



AGENDA

1. Call to Order
2. Attendance Roll Call
3. General Public Comment
4. Proclamation for Local News Day
5. Proclamation for Arbor Day
6. Presentation by HASCO (Housing Authority of Snohomish County)
7. Presentation on Year-End Police Department Report
8. Review and Vote on Ordinance Adopting Lumen/Forged Fiber 37 Franchise Agreement
9. Review Fiscal Sustainability Recommendations
10. City Manager's Report
11. Review April 16, 2026 Meeting Agenda (Meeting Cancelled)
12. Council Comments
13. Adjournment

To listen to the meeting via telephone, call 1-253-215-8782. To watch the meeting online: 1) Go to <https://zoom.us/join>; 2) Enter meeting ID 810 1113 9518 and click "join." No passcode needed.

To provide public comment or testimony remotely (via Zoom or telephone), please refer to the Public Comment and Public Hearing Testimony Protocol on the city website <https://www.cityofmlt.com/129/Agendas-and-Minutes>.

To submit written public comment or hearing testimony, mail to/drop off at City Hall (23204 58th Avenue W., Mountlake Terrace, WA 98043) or email remarks to Jennifer Joki, jjoki@mltwa.gov, no later than 4 p.m. on the public hearing date.

No person shall make personal attacks or threatening remarks while addressing the Council which disrupts, disturbs, or otherwise impedes the orderly conduct of the meeting. All hate speech will be construed as threatening remarks.

CITY OF MOUNTLAKE TERRACE PROCLAMATION

Local News Day

WHEREAS, strong communities depend on strong local news and information to keep residents informed, connected, and prepared; and

WHEREAS, local news organizations provide verified, independent reporting that helps residents make everyday decisions about schools, public safety, health care, small businesses, elections, and community events; and

WHEREAS, access to trusted local news and information strengthens civic participation, supports transparency and accountability in government, and fosters a culture of informed citizenship; and

WHEREAS, local journalists serve as essential members of our community—attending public meetings, covering emergencies, highlighting community achievements, and telling the stories that reflect who we are; and

WHEREAS, Local News Day is a national day of action connecting people with local, independent, and trusted news sources in their own communities, and encouraging residents to learn about, engage with, and support the newsrooms that serve them; and

WHEREAS, participation in Local News Day provides an opportunity for residents, institutions, and local governments to celebrate the value of local news and information through community events, public recognitions, and visible acts of support;

NOW THEREFORE, I, Steve Woodard, Mayor of the City of Mountlake Terrace, on behalf of the City Council, hereby present this proclamation to local journalists and encourage all residents to recognize the importance of trusted local news and information and to engage with the local news organizations that serve our community.

PROCLAIMED BY THE CITY COUNCIL ON APRIL 9, 2026.

Mayor Woodard

ATTEST: _____

CITY OF MOUNTLAKE TERRACE

PROCLAMATION



WHEREAS, in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of trees; and

WHEREAS, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

WHEREAS, Arbor Day is now observed throughout the nation and the world; and

WHEREAS, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce life-giving oxygen, and provide habitat for wildlife; and

WHEREAS, trees are a renewable resource giving us paper, wood for our homes, fuel for our fires and countless other wood products; and

WHEREAS, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

WHEREAS, trees, wherever they are planted, are a source of joy and spiritual renewal, and

WHEREAS, April 8 is Arbor Day in the State of Washington and April 24 is the nationally recognized Arbor Day,

NOW THEREFORE, I, Mayor Steve Woodard, on behalf of the Mountlake Terrace City Council, do hereby proclaim April 24, 2026 as

Arbor Day

in the City of Mountlake Terrace, and ask our residents to celebrate Arbor Day to support efforts to protect our trees and woodlands, and to plant trees to gladden the heart and promote the well-being of this and future generations.

PROCLAIMED BY THE CITY COUNCIL ON APRIL 9, 2026.

MAYOR: _____
Steve Woodard

ATTEST: _____
City Clerk

Getting to Know HASCO

Chris Collier, MPA
Director of Government Relations
Housing Authority of Snohomish County

Mountlake Terrace City Council
April 9, 2026
ccollier@hasco.org | 425-231-2486 (cell)

Covered Today

- History of PHAs
- What is a Washington State PHA
- HASCO in Snohomish County and Mountlake Terrace
- Recent activities and news
- The big picture

- Not covered today:
 - Voucher program specifics, shortfall
 - Property development specifics
 - Regional demographic trends / data



A Washington State Housing Authority

- Authorized by 42 USC 1437c – “United States Housing Act” (1937)
- Washington State RCW 35.82 – “Housing Authorities Law” (1939)
- Snohomish County SCC 2.64 – “Housing Authority” (1971)
- Can (thanks to RCW):
 - Issue bonds, loans/debt, receive grants, housing with 50% units below 80% AMI, rental and ownership (not used now), eminent domain (not used now)
 - Community partnership, experimentation, study, and much more
- Cannot: Tax
 - Making them dependent on self-generated revenue from properties, or...
 - Focused on tax-funded programs (vouchers, Public Housing, LIHTC, etc.)

HASCO In Community

- 4,300 vouchers of different types & focus areas
 - Veteran, senior, family reunification, disabled, and more
- In Mountlake Terrace, 164 vouchers in use (March 25)
- Have an Interlocal Agreement making HASCO *your* housing authority

- 2,768 housing units of all types, income levels, and locations
- 91 HASCO-owned affordable units in MLT, of 210 total



Westend, Marysville, 133 units



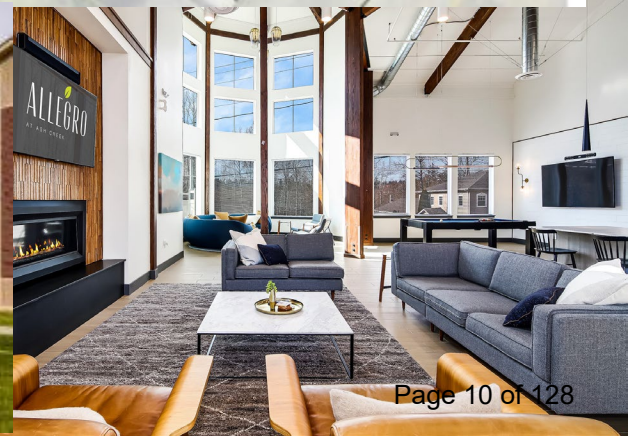
East Terrace Apartments,
MLT, 14 units



Trillium, MLT
40 units, senior

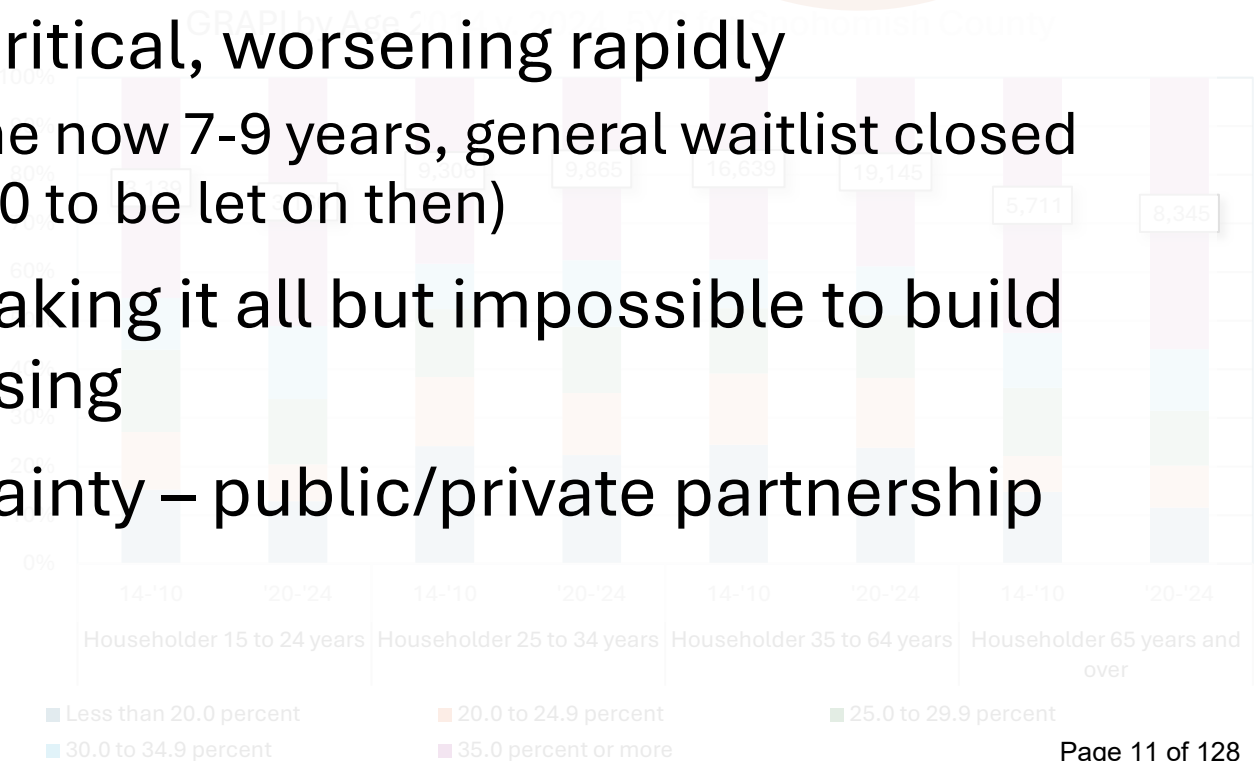
New & Exciting News

- 200th Street (Lynnwood, 124 senior & family);
- Leonard Crossing (Marysville, 124 units (<60% AMI));
- Vaughn Village (Lynnwood Habitat Partnership, 8 Cottages for Seniors);
- The Allegro (164th & Ash Way), 240 workforce TOD units
- 488 units in ~1.5 years

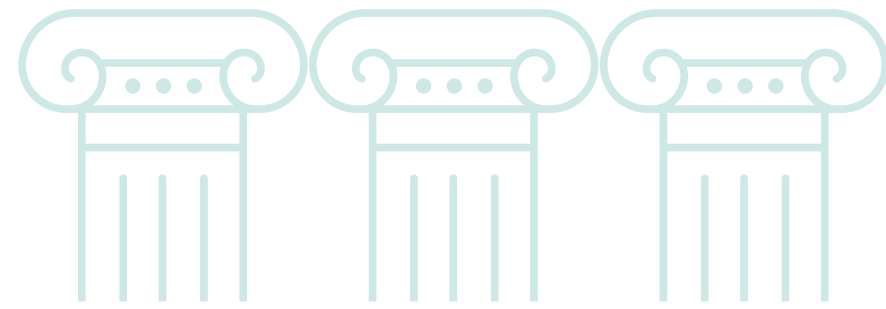


Not All Good News – Challenges & Needs

- Increasing difficulty in development from all directions for HASCO
 - Financing & subsidy, cost to build (land, labor, materials), operate
 - Growing development complexity
 - Private market production slowing down, risk of rent increases again
- Senior rental housing, already critical, worsening rapidly
 - Senior / Disabled waitlist wait time now 7-9 years, general waitlist closed until probably 2027 or 2028 (2-300 to be let on then)
- Subsidy sources tapped out, making it all but impossible to build <50% Area Median Income housing
- Federal policy & funding uncertainty – public/private partnership



HASCO & Mountlake Terrace



- HASCO strategic plan: Financial stability, preservation, expanded opportunities, organizational strength and best practices (technology, client service, etc.)
- What that means: 50-80% AMI, portfolio re-capitalization, increase portfolio by 30%, community partnership
- City housing Goals & Policies in match HASCO's mission
 - Here to participate and help, like Policy HO-2.3
 - Can lend expertise in code review, community outreach, Housing Action Plan
 - Working with AHA & other cities to develop HB 1406 fund RFP & contract documents, cottage housing plans (senior & first-time housing), and more!
- Please help us in our work!
 - Join us in state and federal outreach – your voice matters
 - Appreciate Policy HO-1.5's direction for flexibility, this helps bring down costs

Conclusion

- HASCO is ready to compliment staff work & Comp Plan
 - Not on the Org Chart, but we're here!
- Our landscape is shifting, HASCO working to keep up with the times
- Appreciate the City's flexibility and support
- HASCO is working to support a healthy overall ecosystem, top to bottom – Our Mission
- Happy to come back and talk specifics – vouchers, finance & development, trends, anything at all

Questions?

Chris Collier, MPA
Director of Government Relations
Housing Authority of Snohomish County
ccollier@HASCO.org | 425-231-2486

MOUNTLAKE TERRACE POLICE 2025 ANNUAL POLICE DEPARTMENT REPORT



WASHINGTON STATE ACCREDITED

VISION

SERVE ~ SUPPORT ~ DEFEND



MISSION

The mission of the City of Mountlake Terrace Police Department is to “Serve” the community with professionalism and integrity – “Support” the Constitution, Laws and Core Values as set forth by its citizens and “Defend” the individual rights, human dignity and quality of life for all who live, visit and work within Mountlake Terrace.

MESSAGE FROM THE CHIEF



PETE CAW
CHIEF OF POLICE



In 2025, we continued our work in bringing a new generation of police officers and future leaders into the profession. The Police Department has maintained accreditation with the Washington Association of Sheriffs and Police Chiefs (WASPC) since 2011. Less than thirty percent of Washington law enforcement agencies are successful in attaining this accreditation. We focus on fostering a culture of partnership with the community as we recognize community support and trust is paramount to our mission of- SERVE-SUPPORT-DEFEND.



METHODS

“Rickover’s Rules”



Admiral Hyman Rickover was the father of the U.S. nuclear navy, which continues to have an excellent safety record despite the highly complex and dangerous nature of its mission. He developed and often shared his seven “rules” for success. The Department incorporates his methods for seeking excellence.

- 1. You must have a rising standard of quality over time and well beyond what is required for any minimum standard.**
- 2. People running complex systems must be highly capable.**
- 3. Supervisors have to face bad news when it comes and take problems to a level high enough to fix those problems.**
- 4. You must have a healthy respect for the dangers and risks of your particular job.**
- 5. Training must be constant and rigorous.**
- 6. You must have a robust auditing process to assure that what you say you are doing, you are in fact doing.**
- 7. The organization and members must have the ability and willingness to learn from mistakes of the past.**



GOALS PHILOSOPHY

Goals must be measurable, attainable and consistent with community expectations. The Department continues to embrace the “Six Pillars” identified in President Obama’s 2015 Task Force on 21st Century Policing as part of its goals.

- 1. Building Trust and Legitimacy**
- 2. Policy and Oversight**
- 3. Technology and Social Media**
- 4. Community Policing and Crime Reduction**
- 5. Training and Education**
- 6. Officer Wellness and Safety**

DEPARTMENT GOALS

1. Provide a safe community for everyone:

a) Utilize department resources effectively.

- Continue to use our unmanned aerial vehicle program in an effort to leverage technology for the purpose of increasing the safety of officers and the community. This program utilizes unmanned aerial vehicles to help provide time, distance and shielding, three tactics referenced in recent legislative updates, policy and procedures.
- Traffic/ DUI enforcement/ VOTF (Violent Offenders Task Force).

b) Focus on community oriented policing and outreach.

- Continue to utilize the embedded social worker program.
- Continue to provide and promote outreach programs like Cops and Clergy.
- Utilize the E-Bike program to make community contacts.

c) Work collaboratively with regional law enforcement agencies.

- Participation in the Regional Intelligence Group.
- Partnership with the United States Marshals Office as a member of the regional Violent Offender Task Force.

d) Incorporate education and long-term solution strategies with enforcement.

e) Work with city departments in order to maintain a clean and inviting environment.

DEPARTMENT GOALS

2. Recruit and retain quality personnel / Replacing retiring Department members.

- a) **Maintain high standards for personnel selection.**
- b) **Provide opportunity and new challenges for personnel.**
- c) **Focus on succession planning and developing the next generation of Department leaders.**
- d) **Maintain auditing systems to ensure policy compliance and community expectations are being met.**
 - **Spidrtech**
 - **Command review of critical incidents**
 - **Accreditation auditing and compliance**
 - **Lexipol**
 - **Operate a comprehensive and robust in-service training program**
- e) **Focus on finding candidates of differing backgrounds and diverse communities.**

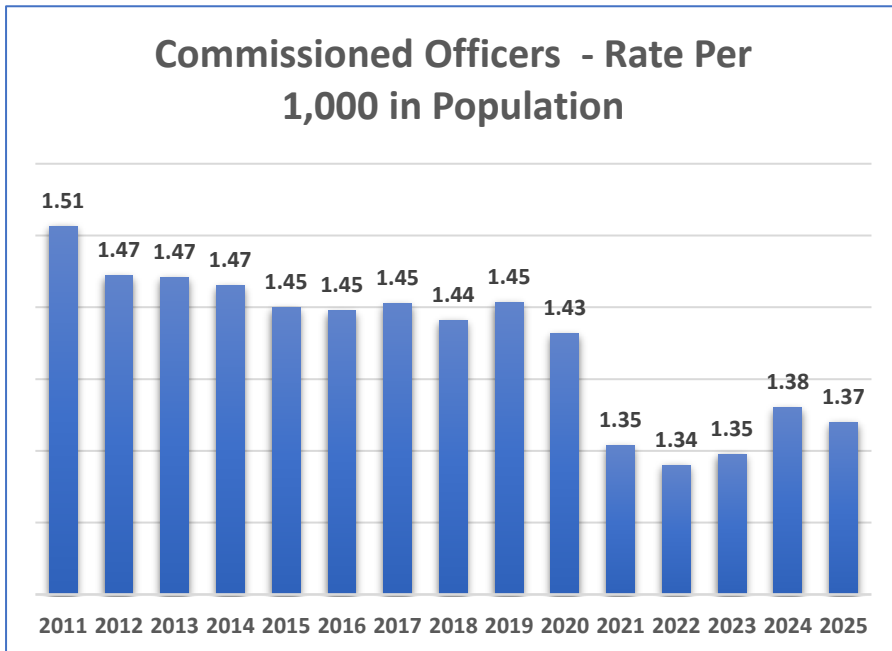
DEPARTMENT GOALS

3. Be regional leaders and set the example for modern policing as it relates to community expectations:
 - a) Listen to community feedback and implement change as appropriate.
 - b) Update and modify policy and procedures promptly.
 - c) Develop and promptly instruct internal training programs consistent with legislative mandates and current events.
 - d) Focus on fostering a culture of partnership with the community.
 - e) Be as transparent as possible.
 - f) Recognize community support and trust is paramount to our success.
 - g) Be proactive in incorporating improvements and efficiencies in lieu of a wait and see approach.
 - h) Fiscal Responsibility.

WASHINGTON ASSOCIATION OF SHERIFFS & POLICE CHIEFS STAFFING DATA

WASHINGTON STATE REMAINS LAST IN NATION IN PER CAPITA POLICE STAFFING

(Lacey, WA) Preliminary data for full-time law enforcement staffing in 2025 in Washington State shows that the per capita rate (officers per thousand population) has fallen further behind. Washington has ranked 51st in the nation (the fifty states and District of Columbia) for officers per capita for 15 consecutive years. The Washington Association of Sheriffs and Police Chiefs (WASPC) tracks the data for use in state and federal crime rate reports. The net increase of a total of 68 officers statewide from 2024 to 2025 was offset by the increase in population of 79,400 for a net decrease of rate per 1,000, to 1.37.



	Rate per 1,000	Population	Officers
2000	1.56	20,451	32
2011	1.60	20,027	28
2026	1.03	25,198	26
	1.07	25,198	27
	1.11	25,198	28

OPERATIONS DIVISION

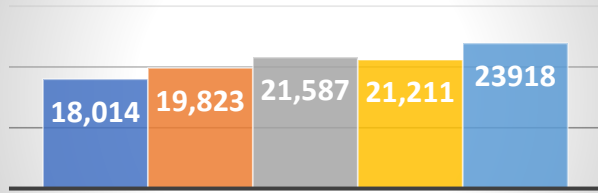
MIKE HAYNES
OPERATIONS COMMANDER



Commander Haynes began his career in law enforcement in 1994. In 2001 Commander Haynes began his career with the Mountlake Terrace Police Department. Commander Haynes currently manages the Patrol Division. Patrol is often referred to as the ‘backbone of policing’. This is not only because it is the largest and most visible division, but because patrol is responsible for the successful completion of critical tasks assigned on a daily basis.

OPERATIONS DIVISION BY THE NUMBERS

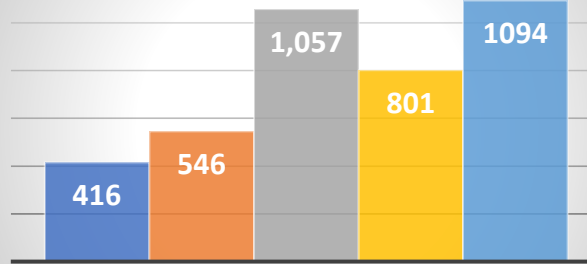
CALLS FOR SERVICE



EACH TIME AN OFFICER IS DISPATCHED OR INITIATES THEIR OWN ACTIVITY

■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

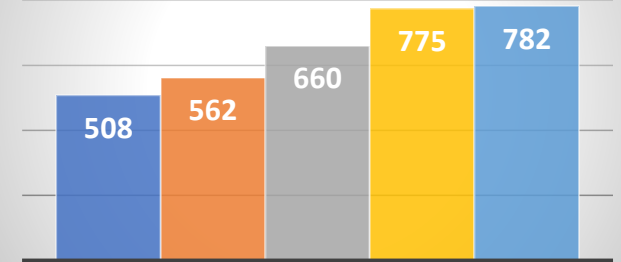
INFRACTIONS



NON-CRIMINAL TRAFFIC VIOLATIONS

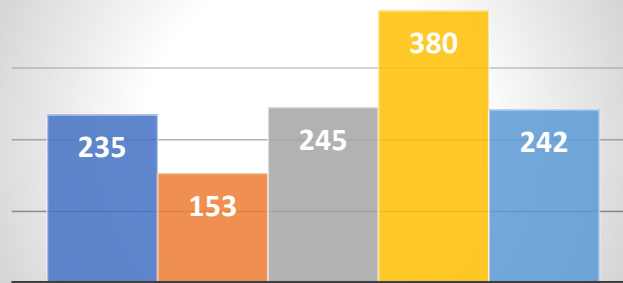
■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

ARRESTS



■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

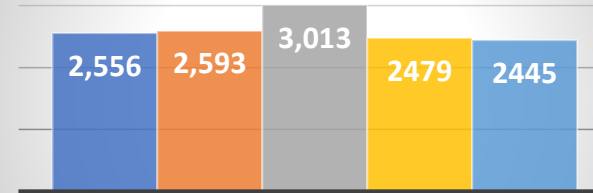
CITATIONS



SUSPENDED LICENSE, RECKLESS DRIVING, ETC

■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

REPORTS

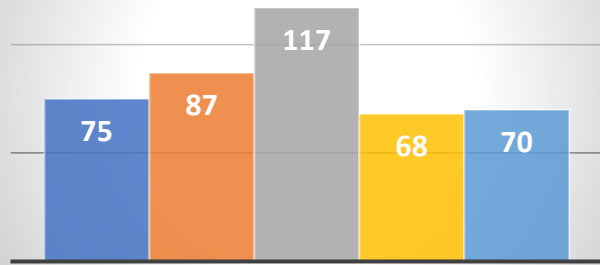


A CALL THAT REQUIRES A POLICE REPORT TO BE WRITTEN

■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

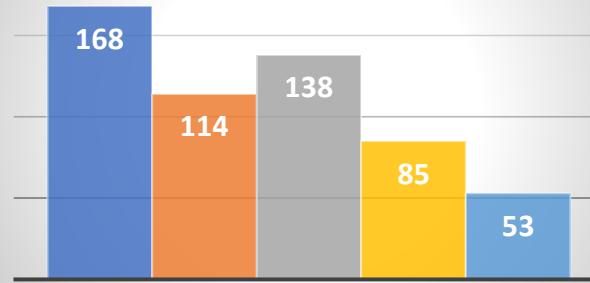
OPERATIONS DIVISION BY THE NUMBERS

BURGLARIES



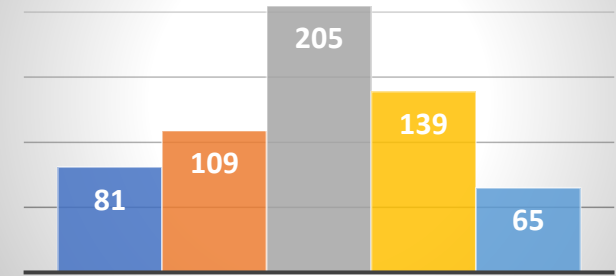
■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

VEHICLE PROWLDS



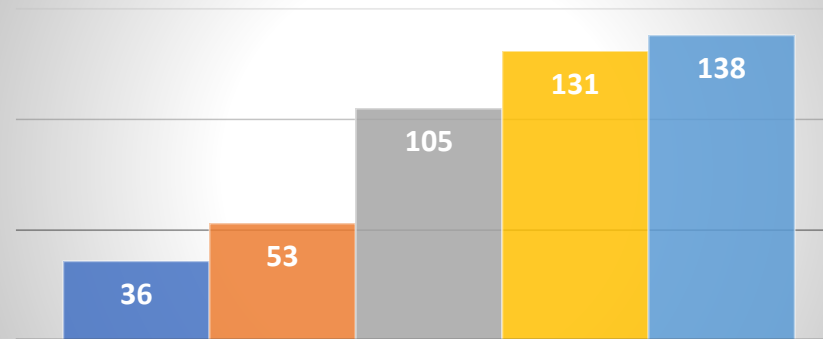
■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

VEHICLE THEFT



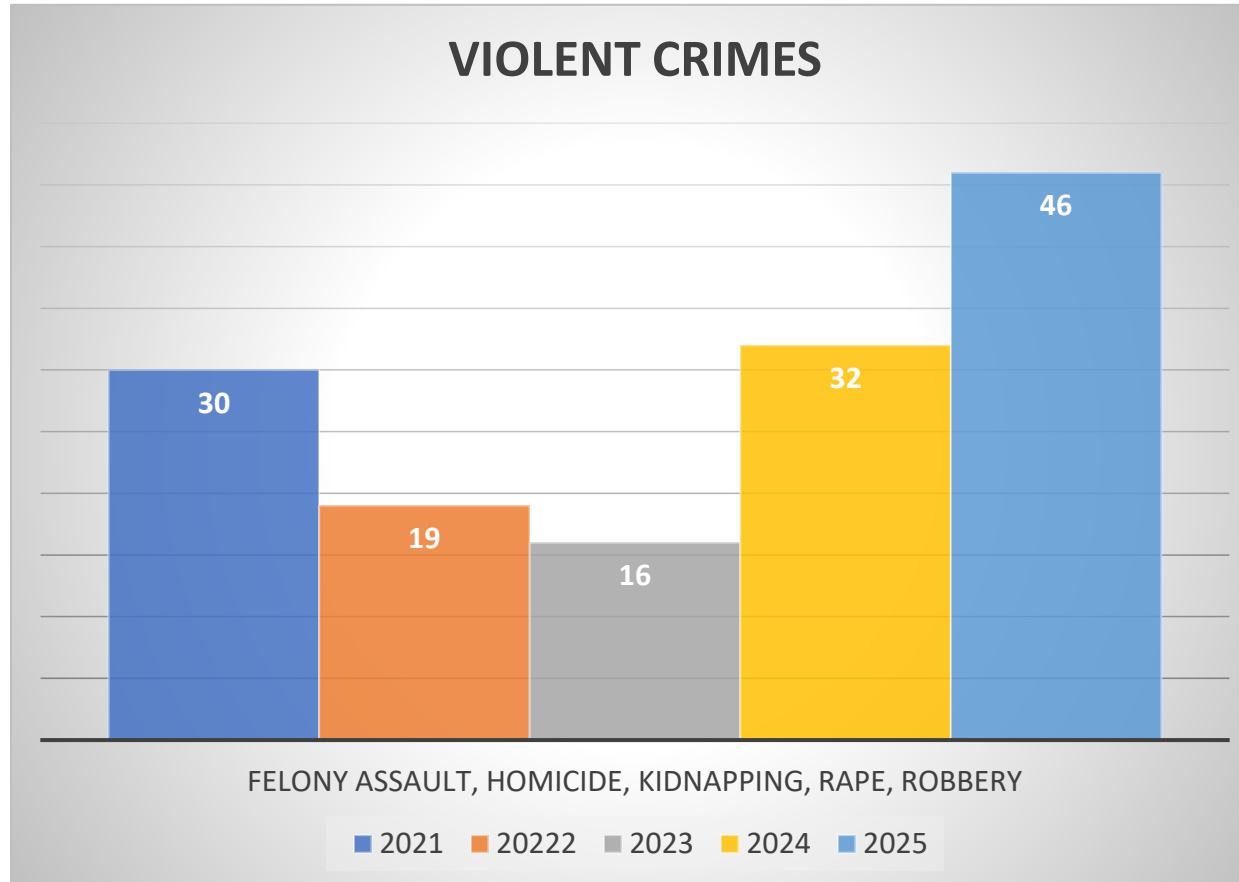
■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

DUI



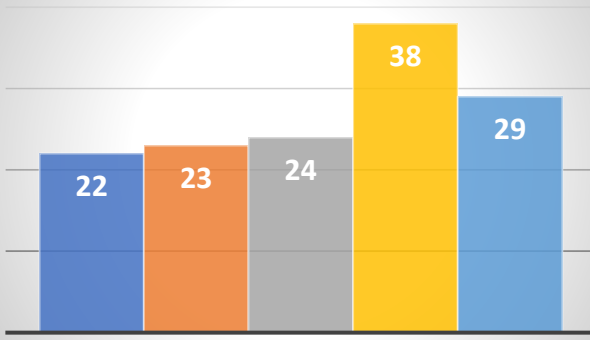
■ 2021 ■ 2022 ■ 2023 ■ 2024 ■ 2025

OPERATIONS DIVISION BY THE NUMBERS

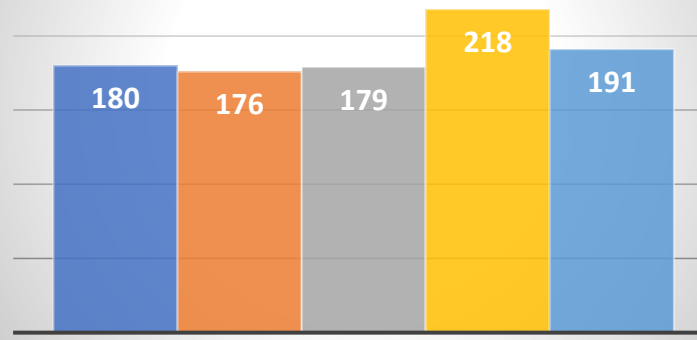


2025 DOMESTIC VIOLENCE

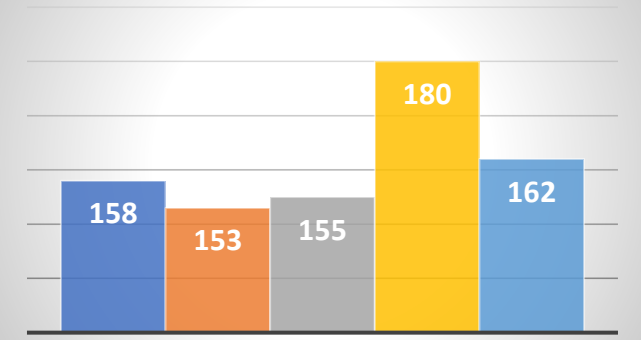
FELONY



DOMESTIC VIOLENCE CRIMES



MISDEMEANOR



2025 CRITICAL ACTIVITY ANALYSIS

Use of Force

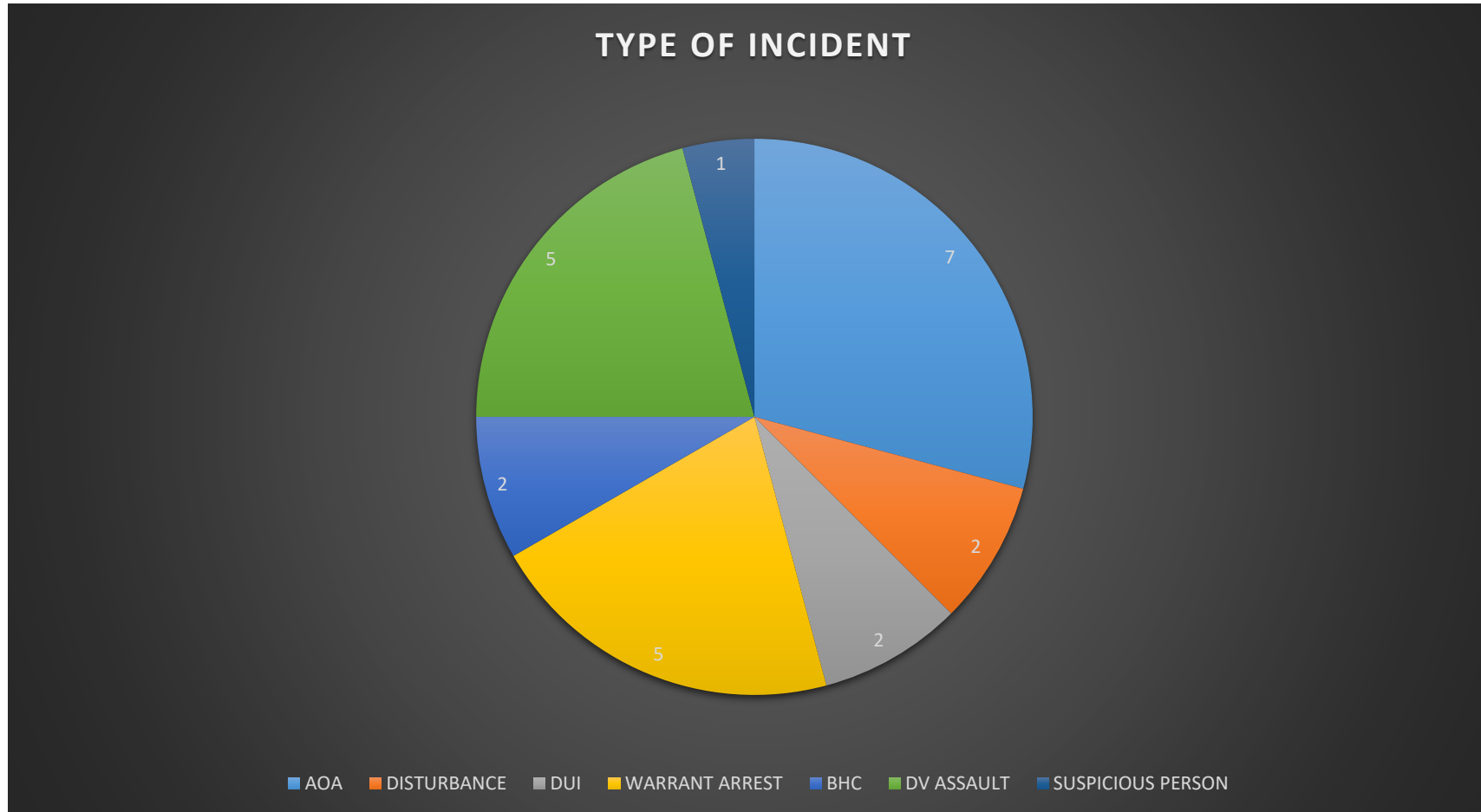
There were forty-one (41) individual officer applications in twenty-four (24) incidents in 2025. All reported use of force incidents were non/less lethal.

TYPE OF FORCE	2021	2022	2023	2024	2025
PHYSICAL CONTROL	35	34	47	42	37
PHYSICAL RESTRAINT DEVICE	3	4	1	9	0
PHYSICAL STRIKE	0	2	2	1	1
LESS LETHAL TOOL – COERCIVE DISPLAY	0	0	1	1	1
LESS LETHAL TOOL USED	9	6	6	5	1
K-9	0	0	0	1	0
FIREARM – COERCIVE DISPLAY	0	0	0	0	1
FIREARM USED	0	0	0	0	0
PER YEAR	47	46	57	59	41

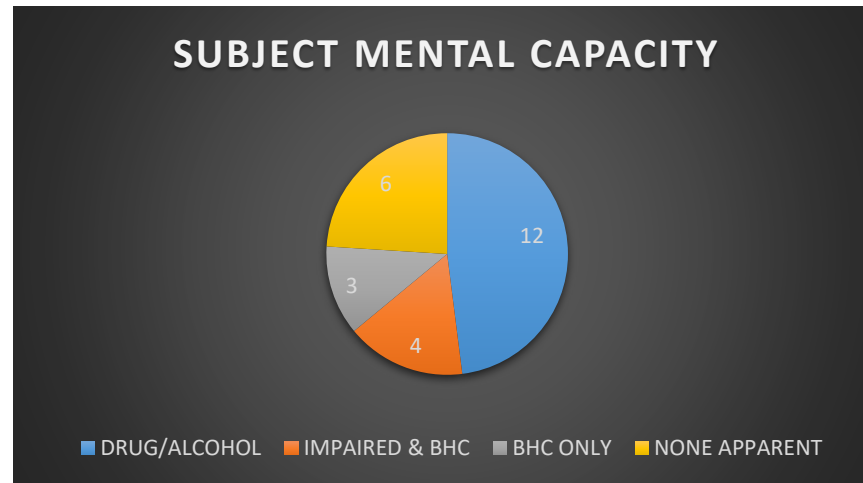
Table reflects the highest level of force used by each officer in each incident.

2025 CRITICAL ACTIVITY ANALYSIS

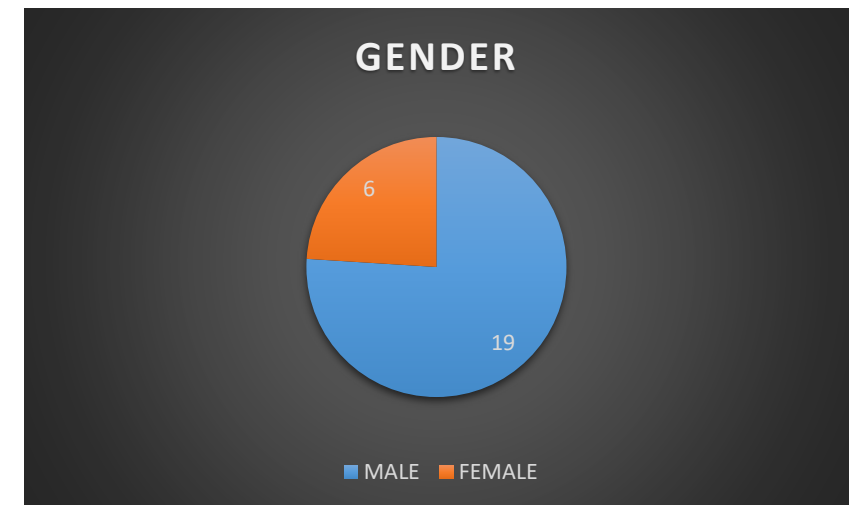
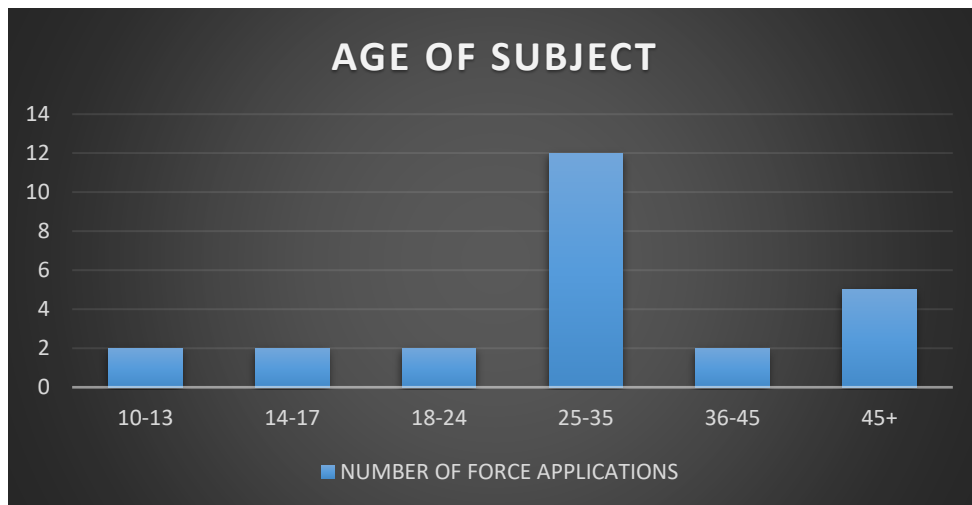
The type of incidents officers responded to resulting in the use of force included the following: Domestic Violence Assault (5), Assist other agency (7), Disturbance (2), DUI/PC (2), Warrant Arrest (5), Behavioral Health Crisis (2), and Suspicious Person (1).



2025 CRITICAL ACTIVITY ANALYSIS



BHC = BEHAVIORAL HEALTH CALL



2025 CRITICAL ACTIVITY ANALYSIS

Review Process:

The review process for use of force applications examines the circumstances surrounding the incident and subject/officer factors at the time force was applied. The review is forwarded through the chain of command. Supervisory and command review each contain the following:

- Examining the initial circumstances surrounding the incident and whether the officer had a legal right to be at the location when force was used.
- The exigency of initial contact by the officer with the violator in relation to waiting for additional officers to arrive to assist.
- Possible alternatives and/or reasonableness of the use of force in relation to the circumstances at the time.

The information and data from the command review process is utilized to identify training needs and patterns of behavior that can be used as an early warning system and/or defend the city against possible litigation.

A command review was conducted for each of the twenty-four (24) incidents involving use of force. All force applications were found to be in compliance with department policy and procedures.

2025 CRITICAL ACTIVITY ANALYSIS

VEHICLE PURSUITS

Due to the inherent danger vehicle pursuits pose to the community and department personnel, officers are required to exercise excellent judgment when evaluating the necessity of initiating a pursuit. The safety of the community is paramount to our overall mission and policy incorporates this principle. Department policy is consistent with current law and best practices.

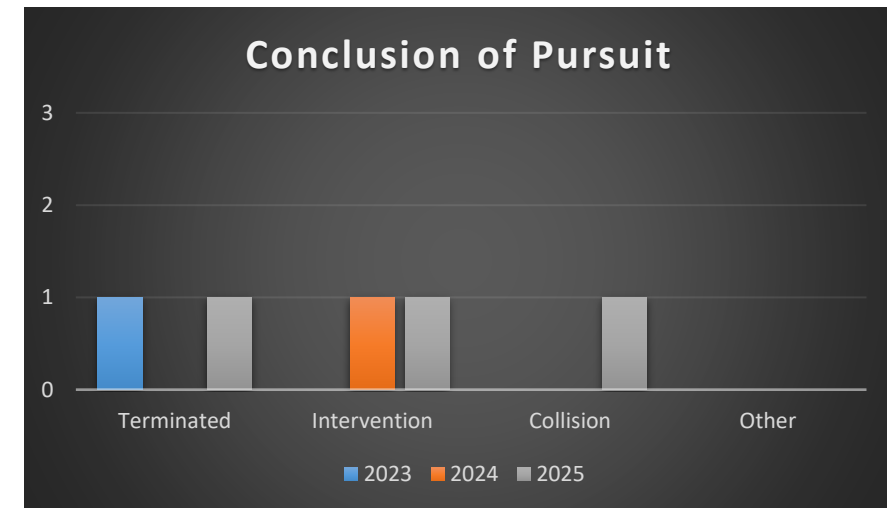
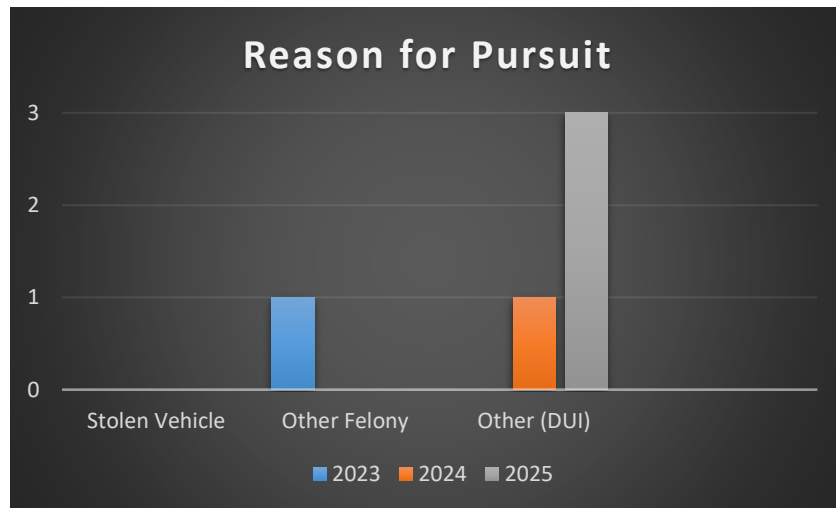
The 2025 Mountlake Terrace Police Department Pursuit Review uses data from the past years to compare trends. In 2025, officers were involved in three (3) vehicle pursuits. Information in this analysis reviews and compares the pursuits from the current year to previous years. The data is broken down into sections, which includes a specific analysis of speed, distance, road conditions, pursuit termination, the outcome of pursuits, and reasons for eluding.



2025 CRITICAL ACTIVITY ANALYSIS

2025 Vehicle Pursuits:

- Patrol attempted to stop a vehicle for a registration violation. The driver failed to yield, and the officer initiated a pursuit. The pursuit was terminated by the shift supervisor.
- Patrol assisted Edmonds Police with a driver suspected of driving under the influence. The driver failed to yield and a pursuit was initiated. A Mountlake Terrace officer deployed a pursuit intervention technique successfully, safely ending the pursuit.
- Patrol attempted to stop a vehicle for a moving violation. The driver failed to yield, and the officer initiated a pursuit. The pursuit concluded when the officer's vehicle became disabled.



2025 CRITICAL ACTIVITY ANALYSIS

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2025 CRITICAL ACTIVITY ANALYSIS

Internal Investigations and Complaints

The city and the department offer a variety of methods for citizen feedback

Comment forms are available on our website and in the department lobby. Feedback is solicited from customers utilizing Spidrtech after each call for service and subsequent case closure. Contact information is not required to submit a complaint. These are forwarded to the Command Staff for review and action when appropriate.

During the reporting period there were twelve (12) complaints received. There were four (4) sustained complaints during 2025. Three (3) were internally initiated (supervisory).

During 2025 officers responded to approximately 22,000 incidents, resulting in eight (8) external complaints, or approximately one (1) complaint for every 2,750 interactions. Each of these complaints was thoroughly investigated and determined to be unfounded with the exception of one (1).

There was one (1) complaint involving the accusation of bias. This complaint was thoroughly investigated and determined to be unfounded.

Complaints:	2025	Unfounded	Sustained	Other
Procedural	9	5	4	0
Driving	0	0	0	0
Demeanor/Conduct	3	3	0	0
Internal Investigations:	2025	Unfounded	Sustained	Other
	0	0	0	0

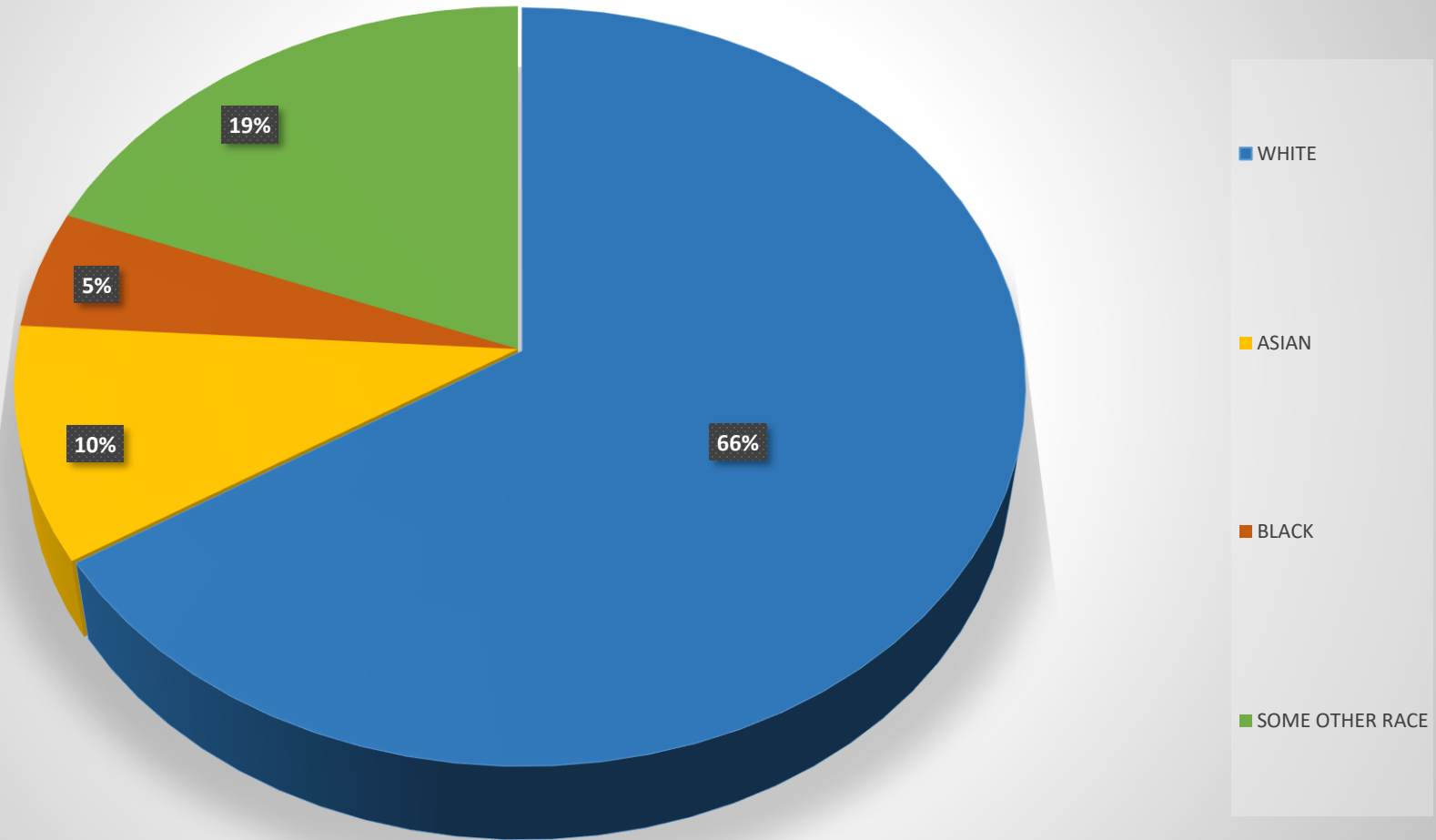
2025 CRITICAL ACTIVITY ANALYSIS

The Mountlake Terrace Police Department strictly prohibits bias based policing

- **Sergeants regularly review policy pertaining to this subject with employees, at a minimum of once annually.**
- **In 2025 staff continued to attend bias training, harassment and emotional intelligence training.**
- **All employees are assigned supervisors and are evaluated on a regular basis. This can be as often as daily for a new officer during field training to annually for permanent non-probationary employees. No behavior indicative of bias has been reported by any staff during the review period.**

2025 DEMOGRAPHICS

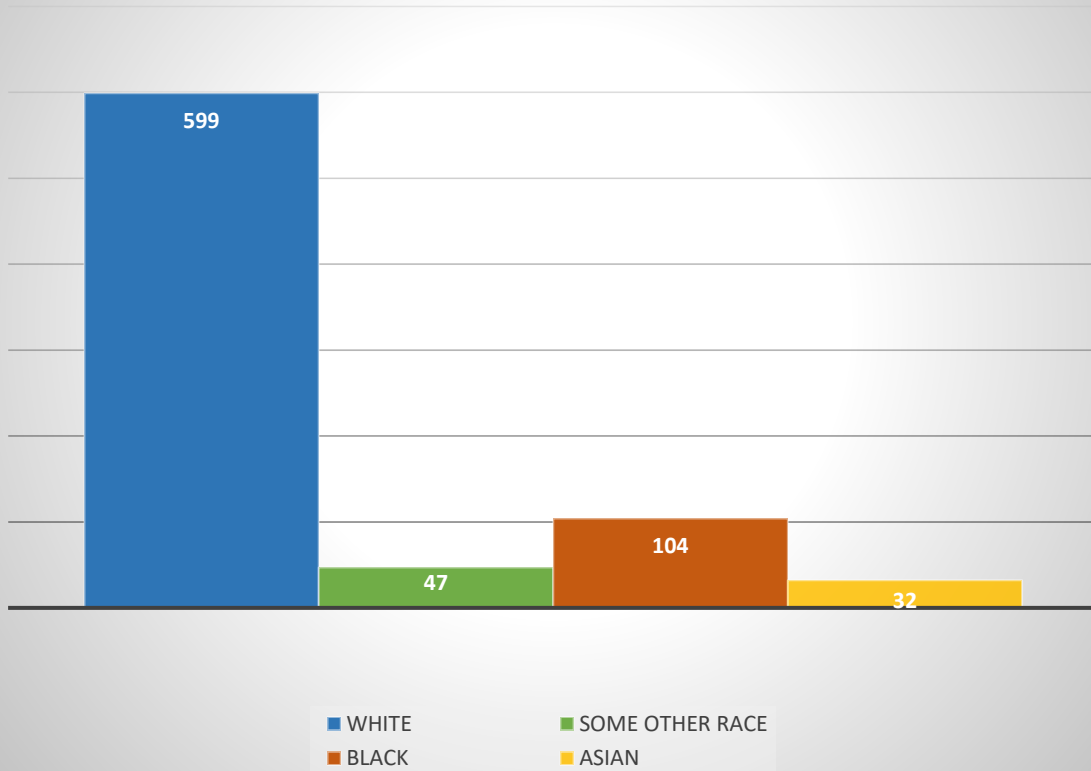
MOUNTLAKE TERRACE DEMOGRAPHICS



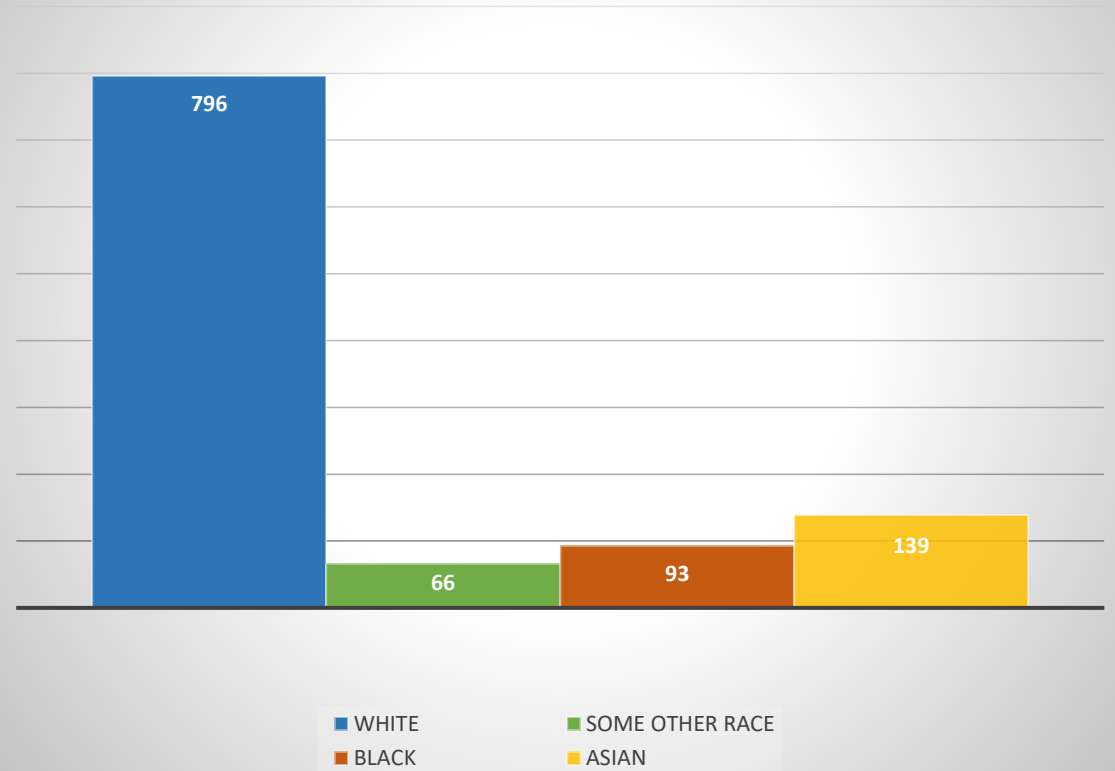
SOME OTHER RACE = Native American, Pacific Islander, Alaska Native, Native Hawaiian, Unknown Race, 2+ Race.

2025 ENFORCEMENT BY RACE

2025 ARRESTS BY RACE



2025 INFRACTIONS BY RACE



SPECIAL SERVICES DIVISION



SCOTT KING
SPECIAL SERVICES COMMANDER



Commander King received his Bachelors of Science in Landscape Architecture from The Ohio State University in 1997 and pursued a career as a Landscape Designer until 2002. In 2003 King graduated from the Basic Law Enforcement Academy and began his career as a police officer with Mountlake Terrace Police Department. Commander King currently manages the Special Services Division, which consists of investigations, records, animal control, evidence, domestic violence coordinator, community outreach, training, and police support specialist.

Technology Overview

- The unmanned aerial systems program continues to grow and has become increasingly relevant to daily operations.



- The department began to transition to Axon mobile audio video systems in fleet vehicles.
- Less lethal impact weapons were updated using modern sighting equipment and placed in each patrol vehicle.
- The department began the body worn camera upgrade from the 3rd generation cameras to the 4th generation.
- The department upgraded several software platforms to PowerDMS. These systems included scheduling, evaluations, field training and daily shift training.
- The department purchased new pepper ball less lethal launchers.
- The department continues to utilize the Spidrtech platform. This system provides valuable feedback from the community and helps us to focus on community priorities.

Technology Overview

“THE SPIDR TECH PLATFORM”

- **A law enforcement agency’s relationship with its community begins with its customers. The interactions that agency employees have with the community members they come into contact with can build trust and goodwill or cause negative effects which can get amplified in the information age. This is why customer service is a top priority for every modern law enforcement agency. The SPIDR Tech platform is the world’s first customer service infrastructure built exclusively for law enforcement.**
- **It enables law enforcement agencies to automatically send one-to-one text messages, emails and mobile-friendly surveys to crime victims, reporting parties and other members of the community. These messages are triggered by RMS and CAD data. SPIDR Tech fits around your communications and investigation workflows.**

“The Officer’s calming demeanor and his willingness to listen helped defuse my anxiety. I also appreciated his willingness to be a buffer between me and the individual that hit my car.”

“I absolutely love our police department. They’re always so helpful and kind. It feels like they are part of the neighborhood. I believe that they genuinely care about our community.”

“I’m very satisfied and thankful for excellent job policemen Jeffery Zarnick did. His advice, directions and explanation were very good, and I followed it to achieve my goals. He deserves to be recognized for the excellent job he did. Big thanks to him!”

“Thank you for your service and helping our community I have felt the Mountlake Terrace police department has put effort over the years to connect with citizens in our community protect and serve our community. I can honestly say that the police department cares and is going above and beyond.”

“All interactions were professional and the officer was quick to respond. Thank you for all you do and all you risk keeping the residents of MLT safe :)”

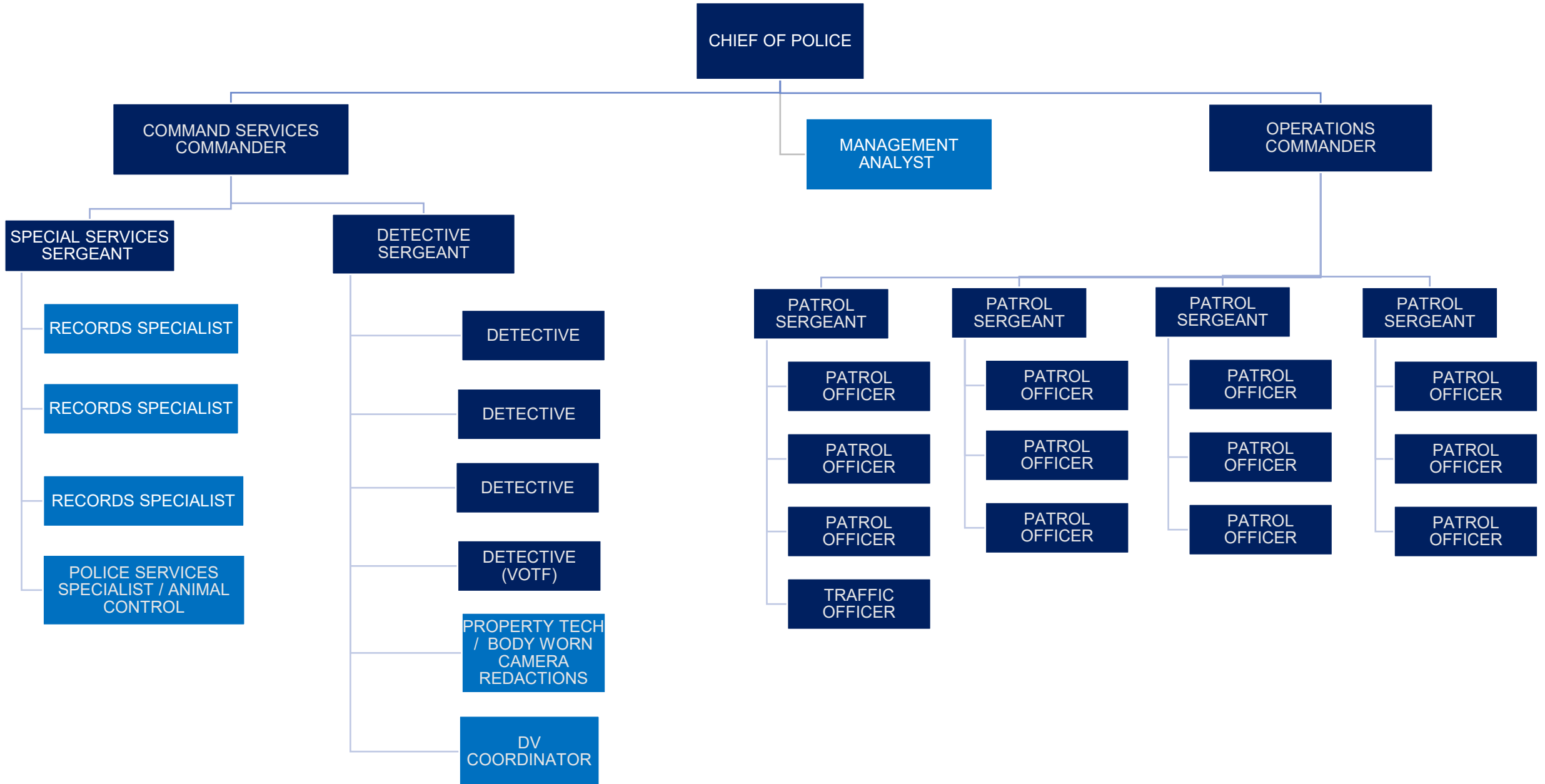
“Call via 911 to report a bicycle vs car collision. Police and fire were very professional. I’m a 23-year MLT resident and am very satisfied with our emergency services”

“I spoke with Officer Marshall who was incredibly professional, aware, efficient and embodied what modern day police officers should aspire to be. Authority was not aggressive, but firm and the issue was resolved without danger to any party involved. He was the responding officer and did his department a service by displaying integrity and competency and cultural awareness. He was stern but not unkind to the perpetrator, which was appreciated. Officer Marshall deserves some laurels. Thank you for keeping my blind mother safe!”

“I appreciated the empathy and professionalism with having Officer Ratliff come out. She was empathetic and shared I did the right thing to call.”

“I just want to say you ladies and gentlemen are the best law enforcement agency in the area. Thank you.”

ORGANIZATIONAL CHART





STAFFING OVERVIEW

- The police department is a full-service organization consisting of 28 commissioned officers complimented by noncommissioned staff (animal control, property technician, domestic violence coordinator, 3 records staff and management analyst).
- The department maintains high standards for employment candidates and conducts extensive background investigations exceeding state law requirements.
- The department recognizes the importance of keeping qualified and well-trained staff. The department maintains a robust training program in order to contribute to the development of personnel and in consideration of succession planning.

STAFFING OVERVIEW

- Officer Look was selected to join the Investigations Division.
- Officer Fee was selected to join the Investigations Division.
- Detective Zuniga was reassigned to patrol as an acting supervisor.
- Detective Sheets was reassigned to patrol as an acting supervisor.
- Officer Van Orman was selected for the traffic enforcement officer position.
- Detective Nguyen was selected as an acting supervisor.
- Officer O'Hagan resigned.
- Officer Alnsour resigned.
- Officers Wiegand and Russell were selected and certified as drone pilots.
- Officer Froisland has been working as the interim homeless liaison officer.
- Officer Ratliff earned Drug Recognition Expert certification.
- Sergeant Perry renewed his Defensive Tactics Instructor certification.
- Officers Zarnick and Ball earned Taser Instructor certifications.
- Officer Russell earned Patrol Tactics Instructor certification.
- Officer Zarnick earned Defensive Tactics Instructor certification.
- Officer Wiegand earned Emergency Vehicle Operations Instructor certification.
- Officers Ball, Ratliff and Russell earned Field Training Officer certification.



DEPARTMENT TRAINING

TRAINING REQUIREMENTS:

All commissioned personnel are required to receive a minimum of 24-hours of training per year as outlined in the Washington Administrative Code and the Revised Code of Washington. Additionally, there are specific areas of training that are Accreditation and State mandated:

- Initial Crisis Intervention Training and Two-Hour Annual Refresher
- Blood Borne Pathogen, Hazardous Materials handling and Fire Extinguisher Use
- Firearms Qualifications
- Emergency Vehicle Operations
- Force Response and Vehicle Pursuit Policy Review.
- Vehicle Pursuit Policy Review
- 24 Hour Patrol Tactics



DEPARTMENT TRAINING

IN-HOUSE INSTRUCTORS

The Police Department has instructors who provide training for the Department. Having in-house instructors reduces overall training costs and provides career development opportunities for employees. The following is a list of disciplines where we currently have in-house instructors.

Firearms ~ Defensive Tactics ~ Patrol Tactics ~ Crisis Intervention Training ~ EVOC ~ Taser ~ Impact Munitions ~ Bola Wrap

The Department maintains programs which require specialized and/or on-going training. These programs include:

Field Training Officer ~ Investigations ~ Background Investigations ~ Supervision and Management ~ Records Management ~ Patrol Tactics Instructors ~ SWAT ~ Firearms ~ Defensive Tactics ~ Violent Offenders Task Force ~ sUAS Pilots ~ Public Disclosure Officer Recertification ~ Bicycle Patrol

DEPARTMENT TRAINING

ENHANCED TRAINING

The Police Department provides some generalized training on a department-wide basis through the use of webinars, training bulletins and briefing training. These include:

- **Power DMS Annual Policy Training.**
- **A library of video training is available through Police One Academy, NTOA and Mindflash.**
- **The Association of Washington Cities and the Washington Cities Insurance Authority offers training that is vetted and approved at no cost to the agency.**
- **Briefing training that includes but is not limited to 67 policy reviews and practical exercises on various policies.**

DEPARTMENT TRAINING

2025 TRAINING PLAN ACCOMPLISHMENTS

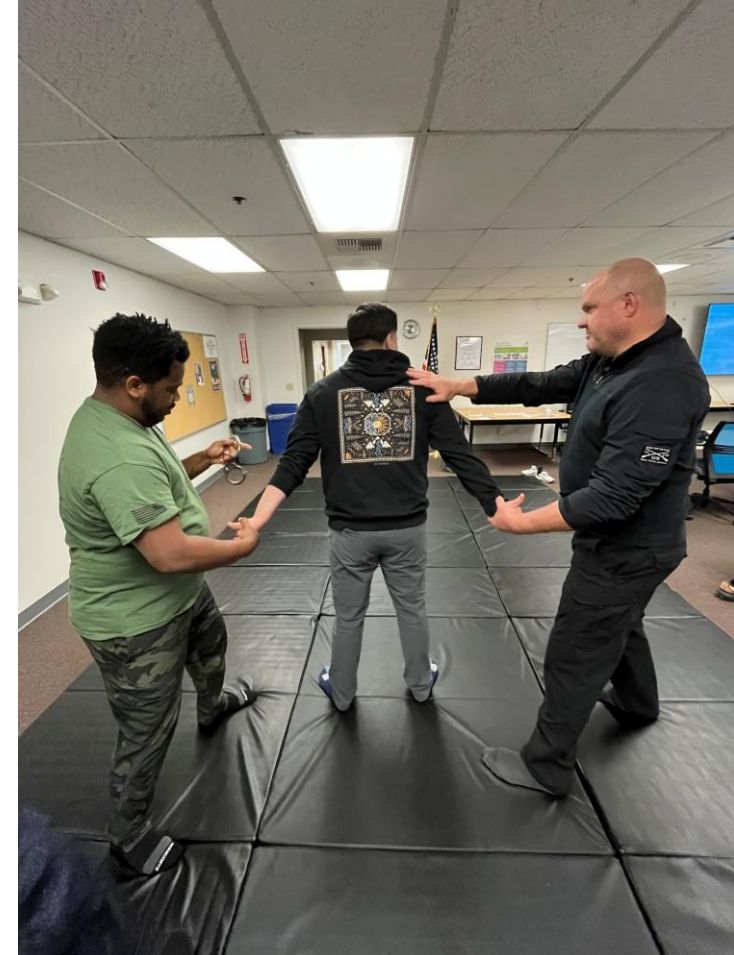
- Advanced SWAT
- 37mm Less Lethal
- ARIDE
- Advanced Auto Theft
- Background Investigations for Police Applicants
- Basic Crime Scene Photography
- Basic Homicide Investigations
- Burnout Prevention 101
- CERT Program Manager
- CIT International Conference
- Chaos to Courage – Virtual
- Collision Investigation – Basic
- Community Emergency Response Team
- Computer Network Foundations for LE
- Cracking the Digital Case
- Crime Scene Photography – The Essentials
- Crime Scene Reporting
- Criminal Investigations – Tactics, Techniques and Procedures
- Criminal Investigative Interviewing Techniques
- Crisis Intervention Refresher: Annual – All Staff
- Defensive Tactics Training
- DRE School
- EVOC Instructor
- Evidence Processing – Crime Scene to Courtroom Basics
- FBI LEEDA - Trilogy
- Field Training Officer Academy
- Fire Related Death Investigation



DEPARTMENT TRAINING

2025 TRAINING PLAN ACCOMPLISHMENTS

Firearms Qualification
Firearms Training
Gang Conference – Sno Co Regional
Good Leadership Outlasts the Leader
Harassment, Discrimination and Retaliation for Supervisors
ICAC Conference 2025
Illicit Massage Business Training
Instructor Development
Labor Conference WCIA
Optimizing Sleep
Part 107 Certification
Patrol Tactics Instructor
Pepperball Blast
Police Skills Refresher
Pre Supervisor Training
Proven Strategies for Recruitment
Search & Seizure – Blue to Gold
Sexual Assault Investigations – Victim Centered Engagement and R
Snohomish County Gang Conference
Social Media and OSINT Investigative Techniques WEB
Supervisor Leadership Institute (FBI-LEEDA)
SWAT Advanced - Team Week
The Leadership Academy
The vital Role of Preservation Letters in Investigations
UAS Basic Pilot School
UOF/CDT Instructor
WSHNA Conference
WADEPS



PROPERTY TECHNICIAN



While performing her responsibility as a Property Technician, Tammy Custer is responsible for processing, logging and tracking of each piece of property/evidence that comes through the Police Department. Custer also assists with the collection of evidence at crime scenes working in her role as a CST (Crime Scene Technician).

There was 1,160 pieces of evidence taken in and 2,080 pieces destroyed.

DOMESTIC VIOLENCE COORDINATOR



Danielle Singson is our Domestic Violence Coordinator, however she does so much more. Below is a list of some of the accomplishments Danielle completed in 2025.

- There were 369 Domestic Violence calls for service resulting in 191 Criminal DV cases.
- Danielle also assists detectives in obtaining medical records, contacting victims with case updates, scheduling forensic interviews and many other tasks relating to victims of violent crimes.
- Some of Danielle's other duties include
 - Assist with planning and execution of National Night Out event.
 - Purple Light Nights campaign.
 - Coordinating participation in Mukilteo Shop with a Cop program.
 - Organizing holiday giving campaign.
 - Participated in South County Fire's Emergency Preparedness Fair.
 - Participated in Bluebridge program.
 - Presentation on Domestic Violence at the Community Academy.

POLICE MANAGEMENT ANALYST

Joie Worthen, our Police Management Analyst, reports to Chief Pete Caw.

Some primary duties include:

- Research and cost analysis of biennium budget/producing budget reports for the Chief's Office.
- Accreditation management and compliance auditing. Serves as a State Assessor for other agency accreditation assessments and Mentor to other agencies through their accreditation and reaccreditation processes.
- As a Certified Public Records Officer, manages records within the State retention schedules.
- Addresses claims, restitution requests and compiles annual reports and surveys.
- Coordinates purchasing /financial duties for the department.
- Maintains department webpage and public facing documents.
- Manages contracts and database subscriptions.

Special projects in 2025:

- Administrator for 4 new databases for management of our policies, training, staff performance and development, and scheduling and timecards.
- Accreditation Mentor through the Washington Association of Sheriffs and Police Chiefs for three agencies.
- Prepared cost analysis for jail services. Cost analysis and RFP's for public defense and prosecutor services.
- Participated in the City Financial Survey and prepared cost reduction scenario report.
- Worked on grant applications and submissions.
- Updated the PD 2026 Workplan and Performance Measures.



Records & Animal Control



Community Outreach





AVOID SCAMS & STAY ALERT



A community meeting offering pro-tips from the Mountlake Terrace Police Department

Thursday, December 4th
9:00am to 11:00am

Join us for an engaging and informative morning at the **Lake Ballinger Center** / Creekside Room.

Financial Scams:

Detective Chuck Elrod will kick things off by shedding light on common financial scams and other threats that target seniors—offering real-world examples and practical steps you can take to stay safe and protect your assets.

Situational Awareness:

Sergeant Matt Porter—a veteran police officer and tactical trainer—will present on situational awareness: how to stay alert, avoid danger, and move confidently through your day. With clear strategies drawn from real-life experience, Sgt. Porter will empower you to trust your instincts and increase your personal safety without living in fear.



Lake Ballinger Center
23000 Lakeview Dr
Mountlake Terrace, WA
425-672-2407



ballingercenter.org

Cops and Clergy



Embedded Social Worker



Mountlake Terrace 2025	
	Clients
Initial Contact	43
Assessment Completed MH	0
Assessment Completed SUD	15
DC Completed	11
Treatment SUD Inpatient Scheduled	13
Treatment Completed SUD Inpatient	2
Treatment Initiated SUD Intensive Outpatient	5
Housing Secured	5

Initial Contact – made first contact with a new client OR a returning client who has not engaged in services for over 60 days
Assessment Completed MH – the number of clients who successfully completed a mental health assessment
Assessment Completed SUD – the number of clients who successfully completed a substance use disorder assessment
DC Completed – the number of clients who successfully completed their stay at the Diversion Center without being asked to leave or absconding
Treatment SUD Inpatient Scheduled – the number of clients scheduled for an inpatient treatment bed
Treatment Completed SUD Inpatient – the number of clients who successfully completed inpatient SUD treatment
Treatment Initiated SUD Intensive Outpatient – the number of clients who became engaged in Intensive Outpatient (IOP) treatment
Housing Secured – the number of clients who successfully moved into independent housing

INVESTIGATIONS



Detective Chuck Elrod, Detective Martin Look, Detective Madison Fee and Detective Sergeant Megan Sheets

INVESTIGATIONS

134 cases were assigned to Investigations 2025.

- **APS -1**
- **Assault- 17**
- **Burglary- 10**
- **Death Investigation- 24**
- **Found Property- 1**
- **Fraud- 6**
- **Malicious Mischief- 3**
- **Missing Person-9**
- **Robbery- 8**
- **Sex Offense- 29**
- **Suspicious Circumstance- 14**
- **Theft- 6**
- **Threats- 6**

What is ICAC?



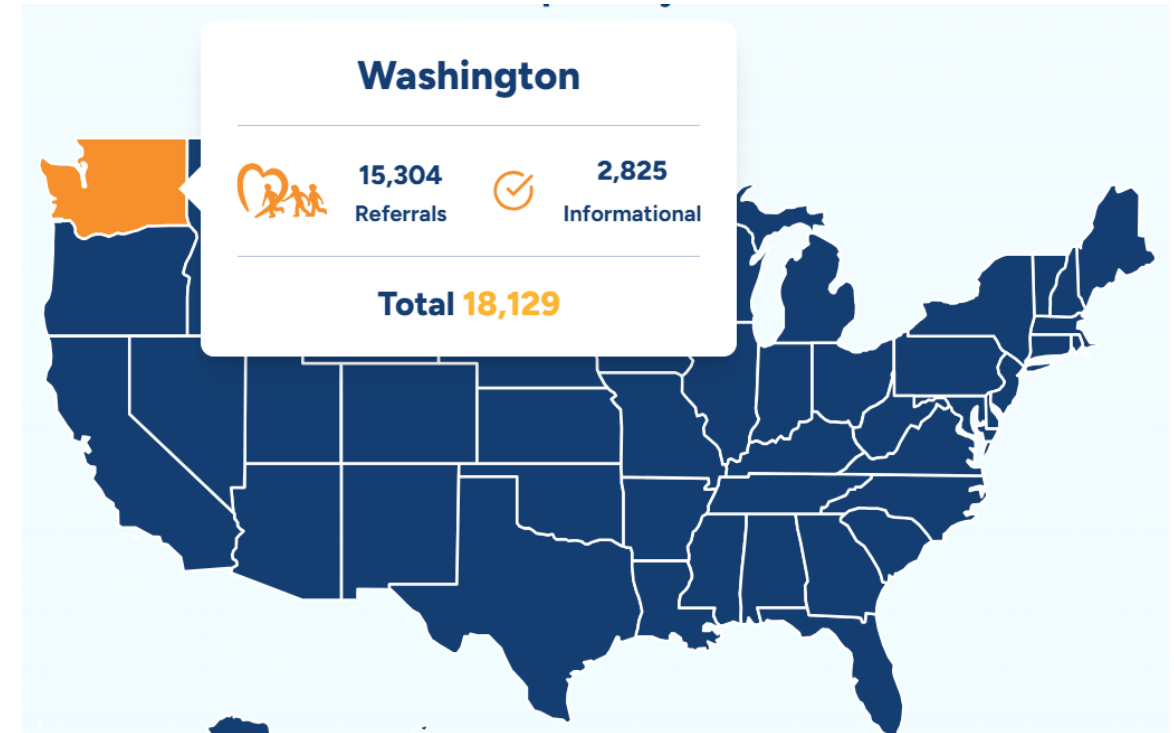
Internet Crimes Against Children



Developed in 1998, ICAC is a national network of 61 coordinated task forces representing over 5400 federal, state, and local law enforcement, dedicated to investigating, prosecuting, and developing effective response to internet crimes against children.


The Problem:

- The National Center for Missing and Exploited Children in 2024 (most recent statistics) received 20.5 million reports of suspected child sexual exploitation.
- In 2024, reports contained 62.9 million images, videos, and other files related to the child sexual exploitation incident reported.
- In 2024, the State of Washington received 15,304 CyberTip referrals through the ICAC Task Force




How does Mountlake Terrace participate in ICAC?

- Mountlake Terrace is an “affiliate agency”, attached to Seattle PD as the lead ICAC Task Force agency.
- Mountlake Terrace Investigations Unit receives “CyberTips”, assigned by Seattle ICAC Detectives.
- MLTPD works these Cybertips as assigned cases in order to determine if there is probable cause for a crime.



What does a Cybertip Investigation look like?



- The Seattle ICAC Task Force receives online tips from the National Center for Missing and Exploited Children (NCMEC).
- Typical crimes under investigation are regarding Possession or Dealing in Depictions of Minors Engaged in Sexually Explicit Conduct; also referred to as Child Sexual Assault Material (CSAM).
- Mountlake Terrace takes the information from the National Center for Missing and Exploited Children and investigates whether a suspect can be identified through legal process, and whether the digital content can be legally determined to be Child Sexual Assault Material.

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What's next?

- Once a specific crime and specific suspect can be identified, Mountlake Terrace investigators work alongside other ICAC Task Force affiliates to serve warrants, conduct interviews, affect arrests, and other steps in the investigative process.
- These are **far** from “victimless” crimes. At the end of an investigation, CSAM material may be sent to the National Center for Missing and Exploited Children where it can be compared to a database of known victims. This repository, know as the Child Victim Identification Program, ensures repeat victims can receive compensation from newly filed cases.

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What's next?

Mountlake Terrace Investigators regularly receive Cybertips about CSAM uploads occurring within the City of Mountlake Terrace.

Investigators continue to train more specifically in ICAC investigations, and the Unit continues to grow in technological capability and resources in order to most effectively investigate these crimes against children.

Resources:

www.missingkids.org

<https://www.seattle.gov/police/about-us/about-policing/icac>

<https://www.icactaskforce.org/>

www.fbi.gov



QUESTIONS?



STAFF REPORT

To: Mountlake Terrace City Council

From: Gary Schimek, Public Works Director

Meeting Date: April 9, 2026

Subject: Review and Vote on Ordinance Adopting Lumen/Forged Fiber 37 Franchise Agreement

Required Reviews:

Jennifer Joki	Created/Initiated - 04/03/2026
Gary Schimek	Approved - 04/03/2026
Sirke Salminen	New -
Hillary Evans	-
Jeff Niten	-

Council Goal(s):

Responsible Governance to Ensure Desired Level of Service

Legislative History:

City Council approved and adopted a franchise agreement and associated ordinance with Level 3 Communications on June 15, 2000. The agreement and ordinance are attached to the staff report. City Council approved and adopted a franchise agreement and associated ordinance with Time Warner Telecom on June 18, 2001. The agreement and ordinance are attached to the staff report. City Council reviewed and public hearing held on this item at the council work session on April 2, 2026.

Subject Summary:

Forged Fiber, 37 is a wholly owned subsidiary of **AT&T** and purchased a portion of the fiber business of **Lumen Technologies**, Inc. and its affiliates (“Lumen”), which includes fiber assets and associated facilities that are located within the rights-of-way of the City. **AT&T** seeks through this franchise to obtain all necessary rights to own and construct facilities within the rights-of-way in the city under the legal entity, **Forged Fiber 37, LLC**, which will take possession of the fiber assets once transferred from **Lumen**. This franchise is a new franchise agreement, and **Lumen** will maintain any existing franchises for those assets it is retaining. This franchise will authorize **Forged Fiber, 37** to install, operate, maintain, repair, replace, and upgrade conduit, fiber optic cables, mule tape, buffer tubes, vaults, splice cases (aerial and buried), poles, and related facilities in the rights of way provided that **Forged Fiber, 37** applies for and receives the necessary permits and authorizations for such installations, repairs, and

upgrades prior to the commencement of such construction activity.

There are two options for City Council consideration on this matter as shown below.

Option 1: Approve the franchise agreement and associated ordinance.

The new agreement would begin after final approval on April 9, 2026.

Option 2: Reject the franchise agreement and associated ordinance.

Forged Fiber, 37 would need to reapply for a franchise agreement under acceptable revised terms provided by the City.

Financial/Budget Impacts:

Budget Amendment Required? N/A

Budget and Sources:	N/A
Expenditure:	N/A
New Appropriation Required + Sources:	N/A

Additional Financial Information:

N/A

Community Notifications:

City Council Agenda

Newspaper

If "Other," please specify:

Board/Commission Recommendation:

N/A

Staff Recommendation:

Staff recommends the City Council vote to adopt the ordinance adopting Lumen/Forged Fiber 37 Franchise Agreement at the April 9 Council Work Session (Action Taken) after the second review.

Council Motion:

I move to adopt the ordinance adopting Lumen/Forged Fiber 37 Franchise Agreement.

Attachments:

1. Forged Fiber 37 Agreement (Draft)
2. Ordinance for Forged Fiber 37 Franchise Agreement 2026 (Draft)
3. Ordinance 2240 Franchise Agreement Level 3 Communications 06.05.2000

4. Ordinance 2286 Franchise Agreement Time Warner Telecom 06.18.2001
5. Ordinance 2521 Franchise Agreement Time Warner Telecom 08.06.2012

TELECOMMUNICATIONS FRANCHISE

between the City of Mountlake Terrace and Forged Fiber, 37 LLC

THIS TELECOMMUNICATIONS FRANCHISE (this “Franchise”) is entered into on _____, 2026, by and between the City of Mountlake Terrace (the “City”) and Forged Fiber 37, LLC, a Delaware limited liability company (“Grantee”).

Section 1. Grant of Franchise.

The City hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, restore, replace, acquire, sell, and lease its Facilities within the Public Ways of the City.

A. “Facilities” as used in this Franchise means authorized plant equipment, fixtures, appurtenances, and other facilities necessary to furnish and deliver telecommunications services, including but not limited to wires, lines, conduits, cables, communication and signal lines, braces, poles, guys, anchors, cabinets, manholes, handholes, pedestals, vaults, and all attachments, appurtenances, and appliances necessary or incidental to the distribution and use of Services (as hereinafter defined).

B. “Public Ways” means land acquired or dedicated for public roads and streets, but does not include: (1) State highways not governed by Section 3.B. of this Franchise; (2) land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; (3) structures, including poles and conduits, located within the right-of-way; (4) federally granted trust lands or Forest Board trust lands; (5) lands owned or managed by the State Parks and Recreation Commission; or (6) federally granted railroad rights-of-way acquired under 43 USC 912 and related provisions of federal law that are not open for motor vehicle use.

C. Location of Franchise Area. The authority granted herein is to occupy and use the Public Ways throughout the City (the “Franchise Area”). The Grantee is authorized to place its Facilities in the Public Ways only consistent with this Franchise, the Mountlake Terrace Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Mountlake Terrace Municipal Code as they now exist and are hereinafter amended (collectively the “Codes”). As described in Section 5, construction is not authorized without the appropriate City permits. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Public Ways of the City to the Grantee other than for the purpose of providing telecommunications services, and this franchise shall not be construed as any warranty of title. Grantee hereby agrees that it plans to provide the following services within the City: high speed data and fiber optic services, wholesale fiber transport services, and data transport services (the “Services”).

D. Terms, Conditions, and Provisions of Mountlake Terrace Municipal Code (“MTMC”) and Charter. All rights granted hereunder are subject to the terms, conditions, and requirements of certain Chapters of the MTMC including MTMC 12.20 concerning work in the right-of-way and franchised utilities in the right-of-way, respectively, unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the terms of the MTMC, terms of this Franchise shall control.

E. No Wireless Communications Facilities or Cable Services. This Franchise does not grant Grantee the right to install and/or operate Wireless Communication Facilities. As used herein, “Wireless Communications Facilities” means those wireless communication facilities as defined in RCW 35.99.010(4). Any entity that seeks to install and/or operate such Wireless Communication Facilities must have an independent franchise to use the Public Ways outside of this Franchise. Further, this Franchise does not grant the right to offer cable services as defined in 47 U.S.C. § 522(6). Any entity that seeks to install and/or operate such cable services must have an independent franchise to use the Public Ways outside of this Franchise.

F. No Access to City-Owned Property. No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than the Public Ways, or upon private property without the owner’s consent, or upon any City, public or privately owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Public Way of the City to Grantee other than for the purpose of providing the Services, or to subordinate the primary use of the right-of-way as a public thoroughfare. If Grantee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Grantee desires to use City owned property, including poles and structures within the Public Ways, it shall enter into a separate lease or license agreement with the City.

G. Leased Capacity. Grantee shall have the right, without prior City approval, to offer or provide fiber capacity or bandwidth to other carriers, resellers, customers, or subscribers consistent with this Franchise; provided, however, that Grantee shall remain responsible for compliance with this Franchise.

H. Nonexclusive Grant.

This Franchise shall not in any manner prevent the City from constructing, operating, and/or maintaining telecommunication systems or facilities of its own or entering into other similar agreements or franchises in, under, on, across, over, through, along or below any Public Ways of the City. Further, this Franchise shall in no way prevent or prohibit the City, consistent with applicable law, from using any of its Public Ways 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, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways.

Section 2. Term of Franchise.

The term of this Franchise shall be for a period of ten (10) years from the Effective Date.

Section 3. Location of Telecommunications Network Facilities.

A. Location of Facilities. Grantee may locate its Facilities anywhere within the Franchise Area consistent with the City's applicable Code requirements and the City's Design and Construction Standards. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services beyond those described in Section 1.A.

B. WSDOT. To the extent that any Public Ways within the Franchise Area are part of the state highway system ("State Highways") and are considered managed access by the City and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Grantee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Grantee specifically agrees that: 1. any pavement trenching and restoration performed by Grantee within State Highways shall meet or exceed applicable WSDOT requirements; 2. any portion of a State Highway damaged or injured by Grantee shall be restored, repaired and/or replaced by Grantee to a condition that meets or exceeds applicable WSDOT requirements; and 3. without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 4. Relocation of Facilities.

A. Relocation Requirement. To the extent required by law, including RCW 35.99.060, Grantee agrees and covenants at its sole cost and expense, to protect, support, temporarily disconnect (where doing so will not cause a customer service outage or disrupt 911 service, and, if required, upon approval of the Washington Utilities and Transportation Commission), relocate, or remove from any Public Way any of its Facilities when so required by the Public Works Director upon his/her determination that such relocation or removal of Facilities is necessary for (1) the construction, repair, maintenance or installation of any City or other public improvement in or upon the Public ways or (2) the operations of the City or other governmental entity in or upon the Public Ways. The City shall provide Grantee at least ninety (90) days written notice prior to such relocation or removal of Facilities.

B. Notice and Relocation Process. If the City determines that the Public Improvement Project necessitates the relocation of Grantee's existing Facilities, the City shall provide Grantee in writing with a date by which the relocation shall be completed (the "Relocation Date") consistent with RCW 35.99.060(2). For purposes of herein, "Public Improvement Project" shall mean a capital improvement project within the Franchise Area that requires the relocation of Facilities within the Franchise Area, is funded by the City (either with its own funds or with other public monies obtained by the City for such capital improvement project) and is undertaken by the City. In calculating the Relocation Date, the City shall consult with Grantee and consider the extent of Facilities to be relocated, the services requirements, and the construction sequence for the relocation, within the City's overall project construction sequence and constraints, to safely complete the relocation. Grantee shall complete the relocation by the Relocation Date, unless the

City or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, the City will make reasonable efforts to involve Grantee in the predesign and design phases of any Public Improvement Project. After receipt of the written notice containing the Relocation Date, Grantee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City and at no charge or expense to the City, except as otherwise permitted by RCW 35.99.060. Such timeline may be extended by a mutual agreement.

C. Locate Facilities. Upon request of the City or of a third-party performing work on behalf of the City in the Public Ways and in order to facilitate the design of the Public Ways, Grantee agrees, at City's sole cost and expense, to locate and, if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated in order to accommodate the Public Improvement Project shall be made by the City upon review of the location and construction of Grantee's Facilities. The City shall provide Grantee at least thirty (30) days' written notice prior to any excavation or exposure of Facilities.

D. Third Party Requests for Relocation. The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities for projects that are not Public Improvement Projects, including recovering costs for relocation from private parties or other entities that do not control the Public Ways.

E. Contractor Delay Claims. Grantee agrees to work cooperatively with the City, other franchisees and/or utilities, and the City's third-party contractor with respect to the Public Improvement Project. Upon a notification of a delay due solely to Grantee's actions or inactions, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues. Except in the case of a Force Majeure Event, if Grantee breaches its obligations under Section 4 with respect to relocating its Facilities within the Franchise Area by the Relocation Date, and to the extent such breach causes a delay in the work being undertaken by the Public Improvement Project that results in a claim by the City's third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option: (1) tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 4.F and Section 9; or (2) require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

F. Indemnification. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee will indemnify, defend, and hold harmless the City, in accordance with the provisions of Section 9, against any and all claims, suits, actions, damages, or liabilities for delays on City

construction projects to the extent caused by or arising out of the failure of Grantee to remove or relocate its Facilities in a timely manner and that are not caused by a Force Majeure Event.

G. City's Costs. If Grantee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City as described in this Section 4, except for in Section 4.D, then, after providing Grantee an additional thirty (30) days' notice and Grantee's continued failure to comply as directed, the City may perform such work or cause it to be done, and the City's costs shall be paid by Grantee pursuant to Section 7.

H. Survival. The provisions of this Section 4 shall survive the expiration or termination of this Franchise for so long as Grantee continues to have Facilities in the Public Ways.

Section 5. Work in the Public Ways.

A. All work performed shall be in compliance with all local, state, and federal laws, including but not limited to the requirements in MTMC 12.20. Permits, including but not limited to rights-of-way permits, must be obtained from the City and if applicable, the state and or federal agencies for any work performed in the Public Ways. Grantee shall provide the City with at least twenty (20) working days' advance notice prior to commencing any non-emergency work in the Public Ways, unless otherwise stated in the permit. Grantee shall not unnecessarily obstruct the passage or proper use of the Public Ways, and all work by Grantee in any area covered by this Franchise and as described in this Section shall be performed in accordance with applicable Codes.

B. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Public Ways and other public properties so as to interfere as little as is reasonably possible with the free passage of traffic (including but not limited to motor vehicles, pedestrians, and bicycles) and the free use of adjoining property. Grantee shall at all times post and maintain proper site safety including but not limited to the use of barricades, traffic control devices, and temporary paving, and make reasonable efforts to comply with all applicable safety and American Disability Act regulations during such period of construction, general ordinances of the City or state of federal laws, including RCW 39.04.180 for the construction of trench safety systems.

C. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by a grantee. Grantee shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

D. Upon request, Grantee shall provide the City with a schedule of their proposed construction activities in, around, or that may affect the rights-of-way. Grantee shall meet with the City and other franchise holders and users of the rights-of-way annually or upon written notice as determined by the City, to schedule and coordinate construction in the rights-of-way. All

construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

Section 6. Restoration After Construction.

A. Grantee shall comply with the restoration requirements provided in and otherwise as described in the applicable permit(s). The Public Works Director or designee shall have final approval of the completeness of all restoration work and Grantee shall warrant said restoration work for a period of 2 years.

B. In the event Grantee damages a Public Way or improvement in or to a Public Way and does not repair a Public Way or an improvement in or to a Public Way or if such work does not comply with the permit, then after providing Grantee with thirty (30) days prior notice and Grantee's continued failure to repair the damage, the City may repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Grantee.

C. Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may provide Grantee written notice and direct Grantee, at Grantee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely provide written notice to Grantee to request that Grantee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Grantee shall be liable to the City for the costs thereof.

7. Recovery of Costs.

A. To the extent permitted under applicable law, Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs reasonable 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, including but not limited to outside attorneys, consultants, City staff and City Attorney's office, then, to the extent permitted by applicable law, Grantee shall reimburse the City directly for any and all costs within thirty (30) days after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were necessary to perform the aforementioned actions. As used in this Agreement, the word "costs" or "expenses" shall mean the actual, reasonable and documented costs or expenses incurred.

B. Grantee shall pay a fee for the actual administrative expenses incurred by the City that are related to the receiving and approving this Franchise pursuant to RCW 35.21.860,

including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. To the extent permitted by applicable law, Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise.

C. Grantee shall reimburse the City for any costs incurred by the City in performing work for Grantee that Grantee is obligated to perform under this Franchise, including but not limited to removing any of Grantee Facilities upon abandonment, or acting in response to an emergency involving Grantee's Facilities, if Grantee's failure continues after Grantor has provided Grantee at least thirty (30) days prior written notice and opportunity to cure.

D. To the extent permitted by applicable law, Grantee shall reimburse the City for the Grantee's proportionate share of all actual expenses incurred by the City in planning, constructing, installing, repairing or altering any City facility as a result of the construction or the presence in the Public Way of the Grantee's telecommunications facilities.

E. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on a monthly basis, and the City shall provide Grantee with the City's itemization of costs at the conclusion of each project for information and reimbursement purposes.

F. All costs reimbursable to the City pursuant to this Agreement shall be paid within sixty (60) days after Grantee's receipt of an itemized invoice documenting such costs and expenses in sufficient detail to demonstrate that they were necessary to perform the aforementioned action.

Section 8. Reservation of Rights.

A. Grantee hereby warrants that its operations as authorized under this Franchise are those of a service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise. The City hereby reserves its right to impose a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed; provided that (i) the City will give one hundred eighty (180) days' notice to invoke this provision, (ii) the parties agree to follow the modification procedure in Section 12, and (iii) any franchise fee under this section shall be prospective in nature. In either instance, the City also reserves its right to require that Grantee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

B. Grantee agrees that, if, in the future, Grantee provides telephone business services or wireless telephone services under this Franchise that are taxable, the Grantee shall pay to the City the rate applicable to such taxable services under MTMC 3.145, respectively and consistent

with state and federal law. The parties agree that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City as may be permitted by law.

Section 9. Indemnification.

A. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee hereby releases, and agrees to indemnify, defend and hold harmless the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person or damage to property to the extent caused by or arising out of any negligent acts or omissions of Grantee, its agents, servants, officers, or employees by virtue of Grantee's exercise of the rights granted herein, or in any franchise or permit. These indemnification obligations shall extend to claims that are not reduced to a suit and any claims that may be compromised, prior to the culmination of any litigation or the institution of any litigation.

B. Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the City of any such claim, 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. The City has the right to defend or participate in the defense of any such claim at its own costs and has the right to approve any non-monetary settlement or other compromise of any such claim.

C. Should a court of competent jurisdiction determine that the franchise is subject to RCW 4.24.115, then, 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 the Grantee and the City, its officers, officials, employees, and volunteers, the Grantee's liability shall be only to the extent of the Grantee's negligence. It is further specifically and expressly understood that the indemnification provided constitutes the Grantee's waiver of immunity under Industrial Insurance, RCW Title 51, solely for the purposes of this indemnification. The obligations of Grantee under this subsection shall be mutually negotiated by the parties, and Grantee shall acknowledge that the City would not enter into a franchise without Grantee's waiver.

D. The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City. Grantee may choose counsel to defend the City subject to the City's consent which shall not be unreasonably withheld and consistent with this subsection. City's failure to notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to this Franchise, 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 Grantee, Grantee shall pay all of the City's reasonable costs for

defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision.

E. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then the Grantee and City shall immediately meet and confer and determine whether alternative counsel or other alternative is possible to resolve the concern. If no alternative is agreeable to the parties, upon the prior written approval and consent of Grantee that such a conflict requires the City to retain separate counsel, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and

Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Grantee and the City shall cooperate and cause their employees and agents to cooperate with each other in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

F. Notwithstanding any other provisions of this section, Grantee assumes the risk of damage to its Facilities located in the Public Ways from activities conducted by the City, its officials, officers, agents, employees and contractors, except to the extent any such damage or destruction is caused by or arises from the negligence or malicious act on the part of the City, its officials, officers, agents, employees or contractors. Except for the indemnity obligations under this Franchise, in no event shall the City or Grantee be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under the Franchise.

G. The provisions of this Section 9 shall survive the expiration, revocation, or termination of this Franchise.

Section 10. Insurance.

A. Grantee shall secure and maintain the following liability insurance policies insuring Grantee and including the City as an additional insured as their interest may appear under this Agreement against claims for injuries to persons, death or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted to Grantee:

1. Commercial general liability insurance with limits of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises-operations, products-completed operations, stop gap liability, personal injury and

advertising injury, and liability assumed under an insured contract and liability arising from explosion, collapse or underground property damage. The policy shall have limits of:

2. Commercial Automobile liability insurance in the amount of \$2,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned, hired and leased vehicles.

3. Worker's compensation within statutory limits and employer's liability insurance with limits of \$1,000,000 each accident/disease/policy limit.

4. Contractors Pollution liability insurance with a limit of \$2,000,000 per occurrence, and \$2,000,000 in the aggregate. Grantee may self-insure for Contractors Pollution liability insurance.

B. The liability insurance policies required by this Franchise shall be maintained by Grantee throughout the term of the Franchise, and such other period of time during which the Grantee is operating in the Public Ways without a franchise or is engaged in the removal of its Facilities. The commercial general liability and commercial automobile liability insurance policies shall include the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants and volunteers as additional insureds as their interest may appear under this Agreement. The Grantee shall provide a certificate of insurance (COI), together with the blanket additional insured endorsement(s) to the City, upon acceptance of the Franchise. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Grantee. The insurance required by this Franchise shall apply separately to each insured against whom a claim is made or suit is brought. Grantee's insurance shall be primary insurance with respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance, self insurance, or self-insured pool coverage maintained by the City shall be excess of Grantee's insurance and shall not contribute with it. Receipt by the City of any certificate or evidence of insurance showing less coverage than required is not a waiver of Grantee's obligations to fulfill the requirements.

C. Upon receipt of notice from its insurers, Grantee shall provide the City with thirty (30) days' prior written notice of cancellation of any required coverage that is not replaced. At least 30 days prior to any said cancellation or nonrenewal effective date, Grantee shall obtain and furnish to the City certificates of insurance evidencing replacement insurance policies meeting the requirements of this section. Failure to provide the insurance cancellation notice and to furnish to the City replacement insurance policies meeting the requirements of this Franchise shall be considered a material breach of the Franchise after City provides Grantee an additional thirty (30) days prior written notice and Grantee's continued failure to cure.

D. Grantee's maintenance of insurance or its scope of coverage as required herein shall not be construed to limit the liability of the Grantee to the specific coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity. Further, Grantee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Grantee.

E. As of the Effective Date of this Franchise, Grantee is not self-insured except for pollution liability insurance (Section 10.A.4). Should Grantee wish to become self-insured at the levels outlined in this Franchise at a later date for insurance coverage other than pollution liability insurance and property damage insurance, Grantee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. Grantee shall comply with the following:

(i) provide the City, upon request, a copy of Grantee's most recent audited financial statements;

(ii) Grantee is responsible for all payments within the self-insured retention; and

(iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

F. The City may review all insurance limits once every calendar year during the Term and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Grantee. Grantee shall then issue a certificate or other evidence of insurance to the City showing compliance with these adjustments.

Section 11. Security; Bonds.

Security Fund. Grantee shall establish a security fund ("Security Fund") in the amount of \$25,000.00 by providing a bond reasonably acceptable to the City to guarantee the full and complete performance of the requirements of this Franchise, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City.

12. Modification.

The City and Grantee reserve the right to modify the terms and conditions of this Franchise upon written agreement of both parties to such modification. The City reserves the right at any time to request Grantee to agree to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. If the parties do not reach agreement as to the terms of the amendment within six (60) days of the call for negotiations unless the parties mutually agree to extend such timeline, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 13. Remedies to Enforce Compliance.

A. In addition to any other remedy provided in this Franchise, the City and Grantee reserve the right to pursue any remedy to compel the other party and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy shall not prevent them from thereafter declaring a default, or revocation for breach of the conditions herein as provided in the

Mountlake Terrace Municipal Code or as allowed by law. All rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to the City or Grantee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

B. If Grantee violates or fails to comply with any of the material provisions of this Franchise, or should Grantee fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, the City shall provide Grantee with written notice and an opportunity to cure such violation as follows: the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and the Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If Grantee does not cure the breach within thirty (30) days, then the Public Works Director or the City Council may elect that in lieu of revocation and without any prejudice to any other legal rights and remedies, to pursue other remedies, the City may: (1) seek damages of two hundred Fifty dollars (\$250.00) per day against the Grantee or Security Fund set forth in Section 11; (2) suspend the issuance of additional permits; (3) obtain an order from the Superior Court having jurisdiction compelling Grantee to comply with the provisions of this Franchise; or (4) pursue other remedies as permitted by law. To the extent permitted by applicable law, the rights granted under this Franchise may be revoked or forfeited.

C. If the City shall violate or fail to comply with any of the provisions of this Franchise, the Grantee shall provide the City with written notice specifying with reasonable particularity the nature of any such breach and the City shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the breach is not cured within the specified time, or the City does not comply with the specified conditions, the Grantee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as permitted by law.

D. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the parties may agree to a longer cure period.

Section 14. Non-Waiver.

The failure of a party to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 15. Survival.

In addition to those Sections containing a survival subsection, all of the obligations, conditions and requirements of Section 1.C Section 5, Section 6, Section 10, Section 11, Section 12, Section 25 and Section 27.B of this Franchise arising by reason of any occurrence taking place during the term of this Franchise shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof.

Section 16. Severability.

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions of this Franchise.

Section 17. Notice.

Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

City:

City of Mountlake Terrace
Attn: Director of Public Works
23204 58th Ave W,
Mountlake Terrace, WA 98043

Grantee:

Forged Fiber 37, LLC c/o AT&T
Attn.: Legal Dept – Network Operations
Re: Mountlake Terrace Franchise Agreement (WA)
208 S. Akard Street
Dallas, TX 75202-4206
E-mail: FF_Right_Of_Way@att.com

Section 18. 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 upon execution of this Franchise.

Section 19. Eminent Domain. This Franchise is subject to the power of eminent domain. In any proceeding under eminent domain, this Franchise itself shall have no value.

Section 20. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to the Grantee by reason of such vacation; provided, however, that the City shall notify the Grantee in writing not less than sixty (60) days before considering such vacation and shall work with Grantee where possible in securing an easement to allow the Facilities to remain in place. Upon Grantee's entry into an easement for the Facilities, this Franchise shall no longer apply with respect to such vacated area. If an easement cannot be retained, or any other accommodation made for the Facilities to remain (e.g., a ground lease or license agreement) Grantee's relocation from the affected parcel shall be governed by section 4 of this Agreement.

Section 21. Signs and Symbols. Except for labels marking equipment, all signs or symbols placed by Grantee shall be subject to the prior approval of the City. In the event Grantee shall place signs or symbols where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such signs or symbols and the refusal of Grantee to comply with such demand within will constitute a breach of this Franchise, thereby entitling the City to exercise any available legal remedy and to remove the signs or symbols. Grantee is not permitted to install any lighting on its Facilities unless required by the FAA or FCC.

Section 22. Compliance with All Applicable Laws. The parties agree to comply with all present and future federal and state laws, ordinances, rules 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 reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Grantee, and Grantee shall promptly conform with all such regulations, unless compliance would cause Grantee to violate other requirements of law or the terms of this Franchise. Grantee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes and such Code modifications shall apply to Grantee's Facilities, except that existing Facilities may be maintained by Grantee per regulations in effect at the time of installation as approved in the permit and plan for said installation. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinance(s) enacted under the City's police powers shall take precedence over the provisions set forth herein.

Section 23. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 24. Hazardous Substances. Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any

of its agents, contractors or any person under its control to do the same. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee will be solely responsible for and will defend, indemnify and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, to the extent arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control.

Section 25. Licenses, Fees, and Taxes. Prior to constructing the Facilities, Grantee shall obtain a business or utility license from the City, if so required by the MTMC and applicable law. Except as otherwise provided in this Franchise or any applicable law, Grantee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Grantee and shall pay all license fees and public utility charges relating to the conduct of its business; shall pay for all permits, licenses, and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 26. Assignment or Transfers of Grant. Ownership or control of a telecommunication system or franchise may, directly or indirectly, be transferred or assigned or disposed of by sale, lease, merger, consolidation or other act of the Grantee, by operation of law or otherwise, without the prior written consent of City, but written notice to the City is required. In the event that a transfer, assignment, or disposal of Grantee's ownership is approved by the Washington Utilities and Transportation Commission ("WUTC"), the City will be deemed to have consented to such transfer for purposes of any WUTC case docket or other proceeding. Grantee will provide City with a copy of any such WUTC approval.

Section 27. Miscellaneous.

A. City and Grantee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

B. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

C. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

D. Where the context so requires, the singular shall include the plural and the plural includes the singular.

E. Grantee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity from whom it is leasing utility poles.

F. This Franchise may be enforced at both law and equity.

G. This Franchise may be executed in counterparts, each of which shall be deemed an original.

H. Grantee acknowledges that it, and not the City, shall be responsible for Grantee's Facilities' compliance with all marking and lighting requirements of the FAA and the FCC. Except to the extent caused by the City, its elected and appointed officers, officials, employees, agents, engineers, consultants, volunteers, and representatives, Grantee shall indemnify, defend and hold the City harmless from any fines or other liabilities to the extent caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the Grantee's Facilities is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, then, after providing Grantee with thirty (30) days prior written notice and opportunity to cure and Grantee's continued failure to cure, the City may either terminate this Franchise immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's expense.

I. Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as circumstances that are beyond a party's reasonable control, and include strikes, lockouts, sit-down strike, unusual transportation delays, riots, floods, washouts, explosions, earthquakes, fire, storms, weather (including inclement weather which prevents construction), acts of the public enemy, wars, terrorism, insurrections, pandemics, and any other similar event.

J. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Grantee and all privileges, as well as all obligations and liabilities of Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Grantee is named herein.

Section 28. Acceptance. This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the Effective Date of this Franchise. Unless executed by Grantee prior to the City's execution, Grantee shall execute this Franchise within sixty (60) days after the City's execution of this Franchise. Such written acceptance shall be accompanied by the memorandum of insurance and additional insured endorsement specified in Section 10, the bonding requirements in Section 11, and the reimbursement to the City pursuant to Section 7.B. This Franchise is voidable unless accepted in writing with the required memorandum of insurance, bond, and reimbursement by Grantee within this sixty (60) days.

Section 29. Effective Date. This Franchise, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title.

IN WITNESS WHEREOF, this Franchise Agreement has been executed by the duly authorized representatives of the parties as set forth below, as of the date set forth below:

For the City of Mountlake Terrace:

Jeff Niten, City Manager

City of Mountlake Terrace, WA

Date

For Forged Fiber, 37 LLC:

[Name], President

Date

CITY OF MOUNTLAKE TERRACE

ORDINANCE NO. XXX

**AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE,
WASHINGTON, GRANTING A FRANCHISE TO FORGED FIBER, 37
LLC; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN
EFFECTIVE DATE**

WHEREAS, Forged Fiber, 37 is a wholly owned subsidiary of AT&T and purchased a portion of the fiber business of Lumen Technologies, Inc. and its affiliates (“Lumen”), which includes fiber assets and associated facilities that are located within the rights-of-way of the City; and

WHEREAS, AT&T seeks through this franchise to obtain all necessary rights to own and construct facilities within the rights-of-way in the city under the legal entity, Forged Fiber 37, LLC, which will take possession of the fiber assets once transferred from Lumen;

WHEREAS, this franchise is a new franchise agreement, and Lumen will maintain any existing franchises for those assets it is retaining;

WHEREAS, this franchise will authorize Forged Fiber, 37 to install, operate, maintain, repair, replace, and upgrade conduit, fiber optic cables, mule tape, buffer tubes, vaults, splice cases (aerial and buried), poles, and related facilities in the rights of way provided that Forged Fiber, 37 applies for and receives the necessary permits and authorizations for such installations, repairs, and upgrades prior to the commencement of such construction activity;

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

Section 1. Franchise Adopted. The franchise between the City of Mountlake Terrace and Forged Fiber, 37 set forth as Exhibit A in the attached is hereby adopted by reference as if fully set forth herein.

Section 2. Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 3. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 4. Summary, Publication, and Effective Date. This Ordinance or a 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 its publication as required by law.

ADOPTED BY THE CITY COUNCIL AT A REGULAR MEETING THEREOF ON THE XX of XXXX, 2026.

CITY OF MOUNTLAKE TERRACE

Steve Woodard, Mayor

ATTEST/AUTHENTICATED:

Jennifer Joki, City Clerk

APPROVED AS TO FORM:

Hillary J. Evans, City Attorney

DRAFT

ORDINANCE NO. 2240

AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON, GRANTING UNTO LEVEL 3 COMMUNICATIONS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, 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 Level 3 Communications, LLC ("Level 3") 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 Level 3, a limited liability company organized under the laws of the State of Delaware, 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 Level 3 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. Level 3 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 Level 3 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; 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. Level 3 is creating a fiber optic network, consisting partially of facilities within the City. Without limiting Level 3's right to expand the Facilities without amending this Franchise, the initial route will be located along, or generally along, Cedar Way and 236th Street, as shown on Exhibit 1 attached hereto.

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

4.1 Level 3 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 Level 3 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 Level 3'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 Level 3's then existing Facilities, the City shall:

A. At least ninety (90) days prior to the commencement of such improvement project, provide Level 3 with written notice requesting such relocation; and

B. Provide Level 3 with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for Level 3's Facilities so that Level 3 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, Level 3 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 Level 3 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 Level 3 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, Level 3 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 Level 3 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, Level 3 shall relocate its Facilities as otherwise provided in this Section. In no event shall Level 3 be responsible for any more than the pro rata cost of relocating Level 3'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 Level 3 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, Level 3 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. Level 3 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 Level 3's aerial Facilities to underground installation at Level 3's expense.

Whenever the City may require the undergrounding of all aerial utilities in any area of the City, Level 3 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, Level 3 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 Level 3'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 Level 3'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, Level 3 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 Level 3 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. Level 3 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 Level 3 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 Level 3 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. Level 3 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 Level 3 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. Level 3 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 Level 3 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 Level 3's Facilities located in or under any street breaks, becomes damaged, or if Level 3's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, Level 3 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 Level 3 from the requirement of obtaining any permits necessary for this purpose, and Level 3 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 Level 3, at Level 3'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 Level 3 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 Level 3 to request Level 3 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 Level 3 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. Level 3 shall pay a filing fee for the City's administrative costs in drafting and processing this Franchise agreement and all work related thereto. Level 3 shall further be subject to all lawful permit fees associated with activities undertaken by Level 3 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, Level 3 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, Level 3 shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Level 3'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 Level 3 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. Level 3 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 Level 3 for purposes other than to recover its administrative expenses, if Level 3'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 Level 3 obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate Level 3's operations, as allowed under applicable law. Level 3 reserves the right to contest on the basis of federal, state, or municipal law the City's imposition of a fee on Level 3 or the requirement that Level 3 obtain a separate franchise.

The parties further understand that Level 3 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. Level 3 stipulates and agrees that should its business activities be subject to taxation that Level 3 shall include the six percent (6%) rate in gross receipts received as imposed under the city's telephone business tax ordinance; provided, however, that in the event Level 3 leases all or a part of its Facilities to another entity whose business operations are subject to taxation, Level 3 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. Level 3 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 Level 3's own employees for which Level 3 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 Level 3, 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 Level 3 thereof and Level 3 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 Level 3 thereof, and Level 3 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 Level 3 at the time of completion of construction shall not be grounds for avoidance by Level 3 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 Level 3 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 Level 3, then Level 3 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 Level 3 and the City, its officers, employees and agents, Level 3's liability hereunder, including liability for costs of defense, shall be only to the extent of Level 3's negligence. It is further specifically and expressly understood that the indemnification provision provided herein constitutes Level 3'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. Level 3 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 Level 3, its agents, representative or employees. Level 3 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 Level 3. The insurance policies obtained by Level 3 shall name the City (its officers, employees and volunteers) as an additional insured with regard to activities performed by or on behalf of Level 3. 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. Level 3'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 Level 3's insurance and shall not contribute with it. The insurance policy or policies required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

Section 15. Abandonment No cable, section of cable or other equipment laid in the street by Level 3 may be abandoned by Level 3 without the express written consent of the City. Any plan for abandonment or removal of Level 3'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, Level 3 shall furnish such bonds executed by Level 3 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 Level 3 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 Level 3 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 Level 3 by the City under the provisions of this Franchise, then the Council may revoke or annul all rights conferred to Level 3 under this Franchise. Nothing in this provision in any way limits, alters or revokes Level 3'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 Level 3 to comply with the provisions of this Ordinance and to recover damages and reasonable costs incurred by the City by reason of Level

3'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 Level 3 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 Level 3, and Level 3 shall promptly conform with all such regulations, unless compliance would cause Level 3 to violate other requirements of law. Notwithstanding the above, said regulations shall not require that Level 3 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 Level 3.

Section 22. Acceptance. Within sixty days after the passage and approval of this Ordinance, this Franchise may be accepted by Level 3 by its filing with the City Clerk a written acceptance thereof. Failure of Level 3 to so accept this Franchise within said period of time shall be deemed a rejection thereof by Level 3, 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 Level 3's Facilities, of this Franchise shall be in addition to any and all other obligations and liabilities Level 3 may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to Level 3 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 Level 3 and all privileges, as well as all obligations and liabilities of Level 3 shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Level 3 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 Level 3 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. Level 3 shall provide prompt, written notice to the City of any such assignment.

Notwithstanding any other provisions in this Section 24, Level 3 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 Level 3 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. Level 3 shall provide written notice to the City within thirty(30) days after any such assignment for security.

Level 3 shall notify City within thirty (30)days after any acquisition by Level 3 of ownership of additional Facilities, and after any sale by Level 3 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 of Mountlake Terrace 23204 - 58th Ave. W Mountlake Terrace, WA 98043-	Level 3 Communications, LLC 1025 El Dorado Blvd. Broomfield, CO 80021
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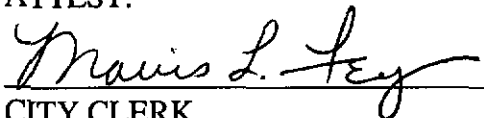
Section 26. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause 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.

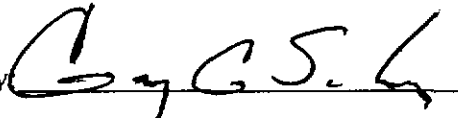
Passed by the City Council of the City of Mountlake Terrace this 5th day of June, 2000, and signed in authentication of its passage this 5th day of June 2000.


MAYOR DAVID GOSSETT

ATTEST:


CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

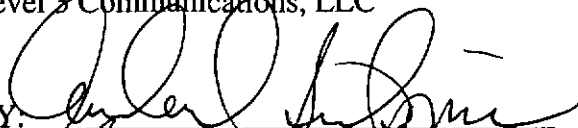
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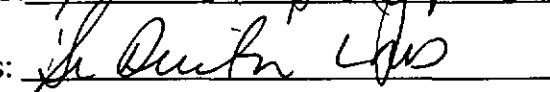
ACCEPTANCE OF FRANCHISE

THE UNDERSIGNED authorized representative of Level 3 Communications, LLC hereby declares on behalf of Level 3 Communications, LLC, the acceptance of the nonexclusive franchise to Level 3 Communications, LLC, approved by the Mountlake Terrace City Council on June 5, 2000, by the adoption of Mountlake Terrace City Ordinance No 2240.

DATED THIS 5 day of June 2000

Level 3 Communications, LLC

BY: 

Its: 

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.

David Gossett
MAYOR DAVID GOSSETT

ATTEST:

Mavis L. Fey
CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: [Signature]
6-19-01

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 ___ day of _____ 2001

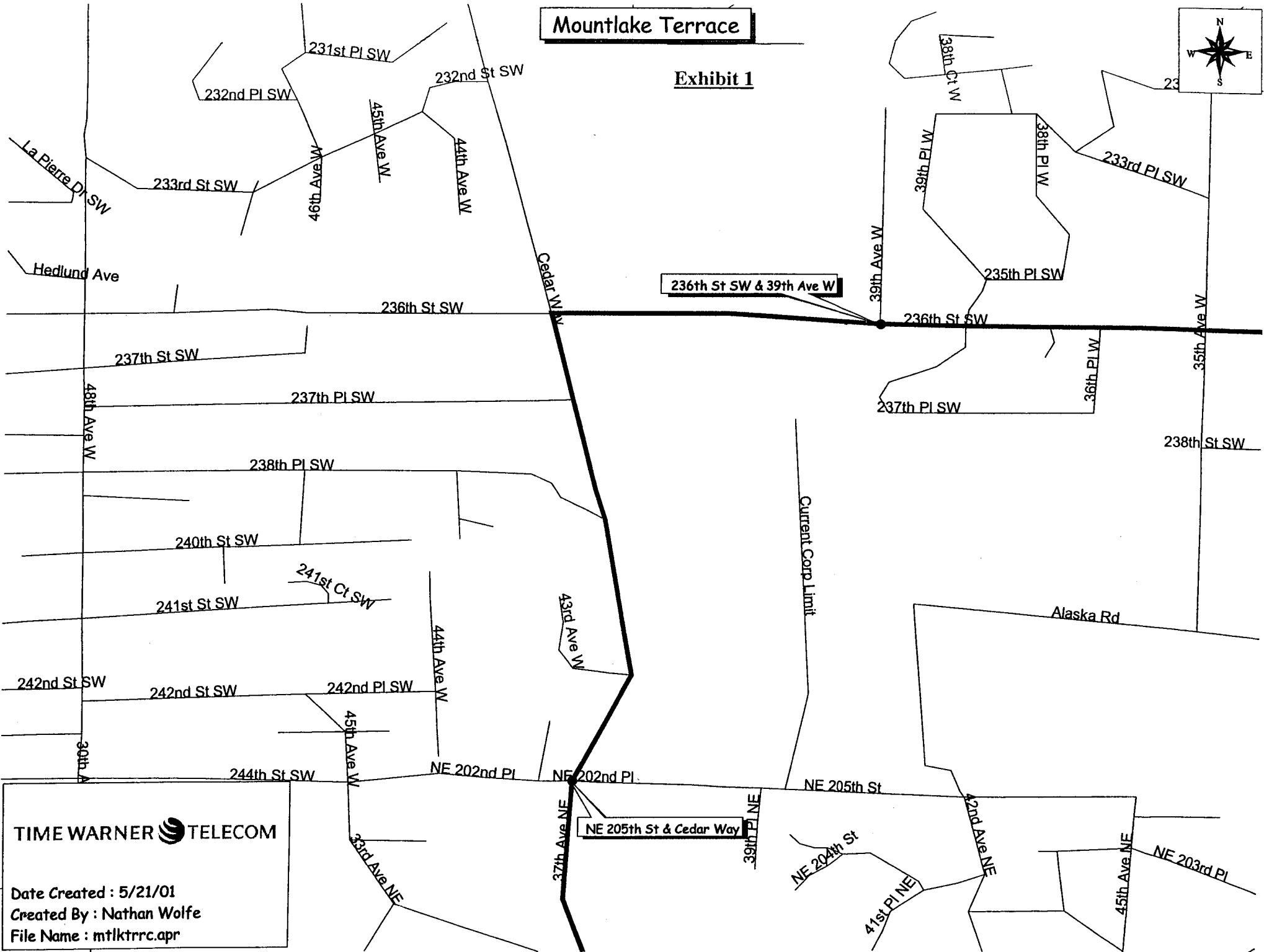
Time Warner Telecom of Washington, LLC

BY: [Signature]

Its: VP- REGULATORY

Mountlake Terrace

Exhibit 1



236th St SW & 39th Ave W

NE 205th St & Cedar Way

TIME WARNER TELECOM

Date Created : 5/21/01
Created By : Nathan Wolfe
File Name : mtlktrrc.apr

CITY OF MOUNTLAKE TERRACE

ORDINANCE NO. 2591

AN ORDINANCE OF THE CITY OF MOUNTLAKE TERRACE, WASHINGTON, GRANTING UNTO tw telecom of washington llc ("tw telecom"), which was formerly known as "Time Warner Telecom of Washington, LLC", A DELAWARE LIMITED LIABILITY COMPANY, 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") was granted a non-exclusive franchise on or about June 23, 2001; and

WHEREAS, Time Warner Telecom's Franchise expired on or about June 23, 2011; and

WHEREAS, Time Warner Telecom of Washington, LLC changed its name to tw telecom of washington llc ("tw telecom"); and

WHEREAS, on July 21, 2011, tw telecom entered into a Consent to be Bound Letter which obligated tw telecom to comply with the terms and conditions of the expired Franchise with Time Warner Telecom; and

WHEREAS, tw telecom has applied for a new Franchise requesting that the City Council grant it a non-exclusive 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 tw telecom, its heirs, successors, legal representatives and assigns, subject to the terms and conditions hereinafter set forth, a franchise for a period of ten (10) years, beginning on the effective date of this ordinance, set forth in Section 27 herein (this "Franchise"). This Franchise shall grant tw 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. tw telecom agrees that upon its decision to provide service within the City of Mountlake Terrace, that they shall endeavor to provide reasonable notice to the City. tw telecom agrees that it shall be subject to Chapter 12.20,

Mountlake Terrace Municipal Code, and any other applicable provision relating to 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, 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 right-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 Telecommunication Facilities. tw telecom constructed a fiber optic network, consisting partially of facilities within the City. Without limiting tw telecom's right to expand the Facilities without amending this Franchise, tw telecom will be expanding its initial route by installing Facilities 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 tw 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 tw 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 tw 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 tw telecom then existing Facilities, the City shall:

- A. At least ninety (90) days prior to the commencement of such improvement project, provide tw telecom with written notice requesting such relocation; and
- B. Provide tw telecom with copies of pertinent portions of the plans and specifications for such improvement project and a proposed location for tw telecom's Facilities in a timely manner so that tw 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, tw 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 tw 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 tw 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, tw 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 tw 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, tw telecom shall relocate its Facilities as otherwise provided in this Section. In no event shall tw telecom be responsible for any more than the pro rata cost of relocating tw 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 tw 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, tw 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. tw 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 tw telecom's aerial Facilities to underground installation at tw telecom's expense.

Whenever the City may require the undergrounding of all aerial utilities in any area of the City, tw 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, tw 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 tw 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 tw 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, tw 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 tw 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. tw 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 tw 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 tw 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, revocation or termination of this Franchise agreement.

Section 8. Restoration after Construction. tw 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 tw 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. tw 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 tw 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 tw telecom's Facilities located in or under any street breaks, becomes damaged, or if tw telecom's construction area is otherwise in such a condition as to immediately endanger the property, life, health or safety of any individual, tw 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 tw telecom from the requirement of obtaining any permits necessary for this purpose, and tw 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 tw telecom, at tw 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 tw 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 tw telecom to request tw 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 tw 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. tw telecom shall pay a filing fee for the City's administrative costs in drafting and processing this Franchise agreement and all work related thereto. tw telecom shall further be subject to all lawful permit fees associated with activities undertaken by tw 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, tw telecom shall pay such reasonable costs and expenses directly to the City within sixty (60) days of submittal by the City of an itemized billing by project of such costs; provided, that in the event that the City expects to incur

costs in excess of \$1,000 under this Section 11, it shall provide reasonable prior notice to tw telecom. In addition to the above, tw telecom shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving tw telecom 's cable and Facilities within sixty (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 tw 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. tw 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 tw telecom for purposes other than to recover its administrative expenses, if tw 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 tw telecom obtain a separate franchise for its change in use, which franchise may include provisions intended to regulate tw telecom's operations, as allowed under applicable law. tw telecom reserves the right to contest on the basis of federal, state, or municipal law, ordinances and regulations the City's imposition of a fee on tw telecom or the requirement that tw telecom obtain a separate franchise.

The parties further understand that tw 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. tw telecom stipulates and agrees that should its business activities be subject to taxation that tw 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 tw telecom leases all or a part of its Facilities to another entity whose business operations are subject to taxation, tw 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. tw 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 tw telecom's own employees for which tw 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 tw 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 tw telecom thereof and tw 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 tw telecom thereof, and tw 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 tw telecom at the time of completion of construction shall not be grounds for avoidance by tw 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 tw 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 tw telecom, then tw 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 tw telecom and the City, its officers, employees and agents, tw telecom's liability hereunder, including liability for costs of defense, shall be only to the extent of tw telecom's negligence. It is further specifically and expressly understood that the indemnification provision provided herein constitutes tw 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. tw 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 tw telecom, its agents, representative or employees. tw 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 tw telecom. The insurance policies obtained by tw telecom shall name the City (its officers, employees and volunteers) as an additional insured with regard to activities performed by or on behalf of tw 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. tw 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 tw 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 voided, or canceled by either party, except after thirty (30) days prior written notice given to the City. In addition, tw 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 tw telecom may be abandoned by tw telecom without the express written consent of the City. Any plan for abandonment or removal of tw 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, tw telecom shall furnish such bonds executed by tw 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 tw 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 tw 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 tw telecom by the City under the provisions of this Franchise, then the Council may revoke or annul all rights conferred to tw telecom under this Franchise. Nothing in this provision in any way limits, alters or revokes tw 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 tw telecom to comply with the provisions of this Ordinance and to recover damages and reasonable costs incurred by the City by reason of tw 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 tw 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 tw telecom, and tw telecom shall promptly conform with all such regulations, unless compliance would cause tw telecom to violate other requirements of law. Notwithstanding the above, said regulations shall not require that tw 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 tw telecom.

Section 22. Acceptance. Within sixty (60) days after the passage and approval of this Ordinance, this Franchise may be accepted by tw telecom by its filing with the City Clerk a written acceptance thereof. Failure of tw telecom to so accept this Franchise within said period of time shall be deemed a rejection thereof by tw 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 tw telecom's Facilities, of this Franchise shall be in addition to any and all other obligations and liabilities tw telecom may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to tw 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 tw telecom and all privileges, as well as all obligations and liabilities of tw telecom shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever tw 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 tw 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. tw telecom shall provide prompt, written notice to the City of any such assignment.

Notwithstanding any other provisions in this Section 24, tw 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 tw 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. tw telecom shall provide written notice to the City within thirty (30) days after any such assignment for security.

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

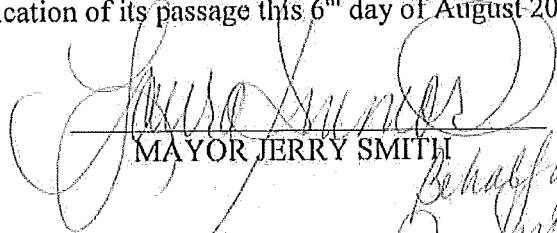
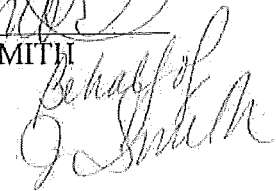
Section 25. Notice. Any notice or information required or permitted to be given to the parties under this franchise agreement shall be sent to the following addresses unless otherwise specified:

City Clerk City of Mountlake Terrace 6100 219 th St. SW, Ste. 200 Mountlake Terrace, WA 98043-4629	Vice President - Regulatory tw telecom of washington llc 9665 Granite Ridge Drive, Suite 500, San Diego, CA 92123 tw telecom inc. SVP and Deputy General Counsel Legal Dept. 10475 Park Meadows Drive Littleton, CO 80124
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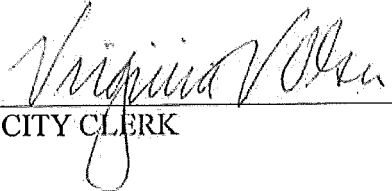
Section 26. Severability. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause 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.

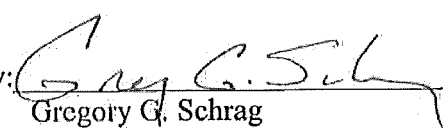
PASSED BY THE CITY COUNCIL OF THE CITY OF MOUNTLAKE TERRACE this 6th day of August, 2012, and signed in authentication of its passage this 6th day of August 2012.


MAYOR JERRY SMITH
Behalf of


ATTEST:


CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: 
Gregory G. Schrag

ACCEPTANCE OF FRANCHISE

THE UNDERSIGNED authorized representative of tw telecom of washington llc, hereby declares on behalf of tw telecom of washington llc, the acceptance of the non-exclusive franchise to tw telecom of washington llc, approved by the Mountlake Terrace City Council on August 6, 2012, by the adoption of Mountlake Terrace City Ordinance No 2591.

DATED THIS 6th day of August 2012.

tw telecom of washington llc
By: tw telecom holdings inc.,
Its sole member

BY: Tim Davis

Its: SVP/Deputy General Counsel



© 2011 Google

47°45'52.83" N 122°17'16.76" W elev 295 ft

244th St SW
Imagery Date: 6/11/2010 1990

Google
©2010

Eye alt: 5002 ft



STAFF REPORT

To: Mountlake Terrace City Council
From: Jeff Niten, City Manager, Carolyn Hope, Deputy City Manager
Meeting Date: April 9, 2026
Subject: Review Fiscal Sustainability Recommendations

Required Reviews:

Jennifer Joki	Created/Initiated - 03/23/2026
Jeff Niten	Approved - 03/25/2026
Sirke Salminen	Approved - 04/01/2026
Hillary Evans	Final Approval - 04/01/2026

Council Goal(s):

Responsible Governance to Ensure Desired Level of Service
Growing our Vibrant Community
An Informed and Engaged Community

Legislative History:

Staff discussed the formation of a Fiscal Sustainability Taskforce (FST) and the development of a Long Range Fiscal Sustainability Plan with City Council on May 15, 2024, June 6, 2024, and March 22, 2025. Staff presented the proposed Fiscal Sustainability Taskforce Members to City Council on May 8, 2025. The City Council approved the consultant contract with Baker Tilly to support this work on February 20, 2025 and an amendment to that contract on January 8, 2026. Baker Tilly presented the long-range financial forecast to the City Council on July 24, 2025 and provided an update on the FST's work on October 9, 2025. On February 26, 2026, the Fiscal Sustainability Taskforce Project Team and members presented the Taskforce recommendations to City Council. On March 7, the City Council discussed high-level fiscal sustainability goals. On March 12, staff shared details of recommended and contingency reductions and City Council members offered ideas about how to adjust some recommendations to achieve the goals.

Subject Summary:

At this meeting, city staff will share two alternative options for the proposed budget packages that attempt to include City Councilmembers ideas such as:

- Reducing the general fund further without adding revenue options
- Evaluating the option for one ballot measure rather than two over the next few years
- Evaluating the option of using the Transportation Benefit District (TBD) license fee

increase of \$20 rather than the TBD sales tax, and using a levy lid lift to offset costs of recreation, parks, streets, and potentially police services.

Additionally, staff will share the impacts of these decisions on community members and the city.

Financial/Budget Impacts:

Budget Amendment No
Required? _____

Budget and Sources:	NA
Expenditure:	NA
New Appropriation Required + Sources:	NA

Additional Financial Information:

N/A

Community Notifications:

City Council Agenda

If "Other," please specify:

Board/Commission Recommendation:

The Taskforce recommendations are attached.

Staff Recommendation:

Staff recommend that City Council decide how to bridge the budget gap by mid-May, so that staff can prepare materials for the budget meetings planned in May and prepare for the 2027-2028 Budget and any potential revenue options that require action before June.

Council Motion:

N/A

Attachments:

None