



## **Legislation Passed August 13, 2013**

The Tacoma City Council, at its regular City Council meeting of August 13, 2013, 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.

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### **Resolution No. 38713**

Setting Thursday, September 26, 2013, at 1:00 p.m., as the date for a hearing before the Hearing Examiner on the request to vacate Milwaukee Way between East 11th Street and Lincoln Avenue. (Port of Tacoma; File No. 124.1108)

### **Resolution No. 38714**

Appointing Agnes Pate to serve on the Sustainable Tacoma Commission in the youth position for a two-year term to commence September 16, 2013 to April 30, 2015.

### **Purchase Resolution No. 38715**

Awarding contracts to:

1. Rodarte Construction, Inc., on its bid of \$1,569,099.92, plus sales tax and a 20 percent contingency, for a cumulative total of \$1,882,919.90, budgeted from the Surface Water Fund and Wastewater Fund, for replacement of approximately 2,800 linear feet of stormwater pipe and approximately 2,100 linear feet of wastewater pipe for the Franklin Trunk Line Improvements and Puget Sound Avenue project – Specification No. ES13-0011F;
2. Stan Palmer Construction Inc., on its bid of \$1,497,609.00, plus sales tax and a 15 percent contingency, for a cumulative total of \$1,722,250.35, budgeted from the Surface Water Fund and the Public Assembly Facilities Fund, to replace approximately three acres of impervious parking lot with porous asphalt, install an infiltration trench, a bio retention facility, and landscaping for the Cheney Stadium Low Impact Development project – Specification No. ES13-0323F;
3. Brown and Caldwell, Inc., in the amount of \$995,292.00, sales tax not applicable, budgeted from the Surface Water Fund, for design and engineering services associated with the Cleveland Way Pump Station Improvement project – Specification No. CT12-0001F; and
4. Office Depot, in the amount of \$315,000.00, plus sales tax, budgeted from various departmental funds, for office supplies on an as needed basis from September 1, 2013 to May 29, 2014, with the option to renew for four additional one-year terms, for a projected contract total of \$2,000,000.00 – Washington State Contract No. 04411.

### **Resolution No. 38716**

Authorizing the execution of an interagency agreement with the Department of Ecology, Washington Conservation Corps, in the amount of \$292,000, budgeted from the Surface Water Fund, to assist in the maintenance and restoration of the City's habitat restoration sites and open spaces for a one-year term, with the option to renew for three additional one year terms, for a projected total of \$1,168,000.

**Resolution No. 38717**

Authorizing Environmental Services to participate in a Tacoma Public Utilities contract with Titan Earthwork, LLC, in the amount of \$1,577,056.56, excluding sales tax, plus a 10 percent contingency, for a cumulative total of \$1,734,762.22, budgeted from the Wastewater Fund, for replacement of underground wastewater pipes in the vicinity of North Vassault to North Visscher Streets, from North 49th to North 51st Streets.

**Resolution No. 38718**

Declaring surplus City-owned property located at 1110, 1114, 1120, and 1124 Martin Luther King Jr. Way; and authorizing the execution of purchase and sale agreements with Kellogg Sicker Pochert LLC, in the amount of \$100,000, for property located at 1110 and 1114 Martin Luther King Jr. Way, and with the Tacoma Housing Authority for property located at 1120 and 1124 Martin Luther King Jr. Way, to construct apartments, ground floor office/retail, and parking.

**Ordinance No. 28163**

Granting a non-exclusive ten-year telecommunications franchise to Electric Lightwave, LLC, to construct, operate, and repair a telecommunications system throughout the city.



## RESOLUTION NO. 38713

1 A RESOLUTION relating to the vacation of City right-of-way; setting Thursday,  
2 September 26, 2013, at 1:00 p.m., as the date for a hearing before the City  
3 of Tacoma Hearing Examiner on the petition of the City of Tacoma and the  
4 Port of Tacoma, to vacate Milwaukee Way between East 11th Street and  
5 Lincoln Avenue.

6 WHEREAS, in 1994, the City of Tacoma ("City") and the Port of Tacoma  
7 ("Port") entered into an Interlocal Agreement whereby the City agreed to vacate  
8 Milwaukee Way between East 11th Street and Lincoln Avenue, more particularly  
9 described as follows:

10 Milwaukee Way lying between the southerly line of the  
11 100 foot East 11th Street right-of-way and the northerly line of  
12 the 160 foot Lincoln Avenue right-of-way, located within the  
13 South half of Section 34, Township 21 North, Range 3 East  
14 and the Northeast Quarter of Section 3, Township 20 North,  
15 Range 3 East of the Willamette Meridian;

16 and

17 WHEREAS, in 2000, the street vacation process began and a public hearing  
18 was held; however, final reading of the ordinance was postponed, and

19 WHEREAS the Port now desires to finalize the street vacation, and

20 WHEREAS, because the public hearing on this matter was held over  
21 13 years ago, and because there have been changes in conditions related to this  
22 street vacation, a new public hearing is being requested before the street vacation  
23 can be finalized; Now, Therefore,

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

25 Section 1. That Thursday, September 26, 2013, at 1:00 p.m., is hereby fixed  
26 as the date and time, and the Council Chambers on the first floor of the Tacoma



1 Municipal Building, 747 Market Street, in the City of Tacoma, as the place when  
2 and where said request will be heard by the Hearing Examiner and her  
3 recommendations thereafter transmitted to the Council of the City of Tacoma.  
4

5 Section 2. That the Clerk of the City of Tacoma shall give proper notice of  
6 the time and place of said hearing.  
7

8 Adopted \_\_\_\_\_

9 \_\_\_\_\_  
10 Mayor

11 Attest:  
12

13 \_\_\_\_\_  
City Clerk

14 Approved as to form:  
15

Property description approved:  
16

17 \_\_\_\_\_  
Deputy City Attorney

18 \_\_\_\_\_  
Chief Surveyor  
Public Works Department

19 Location: Vacate Milwaukee Way between East 11th Street and Lincoln Avenue  
20 Petitioner: City of Tacoma and Port of Tacoma  
21 File No.: 124.1108  
22  
23  
24  
25  
26



## RESOLUTION NO. 38714

BY REQUEST OF DEPUTY MAYOR CAMPBELL AND COUNCIL MEMBERS  
BOE, IBSEN, AND WALKER

A RESOLUTION relating to committees, boards, and commissions; appointing an individual to a youth position on the Sustainable Tacoma Commission.

WHEREAS Resolution No. 38668 added a two-year youth position to the Sustainable Tacoma Commission, and

WHEREAS, at its meeting of July 24, 2013, the Infrastructure, Planning and Sustainability Committee recommended the appointment of Agnes Pate to serve on said commission in the newly established youth position, and

WHEREAS, pursuant to the City Charter Section 2.4 and the Rules, Regulations, and Procedures of the City Council, Agnes Pate has been nominated to serve on the Sustainable Tacoma Commission in the youth position; Now, Therefore,

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

That Agnes Pate is hereby appointed to serve on the Sustainable Tacoma Commission in the youth position for a two-year term to commence September 16, 2013, to April 30, 2015.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney



## RESOLUTION NO. 38715

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

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

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

24 ( ) B. Rejection of those bids and/or proposals that are recommended  
25 for rejection in the attached Exhibit "A";  
26



( ) C. Entry into the proposed purchasing agreement with those governmental entities identified in the attached Exhibit "A," which proposed agreement is on file in the office of the City Clerk;

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

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

  
\_\_\_\_\_  
City Attorney



**City of Tacoma**  
Environmental Services Department

EXHIBIT "A"

RESOLUTION NO.: 38715

ITEM NO.: 1

MEETING DATE: AUGUST 13, 2013

**DATE:** July 26, 2013  
**TO:** Board of Contracts and Awards  
**SUBJECT:** Franklin Trunk Line Improvements and Puget Sound Avenue  
Wastewater Main Replacement  
Budgeted from Environmental Services Surface Water Fund 4301,  
and Wastewater Fund 4300  
Request for Bids Specification No. ES13-0011F

**RECOMMENDATION:** The Environmental Services Department, Science and Engineering Division, recommends a contract be awarded to the low bidder **Rodarte Construction, Inc., Auburn, WA**, for replacement of approximately 2,800 linear feet of 12-inch to 30-inch diameter stormwater pipes and approximately 2,100 linear feet of 8-inch to 12-inch wastewater pipes using open cut construction methods. The contract reflects a base award of \$1,569,099.92, plus applicable sales tax, plus a 20% contingency, for a cumulative amount of \$1,882,919.90, plus applicable sales tax.

**EXPLANATION:** The City of Tacoma's stormwater and wastewater collection systems consist of over 1,275 miles of underground pipe that convey stormwater to surface waters in and around the City of Tacoma, and wastewater from residential and commercial customers to one of three different locations where it is treated prior to being discharged into Puget Sound.

To help address the problem of aging wastewater infrastructure, Environmental Services developed an Asset Management Program. This ongoing program focuses on rehabilitating a certain amount of the City's poorest condition pipes every year. Depending on a pipe's age and condition, rehabilitation can be accomplished via removing and replacing the existing pipe using traditional excavation methods or in some cases the pipe can be rehabilitated using pipe lining technology that minimizes or eliminates the need for costly and disruptive excavation within the street right-of-way.

The underground wastewater pipes scheduled for replacement in this project were installed over 50 years ago. These pipes have exceeded their design life, require recurring maintenance and repairs, and have been identified through our TV inspection program as having deteriorated to the point of imminent failure. If failure were to occur, it would result in sewer overflows of untreated wastewater which would then be collected by the stormwater system and ultimately be discharged to the Thea Foss Waterway. The proposed project will replace these pipes and reduce the risk of sewer overflows.

The underground stormwater pipes scheduled for replacement under this project were installed over 100 years ago. These pipes have exceeded their design life, and have been identified through our TV inspection program as having deteriorated to the point of imminent failure. If failure were to occur, it would result in localized flooding along the Puget Sound Avenue corridor, as well as potential flooding of adjacent residences. The proposed project will replace these pipes and reduce the risk of flooding.



The deteriorated stormwater and wastewater pipes at the various locations addressed by this project require complete replacement using traditional open-cut excavation methods rather than pipe lining. The majority of this excavation work will occur within existing paved roadways and gravel alleys. These roads and alleys will be repaired in accordance with the City's Right-of-Way Restoration Policy.

**COMPETITIVE SOLICITATION:** Specification No. ES13-0011F was opened July 2, 2013. The Request for Bids was advertised in the Tacoma Daily Index. Seven submittals were received. The Small Business Enterprise (SBE) participation level proposed by the bidder(s) are reflected as a credit (maximum applies) against the submitted base bid to arrive at an "evaluated bid" for bid ranking purposes. Rodarte Construction, Inc. submitted a bid that resulted in the lowest evaluated bid after consideration of SBE participation goals. Nova Contracting, Inc.'s submittal was non-responsive for failure to acknowledge Addendum 1.

<u>Respondent</u>	<u>Location</u>	<u>Submittal Amount</u> Plus Sales Tax	<u>Evaluated Submittal</u> Plus Sales Tax
<b>Rodarte Construction, Inc.</b>	<b>Auburn, WA</b>	<b>\$ 1,569,099.92</b>	<b>\$ 1,443,410.63</b>
Titan Earthwork, LLC	Sumner, WA	\$ 1,648,674.00	\$ 1,522,984.71
Northwest Cascade, Inc.	Puyallup, WA	\$ 1,671,473.50	\$ 1,545,784.21
DPK, Inc.	Kent, WA	\$1,725,781.19	\$ 1,600,091.90
*Nova Contracting, Inc.			
Mid Mountain Contractors, Inc.	Kirkland, WA	\$1,922,684.00	\$ 1,796,994.71
Ceccanti, Inc.	Tacoma, WA	\$2,119,116.00	\$ 1,993,426.71
*Non-Responsive			
	Pre-bid Estimate	\$1,850,350.00	

The recommended award is 15.2% below the pre-bid estimate.

**SUSTAINABILITY FACTORS:** From a sustainability perspective the reduced risk of surface water flooding and sewer overflows from this project represents an improvement to human health and the environment. Preventative rehabilitation of underground stormwater and wastewater pipes in the project area, prior to complete failure, represents the lowest lifecycle cost solution to maintaining these assets.

**CONTRACT HISTORY:** The proposed contract would be a new contract.

**FUNDING:** Funds for this contract are budgeted in the ES Surface Water Fund 4301 and Wastewater Fund 4300.

**SBE/LEAP COMPLIANCE:** The recommended contractor is in compliance with the SBE Regulation requirements per memorandum dated July 11, 2013. The SBE goal for this project is 12 percent, and the level of SBE participation for Rodarte Construction, Inc. is 14.32 percent. The recommended contractor submitted the lowest evaluated bid per the SBE Regulation requirements. The Local Employment and Apprenticeship Training Program (LEAP) goal is 1,330 hours.

Board of Contracts and Awards  
Franklin Trunk Line Improvements and  
Puget Sound Avenue Wastewater Main Replacement  
July 26, 2013  
Page Three

**PROJECT ENGINEER/COORDINATOR:** Geoffrey M. Smyth, P.E., Environmental Services,  
Science and Engineering Division, 253-502-2111.



Michael P. Slevin III, P.E.  
Environmental Services Director

cc: Charles Blankenship, Purchasing Analyst  
Charles Wilson, HUB Coordinator  
Peter Guzman, LEAP Coordinator  
Lorna Mauren, Environmental Services



38715

City of Tacoma

Memorandum

**TO:** T.C. Broadnax  
City Manager

**FROM:** Michael P. Slevin III, P.E. *for*  
Environmental Services Director

**SUBJECT:** Council Action Memo – Purchase Resolution – August 13, 2013  
ES13-0011F - Franklin Trunk Line Improvements and Puget Sound Ave  
Wastewater Main Replacement

**DATE:** July 26, 2013

The Environmental Services Department, Science and Engineering Division recommends a contract be awarded to the low bidder **Rodarte Construction, Inc., Auburn, WA**, for replacement of approximately 2,800 linear feet of 12-inch to 30-inch diameter stormwater pipes and approximately 2,100 linear feet of 8-inch to 12-inch wastewater pipes using open cut construction methods. The contract reflects a base award of \$1,569,099.92, plus applicable sales tax, plus a 20% contingency, for a cumulative amount of \$1,882,919.90, plus applicable sales tax.

#### **Background**

The City of Tacoma's stormwater and wastewater collection systems consist of over 1,275 miles of underground pipe that convey stormwater to surface waters in and around the City of Tacoma, and wastewater from residential and commercial customers to one of three different locations where it is treated prior to being discharged into Puget Sound.

To help address the problem of aging wastewater infrastructure, Environmental Services developed an Asset Management Program. This ongoing program focuses on rehabilitating a certain amount of the City's poorest condition pipes every year. Depending on a pipe's age and condition, rehabilitation can be accomplished via removing and replacing the existing pipe using traditional excavation methods or in some cases the pipe can be rehabilitated using pipe-lining technology that minimizes or eliminates the need for costly and disruptive excavation within the street right-of-way.

The deteriorated stormwater and wastewater pipes in the project vicinity (see attached map) require complete replacement performed using traditional open-cut excavation methods rather than pipe-lining. The excavation work will occur within the existing paved roadways and gravel alleys. These roads and alleys will be repaired in accordance with the City's Right-of-Way Restoration Policy.

The subject project is part of the 2013-2014 Biennium Budget. The contract will replace 2,800 linear feet of stormwater pipe, and 2,100 linear feet of wastewater pipe.

#### **Funding**

Funds are budgeted in the ES Surface Water Fund 4301 and the ES Wastewater Fund 4300. The entire contract amount has a base award of \$1,569,099.92 plus applicable sales tax, plus a 20% contingency, for a cumulative total of \$1,882,919.90 plus applicable sales tax.

The Board of Contracts and Awards letter for the subject project requests a 20% project contingency, which is above the typical 10% contingency for Public Works Construction projects. This additional 10% contingency is being recommended due to past experience with similar projects where excavation in close proximity to other utilities presents unique and unpredictable construction challenges, and where surface restoration has the potential to expand beyond what is initially estimated. A 20% contingency would provide funding for additional construction services to address a reasonable amount of unanticipated work without causing costly project delays.

### **Reason for Project**

The underground stormwater and wastewater pipes scheduled for replacement by this project were installed over 50 years ago and have been identified through our TV inspection program as having deteriorated to the point of imminent failure. If failure were to occur, it would result in surface water flooding, sewer overflows and potential damage to adjacent properties. The proposed project would replace these pipes and reduce the risk of surface water flooding and sewer overflows.

A reduced risk of surface water flooding and sewer overflows from this project represents an improvement to human health and the environment. Preventative rehabilitation of underground stormwater and wastewater pipes in the project area, prior to complete failure, represents the lowest lifecycle cost solution to maintaining these assets.

### **Outreach/Public Involvement**

Information related to this project is available at the City's Project website by accessing [www.tacomaprojects.com](http://www.tacomaprojects.com).

### **Construction Schedule**

Construction to begin: August 2013

Scheduled completion: March 2014

Attachment

City of  
Tacoma

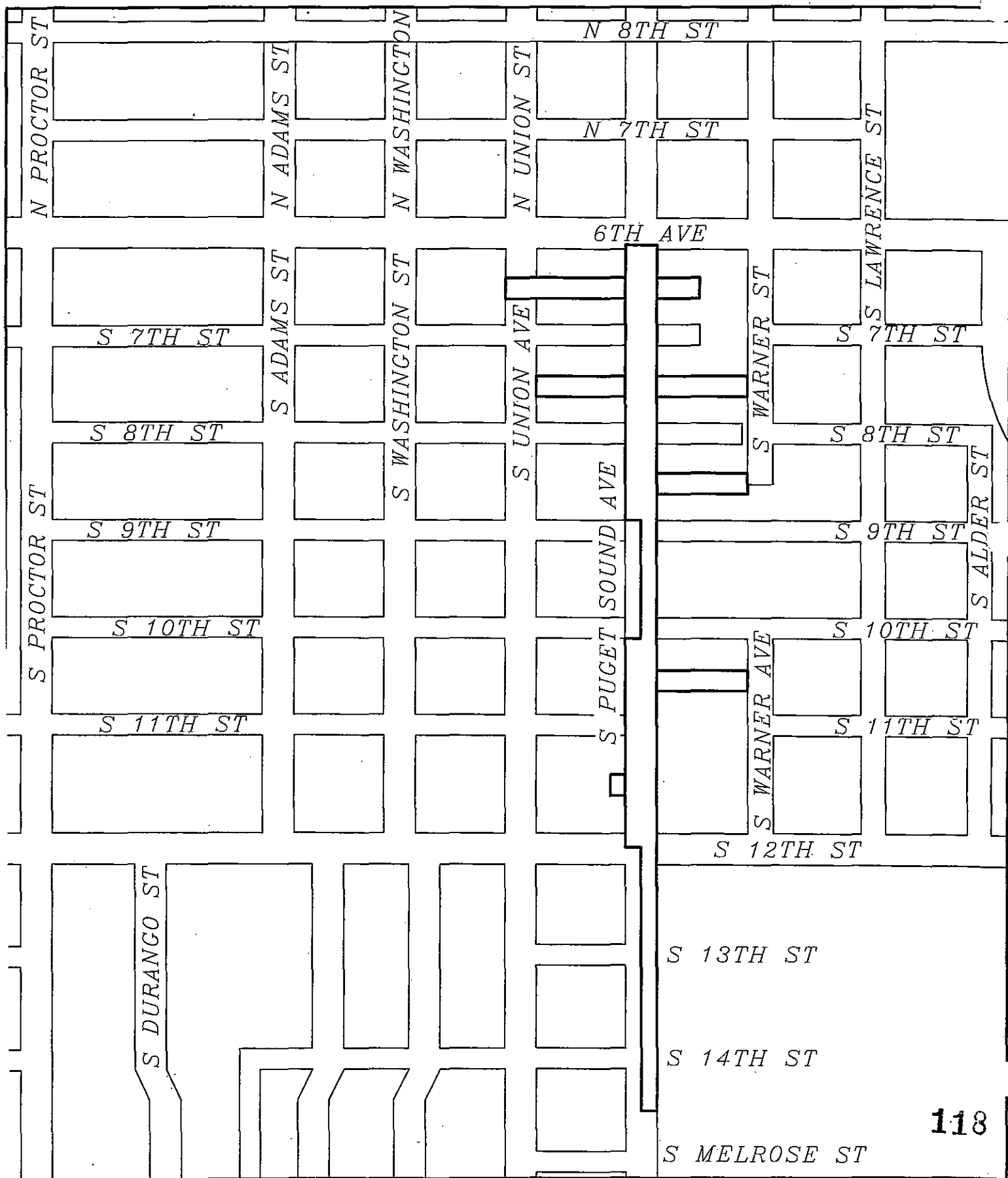
# Franklin Trunk Line Improvements

ES13-0011F

Map Source: Environmental Services  
Division, Public Works Department

City of Tacoma 38715

Environmental Services/ Science & Engineering  
326 East D Street, Tacoma, WA 98421  
(253) 591 - 5588





City of Tacoma  
Environmental Services Department

EXHIBIT "A"

RESOLUTION NO.: 38715

ITEM NO.: 2

MEETING DATE: AUGUST 13, 2013

**DATE:** July 30, 2013  
**TO:** Board of Contracts and Awards  
**SUBJECT:** Cheney Stadium LID Retrofit  
Budgeted from Environmental Services Surface Water Fund 4301  
Request for Bids Specification No. ES13-0323F

**RECOMMENDATION:** The Environmental Services Department, Science and Engineering Division, recommends a contract be awarded to the low bidder **Stan Palmer Construction Inc., Bremerton, WA**, to replace over three acres of impervious parking lot with porous asphalt, install an infiltration trench to mitigate a portion of roof runoff, install a bioretention facility to treat a portion of existing roadway, and plant nearly two and a half acres of landscaping. The contract reflects a base award of \$1,497,609.00, plus applicable sales tax, plus a 15% contingency, for a cumulative amount of \$1,722,250.35, plus applicable sales tax.

**EXPLANATION:** Cheney Stadium was renovated in 2011. In 2012, the Cheney Stadium Sustainable Stormwater Project improved the east half of the parking lot and Clay Huntington Way. Clay Huntington Way was honored as Tacoma's first Greenroad®. This latest project will improve the remainder of the parking lot and complete the City's vision of sustainable stormwater management for the Cheney Stadium site.

The Cheney Stadium Low Impact Development (LID) Retrofit is intended to reduce the quantity of stormwater discharging into the Leach Creek Watershed resulting in overall quality improvement. This site provides a unique opportunity to convert a failed parking lot into a stormwater treatment retrofit using green infrastructure designs. This project is designed with pervious pavement, an infiltration trench, and a bioretention facility to allow the stormwater to soak back into the ground for over 10 acres of contributing area. Tree Retention and Transplanting Best Management Practices (BMPs) are also incorporated into the design to improve the City's tree canopy.

This project is developed in partnership with the Tacoma Rainiers and Public Assembly Facilities. This site has been selected by the City to be a demonstration site for stormwater management and sustainable site design. In addition, Cheney Stadium provides a great opportunity to spread the water quality message to thousands of fans each year.

The project is part of the 2013-2014 Biennium Budget.

**COMPETITIVE SOLICITATION:** Specification No. ES13-0323F was opened July 23, 2013. The Request for Bids was advertised in the Tacoma Daily Index. Six submittals were received. Stan Palmer Construction, Inc. submitted a bid that resulted in the lowest evaluated bid.

<u>Respondent</u>	<u>Location</u> (city and state)	<u>Submittal Amount</u> Plus Applicable Sales Tax
<b>Stan Palmer Construction, Inc.</b>	<b>Bremerton, WA</b>	<b>\$1,497,609.00</b>
Specialized Landscaping, Inc.	Tacoma, WA	\$1,647,606.43
Tucci & Sons, Inc.	Tacoma, WA	\$1,743,666.30
Ceccanti, Inc.	Tacoma, WA	\$1,760,564.00
3 Kings Environmental, Inc.	Battle Ground, WA	\$1,790,801.90
A-1 Landscaping and Construction, Inc.	Snohomish, WA	\$1,809,368.00
Pre-bid Estimate		\$1,649,386.00

The recommended award is 9% below the pre-bid estimate.

**SUSTAINABILITY FACTORS:** The sustainable elements included in this project are listed below:

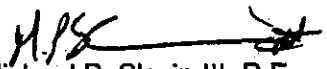
- This project area is located at the headwaters of Leach Creek and runoff generated from this site currently travels through nearly two miles in City storm lines, two and one-third miles in Leach Creek, and three and one-quarter miles in Chambers Creek before discharging into Puget Sound. Managing stormwater onsite through green infrastructure is essential to the success of improving receiving waters in this watershed.
- A Waste Management and Site Recycling Plan are required to quantify the construction waste generated from this project.
- The contractor is required to place 90% of the hot mix asphalt with a paver that meets the National Institute for Occupational Safety and Health emissions guidelines set forth in Engineering Control Guidelines for Hot Mix Asphalt Pavers. This will reduce greenhouse gas emissions and improve worker health and safety.

**CONTRACT HISTORY:** The proposed contract would be a new contract.

**FUNDING:** This project will be funded in part by a \$1,000,000 grant awarded through the Washington State Department of Ecology's FY 2012 Stormwater Retrofit and LID Competitive Grant program. Remaining funds for this contract are available in the ES Surface Water Fund 4301 and Public Assembly Facilities Fund 4170-BBCP.

**MINORITY AND WOMEN BUSINESS ENTERPRISE:** The recommended contract is in compliance with Washington State Department of Ecology's FY 2012 Stormwater Retrofit and LID Competitive Grant Program.

**PROJECT ENGINEER/COORDINATOR:** Geoffrey M. Smyth, P.E., Science and Engineering Division Manager, (253) 502-2111.

  
Michael P. Slevin III, P.E.  
Environmental Services Director

cc: Charles Blankenship, Senior Buyer  
Charles Wilson, SBE Coordinator  
Lorna Mauren, Environmental Services  
Kim Bedier, Public Assembly Facilities Dept.

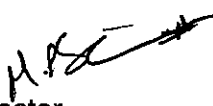


38715

City of Tacoma

Memorandum

**TO:** T.C. Broadnax  
City Manager

**FROM:** Michael P. Slevin III, P.E.   
Environmental Services Director

**SUBJECT:** Council Action Memo – Purchase Resolution – August 13, 2013  
ES13-0323F – Cheney Stadium LID Retrofit

**DATE:** July 30, 2013

The Environmental Services Department, Science and Engineering Division requests City Council award a contract to low bidder Stan Palmer Construction, Inc., of Bremerton, WA, to replace over three acres of impervious parking lot with porous asphalt, install an infiltration trench to mitigate a portion of roof runoff, install a bioretention facility to treat a portion of existing roadway, and plant nearly two and a half acres of landscaping. The contract reflects a base award of \$1,497,609.00, plus applicable sales tax, plus a 15% contingency, for a cumulative amount of \$1,722,250.35, plus applicable sales tax.

#### **Background**

Cheney Stadium was renovated in 2011. In 2012, the Cheney Stadium Sustainable Stormwater project improved the east half of the stadium parking lot and Clay Huntington Way. Clay Huntington Way was honored as Tacoma's first Greenroad®. This latest project will improve the remainder of the parking lot and it will complete the City's vision of sustainable stormwater management for the Cheney Stadium site.

The Cheney Stadium Low Impact Development (LID) Retrofit is intended to reduce the quantity of stormwater discharging into the Leach Creek Watershed resulting in overall quality improvement. This site provides a unique opportunity to convert a failed parking lot into a stormwater treatment retrofit using green infrastructure designs. This project is designed with pervious pavement, an infiltration trench, and a bioretention facility to allow the stormwater to soak back into the ground for over 10 acres of contributing area. Tree Retention and Transplanting Best Management Practices (BMPs) are also incorporated into the design to improve the City's tree canopy.

This project is developed in partnership with the Tacoma Rainiers and Public Assembly Facilities. This site has been selected by the City to be a demonstration site for stormwater management and sustainable site design. In addition, Cheney Stadium provides a great opportunity to spread the water quality message to thousands of fans each year.

#### **Funding**

The project is part of the 2013-2014 Biennium Budget. Funds are budgeted in the ES Surface Water Fund 4301 and Public Assembly Facilities Fund 4170-BBCP. This project will partially be funded by a \$1,000,000 FY 2012 Stormwater Retrofit and LID Competitive Grant from the Department of Ecology.

#### **Reason for Project**

Cheney Stadium is located at the headwaters of Leach Creek. The Leach Creek Watershed covers 2,200 acres of predominately residential land use with commercial uses in localized areas. Leach Creek is a highly urbanized stream and a little over two miles long. Leach Creek flows into Chambers Creek just downstream of the confluence of Flett and Chambers Creeks.



Chambers Creek is a fish bearing creek with two fish hatcheries located on the creek. Salmonid spawning habitat can be found in the lower portion of Leach Creek from Chambers Creek up to Bridgeport Way. The upper portions of Leach Creek also have pockets of spawning grounds; however, the elimination of vegetation and channelization by streamside homeowners and erosion during storm events has impacted these areas.

Retrofitting developments like Cheney Stadium to manage stormwater onsite is essential to reducing the overall flows in the Leach Creek Basin and key to the success of improving receiving waters in this watershed.

**Outreach/Public Involvement**

Information related to this project is available at the City's Project website by accessing [www.tacomaprojects.com](http://www.tacomaprojects.com).

**Construction Schedule**

Construction to begin: Mid-September 2013 after the 2013 baseball season.

Clay Huntington Way and the east part of the parking lot will remain open during construction for events scheduled at the Stadium.

Scheduled completion: January 2014

Attachment

City of  
Tacoma

# Cheney Stadium Low Impact Development (LID) Retrofit

Map Date: August 07, 2013  
Source: Source: Science and Engineering  
Division, Environmental Services Department  
City of Tacoma  
Environmental Services/ Science & Engineering  
326 East D Street, Tacoma WA 98421  
(253) 591-5588

N

36715

S 19TH ST

PRIVATE DR

Cheney Stadium

S TYLER ST

Phase 2 -  
Pervious Pavement,  
Infiltration Trench,  
& Landscaping

Phase 1  
Improvements

Phase 2 -  
Pervious Concrete  
Sidewalk,  
Bioretention Planter,  
& Landscaping

123



City of Tacoma  
Environmental Services Department

EXHIBIT "A"

RESOLUTION NO.: 38715

ITEM NO.: 3

MEETING DATE: AUGUST 13, 2013

**DATE:** July 31, 2013

**TO:** Board of Contracts and Awards

**SUBJECT:** Cleveland Way Pump Station Professional Services Consultant Contract  
Budgeted from ES Surface Water Fund 4301  
Request for Qualifications Specification No. CT12-0001F

**RECOMMENDATION:** The Environmental Services Department, Science and Engineering Division recommends a contract be awarded to **Brown and Caldwell, Inc., Tacoma, WA**, for design and engineering services associated with the Cleveland Way Pump Station Improvement project. The contract amount reflects a total award of \$995,292.00, sales tax not applicable.

**EXPLANATION:** Due to the specialized nature of this project, the improvements to the Cleveland Way Pump Station require expertise beyond the capabilities of City staff. Professional services provided by this contract include project management, permitting, cultural resources, design, bid support services, support services during construction, and additional professional services. This contract is based on a schedule to provide bid documents to the City by June of 2014, followed by construction activities in summer of 2015.

**COMPETITIVE SOLICITATION:** The City of Tacoma solicited engineering and architectural services under Request for Qualifications Specification No. CT12-0001F, which was used to develop the Citywide Architectural and Engineering (A&E) Roster. Seven consulting firms were selected from the A&E roster to find the most qualified consultant for this project.

The evaluation team consisted of three staff members from the Environmental Services Department that were selected to independently review and rank the consultant's statement of qualifications (SOQ's). The following criterion was used to evaluate the SOQ's. Listed below are the consulting firms that were evaluated for this contract with their respective scores.

<u>Respondent</u>	<u>Location (city and state)</u>	<u>Score</u>
<b>Brown and Caldwell, Inc.</b>	<b>Tacoma, WA</b>	<b>8.9</b>
Parametrix, Inc.	Tacoma, WA	7.6
CH2MHill	Bellevue, WA	6.8
HDR	Bellevue, WA	6.3
KPG	Tacoma, WA	5.5
Berger ABAM	Federal Way, WA	4.8
David Evans and Associates	Fife, WA	4.3

Based on evaluation and scoring of the SOQ's, Brown and Caldwell, Inc. scored the highest from the three independent reviews. On this basis, Brown and Caldwell, Inc. has been selected to perform design and engineering support services for the Cleveland Way Pump Station Improvement Project.

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds are budgeted in the ES Surface Water Fund 4301. Funding beyond the current biennium is subject to future availability of funds.

**SBE/LEAP COMPLIANCE:** Not applicable.

**PROJECT ENGINEER/COORDINATOR:** Geoffrey M. Smyth, P.E., Science and Engineering  
Division Manager, (253) 502-2111.

  
Michael P. Slevin III, P.E.  
Environmental Services Director

cc: Chuck Blankenship, Senior Buyer  
Steve Hoffman, Science and Engineering  
Charles Wilson, SBE Coordinator  
Peter Guzman, LEAP Coordinator



**TO:** T.C. Broadnax  
City Manager

**FROM:** Michael P. Slevin III, P.E. *M.P.S.*  
Environmental Services Director

**SUBJECT:** Council Action Memo – Purchase Resolution – August 13, 2013  
Cleveland Way Pump Station Professional Services Consultant Contract  
Request for Qualifications Specification No. CT12-0001F

**DATE:** August 2, 2013

The Environmental Services Department, Science and Engineering Division requests the City Council award a contract to Brown and Caldwell, Inc., of Tacoma, WA, for design and engineering services associated with the Cleveland Way Pump Station Improvement project. The contract amount reflects a total award of \$995,292.00, sales tax not applicable.

#### **Background**

The proposed improvements are necessary to bring the facility up to current codes, safety requirements and to re-establish the pump station reliability and efficiency.

The existing Cleveland Way Pump Station is located just south of the Eells Street Bridge adjacent to the Puyallup River. The pump station was designed in 1959 and constructed in 1960. The facility contains two large diesel engine driven vertical propeller pumps with right angle gear drives and 42-inch discharge pipes and two smaller vertical electric motor driven propeller pumps with 20-inch discharge pipes. Most of the equipment is original; however, a renovation of the station designed in 1988 included a new exterior fuel tank ventilation system, main control panel, engine control panel, bubbler level control system, air compressor and ladders.

We have identified the following concerns:

- The station has no standby emergency power or backup fuel system.
- The mechanical equipment is out dated and it is difficult to find spare parts for the old engines
- The existing two cycle pump engines are not efficient and emit a large amount of fumes while operating.
- The station does not conform to National Fire Protection Agency (NFPA) regarding hazardous classified areas.

The needed improvements to the pump station are required to meet the objective of increasing the pump station reliability, serviceability and to bring the facility up to current design codes and safety requirements.

#### **Funding Source**

Funds for this project are budgeted in ES Surface Water Fund 4301. The proposed contract amount is \$995,292.00, sales tax not applicable.

#### **Reason for the Project**

The Cleveland Way Pump Station is a critical stormwater facility that prevents flooding to the surrounding area, which includes the City's Central Treatment Plant. This pump station was

constructed in 1960 and most of the mechanical equipment in this station is original. Due to the age of the equipment, it has become increasingly difficult to find replacement parts for the large diameter pumps and pump motors when mechanical failures occur. The pump station is currently deemed a hazardous location per current NFPA codes. The proposed improvements will upgrade the mechanical and electrical equipment and bring the pump station into compliance with current NFPA codes and regulations. The proposed improvements will increase the overall pump station reliability, reduce the City's risk associated with flooding due to mechanical failures, and reduce the overall maintenance costs associated with maintenance and operation of outdated equipment.

#### **Outreach/Public Involvement**

The Cleveland Way Pump Station is located within an easement on property managed by the Bureau of Indian Affairs (BIA). We have informed the Puyallup Tribe of Indians that we plan to exercise our easement rights to construct the needed improvements to the Cleveland Way Pump Station. The majority of our work will be internal to the existing building and will have little to no impacts to the property owner. We are keeping the Puyallup Tribe of Indians informed of our progress on the project. To date, the Puyallup Tribe of Indians is working with us and has voiced no concerns with regard to our proposed improvements.

#### **Competitive Solicitation**

The City solicited engineering and architectural services under Request for Qualifications Specification No. CT12-0001F, which was used to develop the Citywide Architectural and Engineering (A&E) Roster. Seven consulting firms were selected from the A&E roster to find the most qualified consultant for this project.

The evaluation team consisted of three staff members from the Environmental Services Department that were selected to independently review and rank the consultant's statement of qualifications (SOQ's). The following criterion was used to evaluate the SOQ's:

- Experience and technical qualifications of the firm
- Experience and qualifications of the project managers
- Project specific experience and qualifications of the technical staff assigned
- Ability to satisfactorily meet the City needs in terms of customer service and completing the project on budget and schedule
- Tacoma Based Office

Additional consideration during the review process:

- Reputation and experience of the firm
- Department/Division familiarity with the firm
- Firm's demonstrated ability to perform specific type of services involved

Based on evaluation and ranking of the SOQ's, Brown and Caldwell, Inc. ranked the highest on all three independent reviews. On this basis, Brown and Caldwell, Inc. has been selected to perform design and construction services for the Cleveland Way Pump Station Improvement project. The selection process was completed consistent with the City's Purchasing policies and guidelines for use of the A&E Roster.

#### **Local Business Utilization**

This contract will be managed by Brown and Caldwell, Inc.'s Tacoma office. In the interest of utilizing local businesses, Brown and Caldwell, Inc. elected to subcontract portions of the design work to three consulting firms located within Tacoma City limits. The work generated by local consulting firms plus Brown and Caldwell, Inc.'s Tacoma office equates to approximately 35

percent of the total contract hours. Due to the specialized nature of the design, the remaining 65 percent of the total contract hours will be designed at Brown and Caldwell, Inc.'s headquarters located in Seattle. Listed below is the Tacoma based sub-consultants that Brown and Caldwell, Inc. plan to utilize during the life of this contract.

- KPG Inc. (Architectural and Survey)
- Bright Engineering (Structural Design)
- Landau Associates (Geotechnical Services)

#### **Schedule**

- Notice to proceed and start Design: September 2013
- Start Permitting Process: November 2013
- Advertise Construction Contract: June 2014
- Notice to proceed with Construction Contract: April 2015
- Project Completion: November 2015

Attachment

City of  
Tacoma

# Cleveland Way Pump Station Upgrade

Map Date: May 16, 2013  
Source: Science and Engineering  
Division, Environmental Services Department  
City of Tacoma

Environmental Services/ Science & Engineering  
326 East D Street, Tacoma WA 98421  
(253) 591- 5588







**City of Tacoma**  
Finance Department

EXHIBIT "A"

RESOLUTION NO.: 38715

ITEM NO.: 4

MEETING DATE: AUGUST 13, 2013

**DATE:** July 17, 2013

**TO:** Board of Contracts and Awards

**SUBJECT:** Citywide Contract to Provide Office Supplies  
Budgeted from various funds as needed by using Departments/Divisions  
Washington State Contract 04411

**RECOMMENDATION:** The Finance Department, Purchasing Division, recommends a contract be awarded to **Office Depot, Kent, WA**, for office supplies to be provided on an as-needed basis. The recommendation is for September 1, 2013, to May 29, 2014, in the amount of \$315,000.00, plus the option to renew for four additional one-year periods, for a cumulative total of \$2,000,000.00, plus sales tax. The specification documents contain market-based provisions for price escalation/de-escalation that may affect overall contract value.

**EXPLANATION:** This competitively bid contract allows the City to continue its sustainable purchasing efforts for office supplies. It includes limited packaging and twice per week delivery schedule requirements, an on-line ordering system with payment by procurement card, and over 1,000 environmentally preferable products. The requested contract amount is based on historical annual usage of past citywide contracts with an estimated distribution of 51% for Tacoma Public Utilities and 49% for General Government.

**COMPETITIVE BIDDING:** Washington State Contract No. 04411 is a competitively solicited contract valid until May 29, 2014, with provisions to extend annually up to eight years. The contract is the result of a Request for Proposals issued by the Department of Enterprises Services (DES). DES notified 713 vendors and received 19 submittals. The RFP was divided into three product categories: Category One included over 3,000 office products, Category Two included 198 ink and toner products, and Category Three included 116 multipurpose printing and duplicating paper products. Office Depot was awarded Categories One and Three

This contract meets Tacoma's competitive solicitation requirements by means of an interlocal cooperative purchasing agreement with the state of Washington.

**CONTRACT HISTORY:** New contract.

**FUNDING:** Funds for this contract are available through individual departments that will use this contract and be billed directly for their purchases. Funding beyond the current biennium is subject to future availability of funds.

**SBE/LEAP COMPLIANCE:** Not applicable.

**PROJECT ENGINEER/COORDINATOR:** Marie Holm, Purchasing Division, 253-502-8139.

A handwritten signature in cursive script, appearing to read "Kathy Katterhagen", written over a horizontal line.

Kathy Katterhagen  
Procurement and Payables Division Manager

cc: Marie Holm, Senior Buyer, Finance/Purchasing

## **Citywide Office Supplies Contract – Supplemental Information**

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The Purchasing Division is requesting approval for a citywide office supplies contract for use by all city departments and divisions on an as-needed basis. City staff requires basic office supplies to conduct their everyday work.

### **Background:**

- Current Citywide office supplies contract with OfficeMax expires August 31, 2013. Awarded from Request for Bids CT11-0159F with fixed pricing for a two-year period.
- **Department of Enterprises (DES) state contract** with Office Depot is available to use through our cooperative purchasing (interlocal) agreement.
- Washington State DES contract with Office Depot is similar to our current office supplies contract. The **benefits of using the Washington State (DES) contract:**
  - A. Competitive pricing - The state contract has buying power with the contract value at \$15,000,000. Competition was open to **all bidders**. **The state received 19 proposals.** The RFP included three product categories, of which categories 1 and 3 were awarded to Office Depot:
    - Category 1: Office Supplies
    - Category 2: Toner (The City has a separate contract for toner)
    - Category 3: Paper (The City has a separate bulk delivery contract for paper products)
  - B. Over 3,000 line items.
  - C. Over 1,000 environmentally preferable office products.
  - D. On- line ordering with alternatives for sustainable products.
  - E. Payment by procurement card.
  - F. Waived shipping fees, no minimum orders.
  - G. Recycled packaging and delivery totes.
  - H. Price adjustments require justification and approval from the state before going into effect.
  - I. Office Depot will provide usage reports to Purchasing.
  - J. Immediate purchase transparency when City staff orders by procurement card. Line item detail is recorded and reported with each transaction.

## Citywide Office Supplies Contract – Supplemental Information

Where is Office Depot located	Storefront – Tacoma, WA Corporate Office – Kent, WA
Original Contract award term	May 28, 2012 to May 29, 2014
Contracts renewals	Four additional one year terms or not to exceed eight years.
How many products are available on this contract?	Over 3,000 office supplies. Contract terms allow for adding new products with pricing based on the contract product group discount structure.
Contract price changes	The contract has a provision that requires Office Depot to submit potential price increases with justification to the state (DES) for review and approval before any price changes are allowed on the contract. Justification includes letters from the manufacture which must align with the Purchase Price Index (PPI) for the office product category.
What cost savings are anticipated?	The Office Depot submittal was the most competitive of those evaluated by the state.  Comparing unit prices between our expiring citywide contract and the current state contract, national brand items are approximately 20% lower in price. Even deeper discounts are available by selecting Office Depot brand products.
How does this contract continue to demonstrate the city's commitment to sustainability and locality?	Paperless ordering process: Orders are placed on-line using a procurement card. Items are ordered, approved, and paid electronically.  Contract offers over 1,000 environmentally preferable products.  Managed Delivery: Office Depot will deliver twice per week to continue the City's managed delivery program and reduction of carbon footprint. Departments will need to plan accordingly.  Reusable Totes: All orders will continue to be delivered in recycled packaging and delivery totes (as with the current citywide contract).

## Citywide Office Supplies Contract – Supplemental Information

How does this contract ensure transparency?	<p>Immediate purchase transparency with line item detail recorded and reported with each procurement card transaction.</p> <p>Contract prices are monitored by the Department of Enterprise Services. Prices may also be cross-checked by City staff by comparing procurement card purchase details against the Office Depot online catalog developed for users of the state contract.</p>
Why use the state contract rather than issuing a City of Tacoma solicitation?	<p>The state contract offers cost savings, transparency, and sustainability. It is very similar to the City's previous contract and mirrors the type of solicitation the City would pursue.</p> <p>The state has a larger office supplies vendor base and allows the City to take advantage of the volume discounts associated with a \$15,000,000 contract. The City saves time and labor utilizing the state contract. The state contract offers a long term contract and compliance enforced by DES.</p>
Why is this contract necessary?	<p>This contract provides cost savings and sustainability benefits to the City by supporting departmental needs for office supplies, offering environmentally preferable product options, twice a week delivery schedules, deliveries in re-usable totes, and on-line (paperless) ordering.</p>
Are city department/divisions required to use this contract?	<p>This is not a mandatory use contract. It is a convenience contract to provide staff with competitive pricing and sustainable product options for office supplies.</p>



## RESOLUTION NO. 38716

1 A RESOLUTION relating to environmental services; authorizing the execution of a  
2 12-month agreement with the Department of Ecology, Washington  
3 Conservation Corps ("WCC"), in the amount of \$292,000, budgeted from the  
4 Environmental Services Surface Water Fund, to assist in the maintenance  
5 and restoration of various City-owned mitigation/restoration projects; and  
6 authorizing the option to extend the agreement with the WCC for up to three  
7 additional one-year terms, for a potential cumulative amount of \$1,168,000.

8 WHEREAS, according to the Foss Waterway Cleanup Consent Decree, the  
9 Commencement Bay Natural Resources Damage Assessment Consent  
10 Decree ("NRDA"), and the Environmental Protection Agency penalty-driven  
11 Supplemental Environmental Project ("SEP"), the City is required to perform  
12 maintenance, monitoring, and restoration activities on 20 habitat restoration sites,  
13 and

14 WHEREAS, although it is anticipated that the effort required on these sites  
15 may decline over the next few years, the Environmental Services Department has  
16 recently adopted many open space properties to manage and maintain for  
17 increased surface water and other benefits, and

18 WHEREAS such maintenance of open spaces will contribute towards  
19 meeting the City's other environmental goals, and

20 WHEREAS, based on forecasted work load, the City applied for and was  
21 selected by the Department of Ecology ("DOE"), Washington Conservation Corps  
22 ("WCC"), to sponsor two six-person crews trained to work in environmentally  
23 sensitive areas for 12 months, beginning in October 2013, and

24 WHEREAS the City has participated in this program in the past and has  
25 found it to be exceptionally valuable and cost-effective, and  
26



1 WHEREAS the proposed agreement would provide for two six-person crews  
2 to perform habitat restoration, maintenance, public education, and invasive plant  
3 and debris removal at City-owned sites, as well as sites owned by others, for a total  
4 cost of \$292,000 for one year, with a portion of the crews' costs provided by the  
5 DOE through a grant from AmeriCorps, and  
6

7 WHEREAS the local youth crews are also enrolled in the AmeriCorps  
8 program, and  
9

10 WHEREAS, in addition to earning wages and gaining life experience and job  
11 skills, each worker receives \$5,500 from AmeriCorps for higher education after  
12 completing the program, and  
13

14 WHEREAS the proposed agreement also has the option to extend the term  
15 for three additional one-year extensions, for a potential cumulative cost of  
16 \$1,168,000, subject to the requisite budget appropriations; Now, Therefore,  
17

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

19 That the proper officers of the City are hereby authorized to execute a  
20 12-month agreement, with three one-year extension options, with the Department of  
21 Ecology, Washington Conservation Corps, in the initial amount of \$292,000, and a  
22 total cost of \$1,168,000 if all three extension options are exercised, with costs to be  
23 budgeted from the Environmental Services Surface Water Fund, to assist in the  
24  
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1 maintenance and restoration of various City-owned mitigation/restoration projects,  
2 said document to be substantially in the form of the proposed agreement on file in  
3 the office of the City Clerk.  
4

5 Adopted \_\_\_\_\_  
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7 \_\_\_\_\_  
8 Mayor

9 Attest:  
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11 \_\_\_\_\_  
12 City Clerk

13 Approved as to form:  
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16 Deputy City Attorney  
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## RESOLUTION NO. 38717

1 A RESOLUTION relating to real property; authorizing the City's Environmental  
2 Services Department to participate in a City of Tacoma, Department of  
3 Public Utilities, contract with Titan Earthwork, LLC, for replacement of  
4 underground wastewater pipes in the vicinity of North Vassault to North  
5 Visscher Streets, from North 49th to North 51st Streets; with Environmental  
6 Services' portion of the project costs to be in the amount of \$1,577,056.56,  
7 excluding sales tax, plus a 10 percent contingency, for a cumulative amount  
8 of \$1,734,762.22.

9 WHEREAS the City of Tacoma wastewater collection system consists of  
10 over 700 miles of underground pipe which convey wastewater from residential and  
11 commercial customers to one of three locations where it is treated prior to being  
12 discharged into Puget Sound, and

13 WHEREAS, in order to address the issue of aging pipes, the City has  
14 developed an Asset Management Program that focuses on rehabilitating a certain  
15 amount of City pipes each year based on their condition, and

16 WHEREAS, depending on the severity of a pipe's condition, rehabilitation  
17 can be accomplished by removing and replacing existing pipe using traditional  
18 excavation methods or, in some cases, the pipe can be rehabilitated using pipe-  
19 lining technologies that minimize or eliminate the need for costly and disruptive  
20 excavation within the street right-of-way, and

21 WHEREAS the City of Tacoma, Department of Public Utilities ("TPU"), will be  
22 replacing water mains in the vicinity of North Vassault to North Visscher Streets,  
23 from North 49th to North 51st Streets ("Project"), and

24 WHEREAS the condition of existing wastewater pipes at the Project location  
25 necessitates replacement using traditional excavation methods, and  
26



WHEREAS the Project will provide an opportunity for the City's  
1 Environmental Services Department ("Environmental Services") to partner with TPU  
2 to remove and replace the wastewater pipes at the same time the water pipes are  
3 being replaced, and  
4

5 WHEREAS combining this work under a single contract will reduce  
6 construction impacts and overall costs while improving Project delivery, and  
7

8 WHEREAS Environmental Services and TPU staff collaborated during  
9 design of the contract to include the wastewater replacement work and have agreed  
10 to share the cost for components of work that are common to the wastewater and  
11 water pipes, with components for work that are unique to each pipe to be borne by  
12 the respective utility, and  
13

14 WHEREAS, TPU will monitor and administer the contract as the lead  
15 department with support, as needed, from Environmental Services, and  
16

17 WHEREAS Environmental Services' portion of the Project cost is  
18 \$1,577,056.56, excluding sales tax, plus a 10 percent contingency, for a cumulative  
19 amount of \$1,734,762.22, budgeted in ES Wastewater Fund 4300; and TPU's  
20 portion of the Project Costs is \$983,901.44, excluding sales tax, budgeted from  
21 Tacoma Water Bond Fund 4600, and  
22

23 WHEREAS the Public Utility Board authorized approval of the contact at its  
24 meeting of July 24, 2013; Now, Therefore;  
25

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

That the Environmental Services Department of the City is hereby authorized  
to participate in a Department of Public Utilities contract with Titan Earthwork, LLC,



1 in the amount of \$1,577,056.56, excluding sales tax, plus a 10 percent contingency,  
2 for a cumulative amount of \$1,734,762.22, for replacement of underground  
3 wastewater pipes in the vicinity of North Vassault to North Visscher Streets, from  
4 North 49th Street to North 51st Street, said document to be substantially in the form  
5 of the document on file in the office of the City Clerk.

6 Adopted \_\_\_\_\_  
7

8 \_\_\_\_\_  
9 Mayor

10 Attest:  
11

12 \_\_\_\_\_  
13 City Clerk

14 Approved as to form:  
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17 Deputy City Attorney  
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## RESOLUTION NO. 38718

1 A RESOLUTION relating to surplus property; declaring certain real property  
2 owned by the City, located at 1110, 1114, 1120, and 1124 Martin Luther  
3 King Jr. Way, to be surplus; authorizing approval of Purchase and Sale  
4 Agreements with Kellogg Sicker Pochert LLC, for property located at  
5 1110 and 1114 Martin Luther King Jr. Way; and with the Tacoma Housing  
6 Authority, for property located at 1120 and 1124 Martin Luther King Jr.  
7 Way, for the purpose of constructing apartments, ground floor office/retail  
8 and parking.

9 WHEREAS that certain real property located at 1110, 1114, 1120, and 1124  
10 Martin Luther King Jr. Way ("Property"), acquired by the City in 2005 after a history  
11 of nuisance and code violations, is surplus to the City's needs, and  
12

13 WHEREAS the Property site, located on a key block in the core of the Hilltop  
14 business district, consists of four parcels, three with existing buildings and one used  
15 for surface parking, and is approximately one-half acre in size, and  
16

17 WHEREAS two of the three existing buildings were recently approved for  
18 inclusion into the Tacoma Register of Historic Places, and  
19

20 WHEREAS the City intends to sell said Property, identified as Tier 1 property  
21 pursuant to the City's Policy for the *Sale/Disposition of City-owned General*  
22 *Government Real Property*, for the purpose of constructing apartments, ground  
23 floor office/retail, and parking, and  
24

25 WHEREAS the City received a joint proposal from the Tacoma Housing  
26 Authority and Kellogg Sicker Pochert LLC, represented by Kevin Grossman (the  
"Parties"), to provide for high-quality market rate and subsidized housing with  
commercial/retail uses on the ground floor, and



WHEREAS the project will preserve two historic buildings and redevelop the remaining two parcels as new construction in a manner that benefits the community by providing 40-50 units of mixed-income, affordable housing, targeting households earning 30-80 percent of area median income, developed in a way that will be aesthetically consistent with neighboring development, and

WHEREAS the Parties will coordinate on project design compatibility, parking solutions, and occupancy/use, and have conducted significant public outreach to key stakeholder groups in the neighborhood, with letters of support received from all groups, and

WHEREAS, there being no foreseeable need for continued City ownership of the Property, a declaration of surplus and negotiated disposition now appear to be in the best interests of the City, pending final approval from the City Council; Now, Therefore,

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

Section 1. That the City-owned property located at 1110, 1114, 1120, and 1124 Martin Luther King Jr. Way is not essential to the needs of the City and is hereby declared surplus property pursuant to RCW 35.22.020 and Article I, Section 1.2, and Article IX of the Tacoma City Charter.

Section 2. That the proper officers of the City are hereby authorized to enter into a Purchase and Sale Agreement and accompanying Declaration of Covenants and Conditions with Kellogg Sicker Pochert LLC, in the amount of \$100,000, in accordance with the appraisal dated May 23, 2013, for the real property located at 1110 and 1114 Martin Luther King Jr. Way, for the purpose of constructing



1 apartments, ground floor office/retail, and parking, said document to be  
2 substantially in the form of the agreement on file in the office of the City Clerk.

3 Section 3. That the proper officers of the City are hereby authorized to enter  
4 into a Purchase and Sale Agreement and accompanying Declaration of Covenants  
5 and Conditions with Tacoma Housing Authority for conveyance of the real property  
6 located at 1120 and 1124 Martin Luther King Jr. Way, for the purpose of  
7 constructing apartments, ground floor office/retail and parking, said document to be  
8 substantially in the form of the agreement on file in the office of the City Clerk.  
9  
10

11 Adopted \_\_\_\_\_  
12

13 \_\_\_\_\_  
Mayor

14 Attest:  
15

16 \_\_\_\_\_  
City Clerk

17 Approved as to form:  
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Deputy City Attorney  
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## ORDINANCE NO. 28163

1 AN ORDINANCE granting a non-exclusive franchise to Electric Lightwave, LLC, a  
2 Delaware limited liability company, to construct, operate, and repair a  
3 telecommunications system throughout the City of Tacoma; setting forth  
4 provisions, terms and conditions of the grant of franchise; specifically  
5 making such grant subject to the provisions of Title 16B and Title 10 of the  
6 Tacoma Municipal Code, as well as the Tacoma City Charter; providing for  
7 City regulation of the Telecommunications System; prescribing liquidated  
8 damages and certain other remedies for violation of franchise provisions in  
9 addition to those specified pursuant to the Municipal Code and the City of  
10 Tacoma Charter.

11 WHEREAS Electric Lightwave, LLC, a Delaware limited liability company  
12 and wholly-owned subsidiary of Integra Telecom Holdings, Inc. ("ELI"), is a  
13 telecommunications company currently involved in the business of operating a  
14 telecommunications network utilizing fiber optic technology, and

15 WHEREAS, as part of such network, ELI currently operates a system of  
16 fiber optic cable, a portion of which passes through the City as a result of Integra's  
17 predecessors in interest, Electric Lightwave, Inc. and Advanced Telecom, Inc.,  
18 having been previously granted non-exclusive franchises for the use of City rights-  
19 of-way in 1997 pursuant to City Ordinance Nos. 26094 and 26402 (the "Prior  
20 Franchises"), and

21 WHEREAS the Prior Franchises have expired by their terms, but have been  
22 in extended holdover status pursuant to a Tolling (Letter) Agreement, and

23 WHEREAS ELI has applied to the City to succeed to the rights and  
24 obligations held under the Prior Franchises to install and operate fiber optic cable  
25 within the City streets and public rights-of-way, and  
26



WHEREAS, the City Council has determined to grant such a franchise to  
ELI upon those certain terms and conditions which the City Council deems  
necessary due to the unique nature of fiber optic cable, and

WHEREAS this City of Tacoma Telecommunications Franchise Ordinance  
contains the following sections:

#### SECTION 1. DEFINITIONS

1.1	City .....	4
1.2	City Manager .....	4
1.3	Communications facility .....	4
1.4	Communications system .....	4
1.5	Construction, operation, or repair .....	4
1.6	Customer .....	5
1.7	Facilities or Installations .....	5
1.8	Franchise .....	5
1.9	Franchise area .....	5
1.10	Franchisee .....	5
1.11	Gross receipts .....	5
1.12	Operator .....	6
1.13	Overhead facilities .....	6
1.14	Person .....	6
1.15	Public rights-of-way .....	6
1.16	System .....	7
1.17	Telecommunications .....	7
1.18	Telecommunications system .....	7
1.19	Telephone service .....	8
1.20	Title .....	8
1.21	Underground facilities .....	8

#### SECTION 2. FRANCHISE

2.1	Grant of Franchise .....	9
2.2	Franchise Term .....	10
2.3	Franchise Non-exclusive .....	10
2.4	Transfers, Generally .....	10
2.5	Change in Control-Notice and Affiliate Exception .....	12
2.6	Revocation .....	12
2.7	Continuity of Service and Right to Purchase the System ...	15
2.8	Right to Require Removal of Property/Right to Remove Property .....	19
2.9	Customers' Right to Obtain Service .....	21
2.10	Responsibility for Costs .....	21





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BE IT ORDAINED BY THE CITY OF TACOMA:

1       Section 1. DEFINITIONS. For the purposes of this Franchise, the following  
2 terms, phrases, words, and their derivations shall have the meaning given herein;  
3 words not defined herein which are defined in Title 16B shall have the same  
4 meaning or be interpreted as provided in Title 16B. Words not defined here or in  
5 Title 16B shall be construed consistently with Title 47 of the United States Code,  
6 and if not therein, they shall have their common and ordinary meaning. A  
7 reference to Title 16B or to the City's Charter refers to the same as may be  
8 amended from time to time.  
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11       1.1 "City" means the City of Tacoma, a municipal corporation of the state  
12 of Washington, and all departments, divisions, and agencies thereof, including  
13 Tacoma Public Utilities.

14       1.2 "City Manager" means the City Manager or the City Manager's  
15 designee.  
16

17       1.3 "Communications facility" means a device which, along or as part of  
18 an aggregation of devices, is capable of transmitting signals from place to place.

19       1.4 "Communications system" refers to a telecommunications system.

20       1.5 "Construction, operation, or repair" and similar formulations of this  
21 term mean the named actions interpreted broadly, encompassing, among other  
22 things, installation, extension, maintenance, replacement, or components,  
23 relocation, undergrounding, grading, site preparation, adjusting, testing, make-  
24 ready, and excavation.  
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26



1.6 "Customer" means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by Franchisee or its affiliates on the Telecommunications System.

1.7 "Facilities" or "Installations" are and refer to and include, but are not limited to, plants, systems, improvements, and equipment owned, leased, or otherwise used by the Franchisee, such as poles, fiber, wires, fixtures, equipment, underground circuits, and conduit in public rights-of-way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located.

1.8 "Franchise" means the rights granted by this Franchise and conditioned as set forth herein, and under the Tacoma Municipal Code and the City Charter.

1.9 "Franchise Area" means that area within the present and future corporate limits of Tacoma.

1.10 "Franchisee" is ELI, a Delaware limited liability company, with its home office at 1201 N.E. Lloyd Blvd., Suite 500, Portland, Oregon 97232, Telephone, (503) 453-8000. Franchisee is a subsidiary of Integra Telecom Holdings, Inc., an Oregon corporation, whose home office is located at 1201 N.E. Lloyd Blvd., Suite 500, Portland, Oregon 97232, Telephone, (503) 453-8000.

1.11 "Gross Receipts," as referenced in Article VIII of the City Charter, or "Gross Revenue," as referenced in Title 16 of the Tacoma Municipal Code, means any and all revenue received directly or indirectly by Franchisee that is derived from the operation of its System. Gross Receipts/Revenues shall include, by way



of example and not limitation, revenues from its Telecommunications Service, all fees, late fees, installation and connection fees, upgrade and downgrade fees, and rental fees. The term Gross Receipts/Revenues shall not include any taxes on Services furnished by Franchisee imposed by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit, nor shall the term include any wholesale services provided by Franchisee upon which fees or taxes have already been levied within the City of Tacoma.

1.12 "Operator," when used with reference to a system, refers to a Person (a) who provides service over a Communications System and directly or through one or more affiliates owns a significant interest in such facility; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility. A Person that operates under agreement of a Telecommunications System or a specific portion of a Telecommunications System to provide Telecommunications Services shall be treated as an Operator for purposes of this Franchise.

1.13 "Overhead Facilities" refers to electric utility and Communications Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.

1.14 "Person" includes any individual corporation, partnership, association, joint stock company, trust, or any other legal entity, but not the City for purposes hereof.

1.15 "Public Rights-of-Way" mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and



1 applicable laws, the City has authority to grant Franchises, permits, or Licenses for  
2 use thereof or has regulatory authority thereover, but expressly excluding railroad  
3 rights-of-way, airport, and harbor areas. Public Rights-of-Way, for the purpose of  
4 this Franchise, do not include buildings, parks, poles, conduits, or similar facilities  
5 or property owned by or leased to the City, including, by way of example and not  
6 limitation, structures in the Public Rights-of-Way such as utility poles and light  
7 poles.

8 1.16 "System" means the Telecommunications System.

9 1.17 "Telecommunications Service" or "Service" means the transmission  
10 for hire of information in electronic or optical form, including, but not limited to,  
11 voice, video, or data, whether or not the transmission medium is owned by the  
12 provider itself. Telecommunications Service includes Telephone Service, but does  
13 not include Cable Service or over-the-air broadcasts to the public-at-large from  
14 facilities licensed by the Federal Communications Commission or any successor  
15 thereto.  
16

17 1.18 "Telecommunications System" or "Telecommunications Facility"  
18 means a tangible facility that is used to provide one or more Telecommunications  
19 Services, any portion of which occupies Public Right-of-Way. The term  
20 Telecommunications System, by way of example and not limitation, includes wires,  
21 equipment cabinets, guys, conduit, radio transmitting towers, poles, other  
22 supporting structures, and associated and appurtenant facilities used to transmit  
23 telecommunications signals. The term Telecommunications System includes all  
24 devices mounted on light poles in the Public Rights-of-Way through which  
25  
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Telecommunications Services are originated or terminated. An Open Video System is not a Telecommunications System to the extent that it provides only video services; a Cable System is not a Telecommunications System to the extent that it provides only Cable Service. The term Telecommunications Facility includes any of the tangible components of a Telecommunications System which occupies Public Rights-of-Way.

1.19. "Telephone Service" means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone service, or providing telephonic, video, data, or similar communication or transmission for hire via a local telephone network, toll line, channel, cable, microwave, or similar communication or transmission system. Telephone Service includes intrastate or interstate service, including toll service, originating from, or received on, communications equipment or apparatus in this State if the charge for the service is billed to a person in this State. Telephone Service does not include the providing of Competitive telephone service as defined in Tacoma Municipal Code 6A.40.030, the providing of cable television service, or the providing of broadcast services by radio or television stations.

1.20 "Title," when used in the context of referring to this Title of the Tacoma Municipal Code, shall mean Title 16 (and more specifically Title 16B) of the Tacoma Municipal Code.

1.21 "Underground Facilities" refers to electric utility and Communications Facilities located under the surface of the ground, excluding the underground foundations or supports for Overhead Facilities.



## Section 2. FRANCHISE.

1           2.1   Grant of Franchise. The City hereby grants to Franchisee a  
2 non-exclusive Franchise which, once it becomes effective, shall authorize  
3 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to  
4 construct, repair, and operate an underground fiber optic Telecommunication  
5 System to provide Telecommunication Service.  
6

7           Such grant is subject to and must be exercised in strict accordance with and  
8 subject to this Franchise Agreement, Title 16B, and other applicable provisions of  
9 the Tacoma Municipal Code and the Tacoma City Charter, including, but not  
10 limited to, the provisions set forth in Article VIII of the Charter, and this Franchise  
11 may be revoked if it is not so exercised. The exercise of any rights pursuant to this  
12 Franchise is subject to the exercise of the City's police powers and other regulatory  
13 powers as the City may have or obtain in the future, and all rights granted herein  
14 must be exercised in strict accordance with applicable law, including, by way of  
15 example and not limitation, zoning codes and permitting requirements. No rights  
16 shall pass to the Franchisee by implication. This Franchise shall constitute both a  
17 right and an obligation to provide the services of the Telecommunications System  
18 as required by the provisions of this Franchise.  
19  
20

21           The grant of this Franchise is limited to the purpose of Franchisee providing  
22 Telecommunications Service. This Franchise does not include permission to  
23 provide cable service, as defined in 47 U.S.C. § 522, multichannel video  
24 programming, open video systems, or uses other than Telecommunications  
25 Service.  
26



Notwithstanding the above grant to use Public Rights-of-Way, no Public Rights-of-Way shall be used by Franchisee if the City, in its sole opinion, determines that such use is inconsistent with the terms, conditions, or provisions by which such Public Rights-of-Way were created or dedicated, or presently used under applicable laws.

In the event of any conflict between a provision in this Franchise and any provision of the City Charter, which Charter is incorporated herein by reference, the applicable provision of the City Charter shall control over any inconsistent provision of this Franchise.

2.2 Franchise Term. The term of the Franchise shall be ten years unless terminated sooner in accordance with this Franchise, Title 16B, or the City Charter.

2.3 Franchise Non-Exclusive. The Franchise granted herein shall be non-exclusive.

2.4 Transfers, Generally.

A. Every Transfer shall be subject to the prior written approval of the City except as provided herein. A Transfer is any transaction in which: (1) all or a portion of the Telecommunications System is sold or assigned; (2) there is any change, acquisition, or direct or indirect transfer of control of the Franchisee; or (3) the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party. The term "control" in subsection (2) above refers to actual working control, in whatever manner exercised. It will be presumed that a change in working control within the meaning of subsection (2) has occurred in any case





where there is a change in voting interest of 30 percent or more; or a change in voting interest that results in a Person obtaining a 50 percent or greater interest in Franchisee; or a change in voting interest that results in a Person that held 50 percent or greater interest reducing their interest to below 50 percent. A Transfer without the prior written approval of the City is a substantial violation of this Franchise and shall make the Franchise subject to termination by the City as provided herein and in Title 16B.

B. Applications for approval of any Transfer shall be filed in accordance with procedures set out in Title 16B of the Tacoma Municipal Code.

C. Franchisee shall, within 60 days of the closing date of any Transfer, file with the City Clerk a copy of the deed, agreement, contract, mortgage, lease, or other written instrument evidencing such sale, lease, contractual agreement, mortgage, assignment or Transfer, certified and sworn to as correct by Franchisee. Every such Transfer, whether voluntary or involuntary, may be deemed void and of no effect by the City unless Franchisee files the required copy within the 60-day period.

D. The requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Telecommunications System franchised hereunder, provided that no such security shall purport to attach the City's real property interest in the Public Right-of-Way. In addition, no such arrangement may be made if it would in any respect, under any condition, prevent the Operator or any successor from complying with the Franchise and applicable



law, nor may any such arrangement permit a third party to succeed to the interest of the Operator, or to own or control the Telecommunications System, without the prior consent of the City. Any mortgage, pledge, or lease shall be subject to and subordinate to the rights of the City under this Franchise and other applicable law.

2.5 Change in Control - Notice and Affiliate Exception. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by any other Person of an ownership interest in Franchisee that results in a change in control of Franchisee within the meaning of Section 2.4.A. However, if the proposed change in control merely results in a Transfer of control from Franchisee to another entity that is 100 percent owned by a direct parent of Franchisee, and such parent provided an unconditional guaranty of performance of the Transferee Affiliate at the time the Franchise was issued, then such Transfer shall not require the prior approval of the City so long as all the conditions on affiliate Transfers set forth in Title 16B are satisfied (including, without limitation, the notice requirements).

2.6 Revocation. In addition to any rights set out elsewhere in this Franchise, the City Charter or Title 16, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, as provided in Title 16(B) or in the event that:

A. Franchisee is in substantial non-compliance with this Franchise; or

B. Franchisee is found to have engaged in any actual or attempted fraud or deceit upon the City, Persons or Customers; or



C. Franchisee fails to obtain and maintain any permit required by any federal or state regulatory body or by the City, relating to the construction, repair and operation of the System; or

D. At any time during the term of the Franchise, Franchisee fails to provide and maintain all of the securities required under this Franchise, including, but not limited to, the performance bond and letter of credit; fails to maintain the insurance required by this Franchise; or fails to satisfy the indemnity set out in this Franchise; or if Franchisee's guarantor revokes its guarantee or fails to satisfy or becomes unable to satisfy its obligations thereunder.

E. The procedures for revocation and forfeiture shall be governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee shall be given notice and opportunity to cure at least equivalent to that required by Title 16B as of the effective date of this Franchise (except in those cases where notice and opportunity to cure are not required), and shall be accorded at least an opportunity to be heard that provides at least the due process protections required by Title 16B as of the effective date of this Franchise, which opportunities and protections are set out in Section 2.6.F below.

F. (1) Where, after notice and providing the Franchisee an opportunity to be heard (if such opportunity is timely requested by a Franchisee), the City finds that there has been an act or omission that would justify revocation of the Franchise, the City may make an appropriate reduction in the remaining term of the Franchise or revoke the Franchise. However, the Franchise may only be revoked if the Franchisee (a) was given written notice of the default; and



(b) 30 days to cure the default; and (c) the Franchisee failed to cure the default, or to propose a schedule for curing the default acceptable to the City where it is impossible to cure the default in 30 days. The required written notice may be given before the City conducts the proceeding required by this paragraph. No opportunity to cure is required for repeated violations, and fraud shall be deemed incurable.

(2) Notwithstanding the foregoing, the City may declare a Franchise forfeited without opportunity to cure when the Franchisee: (a) stops providing service it is required to provide in the Franchise; (b) transfers without the prior consent of the City as required in the Franchise; (c) fails to pay any Franchise application fees owed hereunder; or (d) defrauds or attempts to defraud the City or Franchisee's customers. However, Franchisee shall have the right to receive 30 days' prior notice of an intent to declare a Franchise forfeited, and shall have the opportunity to show cause why the Franchise should not be forfeited.

(3) Notwithstanding the foregoing, the Franchise will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of the Franchisee, whether in a receivership, reorganization, bankruptcy assignment for the benefit of creditors, or other action or proceeding. However, the Franchise may be reinstated within that 120-day period, if: (a) such assignment, receivership, or trusteeship has been vacated; or (b) such assignee, receiver, or trustee has fully complied with the terms and conditions of Title 16B and this Franchise and has executed an agreement, approved by any court having jurisdiction, assuming and agreeing to be bound by the terms and conditions of



1 Title 16B and this Franchise. However, in the event of foreclosure or other judicial  
2 sale of any of the facilities, equipment, or property of a Franchisee, the City may  
3 revoke this Franchise following a public hearing before the City Council, by serving  
4 notice upon the Franchisee and the successful bidder at the sale, in which event  
5 the Franchise and all rights and privileges of this Franchise will be revoked and will  
6 terminate 30 calendar days after serving such notice, unless: (a) the City has  
7 approved the Transfer of the Franchise to the successful bidder; and (b) the  
8 successful bidder has covenanted and agreed with the City to assume and be  
9 bound by the terms and conditions of this Franchise and Title 16B.  
10

11 2.7 Continuity of Service and Right to Purchase the System.

12 A. In the event the City has declared a forfeiture for cause or  
13 otherwise validly revoked this Franchise as provided herein, or in the event of  
14 expiration of the initial term of this Franchise without this Franchise being renewed  
15 or extended (referred to below collectively as a "termination"), Franchisee shall, at  
16 the direction of the City expressed by ordinance, continue its operations for such  
17 reasonable period (the "Continuation Period") as the City may determine is  
18 necessary to permit transition to another provider, which period may be established  
19 taking into account any appeal of the termination. During such Continuation Period,  
20 Franchisee shall continue to be bound by all its obligations under this Franchise  
21 and Title 16B. Additionally, during this Continuation Period, Franchisee shall not  
22 Transfer any portion of its Telecommunications System to any other Person,  
23 including parts of the System rented, leased, or lease-purchased; or significantly  
24 alter the Telecommunications System or remove property from the City, or  
25  
26



otherwise encumber the Telecommunications System in any manner, without prior written consent of the City. The Franchisee's obligations to remove its facilities under Title 16B, Section 16B.03.090, shall be deferred for the Continuation Period. Within 30 days of the date the City passes the ordinance requiring continuation of service, or 30 days after the effective date of the termination, whichever is earlier, Franchisee shall provide the City with an inventory of all its property in the Public Rights-of-Way of the City.

B. The City shall have an option to purchase the Telecommunications System at fair market value (determined on the basis of the value of the Telecommunications System as part of a going concern) upon termination of the Franchise, whether termination is or is not for cause. This option requires Franchisee to convey the Telecommunications System or such portion thereof as the City may choose to purchase free and clear of any monetary or other unreasonable encumbrances, along with (1) all equipment, Facilities, tools, vehicles and real/personal property interests necessary for the Telecommunications System's operation, free and clear of any encumbrances; (2) Customer lists and billing records; (3) all repair records, maps, and equipment and Facilities records (including records identifying equipment that is being used in the field, warranties with respect to such equipment, and the like); (4) and such other properties, contract rights or intangibles as may be normally conveyed in order to permit a buyer to take over and continue the operations of a seller with minimal disruption to Customers; provided, that nothing herein shall require the City to accept or pay for any contract that it does not wish to assume. This option also requires Franchisee



to sell the Telecommunications System, or such portion thereof as the City may choose to purchase at an equitable price, if the Franchise is terminated for cause. If Franchisee's request for a Franchise renewal is denied, the option requires Franchisee to sell the Telecommunications System, or such portion thereof as the City may choose to purchase, at fair market value, determined on the basis of the value of the Telecommunications System as part of a going concern (taking into account such property used and useful in providing service within the City that is not to be conveyed) and with no value allocated to the Franchise itself.

C. The City may exercise its Section 2.7.B option rights in the following manner: the City will have up to 180 days after receiving the inventory required by Section 2.7.A to notify Franchisee that it intends to exercise its right to purchase the Telecommunications System or a portion of the Telecommunications System. Within 90 days of the date the City notifies Franchisee of its intent to exercise the option, or by such other time as the parties may separately agree, the parties shall meet to establish a price that comports with the requirements of Section 2.7.B. If the parties are unable to agree on a price within 180 days after the City notifies Franchisee that the City intends to exercise its purchase option, either party may require the price to be set by appraisal by sending the other party notice that it wishes to have the price set by appraisal. Within 45 days of the date that notice is submitted, each party may appoint one appraiser. If each party appoints an appraiser, the two appraisers shall appoint a third appraiser. If only a single appraiser is appointed (whether by mutual agreement or because of the failure of a party to timely nominate an appraiser) that appraiser shall be the sole



appraiser. The appraiser or appraisers shall establish a price for the System or portion thereof that the City desires to purchase in accordance with Section 2.7.B.

This appraisal determination shall be final and non-appealable. The City shall have 120 days after the decision of the appraisers to notify Franchisee that it wishes to conclude the transaction; if it does not so notify the Franchisee, the option shall be deemed terminated.

If the City gives the notice required by the preceding paragraph, the parties will thereafter promptly sign all necessary documents required to close the transaction; provided, however, that the City may make conclusion of the transaction conditional upon any necessary voter approval of any bond funding for acquisition of all or a part of the System and, if applicable, the successful sale of the bonds.

The City will bear the costs associated with any appraiser that it separately appoints or jointly appoints with the Franchisee; the Franchisee will bear costs associated with any appraiser that it separately appoints.

D. (1) Nothing in this section or in any other section of this Franchise shall prevent the City's exercise of its rights under the Tacoma City Charter or the Franchisee's right to contest the same. Included within the rights granted under Tacoma's Charter is the right to purchase or condemn Franchisee's property within the Franchised Area at any time, which right is expressly set out in Section 8.1(c) of the City Charter, as follows:





To acquire by purchase or condemnation, for the use of the City itself or its inhabitants, all of the property of the grantee within the public streets, alleys, or places at a fair and just value, which shall not include any valuation of the franchise, right, or privilege, which shall thereupon be terminated.

(2) Likewise, nothing in this section or in any other section of this Franchise shall be read to limit the City's right to acquire the Telecommunications System through exercise of any right of eminent domain under state law or Franchisee's right to contest the same.

(3) Nothing in this section shall be read to limit the City's right to acquire the Telecommunications System as a result of abandonment.

E. In the event the City purchases, acquires, takes over, or holds all or parts of the System, the City shall have the right, without limitation, to assign, sell, lease, or otherwise transfer its interest in all or parts of the System to any other Person or entity, including any other Franchisee of a Telecommunications System, on whatever terms the City deems appropriate.

## 2.8 Right to Require Removal of Property/Right to Remove Property.

A. Upon termination of this Franchise, Franchisee may be required to remove its property from any Public Rights-of-Way and restore such Rights-of-Way to their same or better condition as existed just prior to such removal, subject to any rights Franchisee may have to abandon property in place, as set out in Title 16B. If Franchisee fails to remove property that the City requires it to remove, the City may perform the work and collect the cost thereof from Franchisee. The actual cost thereof, including direct and indirect administrative



costs, shall be a lien upon all plant and property of Franchisee effective upon filing of the lien with the Pierce County Auditor.

B. To the extent any portion of the System in the Public Rights-of-Way or on any other public property is not removed by the Operator within 12 months of the later of the end of the Franchise term or any Continuation Period, the property will be deemed abandoned and shall become the property of the City if the City wishes to own it.

C. Any order by the City issued pursuant to Section 2.8.A to remove Installations shall be sent by registered or certified mail to Franchisee not later than 24 months following the date of Franchise termination. Removal shall be completed (except with respect to property that Franchisee is permitted or required to abandon in place) not later than 12 months following the date of notification to remove the Facilities.

D. Franchisee shall file a written removal plan with the City not later than 30 calendar days following the date of the receipt of any orders directing removal, or any consent to removal describing the work that will be performed, the manner it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City, including, without limitation, the City's Right-of-Way Restoration Policy. The affected property must be restored to as good or better condition than existed immediately prior to removal.

E. The purchase option provided for in Section 2.7 does not affect the City's authority to require Franchisee to remove its Telecommunications System upon Franchise termination, as provided in this section and Title 16B, nor



does it affect the City's right to assume ownership of any portion of the Telecommunications System that is abandoned. Within 60 days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances.

2.9 INTENTIONALLY OMITTED.

2.10 Responsibility for Costs. Except as expressly provided otherwise, any act that Franchisee is required to perform under this Franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Franchisee. The Franchisee shall pay the amounts billed within 30 days of receipt of the bill. The parties agree that any amounts paid pursuant to this section or Title 16B are not franchise fees.

2.11 Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and Title 16B, and other applicable law, including, without limitation, the City's Right-of-Way Restoration Policy, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors, or other Persons performing work on Franchisee's behalf are familiar with the requirements of this Franchise, Title 16B, the City's Right-of-Way



Restoration Policy, and other applicable laws governing the work performed by them.

2.12 Survival of Terms. Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the purpose of providing Telecommunications Service. However, Franchisee's obligations to the City (other than the obligation to provide service to Customers) survive the expiration of these rights according to their terms. By way of illustration and not limitation, Sections 2.7, 2.8, 2.10, and 4 of this Franchise shall continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to the extent that a City-approved Transfer, sale, or assignment of the Telecommunications System is completed and another entity has assumed full and complete responsibility for the Telecommunications System or for the relevant acts or omissions.

### SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY.

3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of this Franchise and Title 16B, the City's Right-of-Way Restoration Policy, and other applicable laws, construct, operate and maintain an underground fiber optic Telecommunications System in Public Rights-of-Way within the Franchise Area to provide Telecommunications Services. Without limiting the foregoing, Franchisee expressly agrees that it will construct, operate, and maintain its System in compliance with the requirements of Title 16B, including those governing the placement of its Telecommunications System, and with other applicable City



codes; and will obtain and maintain all bonds and billable work orders required by the same.

3.2 Construction, Operation, or Repair. Franchisee shall, in all cases, comply with all lawful City ordinances and regulations now in effect or hereinafter enacted regarding the acquisition of permits and such other items as may be required by the City in connection with the construction, operation, or repair of the Telecommunications System, including, without limitation, the City's Right-of-Way Restoration Policy.

Without limiting the foregoing, Franchisee agrees that it shall, in the course of constructing, operating, and maintaining its Telecommunications System, comply with the requirements of Title 16B and among other things:

A. (1) Franchisee shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation, or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned Communications System, public work, public project, public facility, or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Telecommunications System. Collectively, such matters are referred to below as the "public work."



(2) In the event of an emergency, or where the Telecommunications System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System without prior notice, and charge the Franchisee for costs incurred.

(3) In the case of non-public work, if any Person that is authorized to place Facilities in the Rights-of-Way requests Franchisee to protect, support, temporarily disconnect, remove, or relocate Franchisee's facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after 30 days' advance written notice, take action to effect the necessary changes requested. In the case of non-public work or non-public projects, unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Franchisee's Telecommunications System was not properly installed, the reasonable cost of the same shall be borne by the Person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action. Unless otherwise directed by the City for reasons of safety, health, public welfare, or project scheduling involving related public work, Franchisee shall be entitled to forego any action required by this subsection until receipt from the Person requesting such action of compensation in an amount equal to or greater than the estimated amount of Franchisee's costs for such action.

(4) Franchisee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its



wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same.

B. The Franchisee's obligation to construct, operate, and repair its Telecommunications System in compliance with all laws, ordinances, departmental rules and regulations and practices affecting such System, includes, by way of example and not limitation, the obligation to construct, operate, and repair in accordance with zoning codes, safety codes, and City construction standards, including the most current version of the Standard Specifications for Road, Bridge and Municipal Construction, as prepared by the Washington State Department of Transportation ("WSDOT") and the Washington State Chapter of American Public Works Association ("APWA"); the most current version of the APWA Amendments to Division One, and the most current version of the City of Tacoma Amendments thereto. In addition, the construction, operation of the Facilities in the Public Rights-of-Way, and repair of the same shall be performed in a manner consistent with industry standards. The Franchisee shall exercise reasonable care in the performance of all its activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property. In the event that Franchisee's work or other use of the Public Right-of-Way causes damage to any City facility, Franchisee shall bear the cost of repairing, or replacing as necessary, such City facility.



C. Franchisee's construction, operation, or repair of its

1 Telecommunications System shall not commence until all required permits have  
2 been properly filed for and obtained from the proper City officials and all required  
3 permits and associated fees paid. In any permit so issued, the City may impose, as  
4 a condition of the granting of the permit, such conditions and regulations as may be  
5 necessary to the management of the Public Rights-of-Way, including, by way of  
6 example and not limitation, for the purpose of protecting any structures in the Public  
7 Rights-of-Way, maintaining proper distance from other utilities, for the proper  
8 restoration of such Public Rights-of-Way and structures, and for the protection of  
9 the City and the public and the continuity of pedestrian and vehicular traffic.  
10  
11

12 D. Franchisee must follow City-established requirements for  
13 placement of Facilities in Public Rights-of-Way, including the specific location of  
14 Facilities in the Public Rights-of-Way, and must in any event install Facilities in a  
15 manner that minimizes interference with the use of the Public Rights-of-Way by  
16 others, including others that may be installing Communications Facilities. The City  
17 may require that Facilities be installed at a particular time, at a specific place, or in  
18 a particular manner as a condition of access to a particular Public Right-of-Way  
19 area; may deny access if Franchisee is not willing to comply with the City's  
20 requirements; and may remove, or require removal of, any Facility that is not  
21 installed in compliance with the requirements established by the City, or which is  
22 installed without prior City approval of the time, place, or manner of installation and  
23 charge the Franchisee for all the costs associated with removal; and may require  
24  
25  
26





Franchisee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

E. Franchisee agrees that, as a condition of a permit for installation of conduit, the City may require it to install conduit in excess of its reasonably foreseeable requirements for the purpose of accommodating the City and/or other Franchisees and Licensees where the City Manager determines it is appropriate to do so to minimize disruption of public passage or infrastructure, to forestall or relieve exhaustion of Right-of-Way capacity, or to protect environmentally sensitive areas. Franchisee shall be reimbursed by the City for the additional cost of installing such excess conduit.

F. To the extent possible, Franchisee shall use conduit existing at the time of permitting in installing its System.

G. Whenever all existing utilities are located underground in an area in the City, the Franchisee must also locate its Telecommunication System underground, including Telecommunication System Facilities, such as drops, which cross private property.

1. Whenever the owners of poles locate or relocate underground within an area of the City, the Franchisee shall concurrently relocate its Facilities underground.

2. Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities, and as required by the City, the Franchisee shall concurrently relocate its Facilities underground and, if it uses the same trench, share the cost of such relocation with all Persons in the same trench



pro-rated by the number of Persons so undergrounding and the volume of space each occupies in the trench.

3. The City Manager may, for good cause shown, exempt a particular portion of the Telecommunication System from the obligation to locate or relocate Facilities underground, where relocation is impractical, or where the interest in protecting against visual blight can be protected in another manner. Nothing in this Section 3.2.G prevents the City from ordering the Franchisee to locate or relocate its Telecommunication System underground under other provisions of the Tacoma Municipal Code, it being the intent that the number and extent of Overhead Facilities and the visual pollution resulting therefrom will, over time, be reduced and eventually, to the extent feasible, be eliminated.

H. The Franchisee shall participate in conversion to underground Local Improvement Districts ("LIDs"). The Franchisee, at no cost to the City, shall share fairly with other utilities the cost of undergrounding when done through the LID process. No cost sharing shall be required of abutting property owners unless the LID was initiated at the request of the abutting property owners.

1. As part of its obligations under the Tacoma Municipal Code, the Franchisee shall provide the preliminary cost estimate, facility conversion designs, and final cost estimates to any LID project coordinator in a timely manner. At the request of an LID project coordinator, the Franchisee shall perform underground construction and movement of Customer connections underground (overhead reclaim) in coordination with the undergrounding services



provided by other LID utilities, at no cost to the City or abutting property owners unless the LID was initiated at the request of the abutting property owners.

I. Franchisee shall promptly repair any and all Public Rights-of-Way, public property, or private property that is disturbed or damaged during the construction, operation, or repair of its Telecommunications System. Public property and Public Rights-of-Way must be restored in conformance with the City's Right-of-Way Restoration Policy.

J. No tree trimming shall be performed without the permission of the City and other affected authorities, and any tree trimming must be performed in strict accordance with the City Code. Even if tree trimming is authorized by the City, Franchisee is liable for any damage it causes during the course of tree trimming.

K. In any dispute over the adequacy of a restoration relative to this section, the Tacoma Department of Public Works Director shall in his/her sole discretion, make the final determination.

L. Franchisee shall not remove any underground Facilities except as hereinafter provided.

(1) Franchisee shall not remove any underground Facilities which require trenching or other opening of the Rights-of-Way along the extension of the Facilities to be removed without the express permission of the City. Franchisee must request permission from the City to remove the Facilities at least 30 days in advance of the date Franchisee proposes to begin removal.



(2) Franchisee shall remove such underground Facilities as the City orders it to remove; provided, that the City may not order removal where such removal is primarily to give economic benefit or advantage to a competing provider of Telecommunications Service.

(3) Where trenching or other opening of the Rights-of-Way along the extension of Facilities to be removed is required, Franchisee must post bonds as the City may require to ensure that the property is promptly removed, with minimum disruption. Franchisee must restore the affected property in conformance with the City's Right-of-Way Restoration Policy; and Franchisee must compensate those whose property it damages for the damage.

(4) Franchisee may voluntarily remove any underground Facilities from the streets which have been installed in such a manner that they can be removed without trenching or other opening of the Rights-of-Way. The foregoing right is subject, however, to the City's right to require that such Facilities remain in place should the City opt to purchase the Telecommunications System in the event that the Franchise is terminated or otherwise expired.

3.3 Right To Inspect and Order Corrections. The City may inspect the Telecommunications System at any time reasonable under the circumstances to ensure compliance with this Franchise and applicable law, including to ensure that the Telecommunications System of Franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct



the unsafe condition on a time table established by the City which is reasonable in light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do so, and to charge the Franchisee therefor.

3.4 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, Franchisee shall make available information regarding any ongoing construction or installation of its Telecommunications System sufficient to show (1) the nature of the work being performed; (2) where it is performed; (3) its estimated completion date; and (4) progress to completion.

#### SECTION 4. REGULATORY PROVISIONS.

4.1 Intent. The City shall have the right to administer and regulate activities of this Franchise up to the fullest extent of the law. The failure to reserve a particular right to regulate, or reference a particular regulation, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation to Franchisee.

4.2 Remedies for Franchise Violations. The City has the right to exercise any and all of the following remedies, singly or in combination, in the event Franchisee violates any provision of this Franchise:

A. Draw upon or foreclose all or any part of any letter of credit, security fund, performance bond, or other security provided under this Franchise; provided, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the



default. Should the City take this action, Franchisee shall be responsible for all direct and actual costs related to such action, including, but not limited to, legal and administrative costs:

- B. Commencing an action at law for monetary damages;
- C. Commencing an action for equitable or other relief;
- D. Declaring the Franchise to be revoked; and/or
- E. Seeking specific performance of any provision, which reasonably lends itself to such remedy.

In determining which remedy or remedies for Franchisee's violation are appropriate, the City may take into consideration the nature and extent of the violation, the remedy needed to prevent such violations in the future, whether Franchisee has a history of previous violations of the same or similar kind, and such other considerations as are appropriate under the circumstances. Remedies are cumulative; the exercise of one shall not foreclose the exercise of others.

4.3 Procedure for Remedying Franchise Violations. Before imposing liquidated damages, or drawing upon the performance bond, letter of credit, security fund, or any other security set out in Section 6, the City shall follow the procedure below.

A. Notice of Violation. In the event that the City believes that Franchisee has not complied with the terms of this Franchise, the City shall notify Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.

B. Franchisee's Right to Cure or Respond. Except as provided in Section 4.3.D, Franchisee shall have 30 days from the receipt of notice described



1 above to (a) respond to the City contesting the assertion of noncompliance, or  
2 (b) to cure such default or, in the event that by the nature of the default such  
3 default cannot be cured within the 30-day period, initiate steps to remedy such  
4 default as promptly as possible. The duty to cure includes the duty to cure all  
5 harms caused by the acts or omissions of Franchisee. At the end of the 30-day  
6 period, Franchisee shall notify the City in writing of the steps it has taken to cure  
7 the default, if any; if the cure is not complete, the reason it is not complete and the  
8 projected date for completion; and if the default is disputed, the complete basis for  
9 that contention.  
10

11 C. Public Hearing. The City may schedule a public hearing to  
12 investigate any alleged default. The City shall give Franchisee 20 calendar days'  
13 notice of the time and place of the hearing and provide Franchisee with an  
14 opportunity to be heard.  
15

16 D. Action after Hearing. If the City determines after such hearing  
17 that the Franchisee did not cure or initiate steps to cure satisfactory to the City,  
18 after the notice required by Section 4.3.A was provided, then the City may draw  
19 upon any performance bond, letter of credit, security fund, or other security,  
20 including requiring performance under the guarantee; and impose liquidated  
21 damages. However, notice and opportunity to cure are not required for repeat  
22 violations or for a failure to correct a default where Franchisee knew or should  
23 have known it was in default; in such cases, the performance bond, security fund,  
24 letter of credit or other security may be drawn upon, the guarantor required to  
25  
26



perform and liquidated damages imposed after the hearing required by

Section 4.3.C.

E. Liquidated Damage Amounts. Because Franchisee's failure to comply with the provisions of this Franchise will result in injury to the City, and because it may be difficult to estimate the extent of each such injury, Franchisee and the City agree to the following liquidated damages, which provisions represent the best estimate of the damages resulting from injuries of specific types. The amounts of the liquidated damages set forth in this Franchise are in 2013 dollars and shall be increased each year by the increase in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City Average for the greater Seattle area. The amount of liquidated damages for all material violations of this Franchise for which actual damages may not be ascertainable shall be: \$500 per day for each violation for each day the violation continues. It is provided, however, that the City shall allow the Franchisee a minimum of 30 days after notice to the Franchisee of such neglect, failure, or refusal to comply within which to meet compliance or correct performance, prior to the assessment of any liquidated damages.

4.4 Failure to Enforce. Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

4.5 Force Majeure. The Franchisee shall not be deemed in default with provisions of this Franchise where performance was rendered impossible by war or





riots, civil disturbances, floods, fire, vandalism, or other natural catastrophes beyond the Franchisee's control; the unforeseeable unavailability of labor or materials; or power outages exceeding back-up power supplies. The acts or omissions of Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. This Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

4.6 Alternative Remedies. No provision of this Franchise shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the Ordinance or any rule, regulation, requirement or directive promulgated thereunder. Neither the existence of other remedies identified in this Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by Franchisee, or to seek and obtain judicial enforcement of Franchisee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

4.7 Compliance with the Laws. Franchisee shall comply with all federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all City ordinances, resolutions, rules, policies, and regulations



heretofore or hereafter adopted or established during the entire term of the Franchise; provided that, nothing herein shall prevent Franchisee from challenging a provision of laws that applies only to it as an impairment of contract. Nothing in this Franchise shall limit the City's right of eminent domain under state law. Nothing in this Franchise shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid, or manner of construction.

## SECTION 5. REPORTING REQUIREMENTS.

5.1 Quarterly Reports. Within 30 days after the end of each of Franchisee's fiscal quarters, Franchisee shall submit a written report to the City which shall contain a listing of all categories of Gross Revenues earned and Gross Receipts collected by Franchisee for its business activities as identified in Section 2.1, which are activities specifically taxable as a Telephone Service business under Title 6 of the Tacoma Municipal Code. Said written report shall be in sufficient detail and with sufficient explanation to enable the City to understand the report and to verify the accuracy of the report. In addition, Franchisee shall provide such other quarterly reports as may be required by Title 16B.

5.2 Annual Report. No later than 120 days following the end of Franchisee's fiscal year each year, Franchisee shall present a written report to the City which shall include:

A. Audited financial statements for (1) Franchisee and (2) any Affiliate which is involved in any way with the operation or ownership of the System; and a financial statement for Franchisee that includes Gross Revenues



1 from all sources, gross Subscriber revenues from each category of service, as well  
2 as an income statement and a balance sheet. In the event any audited financial  
3 report has not been published by the date due under this section, then the audited  
4 financial report shall be deemed presented on time if presented within 30 days  
5 after publication.

6 All financial reports required under this section shall be presented to  
7 the City accompanied by such notes and explanations as are required to fully  
8 understand the reports. Such notes and explanations shall include, but not be  
9 limited to, an explanation of any and all deductions made from Gross Revenues in  
10 order to arrive at Gross Receipts for the calculation of Fees or taxes to be paid to  
11 the City, as well as:  
12

13 B. A summary of the previous year's activities for the Franchise  
14 Area, including, but not limited to, the total number of Customers, miles of  
15 underground Facilities, any services added or dropped, and any technological  
16 changes occurring in the system;  
17

18 C. Plans for the future; and

19 D. Such other information as is required by Title 16B.

20 5.3 Additional Reports. Franchisee shall prepare and furnish to the City,  
21 upon request, at the times and in the form prescribed by the City, such additional  
22 reports with respect to Franchisee's operation, affairs, transactions, or property, as  
23 may be reasonably necessary and appropriate to ensure compliance with the  
24 material provisions of this Franchise, or to permit the performance of any of the  
25  
26



rights, functions, or duties of the City or such other regulatory entity in connection with the Franchise.

5.4 Preservation of Confidential Information. Trade secrets and confidential information designated as such by Franchisee shall be subject to such protection as provided in Title 16B.

## SECTION 6. COMPENSATION AND FINANCIAL PROVISIONS.

### 6.1 Fees; Taxes.

A. State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee. Franchisee agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee in accordance with the City Charter, Tacoma Municipal Code, and other applicable laws.

B. Franchisee Subject to the City Telephone Business Tax. All of Franchisee's activities in the City of Tacoma, as identified in Section 2.1, are activities specifically taxable as a telephone business under Tacoma Municipal Code Chapter 6A and are taxable at the rate specified in Tacoma Municipal Code Chapter 6A now in effect or as amended, which, at the time of the execution of this Franchise agreement, is 6 percent of the Franchisee's Gross Receipts. The amount of Gross Receipts to be taxed will include the amount of tax imposed on Franchisee by City ordinance. This Franchise does not limit the City's power of taxation.

C. Franchisee Obligated to Pay Administrative Costs. In accord with RCW 35.21.860 as presently effective, as later amended, Franchisee must pay the



City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist in the City's consideration and processing of this Franchise application. The first \$5,000 of said expenses will be covered by the \$5,000 application fee deposited with the City. Franchisee will also pay the reasonable costs of enforcing or, as necessary, reviewing the provisions of this Franchise as well as costs involved with the modification, amendment, renewal, or Transfer of this Franchise, as ordered by the Franchise Services Manager, whether such costs result from accrued in-house staff time, or out-of-pocket expenses or administrative costs, as well as expenses of retaining independent technical, legal, or financial consultants or advisors, or whether relating to costs incurred due to initial System development or to future System expansion. The amount of payment to be made by Franchisee to cover these administrative costs is an amount determined to be reasonable by the Franchise Services Manager. Such obligation further includes municipal fees related to receiving and approving permits or licenses, inspecting plans and construction, or relating to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt of the City's billing therefor.

D. Manner of Payment; Audit. Franchisee shall make all required fee payments in the form, intervals, and manner requested by the City Treasurer, and furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit by the City Treasurer or designee, the City Treasurer may require Franchisee to furnish a verified statement of compliance with



Franchisee's obligations or in response to any questions. Said certificate may be required from an independent, certified public accountant at Franchisee's expense.

All audits will take place on Franchisee's premises or offices furnished by Franchisee, which shall be a location within the City of Tacoma or other mutually agreeable place; however, the Franchisee must agree to pay the associated costs. Franchisee agrees, upon request of the City Treasurer, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the City Treasurer on the same day as filed, postage prepaid, affecting any of Franchisee's Facilities or business operations in the City of Tacoma.

E. No Other Deductions. Subject to any allowances under federal law and applicable regulation, no deductions including current or previously paid fees shall be subtracted from the Gross Revenue amount upon which payments are calculated and due for any period, nor shall copyright fees or other license fees paid by Franchisee be subtracted from Gross Revenues for purposes of calculating payments.

F. Late Payments. Any fees owing which remain unpaid more than 10 days after the dates specified herein shall be delinquent and shall thereafter accrue interest at 12 percent per annum or 2 percent above highest prime lending rate published daily in the Wall Street Journal during the period the payment is due but unpaid, whichever is greater.

G. Period of Limitations. The period of limitation for recovery of any fee payable hereunder shall be six years from the date on which payment by Franchisee is due, subject to tolling as provided as a matter of law or equity.



Unless within six years from and after the due date for a particular payment, the City makes written request to review Franchisee's records with respect to such fee payment (either individually or as part of a broader request), recovery shall be barred with respect to such payment and the Franchising Authority shall be estopped from asserting any claims whatsoever against Franchisee relating to any alleged deficiencies in that particular payment.

6.2 Auditing and Financial Records. Franchisee shall manage all of its operations in accordance with a policy of keeping books and records open and accessible to the City. Without limiting its obligations under this Franchise, Franchisee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with Title 16B. Franchisee shall be responsible for collecting the information and producing it. Books and records shall be produced to the City at the Tacoma Municipal Building or such other location as the parties may agree. Notwithstanding any provision of Title 16B or this Franchise, if documents are too voluminous or for security reasons cannot be produced at the Tacoma Municipal Building or mutually agreeable location within the City, then the Franchisee may produce the material at another central location, provided it also agrees to pay the additional reasonable costs incurred by the City in reviewing the materials.

Franchisee shall take all steps required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under Title 16B or this Franchise. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City. Records shall be kept for at



least six years. In addition to maintaining all records as required by Title 16B, Franchisee shall maintain records sufficient to show its compliance with the requirements of this Franchise and shall produce those records within 30 days of a City request.

Franchisee agrees to meet with a representative of the City upon request to review its methodology of record-keeping, financial reporting, computing fee obligations, and other procedures, the understanding of which the City deems necessary for understanding the meaning of reports and records.

In exercising its rights under this section, the City agrees to request access to only those books and records which it deems reasonably necessary as part of a bona fide exercise of its authority over the Telecommunications System under this Franchise, Title 16B, or other applicable law. The City further agrees that it will withhold from public disclosure those books and records made available to it pursuant to this Section 6.2, but only to the extent that the City believes that it has the discretion to do so under state law.

**6.3 Performance Bond.** At the same time it provides its Franchise acceptance to the City, Franchisee shall provide a performance bond to ensure the faithful performance of its responsibilities under this Franchise and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its facilities; and to restore City Rights-of-Way and other property. The initial amount of the performance bond shall be \$250,000. The amount of the bond may be changed from time to time to reflect changed risks to the City or to the public. The Franchisee may be required to obtain additional bonds in accordance





with the City's ordinary practices. The bond form shall be as per Exhibit "A" and with a surety authorized to do business in the state of Washington and with a rating of A in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide. Franchisee shall pay all premiums or costs associated with maintaining the bond and shall keep the same in full force and effect at all times during the Franchise Term.

6.4 Indemnification by Franchisee.

A. Franchisee, by accepting this Franchise, agrees to release the City from and against any and all liability and responsibility in or arising out of Franchisee's or its contractor's or agent's construction, operation, or maintenance of the Telecommunications System, and, without limiting the provisions of Section 7.4, Franchisee agrees not to sue or seek any money or damages from City in connection with the above-mentioned matters.

B. Franchisee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City or any third party arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Franchisee or its agents, independent contractors, or employees related to or in any way arising out of the construction, operation, repair, or relocation of the Telecommunications System. Franchisee waives immunity under Title 51 RCW



and affirms that the City and Franchisee have specifically negotiated this provision,  
as required by RCW 4.24.115, to the extent it may apply.

C. Franchisee agrees that the covenants and representations relating to the indemnity provided in A-B above shall survive the term/expiration/termination of this Franchise and continue in full force and effect as to the Franchisee's responsibility to indemnify.

6.5 Franchisee Insurance.

A. Throughout the term of the Franchise, Franchisee shall maintain adequate insurance to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the construction, operation, or repair of the Telecommunications System. This obligation shall require Franchisee to maintain insurance on an occurrence form at least in the following amounts:

(1) COMMERCIAL GENERAL LIABILITY insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written with combined limits of liability covering bodily injury, property damage, and personal injury of:

- |                     |              |
|---------------------|--------------|
| 1. Each Occurrence  | \$5,000,000  |
| 2. Annual Aggregate | \$5,000,000. |

(2) COMPLETED OPERATIONS AND PRODUCTS LIABILITY shall be maintained for two years after the termination of the Franchise or License (in the case of the Communications System owner or Operator) or



completion of the work for the Communications System owner or Operator (in the case of a contractor or subcontractor).

(3) PROPERTY DAMAGE LIABILITY INSURANCE shall include Coverage for the following hazards: X - explosion, C - Collapse, U - underground.

(4) WORKERS' COMPENSATION insurance shall be maintained during the life of this contract to comply with statutory limits for all employees, and in the case any work is sublet, Franchisee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the Franchisee. Franchisee shall also maintain during the life of this policy employers liability insurance. The following minimum limits must be maintained:

(a) Workers' Compensation	Statutory
(b) Employer's Liability	\$ 500,000 per occurrence

(5) COMMERCIAL AUTO LIABILITY Coverage shall include owned, hired, and non-owned vehicles with combined single limits covering bodily injury and property damage as follows:

1. Each Occurrence	\$3,000,000
2. Annual Aggregate	\$3,000,000

B. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way. If the Franchisee, its contractors, or subcontractors do not have the required insurance,



the City may order such entities to stop operations until the insurance is obtained and approved.

C. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured with all required endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in Section E below.

D. The insurance afforded under these policies shall contain a provision that it will not be canceled until at least 30 days' prior written notice has been given to Franchisee. Franchisee will immediately notify City upon receipt of such notice. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial Ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide", published by A.M. Best Guide.

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise, the Franchisee shall furnish, prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Franchise.

F. The City shall reserve the right to require any other insurance coverage it reasonably deems necessary during the term of the Franchise, depending upon the exposures.



6.6 Security Fund. Franchisee shall establish a cash security fund or provide the City an irrevocable letter of credit in the amount of \$50,000, to secure the payment of fees owed, to secure any other performance promised in this Franchise, and to pay any taxes, fees, or liens owed to the City. The letter of credit shall be in a form and with an institution acceptable to the City's Director of Finance and in a form acceptable to the City Attorney. Should the City draw upon the cash security fund or letter of credit, it shall promptly notify the Franchisee, and the Franchisee shall promptly restore the fund or the letter of credit to the full required amount. The City may, from time to time, change the amount of the required security fund/letter of credit to reflect changes in the risks to the City and to the public, including delinquencies in taxes or other payments to the City.

#### SECTION 7. MISCELLANEOUS PROVISIONS.

7.1 Posting and Publication. Franchisee shall assume the cost of posting and publication of this Franchise as such posting and publication is required by law and such is payable upon Franchisee's filing of acceptance of the Franchise.

7.2 Guarantee of Performance. Franchisee acknowledges that it enters into the Franchise voluntarily in order to secure and in consideration of the grant from the City of a ten-year Franchise. Performance pursuant to the terms and conditions of this Franchise agreement is guaranteed by Franchisee.

7.3 Governing Law and Venue. The Franchise shall be governed by and construed in accordance with the laws of the state of Washington without recourse to any principles of Conflicts of Laws, and Franchisee agrees that any action



brought relative to enforcement of this Franchise shall be initiated in the Superior Court of Pierce County, and shall not be removed to a federal court.

7.4 No Recourse. Without limiting such immunities as the City or other Persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense, or damage arising out of any lawful exercise of the City's authority pursuant to Title 16B, this Franchise, or other applicable law.

7.5 Notice. Unless expressly otherwise agreed between the parties, every notice, billing, or response required by this Franchise to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma  
Municipal Services Building  
1224 MLK Jr. Way  
Tacoma, WA 98405

Attn: Franchise Services Manager

The notices or responses to Franchisee shall be addressed as follows:

Electric Lightwave, LLC  
1201 N.E. Lloyd Blvd., Suite 500  
Portland, OR 97232

Attn: Vice President-Corporate Development



1 The City and Franchisee may designate such other address, from time to  
2 time, by giving written notice to the other, but notice cannot be required to more  
3 than one address and the address must be within the City, except by mutual  
4 agreement.

5 7.6 Execution. Franchisee shall execute and return to the City three  
6 original countersigned copies of this Ordinance and a signed acceptance of the  
7 Franchise granted hereunder within 30 days after the date of passage of the  
8 Ordinance by the City Council. The acceptance shall be submitted in the form  
9 attached hereto or other form acceptable to the City Attorney and in accepting the  
10 Franchise, Franchisee warrants that it has carefully read the terms and conditions  
11 of this Franchise and unconditionally accepts all of the terms and conditions of this  
12 Franchise and agrees to abide by the same and acknowledges that it has relied  
13 upon its own investigation of all relevant facts, that it has had the assistance of  
14 counsel, that it was not induced to accept a Franchise, that this Franchise  
15 represents the entire agreement between Franchisee and the City, and that  
16 Franchisee has consulted fully with legal counsel and accepts whatever risks might  
17 be related to accepting and performing the obligations of this Franchise. The  
18 countersigned Ordinance and acceptance shall be returned to the City  
19 accompanied by: evidence of insurance; a payment for publication costs; billable  
20 work order deposit, and security deposit (or the letter of credit). The Franchise  
21 rights granted herein shall not become effective until all of the foregoing is received  
22 in acceptable form. In the event Franchisee fails to submit the countersigned  
23 Ordinance and acceptance as provided for herein, or fails to provide the required  
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1 accompanying documents and payments within the time limits set forth in this  
2 section, the grant of the Franchise shall be null and void.

3 Passed \_\_\_\_\_

4 Mayor: \_\_\_\_\_

5 Attest: City Clerk  
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7 \_\_\_\_\_

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9 Approved as to form  
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11 \_\_\_\_\_

12 Deputy City Attorney  
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### ACCEPTANCE OF CITY FRANCHISE

Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, 2013.

I, \_\_\_\_\_, am the \_\_\_\_\_ of  
\_\_\_\_\_, and am the authorized representative to accept the  
above-referenced City franchise ordinance on behalf of  
\_\_\_\_\_.

I certify that this franchise and all terms and conditions thereof are accepted  
by \_\_\_\_\_.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

By \_\_\_\_\_

Its \_\_\_\_\_

Witness: \_\_\_\_\_



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BOND FORM

**PERFORMANCE BOND  
TO THE CITY OF TACOMA**

BOND NUMBER: \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That we Electric Lightwave, LLC, as Principal, (hereinafter "Principal"), and \_\_\_\_\_, \_\_\_\_\_, a corporation organized and existing under the laws of the state of \_\_\_\_\_ as Surety, (hereinafter "Surety"), are held and firmly bound unto City of Tacoma, 1224 MLK Jr. Way, Tacoma, WA 98405, as Obligee, (hereinafter "City" or "Obligee"), in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) for the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents:

WHEREAS the Principal has by written acceptance dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, entered into a contract relationship with Obligee for, among other things, work on City rights-of-way per Franchise Ordinance No. \_\_\_\_\_ (the "Franchise") which Franchise is by reference made a part hereof, and is hereinafter referred to as the Franchise;

NOW THEREFORE, if the said Principal shall faithfully perform all of the provisions of the Franchise in the manner and within the time therein set forth, or within such extensions of the time as may be granted, and shall hold the City harmless from any loss or damage occasioned to any person or property by reason of any carelessness, negligence or other failure to perform on the part of said Principal, or any sub-contractor in the performance of said work, and shall indemnify and hold the City harmless from any damage or expense by reason of failure of performance as specified in said Franchise, then and in that event this



1 obligation shall be void. In the event any of the conditions as set forth above is/are  
2 not met, monies in the amount established by this bond shall, upon request by the  
3 City, be immediately made available to the City for the purpose of covering the  
costs of the requirements of the Franchise as referenced above.

4 Dated at Tacoma, Washington, this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

5 Principal:

6 \_\_\_\_\_

7  
8 By: \_\_\_\_\_  
9 Surety

10 By: \_\_\_\_\_  
11 Signature

12  
13 \_\_\_\_\_  
City, State, Zip

14 ( ) \_\_\_\_\_  
15 Phone

16 Approved as to Form:

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18 \_\_\_\_\_  
Deputy City Attorney

19 \_\_\_\_\_  
Franchise Manager

20 **NOTE: PLEASE ATTACH SURETY POWER OF ATTORNEY TO THIS DOCUMENT**  
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