The Tacoma City Council, at its regular City Council meeting of January 28, 2014, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

**Resolution No. 38827**
A resolution approving the final plat of “Chambers Ridge” (formerly “Sunset Estates”), a twenty-five lot subdivision for single-family development located at 1418 South Sunset Drive. (Novastar Development, Inc.; File No. PLT2013-40000207272).
[Philip Kao, Associate Planner; Peter Huffman, Director, Planning and Development Services]

**Resolution No. 38828**
A resolution authorizing the execution of an Interlocal Agreement with Pierce County to renew the Enhanced 9-1-1 Public Safety Answering Point Participation Agreement for 2014, in the amount of $246,190; accepting and depositing said sum into the Fire Miscellaneous Special Revenue Fund, for Tacoma Fire Department expenses related to emergency communications.
[Faith Mueller, Deputy Chief; James Duggan, Chief, Fire Department]

**Resolution No. 38829**
A resolution authorizing the execution of an Interlocal Agreement with the Washington State Patrol to allow reimbursement of fire mobilization costs incurred pursuant to activation of the Washington State Fire Services Resource Mobilization Plan.
[Faith Mueller, Deputy Chief; James Duggan, Chief, Fire Department]

**Resolution No. 38831**
A resolution appointing individuals to the Citizen Review Panel.
[Doris Sorum, City Clerk; Elizabeth Pauli, City Attorney]

**Resolution No. 38832**
A resolution appointing and reappointing the following individuals to the Human Rights Commission: Vazaskia Caldwell, Fred Schuneman, and Christina Zinkgraf.
[Doris Sorum, City Clerk; Elizabeth Pauli, City Attorney]
Resolution No. 38833
A resolution awarding a contract to Rod McConkey Construction, LLC, on its bid of $218,777.83, plus sales tax, plus a 20 percent contingency, for a cumulative total of $262,533.40, budgeted from the 2010 LTGO Series D Fund, for a new public restroom and site improvements at the intersection of Ruston Way and McCarver Street, adjacent to Old Town Dock - Specification No. PW13-0412F.
[Jeffrey A. Jenkins, Assistant Public Works Director; Kurtis D. Kingsolver, P.E., Director, Public Works]

Resolution No. 38834
A resolution awarding a contract to Yes LSE, LLC, in the amount of $405,000, sales tax not applicable, for a cumulative total of $405,000, budgeted from the Tacoma Dome and Convention Center Funds, for temporary personnel services for the Tacoma Dome and the Greater Tacoma Convention and Trade Center, for an initial three-year period, plus the option to renew for one additional two-year period, for a projected contract total of $675,000 - Specification No. PF13-0687F.
[Jon Houg, Deputy Director; Kim Bedier, Director, Public Assembly Facilities]

Ordinance No. 28199
An ordinance amending the non-exclusive telecommunications franchise agreement granted to Zayo Group, LLC, by Ordinance No. 28124, dated January 29, 2013, to construct, operate, and repair a telecommunications system throughout the city; clarifying certain provisions, terms and conditions of the franchise, and making such grant apply to both underground and above-ground use of City right-of-way where applicable.
[Jeff Lueders, Cable Communications and Franchise Services Manager; T.C. Broadnax, City Manager, City Manager’s Office]
A RESOLUTION relating to the platting and subdivision of real property; approving the final plat of CHAMBERS RIDGE (formerly “Sunset Estates”), located at 1418 South Sunset Drive.

WHEREAS all owners of that certain real property situate in Pierce County, Washington, legally described as follows:

PARCEL A:

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE W.M., 1,093.18 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 4;
THENCE WEST 366.43 FEET (266.43 FEET), MORE OR LESS, TO THE SOUTHEASTERLY LINE OF LEWIS ROAD;
THENCE SOUTHWEST ON THE SOUTHEASTERLY LINE OF SAID ROAD TO INTERSECT THE EAST LINE OF TITLOW ROAD; THENCE SOUTH ON THE EAST LINE OF SAID ROAD TO A POINT 170 FEET NORTH OF THE INTERSECTION OF TITLOW ROAD AND THE NORTH LINE OF SOUTH 16TH STREET;
THENCE EAST PARALLEL TO THE NORTH LINE OF SOUTH 16TH STREET, 300 FEET TO A POINT 30 FEET WEST OF THE SECTION LINE;
THENCE NORTH 55 FEET;
THENCE EAST 30 FEET TO THE SECTION LINE;
THENCE NORTH TO THE POINT OF BEGINNING.

TOGETHER WITH THAT PORTION OF CRYSTAL SPRINGS ROAD, LYING NORTH OF SOUTH 16TH STREET AS VACATED BY CITY OF TACOMA ORDINANCE NO. 27592, RECORDED UNDER RECORDING NO. 200901290627.

EXCEPT THEREFROM THAT PORTION CONVEYED TO CITY OF TACOMA BY INSTRUMENT RECORDED UNDER AUDITOR’S FILE NO. 201305100566.
PARCEL B:

BEGINNING AT A POINT ON THE EAST LINE OF SECTION 4, TOWNSHIP 20 NORTH, RANGE 2 EAST OF THE W.M., 1,043.18 FEET SOUTH OF THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION. THENCE CONTINUE SOUTH ON SAID EAST LINE, A DISTANCE OF 50 FEET; THENCE WEST 266.43 FEET, MORE OR LESS, TO THE SOUTHEASTERLY LINE OF LEWIS ROAD; THENCE NORTHERLY ON SAID SOUTHEASTERLY LINE 51.72 FEET TO A POINT WEST OF THE POINT OF BEGINNING; THENCE EAST 253.20 FEET TO THE POINT OF BEGINNING.

PARCEL C:

PARCEL A, CITY OF TACOMA BOUNDARY LINE ADJUSTMENT MPD2012-40000190125, RECORDED ON DECEMBER 13, 2012, AS RECORDING NO. 201212135003, IN THE OFFICIAL RECORDS OF PIERCE COUNTY, WASHINGTON.

EXCEPT THEREFROM THOSE PORTIONS CONVEYED TO CITY OF TACOMA BY INSTRUMENTS RECORDED UNDER AUDITOR’S FILE NOS. 201305100566 AND 201306210057.

TAX PARCEL NOS.: 0220037079, 0220044301, 0220037078, 0220044300, and 0220044035.

have joined in a plat of the property to be known and designated as CHAMBERS RIDGE (formerly “Sunset Estates”), and

WHEREAS the preliminary plat of the residential subdivision known as CHAMBERS RIDGE was tentatively approved by the Land Use Administrator, subject to the conditions contained in the Land Use Administrator’s Report and Decision, dated October 19, 2009, and the conditions have now been fully complied with by the owners of the property, and

WHEREAS the plat, evidenced by the official drawing thereof, has been approved by the Director of Public Works, the City Engineer, the Director of
Planning and Development Services, and the City Attorney, and the requirements of Chapter 13.04 of the Tacoma Municipal Code have been fully complied with, and

WHEREAS the residential subdivision known as CHAMBERS RIDGE plat is hereby submitted to the City Council for acceptance and approval; Now, Therefore,

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

Section 1. That the final plat of the residential subdivision to be known as CHAMBERS RIDGE (formerly “Sunset Estates”) is hereby accepted and approved.

Section 2. That the Mayor and the proper City officers are hereby authorized to indicate upon the original tracing(s) of the plat the acceptance by the City Council of the same as provided in Chapter 13.04 of the Tacoma Municipal Code.

Adopted ______________

________________________

Mayor

Attest:

________________________

City Clerk

Location: 1418 South Sunset Drive
Applicant: Wayne Potter, Novastar Development, Inc.
File No.: PLT2013-40000207272

Approved as to form: Legal description approved:

________________________

Deputy City Attorney

Chief Surveyor

Public Works Department
RESOLUTION NO. 38828

A RESOLUTION relating to emergency fire communications; authorizing the execution of an interlocal Pierce County Enhanced 9-1-1 Public Safety Answering Point Participation Agreement for 2014; and accepting the sum of $246,190 from Pierce County, for deposit into the Fire Miscellaneous Special Revenue Fund, for Tacoma Fire Department expenses related to emergency communications.

WHEREAS the State of Washington collects taxes on telephone services and distributes those funds among the counties in the state for the operation and support of countywide 9-1-1 systems, and

WHEREAS Pierce County, in turn, distributes its share of those funds to various agencies within the county operating emergency call centers, and

WHEREAS the Tacoma Fire Department ("TFD") operates a Public Safety Answering Point ("PSAP") communication center, and

WHEREAS, by adoption of Resolution No. 33739 on June 17, 1997, the City entered into an interlocal Enhanced 9-1-1 Telephone System PSAP Participation Agreement ("Agreement") with Pierce County for the purpose of sharing in 9-1-1 tax revenues to support the TFD PSAP communication center, and

WHEREAS, since 2007, the Agreement has been extended each year by City Council adoption, and

WHEREAS Pierce County now proposes an Agreement for 2014 to provide for the receipt of $246,190 in funding for TFD expenses related to emergency communications, an approximate 3 percent increase over the amount received in 2013; Now, Therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:
Section 1. That the proper officers of the City are hereby authorized to enter into an interlocal Pierce County Enhanced 9-1-1 Public Safety Answering Point Participation (PSAP) Agreement for 2014, said document to be substantially in the form of the proposed amendment on file in the office of the City Clerk.

Section 2. That the proper officers are hereby authorized to accept the sum of $246,190 from Pierce County, for deposit into the Fire Miscellaneous Special Revenue Fund, for Tacoma Fire Department expenses related to emergency communications.

Adopted ________________

__________________________________
Mayor

Attest:

__________________________________
City Clerk

Approved as to form:

__________________________________
Deputy City Attorney
RESOLUTION NO. 38829

A RESOLUTION relating to public safety; authorizing the execution of an interlocal agreement with the Washington State Patrol for the purpose of allowing reimbursement of fire mobilization costs incurred pursuant to activation of the Washington State Fire Services Resource Mobilization Plan.

WHEREAS the Washington State Fire Services Resource Mobilization Plan ("Mobilization Plan") provides a statewide process to quickly notify, assemble, and deploy fire service personnel and equipment to any jurisdiction in Washington that has expended all local and mutual aid resources to manage and mitigate an emergency incident, and

WHEREAS the Tacoma Fire Department ("TFD") has, on occasion, provided resources and equipment to assist the state and/or other jurisdictions in fighting fires and responding to other emergencies, and

WHEREAS such deployments occur rarely, usually when additional resources for structural firefighting are needed, and

WHEREAS, in the past two decades, TFD resources were deployed to two significant events; thus, TFD staff estimates that there is a 10 percent chance each year that a deployment could occur, with an estimated average annual cost risk of $23,000, of which approximately 75 percent would be eligible for reimbursement; Now, Therefore,

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

That the proper officers of the City of Tacoma are hereby authorized to enter into an interlocal agreement with the Washington State Patrol for the purpose of allowing for reimbursement of fire mobilization costs incurred pursuant
to activation of the Washington State Fire Services Resource Mobilization Plan, said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted __________________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
Deputy City Attorney
RESOLUTION NO. 38831

BY REQUEST OF DEPUTY MAYOR WOODARDS AND COUNCIL MEMBERS CAMPBELL AND LONERGAN

A RESOLUTION relating to committees, boards, and commissions; appointing individuals to the Citizen Review Panel.

WHEREAS vacancies exist on the Citizen Review Panel, and

WHEREAS, at its meeting of January 23, 2014, the Public Safety, Human Services, and Education Committee interviewed applicants and recommended the appointment of individuals to said panel, and

WHEREAS, pursuant to the City Charter Section 2.4 and the Rules, Regulations, and Procedures of the City Council, the persons named on Exhibit “A” have been nominated to serve on the Citizen Review Panel; Now, Therefore,

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

That those nominees to the Citizen Review Panel listed on Exhibit “A” are hereby confirmed and appointed as members of such panel for such terms as are set forth on Exhibit “A.”

Adopted ______________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
City Attorney

-1-
EXHIBIT “A”

CITIZEN REVIEW PANEL

Appointing Sue Pivetta to an unexpired term to expire December 31, 2014.
RESOLUTION NO. 38832

BY REQUEST OF DEPUTY MAYOR WOODARDS AND COUNCIL MEMBERS CAMPBELL AND LONERGAN

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

WHEREAS vacancies exist on the Human Rights Commission, and

WHEREAS, at its meeting of January 9, 2014, the Public Safety, Human Services, and Education Committee recommended the appointment and reappointment of individuals to said committee, and

WHEREAS, pursuant to the City Charter Section 2.4 and the Rules, Regulations, and Procedures of the City Council, the persons named on Exhibit “A” have been nominated to serve on the Human Rights Commission; Now, Therefore,

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

That those nominees to the Human Rights Commission, listed on Exhibit “A” are hereby confirmed and appointed or reappointed as members of such commission for such terms as are set forth on Exhibit “A.”

Adopted ____________________________  

______________________________ 
Mayor

Attest:

______________________________ 
City Clerk

Approved as to form:

______________________________ 
City Attorney
EXHIBIT “A”

HUMAN RIGHTS COMMISSION


RESOLUTION NO. 38833

A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the execution of a contract with Rod McConkey Construction, LLC, on its bid of $218,777.83, plus applicable sales tax, plus a 20 percent contingency, for a cumulative total of $262,533.40, budgeted from the 2010 LTGO Series D Fund, for a new public restroom and site improvements at the intersection of Ruston Way and McCarver Street, adjacent to Old Town Dock - Specification No. PW13-0412F.

WHEREAS the City has complied with all applicable laws and processes governing the acquisition of those supplies, and/or the procurement of those services, inclusive of public works, as is shown by the attached Exhibit “A,” incorporated herein as though fully set forth, and

WHEREAS the Board of Contracts and Awards has concurred with the recommendation for award as set forth in Exhibit “A”; Now, Therefore,

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

Section 1. That the Council of the City of Tacoma concurs with the Board of Contracts and Awards to adopt the recommendation for award as set forth in the attached Exhibit “A.”

Section 2. That the proper officers of the City are hereby authorized to enter into a contract with Rod McConkey Construction, LLC, on its bid of $218,777.83, plus applicable sales tax, plus a 20 percent contingency, for a cumulative total of $262,533.40, budgeted from the 2010 LTGO Series D Fund, for a new public restroom and site improvements at the intersection of Ruston Way...
and McCarver Street, adjacent to Old Town Dock - Specification No. PW13-0412F, consistent with Exhibit "A."

Adopted ____________________

________________________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
City Attorney

-2-
EXHIBIT “A”

City of Tacoma
Environmental Services Department

DATE: January 10, 2014
TO: Board of Contracts and Awards
SUBJECT: Old Town Dock, Public Restroom
Budgeted from 2010 LTGO Series D, Fund 3220-10D
Request for Bids Specification No. PW13-0412F

RECOMMENDATION: The Public Works, Facilities Management Division recommends that a contract be awarded to low bidder Rod McConkey Construction, LLC, Olympia, WA, for the Old Town Dock, Public Restroom Project. The contract amount reflects a base award of $218,777.83, plus applicable sales tax, plus a 20% contingency, for a cumulative amount of $262,533.40, plus applicable sales tax.

EXPLANATION: This contract will provide for a new public restroom and site improvements at the intersection of Ruston Way and McCarver Street, adjacent to Old Town Dock. The improvements include two new public restrooms, sidewalk improvements, crosswalk improvements across Ruston Way, rain garden, landscaping and irrigation.

COMPETITIVE BIDDING: Request for Bids Specification No. PW13-0412F was opened December 17, 2013. 10 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 ranking purposes. Rod McConkey Construction, LLC submitted a bid that resulted in the lowest evaluated submittal after consideration of SBE participation goals. The table below reflects the amount of the base award.

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Location (city and state)</th>
<th>Submittal Amount Plus sales tax</th>
<th>Evaluated Submittal</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rod McConkey Construction, LLC</td>
<td>Olympia, WA</td>
<td>$218,777.83</td>
<td>$218,777.83</td>
</tr>
<tr>
<td>Durels Construction &amp; Management, LLC</td>
<td>Tumwater, WA</td>
<td>$231,355.00</td>
<td>$231,355.00</td>
</tr>
<tr>
<td>Berschauer Construction, Inc.</td>
<td>Olympia, WA</td>
<td>$237,609.00</td>
<td>$237,609.00</td>
</tr>
<tr>
<td>Lincoln Construction, Inc.</td>
<td>Spanaway, WA</td>
<td>$242,905.00</td>
<td>$242,905.00</td>
</tr>
<tr>
<td>Pease Construction, Inc.</td>
<td>Lakewood, WA</td>
<td>$249,750.00</td>
<td>$238,182.25</td>
</tr>
<tr>
<td>Pease &amp; Sons, Inc.</td>
<td>Tacoma, WA</td>
<td>$254,548.00</td>
<td>$242,980.25</td>
</tr>
<tr>
<td>Nordland Construction NW</td>
<td>Nordland, WA</td>
<td>$262,000.00</td>
<td>$262,000.00</td>
</tr>
<tr>
<td>Jody Miller Construction, Inc.</td>
<td>Tacoma, WA</td>
<td>$281,000.00</td>
<td>$274,149.23</td>
</tr>
<tr>
<td>Tye Miller, Inc. dba T. Miller Construction</td>
<td>Auburn, WA</td>
<td>$303,700.00</td>
<td>$292,132.25</td>
</tr>
<tr>
<td>Westmark Construction, Inc.</td>
<td>Tacoma, WA</td>
<td>$336,691.00</td>
<td>$330,973.36</td>
</tr>
<tr>
<td>Pre-bid Estimate</td>
<td></td>
<td>$260,000.00</td>
<td></td>
</tr>
</tbody>
</table>

The recommended award is approximately 16% below the pre-bid estimate.

CONTRACT HISTORY: New contract.

FUNDING: Funds are budgeted in the 2010 LTGO Series D, Fund 3220-10D. Funding beyond the current biennium is subject to future availability of funds.

SUSTAINABILITY: Several sustainability factors were incorporated into this project. The project will utilize a waste management plan to separate construction waste for recycling. The project
will also provide for new pedestrian pathways connecting the recreation path to the new ADA compliant restroom and ADA compliant crosswalk at Ruston Way. In addition, the project will enhance the site with native vegetation plantings and a rain garden.

**SBE/LEAP COMPLIANCE:** The recommended contractor is in compliance with the Small Business Enterprise (SBE) Regulation requirements, per the memorandum dated January 7, 2014. The SBE goal for this project is 12%. The SBE participation level of the recommended contractor is 0%. Rod McConkey Construction, LLC submitted the lowest evaluated bid per the SBE Regulation requirements. There is no Local Employment and Apprenticeship Training Program (LEAP) goal for the project.

**PROJECT ENGINEER/COORDINATOR:** Jeffrey A. Jenkins, Assistant Public Works Director, 253-591-5508.

Kurtis D. Kingsolver, P.E.
Public Works Director/City Engineer

Attachment

cc: Chuck Blankenship, Senior Buyer, Finance/Purchasing
Charles Wilson, SEB Coordinator
Peter Guzman, LEAP Coordinator
Jeffrey Jenkins, Assistant Public Works Director
RESOLUTION NO. 38834

A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the execution of a contract with Yes LSE, LLC, in the amount of $405,000, sales tax not applicable, plus the option for one additional two-year renewal period, for a cumulative total of $675,000, budgeted from the Tacoma Dome and Convention Center Funds, for temporary personnel services for the Tacoma Dome and the Greater Tacoma Convention and Trade Center - Specification No. PF13-0687F.

WHEREAS the City has complied with all applicable laws and processes governing the acquisition of those supplies, and/or the procurement of those services, inclusive of public works, as is shown by the attached Exhibit “A,” incorporated herein as though fully set forth, and

WHEREAS the Board of Contracts and Awards has concurred with the recommendation for award as set forth in Exhibit “A”; Now, Therefore,

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

Section 1. That the Council of the City of Tacoma concurs with the Board of Contracts and Awards to adopt the recommendation for award as set forth in the attached Exhibit “A.”

Section 2. That the proper officers of the City are hereby authorized to enter into a contract with Yes LSE, LLC, in the amount of $405,000, sales tax not applicable, plus the option for one additional two-year renewal period, for a cumulative total of $675,000, budgeted from the Tacoma Dome and Convention Center Funds, for temporary personnel services for the Tacoma Dome and the
Greater Tacoma Convention and Trade Center - Specification No. PF13-0687F, consistent with Exhibit “A.”

Adopted __________________________

Mayor

Attest:

______________________________

City Clerk

Approved as to form:

______________________________

City Attorney
DATE: January 8, 2014
TO: Board of Contracts and Awards
SUBJECT: Temporary Personnel Services for the Tacoma Dome and the Greater Tacoma Convention & Trade Center
         Budgeted from 4180 - Tacoma Dome and 4165-CCOP - Convention Center
         Request for Proposals Specification No. PF13-0687F

RECOMMENDATION: Public Assembly Facilities recommends a contract be awarded to Yes LSE, LLC, Winter Park, FL, for providing temporary personnel services for the Tacoma Dome and the Greater Tacoma Convention & Trade Center. The recommendation is for an initial three-year contract term in the estimated amount of $405,000.00, sales tax not applicable, plus the option for one additional two-year renewal period, for a cumulative total of $675,000.00 sales tax not applicable. The specification documents contain market-based provisions for price escalations that will affect overall contract value.

EXPLANATION: To provide temporary personnel services for the Public Assembly Facilities Department as needed. Primary users are the Tacoma Dome and the Greater Tacoma Convention & Trade Center. These services will not impact any Union contracted positions with the City.

COMPETITIVE SOLICITATION: Request for Proposals Specification No. PF13-0687F was opened December 10, 2013. Eight companies were invited to bid in addition to normal advertising of the project. Four submittals were received.

<table>
<thead>
<tr>
<th>Respondent</th>
<th>Location (city and state)</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes LSE, LLC</td>
<td>Winter Park, FL</td>
<td>253</td>
</tr>
<tr>
<td>Command Center, Inc.</td>
<td>Tacoma, WA</td>
<td>207</td>
</tr>
<tr>
<td>Mobius Industries USA, Inc.</td>
<td>Kirkland, WA</td>
<td>207</td>
</tr>
<tr>
<td>West Sound Workforce, Inc.</td>
<td>Gig Harbor, WA</td>
<td>174</td>
</tr>
</tbody>
</table>

CONTRACT HISTORY: New contract.

FUNDING: Funds for this contract are available in the 4180 - Tacoma Dome and 4165-CCOP - Convention Center. Funding beyond the current biennium is subject to future availability of funds.
SBE/LEAP COMPLIANCE: Not applicable.

PROJECT ENGINEER/COORDINATOR: Jon Houg, PAF, 253-593-7626.

Kim Bedier
Director, PAF

(KB:jdh)
cc: Marie Holm, Senior Buyer, Finance/Purchasing
    SBE Coordinator
    LEAP Coordinator
    Jon Houg, Deputy Director, PAF
ORDINANCE NO. 28199

AN ORDINANCE amending that certain non-exclusive franchise granted to Zayo Group, LLC, a Delaware limited liability company, by City Ordinance No. 28124, dated January 29, 2013, to construct, operate, and repair a telecommunications system throughout the City of Tacoma; clarifying certain provisions, terms and conditions of the grant of franchise; specifically making such grant apply to both underground and above ground use of City right-of-way where applicable.

WHEREAS Zayo Group, LLC, a Delaware limited liability company (“Zayo” or “Franchisee”) is a telecommunications company currently involved in the business of operating a telecommunications network utilizing fiber optic technology, and

WHEREAS, as part of such network, Zayo currently operates a system of fiber optic cable, a portion of which passes through the City as a result of Zayo’s predecessors in interest, Metromedia Fiber Network Services, Inc. and AboveNet, Inc. (Zayo acquired AboveNet, Inc. through its wholly owned subsidiary Viola Sub, Inc.; AboveNet had previously acquired Metromedia Fiber as of January 2006), Metromedia Fiber Network Services, Inc. having originally been granted a non-exclusive franchise for the use of City right-of-way on May 23, 2000, pursuant to City Ordinance No. 26623 (the “Prior Franchise”), and

WHEREAS, on January 29, 2013, Zayo was granted a new franchise by City Ordinance No. 28124 (the “Original Franchise”) after expiration of the Prior Franchise, but Zayo neglected therein to secure the ability to locate Facilities in City right-of-way both under and above ground, and
WHEREAS Zayo now desires to amend the Franchise to clarify its rights, and the City Council is willing to make the requested clarifications; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. DEFINITIONS. For the purposes of this Franchise amendment, the capitalized terms, phrases, words, and their derivations defined in the Original Franchise shall have the meaning given therein in their usage here unless otherwise expressly indicated herein.

Section 2. Section 1.7 of the Franchise is hereby amended to read as follows:

1.7 “Facilities” or “Installations” are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by 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. This term, when used without a modifier, shall be considered to encompass both Overhead Facilities and Underground Facilities.

Section 3. Section 1.11 of the Franchise is hereby deleted and replaced with the following:

“Gross Receipts,” for purposes of this Franchise, and 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.

Section 4. Section 2.1 of the Franchise is hereby amended to read as follows:

2.1 Grant of Franchise. The City hereby grants to Franchisee a non-exclusive Franchise which, once it becomes effective, shall authorize Franchisee to use the City’s Public Rights-of-Way within the Franchise Area to construct, repair, and operate an underground fiber optic Telecommunication System to provide Telecommunication Service, and to continue using the City’s Public Rights-of-Way as hereby authorized under the Prior Franchise.

Section 5. Section 3.1 of the Franchise is hereby amended to read as follows:

3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of this Franchise, 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.

Section 6. Subsection 3.2 L. of the Franchise is hereby amended to read as follows:

L. Franchisee shall not remove any Overhead or Underground Facilities except as hereinafter provided.
   (1) Franchisee shall not remove any Overhead or 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 Overhead or 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) Subject to the City's rights to purchase the Telecommunications System, Franchisee may voluntarily remove any Overhead or 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.

Section 7. Subsection 5.2 A. of the Franchise at further subsection A. is hereby amended to read as follows:

   A. A summary of the previous year's activities for the Franchise Area, including, but not limited to, the total number of Customers, miles of Overhead and Underground Facilities, any services added or dropped, and any technological changes occurring in the system;
Section 8. Except as expressly modified in this amendment, the Original Franchise remains in full force and effect. Nothing herein shall be construed as extending the Franchise Term.

Passed __________________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
Deputy City Attorney
ACCEPTANCE OF CITY FRANCHISE AMENDMENT

Ordinance No. _______________, effective _______________, 201__, amending the Franchise previously granted by City Ordinance No. 28124.

I, ______________________________, am the __________________ of Zayo Group, LLC, and am the authorized representative to accept the above-referenced City franchise amendment ordinance on behalf of Zayo Group, LLC.

I certify that this franchise amendment and all terms and conditions thereof are accepted by Zayo Group, LLC without qualification or reservation.

DATED this _____ day of ________________, 201__.

By: ____________________________

Its: ____________________________

Witness: ____________________________