



Legislation Passed April 29, 2014

The Tacoma City Council, at its regular City Council meeting of April 29, 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. 38892

A resolution setting Tuesday, May 13, 2014 at approximately 5:30 p.m., as the date for a public hearing by the City Council on the Six-Year Comprehensive Transportation Improvement Program for years 2015-2020 and the Amended 2013-2014 Transportation Program.

[Dan Seabrandts, Assistant Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]

Resolution No. 38893

A resolution authorizing the execution of an amendment to the agreement with Harlow Construction Co, Inc., in the amount of \$105,000, sales tax not applicable, for a cumulative total of \$305,000, budgeted from the Wastewater Fund, to increase and extend the contract for sandy soil used in the creation of TAGRO soil amendments through September 30, 2015 -

Specification No. PW10-0047F.

[Daniel C. Thompson, Ph.D., Business Operations Division Manager;
Michael P. Slevin III, P.E., Director, Environmental Services]

Resolution No. 38894

A resolution authorizing the execution of an amendment to the agreement with Gem Shavings LLC, in the amount of \$315,000, sales tax not applicable, for a cumulative total of \$700,000, budgeted from the Wastewater Fund, to increase and extend the contract for sawdust used in the creation of TAGRO soil amendment products through September 30, 2015 - Specification No. PW10-0395F.

[Daniel C. Thompson, Ph.D., Business Operations Division Manager;
Michael P. Slevin III, P.E., Director, Environmental Services]

Resolution No. 38895

A resolution authorizing the execution of an amendment to the agreement with Swanson Bark and Wood Products Inc., in the amount of \$300,000, sales tax not applicable, for a cumulative total of \$500,000, budgeted from the Wastewater Fund, to increase and extend the contract for black bark used in the creation of TAGRO potting soil through June 30, 2016 - Specification No. PW10-0844F.

[Daniel C. Thompson, Ph.D., Business Operations Division Manager;
Michael P. Slevin III, P.E., Director, Environmental Services]

Resolution No. 38896

A resolution authorizing the execution of an amendment to the agreement with Agilent Technologies, in the amount of \$45,309.27, plus sales tax, for a cumulative total of \$201,513.33, budgeted from the Fire Miscellaneous Special Revenue Fund, to increase the contract for accessory equipment, installation, training and consulting services to assist the Fire Department to operate a portable gas chromatograph/mass spectrometer Sole Source.
[Roger Edington, Assistant Fire Chief; James P. Duggan, Chief,

Ordinance No. 28214

An ordinance renewing a non-exclusive franchise to Level 3 Communications, LLC, to construct, operate, and repair a telecommunications system throughout the City of Tacoma.
[Jeff Lueders, Cable Communications and Franchise Services Manager;
T.C. Broadnax, City Manager]



RESOLUTION NO. 38892

1 A RESOLUTION relating to the Six-Year Comprehensive Transportation
2 Improvement Program; setting Tuesday, May 13, 2014, as the date for a
3 public hearing for the purpose of adopting the revised Six-Year
4 Comprehensive Transportation Improvement Program for the years
5 2015-2020 and the Amended 2013-2014 Transportation Program.

6 WHEREAS RCW 35.77.010 provides for adoption by the legislative body of
7 each city and town, after conducting one or more public hearings, of a
8 comprehensive transportation program for the ensuing six calendar years, and
9 further provides that each city include in its comprehensive transportation program
10 how it intends to expend the revenues for non-motorized transportation purposes,
11 and

12 WHEREAS the program may be revised at any time by a majority of the
13 legislative body of a city or town, but only after a public hearing, and

14 WHEREAS, at the April 9, 2014, Infrastructure, Planning, and Sustainability
15 Committee meeting, staff presented the proposed addition of one project, the North
16 Vassault Street Sidewalk Project, to the Six-Year Comprehensive Transportation
17 Improvement Program for the years 2015-2020 and Amended 2013-2014
18 Transportation Program, and

19 WHEREAS the City desires to fix a time and date for public hearing for the
20 purpose of adopting said programs, as amended; Now, Therefore,

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

23 That a public hearing, for the purpose of adopting the revised Six-Year
24 Comprehensive Transportation Improvement Program for the years 2015-2020 and
25 the Amended 2013-2014 Transportation Program, shall be held before the City
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1 Council in the Council Chambers on the first floor of the Tacoma Municipal Building,
2 747 Market Street, Tacoma, Washington, on Tuesday, May 13, 2014, at
3 approximately 5:30 p.m. thereof, or as soon thereafter as the same may be heard,
4 all in accordance with RCW 35.77.010.

5 Adopted _____
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7 _____
8 Mayor

9 Attest:
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11 _____
12 City Clerk

13 Approved as to form and legality:
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15 _____
16 Deputy City Attorney
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RESOLUTION NO. 38893

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the increase of Contract
3 No. 4600006581 with Harlow Construction Co., Inc., in the amount of
4 \$105,000, sales tax not applicable, for a cumulative contract amount of
5 \$305,000, sales tax not applicable, budgeted from the ES Wastewater
6 Fund, through September 30, 2015, for sandy soil used in the creation of
7 TAGRO soil amendments pursuant to Specification No. PW10-0047F.

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

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

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

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

18 Section 2. That the proper officers of the City are hereby authorized to
19 increase Contract No. 4600006581 with Harlow Construction Co., Inc., in the
20 amount of \$105,000, sales tax not applicable, for a cumulative contract amount of
21 \$305,000, sales tax not applicable, budgeted from the ES Wastewater Fund,
22 through September 30, 2015, for sandy soil used in the creation of TAGRO
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1 soil amendments pursuant to Specification No. PW10-0047F, consistent with

2 Exhibit "A."

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4 Adopted _____

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Mayor

6 Attest:

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City Clerk

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9 Approved as to form:

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City Attorney

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TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services *MJS*
Daniel C. Thompson, Ph.D., Division Manager, Business Operations
COPY: City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, Joseph Parris, Senior Buyer, Finance/Purchasing; Steve Schmidt, Assistant Division Manager
SUBJECT: Sandy Soil for TAGRO Operations – Contract Increase, Request for Bids Specification No. PW10-0047F, Contract No. 4600006581 – April 29, 2014
DATE: April 16, 2014

SUMMARY:

The Environmental Services Department requests approval to increase and extend Contract No. 4600006581 with Harlow Construction Co, Inc., Lakewood, WA, in the amount of \$105,000, sales tax not applicable, for a cumulative total of \$305,000, budgeted from the ES Wastewater Fund 4300, for sandy soil used in the creation of TAGRO soil amendments, through September 30, 2015.

STRATEGIC POLICY PRIORITY:

- Strengthen and maintain a strong fiscal management position.
- Foster neighborhood, community, and economic development vitality and sustainability.

The City of Tacoma TAGRO products provide for the recycling of 100 percent of the biosolids produced in the City of Tacoma.

BACKGROUND:

ISSUE: The contract increase was anticipated based on the estimated annual usage, the initial contract period, and subsequent contract renewals allowed by the contract.

ALTERNATIVES: The alternative to not increasing and extending existing contract through the end of the allowable contract period, will require the contract to terminate and create a new bid, new product specification review, new approvals, potentially new and increased unit pricing, new quality control review for a new sandy soil product provided by a different vendor, new delivery instructions communicated for the product to maintain this high quality raw material in the City TAGRO product. Rebidding the material contract at this time would be detrimental to sustaining TAGRO production in the current peak demand season for TAGRO products.

COMPETITIVE SOLICITATION: This contract was originally awarded to Harlow Construction Co, Inc. as a result of Request for Bids Specification No. PW10-0047F in September 2010. The contractor has agreed to increase the contract at the same prices, terms, and conditions as the original contract.

CONTRACT HISTORY: The proposed contract increase would be the third renewal of the original contract with Harlow Construction Co, Inc. The original contract was a result of Request for Bids Specification No. PW10-0047F in September 2010, in the amount of \$165,600, sales tax not applicable, for an initial two-year term with the option to renew for three additional one-year terms. The contract was administratively increased in May 2013 by \$34,000. This contract increase, in the amount of \$105,000, would bring the contract to a cumulative total of \$305,000, through September 30, 2015.

SUSTAINABILITY: The City of Tacoma TAGRO products provide for the recycling of 100 percent of the biosolids produced in the City of Tacoma. The sandy soil on Contract No. 4600006581 is acceptable



for use as an ingredient in making TAGRO soil amendment products at Tacoma's Central Wastewater Treatment Plant. TAGRO is an organic soil amendment, manufactured with dewatered biosolids, sawdust, and sandy soil. The highest quality raw materials are required to meet the product quality standard for TAGRO products.

RECOMMENDATION:

The Environmental Services Department recommends approval of an increase and extension of Contract No. 4600006581 with Harlow Construction Co, Inc., Lakewood, WA, in the amount of \$105,000, sales tax not applicable, for a cumulative total of \$305,000, for sandy soil used in the creation of TAGRO soil amendments, through September 30, 2015.

FISCAL IMPACT:**EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	527000	5241000	\$105,000
TOTAL			\$105,000

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	523900	4343150	\$105,000
TOTAL			\$105,000

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$55,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes, for the 2013/2014 Budget.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

Funding beyond the current biennium is subject to future availability of funds. Funds are anticipated to be included in the 2015/2016 Biennium Budget. No budget modifications are required.



RESOLUTION NO. 38894

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the increase of Contract
3 No. 4600006642 with Gem Shavings, LLC, in the amount of \$315,000,
4 sales tax not applicable, for a cumulative contract amount of \$700,000,
5 sales tax not applicable, budgeted from the ES Wastewater Fund, through
6 September 30, 2015, for sawdust used in the creation of TAGRO soil
7 amendment products pursuant to Specification No. PW10-0395F.

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

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

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

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

18 Section 2. That the proper officers of the City are hereby authorized to
19 increase Contract No. 4600006642 with Gem Shavings, LLC, in the amount of
20 \$315,000, sales tax not applicable, for a cumulative contract amount of \$700,000,
21 sales tax not applicable, budgeted from the ES Wastewater Fund, through
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1 September 30, 2015, for sawdust used in the creation of TAGRO soil amendment
2 products pursuant to Specification No. PW10-0395F, consistent with Exhibit "A."
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4 Adopted _____

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Mayor

7 Attest:

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City Clerk

10 Approved as to form:

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City Attorney

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TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services *MPS*
Daniel C. Thompson, Ph.D., Division Manager, Business Operations
COPY: City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, Joseph Parris, Senior Buyer, Finance/Purchasing; Steve Schmidt, Assistant Division Manager
SUBJECT: Sawdust for TAGRO Operations – Contract Increase, Request for Bids Specification No. PW10-0395F, Contract No. 4600006642 – April 29, 2014
DATE: April 10, 2014

SUMMARY:

The Environmental Services Department requests approval to increase and extend Contract No. 4600006642 with Gem Shavings LLC, Auburn, WA, in the amount of \$315,000, sales tax not applicable, for a cumulative total of \$700,000, budgeted from the ES Wastewater Fund 4300, for sawdust used in the creation of TAGRO soil amendment products, through September 30, 2015.

STRATEGIC POLICY PRIORITY:

- Strengthen and maintain a strong fiscal management position.
- Foster neighborhood, community, and economic development vitality and sustainability.

The City of Tacoma TAGRO products provide a mechanism to recycle 100 percent of the biosolids produced in Tacoma.

BACKGROUND:

ISSUE: Greater than anticipated usage has occurred and will continue to occur due to increases in sales volume of the TAGRO soil amendment products.

ALTERNATIVES: The alternative to not increasing and extending existing contract through the end of the allowable contract period, will require the contract to terminate and a new bid to be created along with new product specification review, new approvals, potentially new and increased unit pricing, new quality control review for a new sawdust product provided by a different vendor, new delivery instructions communicated for the product needed to maintain this high quality raw material in the City TAGRO product.

COMPETITIVE SOLICITATION: This contract was originally awarded to Gem Shavings LLC as a result of Request for Bids Specification No. PW10-0395F in September 2010. The contractor has agreed to increase the contract at the same prices, terms, and conditions as the original contract.

CONTRACT HISTORY: The proposed contract increase would be the third renewal of the original contract with Gem Shavings LLC. The original contract, Purchase Resolution No. 38109 adopted by the City Council on September 21, 2010, was a result of Request for Bids Specification No. PW10-0395F, in the amount of \$385,000, sales tax not applicable, for an initial two-year term with the option to renew for three additional one-year terms. This increase, in the amount of \$315,000, would bring the contract to a cumulative total of \$700,000, through September 30, 2015.

SUSTAINABILITY: The City of Tacoma TAGRO products provide for recycling of 100 percent of the biosolids produced in Tacoma. The sawdust on Contract No. 4600006642 is acceptable for use as an ingredient in making TAGRO soil amendment products at Tacoma's Central Wastewater Treatment Plant.



TAGRO is an organic soil amendment, manufactured with dewatered biosolids, sawdust, and sandy soil. The highest quality raw materials are required as this product is used on thousands of residential properties.

RECOMMENDATION:

The Environmental Services Department recommends the approval of an increase and extension of Contract No. 4600006642 with Gem Shavings LLC, Auburn, WA, in the amount of \$315,000, sales tax not applicable, for a cumulative total of \$700,000, for sawdust used in the creation of TAGRO soil amendment products, through September 30, 2015.

FISCAL IMPACT:**EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	527000	5241000	\$315,000
TOTAL			\$315,000

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	523900	4343150	\$315,000
TOTAL			\$315,000

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$165,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes, for the 2013/2014 Budget.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

Funding beyond the current biennium is subject to future availability of funds. Funds are anticipated to be included in the 2015/2016 Biennium Budget. No budget modifications are required.



RESOLUTION NO. 38895

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the increase of Contract
3 No. 4600007339 with Swanson Bark and Wood Products, Inc., in the
4 amount of \$300,000, sales tax not applicable, for a cumulative contract
5 amount of \$500,000, sales tax not applicable, budgeted from the
6 ES Wastewater Fund, through June 30, 2016, for black bark used in the
7 creation of TAGRO soil amendment products pursuant to Specification
8 No. PW10-0844F.

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

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

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

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

19 Section 2. That the proper officers of the City are hereby authorized to
20 increase Contract No. 4600007339 with Swanson Bark and Wood Products, Inc.,
21 in the amount of \$300,000, sales tax not applicable, for a cumulative contract
22 amount of \$500,000, sales tax not applicable, budgeted from the ES Wastewater
23 Fund, through June 30, 2016, for black bark used in the creation of TAGRO soil
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1 amendment products pursuant to Specification No. PW10-0844F, consistent with

2 Exhibit "A."

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4 Adopted _____

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Mayor

6 Attest:

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City Clerk

10 Approved as to form:

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City Attorney

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TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services *MPS*
Daniel C. Thompson, Ph.D., Division Manager, Business Operations
COPY: City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, Joseph Parris, Senior Buyer, Finance/Purchasing; Steve Schmidt, Assistant Division Manager
SUBJECT: Black Bark for TAGRO Operations – Contract Increase, Request for Bids Specification No. PW10-0844F, Contract No. 4600007339 – April 29, 2014
DATE: March 6, 2014

SUMMARY:

The Environmental Services Department requests approval to increase Contract No. 4600007339 with Swanson Bark and Wood Products Inc., Longview, WA, in the amount \$300,000, sales tax not applicable, for a cumulative total of \$500,000, budgeted from the ES Wastewater Fund 4300, for Black Bark used in the creation of TAGRO Potting Soil, through June 30, 2016.

STRATEGIC POLICY PRIORITY:

- Strengthen and maintain a strong fiscal management position.
- Foster neighborhood, community, and economic development vitality and sustainability.

The City of Tacoma TAGRO products provide for the recycling of 100 percent biosolids produced in the City of Tacoma.

BACKGROUND:

ISSUE: Greater than anticipated usage has occurred and will continue to occur due to increases in sales volume of the TAGRO potting soil.

ALTERNATIVES: The alternative to not increasing and extending existing contract through the end of the allowable contract period, will require the contract to terminate and create a new bid, new product specification review, new approvals, potentially new and increased unit pricing, new quality control review for a new black bark/potting soil product provided by a different vendor, and new delivery instructions communicated for the product to maintain this high quality raw material in the City TAGRO product. Rebidding the material contract at this time would be detrimental to sustaining TAGRO production in the current peak demand season for TAGRO products.

COMPETITIVE SOLICITATION: This contract was originally awarded to Swanson Bark and Wood Products, Inc. as a result of Request for Bids Specification No. PW10-0844F in June 2011. The contractor has agreed to increase the contract at the same prices, terms, and conditions as the original contract.

CONTRACT HISTORY: The proposed contract increase would be the second renewal of the original contract with Swanson Bark and Wood Products, Inc. The original contract was a result of Request for Bids Specification No. PW10-0844F in June 2011, in the amount of \$178,328, sales tax not applicable, for an initial two-year term with the option to renew for three additional one-year terms. The contract was administratively increased on August 7, 2013, by \$21,672. This contract increase, in the amount of \$300,000, would bring the contract to a cumulative total of \$500,000, sales tax not applicable through June 30, 2016.



SUSTAINABILITY: The City of Tacoma TAGRO products provide for the recycling of 100 percent of the biosolids produced in Tacoma. The black bark on Contract No. 4600007339 is acceptable for use as an ingredient in making TAGRO Potting Soil and related products at Tacoma's Central Wastewater Treatment Plant. TAGRO is an organic, manufactured potting soil made with dewatered biosolids, black bark, and sawdust. It is available to residential and farming communities for use on landscaping, gardens, and some nursery potting operations. The TAGRO potting soil helps make a more workable non-mineral growing media. The highest quality raw materials are required as this product is used on thousands of residential properties.

RECOMMENDATION:

The Environmental Services Department requests approval to increase Contract No. 4600007339 with Swanson Bark and Wood Products Inc., Longview, WA, in the amount \$300,000, sales tax not applicable, for a cumulative total of \$500,000, budgeted from the ES Wastewater Fund 4300, for Black Bark used in the creation of TAGRO Potting Soil, through June 30, 2016.

FISCAL IMPACT:**EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	527000	5241000	\$300,000
TOTAL			\$300,000

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	523900	4343150	\$300,000
TOTAL			\$300,000

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$100,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes, for the 2013/2014 Budget.

IF EXPENSE IS NOT BUDGETED, PLEASE EXPLAIN HOW THEY ARE TO BE COVERED.

Funding beyond the current biennium is subject to future availability of funds. Funds are anticipated to be included in the 2015/2016 Biennium Budget. No budget modifications are required.



RESOLUTION NO. 38896

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the waiver of competitive
3 procurement procedures due to sole source availability, as deemed in the
4 best interests of the City; authorizing the increase of the existing contract
5 with Agilent Technologies, in the amount of \$45,309.27, plus sales tax, for
6 a cumulative total of \$201,513.33, plus sales tax, budgeted from the Fire
Miscellaneous Special Revenue Fund, for accessory equipment,
installation, training and consulting services to assist the Fire Department
to operate a portable gas chromatograph/mass spectrometer.

7 WHEREAS the City has complied with all applicable laws and processes
8 governing the acquisition of those supplies, and/or the procurement of those
9 services, inclusive of public works, as is shown by the attached Exhibit "A,"
10 incorporated herein as though fully set forth, and
11

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

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

15 Section 1. That the Council of the City of Tacoma concurs with the
16 Board of Contracts and Awards to adopt the recommendation for award as set
17 forth in the attached Exhibit "A," and authorizes the waiver of competitive
18 procurement procedures due to sole source availability, as deemed in the best
19 interests of the City.
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21 Section 2. That the proper officers of the City are hereby authorized to
22 increase the existing contract with Agilent Technologies, in the amount of
23 \$45,309.27, plus sales tax, for a cumulative total of \$201,513.33, plus sales tax,
24 budgeted from the Fire Miscellaneous Special Revenue Fund, for accessory
25 equipment, installation, training and consulting services to assist the Fire
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Department to operate a portable gas chromatograph/mass spectrometer,
consistent with Exhibit "A."

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

City Attorney



TO: Board of Contracts and Awards
FROM: James P. Duggan, Fire Chief, Tacoma Fire Department
Roger Edington, Assistant Chief, Tacoma Fire Department
COPY: City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, and
Richelle Krienke, Finance/Purchasing
SUBJECT: Agilent Technologies Gas Chromatograph/Mass Spectrometer Accessory Equipment,
Installation, Training and Consulting Services for TFD
DATE: April 4, 2014

SUMMARY:

Authorizing a waiver of competitive procurement procedures and approval to increase the existing contract with Agilent Technologies, Santa Clara, California, by \$45,309.27 plus sales tax, to a cumulative total of \$201,513.33 plus sales tax, for accessory equipment, installation, training and consulting services to assist the Fire Department to operate a portable gas chromatograph/mass spectrometer.

STRATEGIC POLICY PRIORITY:

State and briefly explain which strategic policy priority is best aligned to this action.

- Strengthen and support public safety, human services, public education, and diverse higher learning opportunities in Tacoma.

The Tacoma Fire Department (TFD) Hazardous Materials Abatement (HazMat) Team uses its portable gas chromatograph/mass spectrometer (GC/MS) for investigative purposes. The device can be used for drug detection, fire and explosives investigations, environmental analysis and/or to otherwise identify the presence and quantity of unknown chemicals in a sample.

BACKGROUND:

In March 2012, TFD identified grant funding to purchase a GC/MS for the HazMat Team. The required portability and space constraints within the HazMat response vehicle as well as the desired need for compatibility with Environmental Services equipment limited the choice of available units to the Agilent Model 5975T GC/MS. Agilent Technologies agreed to sell a demonstration Model 5975T in use at Environmental Services at a 25 percent price discount. The purchase allowed TFD to take advantage of cross-training and interchange of equipment with Environmental Services as well as discount pricing. A not practical to bid waiver was approved in the amount of \$156,204.06 plus tax, enabling TFD to immediately acquire the GC/MS at a significant savings and meet a grant expenditure deadline. TFD now desires to utilize additional available federal grant funding to purchase and install accessory equipment for the Agilent GC/MS and acquire supplemental training and consulting services to improve HazMat's ability to operate the GC/MS.

ISSUE: For the training, consulting and additional installed equipment to be authorized by the manufacturer and warranted for use with TFD's existing GC/MS, Agilent Technologies, the manufacturer, must furnish and install the accessory equipment and provide the requested services. A waiver of competitive bidding is requested due to sole source.

ALTERNATIVES: Postponing or cancelling the proposed grant funded purchase of equipment and services reduces the capability of the TFD HazMat Team members to optimally operate the GC/MS, thereby reducing its potential benefit as an investigative tool.



COMPETITIVE ANALYSIS: To maintain product and service warranties, the requested equipment and services can only be provided by the manufacturer.

CONTRACT HISTORY: The Agilent Technologies Model 5975T GC/MS demonstration unit was purchased for \$156,204.06 in May 2012 using federal grant funding available for that purpose. The City Manager approved a request to waive competitive solicitation due to it not being practical to bid. A City Procurement Card was used for payment.

SUSTAINABILITY: Agilent Technologies has implemented the enclosed company-wide Environmental Policy. As part of the implementation of the policy, Agilent has adopted environmentally sustainable management practices and requires similar policies and practices from its suppliers. The policy also requires the firm to maintain and improve its environmental management by continually improving the sustainability of its products and activities.

SBE/LEAP COMPLIANCE: Not Applicable.

RECOMMENDATION:

TFD requests a waiver of competitive procurement procedures and recommends that the existing contract with Agilent Technologies be increased by \$45,309.27 plus sales tax, to a cumulative total of \$201,513.33 plus sales tax, for accessory equipment, installation, training and consulting services to assist TFD in operating its GC/MS.

FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
1090 Fire Misc Special Revenue	878000 GRT-01003-09	Various	\$45,309
TOTAL			\$45,309

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
2013 US DHS Port Security Grant	878000 GRT-01003-09	4333004	\$45,309
TOTAL			\$45,309



POTENTIAL POSITION IMPACT: (NOT APPLICABLE)

POSITION TITLE	PERMANENT/ PROJECT TEMPORARY POSITION	FTE IMPACT	POSITION END DATE
TOTAL			

This section should only be completed if a subsequent request will be made to increase or decrease the current position count.

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$45,309 plus sales tax.

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes



City of Tacoma
Fire Department

Date: April 2, 2014

To: Kathy Katterhagen, Procurement and Payables Manager

From: James P. Duggan, Fire Chief
Tacoma Fire Department

Subject: Waiver of Competitive Solicitation Request – Sole Source Purchase
Agilent Technologies Gas Chromatograph/Mass Spectrometer Accessory Equipment,
Installation, Training and Consulting Services for TFD

Please forward for Board of Contracts and Awards review and recommendation.

In accordance with Tacoma Municipal Code 1.06.257.A. (Sole Source), the Tacoma Fire Department (TFD) requests a waiver of the competitive solicitation process for accessory equipment, installation, training, and consulting services for the department's gas chromatograph/mass spectrometer (GCMS). The sole source vendor is the equipment manufacturer **Agilent Technologies, Santa Clara, California**. This is a one-time purchase totaling \$45,309.27, plus sales tax.

“Follow-on” Contracts:

Is this sole source purchase based on a contract that was previously competitively bid by the City?
Yes ☐ No ☒

If “yes”, provide brief history of the initial contract award, bid specification or RFP number, date, etc. Briefly explain relationship of this sole source purchase to previously competitively bid contract.

A waiver of competitive bidding due to not practical to bid was approved by the City Manager, March 21, 2012, allowing TFD to purchase a demonstrator Agilent portable model 5975T GCMS in use at Environmental Services from the manufacturer at a cost of \$156,204.06 plus tax, enabling the department to immediately procure the discounted unit using federal grant funding prior to the grant deadline.

Waiver Criteria:

1. Is there more than one feasible supplier of the product or service in the marketplace?
Yes ☐ No ☒
Briefly explain.

TFD desires to acquire and install additional accessory equipment and receive training and consulting assistance in the operation of its GCMS. For the training and installed accessory equipment to be warranted for proper use with the existing GCMS, Agilent must provide these services.

2. Please support your contention it would be futile to advertise and competitively bid for the product or service as it would result in only one bid:

- a. Describe the screening efforts you engaged in to identify potential suppliers.
Include names of potential suppliers, contact person, phone numbers, or addresses.

While GCMS training is possible from other vendors, a review of vendors determined that only the manufacturer can provide all of the services requested and ensure proper operation of the equipment within the equipment warranty. Non-Agilent work may compromise equipment warranties for the GCMS and the accessory equipment.

- b. Describe any technical or unique product/service attributes that prevent drafting specifications for a competitive bid to which more than one supplier could successfully respond.

Please see above.

- c. Is the product available only through one vendor? Yes ☒ No ☐
If "yes", such certification should be in writing from the manufacturer (not the vendor) and supported by results of the screening process or validated by the Purchasing Division.
Written certification attached? Yes ☐ No ☒

What efforts were made to assure the City is receiving the lowest or best price possible?

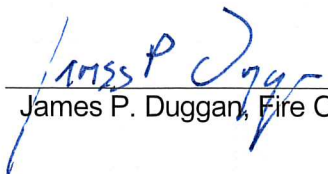
Pricing was compared to other training furnished to Public Works and to other fire departments.

Written certification from manufacturer or vendor attached (optional)? Yes ☐ No ☒

- d. Is this a one-time purchase? Yes ☒ No ☐ Total amount: \$45,309.27
If "no," estimated total dollar amount over three-year period: _____

Other supporting documentation attached? Yes ☐ No ☒

City Contact person: Assistant Chief Roger Edington **Phone:** 253-591-5749


James P. Duggan, Fire Chief

<u>Purchasing Use Only</u>	
Approved _____	Rejected _____
None (after the fact) _____	
Date _____	By _____

cc: Richelle Krienke, Senior Buyer, Finance/Purchasing



ORDINANCE NO. 28214

1 AN ORDINANCE renewing a non-exclusive franchise to Level 3 Communications,
2 LLC, a 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 renewed grant of franchise; specifically
5 making such grant subject to the provisions of Title 16B of the Tacoma Municipal
6 Code and the Tacoma City Charter; providing for City regulation of the
7 Telecommunications System; prescribing liquidated damages and certain other
8 remedies for violation of franchise provisions in addition to those specified
9 pursuant to the Municipal Code and the City of Tacoma Charter.

10 WHEREAS, Level 3 Communications, LLC ("Level 3") is a
11 telecommunications company currently involved in the business of operating a
12 telecommunications network utilizing fiber optic technology, and

13 WHEREAS, as part of such network, Level 3 currently operates a system of
14 fiber optic cable, a portion of which passes through the City as result of Level 3
15 having been previously granted a non-exclusive franchise for the use of City
16 right-of-way in 1999 pursuant to City Ordinance No. 26465, and

17 WHEREAS, Level 3's prior franchise expired in 2009 and has been in
18 holdover status since that time, and

19 WHEREAS, Level 3 has applied to the City to renew its franchise to install
20 and operate fiber optic cable within the City streets and public rights-of-way, and

21 WHEREAS, the City Council has determined to grant a renewed franchise to
22 Level 3 upon those certain terms and conditions which the Council deems
23 necessary due to the unique nature of fiber optic cable, and

24 WHEREAS this City of Tacoma Telecommunications Franchise Ordinance
25 contains the following sections:
26



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Now, Therefore,



1 BE IT ORDAINED BY THE CITY OF TACOMA:

2 Section DEFINITIONS. For the purposes of this Franchise, the following
3 terms, phrases, words, and their derivations shall have the meaning given herein;
4 words not defined herein which are defined in Title 16B, shall have the same
5 meaning or be interpreted as provided in Title 16B. Words not defined here or in
6 Title 16B shall be construed consistently with Title 47 of the United States Code,
7 and if not therein, they shall have their common and ordinary meaning. A reference
8 to Title 16B or to the City's Charter refers to the same as may be amended from
9 time to time.
10
11

12 1.1 "City" means the City of Tacoma, a municipal corporation of the State
13 of Washington, and all departments, divisions, and agencies thereof, including
14 Tacoma Public Utilities.

15 1.2 "City Manager" means the City Manager or the City Manager's
16 designee.
17

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

20 1.4 "Communications system" refers to a telecommunications system.

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



1 1.6 "Customer" means any Person or entity who legally receives within
2 the corporate limits of the City any one or more of the services provided by the
3 Telecommunications System.
4

5 1.7 "Facilities" or "Installations" are and refer to and include, but are not
6 limited to, plant, systems, improvements, and equipment owned, leased, or
7 otherwise used by the Franchisee, such as poles, fiber, wires, fixtures, equipment,
8 underground circuits, and conduit in public rights-of-way and other property within
9 the rights-of-way necessary for the transmission and distribution of communications
10 service where such facilities are located.
11

12 1.8 "Franchise" means the rights granted by this Franchise and
13 conditioned as set forth herein, and under the Tacoma Municipal Code and the City
14 Charter.
15

16 1.9 "Franchise Area" means that area within the present and future
17 corporate limits of Tacoma.
18

19 1.10 "Franchisee" is Level 3 Communications, LLC, a Delaware Limited
20 Liability Company, with its home office at 1025 Eldorado Boulevard, Broomfield,
21 Colorado, 80021, Telephone, (303) 926-3000. Franchisee is a subsidiary of Level
22 3 Communications, Inc. whose home office is located at 1025 Eldorado Boulevard,
23 Broomfield, Colorado, 80021, Telephone, (303) 926-3000.
24

25 1.11 "Gross Receipts" shall have the meaning ascribed in Article VIII of the
26 City Charter or the meaning given to the phrase "Gross Revenue" as set forth in
Title 16 of the Tacoma Municipal Code.



1 1.12 “Operator” when used with reference to a system, refers to a Person
2 (a) who provides service over a Communications System and directly or through
3 one or more Affiliates owns a significant interest in such facility; or (b) who
4 otherwise controls or is responsible for, through any arrangement, the management
5 and operation of such a facility. A Person that operates under agreement of a
6 Telecommunications System or a specific portion of a Telecommunications System
7 to provide Telecommunications Services shall be treated as an Operator for
8 purposes of this Franchise.
9
10

11 1.13 “Overhead Facilities” refers to electric utility and Communications
12 Facilities located above the surface of the ground, including the underground
13 supports and foundations for such Facilities.

14 1.14 “Person” includes any individual corporation, partnership, association,
15 joint stock company, trust, or any other legal entity, but not the City.
16

17 1.15 “Public Rights-of-Way” mean the public streets and easements which,
18 under the City Charter, the Tacoma Municipal Code, City ordinances, and
19 applicable laws, the City has authority to grant Franchises, permits, or Licenses for
20 use thereof or has regulatory authority thereover, excluding railroad rights-of-way,
21 airport, and harbor areas. Public Rights-of-Way for the purpose of this Franchise
22 do not include buildings, parks, poles, conduits, or similar facilities or property
23 owned by or leased to the City, including, by way of example and not limitation,
24 structures in the Public Rights-of-Way such as utility poles and light poles.
25
26



1 1.16 "System" means the Telecommunications System.

2 1.17 "Telecommunications Service" or "Service" means the transmission
3 for hire of information in electronic or optical form, including, but not limited to,
4 voice, video, or data, whether or not the transmission medium is owned by the
5 provider itself. Telecommunications Service includes telephone service but does
6 not include Cable Service or over-the-air broadcasts to the public-at-large from
7 facilities licensed by the Federal Communications Commission or any successor
8 thereto.
9

10
11 1.18 "Telecommunications System" or "telecommunications Facility" means
12 a tangible facility that is used to provide one or more Telecommunications Services,
13 any portion of which occupies Public Rights-of-Way. The term Telecommunications
14 System by way of example, and not limitation, includes wires, equipment cabinets,
15 guys, conduit, radio transmitting towers, poles, other supporting structures, and
16 associated and appurtenant facilities used to transmit telecommunications signals.
17 The term Telecommunications System includes all devices mounted on light poles in
18 the Public Rights-of-Way through which Telecommunications Services are originated
19 or terminated. An Open Video System is not a Telecommunications System to the
20 extent that it provides only video services; a Cable System is not a
21 Telecommunications System to the extent that it provides only Cable Service. The
22 term Telecommunications Facility includes any of the tangible components of a
23 Telecommunications System which occupies Public Rights-of-Way.
24
25
26



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.30.030, 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.

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



1 construct, repair, and operate a fiber optic Telecommunication System to provide
2 Telecommunication Service.

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

15 The grant of this Franchise is limited to the purpose of Franchisee providing
16 Telecommunications Service. This Franchise does not include permission to
17 provide cable service, as defined in 47 U.S.C. § 522, multichannel video
18 programming, open video systems, or uses other than Telecommunications
19 Service.

20 Notwithstanding the above grant to use Public Rights-of-Way, no Public
21 Rights-of-Way shall be used by Franchisee if the City, in its sole opinion,
22 determines that such use is inconsistent with the terms, conditions or provisions by
23



1 which such Public Rights-of-Way was created or dedicated, or presently used
2 under applicable laws.

3
4 In the event of any conflict between a provision in this Franchise and any
5 provision of the City Charter, which Charter is incorporated herein by reference, the
6 applicable provision of the Charter shall control over any inconsistent provision of
7 this Franchise.

8 2.2 Franchise Term and Termination. The term of the Franchise shall be
9 ten years unless terminated sooner in accordance with this Franchise, Title 16(B),
10 or the City Charter. Franchisee may terminate this Franchise at any time upon 180
11 days' prior written notice to the City. Upon such termination, the Franchisee shall
12 remove or abandon its System pursuant to the terms of this Franchise.

13
14 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be
15 non-exclusive.

16
17 2.4 Transfers, Generally.

18 A. Every Transfer shall be subject to the prior written approval of
19 the City except as provided herein. A "Transfer" is any transaction in which: (1) all
20 or a majority portion (i.e. 51% or more) of the Telecommunications System is sold
21 or assigned (2) there is any change, acquisition, or direct or indirect transfer of
22 control of the Franchisee; or (3) the rights and/or obligations held by the Franchisee
23 under the Franchise are transferred, sold, assigned, or leased, in whole or in part,
24 directly or indirectly, to another party. The term "control" in subsection (2) above
25 refers to actual working control, in whatever manner exercised. It will be presumed
26



1 that a change in working control within the meaning of subsection (2) has occurred
2 in any case where there is a change in voting interest of 25 percent or more; or a
3 change in voting interest that results in a Person obtaining a 50 percent or greater
4 interest in Franchisee; or a change in voting interest that results in a Person that
5 held 50 percent or greater interest reducing their interest to below 50 percent. A
6 Transfer without the prior written approval of the City is a substantial violation of
7 this Franchise and shall make the Franchise subject to termination by the City as
8 provided herein and in Title 16B.
9
10

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

13 C. Franchisee, shall within 60 days of the closing date of any
14 Transfer, file with the City Clerk a copy of the deed, agreement, contract, mortgage,
15 lease, or other written instrument evidencing such sale, lease, contractual
16 agreement, mortgage, assignment or Transfer, certified and sworn to as correct by
17 Franchisee. Every such Transfer, whether voluntary or involuntary, may be deemed
18 void and of no effect as it relates to this Franchise by the City unless Franchisee
19 files the required copy within the 60-day period.
20

21 D. The requirements of this section shall not be deemed to
22 prohibit the use of Franchisee's property as collateral for security in financing the
23 construction or acquisition of all or part of the Telecommunications System
24 franchised hereunder provided that no such security shall purport to attach the
25 City's real property interest in the Public Right-of-Way. In addition, no such
26



1 arrangement may be made if it would in any respect under any condition prevent
2 the Operator or any successor from complying with the Franchise and applicable
3 law, nor may any such arrangement permit a third party to succeed to the interest
4 of the Operator, or to own or control the Telecommunications System, without the
5 prior consent of the City. Any mortgage, pledge or lease shall be subject to and
6 subordinate to the rights of the City under this Franchise, and other applicable law.

8 2.5 Change in Control-Notice and Affiliate Exception. Franchisee shall
9 promptly notify the City of any change in, transfer of, or acquisition by any other
10 Person of an ownership interest in Franchisee that results in a change in control of
11 Franchisee within the meaning of Section 2.4.A. In the event that Franchisee does
12 not provide the City with prior written notice of any such Transfer, the City may take
13 all reasonable steps, after actually receiving notice, to ascertain the viability of the
14 transferee in complying with the provisions of this Franchise. If the City reasonably
15 determines that the transferee is not a viable Franchise holder, the City may give
16 the transferee notice of revocation and invoke the steps set forth in Section 2.6
17 below. The foregoing notwithstanding, if the proposed change in control merely
18 results in a Transfer of control from Franchisee to another entity that is 100 percent
19 owned by a direct parent of Franchisee, and such parent provided an unconditional
20 guaranty of performance of the Transferee Affiliate at the time the Franchise was
21 issued, then such Transfer shall not require the prior approval of the City so long as
22 all the conditions on affiliate Transfers set forth in Title 16B are satisfied (including,
23 without limitation, the notice requirements).



1 2.6 Revocation. In addition to any rights set out elsewhere in this
2 Franchise, the City Charter or Title 16, the City reserves the right to declare a
3 forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining
4 thereto, as provided in Title 16(B) or in the event that:

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

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

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

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

18 E. The procedures for revocation and forfeiture shall be governed
19 by Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee
20 shall be given notice and opportunity to cure at least equivalent to that required by
21 Title 16B as of the effective date of this Franchise (except in those cases where
22 notice and opportunity to cure are not required), and shall be accorded at least an



1 opportunity to be heard that provides at least the due process protections required
2 by Title 16B as of the effective date of this Franchise, which opportunities and
3 protections are set out in Section 2.6.F., below.
4

5 F. (1) Where, after notice and providing the Franchisee an
6 opportunity to be heard (if such opportunity is timely requested by Franchisee), the
7 City finds that there has been an act or omission that would justify revocation of the
8 Franchise, the City may make an appropriate reduction in the remaining term of the
9 Franchise or revoke the Franchise. However, the Franchise may only be revoked if
10 the Franchisee (a) was given written notice of the default; and (b) 30 days to cure
11 the default; and (c) the Franchisee failed to cure the default, or to propose a
12 schedule for curing the default acceptable to the City where it is impossible to cure
13 the default in 30 days. The required written notice may be given before the City
14 conducts the proceeding required by this paragraph. No opportunity to cure is
15 required for repeated violations, and fraud shall be deemed incurable.
16
17

18 (2) Notwithstanding the foregoing, the City may declare a
19 Franchise forfeited without opportunity to cure when the Franchisee: (a) has
20 elected to discontinue providing services within the City of Tacoma for a period of
21 six (6) months or more, (b) Transfers without the prior consent of the City as
22 required in the Franchise and the City determines, as provided in Section 2.5, that
23 the transferee is not a viable Franchise holder; (c) fails to pay the Franchise
24 application fees owed hereunder; or (d) defrauds or attempts to defraud the City or
25 Franchisee's customers. However, Franchisee shall have the right to receive
26



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



1 2.7 Continuity of Service and Right to Purchase the System.

2 A. In the event the City has declared a forfeiture for cause or
3 otherwise revoked for cause this Franchise as provided herein, or in the event of
4 expiration of the initial term of this Franchise without this Franchise being renewed
5 or extended (referred to below collectively as a “termination”), Franchisee shall, at
6 the direction of the City expressed by ordinance, continue its operations for such
7 reasonable period (the “Continuation Period”) as the City may determine is
8 necessary to permit transition to another provider, which period may be established
9 taking into account any appeal of the termination. During such Continuation
10 Period, Franchisee shall continue to be bound by all its obligations under this
11 Franchise and Title 16B. Additionally, during this Continuation Period, Franchisee
12 shall not Transfer any portion of its Telecommunications System to any other
13 Person, including parts of the System rented, leased, or lease-purchased; or
14 significantly alter the Telecommunications System or remove Facilities from the
15 City, or otherwise encumber the Telecommunications System in any manner,
16 without prior written consent of the City. Notwithstanding the foregoing, Franchisee
17 may continue to conduct normal business operations and enter into contracts with
18 its customers without obtaining consent from the City. Franchisee acknowledges
19 and accepts any and all risk inherent in such continuation of its normal business
20 conduct. The Franchisee’s obligations to remove its Facilities under Title 16B,
21 Section 16B.03.090 shall be deferred for the Continuation Period. Within 30 days
22 of the date the City passes the ordinance requiring continuation of service, or 30
23
24
25
26



1 days after the effective date of the termination, whichever is earlier, Franchisee
2 shall provide the City with an inventory of all its Facilities in the City, and in addition,
3 such other property located in the rights-of-way as may be used and useful by it in
4 providing service within the City. Any property on the list that is essential to
5 providing service to other communities must be clearly identified. Property on the
6 list that is not within the City must be clearly identified, and its location stated.
7

8 B. The City shall have an option to purchase the
9 Telecommunications System upon termination of the Franchise, whether
10 termination is, or is not, for cause. This option requires Franchisee to convey the
11 Telecommunications System or such portion thereof as the City may choose to
12 purchase along with (1) all equipment within the rights-of-way, Facilities, and real
13 property interests necessary for the Telecommunications System's operation;
14 (2) Customer lists and billing records; (3) all repair records, maps, and equipment
15 and Facilities records (including records identifying equipment that is being used in
16 the field, warranties with respect to such equipment and the like); and (4) such
17 other properties, contract rights or intangibles as may be normally conveyed in
18 order to permit a buyer to take over and continue the operations of a seller with
19 minimal disruption to Customers; provided, that nothing herein shall require the City
20 to accept or pay for any contract that it does not wish to assume. Franchisee is not
21 required to convey portions of the Telecommunications System located outside the
22 City which are essential to Franchisee's operations in other communities, and
23 which were so identified on the inventory provided pursuant to Section 2.7.A. This
24
25
26



1 option also requires Franchisee to sell the Telecommunications System, or such
2 portion thereof as the City may choose to purchase at fair market value, if the
3 Franchise is terminated for cause. If Franchisee's request for a Franchise renewal
4 is denied, the option requires Franchisee to sell the Telecommunications System,
5 or such portion thereof as the City may choose to purchase, at fair market value,
6 determined on the basis of the value of the Telecommunications System as a going
7 concern (taking into account such property used and useful in providing service
8 within the City that is not to be conveyed) and with no value allocated to the
9 Franchise itself.
10
11

12 C. The City may exercise its Section 2.7.B option rights in the
13 following manner: the City will have up to 180 days after receiving the inventory
14 required by Section 2.7.A to notify Franchisee that it intends to exercise its right to
15 purchase the Telecommunications System or a portion of the Telecommunications
16 System. Within 90 days of the date the City notifies Franchisee of its intent to
17 exercise the option, or by such other time as the parties may separately agree, the
18 parties shall meet to establish a price that comports with the requirements of
19 Section 2.7.B. If the parties are unable to agree to a price within 180 days after the
20 City notifies Franchisee that the City intends to exercise its purchase option, either
21 party may require the price to be set by appraisal by sending the other party notice
22 that it wishes to have price set by appraisal. Within 45 days of the date that notice
23 is submitted, each party may appoint one appraiser. If each party appoints an
24 appraiser, the two appraisers shall appoint a third appraiser; if only a single
25
26



1 appraiser is appointed (whether by mutual agreement or because of the failure of a
2 party to timely nominate an appraiser) that appraiser shall be the sole appraiser.

3 The appraiser or appraisers shall establish a price for the System or portion thereof
4 that the City desires to purchase in accordance with Section 2.7.B. This appraisal
5 determination shall be final and non-appealable. The City shall have 120 days after
6 the decision of the appraisers to notify Franchisee that it wishes to conclude the
7 transaction; if it does not so notify the Franchisee, the option shall be deemed
8 terminated.
9
10

11 If the City gives the notice required by the preceding paragraph, the
12 parties will thereafter promptly sign all necessary documents required to close the
13 transaction; provided, however, that the City may make conclusion of the
14 transaction conditional upon any necessary voter approval of any bond funding for
15 acquisition of all or a part of the System and, if applicable, the successful sale of
16 the bonds.
17

18 The City and Franchisee will share equally the costs associated with
19 any appraiser that is jointly appointed (by them or by the appraisers each selects);
20 the City will bear costs associated with any appraiser that it separately appoints
21 and Franchisee will bear costs associated with any appraiser that it separately
22 appoints.
23

24 D. (1) Nothing in this section or in any other section of this
25 Franchise shall prevent the City's exercise of its rights under the Tacoma City
26 Charter. Included within the rights granted under Tacoma's Charter is the right to



1 purchase or condemn Franchisee's property within the Franchised Area at any
2 time, which right is expressly set out in Section 8.1(c) of the Charter as follows:

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

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

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

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

18 2.8 Right to Require Removal of Property/Right to Remove Property.

19 A. Upon termination of this Franchise, Franchisee may be
20 required to remove its property from any Public Rights-of-Way, and restore such
21 Rights-of-Way to the same or better condition as existed just prior to such removal,
22 subject to any rights Franchisee may have to abandon property in place, as set out
23 in Title 16B. If Franchisee fails to remove property that the City requires it to
24



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. The affected property must be restored to as good or better condition than existed immediately prior to removal; and those damaged by removal must be compensated for the damage.



1 E. Nothing in this Franchise Agreement shall affect the City's
2 authority to require Franchisee to remove its Telecommunications System upon
3 Franchise termination, as provided in this section and Title 16B, nor does it affect
4 the City's right to assume ownership of any portion of the Telecommunications
5 System that is abandoned. Within 60 days of a request by the City, the Franchisee
6 shall execute such documents as may be required to convey such abandoned
7 property to the City.
8

9 2.9 Customers Right to Obtain Service. It shall be the right of all
10 Customers to receive all available services insofar as their financial and other
11 obligations to Franchisee are honored during the term of the Franchise or any
12 Continuation Period. In addition to the obligations established under the other
13 provisions of this Franchise, in the event that Franchisee elects to overbuild,
14 rebuild, modify, or sell the system, Franchisee shall make its best effort to ensure
15 that all Customers receive continuous uninterrupted service at rates which are fair
16 and reasonable, regardless of the circumstance.
17

18 2.10 Responsibility for Costs. Except as expressly provided otherwise,
19 any act that Franchisee is required to perform under this Franchise shall be
20 performed at its cost. If Franchisee fails to perform work that it is required to
21 perform within the time provided for performance, the City may perform the work
22 and bill the Franchisee. The Franchisee shall pay the amounts billed within 30
23 days of receipt of the bill. The parties agree that any amounts paid pursuant to this
24 section or Title 16B are not franchise fees.
25
26



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, 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, subcontractor or other Person 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.



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

2 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of
3 this Franchise and Title 16B, the City's Right-of-Way Restoration Policy, and other
4 applicable laws, construct, operate and maintain a fiber optic Telecommunications
5 System in Public Rights-of-Way within the Franchise Area, to provide
6 Telecommunications Services. Without limiting the foregoing, Franchisee
7 expressly agrees that it will construct, operate and maintain its System in
8 compliance with the requirements of Title 16B, including those governing the
9 placement of its Telecommunications System, and with other applicable City codes;
10 and will obtain and maintain all bonds and billable work orders required by the
11 same.
12

13
14 3.2 Construction, Operation, or Repair. Franchisee shall, in all cases,
15 comply with all lawful City ordinances and regulations now in effect or hereinafter
16 enacted regarding the acquisition of permits and such other items as may be
17 required by the City in connection with the construction, operation or repair of the
18 Telecommunications System, including, without limitation, the City's Right-of-Way
19 Restoration Policy.
20

21 Without limiting the foregoing, Franchisee agrees that it shall, in the course
22 of constructing, operating and maintaining its Telecommunications System comply
23 with the requirements of Title 16B and among other things:
24

25 A. (1) Franchisee shall, by a time specified by the City,
26 protect, support, temporarily disconnect, relocate, or remove any of its property



1 when required by the City by reason of traffic conditions; public safety; Public
2 Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or
3 widening); change of Public Rights-of-Way grade; construction, installation or repair
4 of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of
5 government-owned Communications System, public work, public facility, or
6 improvement or any government-owned utility; Public Rights-of-Way vacation; or
7 for any other purpose where the work involved would be aided by the removal or
8 relocation of the Telecommunications System. Collectively, such matters are
9 referred to below as the "public work."
10
11

12 (2) In the event of an emergency, or where the
13 Telecommunications System creates or is contributing to an imminent danger to
14 health, safety, or property, the City may protect, support, temporarily disconnect,
15 remove, or relocate any or all parts of the Telecommunications System without
16 prior notice, and charge the Franchisee for costs incurred.
17

18 (3) In the case of non-public work, if any Person that is
19 authorized to place Facilities in the Rights-of-Way requests Franchisee to protect,
20 support, temporarily disconnect, remove, or relocate Franchisee's facilities to
21 accommodate the construction, operation, or repair of the facilities of such other
22 Person, the Franchisee shall, after 30 days' advance written notice, take action to
23 effect the necessary changes requested. In the case of non-public work, unless the
24 matter is governed by a valid contract or a state or federal law or regulation, or
25 unless the Franchisee's Telecommunications System was not properly installed,
26



1 the reasonable cost of the same shall be borne by the Person requesting the
2 protection, support, temporary disconnection, removal, or relocation and at no
3 charge to the City, even if the City makes the request for such action.
4

5 (4) Franchisee shall, on the request of any Person holding
6 a valid permit issued by a governmental authority, temporarily raise or lower its
7 wires to permit the moving of buildings or other objects. The expense of such
8 temporary removal or raising or lowering of wires shall be paid by the Person
9 requesting the same.
10

11 B. The Franchisee's obligation to construct, operate, and repair its
12 Telecommunications System in compliance with all laws, ordinances, departmental
13 rules and regulations and practices affecting such System, includes, by way of
14 example, and not limitation, the obligation to construct, operate and repair in
15 accordance with zoning codes, safety codes and City construction standards,
16 including the most current version of the Standard Specifications for Road, Bridge
17 and Municipal Construction, as prepared by the Washington State Department of
18 Transportation (WSDOT) and the Washington State Chapter of American Public
19 Works Association (APWA); the most current version of the APWA Amendments to
20 Division One, and the most current version of the City of Tacoma Amendments
21 thereto. In addition, the construction, operation, and repair shall be performed in a
22 manner consistent with high industry standards. The Franchisee shall exercise
23 reasonable care in the performance of all its activities and shall use commonly
24 accepted methods and devices for preventing failures and accidents that are likely
25
26



1 to cause damage, injury, or nuisance to the public or to property. In the event that
2 Franchisee's work or other use of the Public Right-of-Way causes damage to any
3 City facility, Franchisee shall bear the cost of repairing, or replacing as necessary,
4 such City facility.
5

6 C. Franchisee's construction, operation, or repair of its
7 Telecommunications System shall not commence until all required permits have
8 been properly filed for and obtained from the proper City officials and all required
9 permits and associated fees paid. In any permit so issued, the City may impose, as
10 a condition of the granting of the permit, such conditions and regulations as may be
11 necessary to the management of the Public Rights-of-Way, including, by way of
12 example and not limitation, for the purpose of protecting any structures in the Public
13 Rights-of-Way, maintaining proper distance from other utilities, for the proper
14 restoration of such Public Rights-of-Way and structures, and for the protection of
15 the City and the public and the continuity of pedestrian and vehicular traffic.
16
17

18 D. Franchisee must follow City-established requirements for
19 placement of Facilities in Public Rights-of-Way, including the specific location of
20 Facilities in the Public Rights-of-Way, and must in any event install Facilities in a
21 manner that minimizes interference with the use of the Public Rights-of-Way by
22 others, including others that may be installing Communications Facilities. The City
23 may require that Facilities be installed at a particular time, at a specific place, or in
24 a particular manner as a condition of access to a particular Public Right-of-Way
25 area; may deny access if Franchisee is not willing to comply with the City's
26



1 requirements; and may remove, or require removal of, any Facility that is not
2 installed in compliance with the requirements established by the City, or which is
3 installed without prior City approval of the time, place, or manner of installation and
4 charge the Franchisee for all the costs associated with removal; and may require
5 Franchisee to cooperate with others to minimize adverse impacts on the Public
6 Rights-of-Way through joint trenching and other arrangements.

8 E. Franchisee agrees that, as a condition of a permit for
9 installation of conduit, the City may require it to install conduit in excess of its
10 reasonably foreseeable requirements for the purpose of accommodating the City
11 and/or other Franchisees and Licensees where the City Manager determines it is
12 appropriate to do so to minimize disruption of public passage or infrastructure, to
13 forestall or relieve exhaustion of Right-of-Way capacity, or to protect
14 environmentally sensitive areas.

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

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

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



1 2. Whenever an electric utility opens a trench for the
2 purpose of installing or relocating Facilities, the Franchisee shall concurrently
3 relocate its Facilities underground and, if it uses the same trench, share the cost.
4

5 3. The City Manager may, for good cause shown, exempt
6 a particular portion of the Telecommunication System from the obligation to locate
7 or relocate Facilities underground, where relocation is impractical, or where the
8 interest in protecting against visual blight can be protected in another manner.
9 Nothing in this Section 3.2.G prevents the City from ordering the Franchisee to
10 locate or relocate its Telecommunication System underground under other
11 provisions of the Tacoma Municipal Code, it being the intent that the number and
12 extent of Overhead Facilities and the visual pollution resulting therefrom will, over
13 time, be reduced and eventually, to the extent feasible, be eliminated.
14

15 H. The Franchisee shall participate in conversion to underground
16 Local Improvement Districts ("LIDs"). The Franchisee, at no cost to the City or
17 abutting property owners, shall share fairly with other utilities the cost of
18 undergrounding when done through the LID process.
19

20 1. As part of its obligations under the Tacoma Municipal
21 Code, the Franchisee shall provide the preliminary cost estimate, facility conversion
22 designs, and final cost estimates to any LID project coordinator in a timely manner.
23 At the request of an LID project coordinator, the Franchisee shall perform
24 underground construction and movement of Customer connections underground
25
26



1 (overhead reclaim), in coordination with the undergrounding services provided by
2 other LID utilities, at no cost to the City or abutting property owners.

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

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

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

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

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



1 (2) Franchisee shall remove such Facilities as the City
2 orders it to remove; provided, that the City may not order removal where such
3 removal is primarily to give economic benefit or advantage to a competing provider
4 of Telecommunications Service.
5

6 (3) Where trenching or other opening of the Rights-of-Way
7 along the extension of Facilities to be removed is required, Franchisee must post
8 bonds as the City may require to ensure that the property is promptly removed, with
9 minimum disruption. Franchisee must restore the affected property in conformance
10 with the City's Right-of-Way Restoration Policy; and Franchisee must compensate
11 those whose property it damages for the damage.
12

13 (4) Subject to the City's rights to purchase the
14 Telecommunications System, Franchisee may voluntarily remove any Facilities
15 from the streets which have been installed in such a manner that they can be
16 removed without trenching or other opening of the Rights-of-Way.
17

18 3.3 Right To Inspect and Order Corrections. The City may inspect the
19 Telecommunications System at any time reasonable under the circumstances to
20 ensure compliance with this Franchise and applicable law, including to ensure that
21 the Telecommunications System of Franchisee is constructed and maintained in a
22 safe condition. If an unsafe condition is found to exist, the City, in addition to taking
23 any other action permitted under applicable law, may order Franchisee, in writing,
24 to make the necessary repairs and alterations specified therein forthwith to correct
25 the unsafe condition on a time table established by the City which is reasonable in
26



1 light of the unsafe condition. The City has the right to correct, inspect, administer,
2 and repair the unsafe condition if Franchisee fails to do so, and to charge the
3 Franchisee therefor.
4

5 3.4 Information Regarding Ongoing Work. In addition to providing notice
6 to the public of ongoing work as may be required under applicable law, Franchisee
7 shall make available information regarding any ongoing construction, operation or
8 installation of its Telecommunications System sufficient to show (1) the nature of
9 the work being performed; (2) where it is performed; (3) its estimated completion
10 date; and (4) progress to completion.
11

12 SECTION 4. REGULATORY PROVISIONS.

13 4.1 Intent. The City shall have the right to administer and regulate
14 activities of this Franchise up to the fullest extent of the law. The failure to reserve
15 a particular right to regulate, or reference a particular regulation, shall not be
16 interpreted by negative implication or otherwise to prevent the application of a
17 regulation to Franchisee.
18

19 4.2 Remedies for Franchise Violations. The City has the right to exercise
20 any and all of the following remedies, singly or in combination, in the event
21 Franchisee violates any provision of this Franchise:
22

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



1 default. Should the City take this action, Franchisee shall be responsible for all
2 direct and actual costs related to such action, including, but not limited to, legal and
3 administrative costs;
4

- 5 B. Commence an action at law for monetary damages;
- 6 C. Commence an action for equitable or other relief;
- 7 D. Declare the Franchise to be revoked; and/or
- 8 E. Seek specific performance of any provision, which reasonably
9 lends itself to such remedy.
10

11 In determining which remedy or remedies for Franchisee's violation are
12 appropriate, the City may take into consideration the nature and extent of the
13 violation, the remedy needed to prevent such violations in the future, whether
14 Franchisee has a history of previous violations of the same or similar kind, and
15 such other considerations as are appropriate under the circumstances. Remedies
16 are cumulative; the exercise of one shall not foreclose the exercise of others.
17

18 4.3 Procedure for Remedying Franchise Violations. Before imposing
19 liquidated damages, or drawing upon the performance bond, letter of credit,
20 security fund, or any other security set out in Section 6, the City shall follow the
21 procedure below.
22

23 A. Notice of Violation. In the event that the City believes that
24 Franchisee has not complied with the terms of this Franchise, the City shall notify
25 Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.
26



1 B. Franchisee's Right to Cure or Respond. Except as provided in
2 Section 4.3.D., Franchisee shall have 30 days from the receipt of notice described
3 above to (a) respond to the City contesting the assertion of noncompliance, or
4 (b) to cure such default or, in the event that by the nature of the default such default
5 cannot be cured within the 30-day period, initiate steps to remedy such default as
6 promptly as possible. The duty to cure includes the duty to cure all harms caused
7 by the acts or omissions of Franchisee. At the end of the 30-day period,
8 Franchisee shall notify the City in writing of the steps it has taken to cure the
9 default, if any; if the cure is not complete, the reason it is not complete and the
10 projected date for completion; and if the default is disputed, the complete basis for
11 that contention.
12

13 C. Public Hearing. The City may schedule a public hearing to
14 investigate any alleged default. The City shall give Franchisee 20 calendar days'
15 notice of the time and place of the hearing and provide Franchisee with an
16 opportunity to be heard.
17

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



1 have known it was in default; in such cases, the performance bond, security fund,
2 letter of credit or other security may be drawn upon, the guarantor required to
3 perform and liquidated damages imposed after the hearing required by
4 Section 4.3.C.
5

6 E. Liquidated Damage Amounts. Because Franchisee's failure to
7 comply with the provisions of this Franchise will result in injury to the City, and
8 because it may be difficult to estimate the extent of each such injury, Franchisee
9 and the City agree to the following liquidated damages, which provisions represent
10 the best estimate of the damages resulting from injuries of specific types. The
11 amounts of the liquidated damages set forth in this Franchise are in 2014 dollars
12 and shall be increased each year by the increase in the U. S. Department of Labor,
13 Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City
14 Average for the greater Seattle area. The amount of liquidated damages for all
15 material violations of this Franchise for which actual damages may not be
16 ascertainable shall be: \$500 per day for each violation for each day the violation
17 continues. It is provided, however, that the City shall allow the Franchisee a
18 minimum of 30 days after notice to the Franchisee of such neglect, failure, or
19 refusal to comply within which to meet compliance or correct performance, prior to
20 the assessment of any liquidated damages.
21
22
23

24 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its
25 obligations to comply promptly with any provision of this Franchise by reason of any
26



1 failure of the City to enforce prompt compliance, and the City's failure to enforce
2 shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

3 4.5 Force Majeure. The Franchisee shall not be deemed in default with
4 provisions of this Franchise where performance was rendered impossible by war or
5 riots, civil disturbances, floods, or other natural catastrophes beyond the
6 Franchisee's control; the unforeseeable unavailability of labor or materials; or
7 power outages exceeding back-up power supplies. The acts or omissions of
8 Affiliates are not beyond the Franchisee's control, and the knowledge of Affiliates
9 shall be imputed to Franchisee. This Franchise shall not be revoked or the
10 Franchisee penalized for such noncompliance, provided that the Franchisee takes
11 immediate and diligent steps to bring itself back into compliance and to comply as
12 soon as possible under the circumstances with this Franchise without unduly
13 endangering the health, safety, and integrity of the Franchisee's employees or
14 property, or the health, safety, and integrity of the public, Public Rights-of-Way,
15 public property, or private property.

16 4.6 Alternative Remedies. No provision of this Franchise shall be
17 deemed to bar the right of the City to seek or obtain judicial relief from a violation of
18 any provision of the Ordinance or any rule, regulation, requirement or directive
19 promulgated thereunder. Neither the existence of other remedies identified in this
20 Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the
21 right of the City to recover monetary damages for such violation by Franchisee, or
22 to seek and obtain judicial enforcement of Franchisee's obligations by means of



1 specific performance, injunctive relief or mandate, or any other judicial remedy at
2 law or in equity.

3 4.7 Compliance with the Laws. Franchisee shall comply with all federal
4 and state laws and regulations, including regulations of any administrative agency
5 thereof, as well as all City ordinances, resolutions, rules policies and regulations
6 heretofore or hereafter adopted or established during the entire term of the
7 Franchise; provided that, nothing herein shall prevent Franchisee from challenging
8 a provision of laws that applies only to it as an impairment of contract. Nothing in
9 this Franchise shall limit the City's right of eminent domain under state law.
10 Nothing in this Franchise shall be deemed to waive the requirements of any lawful
11 code or resolution of the City regarding permits, fees to be paid or manner of
12 construction.
13

14 SECTION 5. REPORTING REQUIREMENTS.

15 5.1 Quarterly Reports. Within 30 days after the end of each of
16 Franchisee's fiscal quarters, Franchisee shall submit a written report to the City,
17 which shall contain a listing of all categories of Gross Revenues earned and Gross
18 Receipts collected by Franchisee for its business activities as identified in Section
19 2.1, which are activities specifically taxable as a telephone business under Tacoma
20 Municipal Code Title 6. Said written report shall be in sufficient detail and with
21 sufficient explanation, to enable the City to understand the report and to verify the
22 accuracy of the report. In addition, Franchisees shall provide such other quarterly
23 reports as may be required by Title 16B.
24
25
26



1 5.2 Annual Report. No later than 120 days following the end of
2 Franchisee's fiscal year each year, Franchisee shall present a written report to the
3 City which shall include:
4

5 A. Audited financial statements for (1) Franchisee and (2) any
6 Affiliate which signed the guarantee for the previous fiscal year; and a financial
7 statement for Franchisee that includes Gross Revenues from all sources, gross
8 Subscriber revenues from each category of service, as well as an income
9 statement and a balance sheet. In the event any audited financial report has not
10 been published by the date due under this section, then the audited financial report
11 shall be deemed presented on time if presented within 30 days after publication.
12

13 All financial reports required under this section shall be presented to
14 the City accompanied by such notes and explanations as are required to fully
15 understand the reports. Such notes and explanations shall include, but not be
16 limited to, an explanation of any and all deductions made from Gross Revenues in
17 order to arrive at Gross Receipts for the calculation of Fees or taxes to be paid to
18 the City, as well as:
19

20 1. A summary of the previous year's activities for the Franchise
21 Area, including, but not limited to, the total number of Customers, miles of Facilities,
22 any services added or dropped;
23

24 2. Such other information as is required by Title 16B.
25
26



1 5.3 Additional Reports. Franchisee shall prepare and furnish to the City,
2 upon request, at the times and in the form prescribed by the City, such additional
3 reports with respect to Franchisee's operation, affairs, transactions, or property, as
4 may be reasonably necessary and appropriate to ensure compliance with the
5 material provisions of this Franchise, or to permit the performance of any of the
6 rights, functions or duties of the City or such other regulatory entity in connection
7 with the Franchise.
8

9 5.4 Preservation of Confidential Information. Trade secrets and
10 confidential information designated as such by Franchisee shall be subject to such
11 protection as provided in Title 16B.
12

13 SECTION 6. COMPENSATION AND FINANCIAL PROVISIONS.

14 6.1 Fees; Taxes.

15 A. State Prohibition of Franchise Fee. The parties understand that
16 RCW 35.21.860 currently prohibits a municipal franchise fee. Franchisee agrees
17 that if this statutory prohibition is removed, the City may assess a reasonable
18 franchise fee in accordance with the City Charter and Tacoma Municipal Code.
19 The parties agree that this Section 6.1(A) herein does not limit the right of the
20 Franchisee to challenge the franchise fee pursuant to 47 USC § 253.
21
22

23 B. Franchisee Subject to the City Telephone Business Tax.

24 Franchisee agrees that all of its activities in the City of Tacoma, as identified in
25 Section 2.1, are activities specifically taxable as a telephone business under
26 Tacoma Municipal Code Chapter 6A, and are taxable at the rate specified in



1 Tacoma Municipal Code Chapter 6A now in effect or as amended, which at the
2 time of the execution of this Franchise agreement is 6 percent of the Franchisee's
3 Gross Receipts. The City recognizes that its ability to impose taxes on Franchisee
4 is subject to continued lawfulness and that its imposition of the same is subject to
5 standards of equal application and equal protection. It is agreed that the amount of
6 Gross Receipts to be taxed will include the amount of tax imposed on Franchisee
7 by City ordinance. This Franchise does not limit the City's power of taxation.
8

9 C. Franchisee Obligated to Pay Administrative Costs. In accord
10 with RCW 35.21.860 as presently effective, as it may be later amended, Franchisee
11 must pay the City an amount sufficient to recover the actual administration
12 expenses incurred in receiving and approving this Franchise, including, but not
13 limited to, the actual costs of outside consultants retained by the City to assist in
14 the City's consideration and processing of this Franchise application. The first
15 \$5,000 of said expenses will be covered by the \$5,000 application fee deposited
16 with the City. Franchisee will also pay the reasonable actual costs of enforcing, or,
17 as necessary, reviewing, the provisions of this Franchise as well as costs involved
18 with the modification, amendment, renewal, or Transfer of this Franchise, as ordered
19 by the Franchise Services Manager, whether such costs result from accrued in-house
20 staff time, or out-of-pocket expenses or administrative costs, as well as expenses of
21 retaining independent technical, legal, or financial consultants or advisors, or whether
22 relating to costs incurred due to initial System development or to future System
23 expansion. The amount of payment to be made by Franchisee to cover these
24
25
26



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, 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 federal law and 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, including by providing appropriate Subscriber privacy notices. Nothing in this section shall be read to require a Franchisee to violate 47 U.S.C. § 551. 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.

The City agrees to request access to only those books and records, in exercising its rights under this section, 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 shall be, in a form and with a surety (authorized to do business in the state of Washington) reasonably acceptable to the City's Risk Manager and in a form acceptable to the City Attorney. 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 the construction, operation or maintenance of the Telecommunications System, unless



and to the extent caused by the negligence or willful misconduct of the City or any of its agents or representatives, and, without limiting the provisions of Section 7.4, 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 whatsoever 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 or repair of the Telecommunications System, unless and to the extent caused by the gross negligence of the City or any of its agents or representatives. 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 of its Franchise and continue in full force and effect as to the Franchisee's responsibility to indemnify.



6.5 Franchisee Insurance.

A. Franchisee shall maintain, throughout the term of the Franchise, 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 at least in the following amounts:

(1) COMPREHENSIVE 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 on an occurrence basis, with the following limits of liability:

(a) Bodily Injury

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

(b) Property Damage

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

(c) Personal Injury

Annual Aggregate \$ 3,000,000

(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 must 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) COMPREHENSIVE AUTO LIABILITY Coverage shall include owned, hired, and non-owned vehicles.

- (a) Bodily Injury
1. Each Occurrence \$ 1,000,000
 2. Annual Aggregate \$ 3,000,000
- (b) Property Damage
1. Each Occurrence \$ 1,000,000
 2. Annual Aggregate \$ 3,000,000.



1 B. The required insurance must be obtained and maintained for
2 the entire period the Franchisee has facilities in the Public Rights-of-Way, and for
3 six years thereafter. If the Franchisee, its contractors, or subcontractors do not
4 have the required insurance, the City may order such entities to stop operations
5 until the insurance is obtained and approved.

6 C. Certificates of insurance, reflecting evidence of the required
7 insurance and naming the City as an additional insured with all required
8 endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies described
9 above, shall be filed with the City's Risk Manager. The certificate shall be filed with
10 the acceptance of the Franchise, and annually thereafter, and as provided in E
11 below.
12

13 D. The certificates shall contain a provision that coverages
14 afforded under these policies will not be canceled until at least 30 days' prior written
15 notice has been given to the City. Policies shall be issued by companies
16 authorized to do business under the laws of the State of Washington. Financial
17 Ratings must be no less than "A" in the latest edition of "Bests Key Rating Guide",
18 published by A.M. Best Guide.
19

20 E. In the event that the insurance certificate provided indicates
21 that the insurance shall terminate or lapse during the period of the Franchise then
22 in that event, the Franchisee shall furnish, no later than the expiration of the date of
23 such insurance, a renewed certificate of insurance as proof that equal and like
24
25
26



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 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, except to the extent allowed by any preempting Federal, state, or local law, regulation or order, 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 provision or requirement of Title 16B or because of the enforcement of Title 16B or the City's exercise of its 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:



1 City of Tacoma
2 Municipal Services Building
3 1224 MLK Jr Way
4 Tacoma, WA 98405
Attn: Franchise Services Manager

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

6 Level 3 Communications, LLC
7 1025 Eldorado Boulevard
8 Broomfield, Colorado, 80021
Attn: Director, Network Infrastructure Services
Attn: General Counsel

9 The City and Franchisee may designate such other address from time to
10 time by giving written notice to the other, but notice cannot be required to more
11 than one address, and the address must be within the City, except by mutual
12 agreement.

13
14 7.6 Execution. Franchisee shall execute and return to the City three
15 original countersigned copies of this Ordinance and a signed acceptance of the
16 Franchise granted hereunder within 30 days after the date of passage of the
17 Ordinance by the City Council. The acceptance shall be submitted in the form
18 attached hereto or other form acceptable to the City Attorney and in accepting the
19 Franchise, Franchisee warrants that it has carefully read the terms and conditions
20 of this Franchise and unconditionally accepts all of the terms and conditions of this
21 Franchise and agrees to abide by the same and acknowledges that it has relied
22 upon its own investigation of all relevant facts, that it has had the assistance of
23 counsel, that it was not induced to accept a Franchise, that this Franchise
24 represents the entire agreement between Franchisee and the City, and that
25
26



1 Franchisee accepts all risks related to the interpretation of this Franchise. The
2 countersigned Ordinance and acceptance shall be returned to the City
3 accompanied by: evidence of insurance; a payment for publication costs; billable
4 work order deposit, and security deposit (or the letter of credit). The Franchise
5 rights granted herein shall not become effective until all of the foregoing is received
6 in acceptable form. In the event Franchisee fails to submit the countersigned
7 Ordinance and acceptance as provided for herein, or fails to provide the required
8 accompanying documents and payments, within the time limits set forth in this
9 section, the grant of the Franchise shall be null and void.
10
11

12 Passed _____
13

14 Mayor: _____

15 Attest: City Clerk
16
17 _____
18

19 Approved as to form
20
21 _____
22

22 Deputy City Attorney
23
24
25
26



ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _____, effective _____, 2014

I, _____, am the _____ of Level 3 Communications, LLC, a Delaware limited liability company, and am the authorized representative to accept the above-referenced City franchise ordinance on behalf of Level 3 Communications, LLC.

I certify that this franchise and all terms and conditions thereof are accepted by Level 3 Communications, LLC without qualification or reservation.

DATED this _____ day of _____, 2014.

By: _____

Its: _____

Witness: _____