and (c) to the City of Woodinville's Fire Station ("Fire Station") as shown on Exhibit A.

2) NSD's installation of the Additional Cable shall be subject to the following:

(a) The Additional Cable shall consist of six strands of Dark Fiber. The Additional Cable, and all parts and components used in its installation, including patch panels and terminators, will be of a type, specification, and manufacturer which shall be determined by NSD, in its sole discretion.

(b) The installation by NSD shall include construction of a total of three hand hole stubs, each of which will be a demarcation point or "Demarc" for the Facilities. Each Demarc shall be located, as determined by NSD in its sole discretion, outside the property line of the real property upon which the City Hall, Park, and Fire Station is located as generally depicted on Exhibit A.

(c) The installation of the Additional Cable shall be terminated in the main network room ("MDF") at each location on a fiber optic patch panel to be provided by NSD. The City shall provide the required pathway, including, but not limited to trenching, boring, conduit, or other requisite components for installation of the Additional Cable from the Demarc to the MDF at each location.

(d) NSD's obligations regarding the Additional Cable shall be strictly limited to providing Dark Fiber to its terminus reflected in 6(c) above. The City shall have the sole and exclusive responsibility and liability to provide and connect the necessary equipment, links, and other appurtenances to the Additional Cable as necessary to provide the City with desired network services.

(e) NSD shall have exclusive ownership of all property and other rights relative to the Additional Cable up to and including each Demarc and shall have sole responsibility and liability for all maintenance, physical management, and locate services for the Additional Cable up to and including each Demarc.

(f) The City shall have exclusive ownership of all property and other rights relative to the Additional Cable from each Demarc, excluding the Demarc itself and connections therein, to its terminus reflected in 6(c) above and the City shall have sole responsibility and liability for all maintenance, and physical management of the Additional Cable from each Demarc, excluding the Demarc itself and connections therein, to its terminus reflected in 6(c) above.

(g) The City shall have a non-assignable Indefeasible Right of Use of the Additional Cable and that portion of the Communications Facilities necessary for the City to use the Additional Cable for the term of this franchise agreement. Upon termination of this franchise agreement, unless otherwise agreed in writing by the City and the NSD: (i) the Additional Cable shall become the property of the City; and (ii) At the election of the City, the Communications Facilities shall either be removed by the NSD from the "Public Way" at the sole expense of the NSD, or at the election of the City, become the property of the City.

(h) Completion of the installation of Additional Cable shall be contingent upon the City providing all required access to their facilities at each location and providing a completed pathway for installation into the MDF at each location before construction of the Communication Facilities is substantially complete.

(i) The City shall be able to request other connections to the NSD WAN in addition to those listed above for the purpose of providing connections between City

Facilities. Such connections shall be run entirely at the City's sole cost, responsibility, maintenance and liability, including, but not limited to, NSD's staff, engineering, design, procurement, testing, and inspection costs, fees, and expenses. Such connections shall not extend beyond the boundaries of NSD. NSD shall reasonably work with the City to determine the most cost effective route and connection point for all connections, which may include assisting the City to establish its own WAN connections between facilities. NSD shall have sole discretion regarding specifications, types, and other requirements regarding any other connections requested by the City.

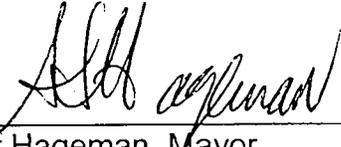
3) The City shall be able to request other connections to the NSD WAN in addition to those listed above for the purpose of providing connections between City facilities. Such connections shall be run entirely at the City's cost. Such connections shall not extend beyond the boundaries of the Northshore School District. NSD shall work with the City to determine the most cost effective route and connection point for all connections, which may include assisting the City to establish its own WAN connection between facilities.

4) In the event that the City believes that NSD has breached any material obligation under this Section of this Franchise, the City shall provide NSD with notice and a reasonable opportunity to cure any such breach. NSD shall not be liable for any incidental, indirect or consequential damages claimed by the City in connection with any alleged breach of NSD's obligations under this Section. If NSD is prevented from performing its obligations under this Section due to an event of *force majeure*, it shall immediately notify the City and its performance shall be excused for the duration of the *force majeure* event.

**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.** This ordinance, or summary thereof consisting of the title, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after publication.

**ADOPTED BY THE CITY COUNCIL AND SIGNED IN AUTHENTICATION OF ITS PASSAGE THIS 21<sup>ST</sup> DAY OF OCTOBER 2008.**

  
\_\_\_\_\_  
Scott Hageman, Mayor

ATTEST/AUTHENTICATED:

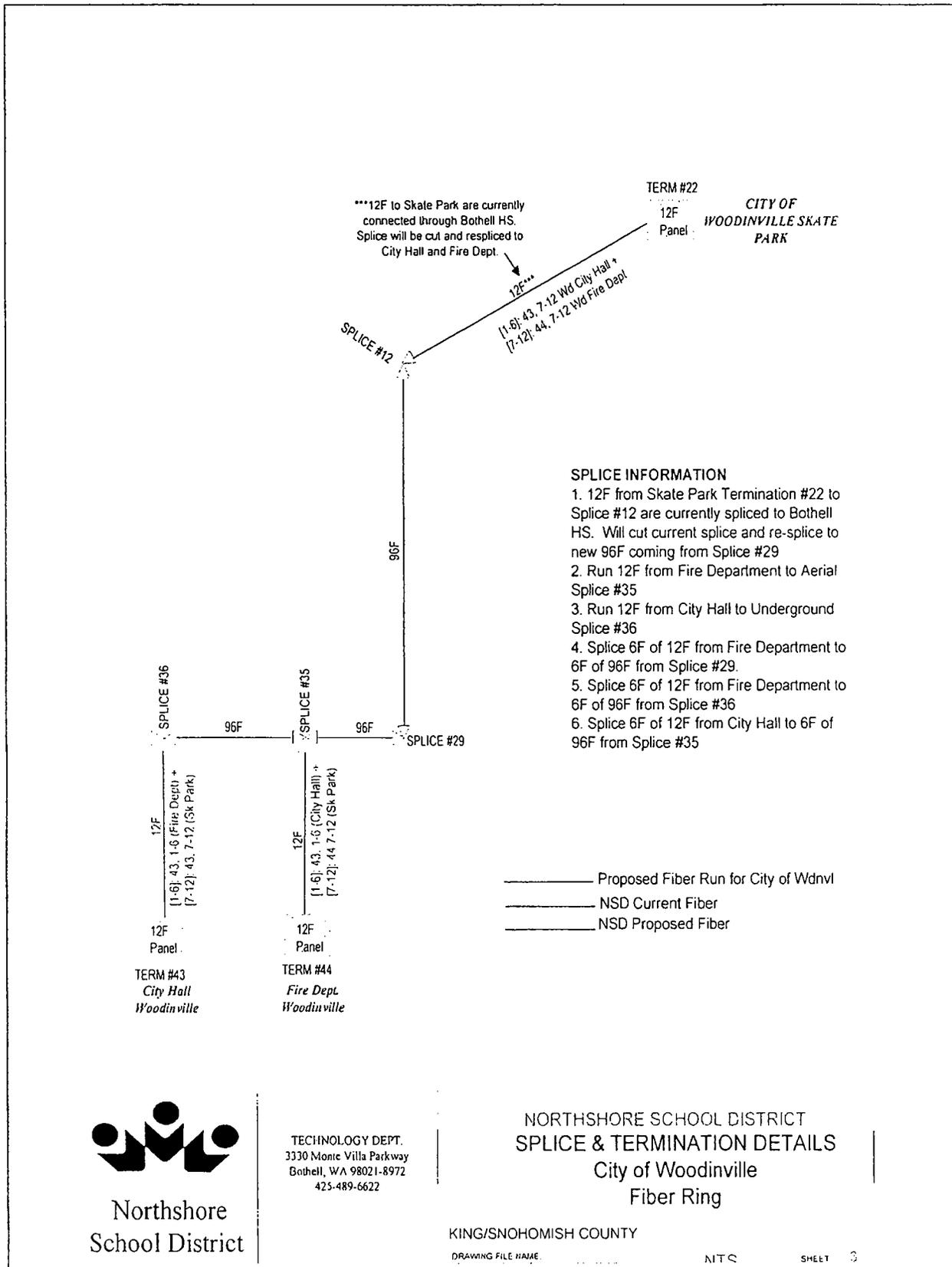
Linda Fava, Deputy City Clerk  
for Jennifer Kuhn  
City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

Greg A. Rubstello  
Greg A. Rubstello  
City Attorney

PASSED BY THE CITY COUNCIL: 10-21-2008  
PUBLISHED: 10-27-2008  
EFFECTIVE DATE: 11-03-2008  
ORDINANCE NO.: 475



10/30/2008



*"Citizens, business and local government;  
a community commitment to our future."*

Jon Wiederspan  
Northshore School District/Technology  
3330 Monte Villa Parkway  
Bothell, WA 98021

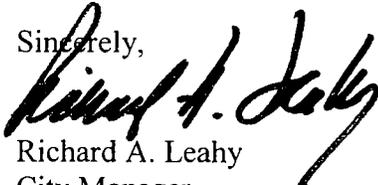
Dear Mr. Weiderspan:

On Tuesday, October 21, the City Council adopted Ordinance No. 475 which amended Ordinance No. 348 a Franchise agreement between the City of Woodinville, and the Northshore School District relating to a network of fiber optic cable within the City's Right of Way. The ordinance, as agreed to by the Northshore School District, amends Section 1 of Ordinance No 348 relating to definitions, and Section 6 of Ordinance No. 348 relating to the services to the City.

This change was initiated by the Northshore School District, and negotiated between the City of Woodinville and Northshore School District. It was subsequently brought before the City Council for its approval. The ordinance requires that both the City of Woodinville and Northshore School district meet certain conditions as outlined in the ordinance. By the City Council's adoption of this ordinance, the City has agreed to meet the conditions of the amended franchise.

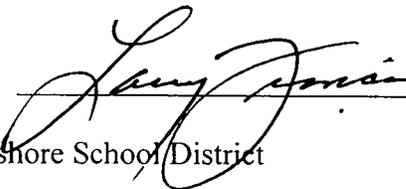
By signing this letter of agreement, Northshore School District acknowledges its agreement to acceptance of the terms and conditions set forth in Ordinance Nos. 348 and 475. Please sign below and return an original copy of this letter agreement to us.

Sincerely,

  
Richard A. Leahy  
City Manager

Accepted and agreed to as of the 13<sup>th</sup> day of November, 2008.

By:

  
Northshore School District

Attachment: Ordinance Nos. 348 and 475