

ORDINANCE NO. O-4869

AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING THE LAKE WASHINGTON SCHOOL DISTRICT NO. 414, A PUBLIC SCHOOL DISTRICT, A FRANCHISE FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, AND OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE DISTRICT'S FIBER OPTIC CABLE NETWORK.

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The City Council of the City of Kirkland do ordain as follows:

Section 1. Definitions. Where used in this franchise (the "Franchise") these terms have the following meanings:

(a) "City" means the City of Kirkland, a municipal corporation of the State of Washington, and its respective successors and assigns.

(b) "Facilities" means wires, lines, conduits, cables, vaults, duct runs, and all necessary or convenient facilities and appurtenances thereto, whether the same be located over or under ground.

(c) "Franchise Area" means any, every and all of the roads, streets, avenues, alleys, highways and unrestricted utility easements of the City as now laid out, platted, dedicated or improved; and any, every and all roads, streets, avenues, alleys and highways that may hereafter be laid out, platted, dedicated or improved within the present limits of the City and such limits as may be hereafter extended; but does not include unopened rights-of-way or the Cross Kirkland Corridor.

(d) "Ordinance" means this Ordinance, which sets forth the terms and conditions of this Franchise.

(e) "School District" means The Lake Washington School District No. 414, a public school district and a municipal corporation of the State of Washington, and its respective successors and assigns.

(f) "WUTC" means the Washington Utilities and Transportation Commission, a State agency, or its successor.

Section 2. Franchise Granted.

A. Facilities within Franchise Area. The City hereby grants to School District the right, privilege, authority and franchise to construct, support, attach, connect and stretch Facilities between, maintain, repair, replace, enlarge, operate and use Facilities in, upon, over, under, along and across the Franchise Area for purposes of installing, maintaining,

42 and operating a Fiber Optic Network designed for the transmission of
43 electronic data.

44
45 B. Permission Required to Enter Onto Other City Property.
46 Nothing contained in this Ordinance is to be construed as granting
47 permission to School District to go upon any other public place other
48 than those types of public places specifically designated as the
49 Franchise Area in this Ordinance. Permission to go upon any other
50 property owned or controlled by the City must be sought on a case-by-
51 case basis from the City. Permission shall not be withheld unreasonably.

52
53 C. Compliance with WUTC Regulations. At all times during
54 the term of this Franchise, School District shall fully comply with all
55 applicable regulations of the WUTC.

56
57 Section 3. Non-interference of Facilities.

58
59 A. School District's Facilities shall be located, relocated and
60 maintained within the Franchise Area so as not to unreasonably
61 interfere with the free and safe passage of pedestrian and vehicular
62 traffic and ingress or egress to or from the abutting property and in
63 accordance with the laws of the State of Washington. Whenever it is
64 necessary for School District, in the exercise of its rights under this
65 Franchise, to make any excavation in the Franchise Area, School
66 District shall, upon completion of such excavation, restore the surface
67 of the Franchise Area to the specifications established within the City's
68 "Pre-approved Plans and Policies" and in accordance with standards of
69 general applicability imposed by the City by ordinance or administrative
70 order. If School District should fail to leave any portion of any Franchise
71 Area so excavated in a condition that meets the City's specifications per
72 the "Pre-approved Plans and Policies," the City may, after written notice
73 of not less than ten (10) days to School District, which notice shall not
74 be required in case of an emergency, order any and all work considered
75 necessary to restore to a safe condition that portion of the Franchise
76 Area so excavated, and School District shall pay to the City the
77 reasonable cost of such work.

78
79 B. Any surface or subsurface failure occurring during the
80 term of this Franchise and caused by any excavation by School District
81 shall be repaired to the City's specifications within 30 days of the
82 discovery of such failure or upon 10 days' written notice to School
83 District. Should School District fail to adequately remedy such failure,
84 the City shall have the right to remedy the failure in accordance with
85 Section 3A.

86
87 Section 4. Relocation of Facilities.

88
89 A. Whenever the City causes the grading or widening of the
90 Franchise Area or undertakes construction of any water, sewer, or storm
91 drainage line, lighting, signalization, sidewalk improvement, pedestrian
92 amenities, or other public street improvement (for purposes other than
93 those described in section 4(B) below) and such project requires the

94 relocation of School District's then existing Facilities within the
95 Franchise Area, the City shall:

96
97 (1) Provide School District written notice at least 90
98 days prior to the commencement of such project, that a project
99 is expected to require relocation; and

100
101 (2) In a timely manner provide School District with
102 reasonable plans and specifications for such grading or
103 widening, construction, or other public street improvement.

104
105 After receipt of such notice and such plans and specifications,
106 School District shall relocate such Facilities within the Franchise Area,
107 at no charge to the City, so as to accommodate such street improvement
108 project; provided, however, for any Facilities that are jointly owned by
109 the School District and the City, the costs to relocate shall be based on
110 the proportionate share of ownership of the fiber optic strands within the
111 fiber optic cable. For example, should there be 100 fiber strands
112 undergrounded, and the School District has 40 fibers allocated to it, the
113 School District would be responsible for 40% of the cost to underground
114 the Fiber Optic Cable. The City shall cooperate with School District to
115 designate a substitute location for its Facilities within the Franchise
116 Area. In cooperation with the School District, City shall establish a date
117 by which the commencement of the work for the Facilities shall be
118 relocated, which date shall be not less than 60 days after written notice
119 to School District as to the facility to be relocated. School District must
120 finish relocation of each such Facility by the date so established.

121
122 B. Whenever any person or entity other than the City
123 requires the relocation of School District's Facilities to accommodate the
124 work of such person or entity within the Franchise Area, or whenever
125 the City requires the relocation of School District's Facilities within the
126 Franchise Area for the benefit of any person or entity other than the City,
127 then School District shall have the right as a condition of such relocation,
128 which the City agrees to enforce prior to issuance of any permit, to
129 require such person or entity to:

130
131 (1) make payment to School District, at a time and
132 upon terms acceptable to School District, for any and all costs
133 and expense incurred by School District in the relocation of
134 School District's Facilities; and

135
136 (2) indemnify and hold School District harmless from
137 any and all claims and demands made against it on account of
138 injury or damage to the person or property of another arising out
139 of or in conjunction with the relocation of School District's
140 Facilities, to the extent such injury or damage is caused by the
141 negligence of the person or entity requesting the relocation of
142 School District's Facilities or other negligence of the agents or
143 employees of the person or entity requesting the relocation of
144 School District's Facilities.

145

146 C. Any condition or requirement imposed by the City upon
 147 any person or entity (including, without limitation, any condition or
 148 requirement imposed pursuant to any contract or in conjunction with
 149 approvals or permits for zoning, land use, construction or development)
 150 that necessitates the relocation of School District's Facilities within the
 151 Franchise Area shall be subject to the provisions of subsection 4(B).
 152 However, in the event the City reasonably determines (and promptly
 153 notifies School District in writing of such determination) that the primary
 154 purpose of imposing such condition or requirement upon such person
 155 or entity that necessitates such relocation is to cause the construction
 156 of an improvement on the City's behalf and in a manner consistent with
 157 City-approved improvement plans [as described in 4(A), above] within a
 158 segment of the Franchise Area then:

159
 160 School District shall require only those costs and expenses
 161 incurred by School District in integrating and connecting such relocated
 162 Facilities with School District's other Facilities to be paid to School
 163 District by such person or entity, and School District shall otherwise
 164 relocate its Facilities within such segment of the Franchise Area in
 165 accordance with the provisions of subsection 4(A), above.
 166

167 D. This Section 4 shall govern all relocations of School
 168 District's Facilities required in accordance with this Franchise. Any
 169 required relocation of School District's Facilities that also involves a
 170 conversion of above-ground Facilities to underground Facilities shall, as
 171 to those Facilities being converted from above-ground Facilities to
 172 underground Facilities, be arranged and accomplished in accordance
 173 with Section 11. Nothing in this Section 4 shall require School District
 174 to bear any cost or expense in connection with the location or relocation
 175 of any Facilities existing under benefit of easement or other rights not
 176 arising under this Franchise.
 177

178 E. School District recognizes the need for the City to
 179 maintain adequate width for installation and maintenance of City owned
 180 and/or Northshore Utility District owned utilities such as, but not limited
 181 to, sanitary sewer, water, and storm drainage. Thus, the City reserves
 182 the right to maintain clear zones within the public right-of-way for
 183 installation and maintenance of said utilities. The clear zones for each
 184 right-of-way segment shall be noted and conditioned with the issuance
 185 of each right-of-way permit. If adequate clear zones are unable to be
 186 achieved on a particular right-of-way, School District shall locate in an
 187 alternate right-of-way, obtain easements from private property owners,
 188 or propose alternate construction methods which maintain and/or
 189 enhance the existing clear zones.
 190

191 Section 5. Indemnification. School District shall indemnify,
 192 defend and hold the City, its agents, officers, employees, volunteers and
 193 assigns harmless from and against any and all claims, demands,
 194 liability, loss, cost, damage or expense of any nature whatsoever,
 195 including all costs and reasonable attorney's fees, made against them
 196 on account of injury, sickness, death or damage to persons or property
 197 which is caused by or arises out of, in whole or in part, the willful, tortious

198 or negligent acts, failures and/or omissions of School District or its
199 agents, employees, volunteers, contractors, subcontractors or assigns
200 in the construction, operation or maintenance of its Facilities or in
201 exercising the rights granted School District in this Franchise. Provided,
202 however, such indemnification shall not extend to injury or damage
203 caused by the negligence or willful misconduct of the City, its agents,
204 officers, employees, volunteers, or assigns.
205

206 In the event any such claim or demand be presented to or filed
207 with the City, the City shall promptly notify School District in writing of
208 the claim thereof, and School District shall have the right, at its election
209 and at its sole cost and expense, to settle and compromise such claim
210 or demand, provided further, that in the event any suit or action be begun
211 against the City based upon any such claim or demand, the City shall
212 likewise promptly notify School District thereof, and School District shall
213 have the right, at its election and its sole cost and expense, to settle and
214 compromise such suit or action, or defend the same at its sole cost and
215 expense, by attorneys of its own election.
216

217 It is further specifically and expressly understood that the
218 indemnification provided herein constitutes School District's waiver of
219 immunity under Industrial Insurance, Title 51 RCW, solely for the
220 purpose of this indemnification. This waiver has been mutually
221 negotiated by the parties. The provisions of this section shall survive
222 the expiration or termination of this Franchise.
223

224 In addition to the foregoing, except for damage to Facilities
225 caused by the negligence or willful misconduct of the City, its agents,
226 officers, employees, volunteers, or assigns, School District
227 acknowledges and assumes all risk of damage to its Facilities in City
228 right-of-way and further acknowledges that it can minimize that risk by
229 subscribing to a one-number locator service (see RCW 19.122.030)
230 through the Washington Utilities Coordinating Council.
231

232 Section 6. Moving Buildings Within the Franchise Area. Before
233 granting permission to any person or entity other than the City to use
234 the Franchise Area for the moving or the removal of any building or other
235 object, the City shall require such person or entity to make any
236 necessary arrangements with School District for the temporary
237 adjustment of School District's Facilities to accommodate the moving or
238 removal of such building or other object. Such necessary arrangements
239 with School District shall be made, to School District's satisfaction, not
240 less than fourteen (14) days prior to the moving or removal of said
241 building or other object. In such event, School District shall, at the
242 expense of the person or entity desiring to move or remove such building
243 or other object, adjust any of its wires that may obstruct the moving or
244 removal of such building or other object, provided that:
245

- 246 (a) The moving or removal of such building or other
247 object that necessitates the adjustment of wires shall be done at

248 a reasonable time and in a reasonable manner so as not to
249 unreasonably interfere with School District's business;

250
251 (b) Where more than one route is available for the
252 moving or removal of such building or other object, such building
253 or other object shall be moved or removed along the route that
254 will minimize the interruption of utility services along the route,
255 interference with transportation, and potential detriments to the
256 public safety, as determined by the City.

257
258 (c) The person or entity other than the City obtaining
259 such permission from the City to move or remove such building
260 or other object shall be required to indemnify and save School
261 District harmless from any and all claims and demands made
262 against it on account of injury or damage to the person or
263 property or another arising out of or in conjunction with the
264 moving or removal of such building or other object, to the extent
265 such injury or damage is caused by the negligence or willful
266 misconduct of the person or entity moving or removing such
267 building or other object or the negligence or willful misconduct of
268 the agents, or employees of the person or entity moving such
269 building or other object.

270
271 Section 7. Default. If School District shall fail to comply with any
272 of the provisions of this Franchise, unless otherwise provided for herein,
273 the City may serve upon School District a written notice to so comply
274 within thirty (30) days from the date such order is received by School
275 District. If School District is not in compliance with this Franchise after
276 expiration of said thirty (30) day period, the City may act to remedy the
277 violation and may charge the costs and expenses of such action to
278 School District; provided, however, if any failure to comply with this
279 Franchise by School District cannot be corrected with due diligence
280 within said thirty (30) day period (School District's obligation to comply
281 and to proceed with due diligence being subject to unavoidable delays
282 and events beyond its control), then the time within which School District
283 may so comply shall be extended for such time as may be reasonably
284 necessary, and so long as School District commences promptly and
285 diligently to effect such compliance.

286
287 The City may act without the thirty (30) day notice in case of an
288 emergency. In the event the School District fails to cure defaults as
289 provided above on more than two (2) occasions within any one (1) year
290 period, the City may in addition, by ordinance, declare an immediate
291 forfeiture of this Franchise.

292
293 Section 8. Nonexclusive Franchise. This Franchise is not and
294 shall not be deemed to be an exclusive Franchise. This Franchise shall
295 not in any manner prohibit the City from granting other and further
296 franchises over, upon, and along the Franchise Area that do not
297 interfere with School District's rights under this Franchise. This
298 Franchise shall not prohibit or prevent the City from using the Franchise

299 Area or affect the jurisdiction of the City over the same or any part
300 thereof.

301
302 Section 9. Franchise Term. This Franchise is and shall remain
303 in full force and effect for a period of ten (10) years from and after the
304 effective date of the Ordinance, and may be renewed for an additional
305 ten (10) years upon the written agreement of School District and the
306 City; and provided further, however, School District shall have no rights
307 under this Franchise nor shall School District be bound by the terms and
308 conditions of this Franchise unless School District shall, within thirty (30)
309 days after the effective date of the Ordinance, file with the City its written
310 acceptance of this Franchise, in a form substantially similar to **Exhibit**
311 **A**, attached hereto and incorporated herein by reference.

312
313 Section 10. Compliance with codes and regulations.

314
315 A. The rights, privileges and authority herein granted are
316 subject to and governed by this Franchise and all other applicable
317 ordinances and codes of the City as they now exist or may hereafter be
318 amended. Nothing in this Franchise limits the City's lawful power to
319 exercise its police power to protect the safety and welfare of the general
320 public. Any location, relocation, erection or excavation by School
321 District shall be performed by School District in accordance with
322 applicable federal, state and city rules and regulations, including the
323 City's "Pre-approved Plans and Policies," and any required permits,
324 licenses, fees, and/or applicable safety standards then in effect.

325
326 B. Upon written inquiry, School District shall provide a
327 specific reference to either the federal, state, or local law, or the WUTC.
328 order or action establishing a basis for School District's actions related
329 to a specific franchise issue.

330
331 C. In the event that any territory served by School District is
332 annexed to the City after the effective date of this Franchise, such
333 territory shall be governed by the terms and conditions contained in this
334 Franchise upon the effective date of such annexation.

335
336 D. School District is responsible for painting over or
337 removing any graffiti on the School District's Facilities defined in this
338 Franchise. School District shall commence removal or painting over
339 graffiti within ten (10) days of receiving written notice from the City and
340 it shall diligently pursue completion of such removal or painting.

341
342 Section 11. Undergrounding. The City encourages School
343 District to locate or relocate its facilities underground when and where
344 practical. School District acknowledges that the City desires to promote
345 a policy of undergrounding of Facilities within the Franchise Areas.
346 School District shall cooperate with the City in the undergrounding of
347 School District's Facilities within the Franchise Areas. If, during the term
348 of this Franchise, the Facilities within any Franchise Area are
349 undergrounded, after not less than sixty (60) days' written notice from
350 the City regarding the undergrounding project, the School District shall

351 participate and pay its proportionate share for the Fiber Optic Cable to
352 be undergrounded based upon the School District's proportional
353 ownership of the fiber strands being underground, as illustrated in
354 Section 4.A. School District shall comply with all federal, state and City
355 regulations on undergrounding. This Section 11 shall govern all matters
356 related to undergrounding of School District's Facilities (i.e., conversion
357 or otherwise) within the Franchise Areas.

358
359 (a) Street improvements. If the City undertakes any
360 street improvement that otherwise would require relocation of
361 School District's above-ground facilities in accordance with
362 subsection 4(a) above, or if subsection 4(c) above applies, the
363 City may, by written notice to School District, direct that School
364 District convert any such Facilities to underground Facilities.
365 Any such conversion shall be done subject to and in accordance
366 with schedules and Tariffs on file with the WUTC.

367
368 (b) Location of equipment. All equipment to be
369 installed within the Franchise Area shall be installed
370 underground; provided, however, that such equipment or
371 Facilities may be installed above ground if so authorized by the
372 City, such as splice boxes, which authorization shall not be
373 withheld unreasonably or delayed, consistent with the provision
374 of the City's Land Use Code and applicable development
375 standards.

376
377 Section 12. Record of Installations and Service. With respect to
378 excavations by School District and the City within the Franchise Area,
379 School District and the City shall each comply with its respective
380 obligations pursuant to Chapter 19.122 RCW and any other applicable
381 state law.

382
383 Upon written request of the City, School District shall provide the
384 City with the most recent update available of any plan of potential
385 improvements to its Facilities within the Franchise Area; provided,
386 however, any such plan so submitted shall be for informational purposes
387 within the Franchise Area, nor shall such plan be construed as a
388 proposal to undertake any specific improvements within the Franchise
389 Area.

390
391 "As built drawings" of the precise location of any Facilities placed
392 by School District in any street, alley, avenue, highway, easement, etc.,
393 shall be made available to the City within thirty (30) working days of
394 request. As-built drawings of all Facilities existing as of the date of
395 execution of this Franchise shall be provided to the City within thirty (30)
396 days of the date the Kirkland City Council approves the Franchise.

397
398 Section 13. City Use of Facilities.

399
400 A. With respect to trenches that are Facilities and that are
401 (1) owned by School District and (2) within the Franchise Area, the City,
402 subject to School District's prior written consent, which may not be

403 withheld unreasonably, may install and maintain City owned conduit in
404 such trenches, for police, fire and other noncommercial communications
405 purposes, subject to the following:

406
407 (1) Such installation and maintenance shall be done
408 by the City and any additional costs shall be at the City's
409 expense;

410
411 (2) School District shall have no obligation under the
412 indemnification provisions of the Franchise for the installation or
413 maintenance of such City-owned wires or conduits.

414
415 (3) School District shall not charge the City a fee for
416 the use of such trenches in accordance with this Section as a
417 means of deriving revenue therefrom; provided, however,
418 nothing herein shall require School District to bear any cost or
419 expense in connection with such installation and maintenance
420 by the City.

421
422 B. City Access. If the City requests telecommunication
423 services from School District, terms and conditions of the provision of
424 such services shall be determined between School District and the City
425 in a separate agreement.

426
427 C. Pole Attachment Agreements. It is agreed and
428 understood that School District shall not install poles in the Franchise
429 Area, nor shall it acquire poles from any other entity with Facilities in the
430 Franchise Area; provided, however, that nothing in this Franchise shall
431 prohibit School District from entering into pole attachment agreements
432 with pole-owners in the Franchise Area.

433
434 Section 14. Shared Use of Excavations. School District and the
435 City shall exercise best efforts to coordinate construction work that
436 either party may undertake within the Franchise Area so as to promote
437 the orderly and expeditious performance and completion of such work
438 as a whole. Such efforts shall include, at a minimum, reasonable and
439 diligent efforts to keep the other party and other utilities within the
440 Franchise Areas informed of its intent to undertake such construction
441 work. School District and the City shall further exercise best efforts to
442 minimize any delay or hindrance to any construction work undertaken
443 by themselves or other utilities within the Franchise Area.

444
445 If at any time the School District, the City, or another franchisee
446 shall cause excavations to be made within the Franchise Area, the party
447 causing such excavation to be made shall afford the other, upon receipt
448 of a written request to do so, an opportunity to use such excavation,
449 provided that:

450
451 (a) Such joint use shall not unreasonably delay the
452 work of the party causing the excavation to be made;

453

454 (b) Such joint use shall be arranged and
 455 accomplished on terms and conditions satisfactory to both
 456 parties. The parties each shall cooperate with other utilities in
 457 the Franchise Area to minimize hindrance or delay in
 458 construction.
 459

460 The City reserves the right to not allow open trenching for five
 461 years following a street overlay or improvement project. School District
 462 shall be given written notice at least 90 days prior to the commencement
 463 of the project. Required trenching due to an emergency shall not be
 464 subject to five year street trenching moratoriums.
 465

466 The City reserves the right to require School District to joint
 467 trench with other facilities if both parties are anticipating trenching within
 468 the same franchise area and provided that the terms of (a) and (b) above
 469 are met.
 470

471 Section 15. Insurance.
 472

473 A. Insurance Required. Throughout the term of this
 474 Franchise, School District shall obtain and maintain insurance of the
 475 types and coverage as described below:
 476

477 (1) Commercial General Liability Insurance shall be
 478 written on ISO occurrence form CG 00 01 and shall cover liability
 479 arising from premises, operations, independent contractors,
 480 products-completed operations, personal and advertising injury,
 481 and liability assumed under an insured agreement. There shall
 482 be no exclusion for liability arising from explosion, collapse or
 483 underground property damage. The City shall be included as an
 484 additional insured under School District's Commercial General
 485 Liability insurance policy using ISO Additional Insured
 486 endorsement CG 20 10 10 01 and Additional Insured-Completed
 487 Operations endorsement CG 20 37 10 01 or substitute
 488 endorsements providing at least as broad coverage. Blanket
 489 additional insured endorsements are acceptable.
 490

491 Commercial General Liability insurance shall be written with
 492 limits of \$1,000,000 each occurrence and \$2,000,000 general
 493 aggregate.
 494

495 (2) Workers' Compensation coverage as required by the
 496 Industrial Insurance laws of the State of Washington and
 497 employer's liability insurance subject to limits of \$1,000,000 per
 498 accident and \$1,000,000 per employee and policy limit for
 499 disease covering School District liability for work-related injuries
 500 to all School District employees.
 501

502 B. Other Insurance Provisions. The Commercial General
 503 Liability insurance policy required by this Franchise shall contain, or be
 504 endorsed to contain, the following provisions:
 505

506 (1) Except with respect to any claim or loss that arise
 507 from the negligence or willful misconduct of City, School
 508 District's insurance coverage shall be primary insurance as
 509 respects the City and any insurance, self-insurance, or self-
 510 insured pool coverage maintained by the City shall be excess
 511 of the Contractor's insurance and shall not contribute with it.
 512

513 (2) School District shall provide the City with written
 514 notice of any policy cancellation, within thirty (30) days of their
 515 receipt of such notice.
 516

517 (3) Notwithstanding any requirements hereunder to the
 518 contrary, to the extent permitted by applicable laws and
 519 regulations, School District shall be permitted to meet the
 520 above requirements through a program of self-insurance and/or
 521 may obtain such coverage through a risk pool authorized by
 522 Chapter 39.24 RCW.
 523

524 C. Acceptability of Insurers. Insurance is to be placed with
 525 insurers with a current A.M. Best rating of not less than A:VII.
 526

527 D. Verification of Coverage. School District shall furnish
 528 the City with a Certificate of Insurance (or self-insurance), and copies
 529 of any applicable endorsements, including but not necessarily limited
 530 to the additional insured endorsement, evidencing the insurance
 531 requirements of School District.
 532

533 E. Failure to Maintain Insurance. Failure on the part of
 534 School District to maintain the insurance as required shall constitute a
 535 material breach of this Franchise, upon which the City may, after giving
 536 thirty (30) days' notice to School District to correct the breach,
 537 immediately terminate the Franchise or, at its discretion, procure or
 538 renew such insurance and pay any and all premiums in connection
 539 therewith, with any sums so expended to be repaid to the City on
 540 demand.
 541

542 Section 16. Tariff Changes. If School District shall file, pursuant
 543 to Chapter 80.28 RCW, with the WUTC any tariff affecting the City's
 544 rights arising under this Franchise, School District shall give the City
 545 Clerk written notice thereof within five (5) days of the date of such filing.
 546

547 Section 17. Assignment. All of the provisions, conditions, and
 548 requirements contained herein shall be binding upon School District,
 549 and no right, privilege, license or authorization granted to School District
 550 hereunder may be assigned or otherwise transferred without the prior
 551 written authorization and approval of the City, which the City may not
 552 withhold unreasonably.
 553

554 Section 18. Miscellaneous. If any term, provision, condition or
 555 portion of this Franchise shall be held to be invalid, such invalidity shall
 556 not affect the validity of the remaining portions of this Franchise which
 557 shall continue in full force and effect. The headings of sections and

558 paragraphs of this Franchise are for convenience of reference only and
559 are not intended to restrict, affect, or be of any weight in the
560 interpretation or construction of the provisions of such sections or
561 paragraphs.
562

563 In consideration for the shared use of the franchise by the City
564 and the School District, the City shall waive costs in drafting and
565 processing this Franchise and all work related thereto. School District
566 shall not be subject to any franchise permit fees or any other fees or
567 expenses associated with activities undertaken through the authority
568 granted in the franchise ordinance for projects subject to and associated
569 with the General Terms and Conditions for sharing of fiber optic
570 installment projects by members of the Community Connectivity
571 Consortium, or under the laws of the City.
572

573 City has the right, but not the obligation, to take over control and
574 ownership of School District's facilities in the ROW, specifically including
575 the fiber-optic network, without compensation, if: (1) such facilities are
576 abandoned; or (2) in the event this Franchise is terminated and School
577 District does not remove such facilities at its own expense.
578

579 This Franchise may be recorded with the King County recording
580 office. This Franchise may be amended only by written instrument,
581 signed by both parties, which specifically states that it is an amendment
582 to this Franchise, and is approved and executed in accordance with the
583 laws of the State of Washington. Without limiting the generality of the
584 foregoing, this Franchise (including, without limitation, Section 5 above)
585 shall govern and supersede and shall not be changed, modified,
586 deleted, added to, supplemented or otherwise amended by any permit,
587 approval, license, agreement or other document required by or obtained
588 from the City in conjunction with the exercise (or failure to exercise) by
589 School District of any and all rights, benefits, privileges, obligations, or
590 duties in and under this Franchise, unless such permit, approval,
591 license, agreement, or document specifically:
592

593 (a) references this Franchise; and
594

595 (b) states that it supersedes this Franchise to the
596 extent it contains terms and conditions that change, modify,
597 delete, add to, supplement, or otherwise amend the terms and
598 conditions of this Franchise.
599

600 Except as may be stated in an Interlocal Agreement between the
601 City and the District, in the event of any conflict or inconsistency
602 between the provisions of this Franchise and the provisions of any such
603 permit, approval, license, agreement or other document, the provisions
604 of this Franchise shall control.
605

606 This Franchise is subject to the provisions of any applicable tariff
607 now or hereafter on file with the Washington Utilities and Transportation
608 Commission or its successor. In the event of any conflict of

609 inconsistency between the provisions of this Franchise and such tariff,
610 the provisions of such tariff shall control.

611
612 Section 19. Notice. Any notice required or permitted to be given
613 to the parties under this Franchise may be sent via U.S. mail to the
614 following addresses unless otherwise specified:

615
616 City of Kirkland
617 123 Fifth Avenue
618 Kirkland, WA 98033
619 Attn: City Clerk

620
621 Lake Washington School District No. 414
622 Attn: Executive Director of Technology Services
623 PO Box 97039
624 Redmond, WA. 98073-9739

625
626 With a copy to:

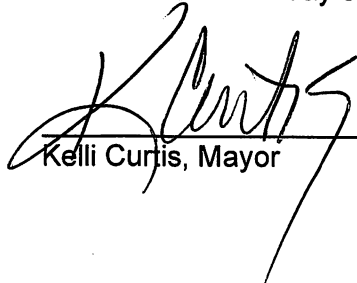
627
628 David B. Johnston
629 PRK Livengood PLLC
630 1850 Skyline Tower
631 10900 NE Fourth Street
632 Bellevue, WA 98004-8341

633
634 The parties may stipulate in writing, from time to time, for certain types
635 of notices, to agree to service of written notice via email. In such
636 instances, the stipulation must include the full names and titles of the
637 recipients, along with their email addresses, and must include the
638 purpose and duration of the stipulation. For instance, the parties can
639 agree to provide notices to each other under Section 11 of this Franchise
640 for a one (1) year period.


641
642 Section 20. Effective date. This Ordinance, in compliance with
643 RCW 35A.47.040, shall be in full force and effect five (5) days from and
644 after its passage by the Kirkland City Council and publication pursuant
645 to Section 1.08.017 Kirkland Municipal Code in the summary form
646 attached to the original of this ordinance and by this reference approved
647 by the City Council.

648
649 Passed by majority vote of the Kirkland City Council in open
650 meeting this 16th day of January, 2024.

651
652 Signed in authentication thereof this 16th day of January, 2024.


Kelli Curtis, Mayor

Attest:



Jamie Lynn Estell, Deputy City Clerk

Approved as to Form:

Publication Date: January 25, 2024



Darcey Eilers, Senior Assistant City Attorney

PUBLICATION SUMMARY
OF ORDINANCE NO. 4869

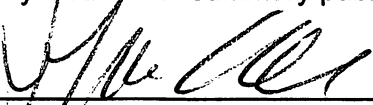
AN ORDINANCE OF THE CITY OF KIRKLAND GRANTING THE LAKE WASHINGTON SCHOOL DISTRICT NO. 414, A PUBLIC SCHOOL DISTRICT, A FRANCHISE FOR THE RIGHT, PRIVILEGE, AND AUTHORITY TO CONSTRUCT AND MAINTAIN, REPAIR, REPLACE, AND OPERATE UPON, OVER, UNDER, ALONG AND ACROSS THE FRANCHISE AREA FOR PURPOSES OF THE DISTRICT'S FIBER OPTIC CABLE NETWORK.

1 SECTIONS 1 - 19. Provide for the grant to the Lake
2 Washington School District No. 414 of a franchise for ten years on
3 specified terms and conditions.
4

5 SECTION 20. Authorizes publication of the ordinance by
6 summary, which summary is approved by the City Council pursuant to
7 Section 1.08.017 Kirkland Municipal Code and establishes the effective
8 date as five days after publication of summary.
9

10 The full text of this Ordinance will be mailed without charge to
11 any person upon request made to the City Clerk for the City of Kirkland.
12 The Ordinance was passed by the Kirkland City Council at its meeting
13 on the 16th day of January, 2024.
14

15 I certify that the foregoing is a summary of Ordinance 4869
16 approved by the Kirkland City Council for summary publication.



Jamie Lynn Estell, Deputy City Clerk

Exhibit A

ACCEPTANCE OF FRANCHISE GRANTED BY CITY OF KIRKLAND
ORDINANCE NO. O-4869

The Lake Washington School District No. 414, a Washington municipal corporation, accepts the nonexclusive Franchise granted to the District by the City of Kirkland via Ordinance No. O-4869.

I certify and declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed this ___ day of _____, 2024, at _____, Washington.

Lake Washington School District No. 414

Name: _____

Title: _____