

## FRANCHISE AGREEMENT

THIS FRANCHISE AGREEMENT, granted this 23<sup>rd</sup> day of JUNE, 1997, by the City Council, City of Las Vegas, a municipal corporation of the State of Nevada to Electric Lightwave Inc., a Delaware corporation, authorized to do business in the State of Nevada:

### WITNESSETH:

WHEREAS, the CITY OF LAS VEGAS is a municipal corporation duly incorporated within the State of Nevada, and authorized, pursuant to the Charter of the City of Las Vegas and applicable provisions of general laws of the State of Nevada, to enter into this Franchise Agreement; and

WHEREAS, Electric Lightwave, Inc. did, on the 7<sup>th</sup> day of April, 1997, file with the City of Las Vegas, State of Nevada, a written request for a Franchise Agreement for a term of ten (10) years with an option to renew for five (5) years for the purpose of constructing, installing, operating and maintaining a telecommunications service within the corporate limits of the City; and

WHEREAS, subsequent to the filing of this application, the City Council adopted a resolution acknowledging the filing of this application and setting forth the name of the applicant for and the purpose, character of, terms, time and conditions of the proposed Franchise Agreement and the date, time and place of a public hearing on the question of the advisability of granting said proposed Franchise Agreement to Electric Lightwave, Inc.; and

WHEREAS, said application coming on regularly for hearing on the 23<sup>rd</sup> day of June, 1997, and it appearing by an Affidavit of Publication that due and legal notice of the filing of said application, and of the filing of the date, time and place for consideration of the same, has been given by publication of that resolution adopted by the City Council in the Las Vegas Review Journal, a newspaper of general circulation within the City of Las Vegas, County of Clark, State of Nevada, to-wit:

In the issue of said newspaper published on the 12<sup>th</sup>  
day of June, 1997, and the 19<sup>th</sup> day of June, 1997;

and

WHEREAS, the CITY OF LAS VEGAS has been requested to grant the right, privilege, permission and authority to do those acts more specifically described herein by Electric Lightwave, Inc.; and

WHEREAS, the CITY COUNCIL of the CITY OF LAS VEGAS, in the exercise of its lawful power has determined that it is in the best interests of the inhabitants of the CITY OF LAS VEGAS that a Franchise Agreement be granted, subject to the terms and conditions hereinafter set forth;

NOW THEREFORE, in consideration of the premises and of the performance by Electric Lightwave, Inc. of the conditions hereinafter set forth, the City Council of the CITY OF LAS VEGAS, State of Nevada, hereby grants a Franchise Agreement to Electric Lightwave, Inc., subject to the following terms and conditions.

#### SECTION 1. SHORT TITLE.

This Franchise Agreement may be cited as the Electric Lightwave Inc. Franchise Agreement.

#### SECTION 2. DEFINITIONS.

For the purpose of this Franchise Agreement, the following terms, phrases, words and their derivations shall have the meaning given in this Section. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this Section shall be given their common and ordinary meaning.

- A. **"City"** is the City of Las Vegas, a municipal corporation of the State of Nevada.
- B. **"City Clerk"** means City Clerk of the City of Las Vegas or a designated representative.
- C. **"Company"** is and refers to Electric Lightwave, Inc.
- D. **"Council"** refers to the legislative body of the City of Las Vegas sometimes referred to as "City Council."
- E. **"Director"** means the Director of the Public Works Department of the City of Las Vegas or his/her designee or the Director of General Services or his/her designee.
- F. **"Facilities"** are and refer to and include, but are not limited to, plant, works, systems, improvements and equipment owned, leased or otherwise used by the Company such as poles, wires, fixtures, equipment, underground circuits and conduit in Public Rights-of-way and other property necessary or convenient for the transmissions, distribution, and/or connection of telecommunication service.
- G. **"Franchise"** means the authorization granted herein to rent and use Rights-of-way and Public Places to construct, operate, and maintain the Company Facilities in the City or any portion or portions thereof.

H. **"Gross Revenues"** shall mean any and all revenue collected by the Company for services provided to customers within the City including but not limited to:

- 1) All telecommunications service revenues charged on a flat rate basis;
- 2) All revenue for intrastate long distance calls;
- 3) All revenues from installation service charges;
- 4) All revenues from connection or disconnection fees;
- 5) All revenues from penalties or charges to customers for checks returned from banks;
- 6) All revenues from joint pole or conduit use;
- 7) All revenues from authorized rental, lease, resale or use of any portion of the Company's network in the City, including plant, facilities or capacity leased to others;
- 8) Recoveries of bad debts previously written off and revenues from the sale or assignment of bad debts. Gross revenues may be adjusted for net write-off of uncollectible accounts computed on the average annual rate for customers within the City.
- 9) Any and all revenues that are designated by City, State or Federal law to be subject to these franchise fees or which may develop by future technology within this industry;
- 10) Any and all other revenue including video dial tone, data transmission or Personal Communication Service.

"Gross revenues" shall not include any tax passed through to consumers on behalf of governmental agencies received by the Company for services provided to customers through use of the Facilities, or any charges passed through to the customers for interconnection with the local exchange provider. Gross revenue shall not include proceeds from the sale of bonds, mortgages or other evidence of indebtedness, securities or stocks.

The Company is not required to measure each category of revenues separately; however, in the event of an audit by the City, the Company will be required to provide an appropriate justification for amounts reported as gross revenues under this Franchise Agreement.

A. **"Line Extension"** means any extension of distribution or transmission Facilities into areas within the boundaries of the City not then served by the

Company.

- B. **"Mayor"** means the Mayor of the City of Las Vegas or his/her designated representative.
- C. **"Public Places"** means all sidewalks, alleys, or other public ways and any and all public places, spaces, grounds and buildings of the City within the City limits.
- D. **"Reasonable Attorney Fees"** are reasonable charges for legal representation as may be incurred by the City and determined by a court of proper jurisdiction.
- E. **"Rights-of-way"** means all present and future streets, avenues, highways, alleys, bridges and public ways, (excluding railroad rights-of-way) of the City within the City limits.
- F. **"Telecommunications Service"** means any switched or other one-way or two-way transmission of voice or data, including but not necessarily limited to (a) services interconnecting interexchange carriers for the purpose of any one-way or two-way transmission of voice or data; (b) services connecting interexchange carriers or competitive access carriers to local exchange providers for the purpose of any one-way or two-way transmission of voice or data; (c) services connecting interexchange carriers to any entity, other than another interexchange carrier or the local exchange provider for the purpose of any one-way or two-way transmission of voice or data; (d) service providing private line, point to point service for end users for the purpose of any one-way or two-way transmission of voice or data; (e) nonentertainment video, video conferencing or point to point private line service; (f) services for the bulk transport of transmission signals, whether digital or analog, and whether voice or data, that are in part or in whole a local exchange telephone service, a video dial tone and a Personal Communication Service, to any company authorized to provide such services by the City, the State of Nevada, or Federal Government authority having jurisdiction over such services; or (g) subject to the exclusions below, any service regulated by state regulatory agencies or the Federal Communications Commission ("FCC") which the state agency or FCC has authorized the Company to provide, if the Company has provided advance notice of same to City.

"Telecommunications service" shall not include cable services as defined in Title 47, Chapter 5, Subchapter V-A of the United States Code, as amended (47 USCA 521, et seq.) or as recognized by the FCC. Before proposing to provide such cable services in the City, the Company agrees to obtain a separate Franchise Agreement from the City for the provision of this service.

- G. **"Treasurer"** shall mean the Treasurer of the City of Las Vegas.

### SECTION 3. GRANT OF FRANCHISE AGREEMENT.

- A. The City of Las Vegas, Nevada, hereby grants to Electric Lightwave, Inc. a Delaware corporation, authorized to do business in the State of Nevada, subject to the terms, conditions, and limitations contained in this Franchise Agreement, a non-exclusive franchise with permission to rent, use and occupy Rights-of-way and Public Places, to provide Telecommunications Service, and right and privilege to erect, construct, maintain and operate a telecommunications system within the corporate limits of the City as the same now exist or may be extended in the future, and a nonexclusive franchise, right and privilege to erect, construct, maintain and operate wires, fixtures, equipment, underground circuits and conduits and other property necessary or convenient for the transmission and distribution of telecommunication service to the City and its inhabitants and to other customers and territory beyond the limits of the City, and to transmit, distribute and sell telecommunications service, upon, over, along, under and across the streets, alleys, roads and other public ways and places, including, but not limited to private property easements on which a preliminary subdivision plat has been approved by the City for the provision of public utilities within the corporate limits of the City as the same now exist or may be extended in the future.
- B. The Company shall be subject to all requirements of City ordinances, rules, regulations and specifications hereafter enacted or established in so far as such ordinances are not in violation of any State or Federal regulation.

### SECTION 4. DURATION.

This Franchise Agreement is granted for a period of ten (10) years from and after the effective date of this Franchise Agreement. If the Company has complied with all material provisions of this franchise this Franchise Agreement will be renewed, by mutual agreement, under the same terms and conditions, for an additional five (5) years on the date of expiration, unless the Company or the City gives notice, in writing to the other party, at least one (1) year prior to the date of expiration of its intent to terminate or renegotiate this Franchise Agreement.

### SECTION 5. CONSTRUCTION PLANS AND DRAWINGS.

- A. Before the Company may conduct underground work involving excavation, new construction or major relocation work in any Rights-of-way or Public Place:
  - 1) The Company shall first notify the City and shall comply with any special conditions relating to location, scheduling, coordination and public safety; and

- 2) The Company shall file maps and drawings with the Director showing the location of any construction or extension of its Facilities and services in any Rights-of-way or Public Place of the City. For multi-conduit banks: maps and drawings shall show overall size, material and configuration of the duct bank. As further set out in Section 16, upon request from the City the Company shall provide City with updates of the maps and drawings showing the location of any new construction, extension or relocation of its Facilities. All materials provided pursuant to this Section shall be kept confidential to the fullest extent possible under the law.
- B. Such proposed construction work to be done by the Company shall be performed in a safe manner subject to the approval of the Director and in accordance with applicable Federal and State laws and City ordinances, regulations and permitting requirements. The Company shall pay all normal permit fees and provide the City with evidence of at least ONE MILLION and NO/100THS DOLLARS (\$1,000,000.00) in requisite insurance coverages.

#### SECTION 6. INSTALLATIONS. EXCAVATIONS AND RESTORATIONS.

- A. The Company shall have the right to excavate in, occupy and use any and all Rights-of-way and Public Places for the purpose of installing, erecting, constructing, repairing, maintaining, removing, relocating and operating its Facilities after obtaining any and all appropriate permits from the City, provided, however, that:
- 1) The Company shall not, pursuant to this Franchise Agreement, place any of its Facilities, on, over, under or within any City park, duly designated as such by the City, but nothing herein contained shall preclude the City from granting a revocable permit therefore;
  - 2) The Company shall not place any of its Facilities, on, over, or within the median portion of any boulevard or parkway without first having obtained the written permission of the City;
  - 3) Where appropriate and as may be required by the City through any permitting process, installation, excavations and restorations affecting street and/or lane closures shall, as often as practicable, be performed after 6:30 p.m. and before 6:00 a.m., but in no event shall any such work be performed from 7:00 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m. except for emergency repairs;
  - 4) The City reserves the right to assist in the coordination and

scheduling of any company projects where such project may be reasonably coordinated with the placement of other Company facilities. Otherwise, and subject to City permitting processes and approvals, it is recognized that, notwithstanding the foregoing, the Company retains discretion over the timing of the Company's proposed projects which shall be in accordance with the Company's construction schedule or its network ring which schedule shall be furnished to the City during the Company's initial permitting process by the City; and

- 5) The Company shall, to the extent feasible, employ "trenchless" technology in the placement of its Facilities. Except in an emergency, not less than seven (7) working days prior to the commencement of any work by the Company which involves excavation in any Rights-of-way or Public Place, the Company shall notify the Director and any appropriate utility coordinating committee for purposes of utility location. Minimum notice to the City shall be by telephone communication or in person prior to any work, followed by notice in writing as soon as practical. The Company will provide advance notice so as not to disrupt services of the City or any other person or utility using any Rights-of-way and Public Places in the City and allow the City to place any inspector it may deem necessary at the site of the project.
- B. Whenever work is performed in any Rights-of-way or Public Place, the Company shall take all reasonable precautions to minimize interruption to traffic flow, damage to property or creation of a hazardous condition.
  - C. After any excavation shall be made and after work is completed pursuant to the provisions of this Franchise Agreement, the Company, at the Company's expense shall, as soon as practicable, but not longer than one (1) day, remove all surplus material in compliance with specifications, requirements and regulations of the city in effect at the time of such restoration and restore the portion of the Rights-of-way or Public Place to the same condition in which it was prior to the excavation thereof. If the Company fails to restore promptly the affected portion of the Rights-of-way or Public Place, following written notice to the Company, the City may make the restoration in a manner satisfactory to City and all costs incurred for such restoration, whether done with City work forces and equipment or otherwise, shall be paid by the Company, including the cost of any inspectors the City may assign to the project.
  - D. The Company shall be responsible for the maintenance of all Rights-of-way impacted by the presence of the Company's Facilities and within reasonable proximity of and upon which the Company maintains above-ground

Facilities, including the removal of weeds and litter.

- E. The Company shall ensure its Facilities in Rights-of-way and Public Places are located and constructed in a manner such that access is not impaired in compliance with the Americans with Disabilities Act (ADA). Following notice by the City of an ADA construction problem, the Company shall have thirty (30) days or other reasonable time as deemed by the City to remedy the problem.

#### SECTION 7. LOCATION AND RELOCATION OF FACILITIES.

- A. All Facilities of the Company shall be placed so that they do not interfere with the use of Rights-of-way and Public Places by the City and shall only be placed after approval of the location by the Director and in accordance with any specifications adopted by the City governing the location of Facilities. The City reserves the right to construct, install, maintain and operate any public improvement, work or facility, do any work that the City may find desirable on, over or under any Rights-of-way and Public Places, and vacate, alter or close any Rights-of-way and Public Places. All such work shall be done, if possible, in such manner as not to obstruct, injure or prevent free use and operation of the Company's Facilities. The Company agrees to obtain the City's express written approval before placing any new poles in Rights-of-way and other Public Places, that do not currently exist in Rights-of-way and other Public Places. The Company agrees to comply with Section 13.52.030 of the LVMC when locating facilities in Rights-of-way or other public places.
- B. The City shall have the right to require the removal or relocation of Facilities used by the Company in any Rights-of-way or Public Place as may reasonably be required by the City for any reason, after notice to the Company, including but not limited to, City projects for the installations of water, sanitary sewer, storm drainage, landscaping, or traffic signal facilities, road reconstruction and construction. The Company shall remove and relocate such Facilities within thirty (30) days following notice to do so from the City. Prior to any such relocation, the City agrees to provide for suitable location for such relocated Facilities sufficient to maintain service. The cost of any removal relocation of the Company Facilities shall be paid by the Company. The Company shall at the City's request, if joint use, pursuant to Section 11 is not feasible due to technical reasons, relocate its Facilities to accommodate another telecommunications franchisee in the City if both the Company's and other franchisee's facilities can be located in the City's Rights-of-way without interfering with operations of the Company's Facilities. The costs of any reallocations occasioned by another franchise of the City, shall be paid by said other franchisee, and in no event shall the costs be the responsibility of the City. The Company shall remove and relocate its



Facilities upon receipt of payment of anticipated costs from other franchisee. Other franchisee shall pay the Company any balance owed within thirty (30) days of receipt of statement following the Company's completion of removing and replacing its Facilities.

The Company shall reconstruct, replace or restore any street, alley, or public way or place, and any water, sewer, sanitary sewer, storm drainage, traffic signalization facilities, or other facility of the City disturbed by the Company, in a timely fashion, without cost to the City to a condition acceptable to the City consistent with reasonable standards of safety and appearance. Any facility so disturbed by the Company shall be reconstructed, replaced, or restored only under the supervision of City personnel. Subject to the provision of Section 5 herein and upon notice to the City, the Company may remove or relocate transmission and distribution Facilities maintained by the Company on its own initiative.

- C. When the City, acting through itself, an agent, contractor or permit holder, proposes to improve a street, including but not limited to, landscaping, traffic signalization, water line, storm sewer or sanitary sewer, repair or installation, within the Rights-of-way or other Public Place under its jurisdiction or control, and such improvements include: (1) excavation, and (2) the placement of underground utilities vaults and conduit sufficient for the Company's Telecommunication Service distribution purposes, by and at the expense of someone other than the Company, then upon notification by the City and upon such reasonable scheduling as may be required by the City's ordinances and policies, the Company shall replace such overhead distribution Facilities as are then within the effected Rights-of-way with underground Facilities within the vaults and conduits provided therefore. Any such placement shall be at the Company expense. The conversion from overhead to underground shall be conditioned upon the City requiring the undergrounding in the area in which both the existing and new Facilities are and will be located and the City shall require: (1) that all existing overhead communication and electric distribution facilities in such area be removed; (2) that each customer served from such existing overhead distribution facilities shall, in accordance with the Company's rules for underground service, make all Facility changes on customer's premises necessary to receive service from the underground Facilities of the Company as soon as it is available; and (3) that the Company is authorized to discontinue its overhead service on completion of the underground Facilities. Such replacement of overhead with underground distribution Facilities shall be paid for by the Company.

#### SECTION 8. PUBLIC WORKS AND IMPROVEMENTS.

- A. The City reserves the right to construct, install, maintain and operate any

public improvement, work or facility and do any work that the City may find desirable on, over or under any Rights-of-way or Public Place. All such work shall be done, if possible, in such manner as not to obstruct, injure or prevent free use and operation of the Company's Facilities.

- B. Whenever the City shall excavate or perform any work in any present and/or future Rights-of-way or Public Place of the City, or shall contract, for such excavation work, where such excavation or work may disturb but not require removal or relocation of the Company's Facilities, the City shall notify the Company sufficiently in advance of such contemplated excavation or work to enable the Company to take such measures as may be deemed necessary to protect such Facilities from damage and possible inconvenience or injury to the public or the City's Rights-of-way or Public Place. If the Company cannot take such measures, the Company shall be required to relocate its Facilities in accordance with Section 7. In such case, the Company upon request, shall furnish field markings to the City or contractor, as the case may be, showing the location of all its Facilities in the area involved in such proposed excavation or other work.
- C. Whenever the City shall vacate any Rights-of-way or Public Place for the convenience or benefit of any person or governmental agency or instrumentality, the Company's rights shall be preserved as to any of its Facilities then existing in such Rights-of-way or Public Place.

#### SECTION 9. MOVING OF BUILDINGS.

Whenever it becomes necessary to temporarily rearrange, remove, lower or raise the aerial cables or wires or other apparatus of the Company to permit the passage of any building, machinery or other object, the Company shall perform such rearrangement upon the receipt of written notice from the person or persons desiring to move said building, machinery or other objects. The written notice shall detail the route of movement of the building, machinery or other object. The costs incurred by the Company in making such rearrangements of its aerial facilities will be borne, excepting the City, by the person or persons seeking such rearrangement, unless the aerial facilities are placed or maintained in violation of the applicable rules of any local, state, or federal regulatory agency and thereby interferes with the movement.

#### SECTION 10. SAFETY STANDARDS.

The Facilities of the Company shall at all times be constructed, operated and maintained so as to protect and safeguard the health and safety of the public and to this end the Company shall observe all rules pertaining thereto prescribed by any local, state, or federal regulatory authority.

## SECTION 11. JOINT USE AGREEMENTS.

The Company is authorized to enter into joint-use agreements with any person or entity franchised by the City with respect to the placement of Facilities. The Company may require any such person or entity to furnish evidence of adequate insurance covering the Company and adequate bonds covering the performance of the person or entity attaching to the Company's Facilities as a condition precedent to granting permission to any such person or entity to attach transmission facilities to the Company's Facilities; provided that the Company's requirements for such insurance shall be reasonable.

## SECTION 12. FEES; CONDITIONS.

- A. As consideration for this Franchise Agreement, which provides for the use by the Company of Rights-of-way and other Public Places within the boundaries of the City, which are valuable public properties acquired and maintained by the City at great expense to its taxpayers and citizens, the Company agrees that it must acquire a valid unexpired business license from the City and pay business license fees based on its gross revenue pursuant to the provisions of Title 6, Chapter 67, of the Las Vegas Municipal Code. The Company further agrees that the definition of "gross revenue" as set forth in Section 2 of this Franchise Agreement is further explanative of the term "gross revenue" as used at LVMC 6.67.020 and agrees to be bound by such explanation.
- B. In addition to payment of consideration pursuant to Subsection A, the Company shall be liable for lawful property, ad valorem taxes and local improvement district assessments. The Company shall also be responsible for exactions, fees and charges, which are generally applicable during the Company's real property development or use as required by the City's ordinances.
- C. The Company agrees to pay the fees required in Subsection A quarterly on the fifteen day of the second month following the end of each calendar quarter for which payment or portion thereof is due. For each year, a quarter shall be determined to end on the last day of January, April, July, and October. The Company shall furnish to the City with each payment of compensation required by this Section a written statement, showing the amount of gross revenue of the Company, within the City, for the period covered by the payment.
- D. In the event that the fee set forth in this Section is declared illegal, unconstitutional or void for any reason by any court or proper authority, the Company shall be contractually bound to pay the City, at the same times and in the same manner as provided for herein, an aggregate amount equal to the amount which would have been paid as a business license fee. This Section, however, shall not constitute a waiver of any claim the Company may assert

against the City.

- E. Acceptance by the City of any payment due under this Section shall not be deemed to be a waiver by the City of any breach of this Franchise Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City.

#### SECTION 13. PERFORMANCE BOND.

The Company shall file and maintain a faithful performance Bond, Letter of Credit or Surety Fund, in favor of the City in the sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00) to guarantee that the Company shall well and truly observe, fulfill and perform each and every term and condition of this Franchise Agreement granted herein, and guaranteeing the liquidated damages as set forth herein. In case of any breach of any condition of the Franchise Agreement, any amount of the sum made in the Bond, Letter of Credit or Surety Fund up to the whole thereof may be receivable from the principal and sureties upon said Bond, Letter of Credit or Surety Fund to compensate City for any damages it may suffer by reason of such breach. Said bond shall be acknowledged by the Company as principal and by a corporation licensed by the Insurance Commissioner of the State of Nevada to transact the business of a fidelity and surety insurance company as surety, and approved by the City.

#### SECTION 14. BREACH.

In the event that a forfeiture is declared as provided under Section 26 of this Franchise Agreement, it shall be deemed a failure to perform on the part of the Company, and the City may proceed against the performance Bond, Letter of Credit or Surety Fund provided for in Section 13 of this Franchise Agreement. It is agreed by and between the parties that the City will be damaged in an amount and to an extent not reasonably foreseeable or calculable, and, that, therefore, the City shall be entitled to the sum of ONE HUNDRED THOUSAND and NO/100THS DOLLARS (\$100,000.00) as liquidated damages and not as a penalty, which sum shall be covered by the Bond, Letter of Credit or Surety Fund required to be posted by the Company.

#### SECTION 15. BOOKS OF ACCOUNT AND REPORTS.

- A. The City shall have the right to review or audit the Company's books and records in accordance with regularly accepted accounting and audit standards regarding any amounts which may be owed under this Franchise Agreement. This right includes the right to review and audit all books and records of revenue which may be reasonably considered by the City to be subject to a franchise fee. The City shall give written notice to the Company of any additional amount claimed to be due to the City as a result of the City's review. The additional amount due the City, if any, shall be paid within thirty (30) days following determination by the City that such amount is due and payable.

- B. The Company shall keep complete and accurate books and records of its business and operations pursuant to this Franchise Agreement in accordance with generally accepted accounting principles and in accordance with the rules and regulations of the State of Nevada.
- C. In the event of an audit, the Company shall provide City specific books, records, contracts, accounts, documents and papers for its operations within the City.
- D. All such books, records, and accounts of the Company shall be retained by the Company for a period of five (5) years. The Company shall make such records available to the City as are necessary for the City to complete its audit, and the same shall be available for inspection by the City, in the City, upon thirty (30) days notice from the City.
- E. All audits will take place on the Company premises in the Las Vegas area. The City's auditors may review all relevant materials.
- F. Upon request by the City, the Company shall provide to the City by U.S. mail, postage prepaid, a copy of all papers filed by the Company with any federal or state regulatory agency that pertain to the Company's Facilities located in Nevada.

#### SECTION 16. SUPPLYING MAPS UPON REQUEST.

The Company shall maintain on file maps and operational data pertaining to its operations in the City. The City may inspect the maps and data at any time during business hours. Upon request of the City, the Company shall furnish to the City as soon as practical without charge, current maps either in a "hard copy" printed form or in the City's GIS format or compatible data base, showing the location and dimension of any existing facilities and proposed facilities, but not other proprietary information, used in operating the Company's Facilities within the City of Las Vegas served by the Company.

#### SECTION 17. RATES.

The rates to be charged by the Company for Telecommunications Service shall comply with the appropriate local, state or federal regulatory authority, or any other governmental official, commission or body having jurisdiction. If no governmental official, commission or body had rate setting jurisdiction, the Company may set rates to be charged at its sole discretion. To the extent that the City is, or may in the future become, entitled to set fees and charges for the services provided pursuant to this Franchise Agreement, the City reserves the right to regulate the rates, fees, charges, deposits and associated terms and conditions for any service provided pursuant to this Franchise Agreement to the fullest extent permitted by applicable law with appropriate procedural due process.

#### SECTION 18. FRANCHISE AGREEMENT NOT EXCLUSIVE.

This Franchise Agreement hereby granted shall not be exclusive and shall not be construed as a limitation on the City's right to grant rights, privileges and authority to other persons or corporations similar to or different from those herein set forth to construct, install, operate or maintain a public utility.

#### SECTION 19. ASSIGNMENT OF FRANCHISE AGREEMENT.

The Company shall not transfer or assign any rights under this Franchise Agreement or lease total capacity of its system or network to another entity unless the City shall first review the financial, technical and operational qualifications of such entity and give its approval in writing, within sixty (60) days of such notice of intent to transfer or assign; such approval shall not be unreasonably withheld. This prohibition shall not apply in the instance that the Company is transferred, assigned, or sold to an affiliated interest, nor shall this prohibition apply to assignments made or security interests granted in order to secure financing. However, the Company agrees to provide at least thirty (30) days advance notice of any affiliate transfer, assignment or sale. The City shall have the discretion to review the financial, technical and operational qualifications of the affiliate.

#### SECTION 20. ADDITIONAL CITY RIGHTS.

The right and privilege of the City to construct, purchase or condemn a public utility or telecommunication provider located within or without the boundaries of the City is expressly recognized herein.

#### SECTION 21. CUSTOMER SERVICE STANDARDS.

- A. Within one year of the effective date of this Franchise Agreement or upon commencement of operation and throughout the duration of this Franchise Agreement, or any extension thereto, the Company shall be required to establish and maintain offices within the Las Vegas metro area for customer service. The Company shall make available at such offices, at a minimum, documents required by this Franchise Agreement with reasonable notice by the City to the Company.
- B. The Company representatives shall be available to respond to customer telephone inquiries and complaints Monday through Friday during normal business hours. The Company shall also maintain a toll-free number by which subscribers may report technical and other problems on a twenty-four hour basis.
- C. Excluding those situations beyond the control of the network operator, the Company shall respond to service interruptions promptly and in no event later than six (6) hours, seven (7) days per week. Other service problems will

be responded to within twenty-four (24) hours during the normal work week.

- D. The Company shall establish procedures for receiving, acting upon, and resolving subscriber complaints to the satisfaction of the City.
- E. The Company shall maintain a written records listing date and time of customer complaints, identifying the customer and describing the nature of the complaints and when and what action was taken by the Company in response thereto.
- F. The City reserves the right to establish written Customer Service Standards for the Company to abide by in the future.

## SECTION 22. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

The Company is committed to stimulating and strengthening the participation of minorities and women within the Company and is also committed to the principle that the success and economic well-being of the Company are related closely to the economic strength and vigor of the communities and people it serves.

## SECTION 23. AGREEMENT TO REOPEN NEGOTIATIONS.

The City and the Company agree that the services provided pursuant to this Franchise Agreement are in an area of law undergoing significant review by state and federal authorities and that there is a real possibility that some of the terms of this Franchise Agreement may be preempted by state or federal law during the term of this Franchise Agreement. Therefore, the City and the Company expressly agree that: (a) The preempted terms of this Franchise Agreement including the terms relating to the compensation to be paid, shall, in the sole discretion of the City, be subject to renegotiation one (1) year from the effective date of this Franchise Agreement, and again, if the City desires, two (2) years and three (3) years from the effective date of this Franchise Agreement; (b) In addition to and separate and apart from the provisions of subparagraph (a) of this Section, in the event an earlier negotiation must occur in order to comply with newly enacted or decided federal or state law, such negotiation shall begin within thirty (30) days after any request for renegotiation is issued by either the City or the Company, or at such time as it becomes apparent that a portion of this Franchise Agreement has been preempted by state or federal law. By execution of this Franchise Agreement, the Company agrees that upon the conclusion of any such renegotiations, the Company will enter into any reasonably necessary amendments to this Franchise Agreement, and the Company expressly agrees to waive any rights it may have under Nevada law to refuse to renegotiate this Franchise Agreement as set forth in this Section. It is further expressly agreed that any renegotiation and subsequent amendment shall not reduce the initial term of this Franchise Agreement. In no event shall such renegotiations impose obligations on the Company that similar service providers would not also be subject to. Further, if the City's right to impose a franchise is totally preempted, this Franchise Agreement is null and void.

#### SECTION 24. INDEMNIFICATION.

The Company, as a condition of the grant of this Franchise Agreement, and in consideration thereof, shall protect, indemnify, and hold the City harmless against all claims for damages to persons or property by reason of the construction, maintenance and operation of its Facilities, and conduct of business, or any way arising out of performance under this Franchise Agreement, directly, or indirectly, when or to the extent injury is caused, or alleged to have been caused, wholly or in part, by any act, omission, negligence, or misconduct of the Company or any of its contractors, subcontractors, officers, agents, or employees, or by any person for whose act, omission, negligence, or misconduct, the Company is by law responsible.

This provision is not intended to create liability for the benefit of third parties but is solely for the benefit of the Company and the City. In the event any claim is made against the City that falls under this indemnity provision and a Court of competent jurisdiction should adjudge, by final decree, that the City is liable therefore, the Company shall indemnify and hold the City harmless of and from any such liability, including any court costs, expenses, and Reasonable Attorney Fees incurred by the City in defense thereof and incurred at any stage. Upon commencement of any suit, proceeding at law or in equity against the City relating to or covering any matter covered by this indemnity, wherein the Company has agreed by accepting this Franchise Agreement, to indemnify and hold the City harmless, or to pay said settlement, final judgment and costs, as the case may be, the City shall give the Company immediate notice of such suit or proceeding; whereupon the Company shall provide a defense to any such suit or suits, including any appellate proceedings brought in connection therewith, and pay as aforesaid, any settlement, costs or judgments that may be rendered against the City by reason of such damage suit.

Upon failure of the Company to comply with the "defense of suit" provisions of this Franchise Agreement, after reasonable notice to it by the City, the City shall have the right to defend the same and in addition to being reimbursed for any settlement or judgment that may be rendered against the City, together with all costs incurred therein, the Company shall reimburse the City for Reasonable Attorney Fees, including those employed by the City in such case or cases, as well as all expenses incurred by the City by reason of undertaking the defense of such suit or suits, whether such suit or suits are successfully defended, settled, comprised, or fully adjudicated against the City. In the event the City is compelled to undertake the defense of any such suit by reason of the Company's failure to perform as here and above provided, the City shall have the full right and authority to make or enter into any settlement or compromise of such adjudication as the governing body shall deem in the best interest of the City, this without the prior approval or consent of the Company with respect to the terms of such compromise or settlement.

#### SECTION 25. INSURANCE.

The Company, concurrently with the filing of an acceptance of award of this Franchise Agreement, shall furnish to the City and file with the City Clerk, and at all times during the existence of this Franchise Agreement, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy for the protection of the City, its officers, boards, commissions, agents and employees, in a company approved by the City Manager and a



form satisfactory to the City Attorney, protecting the City and all persons against liability for loss or damage for personal injury, death and property damage occasioned by the operations of the Company under this Franchise Agreement, with minimum liability limits of ONE MILLION and NO/100THS DOLLARS (\$1,000,000.00) for personal injury or death of any one person and THREE MILLION and NO/100THS DOLLARS (\$3,000,000.00) for personal injury or death of two or more persons in any one occurrence and FIVE HUNDRED THOUSAND and NO/100THS DOLLARS (\$500,000.00) for damage to property resulting from any one occurrence. The Company is not liable for any loss caused by, and no policy provided hereunder shall apply to, the active, willful or intentional misconduct of the City, its agents, employees, officers, boards or commissions.

The policies mentioned in the foregoing paragraphs shall name the City, its officers, boards, commissions, agents and employees as additional insured and shall contain a provision that a written notice of cancellation of, or reduction in coverage under each said policy shall be delivered to the City at least thirty (30) days in advance of the effective date thereof; if any such insurance is provided by a policy which also covers the Company or any other entity or person other than those above named, then such policy shall contain the standard cross-liability endorsement.

SECTION 26. REMEDIES AND PENALTIES NOT EXCLUSIVE: DEFAULT.

- A. All remedies and penalties under this Franchise Agreement are cumulative and not exclusive, and the recovery or enforcement by one available remedy or imposition of any penalty is not a bar to recovery or enforcement by any other such remedy or imposition of any other penalty. 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 the Company by or pursuant to this Franchise Agreement. A specific waiver of a particular breach of any term, condition or obligation imposed upon the Company by or pursuant to this Franchise 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.
- B. The Company agrees that an Event of Default shall include, but shall not be limited to, any of the following acts or failure to act by the Company:
  - 1) Failure to obtain any applicable permits from the City pursuant to this Franchise Agreement.
  - 2) Failure to comply with the terms of Section 19 which limits the assignment of the Franchise Agreement, or transfer of control of the Franchise Agreement.
  - 3) Failure to supply the necessary performance bonding as specified in Section 13.

- 4) Failure to comply with any local, state or federal law that prohibits discrimination in employment, or prohibits the creation of hostile working environments for an employee of the Company;
  - 5) Failure to make any of the payments set forth in Section 6 or Section 12 of this Franchise Agreement.
  - 6) Failure to pay any permit fees, or failure to comply with any rules, regulations, orders or directives of the City as set forth in this Franchise Agreement.
  - 7) Substantial or repeated failure to comply with Section 6 concerning Installations, Excavations and Restorations and Section 21 concerning customer service.
  - 8) Refusal to renegotiate the terms and conditions of this Franchise Agreement in accordance with Section 23.
- C. Upon the occurrence of an Event of Default, then, in accordance with the procedures provided for in this Franchise Agreement, the City may:
1. Require the Company to take such actions as the City deems are appropriate; or
  2. Seek money damages from the Company as compensation for such Event of Default; or
  3. Accelerate the expiration of the term of this Franchise Agreement by decreasing the term of this Franchise Agreement provided in Section 4; the extent of such acceleration shall be determined by the City and may include any period of time, but not less than six (6) months provided that six (6) months remain under this Franchise Agreement; or
  4. As a last measure only, revoke the Franchise Agreement by termination of this Franchise Agreement.
- D. The City shall exercise the rights set forth in this Section in accordance with the following procedures:
1. The Director shall notify the Company, in writing, of an alleged Event of Default. This written notice shall set forth with reasonable specificity the facts the City believes are the basis for declaring that an Event of Default has occurred. The Company shall, within thirty

(30) days of the date the notice is received by the Company, or such additional time as the Director may specify in the notice, cure the alleged Event of Default, or, in writing, present for review by the Director a reasonable time frame and method to cure the Event of Default. The Company, in lieu of the cure of the Event of Default as set forth herein, may, in writing, present facts and arguments as to why the Company disagrees that an Event of Default has occurred.

2. If the Company presents a written response that challenges whether an Event of Default has occurred, the Director shall within fourteen (14) days review the submitted materials and determine again whether an Event of Default has occurred. If the Director reaffirms that an Event of Default has occurred, the Company shall be notified in writing of this decision and shall, within thirty (30) calendar days, cure the alleged Event of Default.
3. If the Company fails to cure the Event of Default so declared pursuant to this Section within the time permitted by the Director, the Director shall prepare a written report to the Council and recommend action to be taken. If the City Attorney, after consideration of this report and hearing, agrees that an Event of Default has occurred, it may order an appropriate remedy as set forth in this Section.

E. In addition to the rights under this Section, the City, upon any termination, may, at its sole discretion, direct the Company to remove, at the Company's sole cost and expense, any or all of the Facilities from all Rights-of-way and other Public Places within the City, subject to the following:

1. The City may determine that removal of buried fiber optic cable, or conduit, is not necessary;
2. In removing any part of the Facilities, the Company shall refill and compact, at its own expense, any excavation that shall be made by it and shall leave all Rights-of-way and other Public Places in as good a condition as that prevailing prior to the Company's removal of the Facilities;
3. The City shall have the right to inspect and approve the conditions of the streets and Public Places after removal has occurred;
4. The removal shall commence within thirty (30) days of an order to remove being issued by the Director at the direction of the Council;
5. The Company shall be responsible for all necessary removals of the Facilities, and maintenance of the street area in the same manner and

degree as if the Facilities were in active use, and the Company shall retain all liability associated with such removals.

6. As an alternative to removal, the Company shall, subject to the City's desire, abandon its Facilities in place and transfer ownership of the installed Facilities to the City. Nothing herein shall cause the City to incur any costs related to the removal of the Company's Facilities or the transfer of ownership of said Facilities to the City.

#### SECTION 27. SEVERABILITY CLAUSE.

If any section, subsection, sentence, clause, phrase, term, provision, condition, covenant or portion of this Franchise Agreement is for any reason, held invalid, unenforceable or unconstitutional by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity or enforceability of the remaining portions of this Franchise Agreement. The Council hereby declares that it would have approved this Franchise Agreement and each portion thereof irrespective of any provision being declared unconstitutional or otherwise invalid.

#### SECTION 28. NOTICES.

Any notice of other communication required or permitted to be given under this Franchise Agreement (herein the "Notices") shall be in writing and shall be (1) personally delivered, or (2) delivered by certified mail, return receipt requested, and deposited in the U.S. mail, postage prepaid. The Notices shall be deemed received upon actual receipt. The Notices shall be directed to the parties at their respective addresses shown below, or such other address as either party may, from time to time, specify in writing to the other party in the manner described above:

For the purpose of this Franchise Agreement, notice to the City will be to:

Mr. David Roark, Manager  
Real Estate & Asset Management Division  
314 Las Vegas Blvd. North  
Las Vegas, NV 89101

with a copy to:

City Attorney's Office  
City of Las Vegas  
400 E. Stewart Avenue  
Las Vegas, NV 89101

Notice to the Company will be to:

Electric Lightwave, Inc.  
Attn.: Legal Affairs  
8100 NE Parkway Drive  
Vancouver, WA 98662

SECTION 29. PUBLIC PURPOSE.

All of the regulations provided in this Franchise Agreement are hereby declared to be for a public purpose and the health, safety, and welfare of the general public. Any member of the governing body or City official or employee charged with the enforcement of this Franchise Agreement, acting for the City in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties. Neither the City nor the Company by accepting this Franchise Agreement waives its right to seek all appropriate legal and equitable remedies as allowed by law upon violation of the terms of this Franchise Agreement, including seeking injunctive relief in a court of competent jurisdiction. Such right to injunctive relief is expressly reserved and all terms and provisions hereof shall be enforceable through injunctive relief.

SECTION 30. APPLICABLE LAW.

This Franchise Agreement is governed by and construed and enforced in accordance with the laws of the State of Nevada.

SECTION 31. CHOICE OF FRANCHISE AGREEMENT.

Should the Company enter into a Franchise Agreement with Clark County, Nevada, ("County") or the Cities of Henderson, North Las Vegas or Boulder City, Nevada, to provide similar services to those stated herein, the City shall have the option, within sixty (60) days of final adoption by those entities, of substituting all or portions of the franchise terms and conditions adopted in Clark County, Nevada, or the Cities of Henderson, North Las Vegas or Boulder City, Nevada, in place of the terms and conditions of this Franchise Agreement.

SECTION 32. STATE PUBLIC SERVICE COMMISSION AND CITY CHARTER REQUIREMENT.

This Franchise Agreement is subject to and contingent upon the Company complying with all applicable rules and regulations of the State Public Service Commission and the City

...  
...  
...

adopting a Resolution, conducting a public hearing and enacting an Ordinance granting a Franchise Agreement to the Company in accordance with Section 7.050 of the City Charter.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed by their duly authorized representatives the day and year first hereinabove written:

CITY OF LAS VEGAS, NEVADA

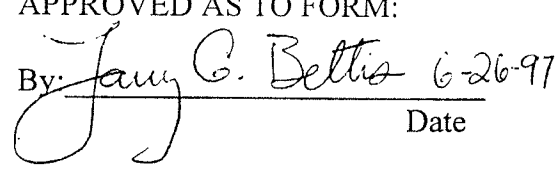
By:   
JAN LAVERTY JONES, Mayor

"City"

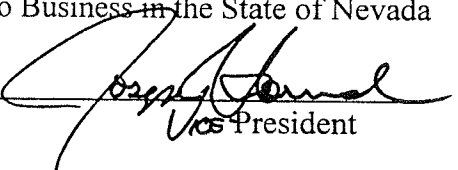
ATTEST:

  
BARBARA JO RONEMUS, City Clerk

APPROVED AS TO FORM:

By:   
Date 6-26-97

ELECTRIC LIGHTWAVE, INC.,  
a Delaware Corporation Authorized  
to do Business in the State of Nevada

By:   
Vice President

"Company"

ATTEST:

\_\_\_\_\_  
, Secretary

REVIEWED AND APPROVED  
ELI LEGAL DEPARTMENT

  
DATE 7/27/97



**LAS VEGAS  
CITY COUNCIL**

CAROLYN G. GOODMAN  
MAYOR

STEVEN D. ROSS  
MAYOR PRO TEM

LOIS TARKANIAN

RICKI Y. BARLOW

STAVROS S. ANTHONY

BOB COFFIN

BOB BEERS

ELIZABETH N. FRETWELL  
CITY MANAGER

CITY OF LAS VEGAS  
DEPARTMENT OF PLANNING  
BUSINESS LICENSING DIVISION  
DEVELOPMENT SERVICES CENTER  
333 NORTH RANCHO DRIVE  
6TH FLOOR  
LAS VEGAS, NEVADA 89106

VOICE 702.229.6281

FAX 702.382.6642

TTY 7-1-1

[www.lasvegasnevada.gov](http://www.lasvegasnevada.gov)



City of Las Vegas

May 11, 2016

Ms. Carrie Renfro  
Supervisor-Contract Administration  
Electric Lightwave  
18110 SE 34<sup>th</sup> Street  
Vancouver, WA 98683

Re: Franchise Agreement with City of Las Vegas

Dear Ms. Renfro:

As you know, the original franchise agreement naturally expired some time ago, but the parties have continued to treat that agreement as effective until a new agreement is in place, indicated by the continuing payment of fees by ELI, and the City's action to permit ELI to continue utilizing its ROW during this time. At this time, a draft of that new agreement is under final review by Public Works and will be provided to you for review as soon as possible. Once finalized and executed, it will be placed on a City Council agenda. The process could take 30 – 60 days.

Electric Lightwave has been asked to relocate its facilities in relation to the City's Main Street Project. This letter is to confirm our mutual understanding that the terms of the original agreement continue to apply, as effective, until such time as the Las Vegas City Council considers and acts upon a new agreement, provided that Electric Lightwave continues to comply with all of the terms of said agreement, including but not limited to maintaining the required security and insurance coverages, and the timely reporting and payment of all fees due to the City. The City Council's decision with regard to the relationship between Electric Lightwave and the City of Las Vegas is final.

If this is acceptable to you, please sign below and return the original to me by May 20. If you have any questions, please feel free to contact me at (702) 229-1206 or [gbishop@lasvegasnevada.gov](mailto:gbishop@lasvegasnevada.gov).

Sincerely,

Gina D. Bishop  
Franchise Analyst

cc: James B. Lewis, Deputy City Attorney  
David Bowers, Public Works Director  
Allen Pavelka, City Engineer

Accepted: \_\_\_\_\_

Date: 5-16-16

Name/Title: Jason Koenders / Senior Vice President and Chief Technology Officer

2014 WINNER OF THE U.S. CONFERENCE OF MAYORS CLIMATE PROTECTION AWARD