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I, Richard Hobernicht, Director of Assessment and Taxation and Ex-Officio County Clerk for Washington County, Oregon, do hereby certify that the within instrument of writing was received and recorded in the book of records of said county.



Return Address:

ATTN: Jim Penney
Wave Business Solutions, LLC
401 Kirkland Parkplace, Suite 500
Kirkland, WA 98033

UTILITY EASEMENT AGREEMENT

Grantor(s): **City of Sherwood**
Grantee: **Wave Business Solutions, LLC**
Abbreviated Legal: **Ptn. SE¼ S32, T2S, R1W, W.M.**
Assessor's Parcel No.: **2S132DB00700**
Reference Nos. of Documents Assigned or Releases: **N/A**

This Utility Easement Agreement (this "**Agreement**") is made and entered into as of this 22nd day of January, 2016 (the "**Effective Date**"), by and between **City of Sherwood, a political subdivision of the State of Oregon** (the "**Grantor**"), and **WAVE BUSINESS SOLUTIONS, LLC**, a Washington limited liability company ("**Wave**"), for and consideration of **\$1,372.00 (One thousand three hundred seventy two and no/100 dollars)**.

Background

Grantor owns certain real property located in Washington County, Oregon, commonly known as **15288 SW Division Street, Sherwood, OR 97140**, as more particularly described on **Schedule 1** to this Agreement (the "**Property**"). Wave provides its customers with a variety of telecommunications, high speed data transmission, broadband Internet access and other similar services. Grantor desires to grant Wave a utility easement allowing Wave to install and maintain **underground** wires, fiber optic cable and associated **underground** equipment and facilities (collectively, the "**Network Facilities**") over a portion of the Property.

Agreement

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Wave now agree as follows:

1. Grant of Easement and Right of Access. Grantor hereby grants and conveys to Wave a perpetual, non-exclusive easement in gross (the "**Easement**") over, under, upon and across the following portion of the Property (the "**Easement Area**"):

See Schedule 2

Wave may use the Easement Area solely for installing their Network Facilities (the “**Permitted Use**”). In connection with the Easement, Grantor also grants to Wave a continuing right of access (the “**Access Right**”) over, across, upon and through those portions of the Property that are reasonably necessary for Wave to access in order to reach the Easement Area and perform the Permitted Use.

2. Ownership of the Network Facilities. The Network Facilities are and shall at all times be and remain the sole and exclusive property of Wave and subject to Wave’s sole and exclusive management and control, and neither Grantor nor any subsequent owner(s) of the Property or any part thereof shall acquire any right, title, or interest in any Network Facilities. Wave shall keep and maintain the Network Facilities in good condition and repair.

3. Covenants and Representations of the Parties. Wave covenants and agrees to use its commercially reasonable efforts to promptly remediate any damage to the Property proximately resulting from Wave’s use of the Easement Area. Grantor covenants and agrees that Grantor: (i) shall not grant to any other individual or entity, any easements, licenses or other rights in or to the Property that **will** materially and adversely interfere with Wave’s Permitted Use of the Easement Area and Wave’s Network Facilities installed on the Easement Area; (ii) shall in no way disturb, alter or move any part of the Network Facilities or otherwise interfere with Wave’s rights and obligations as provided under this Agreement; and (iii) shall not install any improvements in the Easement Area that will need to be damaged in order for Wave to perform regular maintenance on the Network Facilities or that would otherwise make Wave’s ability to engage in the Permitted Use **commercially infeasible**. Each of the parties represents and warrants to the other that it has all necessary power and authority to enter into and perform the terms of this Agreement. **Wave shall defend, indemnify, and hold harmless Grantor, its officers, agents, employees, heirs, and assigns against any and all liability, settlements, loss, damage, costs, and expenses arising from or in connection with any action, suite, demand, or claim resulting or allegedly resulting from, attributable in whole or in part to, or in any way connected with Wave’s and Wave’s officers’, agents’, and employees’ acts, omissions, activities, or services in the construction operation, or maintenance of the Network Facilities and necessary appurtenances. This instrument and the covenants and agreements contained in this instrument, shall inure to the benefit of and binding and obligatory upon the heirs, executors, administrator, successors, and assigns of the respective parties**

4. Easement Runs With the Land. The Easement and Access Right granted to Wave by this Agreement are intended to touch and concern the Property, and shall run with the Property and be binding on Grantor’s successors in title to the Property in perpetuity. Wave shall hold the rights and benefits granted by this Agreement in gross, and Wave’s rights under this Agreement shall be assignable **with the consent of the Grantor or Grantor’s successors, which consent shall not be unreasonably withheld.**

5. Miscellaneous. This Agreement shall not be amended, altered or modified except by an instrument in writing duly executed and acknowledged by the parties hereto. This Agreement shall be governed and construed in accordance with the laws of the State in which the Property is located. This Agreement may be executed in multiple counterparts, and all counterparts shall collectively constitute a single agreement.

IN WITNESS WHEREOF, the parties, intending to be legally bound hereby, have duly executed this Agreement for the purposes and consideration expressed in it and delivered this Agreement as of the date first written above.

GRANTOR:

City of Sherwood, a political subdivision of the State of Oregon

Joseph Gall
Joseph Gall, ICMA-CM
City Manager

Josh Lopez
Approved as to form: City Attorney

WAVE:

Wave Business Solutions, a Washington limited liability company

By James A. Penney
Name: James A. Penney
Title: EVP, Business & Legal Affairs

STATE OF OREGON)
) ss.
COUNTY OF WASHINGTON)

On this 22 day of January, 2016, before me, the undersigned, a Notary Public in and for the State of Oregon, duly commissioned and sworn, personally appeared Joseph Gall, to me known to be the person who signed as City manager of the **City of Sherwood, a political subdivision of the State of Oregon**, the City that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said City for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the City, and that he was authorized to execute said instrument.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.



Michelle Babcock
(Signature of Notary)

Michelle Babcock
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State of Oregon, residing at washington county
My appointment expires: 10-9-17

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

On this 5th day of February, 2016, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared JAMES A. PENNEY, to me known to be the person who signed as Executive Vice President, Business & Legal Affairs of WAVE BUSINESS SOLUTIONS, LLC, the company that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said company for the uses and purposes therein mentioned, and on oath stated that he was duly elected, qualified and acting as said officer of the company, and that he was authorized to execute said instrument.

GIVEN UNDER my hand and official seal hereto affixed the day and year in this certificate first above written.



Bree Urban
(Signature of Notary)

Bree Urban
(Print or stamp name of Notary)

NOTARY PUBLIC in and for the State
of Washington, residing at Seattle
My appointment expires: August 1, 2018.

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Schedule 1
to
Utility Easement Agreement
Legal Description of Property

Beginning at a point which is 20 feet South and 40 rods East of the center of Section 32, Township 2 South, Range 1 West, W.M., Washington County, Oregon, said Point of Beginning being the Northeast corner of that tract of land conveyed to Gordon H. Snyder in Book 186, Page 275, of deed records of Washington County, Oregon;

Thence running South along the East line of said Snyder tract, 260 feet; Thence West parallel with the North line of said Snyder tract, 220 feet; Thence North parallel with the East line of said Snyder tract, 260 feet to the North line of the Snyder tract, said North line also being the South line of East Division Street; Thence East 220 feet along said North line of the Snyder tract to the Point of Beginning.

Situate in the County of Washington, State of Oregon.

Assessor's Tax Parcel No. 2S132DB00700 (a portion of).

Schedule 2
to
Utility Easement Agreement
Legal Description of Easement Area

That portion of the herein described property (Schedule 1) being a strip of land 5 feet in width, 2½ feet on either side of the telecommunications facilities as staked and to be permanently installed following the approximate centerline alignment describe as follows:

Beginning a point on the North property line of the herein described property located 24.5 feet Westerly of the Northeast corner of said property; Thence in a Southerly direction parallel to the East property line of said property a distance of 84.5 feet; Thence in a Westerly direction parallel to the North line of said property a distance of 11.5 feet and the terminus of this line description.