

ORDINANCE NO. 348

AN ORDINANCE OF THE CITY OF WOODINVILLE, WASHINGTON, GRANTING TO THE NORTSHORE SCHOOL DISTRICT #417, A FRANCHISE, TO INSTALL, OPERATE, AND MAINTAIN A NETWORK OF FIBER OPTIC CABLES WITHIN CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF WOODINVILLE, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, AND ESTABLISHING AN EFFECTIVE DATE.

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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, NSD has requested that the City grant it the rights to install, operate, and maintain a "wide area network" of fiber optic cables (hereinafter "WAN") within the public ways of the City; and

WHEREAS, the City has requested that NSD use its WAN to provide the City with certain telecommunications facilities and services; and

WHEREAS, the City Council understands that the purpose of the WAN is for NSD to be able to link its various school facilities and other governmental facilities to allow its students and faculty, and other governmental agencies, to take advantage of the technological opportunities and conveniences that such a system would allow; and

WHEREAS, the City Council has found it desirable for the welfare of the City and its residents that such a rights within the public ways of the City be granted to NSD; and

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

WHEREAS, the City is willing to grant the rights requested subject certain terms and conditions, NOW, THEREFORE,

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

Section 1. Definitions. For the purposes of this Franchise, 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. "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.

d. "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. Right-of-Way Use Authorization. Upon receipt of NSD's complete application for a Right-of-Way Use Authorization for the Communication Facilities and a one time grant fee of Five Hundred Dollars (\$500.00) to defray the City's legal and administrative costs and expenses associated with negotiating and approving this Franchise, the Director shall issue such Authorization to NSD and all provisions of the Right-of-Way Use Ordinance shall govern actions taken by NSD pursuant to this Franchise except as expressly provided in this Section. The parties specifically intend that the Right-of-Way Use Ordinance be applied to resolve matters relating to future relocation and/or undergrounding of the Facilities. For purposes of Right-of-Way Use Authorization, NSD is a Person providing Telecommunications Service but it is not a Telecommunications Carrier. In recognition of NSD's status as a quasi-municipal corporation, the limited services that NSD will provide, the limited nature of NSD's construction and the services that NSD will provide to the City, the Director shall:

a. waive the performance bond requirement of the Right-of-Way Use Ordinance; and

b. accept an alternative instrument in satisfaction of the security fund requirement of the Right-of-Way Use Ordinance.

Section 3. Construction Right-of-Way Use Permits and Private Permissions Required. Prior to site-specific location and installation of any portion of its Communication Facilities within a Public Way, NSD shall apply for and obtain a construction permit. NSD acknowledges that it is responsible for obtaining permission from the owners of any poles it intends to use for the use of such poles, and that such permission is not covered by this Franchise.

Section 4. Term; Termination. The initial term of this Franchise shall be for a period of ten (10) years unless sooner terminated. This Franchise shall automatically renew for one (1) additional ten (10) year term; provided, however, that either Party may notify the other of its desire to renegotiate any of the terms set forth herein or of its desire to add to or delete any such terms not later than 90 days prior to expiration

of the initial term hereof or any subsequent renewal terms. If either Party makes such a request, this Franchise shall not renew unless and until the Parties reach agreement on said modification. In addition, either Party may, upon 12 months' notice, terminate the Franchise with no further obligation, except as specifically set forth herein.

Section 5. NSD's Maps and Records. NSD shall provide the City at no cost with copies of all as-built plans and maps of its Facilities in the Public Ways.

Section 6. 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:

1) A network connection at the City's Rotary Community Park for the purpose of providing the ability for the City to connect to security cameras in the park. The connection shall be provided via fiber optic cable connecting to the NSD WAN. The cable shall be terminated with NSD-provided equipment, which will provide at least four (4) RJ-45 connections with 10 and/or 100 Mbps Ethernet service. The City shall be provided with at least four (4) IP addresses to use for equipment at the Park and will provide more, up to a total of 250, as requested by the City. The service connection speed may be negotiated dependent on limitations presented by the King County I-Net connection servicing both the City and NSD.

2) Contingent upon NSD's availability of funds to expand its network to additional NSD-owned facilities within the City, NSD will provide a redundant Internet connection to Woodinville City Hall to serve solely as an emergency back-up to the City's regular Internet connection provided by King County I-Net. The City will reimburse NSD for fifty percent of the cost of constructing this route PROVIDED THAT such cost sharing only applies to the additional expense necessary to connect Woodinville City Hall. If the estimate of Woodinville's share of the cost exceeds the benefit to Woodinville, Woodinville may, in its sole discretion, waive its rights to the redundant connection described in this paragraph and, correspondingly, make no contribution toward NSD's expansion costs. The Internet connection shall be provided via the NSD WAN. The connection shall be terminated with NSD-provided equipment, which will be compatible with then-current NSD standard WAN equipment and provide enough bandwidth for the City to conduct regular operations. The City shall be provided with two IP addresses to interface with their existing router for Internet traffic. Unless prevented by outside agencies, NSD will host the City's domain(s) on its external DNS server to be used by the City for routing connections when the City's own Internet connection is down. NSD is not responsible for making

changes with the company or agency hosting the City domain so traffic will be directed to NSD's DNS server. Any connection provided to the City by NSD shall meet the following requirements and restrictions:

- a. The connections will not block the City's use of tunneling, VPN, or other encryption technologies intended to provide a private network connection over public networks, provided that those technologies will operate over a TCP/IP network run by NSD;
- b. The connections will allow the City the ability to connect any type of City-owned equipment which uses an Ethernet interface and TCP/IP networking for communications, provided that the equipment does not interfere with or represent a hazard to the NSD network and its equipment;
- c. NSD may place reasonable limits upon the amount of bandwidth that the City may use over the connections as long as NSD has reliable and accurate tools with which to measure such bandwidth usage;
- d. Use of the connections to access NSD computers, servers, network devices, or the Internet via NSD's Internet connections shall be subject to NSD's Acceptable Use Procedure, copies of which will be provided upon request. This will not affect connections that utilize VPN, tunneling, or "dark" fiber to isolate City traffic from the NSD network.

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 connections between facilities.

4) Upon request, the NSD will provide the City with additional conduits for its use. Such additional conduits shall be of a size and configuration specified by the City and shall be dedicated to the City. The City shall have the right to use the conduits for any purpose, including but not limited to leasing them to other entities. The incremental costs of adding conduits under this subsection shall be borne by the City.

5) 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 7. Modification. The City and NSD reserve the right to alter, amend or modify the terms and conditions of this Franchise upon mutual written agreement.

Section 8. City Ordinances and Regulations. Except as provided in Section 2 above, nothing in this Franchise shall be deemed to direct or restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the Public Ways, 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.

Section 9. Severability. If any section, sentence, clause, or phrase of this Franchise should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Franchise.

Section 10. Assignment. Neither Party may assign its rights or obligations under this Franchise without the written approval of the other Party, which approval shall not be unreasonably withheld or delayed, except that NSD may freely assign its rights and obligations in whole or part to any other governmental entity that serves educational needs within the city of Woodinville or the area served by NSD.

Section 11. Notice. Any notice or information required or permitted to be given to the parties under this Franchise may be sent to the following addresses unless otherwise specified:

City:

City of Woodinville  
Director of Public Works  
17301 133<sup>rd</sup> Avenue NE  
Woodinville, WA 98072  
Phone: 425-489-2700  
Fax: 425-489-2705

NSD:

Northshore School District #417  
Technology Department  
18603 Bothell Way NE  
Bothell, WA 98011  
Phone: 425-489-6000  
Fax: 425-489-6317

With Copies to:

With Copies to:

Notice shall be deemed given upon receipt in the case of personal delivery, three days after deposit in the United States Mail in the case of regular mail, or the next day in the case of overnight delivery.

Section 12. Entire Agreement. This Franchise 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.

Section 13. Attorney's Fees. If any suit or other action is instituted in connection with any controversy arising under this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees, including fees upon appeal of any judgment or ruling.

Section 14. Non-waiver. Failure of either Party to declare any breach or default immediately upon the occurrence thereof, or delay in taking any action in connection therewith, shall not waive such breach or default, but each Party shall have the right to declare any such breach or default at any time. Failure of either Party to declare one breach or default does not act as a waiver of the Party's right to declare another breach or default.

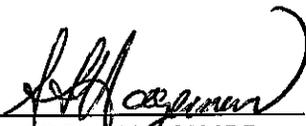
Section 15. Governing Law/Venue. This Franchise shall be governed by and construed in accordance with the laws of the State of Washington. The venue and jurisdiction over any dispute arising under this Franchise shall be with the King County Superior Court.

Section 16. Acceptance. Within 60 days after the passage and approval of this ordinance, this Franchise may be accepted by Franchisee by its filing with the City Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this Franchise within said period of time shall be deemed a rejection thereof, and the rights and privileges herein granted shall, after the expiration of the 60 day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 17. 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 the passage and publication of an approved summary thereof consisting of the title.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE 20th DAY OF OCTOBER, 2003.

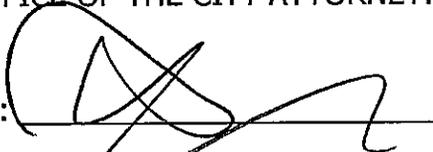
CITY OF WOODINVILLE

  
\_\_\_\_\_  
SCOTT HAGEMAN, MAYOR

ATTEST/AUTHENTICATED:

  
\_\_\_\_\_  
SANDRA PARKER  
CITY CLERK/CMC

APPROVED AS TO FROM:  
OFFICE OF THE CITY ATTORNEY:

By: 

PASSED BY THE CITY COUNCIL: 10-20-2003  
PUBLISHED: 10-27-2003  
EFFECTIVE DATE: 11-1-2003  
ORDINANCE NO.:348