



Legislation Passed September 22, 2009

The Tacoma City Council, at its regular City Council meeting of September 22, 2009, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Purchase Resolution No. 37872

Awarding contracts to:

1. Petrocard Systems, Inc., in the amount of \$1,110,000, including sales tax, budgeted from various departmental funds, for a cumulative total of \$6,510,000, to increase the contract for vehicle fuel through February 21, 2010 – Specification No. GF06-0589F; and
2. Wright Asphalt Products Company, LLC, in the amount of \$250,000, plus sales tax, budgeted from the General Fund, for a cumulative total of \$450,000, to increase the contract for rubber modified hot liquid asphalt on an as-needed basis for the remainder of the 2009 chip seal season – Pierce County Contract No. 7446.

Resolution No. 37873

Approving the recommendations of the Neighborhood Councils for the 2009 Innovative Grant Program; and authorizing the allocation and expenditure of \$145,462, from the Community and Economic Development Special Revenue Fund, for neighborhood improvement projects.

Resolution No. 37874

Authorizing the execution of a nonstatutory Development Agreement with Elks on Broadway, LLC, and Elks Temple Properties LLC, for the Elks Building renovation and Mixed-Used Development project.

Amended Resolution No. 37875

Authorizing the execution of an Assignment Agreement with Elks on Broadway, LLC, for the purchase of real property to be used in the Elks Building/Mixed-Use Development project.

Resolution No. 37876

Authorizing the execution of an Option Agreement with Elks on Broadway, LLC, for the purchase of real property to be used in the Elks Building/Mixed-Use Development project.

Amended Ordinance No. 27834

Amending Title 10 of the Municipal Code by repealing and reenacting Chapter 10.22, relating to rights-of-way.



RESOLUTION NO. 37872

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the appropriate City officials to
3 enter into contracts and, where specified, waiving competitive bidding
4 requirements, authorizing sales of surplus property, or increasing or
5 extending existing agreements.

6 WHEREAS the City has complied with all applicable laws governing the
7 acquisition of those supplies, and/or the procurement of those services,
8 inclusive of public works, set forth in the attached Exhibit "A," which Exhibit is
9 incorporated herein as though fully set forth, and

10 WHEREAS the Board of Contracts and Awards has reviewed the
11 proposals and bids received by the City, and the Board has made its
12 recommendation as set forth in Exhibit "A," and

13 WHEREAS the Board of Contracts and Awards has also made its
14 recommendations as to entering into purchasing agreements with those
15 governmental entities identified in Exhibit "A"; Now, Therefore,

16 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

17 That the Council of the City of Tacoma does hereby concur in the
18 findings and recommendations of the Board of Contracts and Awards set forth
19 in the attached Exhibit "A," and does hereby approve and authorize the:

20 (X) A. Procurement of those supplies, services, and public works
21 recommended for acceptance in the attached Exhibit "A";

22 () B. Rejection of those bids and/or proposals that are recommended
23 for rejection in the attached Exhibit "A";
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() C. Entry into the proposed purchasing agreement with those governmental entities identified in the attached Exhibit "A," which proposed agreement is on file in the office of the City Clerk;

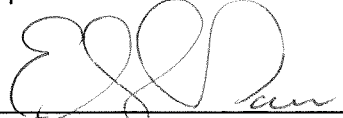
() D. Waiver of competitive bidding procedures in those instances, as set forth in Exhibit "A," in which it is impracticable to obtain supplies or public works improvements by competitive bid, or in those instances in which supplies and/or public works are available from a single source.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:


City Attorney



City of Tacoma
Public Works Department

EXHIBIT "A"

RESOLUTION NO.: 37872

ITEM NO.: 1

MEETING DATE: SEPTEMBER 22, 2009

DATE: September 4, 2009
TO: Board of Contracts and Awards
SUBJECT: Cardlock Fuel Purchases
Budgeted from various funds as needed by using departments
Request For Proposal Specification No. GF06-0589F
Framework Purchase Order 4500133073

RECOMMENDATION: Public Works, Fleet Services requests approval to increase Purchase Order 4500133073, originally established in February 2007, to **Petrocard Systems, Inc., Kent, WA**, by \$1,110,000, including sales tax, for purchase of vehicle fuel to be used by various departments. This increase will bring the purchase order to a cumulative total of \$6,510,000 including sales tax.

EXPLANATION: This increase will provide for the continued purchase of fuel for City vehicles in various departments, including Police, Fire and Public Works, in their daily activity through the end of the initial 3-year contract period in February 2010. This increase is required as a result of the drastic fuel price increases between 2007 and 2008 and higher consumption to support various City programs including residential street improvement, nuisance abatement, code enforcement, construction inspections and a fully staffed police department.

COMPETITIVE BIDDING: This contract was originally awarded to Petrocard Systems, Inc. as a result of Request for Proposals Specification No. GF06-0589F in January 2007. The contractor has agreed to increase the contract at the same prices, terms and conditions as the original contract.

CONTRACT HISTORY: This framework purchase order is the result of cooperative bidding process by General Government and Tacoma Public Utilities. General Government's initial award amount was \$5,400,000, including sales tax, and was approved by City Council Resolution No. 37097 on January 30, 2007. The resulting contract was established in February 2007. This increase will bring the purchase order to a cumulative total of \$6,510,000, including sales tax, for the period February 22, 2007 through February 21, 2010. This is the first amendment to the contract; one two-year extension remains.

FUNDING: Funds for this are available from various departments utilizing the contract. Funding beyond the current biennium is subject to future availability of funds.

PROJECT ENGINEER/COORDINATOR: Mike Clother, Fleet Services, 253-591-5866.

Richard E. McKinley
Public Works Director

cc: Jeffrey Jenkins/Angela Ballard, PW/Facilities
Percy Jones, HUB
Peter Guzman, LEAP
Michele Tuong, TPU/Utilities Accounting
Jayne McCartney, TPU/Purchasing
Fred Chun/Mike Clother/Mary Emery, Fleet Operations



City of Tacoma
Public Works Department

EXHIBIT "A"

RESOLUTION NO.: 37872
ITEM NO.: 2
MEETING DATE: SEPTEMBER 22, 2009

DATE: September 3, 2009
TO: Board of Contracts and Awards
SUBJECT: Rubber Modified Hot Liquid Asphalt (AC 15-5TR)
Budgeted from the General Fund 0010
SAP Contract No. 4600004161, Pierce County Contract No. 7446

RECOMMENDATION: The Public Works Department, Streets and Grounds Division requests approval to increase SAP Contract No. 4600004161 to **Wright Asphalt Products Company, LLC, Gladstone, OR**, by \$250,000, plus sales tax, for the purchase of rubber modified hot liquid asphalt (AC 15-5TR) on an as needed basis. This increase will bring the contract to a cumulative total of \$450,000, plus sales tax.

EXPLANATION: The requested contract increase will provide necessary material for application on streets throughout the City during the 2009 chip seal season on an as needed basis. This requested increase represents ratification of \$140,076.90 for purchases dating July 14, 2009 through August 24, 2009. The additional requested amount of \$109,923.10 is for incidental expenses for the remainder of the 2009 chip seal season.

COMPETITIVE BIDDING: This contract was originally awarded to **Wright Asphalt Products Company, LLC**, as a result of an Interlocal Agreement with Pierce County; per Pierce County Contract No. 7446 on July 24, 2007.

CONTRACT HISTORY: The original contract for \$200,000, plus sales tax, was approved by City Council Resolution No. 37234 on July 24, 2007. This increase will bring the contract to a cumulative total of \$450,000, plus sales tax. This is the first amendment to the contract.

FUNDING: Funds for this are available in the General Fund 0010. Funding beyond the current biennium is subject to future availability of funds.

PROJECT ENGINEER/COORDINATOR: Matt Fengler, Streets and Grounds Division, 591-5060.

Richard E. McKinley
Public Works Director

cc: Chuck Blankenship, Purchasing Analyst, Finance/Purchasing
Percy Jones, HUB
Peter Guzman, HALO
Matt Fengler, Streets and Grounds Assistant Division Manager

RESOLUTION NO. 37873

A RESOLUTION relating to community and economic development; approving the recommendations of the Neighborhood Councils for the 2009 Innovative Grant Program; and authorizing the allocation and expenditure of \$145,462 for neighborhood improvement projects.

WHEREAS, for the year 2009, the Neighborhood Council Program received \$145,462 to be used for the Innovative Grant Program, and

WHEREAS a portion of the funding is derived from Community Development Block Grant ("CDBG") funds for eligible projects and supplemented by the Community Economic Development Special Revenue Fund for those projects that are not CDBG eligible, and

WHEREAS the innovative grant projects eligible for funding recommendations by the eight Neighborhood Councils include projects such as street- and sidewalk-related improvements, removal of blight, and traffic-calming, and

WHEREAS the boards for each of the Neighborhood Councils have reviewed all applications received and have submitted to the City Council their recommendations for the projects set forth in Exhibit "A," attached hereto, and made a part hereof, and

WHEREAS the City Council hereby expresses its intent to adopt the recommendations of the Neighborhood Council Office for allocation of funding for such projects from CDBG funds and other funding, subject to eligibility requirements of the other funding to be utilized; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the proper officers of the City are hereby authorized to approve the 2009 Innovative Grant Program project recommendations, as set forth in the attached Exhibit "A," to be paid from the Community Economic Development Special Revenue Fund.

Section 2. That the various programs and projects referred to in the attached Exhibit "A" shall not be implemented or carried into effect until such time as the same have been further reviewed by the appropriate officers and employees of the City, with reference to the legality thereof, and the making of such technical adjustments as may be required to carry out such programs and projects.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney

EXHIBIT "A"

2009 INNOVATIVE GRANT RECOMMENDATIONS

FINAL RECOMMENDATIONS

South End Neighborhood Council

- Project Cruise Control** **\$2,700**
Install a speed hump in the vicinity of Tacoma Avenue South between 88th Street and 91st to reduce vehicle speeds, and provide a safer environment for families, schools, and playgrounds and parks in the neighborhood.
- Project Peaceful-Fern Hill Alliance, Safe Streets** **\$1,750**
Produce five safety notification signs; in cooperation with Safe Streets, to warn and discourage would-be criminal activities in the neighborhood. Fund 5 signs.
- South 37th Speed Bump, Lincoln Safe Streets** **\$6,500**
Install a speed hump in the vicinity of the 1200 Block of 37th Street within the Jenny Reed Community to reduce traffic speed. A speed hump will also make it safer for children to cross the street, and would also reduce the flow of cars trying to avoid the traffic light on South 38th and South "M".
- Fallen Rider's Outdoor Memorial (FROM)** **\$5,112**
Remove broken and hazardous sidewalk, and install new sidewalk around the Triangle Park, located at South 46th at Thompson and Yakima where the "Fallen Rider's Outdoor Memorial" is located.

South Tacoma Neighborhood Council

- Neighborhood Signage** **\$3,000**
Create a neighborhood gateway by installing 4 signs in the Manitou area to identify and encourage pride in the neighborhood.
- Garden for Hope** **\$4,000**
Install a community garden at the Manitou Community Center; that include handicap accessible raised bed gardens, to raise fresh vegetables for the South Tacoma food bank.
- South Tacoma Way Greenway Demonstration Project** **\$7,000**
Install a Greenway project on Tacoma Water property along the Water Ditch Trail with landscaping and benches that are handicap accessible.

Lights to Take a Bite Out of Crime **\$5,000**
Purchase dusk to dawn lights to be distributed to low-moderate income residents at meeting and neighborhood activities to encourage light visibility as a safety measure in the neighborhood.

South 45th and Lawrence Roundabout **\$1,000**
To enhance and beautify the roundabout at South 45th and Lawrence by installing concrete, rock design, and plants in the roundabout.

Eastside Neighborhood Council

Installation of Speed Hump East “B” Street **\$6,500**
Install one speed hump in the middle of the stretch of the road between the homes in the vicinity of the 6800 block of East “B” Street to reduce traffic speed in the residential neighborhood.

Street Lights, East “M,” Portland Ave., and East 60th Area **\$7,200**
Erect and install three streetlights within the neighborhood and/or vicinity of East 60th between Portland Avenue and “M” Street to promote safety and discourage criminal activities in the area.

Replace/Repair Hand Rail on Hill Climb, East 34th Street **\$5,000**
To update and replace deteriorating steel hand railing on the hill climb stairs located in the rights-of-way on East 32nd Street

Central Neighborhood Council

South “M” Street Lighting Project **\$7,425**
The project will replace lighting globes and lights on South “M” Street

South 9th and Ainsworth Speed Hump **\$6,000**
Install speed hump in the vicinity of South 9th and Ainsworth

Heidelberg Skate Park Renovations **\$4,200**
Renovate and add new features (granite rails and new ramps) to the existing skate park

Blight Removal Delong Lake Bio-swale **\$ 566**
Purchase items for residents; or a neighborhood cleanup, so they can remove blighted conditions in the Delong Lake Neighborhood adjacent to the bio-swale.

North End Neighborhood Council

Proctor District Tree Surrounds **\$1,778**
This is a street beautification project that will refurbish the iron “tree surrounds” around street trees in the Proctor Business District (North 24th – 30th, along Proctor)

**Head of Buckley Creek Restoration
(North 16th & Junette- Buckley Gulch) \$1,505**
Transform this public open space, located by improving and beautifying the area. Improvements and further beautification will include making improvement to the deteriorating railing along the creek to insure safety, and purchase and install landscaping rocks and planting materials.

Historic Pedestrian Lighting (3000 Block of North 13th) \$7,354
Increase lighting for security in the neighborhood located in the 3000 Block of North 13th by installing historic lighting fixtures.

Old Town Beautification –Signage (Tacoma Ave./McCarver) \$7,500
Remove blight conditions and make improvements and beautify the Old Town Business District. Two “Welcome to Old Town” signs will be produced and installed as gateways signage to the district as part of their beautification efforts.

Puget Creek Kiosk/Boardwalk \$7,500
Install a kiosk on the boardwalk along the Puget Creek watershed to educate visitors about urban streams, protecting the wetlands and the habitats in the area. It would be designed to incite interaction and raise awareness about the importance of urban streams and also provide public access to the watershed.

**Pruning Historic Tree in North Slope
(Division/Sprague/North “M”) \$3,720**
(\$3,720 carried over from previous years)
This is a streetscape improvement that is intended to improve the health of the street trees in the neighborhood and also to remove trees damaged by storms and diseases.

Stump Removal in North Slope (North “I,” 4th & 5th vicinity) \$4,664
(\$4.664 carried over from previous years)
To provide improved streetscape by grinding and removing tree stumps in the rights-of-way. A new tree will be planted to replace stumps removed.

Northeast Tacoma Neighborhood Council

Safe Traffic Circle Planting \$7,000
Remove overgrown plants that block the view of traffic, and plant lower, yet attractive and low-maintenance plants to provide visual and motorist safety in negotiating the traffic circle at Norpoint Way NE and 49TH Ave. N.E.

NET Neighbors and Safe Street Signage **\$1,500**
Have 6 signs produced and installed in various location in the neighborhood as a show of unity against criminal activities, and to act as a deterrent to potential criminals.

Metal-Arch Directional Sign #8 **\$5,500**
To produce and install directional/way-finder signage in Northeast East Tacoma as a continuation of phase #8 of previous efforts to help visitors and Tacoma residents locate physical locations and nearby landmarks in the area.

NET Neighbors Lighting **\$6,000**
To have lighting installed in areas of Northeast Tacoma that currently do not have adequate lighting and in known areas where criminal activities has previously occurred, and will most likely continue to occur. Light will reduce and deter these activities.

West End Neighborhood Council

Barrier Free West End, Phase I **\$7,500**
In cooperation with the City's ADA Coordinator, identify areas in the West End to remove barriers, i.e. handicap accessible ramps, etc. and take appropriate steps to install barrier free accommodations.

Barrier Free West End, Phase II **\$7,500**
In cooperation with the City's ADA Coordinator, identify areas in the West End to Remove barriers, i.e. handicap accessible ramps, etc. and take appropriate steps to install barrier free accommodations.

Barrier Free West End, Phase III **\$7,500**
(\$2,500 carried over from previous years)
In cooperation with the City's ADA Coordinator, identify areas in the West End to remove barriers, i.e. handicap accessible ramps, etc. and take appropriate steps to install barrier free accommodations.

New Tacoma Neighborhood Council

Triangle Landscaping (7th & Yakima) **\$5,900**
To landscape and transform the triangle at the intersection of South 7th and "I" Street as a focal point in the neighborhood. Residents will design and plant low-maintenance, low-water consumption plantings.

Outdoor Covered Area, Tacoma Ave. Homeless Shelter **\$7,500**
Install an outdoor covered area to provide a welcoming, comfortable, compassionate, and safe place where men and women experiencing homelessness can go. It will also improve the appearance of the exterior area

of the Tacoma Avenue shelter in order to promote a sense of community with the surrounding neighborhood by creating an attractive, safe, supervised, outdoor area; that is protected from the element where shelter guest can enjoy a meal.

Dome District Banner Brackets **\$3,300**

Purchase and install banner brackets. These brackets will be installed in various locations in the Dome so that banners can be hung in the future.

MLK Proud to Be American Banner Brackets **\$3,300**

Purchase and install banner brackets in various locations in the MLK Business District for future banners to be hung.

RESOLUTION NO. 37874

A RESOLUTION relating to community and economic development; authorizing the execution of a nonstatutory Development Agreement with Elks on Broadway, LLC, and Elks Temple Properties LLC for the Elks Building renovation and adjacent mixed-use development project.

WHEREAS, on July 28, 2009, the City Council adopted

Resolution No. 37836, authorizing the execution of a Letter of Intent with Elks on Broadway, LLC (“EOB”), and Elks Temple Properties LLC (“ETP”) to lay the foundation for a nonstatutory Development Agreement with both parties for the Elks Building rehabilitation and adjacent mixed-use development project, and

WHEREAS the Elks Building, located in downtown Tacoma at 565 Broadway, is a significant Tacoma landmark in need of restoration, and

WHEREAS the Elks Building has been vacant for many years and has deteriorated to the point of requiring renovation and restoration before it can be returned to productive use, and

WHEREAS ETP desires to purchase and restore the historic Elks Building, reshaping it into a multifunctional entertainment venue in conjunction with EOB’s development of a mixed-use development on adjacent property to the north of the building, and

WHEREAS the City is agreeing to construct an approximate 300-stall, municipally owned public parking garage on the adjacent vacant land, which would serve as a podium for a multi-level, mixed-use development project, and

WHEREAS EOB proposes to build a six-story structure above the garage, which would contain an approximately 22,500-square-foot grocery

store, drug store, convenience store, or other acceptable retail use, as well as 68 market rate apartments above the commercial space, and

WHEREAS, by November 3, 2009, ETP will purchase the Elks Building and the City will acquire the adjacent vacant land to the north of the structure with the closing on both parcels to occur simultaneously; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute a nonstatutory Development Agreement with Elks on Broadway, LLC, and Elks Temple Properties LLC for the Elks Building renovation and adjacent mixed-use development project, said document to be substantially in the form of the proposed nonstatutory Development Agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

RESOLUTION NO. 37875

A RESOLUTION relating to community and economic development; authorizing the execution of an Assignment Agreement with Elks on Broadway, LLC, for the Elks Building/Mixed-Use Development project.

WHEREAS, on July 28, 2009, the City Council adopted Resolution No. 37836, authorizing the execution of a Letter of Intent with Elks on Broadway, LLC (“EOB”), and Elks Temple Properties LLC (“ETP”) to lay the foundation for a development agreement with both parties for the Elks Building rehabilitation and adjacent mixed-use development project, and

WHEREAS the Elks Building, located in downtown Tacoma at 565 Broadway, is a significant Tacoma landmark in need of restoration, and

WHEREAS the Elks Building has been vacant for many years and has deteriorated to the point of requiring renovation and restoration before it can be returned to productive use, and

WHEREAS, upon the City Council’s approval of the proposed negotiated Assignment Agreement with EOB, which is designed to facilitate the development transaction, the following action will occur:

A. EOB will assign the City its interest in a purchase and sale agreement, executed on April 20, 2009, with Tacoma Alpha Land Investors LLC, for the acquisition of the vacant land adjacent to the Elks Building on the north side.

B. Pursuant to a separate assignment, ETP will buy the Elks Building for \$1,200,000.

C. The City will purchase the adjacent vacant land for a total of \$900,000, plus an estimated \$10,000 in closing costs; the City will reimburse the \$50,000

extension deposit held in escrow to EOB, as well as reimburse the developer for due diligence expenses estimated at up to \$67,500.

D. The City will be required to deposit an additional \$50,000 as the second deposit prior to October 5, 2009, which the City intends to make on or before September 28, 2009, and

E. At closing, the City will pay \$800,000, plus closing costs, which is the balance of funds needed after the \$100,000 deposit; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute an Assignment Agreement with Elks on Broadway, LLC, for the purchase of real property to be used in the Elks Building/Mixed-Use Development project, said document to be substantially in the form of the proposed Assignment Agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

RESOLUTION NO. 37876

A RESOLUTION relating to community and economic development; authorizing the execution of an Option Agreement with Elks on Broadway, LLC, for the Elks Building/Mixed-Use Development project.

WHEREAS, on July 28, 2009, the City Council adopted Resolution No. 37836, authorizing the execution of a Letter of Intent with Elks on Broadway, LLC (“EOB”), and Elks Temple Properties LLC (“ETP”) to lay the foundation for a development agreement with both parties for the Elks Building rehabilitation and adjacent mixed-use development project, and

WHEREAS the Elks Building, located in downtown Tacoma at 565 Broadway, is a significant Tacoma landmark in need of restoration, and

WHEREAS the Elks Building has been vacant for many years and has deteriorated to the point of requiring renovation and restoration before it can be returned to productive use, and

WHEREAS, upon the City Council’s approval of the proposed negotiated Option Agreement with EOB, which is designed to facilitate the development transaction, the following action will occur:

A. The City will provide EOB with an 18-month option to purchase the adjacent vacant land to the north of the Elks Building.

B. EOB will be permitted to purchase the property for (1) the City’s acquisition cost of \$900,000; closing costs; and other costs actually paid by the City in connection with the purchase of the property, which includes reimbursement of up to \$50,000 in due diligence expenses in addition to the carrying costs during the 18-month option period; (2) the amount of any

property taxes and assessments that the City would have received during the option period; (3) the amount that the City paid in connection with LID bonds that encumber the property during the option period; and (4) reimbursement of the non-City share of actual demolition and environmental remediation costs of the adjoining structure to the Elks Building if demolition will be required during the option period; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute an Option Agreement with Elks on Broadway, LLC, for the Elks Building/Mixed-Use Development project, said document to be substantially in the form of the proposed Option Agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

ORDINANCE NO. 27834

AN ORDINANCE relating to City rights-of-way; amending Title 10 of the Tacoma Municipal Code by repealing and reenacting Chapter 10.22 in its entirety, relating to rights-of-way.

WHEREAS, on February 24, 2009, the City Council passed Ordinance No. 27787, repealing and reenacting subtitle 16A of the Tacoma Municipal Code ("TMC"), in order to comply with changes in federal and state law relating to telecommunications systems, cable systems, private communications systems, and franchise and licensing requirements, and

WHEREAS there were several code provisions in subtitle 16A TMC that pertained to the management of the City's rights-of-way that were removed with the intent of relocating them into Chapter 10.22 TMC, and

WHEREAS Chapter 10.22 TMC provides for the permitting and restoration requirements for all work performed in the rights-of-way, and

WHEREAS, although the public and private uses of rights-of-way for location of facilities should be accommodated, the City must ensure that the primary purpose of the rights-of-way and the passage of pedestrian and vehicular traffic are maintained to the greatest extent possible, and

WHEREAS, in addition, the value of other public and private installations, roadways, facilities, and properties should be protected; competing uses must be reconciled; and the public safety preserved, and

WHEREAS the use of the rights-of-way corridors by private users is secondary to these public objectives and the movement of traffic, and

WHEREAS the Public Works Department and the Information Technology Department worked with various stakeholders that perform work within the rights-of-way in crafting a comprehensive update to Chapter 10.22 TMC that strikes a balance between the public need for efficient, safe transportation routes and the use of rights-of-way for location of facilities by public and private entities; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Chapter 10.22 of the Tacoma Municipal Code is amended, as set forth in the attached Exhibit "A."

Passed _____

Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

EXHIBIT “A”

Chapter 10.22

RIGHTS-OF-WAY

Sections:

10.22.010	Purpose – Objectives.
10.22.020	Definitions.
10.22.030	Administration and enforcement.
10.22.040	Police powers.
10.22.050	Permit required.
10.22.060	Permit application and contents.
10.22.070	Provisions for Permit.
10.22.080	Billable Work Order.
10.22.090	Insurance and indemnification.
10.22.100	Notice to Fire Department.
10.22.110	Inspection by the City.
10.22.120	Public safety.
10.22.130	Time of completion.
10.22.140	Traffic control.
10.22.150	General Rights-of-Way use and construction.
10.22.160	Joint planning and construction; coordination of Excavations.
10.22.170	Minimizing the impacts of Work in the Rights-of-Way.
10.22.180	Relocation of Facilities.
10.22.190	Abandonment and removal of Facilities.
10.22.200	Emergency procedures.
10.22.210	Application of the Utilities Department and Contractors working for the City.
10.22.220	Revocation of Permits and stop Work orders.
10.22.230	Maps/Record Drawings.
10.22.240	Responsibility of costs.
10.22.250	Local Improvement District (LID) – Aerial to underground cost estimates and participation.
10.22.260	Appeals procedure.
10.22.270	Violation – Penalty.
10.22.280	Severability.

10.22.010 Purpose – Objectives.

A. Purpose. This chapter provides principles, procedures, and associated funding for the placement of Structures and Facilities, construction Excavation encroachments and Work activities within or upon the public Rights-of-Way, and to protect the integrity of the road system. To achieve these purposes, it is necessary to require Permits of users of the public Rights-of-Way and to establish Permit procedures.

B. Objectives. Public and private uses of Rights-of-Way for location of Facilities employed in the provision of public services should, in the interests of the general welfare, be accommodated; however, the City must ensure that the primary purpose of the Rights-of-Way

and passage of pedestrian and vehicular traffic is maintained to the greatest extent possible. The use of the Rights-of-Way will not unreasonably limit or encroach upon the public's right to travel on said Rights-of-Way or the ancillary right to occupy said Rights-of-Way for utility purposes. In addition, the value of other public and private installations, roadways, Facilities, and properties should be protected; competing uses must be reconciled; and the public safety preserved. The use of the Rights-of-Way corridors by private users is secondary to these public objectives and the movement of traffic. This chapter is intended to strike a balance between the public need for efficient, safe transportation routes and the use of Rights-of-Way for location of Facilities by public and private entities. It, thus, has several objectives:

1. To ensure that public safety is maintained and that public inconvenience is minimized;
2. To protect the City's Infrastructure investment by establishing repair standards for the pavement, Facilities, and property in the Rights-of-Way, when Work is accomplished;
3. To facilitate Work within the Rights-of-Way through the standardization of regulations, by establishing clear and nondiscriminatory local guidelines, standards, and time frames for the exercise of local authority with respect to the regulation of the use of Rights-of-Way, and permit and manage reasonable access to the Rights-of-Way on a competitively neutral basis;
4. To maintain an efficient Permit process and assure that the City's current and ongoing costs of granting and regulating private access to and use of the Rights-of-Way are fully paid by the Persons seeking such access and causing such costs;
5. To conserve the limited physical capacity of the Rights-of-Way held in public trust by the City;
6. To establish a public policy for enabling the City to discharge its public trust consistent with the evolving federal and state regulatory policies, industry competition, and technological development;
7. To promote cooperation among the Permittees and the City in the occupation of the Rights-of-Way, and Work therein, in order to (a) eliminate duplication that is wasteful, unnecessary, or unsightly; (b) lower the Permittee's and the City's costs of providing services to the public; and (c) minimize street cuts; and
8. To assure that the City can continue to fairly and responsibly protect the public health, safety, and welfare.

10.22.020 Definitions.

For the purpose of this chapter the following words shall have the following meanings:

A. "Annual Permit" means the Permit described in subsection 10.22.050.I of this chapter. The cost of the Annual Permit will be in accordance with subsection 10.22.080.B of this chapter.

B. "Applicable Law" means any Local Law or federal or state statute, law, regulation, or other legal authority governing any of the matters addressed in this chapter.

C. "Billable Work Order" means funding to be provided by a Permittee for Work for which a Permit is required under Section 10.22.080 to cover the City's actual costs, including, but not limited to, design review and approval, administration, and inspection of the privately designed plans for the construction of City-owned Infrastructure in the public Rights-of-Way.

D. “City” means the City of Tacoma, Washington. General references to “City” are not intended to refer to the City’s Utilities Department, which is to be governed as any other Permittee or Owner under this chapter, unless the context of a specific provision otherwise provides.

E. “Contractor” means a Person, partnership, corporation, or other legal entity who undertakes to construct, install, alter, move, remove, trim, demolish, repair, replace, Excavate, or add to any improvements covered by this chapter, that requires Work, workers, and/or equipment to be in the Rights-of-Way in the process of performing the above-named operations.

F. “Developer” means the Person, partnership, corporation, or other legal entity who is improving a parcel of land within the City and who is legally responsible to the City for the construction of improvements within a subdivision or as a condition of a building Permit.

G. “Director” means the Director of Public Works of the City or his or her authorized representative.

H. “Emergency” means any event which may threaten public health or safety, or that results in an interruption in the provision of services, including, but not limited to, damaged or leaking water or gas conduit systems; damaged, plugged, or leaking sewer or storm drain conduit systems; damaged electrical and communications Facilities, and advanced notice of needed repairs is impracticable under the circumstances.

I. “Excavate” or “Excavation” means to dig into or in any way remove or penetrate any part of the Rights-of-Way.

J. “Facility” or “Facilities” means, including, without limitation, any pipes, conduits, wires, cables, amplifiers, transformers, fiber-optic lines, antennae, poles, street lights, ducts, fixtures and appurtenances, and other like equipment used in connection with transmitting, receiving, distributing, offering, and providing utility and other services.

K. “Infrastructure” means any public Facility, system, or improvement including, without limitation, water and sewer mains and appurtenances, storm drains and Structures, streets, alleys, traffic signal poles and appurtenances, conduits, power poles, signs, landscape improvements, sidewalks, and public safety equipment.

L. “Landscaping” means materials, including, without limitation, grass, ground cover, shrubs, vines, hedges, or trees and nonliving natural materials commonly used in landscape development, as well as attendant irrigation systems.

M. “Local Law” means any Tacoma City Charter provisions, ordinances, regulations, rules, standards, or other legal authority adopted by the City governing any of the matters addressed in this chapter.

N. “Owner” means the lawful owner of Facilities subject to provisions of this chapter.

O. “Permit” means any authorization for use of the Rights-of-Way granted in accordance with the terms of this chapter and Local Law.

P. “Permittee” means the holder of a valid Permit issued pursuant to this chapter.

Q. “Person” means any Person; firm; partnership; special, metropolitan, or general district; association; corporation; company; or organization of any kind, except as otherwise provided herein.

R. “Rights-of-Way” means the public streets and easements which, under Applicable Law, the City has regulatory authority, and any license, or Permit granting any right to or use thereof, excluding railroad rights-of-way, airport, and harbor areas. Rights-of-Way, for the purpose of this chapter, do not include buildings, parks, poles, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, Structures in the Rights-of-Way such as utility poles and light poles.

S. “Specifications” means regulations, policies, and standards adopted by the City.

T. “Structure” means anything constructed or erected with a fixed location below, on, or above grade, including, without limitation, foundations, fences, retaining walls, awnings, balconies, and canopies.

U. “Work” means any labor performed in connection with construction, maintenance or repair of Facilities impacting the Rights-of-Way and all related appurtenances, fixtures, improvements, sidewalks, driveway openings, bus shelters, bus-loading pads, streetlights, and traffic signal devices. It shall also mean construction, maintenance, and repair of all underground Structures such as pipes, conduits, ducts, tunnels, manholes, vaults, buried cable, wire, or any other similar Structure located below surface, and installation of overhead poles used for any purpose.

10.22.030 Administration and enforcement.

The Director, or his or her duly authorized agent, is hereby authorized and directed, and it shall be his or her duty, to enforce all the provisions of this chapter. Such duty shall include, but not be limited to, the approval of plans and Specifications for any construction, barricade, or Excavation; issuance of Permits; establishment and collection of engineering inspection charges, repairs of cuts, and reconditioning of streets; inspection of constructing sidewalk, curb, gutter, grading, paving, storm and sanitary sewers, retaining walls, driveways, or any other construction, barricade, or Excavation in any street or alley; keeping of necessary records; and gathering of evidence for the assistance in apprehending and prosecuting violators. The Director shall have the authority to render interpretations of this chapter and may adopt reasonable rules and administrative procedures, including the City of Tacoma Right-of-Way-Restoration Policy (hereinafter “Policy”), to enforce the provisions of this chapter. Such interpretations, rules, and administrative procedures shall be in conformity with the intent and purposes of this chapter. The Director is authorized to amend and update, as necessary, such rules and administrative procedures. All restoration activities within the Rights-of-Way shall conform to the Policy.

10.22.040 Police powers.

A Permittee’s rights hereunder are subject to the police powers of the City, which include the power to adopt and enforce Local Law, including amendments to this chapter, necessary to protect the safety, health, and welfare of the public. A Permittee shall comply with all Local Law enacted, or hereafter enacted, by the City. The City reserves the right to exercise its police powers, notwithstanding anything in this chapter and any Permit to the contrary. Any conflict between the provisions of the chapter or a Permit and any other present or future lawful exercise of the City’s police powers shall be resolved in favor of the latter.

10.22.050 Permit required.

A. No Person shall grade, pave, level, alter, construct, repair, remove or Excavate any pavement, sidewalk, crosswalk, curb, driveway, gutter, public sewer, water main, conduit, fuel tank, vault, or any other Structure or improvement located over, under, or upon any street, alley, or other public place, or place any Structure, building materials, earth, gravel, rock, garbage, debris, or any other material or thing tending to obstruct, damage, disturb, or interfere with the free use thereof or any improvement situate therein, or cause a dangerous condition thereon, without first obtaining a Permit in writing from the Director.

B. No Permittee shall perform Work in an area larger, at a location different, or for a longer period of time than that specified in the Permit or Permit application. If, after Work is commenced under an approved Permit, it becomes necessary to perform Work in a larger or different area than originally requested under the application or for a longer period of time, the Permittee shall notify the Director immediately and, within 24 hours, shall file a supplementary application for the additional Work if required by the Director.

C. The applicant may subcontract the Work to be performed under a Permit, provided that the Permittee shall be and remain responsible for the performance of the Work under the Permit and all insurance and financial security as required.

D. In the City, the physical construction of public Infrastructure in new developments is the responsibility of the Developer of the land. Ownership of that Infrastructure remains with the Developer of the land until acceptance by the City. Any Developer of land where Work is undertaken on Infrastructure that is within the Rights-of-Way, but prior to acceptance by the City, shall obtain a Permit from the City. The City will not accept public Infrastructure improvements where Work performed is not in accordance with applicable City Specifications and applicable provisions of this chapter.

E. Any Person or utility found to be conducting any Excavation activity within the Rights-of-Way, without having first obtained the required Permit(s), shall immediately cease all activity (exclusive of actions required to stabilize the area) and be required to obtain a Permit before Work may be restarted.

F. No Permit shall be assignable and no Person shall allow his or her name to be used to obtain a Permit or Permits for any other Person; provided, however that a Contractor may obtain a Permit on behalf of an Owner, in which case both the Contractor's and the Owner's name shall appear on the Permit.

G. All applications for such Permit shall be signed by the Person, or his duly authorized agent, who desires to do the Work designated in said application. Said Permit will become void 30 days after the date of issue, unless otherwise provided in the Permit or unless extended or revoked by the Director.

H. No Permit shall be issued where it appears that the Work to be done, or any part thereof, conflicts with the provisions of this chapter.

I. Notwithstanding anything in this Section 10.22.050 to the contrary, for entities that undertake regular, routine maintenance or other limited Work that physically impacts the Rights-of-Way or disrupts traffic in the Rights-of-Way not lasting more than one day, the Director may grant Annual Permits to allow for such Work without the need for obtaining individual Permits on each occasion. The Director may, in his reasonable discretion, consistent with the needs of public safety and welfare, limit the kinds of Work that will be subject to Annual Permits and may attach conditions to the granting of any Annual Permits. Permittees shall notify the Director 24 hours in advance of performing routine maintenance or other limited Work if the Work will impact traffic for more than one day or if lane closures are required during peak traffic hours. Permits issued for Work accomplished under an Annual Permit in arterial streets shall require an approved traffic control plan in accordance with Section 10.22.140 of this code. Permits issued for Work accomplished under an Annual Permit

in all other streets shall utilize traffic control in accordance with the Manual on Uniform Traffic Control Devices (MUTCD) and the City's Traffic Control Manual and are not required to submit site specific traffic control plans for such Work.

10.22.060 Permit application and contents.

A. An applicant for a Permit to allow Work in the Rights-of-Way under this chapter shall:

1. File a written application, on forms furnished by the City, which include the following: (a) the date of application; (b) the name and address of the applicant; (c) the name and address of the Developer, Contractor, or Subcontractor licensed to perform Work in the Rights-of-Way; (d) the exact location of the proposed Work activity; (e) the type of existing public Infrastructure (street pavement, curb and gutter, sidewalks, or utilities) impacted by the Work; (f) the purpose of the proposed Work; (g) the dates for beginning and ending the proposed Work; (h) proposed hours of Work; and (i) type of Work proposed;

2. Include an affirmative statement that the applicant or its Contractor is not delinquent in payments due the City's Department of Public Works on prior Work;

3. Attach copies of all Permits or licenses (including City of Tacoma business license and required insurance, deposits, bonding, and warranties) required to do the proposed Work, and to Work in the Rights-of-Way, if licenses or Permits are required under the laws of the United States, the state of Washington, or Local Law; provided, however, that for any Permittee holding an Annual Permit under subsection 10.22.050.I, the Permittee may certify, in a sworn statement upon a form approved by the City, that its required licenses and Permits are current, correctly filed, and will remain so during the entire term of the Annual Permit. If relevant Permits or licenses have been applied for, but not yet received, provide a written statement so indicating. Copies of any such Permits or licenses shall be provided to the City within 48 hours after receipt;

4. At the discretion of the Director, provide a satisfactory plan of Work, acceptable to the Director, showing protection of the subject property and adjacent properties;

5. At the discretion of the Director, provide a satisfactory plan for the protection of existing Landscaping, acceptable to the Director, when the Department of Public Works determines that damage may occur;

6. Include a signed statement verifying that all orders issued by the Department of Public Works to the applicant, requiring the applicant to correct deficiencies under previous Permits issued under this chapter, have been satisfied. This verification shall not apply to outstanding claims which are honestly and reasonably disputed by the applicant if the applicant and the Department of Public Works are negotiating in good faith to resolve the dispute;

7. At the discretion of the Director, include, with the application, engineering construction drawings or site plans for the proposed Work;

8. Include with the application a satisfactory traffic control and erosion protection plan for the proposed Work and any required National Pollutant Discharge Elimination System (NPDES) discharge permit; and

- 9. Pay the fees prescribed by the Tacoma Municipal Code.
- B. Applicants shall update any new information on Permit applications within ten days after any material change occurs.
- C. Joint Applications. Applicants may apply jointly for Permits to Work in the Rights-of-Way at the same time and place. Applicants who apply jointly for Permits may share in the payment of the Permit fee. Applicants must agree, among themselves, as to the portion each shall pay.

10.22.070 Provisions for Permit.

Every Permit shall require that the Person performing the work shall:

- A. Unless a City entity, be a state of Washington licensed and bonded contractor. Contractors working on behalf of the City shall also be a state of Washington licensed and bonded contractor;
- B. Give the Director 24 hours' notice prior to and upon completion of such Work. Should the schedule of Work to be performed under an Annual Permit be revised, the Permittee shall notify the Director as soon as practicable;
- C. Carry on such Work in conformance with the City's general Specifications in effect at the time of issuance of said Permit;
- D. Diligently prosecute the same to completion;
- E. Comply with such additional conditions and provisions as may be prescribed by the Director;
- F. Except for City departments or Contractors working for City departments, deliver to the City, prior to the issuance of a Billable Work Order permit, a bond in the sum equal to the value of the Work to be performed, but, in any event, not less than \$15,000, in a form to be approved by the City Attorney and with surety approved by the Director of Finance. Such bond shall be conditioned on the faithful conformance with the provisions of this chapter, and shall be further conditioned that the Permit applicant shall carry out and complete such Work within the specified time and according to the terms of such Permit furnished by the Director and according to the City's general Specifications. Such bond shall be continuously in effect from the date of issue and may be further conditioned to cover all Permits issued to the applicant; provided, that such bond by its terms provides that the same shall not be canceled unless and until the Director is given a written notice of such intention to cancel a minimum of ten days before the effective date of said cancellation. Such bond shall further provide that it shall remain in full force and effect until the completion of any and all Work which has been commenced, or is to be commenced, pursuant to any Permits issued prior to the effective date of cancellation. The bond shall remain in force and effect for a minimum of one year after completion and acceptance of any street cut or Excavation.

Except for Billable Work Order permits, deliver to the City prior to issuance of a Permit, a bond in the sum amount of \$15,000, in a form to be approved by the City Attorney and with surety approved by the Director of Finance. Such bond shall be conditioned on the faithful conformance with the provisions of this chapter and shall be further conditioned that the Permit applicant shall carry out and complete such Work within the specified time and according to the terms of such Permit furnished by the Director, and according to the City's general Specifications. Such bond shall be continuously in effect from the date of issue and may be further conditioned to cover all Permits issued to the applicant; provided, that such bond by its terms provides that the same shall not be canceled unless and until the Director is given a

written notice of such intention to cancel a minimum of ten days before the effective date of said cancellation. Such bond shall further provide that it shall remain in full force and effect until the completion of any and all Work which has been commenced, or is to be commenced, pursuant to any Permits issued prior to the effective date of cancellation. The bond shall remain in force and effect for a minimum of one year after completion and acceptance of any street cut or Excavation.

Exceptions: (1) Persons or corporations with a valid City sign erector's license shall not be required to post a bond or other surety to be issued Permits to work in public Rights-of-Way; (2) the Director may waive or reduce the bond obligation for an applicant who requests a Permit to replace a sidewalk or other project located in City Rights-of-Way and is immediately abutting the applicant's property and where the value of the Work to be performed is less than \$15,000; (3) for entities that undertake regular, periodic Work in the Rights-of-Way and receiving an Annual Permit, as described in subsection 10.22.050.I TMC, the Director may accept a single bond in an amount to be determined in the Director's reasonable discretion, in lieu of the requirement to obtain individual bonds on each occasion; and (4) the Director shall have the discretion to reduce the bond obligation down to 30 percent of the original bond amount for building developers undertaking substantial road construction where the amount of the reduced bond is deemed sufficient to protect the City; and

G. Except in the case of a City department, or a Contractor working for a City department, deposit with the Director a sum, to be computed based upon the itemized estimated cost of the Work as determined by the Director, for repair of cuts and reconditioning by reason of sewer, water pipe, conduit, gas pipe, cable, or other Excavation to be done by the City at the expense of the Permittee. If the said Work by the City exceeds the initial deposit, the Director will, upon determining the actual size of the repair or cut, bill the Permittee the balance of the charge.

10.22.080 Billable Work Order.

A. A Permittee is required to obtain a Billable Work Order Permit to cover the City's actual costs, including, but not limited to, design review and approval, administration, and inspection of the privately designed plans for the construction of City-owned Infrastructure in the public Rights-of-Way. City-owned Infrastructure may include, but is not limited to, the construction of sanitary sewers, storm drainage, permanent alley paving, permanent street paving and associated appurtenances, street lighting, and traffic signalization.

B. Every Person that undertakes regular, routine maintenance, or other limited Work in the Rights-of-Way shall, by January 31 of each year, deposit with the City Treasurer an amount calculated by the Director to cover the cost of Work likely to be performed by the City under that Billable Work Order during the succeeding 12 months. The City may draw upon that deposit to cover its costs. In the event excess funds remain in the operator's Billable Work Order account at the end of the year, such excess shall be refunded or credited to the next year's Billable Work Order. The Director, at any time, may require a Permittee to replenish the amount deposited if it appears that the initial deposit or subsequent deposits will be exhausted during the course of the year. No Permit issued shall be valid or of any force or effect if an operator fails to make the required deposits.

10.22.090 Insurance and indemnification.

Except for City departments and unless otherwise specified in a franchise agreement between the Permittee and the City, prior to the granting of any Permit, the Permittee shall provide to the City the insurance coverages and shall indemnify the City in the same amounts and in the same manner as required for street occupancy permits in Chapter 9.08 TMC.

10.22.100 Notice to Fire Department.

At least three days prior to working in any portion of a street commonly used as a thoroughfare requiring closure to vehicular traffic, the Permittee shall give written notice thereof to the Chief of the Fire Department and shall give written notice upon completion of said Work. If access to a fire station will be obstructed at any time during construction, the Permittee shall submit a plan of action to be approved by the Chief of the Fire Department at least 30 days prior to any activities that result in such obstruction. At least five days prior to obstructing access to the fire station, the Permittee shall give written notice to the Chief of the Fire Department confirming the date that the obstruction will commence.

10.22.110 Inspection by the City.

If, in the judgment of the Director, the nature of the Work shall be such, under the provisions of this chapter, as to require inspection, engineering, and/or design review on behalf of the City, either during the progress of the same or after the completion thereof, or both, the City may inspect and/or design, perform design review or survey the same, and charge the Permittee for actual costs, including administrative overhead performed on a time and materials basis. If the provisions of this chapter are not performed to the satisfaction of the Director, then said Director may cause the necessary Work to be done to comply with the provisions of this chapter at the expense of the Person doing such Work.

10.22.120 Public safety.

A Permittee shall maintain a safe Work area, free of safety hazards. The City may make any repair necessary to eliminate any safety hazards not performed as directed. Any such Work performed by the City shall be completed and billed to the Permittee at the City's actual cost. The Permittee shall pay all such charges within 30 days of the statement date. The City shall not issue any further Permits of any kind to said Permittee until all outstanding charges (except those outstanding charges that are honestly and reasonably disputed by the Permittee and being negotiated in good faith with the City) have been paid in full.

10.22.130 Time of completion.

All Work covered by the Permit shall be completed by the date stated on the application. Permits shall be void if Work has not commenced 30 days after issuance, unless an extension has been granted by the Director. Bonds provided pursuant to the Tacoma Municipal Code for individual Permits will be returned after voiding of the Permit, with administrative and any other City costs deducted.

10.22.140 Traffic control.

A. When it is necessary to obstruct or impact vehicular or pedestrian traffic, and unless otherwise allowed by this code or in the discretion of the Director, a traffic control plan in accordance with the MUTCD shall be submitted to the City prior to starting construction. The traffic control plan shall include provisions to provide temporary pedestrian accessibility in accordance with Americans with Disabilities Act Accessibility Guidelines (ADAAG), the Draft Public Rights-of-Way Accessibility Guidelines (PROWAG) and the MUTCD. No Permit will be issued until the plan is approved by the City. No Permittee shall block access to and from private property; block emergency vehicles; or block access to fire hydrants, fire stations, fire escapes, water valves, underground vaults, valve housing Structures, or any other vital equipment, unless the Permittee provides the City with written verification that it has provided written notice to the Owner or occupier of the facility, equipment, or property at least a minimum of three days in advance. If a street closing is desired, the applicant will request the assistance and obtain the approval of the Director. It shall be the responsibility of the Permittee to notify and coordinate all Work in the public Rights-of-Way with police, fire, ambulance, transit organizations, and other entities, as determined in the Director's reasonable discretion. An approved traffic control plan shall be located on the construction site.

B. When necessary for public safety, the Permittee shall employ flag persons, whose duties shall be to control traffic around or through the construction site. The use of flag persons will be governed by the provisions of the MUTCD and may be required in other cases at the discretion of the Director.

C. Unless approved by the Director, the Permittee shall not impede rush hour traffic on arterial or collector streets during the morning or evening rush hours. No traffic lane shall be closed to traffic during the hours of 7:00 a.m. to 9:00 a.m. or 3:30 p.m. to 6:00 p.m. without the approval of the Director. In addition, no construction shall be performed nor shall any traffic lane be closed to traffic between Thanksgiving day and New Year's day within the downtown core and outlying business districts unless otherwise approved by the Director.

D. Traffic control devices, as defined in Part VI of the MUTCD, must be used whenever it is necessary to close a traffic lane or sidewalk. Traffic control devices are to be supplied by the Permittee. If used at night, they must be reflectorized and must be illuminated or have barricade warning lights.

E. Unless necessary for protection of the workplace, nighttime Work area flood lighting shall not be allowed to spill out of the construction area in such a way as to disturb, annoy, or endanger the comfort, health, or peace of others.

F. The most current version of the MUTCD, or any successor publication thereto, shall be used as a guide for all maintenance and construction signing. The Permittee shall illustrate on the Permit the warning and control devices proposed for use. At the direction of the Director, such warning and control devices shall be modified.

G. Maintenance and construction signing. The Permittee shall be responsible for maintaining all Work area signing and barricading during construction operations, as well as any signs and barricades that are needed to protect roadway users and pedestrians during nonwork hours. During nonwork hours, all construction Work area signs that are not appropriate shall be removed or covered. Any deficiencies noted by the City shall be corrected immediately by the Permittee. If Permittee is not available or cannot be found, the City may make such corrections and the Permittee shall pay the actual costs plus a penalty of 50 percent of the amount thereof.

10.22.150 General Rights-of-Way use and construction.

A. Rights-of-Way meetings. Permittee will make reasonable efforts to attend and participate in meetings of the City, of which the Permittee is made aware, regarding Rights-of-Way issues that may impact its Facilities, including planning meetings to anticipate joint trenching and boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, Permittee shall work with other similarly situated providers, licensees, Permittees, and franchisees so as to reduce, so far as possible, the number of Rights-of-Way cuts within the City and the amount of pedestrian and vehicular traffic that is obstructed or impeded.

B. Minimal interference. Work in the Rights-of-Way, on or near other public or private property, shall be done in a manner that minimizes interference with the rights and reasonable convenience of property owners and residents. Permittee's Facilities shall be constructed and maintained in such a manner as not to interfere with sewers, water pipes, or any other property of the City, or with any other pipes, wires, conduits, pedestals, Structures, or other Facilities that may have been laid in the Rights-of-Way by, or under, the City's authority. The Permittee's Facilities shall be located, erected, and maintained so as not to endanger or interfere with the lives of Persons or to interfere with new improvements the City may deem proper to make or to unnecessarily hinder or obstruct the free use of the Rights-of-Way or other public property.

C. Underground construction and use of poles.

1. The construction, operation, and repair of Facilities in the Rights-of-Way are subject to the supervision of all of the authorities of the City that have jurisdiction in such matters and shall be performed in compliance with all Local Law affecting such Facilities. By way of example, and not limitation, this includes zoning codes, safety codes, and City construction standards, including the most current version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation (WSDOT) and the Washington State Chapter of American Public Works Association (APWA), the most current version of the City of Tacoma Amendments to the WSDOT and APWA Standard Specifications, City of Tacoma Standard Plans, and the City's Right-of-Way Restoration Policy, as amended. Permittees engaged in the construction, operation, or repair of Facilities in the Rights-of-Way shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property.

2. Construction, operation, or repair of Facilities in the Rights-of-Way shall not commence until all required Permits have been properly filed for and obtained from the proper City officials and all required Permits and associated fees paid. In any Permit so issued, the City may impose, as a condition of the granting of the Permit, such conditions and regulations as may be necessary to the management of the Rights-of-Way, including, by way of example and not limitation, for the purpose of protecting any Structures in the Rights-of-Way, for the proper restoration of such public Rights-of-Way and Structures, for the protection of the City and the public, and for the continuity of pedestrian and vehicular traffic.

3. Permittees of any Facilities in the Rights-of-Way must follow City-established requirements for placement of such Facilities, including the specific location of Facilities in the Rights-of-Way, and must, in any event, install Facilities in a manner that minimizes interference with the use of the Rights-of-Way by others, including others that may be installing similar Facilities. The Director may require that Facilities be installed at a particular time, at a specific line and grade, or in a particular manner as a condition of access to

particular Rights-of-Way; may deny access if an operator is not willing to comply with the City's requirements; and may remove, or require removal of, any Facility that is not installed in

compliance with the requirements established by the City, or which is installed without prior City approval of the time, line and grade, or manner of installation and charge the operator of the Facility for all the costs associated with removal.

4. When required by Applicable Law, a Permittee's Facilities shall be placed underground at no cost to the City. Placing Facilities underground does not preclude the use of ground-mounted appurtenances.

5. Where all Facilities are installed underground at the time of Permittee's construction, or when all such Facilities are subsequently placed underground, all Permittee Facilities, including Facilities such as drops, which cross private property shall also be placed underground at no expense to the City. With respect to private property, the undergrounding shall be based upon mutual agreement with the private property owner or pursuant to RCW 35.96, as applicable. Whenever the Owners of poles locates or relocates underground within an area of the City, every Permittee with Facilities on the same poles shall concurrently relocate its Facilities underground at its expense. Related equipment, such as pedestals, must be placed in accordance with Local Law. In areas where existing Facilities are aerial, the Permittee may install aerial Facilities.

6. For above-ground Facilities, the Permittee shall utilize existing poles and conduit wherever possible.

7. The Director may, for good cause shown, exempt a particular Facility or group of Facilities from the obligation to locate or relocate Facilities underground, where relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner. Nothing in the paragraph prevents the City from ordering Facilities to be located or relocated underground under other provisions of the Tacoma Municipal Code.

8. Tree trimming must be performed in strict accordance with the Tacoma Municipal Code.

9. To minimize disruption of public passage or Infrastructure, to forestall or relieve exhaustion of Rights-of-Way capacity, or to protect environmentally sensitive areas, the City may require, as a condition of issuing any Rights-of-Way Permit for placement of underground conduit in trenches or bores, that the holder of the Permit place empty conduits in excess of its own present and reasonably foreseeable requirements for the purpose of accommodating the City's use, in accordance with Applicable Law. The Owner shall cooperate with the City in any such construction, provided that the City has first notified the Owner in some manner that it is interested in sharing the trenches or bores in the area where the Owner's construction is occurring. The Owner shall allow the City to place its Infrastructure in the Owner's trenches and bores as requested by the City, provided that the City incurs a proportionate share of the costs of trenching, boring, and placing the conduit/infrastructure.

The City shall be responsible for maintaining its respective Infrastructure buried in the Owner's trenches and bores or otherwise placed in the Rights-of-Way under this section.

10.22.160 Joint planning and construction; coordination of Excavations.

A. Excavations in the Rights-of-Way disrupt and interfere with the public use of City streets and damage the pavement and Landscaping. The purpose of this section is to reduce this disruption, interference, and damage by promoting better coordination among Permittees making Excavations in the Rights-of-Way and between these Permittees and the City. Better coordination will assist in minimizing the number of Excavations being made,

wherever feasible, and will ensure the Excavations in the Rights-of-Way are, to the maximum extent possible, performed before, rather than after, the resurfacing of the streets by the City.

B. The Public Works Department may develop a capital projects layer on its GIS mapping system, entitled "Capital Improvement Projects," where it will identify its capital improvement projects. Once established, all public and private utilities and operators of any communications or cable system shall identify and update their capital projects on the Capital Improvement Projects map, in accordance with Local Law. The Public Works Department, all utilities, and all communications or cable system operators are responsible for updating their capital improvement projects on no less than a calendar quarterly basis. The Director will hold semi-annual meetings to discuss capital project schedules with the intent to coordinate construction schedules to the extent practical.

C. Prior to applying for a Permit, any Person planning to Excavate in the Rights-of-Way shall review the Capital Improvement Projects map to coordinate, to the extent practicable, with the utility and street Work shown on such plans to minimize damage to and avoid undue disruption and interference with the public use of such Rights-of-Way.

10.22.170 Minimizing the impacts of Work in the Rights-of-Way.

A. Protection of Utilities. Before beginning Excavation in any Rights-of-Way, a Permittee shall contact the regional notification center for subsurface installations (One-Number Locator Service) and, to the extent required by RCW 19.122, make inquiries of all ditch companies, utility companies, districts, local government departments, and all other agencies that might have Facilities in the area of Work to determine possible conflicts.

B. The Permittee shall contact the One-Number Locator Service and request field locations of all Facilities in the area, pursuant to its requirements. Field locations shall be marked prior to commencing Work. The Permittee shall support and protect all pipes, conduits, poles, wires, or other apparatus, which may be affected by the Work from damage during construction or settlement of trenches subsequent to construction.

C. Unless exempt under state law, each Owner that places Facilities underground shall be a member of the One-Number Locator Service and shall field mark the locations of its underground Facilities upon request. The Permittee shall locate its Facilities for the City at no charge.

D. In order to minimize inconvenience and disruption to the public, the publication of Work may be used to notify the public, as well as operators of other Facilities in the Rights-of-Way, of the impending Work. Except for emergencies and routine maintenance Work, and unless otherwise directed by the Director, a Permittee shall, at a minimum, provide notice of the Work to all adjacent property owners and tenants a minimum of five working days prior to start of construction. The notice shall be by letter, flyer, reader boards, door hangers, or comparable method, as approved by the Director, and shall advise of the construction schedule and include the Contractor's name, a contact person, and telephone number.

E. Noise, dust, debris. Each Permittee shall conduct Work in such a manner as to avoid unnecessary inconvenience and annoyance to the general public and occupants of neighboring property. In the performance of the Work, the Permittee shall comply with the provisions of Chapter 8.122 TMC, and take appropriate measures to reduce dust and unsightly debris.

F. Hours of Work. Permittee's Work hours shall be limited to those hours identified in Section 8.122.090 TMC.

G. Trash and construction materials. Each Permittee shall maintain the Work site so that:

1. Trash and construction materials are contained so that they are not blown off of the construction site;
2. Trash is removed from a construction site often enough so that it does not become a health, fire, or safety hazard; and
3. Trash dumpsters and storage or construction trailers are not placed in the Rights-of-Way without specific approval of the Director.

H. Deposit of dirt and material on roadways. Each Permittee shall utilize their best efforts to eliminate the tracking of mud or debris upon any street or sidewalk. Streets and sidewalks shall be cleaned of mud and debris at the end of each day. All equipment and trucks tracking mud and debris into the Rights-of-Way shall be cleaned of mud and debris at the end of each day or as directed by the Director.

I. Unless otherwise approved by the Director, a Permittee shall not stockpile in any Rights-of-Way any Structure, building materials, earth, gravel, rock, garbage, debris, or any other material or thing tending to obstruct, damage, disturb, or interfere with the free use thereof or any improvement therein.

J. Protection of trees and Landscaping. Each Permittee shall protect trees, Landscape, and Landscape features, as required by the City. All protective measures shall be provided at the expense of the Permittee.

K. Protection of paved surfaces from equipment damage. Backhoe equipment outriggers shall be fitted with rubber pads whenever outriggers are placed on any paved surface. Tracked vehicles that will damage pavement surfaces are not permitted on paved surface unless specific precautions are taken to protect the surface. The Permittee will be responsible for any damage caused to the pavement by the operation of such equipment and shall repair such surfaces. Failure to do so will result in the use of the applicant's performance/warranty guarantee by the City to repair any damage and, possibly, the requirement of additional warranty(s).

L. Protection of property. Each Permittee shall protect from injury any adjoining property by providing adequate support and taking other necessary measures. The Permittee shall, at its own expense, shore up and protect all buildings, walls, fences, or other property likely to be damaged during the Work, and shall be responsible for all damage to public or private property resulting from failure to properly protect and carry out Work in the public way.

M. Cleanup. As the Work progresses, all Rights-of-Way and private property shall be thoroughly cleaned of all rubbish, excess dirt, rock, and other debris. All cleanup operations shall be done at the expense of the Permittee.

N. Preservation of monuments. A Permittee shall not disturb any surface monuments, property marks or survey hubs, and points found on the line of Work, unless approval is obtained from the Director. Any monuments, hubs, and points disturbed will be replaced by a Washington Registered Land Surveyor, at the Permittee's expense in accordance with Applicable Law.

O. Each Permittee shall make provisions for employee and construction vehicle parking, so that neighborhood parking adjacent to a Work site is not impacted.

P. Each Permittee shall provide necessary sanitary facilities for workers.

10.22.180 Relocation of Facilities.

A. If relocation of Facilities is required as a result of any public project, the Director shall provide at least 90 days' notice to any Permittee and/or Owner of Facilities.

Unless otherwise provided by Applicable Law, the Permittee and/or Owner shall thereupon, at no cost to the City, accomplish the necessary relocation within a reasonable time from the date of the notification, but, in no event, no later than seven working days prior to the date the City has notified the Permittee and/or Owner that it intends to commence its Work, or immediately in the case of emergencies. Upon the Permittee's and/or Owner's failure to accomplish such Work, the City or other public agencies may perform such Work at the Permittee's and/or Owner's expense and the Permittee and/or Owner shall reimburse the City or other agency within 30 days after receipt of a written invoice. Following relocation, all affected property shall be restored to, at a minimum, the condition which existed prior to construction by Permittee and/or Owner at Permittee's and/or Owner's expense. Notwithstanding the requirements of this section, a Permittee and/or Owner may request additional time to complete a relocation project. The Director shall grant a reasonable extension if, in his sole discretion, the extension will not adversely affect the public project.

B. In the event of an Emergency, or where any Facility in the Rights-of-Way creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of such Facility without prior notice, and charge the Permittee and/or Owner for costs incurred.

C. If any Permittee or Owner who is authorized to place Facilities in the Rights-of-Way requests another Person to protect, support, temporarily disconnect, remove, or relocate such Facilities to accommodate the construction, operation, or repair of the Facilities of such Permittee or Owner, the Person shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or Applicable Law or unless the Facility that is being requested to move was not properly installed, the reasonable cost of the same shall be borne by the Permittee or Owner requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City.

D. A Permittee or Owner of Facilities in the Rights-of-Way shall, on the request of any Person holding a valid Permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same. A Permittee or Owner shall be given not less than 30 days' advance notice to arrange for such temporary wire changes.

10.22.190 Abandonment and removal of Facilities.

A. Notification of abandoned Facilities. Any Permittee or Owner that intends to permanently discontinue use of any Facilities within the Rights-of-Way shall notify the Director in writing of the intent to discontinue use. Such notice shall describe the Facilities for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than 30 days from the date such notice is submitted to the Director. With respect to City departments, notification to the Department of Public Works of plans that include information on abandoned Facilities shall constitute notice to the Director under this section. Upon notification, the Director will identify the following options available to the Permittee or Owner:

1. Abandon the Facility in place and the Permittee or Owner shall further convey full title and ownership of such abandoned Facilities to the City. The Permittee and Owner are responsible for all obligations of the Facilities, or other liabilities associated therewith, until the conveyance to the City is completed. At the discretion of the Director, the

Permittee or Owner may be required to fill the abandoned underground Facility with controlled density fill.

2. Abandon the Facility in place and the Facility remains the property of the Permittee or Owner. The Permittee or Owner shall retain the responsibility for all obligations as Owner of the Facilities or other liabilities associated therewith. At the discretion of the Director, the Permittee or Owner may be required to fill the abandoned underground Facility with controlled density fill.

3. Facility shall be removed and the Permittee or Owner shall be liable for removing its abandoned Facilities at its own cost. This obligation to remove Facilities applies as well upon termination of any franchise agreement, unless alternative arrangements have been agreed to in writing. Permittee or Owner shall be obligated to restore affected property to the same or better condition as existed, in accordance with the City's Rights of Way Restoration Policy, just prior to such removal, subject to any rights to abandon Facilities in place, as set forth in this section. If a Permittee or Owner fails to remove Facilities that the City requires it to remove, the City may perform the work and collect the cost thereof from Permittee or Owner.

B. The Director shall use reasonable discretion to determine a time period to remove Facilities based upon the size of the Facilities and scope of deployment throughout the City and based on whether such Facilities is above ground or underground. In no case shall a Permittee or Owner with Facilities deployed City-wide be provided less than 12 months to remove its Facilities, measured from the date the Permittee or Owner is ordered to remove its Facilities.

C. A Permittee or Owner shall file a written removal plan with the City not later than 30 calendar days following the date of the receipt of any orders directing removal, or any consent to removal, describing the Work that will be performed, the manner in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City. The affected property shall be restored to as good or better condition than existed immediately prior to removal.

10.22.200 Emergency procedures.

A. Any Person maintaining Facilities in the Rights-of-Way may proceed with repairs upon existing Facilities, without a Permit, when Emergency circumstances demand that the Work be done immediately. The Person doing the Work shall apply to the City for a Permit on or before the third working day after such Work has commenced. All Emergency Work will require prior telephone notification to the Tacoma Police Department and Tacoma Fire Department.

B. Notifications. If any damage occurs to an underground Facility or its protective covering, the Permittee, or his or her agent, shall notify the Facility's operator promptly. When the Facility's operator receives a damage notice, the Facility's operator shall promptly dispatch personnel to the damage area to investigate. If the damage results in the

escape of any flammable, toxic, or corrosive gas or liquid, or endangers life, health, or property, the Permittee, or his or her agent, responsible shall immediately notify the Facility's operator and 911 and take immediate action to protect the public and nearby properties.

10.22.210 Application of the Public Utilities Department and Contractors working for the City.

This chapter shall apply with equal force and effect to the Public Utilities Department in all cases where the Utilities Department makes, or seeks to make, any cuts, openings, or Excavations in, through, or under any Rights-of-Way or public place; provided, however, that the Public Utilities Department or Contractors working for it or for the City shall not be required to give any deposit or bond, as provided in this chapter. Notwithstanding the foregoing, Contractors working for the Public Utilities Department or for the City shall be licensed and bonded as required by Section 10.22.060.A.1 of this chapter.

10.22.220 Revocation of Permits and stop Work orders.

Any Permit may be revoked or suspended by the Building Official or City Engineer or the designee of either one of them, pursuant to Section 2.02.130 TMC.

10.22.230 Maps/Record Drawings.

Each Facilities Permittee and/or Owner shall maintain maps or record drawings and improvement plans which show the location and approximate size of ground level and underground Facilities. Maps or record drawings shall be based upon post-construction inspection to verify location. Upon written request, the City may review a Permittee and/or Owner's Facility maps or record drawings during normal business hours. To the extent that any maps or record drawings that may be provided to the City are proprietary under RCW 42.56.270(11) or any other provision of Applicable Law and noted as such in writing by the Permittee and/or Owner, or are otherwise protected from disclosure by any other provision of Applicable Law, the City shall protect the information from public disclosure, subject to Applicable Law.

10.22.240 Responsibility for costs.

Except as expressly provided otherwise, any act that a Permittee, its Contractors, or subcontractors is required to perform under this chapter shall be performed at their cost. If a Permittee fails to perform Work that it is required to perform within the time provided for performance, the City may perform the Work and bill the Permittee therefor. The Permittee shall pay the amounts billed within 30 days.

10.22.250 Local Improvement District (LID) – Aerial to underground cost estimates and participation.

A. Utilities, whose Infrastructure is overhead, shall participate (if needing to remain in that particular Rights-of-Way), upon request, in LID conversions of said overhead

utilities to underground. Private utilities shall provide estimates to the City at no cost. Should an LID be adopted by the City Council, utilities affected by the conversion shall participate and be reimbursed for the cost of the undergrounding.

B. Unless otherwise specified by the Director, each utility shall provide the preliminary cost estimate, Facility-conversion designs, and final cost estimates to the LID program representative within 60 days of request. At the request of the LID program representative, the utility shall perform underground construction and movement of customer connections underground (overhead reclaim) in coordination with the undergrounding services provided by the other LID utility participants.

C. If federal or state funds are made available to the City for conversion to underground LIDs, the property Owner(s) shall be permitted to share in such funds to the extent legally permissible.

10.22.260 Appeals procedure.

Any decision rendered by the Director, pursuant to this chapter, may be appealed pursuant to Section 2.02.130 TMC.

10.22.270 Violation – Penalty.

Violations of this chapter shall be addressed in accordance with Section 2.02.130 TMC.

10.22.280 Severability.

All sections, subsections, provisions, and portions of this chapter shall be severable; and if any section, subsection, provision, or portion of this chapter is declared or ruled invalid or otherwise invalidated by any court or agency of valid jurisdiction, such declaration or ruling shall not affect the validity of any other section, subsection, provision, or portion of this chapter, and all other sections, subsections, provisions, and portions of this chapter shall remain in full force and effect.