

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY OF OLYMPIA, WASHINGTON, GRANTING A NON-EXCLUSIVE MASTER PERMIT TO NOEL COMMUNICATIONS INC., LEGALLY AUTHORIZED TO CONDUCT BUSINESS IN THE STATE OF WASHINGTON, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING TELECOMMUNICATIONS TRANSMISSION LINES IN CERTAIN PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, NOEL COMMUNICATIONS INC. is a competitive telecommunications company providing communications and telecommunications services; and

**WHEREAS**, NOEL COMMUNICATIONS INC.'s route through the City of Olympia ("City") requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of a telecommunications system; and

**WHEREAS**, the City Council held a public hearing on November 26, 2019, where it was presented with information demonstrating that NOEL COMMUNICATIONS INC. satisfies the requirements set forth in Olympia Municipal Code ("OMC") 11.06.020. In particular, the City Council was presented with information confirming and demonstrating the following: That NOEL COMMUNICATIONS INC. has submitted all required licenses, certificates, and authorizations from the Federal Communications Commission, the Washington Utilities and Transportation Commission, and any other federal or state agency with jurisdiction over the activities proposed by NOEL COMMUNICATIONS INC. That the capacity of the public ways can accommodate NOEL COMMUNICATIONS INC.'s Facilities if the Master Permit is granted. That the City's rights-of-way will accommodate additional utility and facilities if the Master Permit is granted. That NOEL COMMUNICATIONS INC. confirms that there are currently no additional Facilities planned and there is no anticipated damage or disruption to the City's rights-of-way. That construction of additional Facilities will comply with the City's Engineering Design and Development Standards ("EDDS"). That there will be minimal effect, if any, on public health, safety, and welfare if the Master Permit requested is granted. That the proposed route of NOEL COMMUNICATIONS INC.'s Facilities is appropriate; an alternate route is not needed. And that NOEL COMMUNICATIONS INC. has agreed to comply with all federal, state, and local telecommunications laws, regulations, and policies; and

**WHEREAS**, the Revised Code of Washington (RCW) authorizes the City to grant and regulate nonexclusive Master Permits, for the use of public streets, rights-of-way, and other public property, for transmission of communications; and

**WHEREAS**, the insurance provisions of this Master Permit are updated and supersede the insurance provisions set forth in OMC 11.10.220; and

**WHEREAS**, this Master Permit contains the following:

- Section 1. Non-exclusive Master Permit Granted
- Section 2. Authority
- Section 3. Master Permit Term
- Section 4. Acceptance of Terms and Conditions

Section 5. Construction Provisions and Standards

- A. Permit Required
- B. Coordination
- C. Construction Standards
- D. Underground Installation Required
- E. Relocation.
- F. Removal or Abandonment
- G. Bond
- H. "One-Call" Location & Liability
- I. As-Built Plans Required
- J. Recovery of Costs
- K. Vacation

Section 6. Master Permit Compliance.

- A. Master Permit Violations
- B. Emergency Actions.
- C. Other Remedies
- D. Removal of System

Section 7. Insurance

Section 8. Other Permits & Approvals

Section 9. Transfer of Ownership.

Section 10. Administrative Fees.

Section 11. Notices.

Section 12. Indemnification.

Section 13. Severability

Section 14. Reservation of Rights

Section 15. Police Powers

Section 16. Future Rules, Regulations, and Specifications

Section 17. Effective Date

Section 18. Law and Venue

Section 19. Ratification

**NOW, THEREFORE, THE OLYMPIA CITY COUNCIL ORDAINS AS FOLLOWS:**

**Section 1. Non-exclusive Master Permit Granted.**

**A.** The City hereby grants to NOEL COMMUNICATIONS INC., subject to the terms and conditions of this Ordinance ("Master Permit"), the rights to construct, replace, repair, monitor, maintain, use, and operate the Facilities (as defined in OMC 11.02.020 O) necessary for an underground telecommunications transmission system, within the City-owned rights-of-way generally described in Exhibit A, and referred to as the "Master Permit Area."

**B.** The rights granted by this Master Permit are not exclusive to NOEL COMMUNICATIONS INC. and the granting of this Master Permit does not in any way prohibit or limit the City's ability to grant other Master Permits or rights along, over, or under the Master Permit area, provided that such other uses do not unreasonably interfere with NOEL COMMUNICATIONS INC.'s exercise of the rights granted in this Master Permit, as determined by the City. This Master Permit does not allow for interference

with existing utilities or in any way limit, prohibit, or prevent the City from using the Master Permit Area, and does not in any way affect the City's jurisdiction over that area.

**Section 2. Authority.** The City Manager or the City Manager's designee is hereby granted the authority to administer and enforce the terms and conditions of this Master Permit, and may develop such rules, policies, and procedures as deemed necessary to carry out this Master Permit.

**Section 3. Master Permit Term.** This Master Permit is effective for a period of five years from the effective date of this Ordinance. The effectiveness of this Master Permit is contingent upon NOEL COMMUNICATIONS INC.'s delivery of a written acceptance to the City pursuant to Section 4 of this Master Permit. If NOEL COMMUNICATIONS INC. requests a Master Permit renewal prior to the expiration date, the City may, at the City's sole discretion, extend the term of this Master Permit beyond the expiration date to allow processing of the renewal. If the City elects to extend the term of this Master Permit, the City shall provide written notice of the extension to NOEL COMMUNICATIONS INC. prior to the expiration date.

**Section 4. Acceptance of Terms and Conditions.** As required by OMC 11.10.020, NOEL COMMUNICATIONS INC. shall, within 30 days of the effective date of this Ordinance or within such other time period as is mutually agreed by the parties, deliver to the City Manager for filing an unconditional acceptance of this Master Permit in the form attached as Exhibit B. NOEL COMMUNICATIONS INC.'s failure to deliver the acceptance within this time period voids and nullifies this Master Permit and terminates any and all rights granted under this Master Permit.

**Section 5. Construction Provisions and Standards.** NOEL COMMUNICATIONS INC. shall abide by the following construction provisions and standards, and NOEL COMMUNICATIONS INC.'s failure to abide by any of the following construction provisions or standards constitutes non-compliance with the terms and conditions of this Master Permit and may result in imposition of some or all of the remedies specified in Section 6.

**A. Permit Required.** Neither NOEL COMMUNICATIONS INC., nor any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, may perform any construction, installation, maintenance, repair, or restoration activities (except for emergency repairs) in the Master Permit Area without first obtaining appropriate permits from the Community Planning and Development Department (CP&D). In case of an emergency, NOEL COMMUNICATIONS INC. shall within 24 hours of the emergency, obtain a permit from CP&D.

**B. Coordination.** All construction, installation, maintenance, repair, or restoration activities are subject to City inspection and approval, as provided in the OMC. NOEL COMMUNICATIONS INC. shall arrange and allow for such inspection. NOEL COMMUNICATIONS INC. shall coordinate all construction, installation, maintenance, repair, or restoration activities and inspections with CP&D to ensure consistency with City infrastructure, future Capital Improvement Projects, all developer improvements, and pertinent codes and ordinances.

**C. Construction Standards.** NOEL COMMUNICATIONS INC., and any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, shall perform all construction, installation, maintenance, repair, or restoration activities within the Master Permit Area so as to produce the least amount of interference with the free passage of pedestrian, bicycle, and vehicular traffic. NOEL COMMUNICATIONS INC., and any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, shall perform all

construction, installation, maintenance, repair, or restoration activities in conformance with the EDDS and with Title 11 of the OMC.

**D. Underground Installation Required.** NOEL COMMUNICATIONS INC., and any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, shall install any new Facilities underground unless otherwise exempted from this requirement, in writing, by the City Manager, or the City Manager's designee.

**E. Relocation.**

1. NOEL COMMUNICATIONS INC. shall, at its own expense, temporarily or permanently remove, relocate, place underground, change, or alter the position of any of its Facilities within the right-of-way whenever the City has determined that such removal, relocation, undergrounding, change, or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any City or other public improvement in or upon the rights-of-way. NOEL COMMUNICATIONS INC. may seek reimbursement for relocation expenses from the City as provided for in the OMC.
2. NOEL COMMUNICATIONS INC. may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation. Such alternatives must include the use and operation of temporary transmitting facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise NOEL COMMUNICATIONS INC. in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, NOEL COMMUNICATIONS INC. shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by NOEL COMMUNICATIONS INC. full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, NOEL COMMUNICATIONS INC. shall relocate its Facilities as otherwise provided in this Section.

**F. Removal or Abandonment.** Upon the removal from service of any of NOEL COMMUNICATIONS INC.'s Facilities, NOEL COMMUNICATIONS INC. shall comply with all applicable standards and requirements prescribed by the OMC and the EDDS for the removal or abandonment of the Facilities. No Facilities constructed or owned by NOEL COMMUNICATIONS INC. may be abandoned without the express written consent of the City.

**G. Bond.** Before undertaking any of the construction, installation, maintenance, repair, or restoration activities authorized by this Master Permit, NOEL COMMUNICATIONS INC. shall upon the request of the City, furnish a bond executed by NOEL COMMUNICATIONS INC. and a corporate surety authorized to operate a surety business in the State of Washington, in an amount determined by the City as sufficient to ensure performance of NOEL COMMUNICATIONS INC.'s obligations under this Master Permit. At NOEL COMMUNICATIONS INC.'s sole option, NOEL COMMUNICATIONS INC. may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of bond or alternate security must be in the form reasonably acceptable to the City. The bond must be conditioned so that NOEL COMMUNICATIONS INC. shall observe all the terms and conditions and shall faithfully perform all of the obligations of this Master Permit, and to repair or replace any defective work or materials discovered in the City's roads, streets, or property. NOEL COMMUNICATIONS INC. may not encumber a bond required by this Section for any other purpose.

**H. "One-Call" Location & Liability.** NOEL COMMUNICATIONS INC. shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate any of its Facilities upon request. The City is not liable for any damages to NOEL COMMUNICATIONS INC.'s Facilities or for interruptions in service to NOEL COMMUNICATIONS INC.'s customers which are a direct result of work performed for any City project for which NOEL COMMUNICATIONS INC. has failed to properly locate its Facilities within the prescribed time limits and guidelines established by One-Call. The City is also not liable for any damages to NOEL COMMUNICATIONS INC.'s Facilities or for interruptions in service to NOEL COMMUNICATIONS INC.'s customers resulting from work performed under a permit issued by the City.

**I. As-Built Plans Required.** NOEL COMMUNICATIONS INC. shall maintain accurate engineering plans and details of all Facilities installed within the City limits and shall, at the City's request, provide such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any construction, installation, maintenance, repair, or restoration activities performed by NOEL COMMUNICATIONS INC., or any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction, pursuant to this Master Permit. The City shall determine the acceptability of any as-built submittals provided under this Section.

**J. Recovery of Costs.** NOEL COMMUNICATIONS INC. is subject to all permit fees associated with activities undertaken through the authority granted in this Master Permit or under other ordinances of the City. Where the City incurs costs and expenses for review or inspection of activities undertaken through the authority granted in this Master Permit or any ordinances relating to the subject for which permit fees have not been established, NOEL COMMUNICATIONS INC. shall pay such reasonable costs and expenses directly to the City.

**K. Vacation.** If, at any time, the City vacates any City road, right-of-way, or other City property which is subject to rights granted by this Master Permit and the vacation is for the purpose of acquiring the fee or other property interest in the road, right-of-way, or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving 30 days written notice to NOEL COMMUNICATIONS INC., terminate this Master Permit with reference to such City road, right-of-way, or other City property vacated, and the City is not liable for any damages or loss to NOEL COMMUNICATIONS INC. by reason of such termination other than those provided for in RCW chapter 35.99.

## **Section 6. Master Permit Compliance.**

**A. Master Permit Violations.** If NOEL COMMUNICATIONS INC. fails to fully comply with any of the provisions of this Master Permit, the City may provide written notice to NOEL COMMUNICATIONS INC., which describes the violation(s) of the Master Permit and requests remedial action within 30 days of receipt of the violation notice. If NOEL COMMUNICATIONS INC. has not remedied the violation(s) identified in the violation notice at the end of the 30-day period following receipt of the violation notice, the City may declare an immediate termination of this Master Permit, provided that remedying the violation(s) was reasonably possible within that 30-day period. If the violation(s) identified in the violation notice could not possibly be remedied within the 30-day period, the City may declare an immediate termination of this Master Permit at the end of the period in which the violation could possibly have been remedied.

**B. Emergency Actions.**

1. If the City determines that any of NOEL COMMUNICATIONS INC.'s actions, or any failure by NOEL COMMUNICATIONS INC. to act to correct a situation caused by NOEL COMMUNICATIONS INC., creates a threat to life or property, the City may order NOEL COMMUNICATIONS INC. to immediately correct the threat or, at the City's discretion, the City may act to correct the threat; provided that, when possible, the City shall notify NOEL COMMUNICATIONS INC. and give NOEL COMMUNICATIONS INC. an opportunity to correct the threat before the City acts to correct the threat. NOEL COMMUNICATIONS INC. is liable to the City for all costs, expenses, and damages resulting to the City from the threat or incurred by the City in acting to correct the threat to the extent that the threat was caused by NOEL COMMUNICATIONS INC. NOEL COMMUNICATIONS INC. shall reimburse the City for any such costs within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by NOEL COMMUNICATIONS INC. to take appropriate action to correct a threat caused by NOEL COMMUNICATIONS INC. and identified by the City is a violation of this Master Permit.
2. If during construction, installation, maintenance, repair, or restoration of any of NOEL COMMUNICATIONS INC.'s Facilities any damage occurs to an underground facility, and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health, or property, NOEL COMMUNICATIONS INC. or any person or entity working on NOEL COMMUNICATIONS INC.'s behalf or at NOEL COMMUNICATIONS INC.'s direction shall immediately call 911 or other local emergency response number.

**C. Other Remedies.** Nothing contained in this Master Permit limits the City's available remedies in the event of NOEL COMMUNICATIONS INC.'s failure to comply with this Master Permit, including but not limited to, the City's right to a lawsuit for specific performance, or damages, or both.

**D. Removal of System.** In the event that this Master Permit is terminated as a result of violations of this Master Permit, NOEL COMMUNICATIONS INC. shall at its sole expense, promptly remove all Facilities, provided that the City, at its sole option, may allow NOEL COMMUNICATIONS INC. to abandon some or all of its Facilities in place.

**Section 7. Insurance.**

**A.** NOEL COMMUNICATIONS INC. shall maintain liability insurance written on an occurrence form during the full term of this Master Permit for bodily injuries and property damages. The policy must contain coverage in the amounts and conditions set forth in subsection D of this Section.

**B.** Such insurance must specifically name, as additional insured, the City, its officers (including its elected and appointed officials), employees, and agents (including its representatives, consultants, engineers, and volunteers); must apply as primary insurance; must stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder; and must further provide that the policy may not be modified or canceled during the term of this Master Permit without giving advanced written notice to the City. Notice must be by certified mail to the City Manager, return receipt requested.

**C.** If the City determines that circumstances warrant an increase in insurance coverage and liability limits to adequately cover the risks of the City, the City may require additional insurance to be

acquired. The City shall provide written notice should the City exercise its right to require additional insurance.

**D.** NOEL COMMUNICATIONS INC. shall grant, secure, and maintain the following liability insurance policies insuring both NOEL COMMUNICATIONS INC. and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insured parties against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights granted to NOEL COMMUNICATIONS INC.:

1. Commercial general liability insurance, written on an occurrence basis and on form to include premises, products, completed operations, explosions, collapse and underground hazards with limits not less than \$5,000,000.00 per occurrence covering bodily injury or death and property damage and may be placed with a combination of primary and excess liability policies;
2. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 for each accident covering bodily injury or death and property damage and may be placed with a combination of primary and excess liability policies;
3. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000.00;
4. The liability insurance policies required by this Section must be maintained by NOEL COMMUNICATIONS INC. throughout the term of the Master Permit and such other period of time during which NOEL COMMUNICATIONS INC. is operating without an authorization or is engaged in the removal of its Facilities. NOEL COMMUNICATIONS INC. shall provide an insurance certificate, together with an endorsement naming the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Facilities pursuant to this Master Permit. Any deductibles or self-insured retentions must be declared to and approved by the City. NOEL COMMUNICATIONS INC. shall pay and is solely responsible for any deductibles and self-insured retentions. The liability insurance policies required by this Section must contain a clause stating that coverage applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. NOEL COMMUNICATIONS INC.'s insurance must be primary insurance as respects the City, its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers. Any insurance maintained by the City, elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers is in excess of NOEL COMMUNICATIONS INC.'s insurance and does not contribute with it; and
5. In addition to the coverage requirements set forth in this Section, the insurance certificate must state should any of the required insurance be cancelled or not renewed, advanced written notice must be provided to the City Manager of such intent to cancel or not to renew. Within 30 days after receipt by the City of said notice, and in no event later than five days prior to said cancellation or intent not to renew, NOEL COMMUNICATIONS INC. shall obtain and furnish to the City replacement insurance policies meeting the requirements of this Section.

**Section 8. Other Permits & Approvals.** Nothing in this Agreement relieves NOEL COMMUNICATIONS INC. from any obligation to obtain approvals or permits from applicable federal, state, and City authorities for all activities in the Master Permit Area.

**Section 9. Transfer of Ownership.**

**A.** NOEL COMMUNICATIONS INC. shall not sell, transfer, assign, or otherwise encumber its rights provided by this Master Permit without the prior written consent of the City, which the City shall not unreasonably withhold or delay. The City's consent is not required where NOEL COMMUNICATIONS INC.'s transfers or assigns its rights under this Master Permit for the purpose of securing a debt, or where the transfer or assignment is to another person or entity controlling, controlled by, or under common control with NOEL COMMUNICATIONS INC. NOEL COMMUNICATIONS INC. may license the use of its Facilities to other users without the consent of the City, but NOEL COMMUNICATIONS INC. remains solely responsible for complying with the terms and conditions of this Master Permit.

**B.** In any sale, transfer, or assignment of this Master Permit which requires the City's consent, NOEL COMMUNICATIONS INC. shall demonstrate to the City's satisfaction that the recipient of such sale, transfer, or assignment has the technical ability, financial capability, and any other legal or general qualifications reasonably determined by the City to be necessary to ensure that the recipient can meet the terms and conditions of this Master Permit. The City Council will determine the qualifications of any proposed recipient in a public hearing and will approve or deny the sale, transfer, or assignment by resolution. NOEL COMMUNICATIONS INC. shall, within 30 days of any sale, transfer, or assignment, of this Master Permit reimburse the City for any actual and reasonable administrative costs incurred by the City in approving the sale, transfer, or assignment.

**Section 10. Administrative Fees.**

**A.** The City is precluded from imposing Master Permit fees for "telephone businesses," as defined in RCW 82.16.010, except that fees may be collected for administrative expenses related to a Master Permit. NOEL COMMUNICATIONS INC. hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010.

**B.** NOEL COMMUNICATIONS INC. is subject to a reasonable administrative fee for reimbursement of costs associated with the preparation, processing, and approval of this Master Permit and for reimbursement of administrative costs for issuing any permits and for inspecting, monitoring, or supervising any actions required under Section 5 above. These costs include but are not limited to wages, benefits, overhead expenses, equipment, and supplies associated with such tasks as plan review, site visits, meetings, negotiations, and other functions critical to proper management and oversight of City's right-of-way. Administrative fees exclude normal permit fees as provided in Title 11 of the OMC.

**C.** In the event NOEL COMMUNICATIONS INC. submits a request for work beyond the scope of this Master Permit, or submits a complex project that requires significant plan review or inspection, NOEL COMMUNICATIONS INC. shall reimburse the City for costs incurred by the City associated with the request or project. NOEL COMMUNICATIONS INC. shall pay such costs within 30 days of receipt of an invoice from the City.

**D.** Failure by NOEL COMMUNICATIONS INC. to make full payment of invoices within the time specified is grounds for the termination of this Master Permit.



**Section 11. Notices.** Each party shall deliver any notice to be served on the other party to the following addresses:

CITY:  
City of Olympia  
ATTN: City Manager  
PO Box 1967  
Olympia WA 98507

NOEL COMMUNICATIONS INC.:  
Nick Guy  
Chief Operating Officer  
901 Pitcher Street  
Yakima, WA 98901-3063

With a copy to:  
City of Olympia  
ATTN: City Attorney  
PO Box 1967  
Olympia WA 98507

With a copy to:  
Jym Schuler  
Facilities & OSP Mgr  
901 Pitcher Street  
Yakima, WA 98901-3063

**Section 12. Indemnification.**

**A.** NOEL COMMUNICATIONS INC. shall use reasonable and appropriate precautions to avoid damage to persons or property in any construction, installation, maintenance, repair, restoration or operation of its Facilities. NOEL COMMUNICATIONS INC. shall indemnify, defend, and hold the City harmless from all claims, actions, or damages, including reasonable attorney's and expert witness fees, which may accrue to or be suffered by any person or persons, corporation, or property to the extent caused in part or in whole by any act or omission of NOEL COMMUNICATIONS INC., its officers, agents, servants, or employees, carried on in the furtherance of the rights granted to NOEL COMMUNICATIONS INC. by this Master Permit, including, but not limited to, any delay or failure to comply with the City's directives to relocate or remove its Facilities. In the event any claim or demand is presented to or filed with the City which gives rise to NOEL COMMUNICATIONS INC.'s obligation pursuant to this Section, the City shall within a reasonable time notify NOEL COMMUNICATIONS INC. of the claim or demand and NOEL COMMUNICATIONS INC. shall have the right, at its election, to settle or compromise the claim or demand. In the event any lawsuit is commenced in which the City is named a party, and which lawsuit is based on a claim or demand which gives rise to NOEL COMMUNICATIONS INC.'s obligation pursuant to this Section, the City shall promptly notify NOEL COMMUNICATIONS INC. of the lawsuit, and NOEL COMMUNICATIONS INC. shall, at its sole cost and expense, defend such lawsuit by attorneys of its own election. In defense of such lawsuit, NOEL COMMUNICATIONS INC. may, at its election and at its sole cost and expense, settle or compromise such lawsuit.

**B.** To the extent of any concurrent negligence between NOEL COMMUNICATIONS INC. and the City, NOEL COMMUNICATIONS INC.'s obligations under this Section only extend to its share of negligence or fault. The City may at all times participate through its own attorney in any lawsuit which arises out of or relates to this Master Permit when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City is at the City's sole cost and expense.

**C.** With respect to the performance of this Master Permit and as to claims or demands against the City, its officers, agents, and employees, NOEL COMMUNICATIONS INC. expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its officers, agents, and employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this Section extends to any claim brought by or on behalf of NOEL

COMMUNICATIONS INC.'s officers, agents or employees. This waiver was mutually negotiated by the parties.

**Section 13. Severability.** If a court with proper jurisdiction holds that any section, sentence, clause, or phrase of this Master Permit is invalid or unconstitutional, the City may, at its sole option, deem the entire Master Permit to be affected and thereby nullified, or the City may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this Master Permit. If the City elects to enforce the remaining provisions of this Master Permit, NOEL COMMUNICATIONS INC. may elect to terminate this Master Permit.

**Section 14. Reservation of Rights.** The parties agree that this Master Permit is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders, and ordinances. Accordingly, any provision of this Master Permit or any local ordinance which may conflict with or violate the law is invalid and unenforceable, whether enacted before or after the effective date of this Master Permit, it being the intention of the parties to preserve their respective rights and remedies under the law, and that this Master Permit does not constitute a waiver of any rights or obligations by either party under the law.

**Section 15. Police Powers.** Nothing contained in this Master Permit affects the City's authority to exercise its police powers. NOEL COMMUNICATIONS INC. does not by this Master Permit obtain any vested rights to use any portion of the City right-of-way except for the locations approved by the City and then only subject to the terms and conditions of this Master Permit. This Master Permit and the permits issued for work related to this Master Permit are governed by applicable City ordinances in effect at the time of application for such permits.

**Section 16. Future Rules, Regulations, and Specifications.** NOEL COMMUNICATIONS INC. acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to NOEL COMMUNICATIONS INC., thereafter govern NOEL COMMUNICATIONS INC.'s activities under this Master Permit; provided, however, that in no event may regulations:

**A.** Materially interfere with or adversely affect NOEL COMMUNICATIONS INC.'s rights pursuant to and in accordance with this Master Permit; or

**B.** Be applied in a discriminatory manner as it pertains to NOEL COMMUNICATIONS INC. and other similar user of such facilities.

**Section 17. Effective Date.** The City shall cause this Master Permit, or a summary, to be published in the official newspaper of the City, and this Master Permit takes effect five days after passage and publication as provided by law. Effectiveness of this Master Permit is subject to NOEL COMMUNICATIONS INC.'s acceptance of this Master Permit, as required by Section 4, above.

**Section 18. Law and Venue.** This Master Permit is issued under the laws of the State of Washington, and the forum for any dispute arising under this Master Permit is in Thurston County state Superior Court.

**Section 19. Ratification.** Any act consistent with the authority and prior to the effective date of this Master Permit is hereby ratified and affirmed.

\_\_\_\_\_  
MAYOR

**ATTEST:**

\_\_\_\_\_  
CITY CLERK

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
DEPUTY CITY ATTORNEY

**PASSED:**

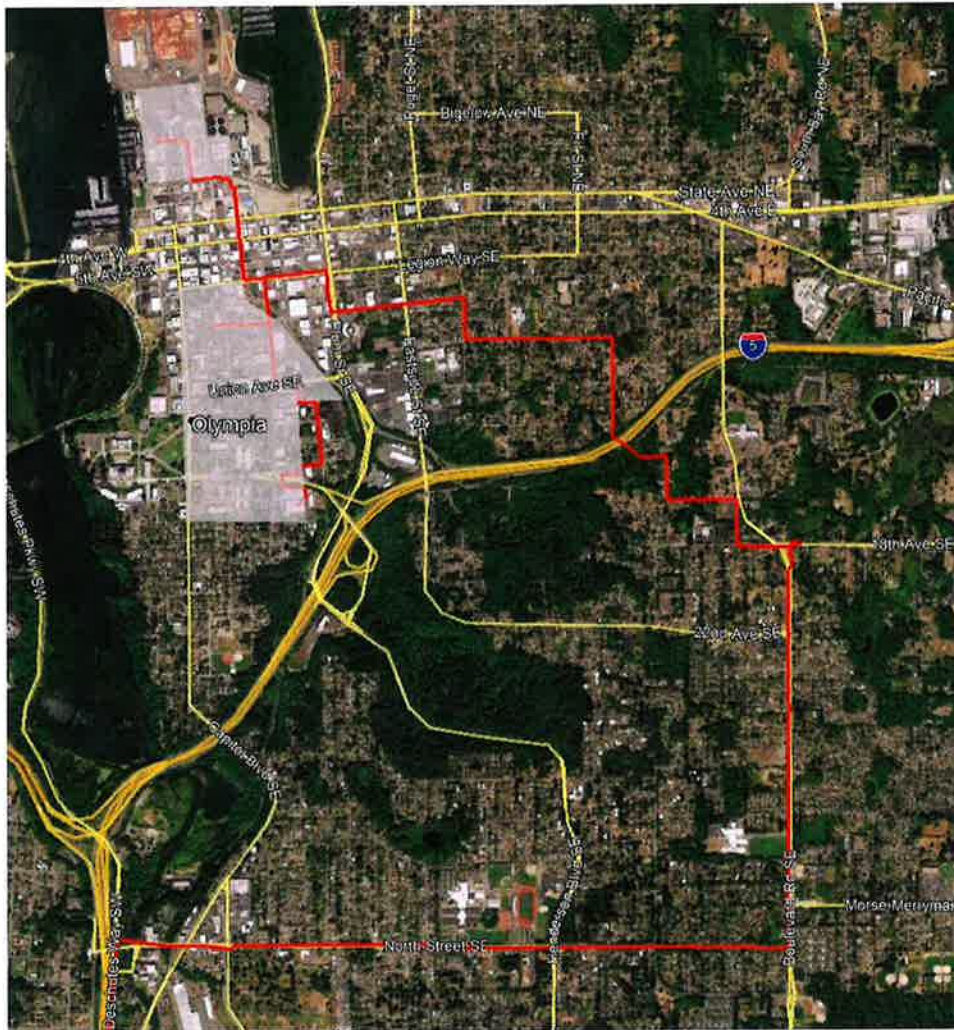
**APPROVED:**

**PUBLISHED:**

**ATTACHMENTS:**      ***EXHIBIT A, NOEL COMMUNICATIONS INC. system map (combination NOEL COMMUNICATIONS INC./ facilities)***  
***EXHIBIT B, Master Permit Acceptance Form, NOEL COMMUNICATIONS INC.***

**EXHIBIT A**

*Noel Communications – Future Wholesail Networks  
City of Olympia local fiber network*



Red line indicates 2019 existing facilities

Shaded area indicates future expansion areas

**EXHIBIT B**

**MASTER PERMIT ACCEPTANCE FORM**

**NOEL COMMUNICATIONS INC.**

Date: \_\_\_\_\_

City of Olympia  
City Clerk's Office  
PO Box 1967  
Olympia, WA 98507

Re: Ordinance No. \_\_\_\_\_  
Adopted \_\_\_\_\_

In accordance with and as required by Section 4 of the City of Olympia Ordinance referenced above, NOEL COMMUNICATIONS INC. hereby unconditionally accepts the terms, conditions, and obligations to be complied with or performed by it under the Master Permit.

I certify that I am duly authorized to execute this acceptance on behalf of NOEL COMMUNICATIONS INC.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name and Title