



RESOLUTION
(47 - 2014)

**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO
ENTER INTO A FRANCHISE AGREEMENT WITH ELECTRIC LIGHTWAVE
TO USE THE CITY RIGHTS OF WAY FOR THE PURPOSE OF PROVIDING
TELECOMMUNICATIONS IN THE CITY**

WHEREAS, The City of Fairview has exclusive authority to administer, govern and receive compensation for use of its rights-of-way (ROW); and

WHEREAS, Electric Lightwave, LLC (ELI) is a telecommunications carrier that wishes to use the City's ROW for telecommunications services; and

WHEREAS, Fairview Municipal Code Chapter 12.35 requires a telecommunications carrier desiring to occupy public rights-of-way of the City to obtain a telecommunications franchise; and

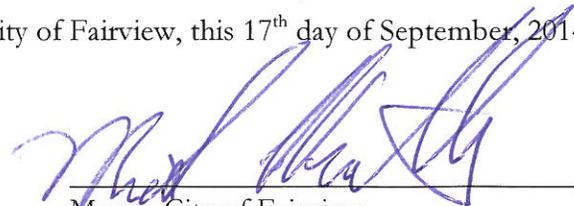
WHEREAS, the City and ELI have agreed to the terms and conditions set forth in the Franchise Agreement attached as Exhibit A.

NOW, THEREFORE, BE IT RESOLVED BY THE FAIRVIEW CITY COUNCIL AS FOLLOWS:

Section 1 The City of Fairview authorizes the City Administrator to execute a franchise agreement with Electric Lightwave, LLC to use City rights-of-way for telecommunications services on the terms contained in the attached Exhibit A.

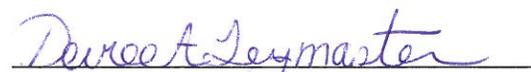
Section 2 This resolution takes effect immediately upon adoption by the City Council.

Resolution adopted by the City Council of the City of Fairview, this 17th day of September, 2014.



Mayor, City of Fairview
Mike Weatherby

ATTEST



City Recorder, City of Fairview
Devree Leymaster

FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT (“Agreement”) is made and entered into by and between the City of Fairview, an Oregon municipal corporation, (“City”) and Electric Lightwave, LLC, a Delaware limited liability company and wholly owned subsidiary of Integra Telecom Holdings, Inc. (“Franchisee”):

RECITALS

WHEREAS, Title 12 of the Fairview Municipal Code governs the construction and franchising of telecommunications carriers operating within the City and desiring to occupy City rights of way; and

WHEREAS, Electric Lightwave, LLC, has requested registration and a franchise to place and maintain telecommunications facilities in the rights of way within the City; and

WHEREAS, the City has reviewed the request and application filed by Electric Lightwave, LLC, and finds that the company has the requisite authority to provide these services and that the level of impact on the City's rights of way will be acceptable, and the City Council therefore desires to issue a franchise; and

WHEREAS, prior to the City granting such franchise, Electric Lightwave, LLC installed facilities in the City and thus this franchise, and the rights and obligations set forth herein, shall be retroactive to May 31, 2011, which is the date on which Electric Lightwave, LLC began to occupy the rights of way in the City.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties agree as follows:

AGREEMENT

1. GRANT OF AUTHORITY

The City grants Franchisee the non-exclusive right and franchise to occupy public rights-of-way within the City for the purpose of construction, use, operation, and maintenance of a telecommunication system for the period as outlined in Section 6 (“Term and Effective Date”) (the “Term”). Such grant is subject to all of the laws and ordinances of the City and the State of Oregon in existence at the time of this franchise grant or hereafter enacted.

2. AUTHORITY NOT EXCLUSIVE

This Agreement and the grant of authority conferred herein are not exclusive. The City reserves the right to grant rights to others to use the Franchise Area during the Franchise Term. The City may also do any work the City finds desirable on, over or under any street, alley, utility easement or other right-of-way. The Franchisee shall respect the rights and property of the City and other authorized users of easements and rights-of-way. This Agreement does not confer on Franchisee any right, title or interest in any public right-of-way beyond that expressly conferred

herein or confer any right or privilege to use or occupy any other property of the City or any other entity. This grant of authority shall not be construed as a limitation on the City in constructing, installing, maintaining or operating facilities for the provision of telecommunications services.

3. PERFORMANCE

During the term of this Agreement, the Franchisee agrees to comply with all lawful terms and conditions of FMC Chapter 12.35, as amended from time to time, the provisions of which are incorporated herein as though fully set forth.

4. FRANCHISE FEE

The annual franchise fee payable to the City shall be as follows:

- a. The greater of five percent (5%) of its gross revenues earned from the provision of telecommunications services to customers in the City or the Minimum Annual Fee. "Gross revenues" shall mean any and all revenue, of any kind, nature or form, without deduction for expense, less net uncollectibles, subject to all applicable limitations imposed by federal or state law. The "Minimum Annual Fee" shall be \$4,000.00 per year, and shall increase \$1,000.00 per year on January 1st of every year beginning January 1, 2012.
- b. The initial franchise fee payment, which shall be due no later than thirty (30) days after Council enactment of the authorizing resolution, shall be the greater of five percent (5%) of Franchisee's gross revenues from the Effective Date through September 30, 2014, or \$20,250, which represents the Minimum Annual Fee from the Effective Date of May 31, 2011 through September 30, 2014 (\$4,000 for 2011; \$5,000 for 2012; \$6,000 for 2013 and \$5,250 for the first three quarters of 2014). Thereafter, the franchise fee required in this Agreement shall be paid quarterly, in arrears, for each quarter during the term of the franchise. The franchise fee shall be due and payable within forty-five (45) days of the end of each calendar quarter. Concurrently with the remittance of franchise fees as required by this Franchise, Franchisee shall submit a report of gross receipts utilized to compute such franchise fees.

5. REPORTS

Franchisee shall make available to City, upon reasonable advance written notice, such information or reports pertinent to enforcing the terms of the Franchise in such form and at such times as the City may request. Subject to the Oregon Public Records law, any information that is provided to the City which is marked proprietary and confidential shall not be disclosed or used for any purpose, other than verifying compliance with the terms of this Franchise, and shall be returned to Franchisee.

6. TERM AND EFFECTIVE DATE

The term of this franchise is from May 31, 2011 to June 30, 2019. The franchise is only effective if the Franchisee accepts all terms and conditions hereof in writing in a form acceptable

to the City within thirty (30) days of Council enactment of the authorizing Resolution. If the Franchisee fails to provide such written acceptance, the Resolution and this Agreement is void..

7. TAXES

Nothing contained in this Agreement shall be construed to exempt the Franchisee from any license, occupation, franchise or excise tax or assessment which is or may be hereafter lawfully imposed on all entities engaged in the same business as the Franchisee.

8. SEVERABILITY CLAUSE

If any clause, sentence, or any other portion of this Agreement becomes illegal, null or void for any reason, the remaining portions will remain in full force and effect to the fullest extent permitted by law. If any material portion of the Agreement becomes illegal, null or void so that the intent of the Agreement is frustrated, the parties agree to negotiate replacement provisions to fulfill the intent of the Agreement consistent with applicable law.

9. REMEDIES

9.1. If Franchisee fails to comply with any material provision of this Agreement, or if grounds for revocation of this agreement exist under FMC 12.35.045(N), Franchisee will forfeit all rights and privileges granted by this Agreement. That forfeiture and revocation of the franchise will not occur until the City complies with the requirements for revocation of the franchise set out in FMC 12.35.045.

9.2. Notwithstanding the above, failure or default or violation by Franchisee shall not constitute grounds for the forfeiture of this franchise if due materially, substantially and reasonably to an act of God, fire, flood, storm or other element or casualty, theft, war, disaster, strike, lock-out, boycott, prevailing war or war preparation, or bona fide legal proceedings, beyond the control of Franchisee, or matter unrelated to the Franchisee's use of the public right-of-way.

9.3. All remedies under this Agreement, including revocation of the franchise, are cumulative and not exclusive, and the recovery or enforcement by one available remedy is not a bar to recovery or enforcement by any other such remedy. The City reserves the right to enforce the penal provisions of any ordinance or resolution and to avail itself of any and all remedies available at law or in equity. Failure to enforce shall not be construed as a waiver of a breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon Franchisee by or pursuant to this Agreement shall not be a waiver of any other, or subsequent or future breach of the same or of any other term, condition or obligation, or a waiver of the term, condition or obligation itself.

9.4. The right is hereby preserved to the City to adopt, in addition to the reservations contained herein and existing applicable ordinances, such additional regulations as it shall find necessary for the regulation of the public right-of-way. Franchisee shall, at all times during the life of this Agreement, be subject to all lawful exercise of the police power by the City, and to such reasonable regulations as the City may hereafter by resolution or ordinance provide. The

City hereby reserves the right to exercise, with regard to this franchise, all authority now or hereafter granted to the City by state statute or City charter, except where such authority may be modified or superseded by the Constitution of the State of Oregon or the Constitution of the United States.

10. ASSIGNMENT

All rights and privileges granted and duties imposed by this Agreement upon Franchisee shall extend to and be binding upon Franchisee's successors, legal representatives and assigns. Franchisee shall comply with FMC 12.35.045(M) for any direct or indirect transfer, assignment or disposal of this Agreement.

11. NOTICE

Unless specifically provided otherwise herein, all notices shall be mailed, postage prepaid, to the following addresses or to such other addresses as Franchisee or the City may designate in writing:

If to Franchisee: Electric Lightwave, LLC
 Attn: Contracts Administration
 18110 SE 34th St.
 Building One, Suite 100
 Vancouver, WA 98683

If to City: City of Fairview
 Attention: City Administrator
 1300 NE Village Street
 Fairview, Oregon 97024

12. GOVERNING LAW

The law of the State of Oregon governs the validity of this Agreement, and its interpretation, performance and enforcement. Any action or suit to enforce or construe any provision of this Agreement by any party shall be brought in the Circuit Court of the State of Oregon for Multnomah County, or the United States District Court for the District of Oregon.

CITY OF FAIRVIEW

FRANCHISEE

By: _____

By: _____

Title: _____

Title: _____