

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OLYMPIA, WASHINGTON,
CONSENTING TO THE ASSIGNMENT OF A MASTER USE PERMIT, ISSUED BY THE CITY OF
OLYMPIA TO NOEL COMMUNICATIONS, INC., TO WHOLESAIL NETWORKS LLC**

WHEREAS, the City of Olympia ("City") granted to Noel Communications, Inc., a Washington corporation ("Grantee"), a Master Use Permit as set forth in Ordinance No. 7226, published December 20, 2019, to use the rights-of way within the City of Olympia to construct and operate an underground telecommunications system (the "Franchise"); and

WHEREAS, the Master Use Permit issued to Grantee requires that Grantee obtain the Consent of the City before selling, transferring, or assigning its Master Use Permit. The Master Use Permit further requires that in seeking the City's consent to a transfer, Grantee must 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 the Master Permit. Under the Master Use Permit, the City Council determines the qualifications of any proposed recipient in a public hearing and will approve or deny the sale, transfer, or assignment by resolution; and

WHEREAS, Grantee entered into an agreement (the "Purchase Agreement") by which it sold certain of its assets and related business operations, including the Master Use Permit (collectively, the "Business"), to Wholesail Networks LLC, a Washington limited liability company ("Assignee"); and

WHEREAS, Grantee has requested the City's consent to the Assignment of the Master Permit from Grantee to Assignee ("Consent to Transfer"); and

WHEREAS, in connection with the consummation of the sale of the Business to Assignee, which took place on December 19, 2019 (the "Closing"), Grantee desires to assign its rights and delegate its obligations under the Master Permit to Assignee (the "Assignment"); and

WHEREAS, City Staff have conducted a review of the technical ability, financial capability, and other legal and other general qualifications of Assignee to hold and meet the terms and conditions of the Master Use Permit and own and operate the telecommunications network authorized by the Master Use Permit and have determined that Assignee possesses the necessary abilities, capabilities, and qualifications; and

WHEREAS, all written comments and staff reports have been received, and made a part of the record;

NOW, THEREFORE, THE OLYMPIA CITY COUNCIL DOES HEREBY RESOLVE as follows:

1. Grantee has demonstrated to the City's satisfaction that Assignee has the technical ability, financial capability, and other legal and other general qualifications to hold and meet the terms and conditions of the Master Use Permit and to own and operate the telecommunications network authorized by the Master Use Permit.

2. Consent to the transfer of the Master Use Permit from Noel Communications, Inc. to Wholesail Networks, LLC, as reflected in the Purchase Agreement, is hereby granted.
3. The City confirms that: (a) the Master Use Permit was duly issued to Grantee, is valid and enforceable in accordance with its terms, and is in full force and effect; (b) other than as set forth in this Resolution, there have been no amendments or modifications to the Master Use Permit; (c) to City's knowledge, there are no defaults under the Master Use Permit, and no event has occurred and is continuing which, with the giving of notice or passage of time, or both, could constitute a default thereunder; and (d) upon the passage of this Resolution, the duly authorized franchisee under the Master Use Permit will be Assignee.
4. As provided in the Master Use Permit, Assignee may hereafter, without the need to obtain the prior consent of City, from time to time assign or transfer its assets, including the Master Use Permit, provided however, that such assignment or transfer is 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 Assignee.
5. The Master Use Permit and this Resolution providing for the Consent to Transfer were and are made, passed, and adopted in accordance with all applicable notice and procedure requirements under all laws applicable to City, and with all applicable notice and procedure requirements, and do not conflict with the laws, ordinances, resolutions, and other regulations of City, as presently in effect or as the same were in effect at the time the particular action was taken.
6. The City's Consent to Transfer the Master Use Permit to Assignee is effective upon passage of this Resolution.
7. The City hereby releases Grantee, effective upon passage of this Resolution, from all obligations and liabilities (including any guarantee or surety) under the Master Use Permit related to the period on and after passage of this Resolution; and Assignee is responsible for any obligations and liabilities under the Master Use Permit related to the period on and after passage of this Resolution.

PASSED BY THE OLYMPIA CITY COUNCIL this 7th day of July 2020.

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

DEPUTY CITY ATTORNEY