



Legislation Passed July 13, 2010

The Tacoma City Council, at its regular City Council meeting of July 13, 2010, 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.

Resolution No. 38066

Setting Tuesday, July 27, 2010, at approximately 5:30 p.m., as the date for a public hearing by the City Council to consider amendments to the Land Use Regulatory Code related to modifying enforcement, penalty provisions, and processes.

Resolution No. 38067

Appointing and reappointing individuals to serve on the Human Rights Commission.

Purchase Resolution No. 38068

Awarding contracts to:

1. RailWorks Track Systems, Inc., on its bid of \$719,905.00, plus sales tax, budgeted from the Tacoma Rail Mountain Division Fund, for on-call track work and maintenance on the Mountain Division Line, for the period of August 1, 2010 through July 31, 2012 – Specification No. TR10-0125F; and
2. Wm. Dickson Co., in the amount of \$80,000.00, including sales tax, for a cumulative total of \$834,290.54, budgeted from the Surface Water Utility Fund, to increase the contract for additional work on the South 23rd Street Surface Water Treatment Retrofit Project – Specification No. PW09-0565F.

Substitute Resolution No. 38069

Approving the sale of Electric System Revenue Bonds, Series 2010A, 2010B, and 2010C, in the principal amount not to exceed \$240,000,000, for capital improvements and extensions of the existing electric system for 2011-2012 and certain 2009-2010 capital projects.

Resolution No. 38070

Authorizing the execution of Amendment No. 259 to the Tacoma Community Redevelopment Authority (TCRA) Agreement authorizing the TCRA to administer \$451,333 of 2010 HOME Investment Partnership funding allocated to the Tacoma/Lakewood Consortium for Lakewood's HOME housing programs.

Resolution No. 38071

Authorizing the execution of Amendment No. 260 to the Tacoma Community Redevelopment Authority (TCRA) Agreement authorizing the TCRA to loan \$918,300 in Community Development Block Grants funds and \$1,498,696 in HOME Investment Partnership funds for TCRA housing improvement programs and for housing development organizations that provide emergency shelter, special needs, and homeownership programs.

Resolution No. 38072

Authorizing the execution of Addendum A to the Collective Bargaining Agreement with Teamsters Local 313, which consists of approximately 130 budgeted, full-time positions, and provides for wage increases to reflect the 70th percentile of the market retroactive to January 4, 2010, and the addition of an application of rate for employees in the classification of Biosolids Distribution Operator when assigned as a Transfer Driver.

Ordinance No. 27894

Vacating a portion of East I Street lying approximately 300 feet south of the southwest corner of the intersection of East I Street and East 40th Street, for landscaping purposes. (Leroy and Traci VanderPool; File No. 124.1308)

Ordinance No. 27898

Granting a non-exclusive telecommunications franchise to the Port of Tacoma, to construct, operate, and maintain a telecommunications system within the City of Tacoma rights-of-way.

RESOLUTION NO. 38066

A RESOLUTION relating to the Land Use Regulatory Code; setting Tuesday, July 27, 2010, as the date for a public hearing to consider amendments to the Land Use Regulatory Code related to modifying enforcement, penalty provisions, and processes.

WHEREAS the Planning Commission ("Commission") has reviewed the provisions in the Land Use Regulatory Code ("Code") regarding enforcement provisions, and

WHEREAS the Commission recommends amendments to the enforcement provisions to better address violations of the Code, and

WHEREAS the overall intent of the amendments is to enable more effective and efficient enforcement by consolidating enforcement processes, procedures, and penalties into one primary location under Chapter 13.05 of the Tacoma Municipal Code ("TMC"), rather than distributed throughout the various TMC 13 chapters, and to ensure that enforcement procedures for the Land Use Regulatory Code are consistent with how the staff of the City's Community Based Services Division addresses violations of the Nuisance Code, and

WHEREAS Chapter 13.02 TMC requires the City Council to conduct a public hearing before amending the Code; Now, Therefore,

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

Section 1. That Tuesday, July 27, 2010, at 5:30 p.m., or as soon afterwards as is practicable, is hereby fixed as the date and time, and the Council Chambers on the first floor of the Tacoma Municipal Building, 747 Market Street, in the City of Tacoma, as the place when and where a public hearing shall be held to take public

testimony on the recommended amendments to the Land Use Regulatory Code relative to modifying enforcement and penalty provisions and processes.

Section 2. That the Clerk of the City of Tacoma shall give proper notice of the time and place of said hearing.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

RESOLUTION NO. 38067

BY REQUEST OF MAYOR STRICKLAND, DEPUTY MAYOR FEY, AND COUNCIL MEMBERS CAMPBELL AND MANTHOU

A RESOLUTION relating to committees, boards, and commissions; appointing or reappointing citizens to the Human Rights Commission.

WHEREAS there exists in the City of Tacoma a number of committees, boards, and commissions, and

WHEREAS vacancies presently exist on certain committees, boards, and commissions, and

WHEREAS, pursuant to the City Charter and the Rules, Regulations, and Procedures of the City Council, the persons named on Exhibit "A" have been nominated to serve on the committees, boards, and commissions listed; Now, Therefore,

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

That those nominees to the committees, boards, and commissions, listed on Exhibit "A" are hereby confirmed and appointed or reappointed as members of such committees, boards, and commissions, for such terms as are set forth on Exhibit "A."

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

EXHIBIT "A"

HUMAN RIGHTS COMMISSION

Reappointing **Patricia McIntyre** for a term to expire March 3, 2013; reappointing **Stephanie Taylor** for a term to expire March 3, 2013; reappointing **Dan McKown** for a term to expire March 3, 2013; appointing **Alice Currie** for a term to expire March 3, 2013; appointing **Scott Heinze** for a term to expire March 7, 2013; appointing **Matthew Smith** for a term to expire May 12, 2013; and appointing **Robert Englehart** to the unexpired term of Amy Bates to expire May 14, 2012.



RESOLUTION NO. 38068

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 findings
18 and recommendations of the Board of Contracts and Awards set forth in the
19 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:

Ally Mosick

City Attorney



2601 5R 509 North Frontage Road
Tacoma, Washington 98421

EXHIBIT "A"

RESOLUTION NO.: 38068

ITEM NO.: 1

MOUNTAIN DIVISION: Operated for the ~~MBE~~ **BIDDING DATE:** JULY 13, 2010

DATE: June 16, 2010

TO: Board of Contracts and Awards

SUBJECT: On-Call Track Maintenance-Tacoma Rail Mountain Division
Budgeted from Tacoma Rail Mountain Division, Fund 4120
Request for Bids Specification No. TR10-0125F

RECOMMENDATION: City of Tacoma, Tacoma Rail, recommends a contract be awarded to low bidder **RailWorks Track Systems, Inc., Chehalis, WA**, for on-call railroad track work and maintenance on the Tacoma Rail Mountain Division Line. The contract duration will be from August 1, 2010 through July 31, 2012. The contract amount reflects a total award of \$719,905.00 plus sales tax.

EXPLANATION: The contract will provide equipment and personnel to perform on-call railroad track upgrades and repairs, as necessary, for Tacoma Rail Mountain Division on a 24 hour, on-call basis.

COMPETITIVE BIDDING: Request for Bids Specification No. TR10-0125F was opened June 15, 2010. Three companies were invited to bid in addition to normal advertising of the project. One submittal was received. The table below reflects the amount of the total award.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal Amount</u> Plus sales tax
RailWorks Track Systems, Inc.	Chehalis, WA	\$ 719,905.00
	Pre-bid estimate	\$ 525,000.00

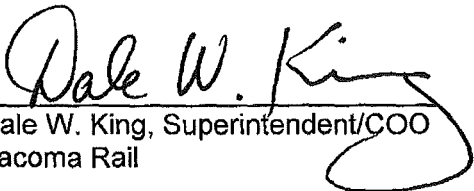
The recommended award is 37.12 percent above the pre-bid estimate.

CONTRACT HISTORY: New contract.

FUNDING: Funds for this contract are available in the Public Works Mountain Division Fund 4120.

HUB/LEAP COMPLIANCE: The recommended contractor is in compliance with the Historically Under-utilized (HUB) regulation requirements per memorandum dated June 16, 2010. No bids were received from Historically Under-utilized Business (HUB) contractors for this Single Trade project. The Local Employment and Apprenticeship Training Program (LEAP) goal is 952 labor hours.

PROJECT ENGINEER/COORDINATOR: Kari Halliday, Tacoma Rail, (253) 396-3285.



Dale W. King, Superintendent/COO
Tacoma Rail

KLH

cc: Jayne McCartney
Percy Jones, HUB
Peter Guzman, LEAP



City of Tacoma
Public Works Department

EXHIBIT "A"

RESOLUTION NO.: 38068

ITEM NO.: 2

MEETING DATE: JULY 13, 2010

DATE: June 16, 2010
TO: Board of Contracts and Awards
SUBJECT: South 23rd Street Surface Water Treatment Retrofit Project
Budgeted from PW Surface Water Utility Fund 4301
Request for Bids PW09-0565F
Contract No. 4600006002

RECOMMENDATION: Public Works Construction Division requests approval to increase Contract 4600006002 to **Wm. Dickson Co., Tacoma, WA**, by \$80,000.00, including sales tax, for additional project work. This increase will bring the contract to a cumulative total of \$834,290.54, including sales tax.

EXPLANATION: The existing 21" storm sewer line along South 23rd Street was found deeper in the ground than was shown on contract plans. This discovery prevented installation of storm sewer structures associated with the storm water filter vault and sanitary sewer line per the contract plans. This condition required a redesign of the 21" storm sewer line.

Insufficient depth of crushed rock and asphalt cover over the storm water filter vault required the City to produce a revised street design. The contractor was directed to construct the street with new curb and sidewalk alignment, new street grades, and installation of a new catch basin.

COMPETITIVE BIDDING: This contract was originally awarded to **Wm. Dickson Co.** as a result of Request for Bids Specification No. PW09-0565F in December 2009. The contractor has agreed to extend the contract at the same prices, terms, and conditions as the original contract.

CONTRACT HISTORY: The original contract for \$754,290.54, including sales tax, was approved by City Council Resolution 37969 on January 12, 2010. This increase will bring the contract to a cumulative total of \$834,290.54, including sales tax. This is the first amendment to the contract.

FUNDING: Funds are available in the PW Surface Water Utility Fund 4301.

PROJECT ENGINEER/COORDINATOR: Rae Bailey, Public Works Construction Division Manager, 253-591-5488.

Richard E. McKinley
Public Works Director

cc: Chuck Blankenship, Finance/Purchasing
Percy Jones, HUB
Peter Guzman, LEAP
Leigh Starr/Rae Bailey/Mike Slade/Lorna Mauren, Public Works Construction Division

**SUBSTITUTE
RESOLUTION NO. 38069**

A RESOLUTION relating to Tacoma Power; approving the sale of Electric System Revenue Bonds, 2010A, Electric System Revenue Bonds, 2010B (Taxable Build America Bonds – Direct Payment) and Electric System Revenue Bonds, 2010C (Taxable Clean Renewable Energy Bonds – Direct Payment), in the aggregate amount of \$187,255,000.

WHEREAS the City Council (the “City Council”) of the City of Tacoma, Washington (the “City”), by Ordinance No. 27889, passed on June 15, 2010 (the “Bond Ordinance”), authorized the issuance and sale of the City’s Electric System Revenue Bonds, Series 2010, in the principal amount of not to exceed \$240,000,000 (the “2010 Bonds”), and

WHEREAS it is in the best interest of the City that the 2010 Bonds be sold to J.P. Morgan Securities Inc. and Merrill Lynch, Pierce, Fenner & Smith Incorporated (together, the “Purchasers”) on the terms set forth in the Bond Ordinance and this resolution; Now, Therefore,

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

Section 1. Definitions. Except as otherwise defined herein, capitalized terms used in this resolution have the meanings set forth in the Bond Ordinance.

Section 2. Terms of the 2010 Bonds. The 2010 Bonds shall be issued in three series. One tax-exempt series shall be named the Electric System Revenue Bonds, 2010A and issued in the aggregate principal amount of \$16,000,000 (the “2010A Bonds”); the second series to be designated as Build America Bonds shall be named the Electric System Revenue Bonds, 2010B

(Taxable Build America Bonds – Direct Payment) and issued in the aggregate principal amount of \$147,070,000 (the “2010B Bonds”); and the third series of new clean renewable energy bonds shall be named the Electric System Revenue Bonds, 2010C (Taxable Clean Renewable Energy Bonds – Direct Payment) and issued in the aggregate principal amount of \$24,185,000 (the “2010C Bonds,” and together with the 2010A Bonds, and the 2010B Bonds, the “2010 Bonds”). The 2010 Bonds shall be dated as of the date of their initial delivery to the Purchasers, shall bear interest payable semiannually on each January 1 and July 1, commencing January 1, 2011, to the maturity or prior redemption of the 2010 Bonds, and shall mature on the dates and in the principal amounts and at the interest rates as follows:

2010A Bonds

<u>Maturity Date (January 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2014	\$ 5,000,000	4.00%
2014	3,000,000	2.00
2015	5,000,000	5.00
2015	3,000,000	4.00

2010B Bonds

<u>Maturity Date (January 1)</u>	<u>Principal Amount</u>	<u>Interest Rate</u>
2032	\$ 47,070,000	5.791%
2035	100,000,000	5.966

2010C Bonds

<u>Maturity Date</u> <u>(January 1)</u> 2027	<u>Principal Amount</u> \$ 24,185,000	<u>Interest Rate</u> 5.641%
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The 2010 Bonds shall conform in all other respects to the terms and conditions specified in the Bond Ordinance.

The 2010A Bonds are not subject to redemption prior to maturity.

The 2010B Bonds and 2010C Bonds are subject to redemption prior to their respective maturities at the option of the City, prior to their stated maturity date, in whole or in part, on any Business Day, at the Make-Whole Redemption Price (as defined herein) determined by the Designated Investment Banker (as defined herein). The "Make-Whole Redemption Price" is the greater of (i) the issue price of the 2010B Bonds and 2010C Bonds as shown on the inside cover page of the Official Statement (but not less than 100% of the principal amount of the 2010B Bonds and 2010C Bonds to be redeemed), or (ii) the sum of the present values of the remaining scheduled payments of principal and interest on the 2010B Bonds and 2010C Bonds to be redeemed (taking into account any mandatory sinking fund redemptions on a proportionate basis), not including any portion of those payments of interest accrued and unpaid as of the date on which the 2010B Bonds and 2010C Bonds are to be redeemed, discounted on a semi-annual basis to the date on which such 2010B Bonds and 2010C Bonds are to be redeemed, assuming a 360-day year consisting of

twelve 30-day months, at the “Treasury Rate” (defined below) plus 30 basis points, plus accrued and unpaid interest on the 2010B Bonds and 2010C Bonds to be redeemed on the redemption date.

“Treasury Rate” means, with respect to any redemption date for a particular 2010B Bond or 2010C Bond, the rate per annum, expressed as a percentage of the principal amount, equal to the semi-annual equivalent yield to maturity or interpolated maturity of the Comparable Treasury Issue (defined below), assuming that the Comparable Treasury Issue is purchased on the redemption date for a price equal to the Comparable Treasury Price (defined below), as calculated by the Designated Investment Banker (defined below).

“Comparable Treasury Issue” means, with respect to any redemption date for a particular 2010B Bond or 2010C Bond, the U.S. Treasury security or securities selected by the Designated Investment Banker that has an actual or interpolated maturity comparable to the remaining average life of the 2010B Bonds or 2010C Bonds to be redeemed, and that would be utilized in accordance with customary financial practice in pricing new issues of debt securities of comparable maturity to the remaining average life of such 2010B Bonds or 2010C Bonds to be redeemed.

“Comparable Treasury Price” means, with respect to any redemption date for a particular 2010B Bond or 2010C Bond, (i) if the Designated Investment Banker receives at least five Reference Treasury Dealer Quotations (defined below), the average of such quotations for such redemption date, after excluding the highest and lowest such Reference Treasury Dealer Quotations,

or (ii) if the Designated Investment Banker obtains fewer than five Reference Treasury Dealer Quotations, the average of all such quotations.

“Designated Investment Banker” means one of the Reference Treasury Dealers appointed by the City.

“Reference Treasury Dealer” means each of five firms, specified by the City from time to time, that are primary U.S. Government securities dealers in the City of New York (each, a “Primary Treasury Dealer”); provided, however, that if any of them ceases to be a Primary Treasury Dealer, the City will substitute another Primary Treasury Dealer.

“Reference Treasury Dealer Quotations” means, with respect to each Reference Treasury Dealer and any redemption date for a particular 2010B Bond or 2010C Bond, the average, as determined by the Designated Investment Banker, of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the City, the Bond Registrar by such Reference Treasury Dealer at 3:30 p.m. (New York City time) on a date that is no earlier than four days prior to the date the redemption notice is mailed.

The 2010B Bonds and 2010C Bonds are subject to redemption at any time prior to their stated maturity date at the option of the City, in whole or in part upon the occurrence of an Extraordinary Event (defined below), at a redemption price (the “Extraordinary Redemption Price”) equal to the greater of:

(i) 100% of the principal amount of the 2010B Bonds or 2010C Bonds to be redeemed, or (ii) the sum of the present values of the remaining scheduled

payments of principal of and interest on the 2010B Bonds or 2010C Bonds to be redeemed (taking into account any mandatory sinking fund redemptions on a proportionate basis), not including any portion of those payments of interest accrued and unpaid as of the date on which the 2010B Bonds or 2010C Bonds are to be redeemed, discounted to the date on which the 2010B Bonds or 2010C Bonds are to be redeemed, on a semi-annual basis, assuming a 360-day year consisting of twelve 30-day months, at the Treasury Rate (defined above) plus 100 basis points plus accrued and unpaid interest on the 2010B Bonds or 2010C Bonds to be redeemed to the redemption date.

An “Extraordinary Event” will have occurred if (a) Section 54AA or 6431 of the Code (as such Sections were added by Section 1531 of the American Recovery and Reinvestment Act of 2009, pertaining to “Build America Bonds” and as Section 6431 of the Code was amended by Section 301 of the Hiring Incentives to Restore Employment Act pertaining to “New Clean Renewable Energy Bonds”) is modified or amended in a manner pursuant to which the City’s applicable cash subsidy payments from the United States Treasury are reduced, modified or eliminated, or (b) guidance published by the Internal Revenue Service or the United States Treasury with respect to such sections places one or more substantive new conditions on the receipt by the City of such applicable cash subsidy payments and such condition(s) are unacceptable to the City.

In addition to optional redemption, the 2010B Bonds maturing on January 1, 2032 and January 1, 2035 (which shall be deemed to be Term

Bonds), if not optionally redeemed, purchased or defeased in accordance with the Bond Ordinance, are subject to mandatory redemption at a redemption price equal to 100% of the principal amount thereof, plus accrued interest to the date fixed for redemption, and without premium, on January 1 in the years and principal amounts as follows:

2032 Term Bond

Year	Principal Amount
2031	\$27,310,000
2032*	19,760,000

* Maturity.

2035 Term Bond

Year	Principal Amount
2032	\$ 8,575,000
2033	29,335,000
2034	30,460,000
2035*	31,630,000

* Final maturity.

Upon the purchase or redemption of 2010B Bonds for which mandatory sinking fund installments have been established, other than by reason of the mandatory sinking fund installment redemption described above, an amount equal to the principal amount of the 2010B Bonds so purchased or redeemed shall be credited toward each of the mandatory sinking fund installments with respect to such 2010B Bonds of such maturity on a proportionate basis in such

manner as the City shall determine. Amounts so purchased or redeemed for 2010A Bonds that are Term Bonds, if any, shall be credited against mandatory sinking fund installments by lot.

If the 2010B Bonds or 2010C Bonds are not registered in book-entry only form, any redemption of less than all of a maturity of a series of 2010B Bonds or 2010C Bonds shall be allocated among the registered owners of such 2010B Bonds or 2010C Bonds as nearly as practicable in proportion to the principal amounts of the 2010B Bonds or 2010C Bonds of that series owned by each registered owner, subject to the authorized denominations applicable to the 2010B Bonds or 2010C Bonds. This will be calculated based on the following formula:

$$\frac{(\text{principal amount to be redeemed}) \times (\text{principal amount owned by owner})}{(\text{principal amount outstanding})}$$

The particular 2010B Bonds or 2010C Bonds to be redeemed shall be determined by the Bond Registrar, using such method as it shall deem fair and appropriate. If the 2010B Bonds or 2010C Bonds are registered in book-entry only form, and so long as DTC or a successor securities depository is the sole registered owner of the 2010B Bonds or 2010C Bonds, partial redemptions will be done in accordance with DTC procedures. It is the City's intent that redemption allocations made by DTC, the DTC Participants or such other intermediaries that may exist between the City and the Beneficial Owners be made in accordance with these same proportional provisions. However, the

City can provide no assurance that DTC, the DTC Participants or any other intermediaries will allocate redemptions among Beneficial Owners on such a proportional basis.

Section 3. Approval of Documents. The City hereby approves the Official Statement for the 2010 Bonds that has been presented to the City and ratifies its use in connection with the offering of the 2010 Bonds. The City further hereby approves the sale of the 2010 Bonds to the Purchasers on the terms set forth in this resolution and in the contract dated the date of this Resolution. The Finance Director is hereby authorized to sign the bond purchase contract relating to the 2010 Bonds.

Section 4. Application of 2010 Bond Proceeds. The proceeds of the sale of the 2010 Bonds remaining after the deposit to the Reserve Account of the amount necessary to fund the Reserve Account Requirement shall be deposited into the construction fund or funds as determined by the Finance Director to be used for the purpose of paying part of the costs of carrying out the Plan and to pay costs of issuance of the 2010 Bonds. None of the 2010 Bonds will be used to refund any Outstanding Parity Bonds.

Section 5. Tax Covenants.

A. General. The City intends that interest on the 2010A Bonds shall be excludable from gross income for federal income tax purposes pursuant to Sections 103 and 141 through 150 of the Code, and the applicable regulations. The City covenants not to take any action, or knowingly omit to take any action

within its control, that if taken or omitted would cause the interest on the 2010A Bonds to be includable in gross income, as defined in Section 61 of the Code, for federal income tax purposes.

B. Tax Certificate. Upon the issuance of each of the 2010A Bonds, the 2010B Bonds and the 2010C Bonds, the Finance Director is authorized to execute a federal tax certificate or certificates (the "Tax Certificate"), which will certify to various facts and representations concerning the 2010A Bonds, the 2010B Bonds and the 2010C Bonds, respectively, based on the facts and estimates known or reasonably expected on the date of issuance of the 2010A Bonds, the 2010B Bonds and the 2010C Bonds, and make certain covenants with respect to the 2010A Bonds, the 2010B Bonds and 2010C Bonds, including the following:

(i) No Private Activity Bonds. The proceeds of the 2010B Bonds will not be used in a manner that would cause the 2010B Bonds to be "private activity bonds" within the meaning of the Code, as further described in the Tax Certificate. Moreover, the City covenants that it will use the proceeds of the 2010B Bonds (including interest or other investment income derived from 2010B Bond proceeds), regulate the use of property financed or refinanced, directly or indirectly, with such proceeds, and take such other and further action as may be required so that the 2010B Bonds will not be "private activity bonds."

(ii) No Federal Guarantee. The City has not and will not take any action, and has not knowingly omitted and will not knowingly omit to

take any action within its control, that, if taken or omitted would cause the 2010A Bonds, the 2010B Bonds and the 2010C Bonds to be “federally guaranteed” within the meaning of the Code, as further described in the Tax Certificate.

(iii) No Arbitrage Bonds. The City reasonably expects that the proceeds of the 2010A Bonds, the 2010B Bonds and the 2010C Bonds will not be used in a manner that would cause the 2010A Bonds, the 2010B Bonds and the 2010C Bonds to be “arbitrage bonds” within the meaning of the Code, as further described in the Tax Certificate.

C. Arbitrage Rebate. If the City does not qualify for an exception to the requirements of Section 148(f) of the Code relating to the payment of arbitrage rebate to the United States, the City will take all necessary steps to comply with the requirement that certain amounts earned by the City on the investment of the “gross proceeds” of the 2010A Bonds, the 2010B Bonds and the 2010C Bonds (within the meaning of the Code) be rebated.

D. Designation of 2010B Bonds as “Build America Bonds.” The City hereby irrevocably elects to have Section 54AA of the Code apply to the 2010B Bonds so that the 2010B Bonds are treated as “build America bonds,” and further to have Subsection 54AA(g) of the Code apply to the 2010B Bonds so that the 2010B Bonds are treated as “qualified bonds” with respect to which the City will be allowed a credit payable by the United States

Treasury to or to the order of the City pursuant to Section 6431 of the Code in an amount equal to 35 percent of the interest payable on the 2010B Bonds on each interest payment date.

E. 2010C Bonds as “New Clean Renewable Energy Bonds.”

The City has received an allocation of new clean renewable energy bonds in the amount of \$24,185,338. The 2010C Bonds are being issued as new clean renewable energy bonds and will use this allocation. The City hereby irrevocably elects to have Section 6431(f) of the Code apply to the 2010C Bonds so that the 2010C Bonds are treated as “specified tax credit bonds,” with respect to which the City will be allowed a credit payable by the United States Treasury to the order of the City pursuant to Section 6431 of the Code in an amount equal to the lesser of (i) the amount of interest payable on the 2010C Bonds on each interest payment date or (ii) 70% of the amount of interest which would have been payable on the 2010C Bonds on such date if such interest were determined at the applicable credit rate determined under Section 54A(b)(3) of the Code with respect to the 2010C Bonds.

The City officials, their agents, and representatives are hereby authorized and directed to do everything necessary for the prompt issuance and delivery of the 2010 Bonds and for the proper use and application of the proceeds of the sale of the 2010 Bonds, including taking such actions as are necessary or appropriate for the City to receive from the United States Treasury the applicable federal credit payments in respect of the 2010B Bonds and the 2010C Bonds, including but not limited to the timely filing with the Internal

Revenue Service of Form 8038-CP – “Return for Credit Payments to Issuers of Qualified Bonds” or any other required form, in the manner prescribed by the Internal Revenue Service, and entering into a calculation agency agreement relating to such payments.

Section 6. Bond Insurance.

A. The Council finds that a higher rating and, therefore, a savings will result from purchasing, the insurance policy (the “Insurance Policy”) issued by Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.), a New York stock exchange insurance company, or any successor thereto or assignee thereof (the “Bond Insurer”) insuring the payment of the 2010B Bonds that are Term Bonds maturing in 2032 (the “Insured Bonds”). The Finance Director is authorized to execute the commitment of the Bond Insurer to issue the Insurance Policy and all other documents on behalf of the City necessary in connection with the Insurance Policy. Any actions heretofore taken by such officials not inconsistent with this Section are hereby ratified and confirmed.

B. The City shall purchase from the Bond Insurer the Insurance Policy and shall pay the premium therefor. As long as the Insurance Policy shall be in full force and effect and the Bond Insurer is not in default under the Insurance Policy, the City agrees with the terms in the Insurance Policy and shall comply with the following provisions.

C. The Bond Insurer shall be deemed to be the sole holder of the Insured Bonds for the purpose of exercising any voting right or privilege or

giving any consent or direction or taking any other action that the holders of the Insured Bonds are entitled to take pursuant to the provisions of the Bond Ordinance pertaining to (i) Events of Default and (ii) the duties and obligations of the Bond Registrar.

D. No grace period for a covenant Event of Default shall exceed 30 days or be extended for more than 60 days, without the prior written consent of the Bond Insurer. No grace period shall be permitted for a payment Event of Default.

E. The Bond Insurer shall be included as a third party beneficiary of the covenants and benefits set forth in the Bond Ordinance.

F. Any Insured Bonds purchased by or on behalf of the City shall be immediately cancelled unless the Bond Insurer consents otherwise.

G. Any amendment, supplement, modification to, or waiver of this Section 6 shall be subject to the prior written consent of the Bond Insurer.

H. Unless the Bond Insurer otherwise directs, upon the occurrence and continuance of an Event of Default or an event which with notice or lapse of time would constitute an Event of Default, amounts on deposit in the construction fund for the deposit of 2010B Bond proceeds shall not be disbursed, but shall instead be applied to the payment of debt service or redemption price of the Parity Bonds.

I. The rights granted to the Bond Insurer under this resolution or the Bond Ordinance to request, consent to or direct any action are rights granted to the Bond Insurer in consideration of its issuance of the Insurance

Policy. Any exercise by the Bond Insurer of such rights is merely an exercise of the Bond Insurer's contractual rights and shall not be construed or deemed to be taken for the benefit, or on behalf, of the holders of the Insured Bonds and such action does not evidence any position of the Bond Insurer, affirmative or negative, as to whether the consent of the owners of the Insured Bonds or any other person is required in addition to the consent of the Bond Insurer.

J. Only (1) cash, (2) non-callable direct obligations of the United States of America ("Treasuries"), (3) evidences of ownership of proportionate interests in future interest and principal payments on Treasuries held by a bank or trust company as custodian, under which the owner of the investment is the real party in interest and has the right to proceed directly and individually against the obligor and the underlying Treasuries are not available to any person claiming through the custodian or to whom the custodian may be obligated, shall be used to effect defeasance of the Insured Bonds unless the Bond Insurer otherwise approves.

To accomplish defeasance of any Insured Bonds, the City shall cause to be delivered (i) a report of an independent firm of nationally recognized certified public accountants or such other accountant as shall be acceptable to the Bond Insurer ("Accountant") verifying the sufficiency of the escrow established to pay the Insured Bonds in full on the maturity or redemption date ("Verification"), (ii) an escrow deposit agreement (which shall be acceptable in form and substance to the Bond Insurer), and (iii) an opinion of nationally recognized bond counsel to the effect that the Insured Bonds are no longer "Outstanding"

under the Bond Ordinance; each Verification and defeasance opinion shall be acceptable in form and substance, and addressed, to the Bond Insurer. The Bond Insurer shall be provided with final drafts of the above-referenced documentation not less than five business days prior to the funding of the escrow.

Insured Bonds shall be deemed "Outstanding" under the Bond Ordinance unless and until they are in fact paid and retired or the above criteria are met.

K. Amounts paid by the Bond Insurer under the Insurance Policy shall not be deemed paid for purposes of the Bond Ordinance and the Insured Bonds relating to such payments shall remain Outstanding and continue to be due and owing until paid by the City in accordance with the Bond Ordinance. The Bond Ordinance shall not be discharged unless all amounts due or to become due to the Bond Insurer have been paid in full or duly provided for.

L. The City covenants and agrees to take such action as is necessary from time to time to preserve the priority of the pledge of the Net Revenues under applicable law.

M. Claims upon the Insurance Policy and Payments by and to the City: If, on the third Business Day prior to the related scheduled interest payment date or principal payment date ("Payment Date") there is not on deposit with the Paying Agent, after making all transfers and deposits required under the Bond Ordinance, moneys sufficient to pay the principal of and interest

on the Insured Bonds due on such Payment Date, the Paying Agent shall give notice to the Bond Insurer and to its designated agent (if any) (the "Insurer's Fiscal Agent") by telephone or telecopy of the amount of such deficiency by 12:00 noon, New York City time, on such Business Day. If, on the second Business Day prior to the related Payment Date, there continues to be a deficiency in the amount available to pay the principal of and interest on the Insured Bonds due on such Payment Date, the Paying Agent shall make a claim under the Insurance Policy and give notice to the Bond Insurer and the Insurer's Fiscal Agent (if any) by telephone of the amount of such deficiency, and the allocation of such deficiency between the amount required to pay interest on the Insured Bonds and the amount required to pay principal of the Insured Bonds, confirmed in writing to the Bond Insurer and the Insurer's Fiscal Agent by 12:00 noon, New York City time, on such second Business Day by filling in the form of Notice of Claim and Certificate delivered with the Insurance Policy.

The Paying Agent shall designate any portion of payment of principal on Insured Bonds paid by the Bond Insurer, whether by virtue of mandatory sinking fund redemption, maturity or other advancement of maturity, on its books as a reduction in the principal amount of Insured Bonds registered to the then current holder of any Insured Bond, whether DTC or its nominee or otherwise, and shall issue a replacement Insured Bond to the Bond Insurer, registered in the name of Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.), in a principal amount equal to the amount of principal

so paid (without regard to authorized denominations); provided that the Paying Agent's failure to so designate any payment or issue any replacement Insured Bond shall have no effect on the amount of principal or interest payable by the City on any Insured Bond or the subrogation rights of the Bond Insurer.

The Paying Agent shall keep a complete and accurate record of all funds deposited by the Bond Insurer into the Policy Payments Account (defined below) and the allocation of such funds to payment of interest on and principal of any Insured Bond. The Bond Insurer shall have the right to inspect such records at reasonable times upon reasonable notice to the Paying Agent.

Upon payment of a claim under the Insurance Policy, the Paying Agent shall establish a separate special purpose trust account for the benefit of holders of the Insured Bonds referred to herein as the "Policy Payments Account" and over which the Paying Agent shall have exclusive control and sole right of withdrawal. The Paying Agent shall receive any amount paid under the Insurance Policy in trust on behalf of holders of the Insured Bonds and shall deposit any such amount in the Policy Payments Account and distribute such amount only for purposes of making the payments for which a claim was made. Such amounts shall be disbursed by the Paying Agent to holders of the Insured Bonds in the same manner as principal and interest payments are to be made with respect to the Insured Bonds under the sections hereof regarding payment of Insured Bonds. It shall not be necessary for such payments to be made by checks or wire transfers separate from the check or wire transfer used to pay debt service with other funds available to make such payments.

Notwithstanding anything herein to the contrary, the City agrees to pay to the Bond Insurer (i) a sum equal to the total of all amounts paid by the Bond Insurer under the Insurance Policy (the “Insurer Advances”); and (ii) interest on such Insurer Advances from the date paid by the Bond Insurer until payment thereof in full, payable to the Bond Insurer at the Late Payment Rate per annum (collectively, the “Insurer Reimbursement Amounts”). “Late Payment Rate” means the lesser of (a) the greater of (i) the per annum rate of interest, publicly announced from time to time by JPMorgan Chase Bank at its principal office in The City of New York, as its prime or base lending rate (any change in such rate of interest to be effective on the date such change is announced by JPMorgan Chase Bank) plus 3%, and (ii) the then applicable highest rate of interest on the Insured Bonds and (b) the maximum rate permissible under applicable usury or similar laws limiting interest rates. The Late Payment Rate shall be computed on the basis of the actual number of days elapsed over a year of 360 days. The City hereby covenants and agrees that the Insurer Reimbursement Amounts are secured by a lien on and pledge of the Net Revenues and payable from such Net Revenues on a parity with debt service due on the Insured Bonds.

Funds held in the Policy Payments Account shall not be invested by the Paying Agent and may not be applied to satisfy any costs, expenses or liabilities of the Paying Agent. Any funds remaining in the Policy Payments Account following an Insured Bond payment date shall promptly be remitted to the Bond Insurer.

N. The Bond Insurer shall, to the extent it makes any payment of principal of or interest on the Insured Bonds, become subrogated to the rights of the recipients of such payments in accordance with the terms of the Insurance Policy. Each obligation of the City under the Bond Ordinance and this resolution shall survive discharge or termination of such document.

O. The City shall pay or reimburse the Bond Insurer any and all charges, fees, costs and expenses that the Bond Insurer may reasonably pay or incur in connection with (i) the administration, enforcement, defense or preservation of any rights or security in the Bond Ordinance or this resolution; (ii) the pursuit of any remedies under the Bond Ordinance or this resolution or otherwise afforded by law or equity, (iii) any amendment, waiver or other action with respect to, or related to, the Bond Ordinance or this resolution whether or not executed or completed, or (iv) any litigation or other dispute in connection with the Bond Ordinance or this resolution or the transactions contemplated thereby, other than costs resulting from the failure of the Bond Insurer to honor its obligations under the Insurance Policy. The Bond Insurer reserves the right to charge a reasonable fee as a condition to executing any amendment, waiver or consent proposed in respect of the Bond Ordinance.

P. The Bond Insurer shall be entitled to pay principal or interest on the Insured Bonds that shall become Due for Payment but shall be unpaid by reason of Nonpayment by the City (as such terms are defined in the Insurance Policy), whether or not the Bond Insurer has received a Notice of

Nonpayment (as such terms are defined in the Insurance Policy) or a claim upon the Insurance Policy.

Q. The notice address of the Bond Insurer is: Assured Guaranty Municipal Corp. (formerly known as Financial Security Assurance Inc.), 31 West 52nd Street, New York, New York 10019, Attention: Managing Director – Surveillance, Re: Policy No. _____, Telephone: (212) 826-0100; Telecopier: (212) 339-3556. In each case in which notice or other communication refers to an Event of Default, then a copy of such notice or other communication shall also be sent to the attention of the General Counsel and shall be marked to indicate "URGENT MATERIAL ENCLOSED."

R. The Bond Insurer shall be provided with the following information by the City:

i. Annual audits in the form and by the date required by Section 8.1B of the Bond Ordinance.

ii. Notice of material events as required by Section 8.1C of the Bond Ordinance.

iii. Notice of the making of any claim with any insolvency proceeding seeking the avoidance as a preferential transfer of any payment of principal of, or interest on, the Insured Bonds; and

iv. A full original transcript of all proceedings relating to the execution of any amendment, supplement, or waiver to the Bond Ordinance.

S. The Bond Insurer shall have the right to receive such additional information as it may reasonably request.

T. The City will permit the Bond Insurer to discuss the affairs, finances and accounts of the City or any information the Bond Insurer may reasonably request regarding the security for the Insured Bonds with appropriate officers of the City and will use commercially reasonable efforts to enable the Bond Insurer to have access to the facilities, books and records of the City on any business day upon reasonable prior notice.

U. Notwithstanding satisfaction of the other conditions to the issuance of Future Parity Bonds set forth in the Bond Ordinance, no such issuance may occur if an Event of Default (or any event which, once all notice or grace periods have passed, would constitute an Event of Default) exists unless such default shall be cured upon such issuance.

V. In determining whether any amendment, consent, waiver or other action to be taken, or any failure to take action, under the Bond Ordinance would adversely affect the security for the Insured Bonds or the rights of the holders of the Insured Bonds, the City shall consider the effect of any such amendment, consent, waiver, action or inaction as if there were no Insurance Policy.

W. No contract shall be entered into or any action taken by which the rights of the Bond Insurer or security for or sources of payment of the Insured Bonds may be impaired or prejudiced in any material respect except upon obtaining the prior written consent of the Bond Insurer.

X. The City's obligation to pay principal and interest on the Insured Bonds shall not be determined net of the subsidy payments received by the City as a consequence of any outstanding Parity Bonds being Recovery Zone Economic Development Bonds or Build America Bonds under the American Recovery and Reinvestment Act of 2009, or other program providing for debt service subsidies with respect to Insured Bonds ("Federal Subsidy"), so that if such Federal Subsidy is suspended, reduced or terminated, the City shall remain obligated for the full amount of principal and interest on the Insured Bonds.

Section 7. Severability. The covenants contained in this resolution shall constitute a contract between the City and the owners of each 2010 Bond and the Bond Insurer with respect to the Insured Bonds. If any one or more of the covenants or agreements provided in this resolution to be performed on the part of the City shall be declared by any court of competent jurisdiction to be contrary to law, then such covenant or covenants, agreement or agreements, shall be null and void and shall be deemed separable from the remaining covenants and agreements of this resolution and shall in no way affect the validity of the other provisions of this resolution or of the 2010 Bonds.

Section 8. Effective Date. This resolution shall be effective after its passage as provided by law.

Adopted July 13, 2010

Mayor

Attest:

City Clerk

Approved as to form and legality:

FOSTER PEPPER PLLC
Bond Counsel to the City of Tacoma

By _____

CERTIFICATE

I, the undersigned, Clerk of the City of Tacoma, Washington (the "City"),
DO HEREBY CERTIFY:

1. That the attached Substitute Resolution No. 38069 (the "Resolution"),
is a true and correct copy of a resolution of the City, as finally adopted at a
meeting of the City Council of the City (the "City") held on the 13th day of July,
2010, and duly recorded in my office.

2. That said meeting was duly convened and held in all respects in
accordance with law, and to the extent required by law, due and proper notice
of such meeting was given; that a quorum of the Council was present
throughout the meeting and a legally sufficient number of members of the
Council voted in the proper manner for the adoption of the Resolution; that all
other requirements and proceedings incident to the proper adoption of the
Resolution have been duly fulfilled, carried out and otherwise observed; and
that I am authorized to execute this certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of
July, 2010.

City Clerk

RESOLUTION NO. 38070

A RESOLUTION relating to community and economic development; authorizing the execution of Amendment No. 259 to the Tacoma Community Redevelopment Authority ("TCRA") Agreement, authorizing the TCRA to administer \$451,333 of 2010 HOME Investment Partnership ("HOME") funding allocated to the Tacoma/Lakewood Consortium for the purpose of funding Lakewood's HOME housing programs.

WHEREAS the Tacoma Community Redevelopment Authority ("TCRA") is a public corporation organized and existing pursuant to its charter, Chapter 1.60 of the Tacoma Municipal Code, and the laws of the State of Washington, and

WHEREAS, on May 28, 1976, the City and the TCRA executed an agreement (which agreement, together with all amendments thereto, is hereinafter referred to as the "TCRA Agreement") by which the TCRA has undertaken various housing and business improvement programs utilizing federal funds in support of such programs, and

WHEREAS the City and the City of Lakewood ("Lakewood") formed the Tacoma/Lakewood Consortium under Resolution No. 34400, dated May 18, 1999, which Cooperative Agreement authorized the City to receive HOME Investment Partnership ("HOME") funds on behalf of Lakewood to be used for Lakewood's housing programs, and

WHEREAS the Cooperative Agreement states that HOME funds will be allocated according to information provided by the Department of Housing and Urban Development ("HUD"), and

WHEREAS the City received \$2,033,029 in 2010 HOME funds, of which \$1,581,696 in HOME funds are to be administered by the TCRA for Tacoma

housing programs and \$451,333 to be administered by the TCRA for Lakewood housing programs, and

WHEREAS the TCRA will provide loan review and approval services and its accounting staff will maintain the financial records for the Lakewood HOME funds; 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 Amendment No. 259 to the Tacoma Community Redevelopment Authority ("TCRA") Agreement, authorizing the TCRA to administer \$451,333 of 2010 HOME Investment Partnership funds for the purpose of funding Lakewood's HOME housing programs, said document to be substantially in the form of the proposed Amendment No. 259 on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

RESOLUTION NO. 38071

A RESOLUTION relating to housing improvement programs; authorizing the execution of Amendment No. 260 to the Tacoma Community Redevelopment Authority ("TCRA") Agreement, authorizing the TCRA to loan \$918,300 in Community Development Block Grant funds and \$1,498,696 in HOME Investment Partnership funds for TCRA housing improvement programs and to housing development organizations that provide emergency shelter, special needs, and homeownership.

WHEREAS the Tacoma Community Redevelopment Authority ("TCRA") is a public corporation organized and existing pursuant to its charter, Chapter 1.60 of the Tacoma Municipal Code, and the laws of the state of Washington, and

WHEREAS, on May 28, 1976, the City and the TCRA executed an agreement (which agreement, together with all amendments thereto, is hereinafter referred to as the "TCRA Agreement") by which the TCRA has undertaken various housing and business improvement programs utilizing federal funds in support of such programs, and

WHEREAS the City received \$3,172,935 in 36th Year Community Development Block Grant ("CDBG") funds and \$1,581,696 in 2010-2011 HOME Investment Partnership ("HOME") funds, and

WHEREAS, on May 4, 2010, the City Council adopted Resolution No. 38024, authorizing the 2010-2011 Consolidated Plan Annual Action Plan in which the City Council approved the allocation of \$918,300 in CDBG funds and \$1,498,696 in HOME funds to the TCRA housing programs, and

WHEREAS CDBG funding includes \$175,000 for the Major Home Repair program, \$250,000 for the Neighborhood Preservation Program Housing

Rehabilitation program, and \$493,300 for the Affordable Housing Fund to make loans to housing development organizations that provide emergency shelter, special needs, and homeownership, and

WHEREAS HOME funding includes \$998,696 for the Affordable Housing Fund and \$500,000 to the TCRA for their housing improvement programs; 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 Amendment No. 260 to the Tacoma Community Redevelopment Authority (“TCRA”) Agreement, authorizing the TCRA to loan \$918,300 in Community Development Block Grant funds and \$1,498,696 in HOME Investment Partnership funds for TCRA housing improvement programs and to housing development organizations that provide emergency shelter, special needs, and homeownership, said document to be substantially in the form of the proposed Amendment No. 260 on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

RESOLUTION NO. 38072

A RESOLUTION relating to employment; authorizing the execution of the proposed Addendum "A" to the Collective Bargaining Agreement between the City and Teamsters Local 313, retroactive to January 4, 2010.

WHEREAS this resolution allows the execution of the proposed Addendum "A" to the Collective Bargaining Agreement between the City and Teamsters Local 313 ("Union"), and

WHEREAS the proposed Addendum "A" covers approximately 130 budgeted, full-time equivalent positions; provides for a wage adjustment retroactive to January 4, 2010, to reflect the 70th percentile of the comparable labor market that accomplishes the City Council's directive to pay competitive wages based on its compensation philosophy and the results of the Classification and Compensation Study; and to include the addition of an application of rate for the employees in the classification of Biosolids Distribution Operator when assigned as a Transfer Driver, and

WHEREAS it now appears in the best interest of the City that the proposed Addendum "A" negotiated by said Union and the City be approved;
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, for and on behalf of the City, Addendum "A" between the City and Teamsters Local 313, said Addendum "A" to be substantially in the form of the proposed

addendum on file in the office of the City Clerk, and by its terms to remain in full force and effect upon adoption by the City Council retroactive to January 4, 2010.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

ORDINANCE NO. 27894

AN ORDINANCE related to the vacation of City right-of-way; vacating a 6-foot by 150-foot portion of East "I" Street, lying approximately 300 feet southerly of the southwest corner of the intersection of East "I" Street and East 40th Street; and adopting the Hearing Examiner's Findings, Conclusions, and Recommendations related thereto.

WHEREAS all steps and proceedings required by law and by resolution of the City Council to vacate the portion of the street hereinafter named have been duly taken and performed; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council hereby adopts the Hearing Examiner's Findings, Conclusions, and Recommendations as contained in the Hearing Examiner's Report and Recommendation ("Report") to the City Council bearing File No. 124.1308, and dated May 3, 2010, which Report is on file in the office of the City Clerk.

Section 2. That a 6-foot by 150-foot portion of East "I" Street, lying approximately 300 feet southerly of the southwest corner of the intersection of East "I" Street and East 40th Street, described as follows:
East "I" Street, abutting Block 4, as contained within Anderson Addition to Tacoma, according to the Plat recorded in Book 10 of Plats at Page 22, records of Pierce County, Washington.

is hereby vacated, and the land so vacated is hereby surrendered and attached to the property bordering thereon, respectively, as a part thereof, and all right or title of the City in and to the portion of the streets so vacated does hereby vest in the owners of the property abutting thereon, all in the manner provided by law; provided, however, that there is hereby retained and reserved, pursuant to statutes of the state of Washington, the following easement, to wit: Retaining and reserving therein an easement to the City of Tacoma a public sanitary and storm sewer easement over the entire subject site with the following conditions:

No permanent structures shall be erected within the public utility easement areas unless specifically approved in writing by the City of Tacoma, Director of Public Works. Permanent structures shall mean any concrete foundation, concrete slab, wall, rockery, building, deck,

overhanging structures, fill material, recreational sport courts, carports, portable sheds, private utilities, fences, or other site improvement that will unreasonably interfere with the need to access or construct public utilities in said easements. Permanent structures shall not mean improvements such as normal landscaping, asphalt paving, gravel, or other similar site improvements that do not prevent the access of men, material, and machinery across, along, and within the said easement area. Land restoration by the City within the said easement area due to the construction, operation, inspection, replacement, repair, or maintenance of public utilities will be strictly limited to grass seed, grass sod, and/or asphalt replacement unless otherwise determined by the City of Tacoma.

Passed _____

Mayor

Attest:

City Clerk

Location: Vacate a 6-foot by 150-foot portion of East "I" Street,
lying approximately 300 feet southerly of the southwest
corner of the intersection of East "I" Street and East
40th Street

Petitioner: Leroy and Traci Vanderpool
Vacation Request File No. 124.1308

Approved as to form:

Property description approved:

Deputy City Attorney

Chief Surveyor
Public Works Department

ORDINANCE NO. 27898

AN ORDINANCE relating to cable communications and franchise services; granting to the Port of Tacoma the nonexclusive right, privilege, authority, and limited franchise to construct, operate, maintain, remove, replace, and repair fiber-optic communications facilities in designated area of City right-of-way, together with equipment and appurtenances for the transmission of data within and through those certain right-of-way areas, streets, and public property.

WHEREAS, on April 15, 1997, the City Council passed Amended Substitute Ordinance No. 26053, amending the Tacoma Municipal Code to add Title 16 regulating the occupancy and use of public rights-of-way by telecommunications systems, cable systems, and private communication systems; regulating cable systems; establishing franchise and licensing requirements; and prescribing minimum charges, terms, and conditions for the construction, maintenance, and repair of such systems, and

WHEREAS, on April 21, 2002, the City Council passed Substitute Ordinance No. 26936, repealing and reenacting Title 16 to be entitled "Cable Systems, Open Video Systems, Telecommunications Systems, and Private Communications Systems" for the regulation of cable, open video and private communications systems and to comply with federal and state law, and

WHEREAS the City's telecommunications right-of-way ordinance requires operators of telecommunications systems to obtain a franchise to use and occupy City right-of-way for their business purposes, and

WHEREAS, in response to a franchise application received from the Port of Tacoma, City staff has negotiated a limited franchise agreement that establishes the contractual and legal charges, terms, and conditions for and

upon the construction, maintenance, and repair of its communications system in conformance with the City Council's telecommunications right-of-way ordinance; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. Purpose.

The City grants this nonexclusive franchise to Grantee to operate and maintain fiber optic communication lines and related facilities (the "Facilities") necessary to the operation of Grantee's business and to the health, safety and welfare of the community. This franchise is conditioned upon the terms and conditions contained herein and Grantee's compliance with any applicable federal or state regulatory programs that currently exist or may hereafter be enacted by any federal or state regulatory agencies with jurisdiction over the Grantee and its use of the right-of-way. The purpose of this franchise is to delineate the conditions relating to Grantee's use of the public's right of way, streets and property and to create a foundation for the parties to work cooperatively in the public's best interests after this ordinance becomes effective. By granting this franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee.

Section 2. Right Conveyed.

2.1 Grantor hereby grants, under the terms and conditions contained herein, to Grantee, a municipal corporation organized and existing under and by virtue of the laws of the State of Washington, and which is registered and authorized to transact business within the State of Washington, the right,

privilege, authority and franchise to construct, operate, maintain, remove, replace and repair the Facilities, together with all equipment and appurtenances as may be necessary thereto, for the transmission and handling of electronic information and data, through and under those certain streets, avenues, drives and other public lands within the City of Tacoma, as designated and more particularly described in Schedule I, which is attached hereto and expressly incorporated herein by this reference (the “Franchised Area”).

2.2 This franchise is only intended to convey a limited right and interest as to that public property and those rights of way designated on Schedule I in which the City has an actual interest. It is not a warranty of title or interest in City road rights of way, nor is it a warranty of Grantee's right to locate in any such area. None of the rights granted herein shall affect the City's ability or jurisdiction over its property, streets or rights of way.

Section 3. Term.

Each of the provisions of this franchise shall become effective upon Grantee's acceptance of the terms and conditions of this franchise (the “Effective Date”) and shall remain in effect for ten (10) years thereafter. Subsequently, and in accordance with the terms and provisions of Tacoma Charter Article VIII, City Council may consider renewing this franchise, at the written request of Grantee, for any additional renewal period at any time within two (2) years before the end of the franchise's original ten (10) year term, unless either party expresses its intention in writing to terminate this franchise at the conclusion of the original ten (10) year term.

Section 4. Compliance with Laws Standards and Policies.

Grantee shall, in carrying out any authorized activities under the privileges granted herein, comply with all applicable federal, state and local laws of any governmental entity with jurisdiction over the Facilities. This shall include all applicable laws, rules and regulations, and published City of Tacoma policies relating to Grantee's use of City right-of-way existing at the Effective Date of this franchise or that may be subsequently enacted, modified or amended by any governmental entity with jurisdiction over Grantee and/or the Facilities.

Section 5. Construction on Public Properties.

5.1 This Section 5 shall apply to all construction done by Grantee in the Franchised Area. Except in the event of an emergency, Grantee shall provide Grantor at least thirty (30) calendar days' written notice prior to any alteration, repair, replacement, removal, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's Facilities or appurtenant structures on Grantor's property. Said written notice shall include, at a minimum, detailed plans and specifications, if any, and a detailed description of the proposed work and anticipated time of the work. Such work shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, Grantor's

property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances.

5.2 All work done hereunder by Grantee or upon Grantee's direction or on Grantee's behalf shall be undertaken and completed in a workmanlike manner and in accordance with the descriptions, plans and specifications provided to, and approved by, Grantor. Grantee's activities shall be conducted in such a manner as to avoid damage or interference with other utilities, drains or other structures, and to interfere as little as possible with public travel, or other municipal uses and the free use of adjoining property and so as to provide safety for persons and property. The Grantee's construction, maintenance and repairs shall be in compliance with all applicable laws and regulations of governmental agencies with jurisdiction including, without limitation the City's right-of-way restoration policy.

5.3 The City may condition the granting of any permit or other approval that is required under this Franchise, at any time, on any lawful condition or regulation, unless such condition or regulation is in conflict with a federal directive, as may be reasonably necessary to the management of the public right-of-way or the Grantor's property, including, by way of example and not limitation, bonding, maintaining proper distance from other utilities, protecting the continuity of pedestrian and vehicular traffic and protecting any right-of-way improvements, private facilities and public safety.

5.4 Whenever it shall be necessary in constructing, maintaining, repairing, relocating, removing or replacing any of the Grantee's Facilities in any

street, right of way area, or public property, the Grantee shall without delay, as soon as is commercially reasonable, and at Grantee's sole expense, remove all debris and restore the surface of the street, or public property as nearly as practicable to as good or better condition as it was in before the work began. Grantee shall replace any property corner monuments, survey reference or hubs that were disturbed or destroyed during Grantee's work in the areas covered by this franchise. Such restoration shall be done in a manner consistent with applicable codes and laws, under the supervision of the City's Director of Public Works or his authorized designee and to the City's reasonable satisfaction and specifications. Whenever restoration is required hereunder, the restoration shall be done under a bond in an amount appropriate to guarantee adequate restoration.

5.5 Grantee shall continuously be a member of the State of Washington one number locator service under RCW 19.122, or approved equivalent, and shall comply with all such applicable rules and regulations. Grantee shall provide reasonable notice to the City prior to commencing any work or construction under this Franchise and additionally to those owners or other persons in control of property abutting the Franchise Area when such work or construction will affect access to such property or otherwise impact such property or the private or public improvements within said area.

5.6 Upon acceptance of this franchise by Grantee, and as a condition of this Franchise, Grantee shall make available to the City, upon the City's written request and at no cost to the City, within sixty (60) working days from

construction completion of the Facilities, relevant as-built plans, maps and records revealing the current location and condition of Grantee's Facilities within the public right-of-way and public places.

5.7 Nothing in this franchise shall be deemed to impose any duty or obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans and designs or to ascertain whether Grantee's proposed or actual construction, testing, maintenance, repairs, replacement or removal is in conformance with the plans and specifications reviewed by Grantor. Grantee shall ensure that any contractor working on its job sites within the Franchise Area has a written safety plan addressing the safety of all persons and property during the performance of any work therein.

Section 6. Operations, Maintenance, Inspection and Testing.

Grantee shall operate, test, inspect and maintain its Facilities in full compliance with all applicable laws, rules, regulations and policies as now enacted or hereafter amended, and any other current or future laws or regulations that are applicable to Grantee's Facilities.

Section 7. INTENTIONALLY OMITTED

Section 8. Relocation.

8.1 Relocation for Public Work. Grantee shall, by a time specified by the Grantor, protect, support, temporarily disconnect, relocate, or remove any of its Facilities when required by Grantor for work in furtherance of the public health, safety, or welfare, which work includes, without limitation: traffic conditions; public safety; public right-of-way construction; public right-of-way

repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned telecommunications or public transportation systems, public work, public facility, or improvement or any government-owned utility; public right-of-way vacation; or for any other public purpose where the work involved would be aided by the removal or relocation of the Facilities. Collectively, such matters are referred to as the “public work.”

8.1.1 Grantee may, after receipt of written notice requesting a relocation of its facilities under section 8.1, submit to the City written alternatives to such relocation within thirty (30) calendar days of receiving the plans and specifications. The City shall evaluate such alternatives and advise Grantee in writing if one or more of the alternatives are suitable to accommodate the work that would otherwise necessitate relocation of the Facilities. If so requested by the City, Grantee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Grantee full and fair consideration but retains sole discretion to decide for itself whether to utilize its original plan or an alternative proposed by Grantee. In the event the City ultimately determines that there is no other reasonable alternative, Grantee shall relocate its Facilities as otherwise provided in this Section.

8.1.2 Grantor shall work cooperatively with Grantee in determining a viable and practical route within which Grantee may relocate its Facilities under this Section 8, in order to minimize costs while meeting the public work project

objectives. Upon receipt of Grantor's notice, plans and specifications, Grantee shall complete relocation of its Facilities so as to accommodate the public work project at least ten (10) calendar days prior to commencement of the public work project or such other time as the parties may agree in writing.

8.2 Notice. Except in the case of emergencies, the City shall provide written notice, describing where the public work is to be performed, at least sixty (60) days prior to the deadline by which Grantee must protect, support, temporarily disconnect, relocate or remove its Facilities. Grantee may seek an extension of the time to perform such tasks where they cannot be performed in sixty (60) days even with the exercise of due diligence, and such request for an extension shall not be unreasonably refused.

8.3 Emergency Relocation or Repair. In the event of an emergency, or where the Facilities create or are contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, repair or relocate any or all parts of the Facilities, without prior notice, and charge the Grantee for costs incurred.

8.4 Relocation for Other than Public Work. The City reserves its authority to require relocation of the Facilities located within the public right-of-way, as provided for under applicable state, federal, and local law.

8.5 Redesign Option. As an alternative to relocation, Grantee may propose an alternative design for the pending public work in order to avoid any relocation of Grantee's Facilities. Such redesign proposal shall be subject to review and approval by the City and all costs of the redesign, including, without

limitation, the costs actually incurred in the public work as a result of the redesign shall be solely for Grantee's account. Approval and acceptance of any such redesign proposal shall be at the sole discretion of the City.

Section 9. INTENTIONALLY OMITTED

Section 10. Dispute Resolution.

10.1 In the event of a dispute between Grantor and Grantee arising by reason of this franchise, or any obligation hereunder, the dispute shall first be referred to the operational officers or representatives designated by Grantor and Grantee to have oversight over the administration of this franchise. Said officers or representatives shall meet within thirty (30) calendar days of either party's request for said meeting, whichever request is first, and the parties shall make a good faith effort to attempt to achieve a resolution of the dispute.

10.2 In the event that the parties are unable to resolve the dispute under the procedure set forth in section 10.1, then the parties hereby agree that the matter shall be referred to mediation within Pierce County. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall jointly obtain a list of seven (7) mediators from a reputable dispute resolution organization and alternate striking mediators on that list until one remains. A coin toss shall determine who may strike the first name. If a party fails to notify the other party of which mediator it has stricken within two (2) business days, the other party

shall have the option of selecting the mediator from those mediators remaining on the list. Any expenses incidental to mediation shall be borne equally by the parties.

10.3 If either party is dissatisfied with the outcome of the mediation, that party may then pursue any available judicial remedies in Pierce County, provided, that if the party seeking judicial redress does not substantially prevail in the judicial action, it shall pay the other party's reasonable legal fees and costs incurred in the judicial action.

Section 11. Abandonment or Removal of Facilities.

In the event of abandonment or Grantee's permanent cessation of use of its Facilities, or any portion thereof within the City of Tacoma, the Grantee shall, within one hundred and eighty days (180) after the abandonment or permanent cessation of use, remove the Facilities, secure the Facilities in such a manner as to cause it to be as safe as is reasonably possible, or petitioning the City to be allowed to decommission the Facilities in place, all in compliance with applicable laws, regulations and industry standards. In the event of the removal of all or a portion of the Facilities, Grantee shall restore the Franchise Area as nearly as possible to a condition that existed prior to installation of Grantee's facilities and in compliance with the City's right-of-way restoration policy. Such property restoration work shall be done at Grantee's sole cost and expense and to Grantor's reasonable satisfaction. If Grantee fails to remove, secure or decommission the Facilities, and/or fails to restore the Franchised Area or take such other mutually agreed upon action, Grantor may, after reasonable notice

to Grantee, remove the Facilities, restore the Franchised Area or take such other action as is reasonably necessary at Grantee's expense and Grantor shall not be liable therefor. This remedy shall not be deemed to be exclusive and shall not prevent the City from seeking a judicial order directing that the Facilities be removed.

Section 12. Nonexclusive Franchise.

This franchise is nonexclusive. Grantor reserves the right to grant other franchises, easements, licenses, permits or other approvals to others, subject to the rights granted herein, provided that Grantor shall not grant any other franchise, license, permit or other approval which would substantially interfere with Grantee's use. Grantor shall notify Grantee in writing of any proposed franchise, easement, license or permit for a utility or other structure which may be located within ten (10) feet of Grantee's Facilities, as shown on the latest map Grantee has provided the City. When the Grantor has notice that excavation, construction or other work may be undertaken within ten (10) feet of Grantee's Facilities, it shall notify Grantee, where possible sixty (60) days in advance, so that Grantee may have the opportunity to inspect the work to see that Grantee's Facilities are not damaged. If the contractor undertaking the excavation, construction or other work is observed to have violated safety regulations, Grantor will cooperate to the extent feasible in pursuing an enforcement action to avoid third party damage to the Facilities. This provision shall not create, either expressly or implicitly, nor shall the City assume, any liability under any circumstances hereunder.

Section 13. Indemnification.

13.1 General Indemnification. Grantee shall indemnify, defend and hold harmless Grantor from any and all liability, loss, damage, cost, expense, and claim whatsoever, arising on or after the date of this Agreement, whether at law or in equity, arising out of or related to, directly or indirectly, the construction, operation, use, location, testing, repair, maintenance, relocation, removal, abandonment or damage to Grantee's Facilities, or from the existence of Grantee's Facilities and appurtenances, or for any information or other items transmitted through the Facilities, from any and all causes whatsoever, except to the extent they are caused by Grantor's sole negligence. If any action or proceeding is brought against Grantor by reason of the Facilities, Grantee shall defend the Grantor at the Grantee's complete expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

13.2 Environmental Indemnification. Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, arising on or after the date of this Agreement, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on, from or as a result of the Facilities being in the Franchise Area, or (c) other activity related to this franchise by Grantee, its agents, contractors or subcontractors. This indemnity

includes but is not limited to (a) liability for a governmental agency's costs of removal or remedial action for hazardous substances; (b) damages to natural resources caused by hazardous substances, including the reasonable costs of assessing such damages; (c) liability for any other person's costs of responding to hazardous substances; (d) liability for any costs of investigation, abatement, correction, cleanup, fines, penalties, or other damages arising under any environmental laws; and (e) liability for personal injury, property damage, or economic loss arising under any statutory or common-law theory.

13.3 Definitions.

13.3.1 "Hazardous Substance" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as amended from time to time; or any other federal, state, or local statute, code or ordinance or lawful rule, regulation, order, decree, or other governmental authority as now or at any time hereafter in effect. The term shall specifically include petroleum

and petroleum products. The term shall also be interpreted to include any substance which, after release into the environment, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities.

13.3.2 "Environmental Laws" shall include the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended from time to time; or any other federal, state, or local statute, code, or ordinance or federal or state administrative rule, regulation, ordinance, order, decree, or other governmental authority as now or at any time hereafter in effect pertaining to the protection of human health or the environment.

Section 14. Insurance, Performance Bond and Security.

14.1 During this Agreement, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of Two Million United States Dollars (\$2000,000.00) each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured

for ongoing operations and completed operations, to cover any and all insurable liability, damage, claims and loss as set forth in Section 13.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and loss as set forth in Section 13.2 above, except for liability for fines and penalties for violation of environmental laws and as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, environmental liability coverage, at a minimum covering liability from environmental incidents, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace. In the event that a deductible or self retention amount applies to the insurance herein, Grantee agrees to pay the amount of that deductible or self retention amount.

14.2 Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Facilities. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days' prior written notice to the Grantor, and shall include the City of Tacoma as a named additional insured. All required liability policies shall be maintained for a period of not less than three years following termination of this franchise.

14.3 The indemnity and insurance provisions herein under Sections 13 and 14 shall survive the termination of this franchise and shall continue for as

long as the Grantee's Facilities shall remain in or on the Franchise Area or until the parties execute a new franchise agreement which modifies or terminates these indemnity or insurance provisions.

14.4 Performance Bond. Within thirty (30) days after the award of this franchise, but in no event sooner than the final reading of the franchise ordinance, Grantee shall submit to the City Attorney, which shall be filed with the appropriate City department, a performance bond running to the City, with good and sufficient surety licensed to do business in the State of Washington and approved by the City in the amount of \$10,000.00, conditioned that Grantee shall well and truly observe, fulfill, and perform each term and condition of the franchise. In the alternative, Grantee may provide written evidence of the establishment of an assignment of funds in favor of the City, in a form and with a financial institution acceptable to the City in the amount of \$10,000.00. This bond (or assignment of funds) shall be conditioned that in the event Grantee shall fail to comply with any one or more of the provisions of this franchise, then there shall be recoverable jointly and severally from the principal and/or surety of such bond, any damages suffered by the Grantor as a result thereof, including the full amount of any compensation, indemnification, or cost of removal, relocation or abandonment of Facilities as prescribed herein; said condition to be a continuing obligation for the duration of the franchise and thereafter until Grantee has liquidated all of its obligations with the City that may have arisen from the acceptance of the franchise by Grantee or from its exercise of any privilege herein granted. Written evidence of payment of

required premiums shall be filed and maintained with the City. In lieu of the bond, Grantee may provide for a letter of credit, assignment of funds, or similar arrangement to be established giving the City rights substantially the same as the rights of the City in relation to the bond, the provisions of which letter of credit, assignment of funds, or other arrangement shall be subject to the approval of legal counsel for the City.

Neither the provisions of this section, any bond (or other security) accepted by the City pursuant thereto, nor any damages recovered by the City thereunder shall be construed to excuse faithful performance by Grantee or to limit liability of Grantee under the franchise or for damages, either to the full amount of the bond or otherwise, except as otherwise provided herein.

14.5 Validity of Bond. If at any time during the term of the franchise, the condition of the entity issuing the bond shall change in such a manner as to render the bond unsatisfactory to the City, Grantee shall replace such bond by a bond of like amount and similarly conditioned, issued by an entity satisfactory to the City. The City Council, from time to time, may authorize or require appropriate and reasonable adjustments in the amount of the bond; provided, however, that prior to any required increase in the amount of the bond, the City shall give Grantee at least one hundred twenty (120) days' prior notice thereof stating the exact reason for the requirement. Such reasons must demonstrate a change in Grantee's business practices that would materially prohibit or impair its ability to comply with the terms of the franchise or afford compliance therewith.

Section 15. Annual Franchise Fee.

15.1 In consideration for granting this franchise and for the use of the Franchised Area, there is hereby established an annual fee of \$4,000.00, paid in United States Dollars (the "Franchise Fee"). The first installment of the Franchise Fee shall be paid within three (3) weeks of the time Grantee accepts this franchise and shall cover the first twelve (12) months of operation. Each succeeding installment shall cover the next twelve (12) month period and shall be paid upon receipt of invoice, not later than the anniversary date of this franchise's Effective Date. Interest shall accrue on any late payment at the rate of twelve percent (12%) per annum.

15.2 Grantee agrees that it will obtain, pursuant to the City's currently effective code and rates, any and all licenses, permits or other approvals necessary for Grantee to operate, maintain or repair its facilities in the franchised area. This shall include, by way of example only and not limitation, inspection and permit costs associated with Grantee's work in the City's right of way. The franchise fee set forth in section 15.1 does not include standard and customary payments associated with the City's administrative expenses incurred in reviewing, licensing, permitting or granting any other approvals necessary for Grantee to construct, operate, maintain or repair its Facilities or for any inspection or enforcement costs related thereto. Additionally, the foregoing annual fee does not include any generally applicable taxes that the Grantor may legally levy.

Section 16. Notice.

All notices, demands, requests, consents and approvals which may, or are required to be given by any party to any other party hereunder, shall be in writing and shall be deemed to have been duly given if delivered personally, sent by facsimile, sent by a nationally recognized overnight delivery service, or if mailed or deposited in the United States mail and sent by registered or certified mail, return receipt requested, postage prepaid to:

Grantor: Cable Communications and Franchise Services
Manager
City of Tacoma
1224 MLK, Jr., Way
Tacoma, WA 98405

With copy to: City Attorney
City of Tacoma
747 Market Street, #737
Tacoma, WA 98402

Grantee: Port of Tacoma, Director of Contracts
P.O. Box 1837
Tacoma, WA 98401

With copy to: Port General Counsel (provided the City has been informed of the Port Counsel's current address)

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. Assignment and Transfer of Franchise.

17.1 In accordance with Tacoma City Charter Article VIII, Section 8.5, this franchise shall not be leased, assigned or otherwise alienated without the express consent of the Grantor by ordinance, which approval shall not be unreasonably withheld.

17.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer:

17.2.1 Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer;

17.2.2 All information reasonably required by the City of a franchise applicant under Tacoma City Charter Article VIII and any applicable provisions of the Tacoma Municipal Code, as it may be amended from time to time, with respect to the proposed assignee or transferee;

17.2.3 Any other information reasonably required by the City; and,

17.2.4 An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

17.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the franchisee granted hereunder.

17.4 Any transfer or assignment of this franchise without the prior written consent of the City as set forth herein shall be void and shall result in revocation of the existing permit or franchise.

Section 18. Reservation of Police Power.

All the rights and privileges granted in this franchise shall be governed by the terms and conditions contained herein subject to the City's reservation of all its police powers to enact ordinances that are necessary to protect the health, safety and welfare of the general public.

Section 19. Termination.

19.1 Grantor may terminate this Agreement upon the occurrence of any of the following events:

19.1.1 If Grantee materially breaches or otherwise fails to perform, comply with or otherwise observe any of the terms and conditions of this franchise or fails to maintain all required licenses and approvals from federal, state, and local jurisdictions, and fails to cure such breach or default within thirty (30) calendar days of Grantor's providing Grantee written notice thereof, or, if not reasonably capable of being cured within thirty (30) calendar days, within such other reasonable period of time as the parties may agree upon; or,

19.1.2 Grantee becomes insolvent, unable or unwilling to pay its debts, or is adjudged a bankrupt; or

19.1.3 Grantee fails to maintain the full amount of, or to post a performance bond as required under the terms of this franchise.

19.2 This Agreement shall not be terminated except upon a majority vote of the City Council, after reasonable notice to Grantee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.

19.3 Grantor's right to terminate this franchise is in addition to and not in limitation of any other remedy of Grantor at law or equity. Grantor's failure to exercise such remedy at any time shall not waive Grantor's right to terminate or assert any other remedy at law or equity for any future breach or default of Grantee.

19.4 Termination of this franchise shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the Facilities and restore the premises pursuant to Section 11 hereof.

Section 20. Legal Relations.

20.1 Grantee accepts any privileges granted hereunder by Grantor to the franchised public right of way and other public property in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of Facilities or the Facilities themselves in public property or right of way or possible hazards or dangers arising from other uses of the public right of way or other public property by the City or the general public. Grantee shall remain solely and separately liable for the function,

testing, maintenance, replacement and/or repair of the Facilities or other activities permitted hereunder.

20.2 Grantee hereby waives immunity under Title 51 RCW in any cases involving the Grantor and affirms that the Grantor and Grantee have specifically negotiated this provision, to the extent it may apply.

20.3 This franchise ordinance shall not create any duty on the City or any of its officials, employees or agents and no liability shall arise from any action or failure to act by the City or any of its officials, employees or agents in the exercise of powers reserved herein. Further, this ordinance is not intended to acknowledge, create, imply or expand any duty or liability of the Grantor with respect to any function in the exercise of its police power or for any other purpose. Any duty that may be deemed to be created in the City hereunder shall be deemed a duty to the general public and not to any specific party, group or entity.

20.4 This franchise shall be governed by, and construed in accordance with, the laws of the State of Washington and the parties agree that, in any such action brought hereunder, except actions based on federal questions, venue shall lie exclusively in Pierce County, Washington.

Section 21. Grantee's Acceptance.

This franchise ordinance shall be completely void if Grantee shall not file its unconditional acceptance of this franchise within thirty (30) calendar days

from the final passage of same by Council. Grantee shall file its unconditional acceptance with the City's Finance Director and a copy of same with the City Attorney's Office.

Section 22. Specific Performance.

The parties acknowledge that the covenants set forth herein are essential to this franchise, and, but for the mutual agreements of the parties to comply with such covenants, the parties would not have entered into this franchise. The parties further acknowledge that they may not have an adequate remedy at law if the other party violates such covenant. Therefore, the parties shall have the right, in addition to any other rights they may have, to obtain in any court of competent jurisdiction injunctive relief to restrain any breach or threatened breach of or otherwise to specifically enforce any of such covenants contained herein should the other party fail to perform them after notice as provided herein.

Section 23. Miscellaneous Provisions.

23.1 All the provisions, conditions, terms and requirements contained herein shall be binding upon the Grantee's successors and assigns. All of Grantee's privileges, obligations, and liabilities shall inure to its successors and assigns equally as if they were specifically mentioned in this franchise wherever the Grantee is so mentioned.

23.2 Any modification, change or alteration to this franchise shall only be effective if completed in a written ordinance duly approved by City Council approving said modification, change or alteration.

23.3 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this franchise, and each and every covenant, agreement, term and condition of this franchise shall continue in full force and effect with respect to other than existing or subsequent breach thereof.

23.4 The captions of this franchise ordinance are for convenience and reference only and in no way define, limit, or describe the scope or intent of this franchise.

Passed _____

Mayor

Attest:

City Clerk

Approved as to Form:

Deputy City Attorney

FRANCHISE ACCEPTANCE BY GRANTEE:

I, the undersigned official of the Port of Tacoma (the "Port"), am authorized to bind the Port and to accept the terms and conditions of the foregoing franchise (Ordinance No. _____), which are hereby accepted by the Port this _____ day of _____, 20___. The foregoing date shall constitute the "Effective Date" of the Ordinance.

Port of Tacoma

By: _____

Name: _____

Title: _____

Subscribed and sworn to before me this _____ day of _____, 2010.

Notary Public in and for the
State of Washington
My commission
expires _____

Received on behalf of the City this _____ day of _____, 2010.

Name: _____
Title: _____

Schedule I

“Franchised Area”

A meandering 5 Foot wide strip lying within the northerly 75 feet of the Port of Tacoma Road Right of Way described as follows:

Beginning at a point 45 Feet easterly of the intersection of East 11th Street, as vacated by City of Tacoma Ordinance 15312 dated April 18, 1955 and the extended northerly margin of Port of Tacoma Road as dedicated per the Corrected Plat of Port of Tacoma Industrial Development District, First Addition recorded March 20, 1957 under Auditor's File Number 1782439, records of Pierce County, Washington; thence Southeasterly, within said Port of Tacoma Road Right of Way, to a point lying 250 Feet Easterly of the easterly margin of Lincoln Avenue and the Terminus of this described strip.

As further depicted within the As-Build drawings attached hereto and incorporated herein by this reference.

All situate in the Northeast and Southeast Quarter of Section 34, and the Southwest Quarter of Section 35, Township 21 North, Range 3 East of the W.M., City of Tacoma, County of Pierce, State of Washington.