

ORDINANCE NO. 203

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, GRANTING US CROSSING INC. A NON-EXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE AND REPAIR A MULTIPLE CONDUIT FIBER OPTIC TELECOMMUNICATIONS SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH AND BELOW CERTAIN DESIGNATED PUBLIC RIGHTS-OF-WAY OF THE CITY OF SHORELINE, WASHINGTON.

WHEREAS, RCW 35A.11.020 grants the City broad authority to regulate the use of the public Right-of-Way; and

WHEREAS, RCW 35A.47.040 grants the City broad authority to grant nonexclusive franchises; and

WHEREAS, the Council finds that it is in the best interests of the health, safety and welfare of residents of the Shoreline community to grant a non-exclusive franchise to US Crossing Inc. ("US Crossing"), for the operation of a multiple conduit fiber optic telecommunications system within the City Right-of-Way;

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

Section 1 Definitions.

The following terms contained herein, unless otherwise indicated, shall be defined as follows:

- 1.1 City: The City of Shoreline, a municipal corporation of the State of Washington, specifically including all areas incorporated therein as of the effective date of this ordinance and any other areas later added thereto by annexation or other means.
- 1.2 Days: Calendar days.
- 1.3 Facilities: All conduit, wires, lines, fiber optic cable, equipment, supporting structures, and all other facilities associated with the Telecommunications System located in the Right-of-Way, utilized by US Crossing in the operation of activities authorized by this Ordinance. The abandonment by US Crossing of any Facilities as defined herein shall not act to remove the same from this definition.
- 1.4 Permitting Authority: The head of the City department authorized to process and grant permits required to perform work in the City's Right-of-Way, or the head of any agency authorized to perform this function on the City's behalf. Unless otherwise indicated, all references to Permitting Authority shall include the designee of the department or agency head.

- 1.5 Person: An entity or natural person.
- 1.6 Public Works Director: The head of the Public Works department of the City, or in the absence thereof, the head of the Permitting Authority, or the designee of either of these individuals.
- 1.7 Right-of-Way: As used herein shall refer to the surface of and the space along, above, and below any street, road, highway, freeway, lane, sidewalk, alley, court, boulevard, parkway, drive, utility easement, and/or road Right-of-Way now or hereafter held or administered by the City of Shoreline.
- 1.8 US Crossing: US Crossing Inc., a Delaware corporation, and its respective successors and assigns.
- 1.9 Telecommunications System: means the multiple conduit fiber optic cable telecommunications system and all Facilities associated with that Telecommunications System that US Crossing seeks to construct within the Right-of-Way.

Section 2 Franchise Granted.

- 2.1 Pursuant to RCW 35A.47.040, the City hereby grants to US Crossing, its heirs, successors, 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.
- 2.2 This franchise shall grant US Crossing the right, privilege and authority to construct, operate, maintain, replace, and use the Telecommunications System and Facilities located in the authorized installation route of the Right-of-Way as depicted in documents filed with the City Clerk under Clerk's Receiving Number 950, and as approved under City permits issued by the Permitting Authority pursuant to this franchise and City ordinances.

Section 3 Nonexclusive 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 any Right-of-Way. Such franchise shall in no way prevent or prohibit the City from using any Right-of-Way or other public property or affect its jurisdiction over them or any part of them, and the City shall retain the authority to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the City may deem appropriate.

Section 4 Relocation of Facilities.

- 4.1 US Crossing agrees and covenants at its sole cost and expense, to relocate from any Right-of-Way its Facilities when so required by a public project of the City provided that US Crossing shall in all such cases have the privilege to temporarily bypass, in the authorized portion of the same right-of-way upon approval by the City, any Facilities required to be relocated.

- 4.2 If the City determines that a public project necessitates the relocation of US Crossing's existing Facilities, the City shall:
- 4.2.1 At least sixty (60) days prior to the commencement of such project, provide US Crossing with written notice requiring such relocation; and
 - 4.2.2 Provide US Crossing with copies of any plans and specifications pertinent to the requested relocation and a proposed temporary or permanent relocation for US Crossing's Facilities.
 - 4.2.3 After receipt of such notice and such plans and specifications, US Crossing shall complete relocation of its Facilities at no charge or expense to the City at least ten (10) days prior to commencement of the project.
- 4.3 US Crossing 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 US Crossing in writing if any of the alternatives is suitable to accommodate the work that otherwise necessitates the relocation of the Facilities. If so requested by the City, US Crossing shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by US Crossing full and fair consideration. In the event the City ultimately determines that there is no other reasonable alternative, US Crossing shall relocate its Facilities as directed by the City.
- 4.4 The provisions of this Section shall in no manner preclude or restrict US Crossing from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person other than the City, where the improvements to be constructed by said person are not or will not become City-owned, operated or maintained, provided that such arrangements do not unduly delay a City construction project or result in the installation of Facilities outside the limited scope of this franchise.

Section 5 US Crossing's Maps and Records.

As a condition of this franchise, and at its sole expense, US Crossing shall provide the City with typicals and as-built plans, maps, and records that show the vertical and horizontal location of its Facilities within the Right-of-Way using a minimum scale of one inch equals one hundred feet (1"=100'), measured from the center line of the Right-of-Way, which maps shall be in hard copy format acceptable to the City and in Geographical Information System (GIS) or other digital electronic format acceptable to the City. This information shall be provided no later than one hundred eighty (180) days after the effective date of this Ordinance and shall be updated upon reasonable request of the City.

Section 6 Incorporation By Reference.

Shoreline City Ordinance No. 83, Establishing Minimum Requirements, Procedures, And Application Information For Franchises Within Shoreline, is hereby incorporated herein

by this reference. In the event of a conflict between Ordinance No. 83 and this Ordinance, this Ordinance shall control. In addition, the following limitations to the requirements of Ordinance No. 83 shall apply:

- 6.1 US Crossing is a wholly-owned subsidiary of Global Crossing Ltd., a publicly traded corporation listed on the NASDAQ stock exchange, and the reporting requirements stated in subsections 10(A)(2) and 10(A)(6) of Ordinance 83 shall be satisfied for all purposes under this Ordinance by Global Crossing's public annual report filed with the Securities Exchange Commission;
- 6.2 The franchise granted herein does not require or grant authority for US Crossing to provide services of any kind to the residents and businesses of the City of Shoreline. For this reason, any terms of Ordinance No. 83 related to the provision of services shall not apply.

Section 7 Undergrounding.

The franchise granted herein is subject to Shoreline City Ordinance No. 82, Establishing Minimum Requirements And Procedures For The Underground Installation Of Electric And Communication Facilities Within Shoreline. Consistent with that Ordinance, US Crossing shall install all of its Facilities underground in accordance with relevant road and construction standards.

Section 8 Excavation And Notice Of Entry.

- 8.1 During any period of relocation or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Right-of-Way so as to minimize interference with the passage of traffic and the use of adjoining property. US Crossing 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 state law, including RCW 39.04.180, for the construction of trench safety systems.
- 8.2 Whenever US Crossing excavates in any Right-of-Way for the purpose of installation, construction, repair, maintenance or relocation of its Facilities, it shall apply to the City for a permit to do so in accordance with the ordinances and regulations of the City requiring permits to operate in the Right-of-Way. In no case shall any work commence within any Right-of-Way without a permit, except as otherwise provided in this Ordinance. During the progress of the work, US Crossing shall not unnecessarily obstruct the passage or use of the Right-of-Way, and shall provide the City with plans, maps, and information showing the proposed and final location of any Facilities in accordance with Section 5 of this Ordinance.
- 8.3 At least ten (10) days prior to its intended construction of Facilities, US Crossing shall inform all residents in the affected area, that a construction project will commence, the dates and nature of the project, and provide a toll-free or local telephone number which

the resident may call for further information. A pre-printed door hanger may be used for this purpose.

- 8.4 At least twenty-four (24) hours prior to entering Right-of-Way adjacent to or on private property to perform the installation, maintenance, repair, reconstruction, or removal of Facilities, a written notice describing the nature and location of the work to be performed shall be physically posted upon the affected private property by US Crossing. US Crossing shall make a good faith effort to comply with the property owner/resident's preferences, if any, regarding the location or placement of Facilities that protrude above the prior ground surface level consistent with sound engineering practices.

Section 9 Emergency Work, Permit Waiver.

In the event of any emergency where any Facilities located in the Right-of-Way are broken or damaged, or if US Crossing's construction area for their Facilities is in such a condition as to place the health or safety of any person or property in imminent danger, US Crossing shall immediately take any necessary emergency measures to repair or remove its Facilities without first applying for and obtaining a permit as required by this Ordinance. However, this emergency provision shall not relieve US Crossing from later obtaining any necessary permits for the emergency work. US Crossing shall apply for the required permits not later than the next business day following the emergency work.

Section 10 Recovery of Costs.

US Crossing shall be subject to all permit fees associated with activities undertaken pursuant to the franchise granted herein or other ordinances of the City. If the City incurs any costs and/or expenses for review, inspection or supervision of activities undertaken pursuant to the franchise granted herein or any ordinances relating to a subject for which a permit fee is not established, US Crossing shall pay the City's costs and expenses. In addition, US Crossing shall promptly reimburse the City for any costs the City reasonably incurs in responding to any emergency involving US Crossing's Facilities. Said costs and expenses shall be paid by US Crossing after submittal by the City of an itemized billing by project of such costs.

Section 11 Dangerous Conditions, Authority for City to Abate.

- 11.1 Whenever installation, maintenance or excavation of Facilities authorized by the franchise granted herein causes or contributes to a condition that appears to substantially impair the lateral support of the adjoining Right-of-Way, public or private property, or endangers any person, the Public Works Director may direct US Crossing, at US Crossing's expense, to take actions to resolve the condition or remove the endangerment. Such directive may include compliance within a prescribed time period.
- 11.2 In the event US Crossing fails or refuses to promptly take the directed action, or fails to fully comply with such direction, or if emergency conditions exist which require immediate action to prevent injury or damages to persons or property, the City may take

such actions as it believes are necessary to protect persons or property and US Crossing shall reimburse the City for all costs incurred.

Section 12 Safety.

- 12.1 US Crossing, in accordance with applicable federal, state, and local safety rules and regulations shall, at all times, employ ordinary care in the installation, maintenance, and repair utilizing methods and devices commonly accepted in their industry of operation to prevent failures and accidents that are likely to cause damage, injury, or nuisance to persons or property.
- 12.2 All of US Crossing's Facilities in the Right-of-Way shall be constructed and maintained in a safe and operational condition.
- 12.3 The City reserves the right to ensure that US Crossing's Facilities are constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist, the City will notify US Crossing in writing of said violation and establish a reasonable time for US Crossing to take the necessary action to correct the violation. If the correction is not made within the established time frame, the City, or its authorized agent, may make the correction. US Crossing shall reimburse the City for all costs incurred by the City in correcting the violation.

Section 13 Franchise Fee.

In consideration of US Crossing providing the capital improvements to the City's Right-of-Way described in the preliminary plans and specification filed with the City Clerk under Clerk's Receiving Number 951, the City agrees not to charge US Crossing any franchise fee other than standard permit and inspection fees, and the franchise application fee paid by US Crossing.

Section 14 Authorized Activities.

The franchise granted herein is solely for the construction, installation, ownership, operation, replacement, repair and maintenance of the Telecommunications System and associated Facilities, as defined herein. This franchise does not authorize US Crossing to provide services of any kind within Shoreline. US Crossing shall obtain a separate franchise for any operations or services other than authorized activities.

Section 15 Indefeasible Rights of Use.

- 15.1 An Indefeasible Right of Use ("IRU") is an interest in US Crossing's Facilities which gives US Crossing's customer the right to use certain Facilities for the purpose of providing telecommunications; an IRU does not provide the customer with any right to control the Facilities, or any right of physical access to the Facilities to locate, construct, replace, repair or maintain the Facilities, or any right to perform work within the Right-of-Way.

- 15.2 A lease or grant of an IRU regarding US Crossing's Facilities shall not require that the holder of the lease or IRU obtain its own franchise or pay any fee to the City, PROVIDED THAT, under such lease or grant of an IRU, US Crossing: (i) retains exclusive control over such Telecommunications System and Facilities, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications and Facilities pursuant to the terms and conditions of the franchise granted herein, and (iii) remains responsible for all other obligations imposed by the franchise.

Section 16 Indemnification.

- 16.1 US Crossing hereby releases and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, and agents from any and all claims, costs, judgments, awards or liability to any person, including claims by US Crossing's own employees to which US Crossing might otherwise be immune under Title 51 RCW, for injury, sickness, or death of any person or damage to property arising from the negligent acts or omissions of US Crossing, its agents, servants, officers or employees in performing activities authorized by this franchise. US Crossing further releases and agrees to indemnify, defend and hold harmless the City, its elected officials, employees, and agents from any and all claims, costs, judgments, awards or liability to any person (including claims by US Crossing's own employees, including those claims to which US Crossing might otherwise have immunity under Title 51 RCW) arising against the City solely by virtue of the City's ownership or control of the right-of-ways or other public properties, by virtue of US Crossing's exercise of the rights granted herein, or by virtue of the City's permitting US Crossing's use of the right-of-way or other public property based upon the inspection or lack of inspection of work performed by US Crossing, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this franchise or pursuant to any other permit or approval issued in connection with this franchise. This covenant of indemnification shall include, but not be limited by this reference to, claims against the City arising as a result of the negligent acts or omissions of US Crossing, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any right-of-way or other public place in performance of work or services permitted under this franchise. If final judgment is rendered against the City, its elected officials, employees, and agents, or any of them, US Crossing shall satisfy the same pursuant to this Section.
- 16.2 Inspection or acceptance by the City of any work performed by US Crossing at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said 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 provided that US Crossing consents to such compromise.
- 16.3 In the event US Crossing refuses to undertake the defense of any suit or any claim, after the City's request for defense and indemnification has been made pursuant to the

indemnification clauses contained herein, and US Crossing's 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 US Crossing, then US Crossing shall pay all of the City's costs and expenses for defense of the action, including reasonable attorneys' fees of recovering under this indemnification clause, as well as any judgment against the City.

- 16.4 Should a court of competent jurisdiction determine that this 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 US Crossing and the City, its officers, employees and agents, US Crossing's liability hereunder shall be only to the extent of US Crossing's negligence. It is further specifically and expressly understood that the indemnification provided in Section 16 constitutes US Crossing's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Section 17 Insurance.

- 17.1 US Crossing 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 US Crossing, its agents or employees. US Crossing shall provide to the City an insurance certificate naming the City, for its inspection prior to the commencement of any work or installation of any Facilities pursuant to this franchise, and such insurance shall evidence:
- 17.1.1 Automobile Liability insurance for owned, non-owned and hired vehicles with limits no less than \$1,000,000 Combined Single Limit per accident for bodily injury and property damage; and
- 17.1.2 Commercial General Liability insurance policy, 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 blanket contractual liability and employer's liability.
- 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of US Crossing.
- 17.3 The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, or employees. 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. US Crossing's insurance shall be primary insurance for the City. Any insurance maintained by the City shall be excess of US Crossing's insurance and shall not contribute with it. Coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

Section 18 Abandonment of US Crossing's Facilities.

No section of cable or portion of the Facilities laid, installed, or constructed in the Right-of-Way by US Crossing may be abandoned by US Crossing without the express written consent of the City. Any plan for abandonment or removal of US Crossing's Facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work.

Section 19 Restoration after Construction.

- 19.1 US Crossing shall, after any abandonment approved under Section 18, or any installation, construction, relocation, maintenance, or repair of Facilities within the franchise area, restore the Right-of-Way to at least the condition the same was in immediately prior to any such abandonment, installation, construction, relocation, maintenance or repair pursuant to City standards. 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. US Crossing agrees to promptly complete all restoration work and to promptly repair any damage caused by such work at its sole cost and expense.
- 19.2 If it is determined that US Crossing has failed to restore the Right-of-Way in accordance with this Section, the City shall provide US Crossing with written notice including a description of actions the City believes necessary to restore the Right-of-Way. If the Right-of-Way is not restored in accord with the City's notice within thirty (30) days of that notice, the City, or its authorized agent, may restore the Right-of-Way. US Crossing is responsible for all costs and expenses incurred by the City in restoring the Right-of-Way in accord with this Section. The rights granted to the City under this paragraph shall be in addition to those otherwise provided herein.
- 19.3 Nothing in this Section shall relieve US Crossing from any obligation to replace disturbed right-of-way with improvements of a higher value as may be required by the plans and specifications referenced in Section 13 hereof.

Section 20 Commencement of Construction.

Initial construction of the Facilities contemplated by this franchise Ordinance shall commence no later than 180 days from the Effective Date of this franchise Ordinance.

Section 21 Bond.

Before undertaking any of the work, installation, improvements, construction, repair, relocation or maintenance authorized by this franchise, US Crossing shall furnish a bond executed by US Crossing 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 Director of Public Works as sufficient to ensure performance of US Crossing's obligations under this franchise. The bond shall be conditioned so that US Crossing shall observe all the covenants, terms and conditions and faithfully perform all of the obligations of this franchise, and to erect or

replace any defective work or materials discovered in the replacement of the City's streets or property within a period of two years from the date of the replacement and acceptance of such repaired streets by the City. US Crossing may meet the obligations of this Section with one or more bonds acceptable to the City. In the event that a bond issued pursuant to this Section is canceled by the surety, after proper notice and pursuant to the terms of said bond, US Crossing shall, prior to the expiration of said bond, procure a replacement bond which complies with the terms of this Section.

Section 22 Recourse Against Bonds and Other Security.

So long as the bond is in place, it may be utilized by the City for reimbursement of the City by reason of US Crossing's failure to pay the City for actual costs and expenses incurred by the City to make emergency corrections under Section 11 of this Ordinance, to correct franchise violations not corrected by US Crossing after notice, and to compensate the City for monetary remedies or damages assessed against US Crossing due to default or violations of the requirements of City ordinances.

- 22.1 In the event US Crossing has been declared to be in default by the City and if US Crossing fails, within thirty (30) days of mailing of the City's default notice, to pay the City any penalties, or monetary amounts, or fails to perform any of the conditions of the franchise granted herein, the City may thereafter obtain from the bond, after a proper claim is made to the surety, an amount sufficient to compensate the City for its damages. Upon such withdrawal from the bond, the City shall notify US Crossing in writing, by First Class Mail, postage prepaid, of the amount withdrawn and date thereof.
- 22.2 Thirty (30) days after the City's mailing of notice of the bond forfeiture or withdrawal authorized herein, US Crossing shall deposit such further bond, or other security, as the City may require, which is sufficient to meet the requirements of this Ordinance.
- 22.3 The rights reserved to the City with respect to any bond are in addition to all other rights of the City whether reserved by this Ordinance or authorized by law, and no action, proceeding, or exercise of a right with respect to any bond shall constitute an election or waiver of any rights or other remedies the City may have.

Section 23 Modification.

The City and US Crossing hereby reserve the right to alter, amend or modify the terms and conditions of the franchise granted herein upon written agreement of both parties to such amendment.

Section 24 Remedies to Enforce Compliance.

In addition to any other remedy provided herein, the City reserves the right to pursue any remedy to compel US Crossing to comply with the terms of this franchise, and the pursuit of any right or remedy by the City shall not prevent the City from thereafter declaring a breach or revocation of the franchise.

Section 25 Force Majeure.

The franchise provided herein shall not be revoked due to any violation or breach that occurs without fault of US Crossing or occurs as a result of circumstances beyond the Grantee's reasonable control.

Section 26 City Ordinances and Regulations.

Nothing herein shall be deemed to direct or 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 reasonable 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 regulations, the location, elevation, and manner of construction and maintenance of any fiber optic cable or other Facilities by US Crossing. US Crossing shall promptly conform to all such regulations, unless compliance would cause US Crossing to violate other requirements of law. Nothing in this Section shall require US Crossing to relocate Facilities installed in compliance with then existing City regulations.

Section 27 Cost of Publication.

The cost of the publication of this Ordinance shall be borne by US Crossing.

Section 28 Acceptance/Liaison.

After the passage and approval of this Ordinance and within thirty (30) days after such approval, the franchise granted herein shall be accepted by US Crossing by its filing with the City Clerk an unconditional written acceptance thereof. US Crossing's written acceptance shall include the identification of an official liaison that will act as the City's contact for all issues regarding this franchise. US Crossing shall notify the City of any change in the identity of its liaison. Failure of US Crossing to so accept this franchise within said period of time shall be deemed a rejection thereof by US Crossing, and the rights and privileges herein granted shall, after the expiration of the thirty (30) day period, absolutely cease and determine, unless the time period is extended by ordinance duly passed for that purpose.

Section 29 Survival.

All of the provisions, conditions and requirements of Sections 4, Relocation of Facilities; 8, Excavation And Notice Of Entry; 11, Dangerous Conditions; 16, Indemnification; 18, Abandonment of US Crossing's Facilities; and 19, Restoration After Construction, of this franchise shall be in addition to any and all other obligations and liabilities US Crossing may have to the City at common law, by statute, or by contract, and shall survive the City's franchise to US Crossing for the use of the areas mentioned in Section 2 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 US

Crossing and all privileges, as well as all obligations and liabilities of US Crossing shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever US Crossing is named herein.

Section 30 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 franchise Ordinance. In the event that any of the provisions of this franchise Ordinance or of the franchise granted herein are held to be invalid by a court of competent jurisdiction, the City reserves the right to reconsider the grant of this franchise and may amend, repeal, add, replace or modify any other provision of this franchise Ordinance or of the franchise granted herein, or may terminate this franchise. US Crossing must accept any revisions or modifications to the franchise prior to the revised franchise becoming effective.

Section 31 WUTC Tariff Filings, Notice Thereof.

If US Crossing intends to file, pursuant to Chapter 80.28 RCW, with the Washington Utilities and Transportation Commission (WUTC), or its successor, any tariff affecting the City's rights arising under this franchise US Crossing shall provide the City with fourteen (14) days written notice.

Section 32 Assignment.

The franchise granted herein shall not be sold, transferred, assigned, or disposed of in whole or in part either by sale or otherwise, without the written approval of the City. The City's approval shall not be unreasonably withheld or delayed. Any costs associated with the City's review of any transfer proposed by US Crossing shall be reimbursed to the City by the new prospective franchisee, if the City approves the transfer, or by US Crossing if said transfer is not approved by the City.

- 32.1 Except as otherwise provided herein, US Crossing shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of US Crossing. Such change, transfer, or acquisition of control of US Crossing shall not require the prior approval of the City under this Section, except for a transaction which would result in the transfer of the franchise granted herein to a person or entity not controlling, controlled by, or otherwise under common control with US Crossing. Neither approval nor notification shall be required for mortgaging purposes or if said transfer or assignment is from US Crossing to another person or entity controlling, controlled by, or otherwise under common control with US Crossing.
- 32.2 A change in control shall be deemed to occur if there is an actual change in control or where ownership of fifty percent (50%) or more of the beneficial interests, singly or collectively, are obtained by other parties. The word "control" as used herein is not

limited to majority stock ownership only, but includes actual working control in whatever manner exercised.

- 32.3 A lease or grant of an Indefeasible Right of Use ("IRU") in the Telecommunications System, the associated Facilities, or any portion thereof, to another Person shall not be considered an assignment for purposes of this Section, PROVIDED THAT, under such lease or IRU, US Crossing: (i) retains exclusive control over the Telecommunications System and Facilities, (ii) remains responsible for the location, construction, replacement, repair and maintenance of the Telecommunications System and Facilities pursuant to the terms and conditions of the franchise granted herein, and (iii) remains responsible for all other obligations imposed hereunder.

Section 33 Notice.

Any notice or information required or permitted to be given to the City or to US Crossing under this franchise may be sent to the following addresses unless otherwise specified:

US Crossing
Sherri Cook, Esq.
Vice Pres. US Crossing, Inc.
150 El Camino Drive, Suite 204
Beverly Hills, CA 90212
Phone: (310) 281-4900
Fax: (310) 281-4942

City of Shoreline
Director of Public Works
City of Shoreline
17544 Midvale Ave. NE
Shoreline, WA 98133
Office 206-546-1700
Fax 206-546-2200

Section 34 Alternate Dispute Resolution.

If the City and US Crossing are unable to resolve disputes arising from the terms of the franchise granted herein, prior to resorting to a court of competent jurisdiction, the parties shall submit the dispute to an alternate dispute resolution process agreed to by the parties. Unless otherwise agreed between the parties or determined herein, the cost of that process shall be shared equally.

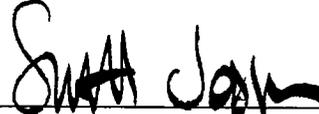
Section 35 Entire Agreement.

The franchise granted herein 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 and acceptance hereof.

Section 36 Effective Date.

This ordinance shall take effect and be in full force five (5) days after the date of publication and upon acceptance by US Crossing. The City Clerk is hereby directed to publish this ordinance in full.

PASSED BY THE CITY COUNCIL ON JULY 26, 1999



Mayor Scott Jepsen

ATTEST:



Sharon Mattioli, CMC
City Clerk

APPROVED AS TO FORM:



Ian Sievers
City Attorney

Date of Publication: July 30, 1999
Effective Date: August 4, 1999

US Crossing
Plans & Specifications
Capital Improvements

In accordance with Section 13 of Shoreline City Ordinance No. 203, and in exchange for the rights provided by that Ordinance, US Crossing agrees to perform the following work on behalf of the City of Shoreline:

1. Install two 2-inch conduits along the same path as US Crossing's installation within the City.
2. Said conduit shall be of the same grade and quality as that utilized by US Crossing for its system within the City.
3. Said conduit shall be installed in the same manner and to the same standard and specifications utilized by US Crossing in constructing its system within the City.
4. Install access vaults at the following approximate locations to allow the City access to the conduit installed on the City's behalf:

<u>Distance from</u>	<u>Cross street to authorized route</u>
500 feet North	N 145th Street
600 feet South	N 155th Street
300 feet North	N 160th Street
250 feet North	N 165th Street
600 feet South	N 175th Street
500 feet South	N 185th Street
400 feet South	N 192nd Street
350 feet South	N 200th Street
400 feet South	N 205th Street

5. All of the vaults will be located in the center turn lane.
6. The top of the vaults will be set below existing grade a minimum of 12-inches to allow adjustments in profile. Access to vaults shall be placed at existing street grade and shall be designed for traffic loads.
7. The City will be shown as the owners of the two 2" conduits and access vaults on the plans and in the ROW permit.
8. US Crossing will complete all necessary documentation requested by the City to establish the City's ownership of the provided facilities.
9. The conduit system installed by US Crossing on the City's behalf shall be completed along with the completion of US Crossing's system within Shoreline which shall be no later than February 28, 2000.
10. Plans and illustrative diagrams are attached.