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 Seabrand, 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

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

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

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

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

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

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

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

Adopted ____________________________

_______________________________
Mayor

Attest:

_______________________________
City Clerk

Approved as to form and legality:

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

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

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

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

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

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

Adopted ________________________________

Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
City Attorney
TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services
       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
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:

<table>
<thead>
<tr>
<th>FUND NUMBER &amp; FUND NAME *</th>
<th>COST OBJECT (CC/WBS/OBJECT)</th>
<th>TOTAL AMOUNT</th>
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* General Fund: Include Department

REVENUES:

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<td>$105,000</td>
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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.
A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the increase of Contract No. 4600006642 with Gem Shavings, LLC, in the amount of $315,000, sales tax not applicable, for a cumulative contract amount of $700,000, sales tax not applicable, budgeted from the ES Wastewater Fund, through September 30, 2015, for sawdust used in the creation of TAGRO soil amendment products pursuant to Specification No. PW10-0395F.

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

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

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

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

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

Adopted __________________________

________________________________________
Mayor

Attest:

________________________________________
City Clerk

Approved as to form:

________________________________________
City Attorney
TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services
       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:**

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<th>FUND NUMBER &amp; FUND NAME</th>
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* General Fund: Include Department

**REVENUES:**

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**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

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

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

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

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

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

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

Adopted ________________________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
City Attorney
TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services
       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
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 contact 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.

Revised: 01/29/2014
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:

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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.

Revised: 01/29/2014
A RESOLUTION related to the purchase of materials, supplies or equipment, and
the furnishing of services; authorizing the waiver of competitive
procurement procedures due to sole source availability, as deemed in the
best interests of the City; authorizing the increase of the existing contract
with Agilent Technologies, in the amount of $45,309.27, plus sales tax, for
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.

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

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

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

Section 1. That the Council of the City of Tacoma concurs with the
Board of Contracts and Awards to adopt the recommendation for award as set
forth in the attached Exhibit “A,” and authorizes the waiver of competitive
procurement procedures due to sole source availability, as deemed in the best
interests of the City.

Section 2. That the proper officers of the City are hereby authorized to
increase the existing contract with Agilent Technologies, in the amount of
$45,309.27, plus sales tax, for 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, 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:

<table>
<thead>
<tr>
<th>FUND NUMBER &amp; FUND NAME *</th>
<th>COST OBJECT (CC/WBS/ORDER)</th>
<th>COST ELEMENT</th>
<th>TOTAL AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1090 Fire Misc Special Revenue</td>
<td>878000 GRT-01003-09</td>
<td>Various</td>
<td>$45,309</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>$45,309</td>
</tr>
</tbody>
</table>

* General Fund: Include Department

REVENUES:

<table>
<thead>
<tr>
<th>FUNDING SOURCE</th>
<th>COST OBJECT (CC/WBS/ORDER)</th>
<th>COST ELEMENT</th>
<th>TOTAL AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013 US DHS Port Security Grant</td>
<td>878000 GRT-01003-09</td>
<td>4333004</td>
<td>$45,309</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
<td>$45,309</td>
</tr>
</tbody>
</table>

Revised: 01/29/2014
**POTENTIAL POSITION IMPACT: (NOT APPLICABLE)**

<table>
<thead>
<tr>
<th>POSITION TITLE</th>
<th>PERMANENT/PROJECT TEMPORARY POSITION</th>
<th>FTE IMPACT</th>
<th>POSITION END DATE</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

*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

Purchasing Use Only

Approved ___________ Rejected ___________

None (after the fact) ___________

Date ___________ By ___________

cc: Richelle Krienke, Senior Buyer, Finance/Purchasing
ORDINANCE NO. 28214

AN ORDINANCE renewing a non-exclusive franchise to Level 3 Communications, LLC, a Delaware limited liability company, to construct, operate, and repair a telecommunications system throughout the City of Tacoma; setting forth provisions, terms and conditions of the renewed grant of franchise; specifically making such grant subject to the provisions of Title 16B of the Tacoma Municipal Code and the Tacoma City Charter; providing for City regulation of the Telecommunications System; prescribing liquidated damages and certain other remedies for violation of franchise provisions in addition to those specified pursuant to the Municipal Code and the City of Tacoma Charter.

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

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

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

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

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

WHEREAS this City of Tacoma Telecommunications Franchise Ordinance contains the following sections:
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Now, Therefore,
BE IT ORDAINED BY THE CITY OF TACOMA:

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

1.1 “City” means the City of Tacoma, a municipal corporation of the State of Washington, and all departments, divisions, and agencies thereof, including Tacoma Public Utilities.

1.2 "City Manager" means the City Manager or the City Manager’s designee.

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

1.4 “Communications system” refers to a telecommunications system.

1.5 "Construction, operation, or repair" and similar formulations of these terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, or components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.
1.6 “Customer” means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by the Telecommunications System.

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

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

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

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

1.11 “Gross Receipts” shall have the meaning ascribed in Article VIII of the City Charter or the meaning given to the phrase “Gross Revenue” as set forth in Title 16 of the Tacoma Municipal Code.
1.12 “Operator” when used with reference to a system, refers to a Person (a) who provides service over a Communications System and directly or through one or more Affiliates owns a significant interest in such facility; or (b) who otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility. A Person that operates under agreement of a Telecommunications System or a specific portion of a Telecommunications System to provide Telecommunications Services shall be treated as an Operator for purposes of this Franchise.

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

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

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

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

1.18 “Telecommunications System” or “telecommunications Facility” means a tangible facility that is used to provide one or more Telecommunications Services, any portion of which occupies Public Rights-of-Way. The term Telecommunications System by way of example, and not limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other supporting structures, and associated and appurtenant facilities used to transmit telecommunications signals. The term Telecommunications System includes all devices mounted on light poles in the Public Rights-of-Way through which Telecommunications Services are originated or terminated. An Open Video System is not a Telecommunications System to the extent that it provides only video services; a Cable System is not a Telecommunications System to the extent that it provides only Cable Service. The term Telecommunications Facility includes any of the tangible components of a Telecommunications System which occupies Public Rights-of-Way.
1.19. “Telephone Service” means the providing by any person of access to a local telephone network, local telephone network switching service, toll service, or coin telephone service, or providing telephonic, video, data, or similar communication or transmission for hire via a local telephone network, toll line, channel, cable, microwave, or similar communication or transmission system. Telephone Service includes intrastate or interstate service, including toll service, originating from, or received on, communications equipment or apparatus in this State if the charge for the service is billed to a person in this State. Telephone Service does not include the providing of competitive Telephone Service as defined in Tacoma Municipal Code § 6A.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
construct, repair, and operate a fiber optic Telecommunication System to provide Telecommunication Service.

Such grant is subject to and must be exercised in strict accordance with and subject to this Franchise Agreement, Title 16B of the Tacoma Municipal Code, and the Tacoma City Charter including but not limited to the provisions set forth in Article VIII of the Charter, and this Franchise may be revoked if it is not so exercised. Provided further, that the exercise of any rights pursuant to this Franchise is subject to the exercise of the City's police powers, and other regulatory powers as the City may have or obtain in the future, and all rights granted herein must be exercised in strict accordance with applicable law, including by way of example and not limitation, zoning codes and permitting requirements.

No rights shall pass to the Franchisee by implication. Said Franchise shall constitute both a right and an obligation to provide the services of the Telecommunications System as required by the provisions of this Franchise.

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

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

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

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

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

2.4 Transfers, Generally.

A. Every Transfer shall be subject to the prior written approval of the City except as provided herein. A “Transfer” is any transaction in which: (1) all or a majority portion (i.e. 51% or more) of the Telecommunications System is sold or assigned (2) there is any change, acquisition, or direct or indirect transfer of control of the Franchisee; or (3) the rights and/or obligations held by the Franchisee under the Franchise are transferred, sold, assigned, or leased, in whole or in part, directly or indirectly, to another party. The term “control” in subsection (2) above refers to actual working control, in whatever manner exercised. It will be presumed
that a change in working control within the meaning of subsection (2) has occurred in any case where there is a change in voting interest of 25 percent or more; or a change in voting interest that results in a Person obtaining a 50 percent or greater interest in Franchisee; or a change in voting interest that results in a Person that held 50 percent or greater interest reducing their interest to below 50 percent. A Transfer without the prior written approval of the City is a substantial violation of this Franchise and shall make the Franchise subject to termination by the City as provided herein and in Title 16B.

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

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

D. The requirements of this section shall not be deemed to prohibit the use of Franchisee’s property as collateral for security in financing the construction or acquisition of all or part of the Telecommunications System franchised hereunder provided that no such security shall purport to attach the City’s real property interest in the Public Right-of-Way. In addition, no such
arrangement may be made if it would in any respect under any condition prevent
the Operator or any successor from complying with the Franchise and applicable
law, nor may any such arrangement permit a third party to succeed to the interest
of the Operator, or to own or control the Telecommunications System, without the
prior consent of the City. Any mortgage, pledge or lease shall be subject to and
subordinate to the rights of the City under this Franchise, and other applicable law.

2.5 Change in Control-Notice and Affiliate Exception. Franchisee shall
promptly notify the City of any change in, transfer of, or acquisition by any other
Person of an ownership interest in Franchisee that results in a change in control of
Franchisee within the meaning of Section 2.4.A. In the event that Franchisee does
not provide the City with prior written notice of any such Transfer, the City may take
all reasonable steps, after actually receiving notice, to ascertain the viability of the
transferee in complying with the provisions of this Franchise. If the City reasonably
determines that the transferee is not a viable Franchise holder, the City may give
the transferee notice of revocation and invoke the steps set forth in Section 2.6
below. The foregoing notwithstanding, if the proposed change in control merely
results in a Transfer of control from Franchisee to another entity that is 100 percent
owned by a direct parent of Franchisee, and such parent provided an unconditional
guaranty of performance of the Transferee Affiliate at the time the Franchise was
issued, then such Transfer shall not require the prior approval of the City so long as
all the conditions on affiliate Transfers set forth in Title 16B are satisfied (including,
without limitation, the notice requirements).
2.6 **Revocation.** In addition to any rights set out elsewhere in this Franchise, the City Charter or Title 16, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, as provided in Title 16(1B) or in the event that:

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

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

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

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

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

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

(2) Notwithstanding the foregoing, the City may declare a Franchise forfeited without opportunity to cure when the Franchisee: (a) has elected to discontinue providing services within the City of Tacoma for a period of six (6) months or more, (b) Transfers without the prior consent of the City as required in the Franchise and the City determines, as provided in Section 2.5, that the transferee is not a viable Franchise holder; (c) fails to pay the Franchise application fees owed hereunder; or (d) defrauds or attempts to defraud the City or Franchisee’s customers. However, Franchisee shall have the right to receive
30 days' prior notice of an intent to declare a Franchise forfeited, and shall have the opportunity to show cause why the Franchise should not be forfeited.

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

A. In the event the City has declared a forfeiture for cause or otherwise revoked for cause this Franchise as provided herein, or in the event of expiration of the initial term of this Franchise without this Franchise being renewed or extended (referred to below collectively as a “termination”), Franchisee shall, at the direction of the City expressed by ordinance, continue its operations for such reasonable period (the “Continuation Period”) as the City may determine is necessary to permit transition to another provider, which period may be established taking into account any appeal of the termination. During such Continuation Period, Franchisee shall continue to be bound by all its obligations under this Franchise and Title 16B. Additionally, during this Continuation Period, Franchisee shall not Transfer any portion of its Telecommunications System to any other Person, including parts of the System rented, leased, or lease-purchased; or significantly alter the Telecommunications System or remove Facilities from the City, or otherwise encumber the Telecommunications System in any manner, without prior written consent of the City. Notwithstanding the foregoing, Franchisee may continue to conduct normal business operations and enter into contracts with its customers without obtaining consent from the City. Franchisee acknowledges and accepts any and all risk inherent in such continuation of its normal business conduct. The Franchisee's obligations to remove its Facilities under Title 16B, Section 16B.03.090 shall be deferred for the Continuation Period. Within 30 days of the date the City passes the ordinance requiring continuation of service, or 30
days after the effective date of the termination, whichever is earlier, Franchisee shall provide the City with an inventory of all its Facilities in the City, and in addition, such other property located in the rights-of-way as may be used and useful by it in providing service within the City. Any property on the list that is essential to providing service to other communities must be clearly identified. Property on the list that is not within the City must be clearly identified, and its location stated.

B. The City shall have an option to purchase the Telecommunications System upon termination of the Franchise, whether termination is, or is not, for cause. This option requires Franchisee to convey the Telecommunications System or such portion thereof as the City may choose to purchase along with (1) all equipment within the rights-of-way, Facilities, and real property interests necessary for the Telecommunications System’s operation; (2) Customer lists and billing records; (3) all repair records, maps, and equipment and Facilities records (including records identifying equipment that is being used in the field, warranties with respect to such equipment and the like); and (4) such other properties, contract rights or intangibles as may be normally conveyed in order to permit a buyer to take over and continue the operations of a seller with minimal disruption to Customers; provided, that nothing herein shall require the City to accept or pay for any contract that it does not wish to assume. Franchisee is not required to convey portions of the Telecommunications System located outside the City which are essential to Franchisee’s operations in other communities, and which were so identified on the inventory provided pursuant to Section 2.7.A. This
option also requires Franchisee to sell the Telecommunications System, or such portion thereof as the City may choose to purchase at fair market value, if the Franchise is terminated for cause. If Franchisee’s request for a Franchise renewal is denied, the option requires Franchisee to sell the Telecommunications System, or such portion thereof as the City may choose to purchase, at fair market value, determined on the basis of the value of the Telecommunications System as a going concern (taking into account such property used and useful in providing service within the City that is not to be conveyed) and with no value allocated to the Franchise itself.

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

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

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

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

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

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

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

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

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

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

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

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

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

D. Franchisee shall file a written removal plan with the City not
later than 30 calendar days following the date of the receipt of any orders directing
removal, or any consent to removal describing the work that will be performed, the
manner it will be performed, and a schedule for removal by location. The removal
plan shall be subject to approval and regulation by the City. 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.
E. Nothing in this Franchise Agreement shall affect the City’s authority to require Franchisee to remove its Telecommunications System upon Franchise termination, as provided in this section and Title 16B, nor does it affect the City’s right to assume ownership of any portion of the Telecommunications System that is abandoned. Within 60 days of a request by the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City.

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

2.10 Responsibility for Costs. Except as expressly provided otherwise, any act that Franchisee is required to perform under this Franchise shall be performed at its cost. If Franchisee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Franchisee. The Franchisee shall pay the amounts billed within 30 days of receipt of the bill. The parties agree that any amounts paid pursuant to this section or Title 16B are not franchise fees.
2.11 **Work of Contractors and Subcontractors.** Work by contractors and subcontractors is subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it and shall ensure that all such work is performed in compliance with this Franchise and Title 16B, and other applicable law, 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.
SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY.

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

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

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

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

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

(3) In the case of non-public work, if any Person that is authorized to place Facilities in the Rights-of-Way requests Franchisee to protect, support, temporarily disconnect, remove, or relocate Franchisee’s facilities to accommodate the construction, operation, or repair of the facilities of such other Person, the Franchisee shall, after 30 days’ advance written notice, take action to effect the necessary changes requested. In the case of non-public work, unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Franchisee’s Telecommunications System was not properly installed,
the reasonable cost of the same shall be borne by the Person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action.

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

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

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

D. Franchisee must follow City-established requirements for placement of Facilities in Public Rights-of-Way, including the specific location of Facilities in the Public Rights-of-Way, and must in any event install Facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Communications Facilities. The City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Public Right-of-Way area; may deny access if Franchisee is not willing to comply with the City's
requirements; and may remove, or require removal of, any Facility that is not
installed in compliance with the requirements established by the City, or which is
installed without prior City approval of the time, place, or manner of installation and
charge the Franchisee for all the costs associated with removal; and may require
Franchisee to cooperate with others to minimize adverse impacts on the Public
Rights-of-Way through joint trenching and other arrangements.

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

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

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

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

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

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

1. As part of its obligations under the Tacoma Municipal Code, the Franchisee shall provide the preliminary cost estimate, facility conversion designs, and final cost estimates to any LID project coordinator in a timely manner. At the request of an LID project coordinator, the Franchisee shall perform underground construction and movement of Customer connections underground.
(overhead reclaim), in coordination with the undergrounding services provided by other LID utilities, at no cost to the City or abutting property owners.

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

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

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

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

(1) Franchisee shall not remove any Facilities which require trenching or other opening of the Rights-of-Way along the extension of the Facilities to be removed without the express permission of the City. Franchisee must request permission from the City to remove the Facilities at least 30 days in advance of the date Franchisee proposes to begin removal.
(2) Franchisee shall remove such Facilities as the City orders it to remove; provided, that the City may not order removal where such removal is primarily to give economic benefit or advantage to a competing provider of Telecommunications Service.

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

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

3.3 Right To Inspect and Order Corrections. The City may inspect the Telecommunications System at any time reasonable under the circumstances to ensure compliance with this Franchise and applicable law, including to ensure that the Telecommunications System of Franchisee is constructed and maintained in a safe condition. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a time table established by the City which is reasonable in
light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do so, and to charge the Franchisee therefor.

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

SECTION 4. REGULATORY PROVISIONS.

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

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

A. Draw upon or foreclose all or any part of any letter of credit, security fund, performance bond or other security provided under this Franchise; provided, however, such drawing or foreclosure shall be only in such a manner and in such amount as the City reasonably determines is necessary to remedy the
default. Should the City take this action, Franchisee shall be responsible for all
direct and actual costs related to such action, including, but not limited to, legal and
administrative costs;

B. Commence an action at law for monetary damages;

C. Commence an action for equitable or other relief;

D. Declare the Franchise to be revoked; and/or

E. Seek specific performance of any provision, which reasonably

lends itself to such remedy.

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

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

A. Notice of Violation. In the event that the City believes that
Franchisee has not complied with the terms of this Franchise, the City shall notify
Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.
B. Franchisee’s Right to Cure or Respond. Except as provided in Section 4.3.D., Franchisee shall have 30 days from the receipt of notice described above to (a) respond to the City contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the 30-day period, initiate steps to remedy such default as promptly as possible. The duty to cure includes the duty to cure all harms caused by the acts or omissions of Franchisee. At the end of the 30-day period, Franchisee shall notify the City in writing of the steps it has taken to cure the default, if any; if the cure is not complete, the reason it is not complete and the projected date for completion; and if the default is disputed, the complete basis for that contention.

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

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

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

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

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

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

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

SECTION 5. REPORTING REQUIREMENTS.

5.1 Quarterly Reports. Within 30 days after the end of each of Franchisee’s fiscal quarters, Franchisee shall submit a written report to the City, which shall contain a listing of all categories of Gross Revenues earned and Gross Receipts collected by Franchisee for its business activities as identified in Section 2.1, which are activities specifically taxable as a telephone business under Tacoma Municipal Code Title 6. Said written report shall be in sufficient detail and with sufficient explanation, to enable the City to understand the report and to verify the accuracy of the report. In addition, Franchisees shall provide such other quarterly reports as may be required by Title 16B.
5.2 **Annual Report.** No later than 120 days following the end of Franchisee's fiscal year each year, Franchisee shall present a written report to the City which shall include:

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

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

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

2. Such other information as is required by Title 16B.
5.3  **Additional Reports.** Franchisee shall prepare and furnish to the City, upon request, at the times and in the form prescribed by the City, such additional reports with respect to Franchisee’s operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to ensure compliance with the material provisions of this Franchise, or to permit the performance of any of the rights, functions or duties of the City or such other regulatory entity in connection with the Franchise.

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

**SECTION 6. COMPENSATION AND FINANCIAL PROVISIONS.**

6.1  **Fees; Taxes.**

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

B.  **Franchisee Subject to the City Telephone Business Tax.** Franchisee agrees that all of its activities in the City of Tacoma, as identified in Section 2.1, are activities specifically taxable as a telephone business under Tacoma Municipal Code Chapter 6A, and are taxable at the rate specified in...
Tacoma Municipal Code Chapter 6A now in effect or as amended, which at the
time of the execution of this Franchise agreement is 6 percent of the Franchisee’s
Gross Receipts. The City recognizes that its ability to impose taxes on Franchisee
is subject to continued lawfulness and that its imposition of the same is subject to
standards of equal application and equal protection. It is agreed that the amount of
Gross Receipts to be taxed will include the amount of tax imposed on Franchisee
by City ordinance. This Franchise does not limit the City’s power of taxation.

C. Franchisee Obligated to Pay Administrative Costs. In accord
with RCW 35.21.860 as presently effective, as it may be later amended, Franchisee
must pay the City an amount sufficient to recover the actual administration
expenses incurred in receiving and approving this Franchise, including, but not
limited to, the actual costs of outside consultants retained by the City to assist in
the City’s consideration and processing of this Franchise application. The first
$5,000 of said expenses will be covered by the $5,000 application fee deposited
with the City. Franchisee will also pay the reasonable actual costs of enforcing, or,
as necessary, reviewing, the provisions of this Franchise as well as costs involved
with the modification, amendment, renewal, or Transfer of this Franchise, as ordered
by the Franchise Services Manager, whether such costs result from accrued in-house
staff time, or out-of-pocket expenses or administrative costs, as well as expenses of
retaining independent technical, legal, or financial consultants or advisors, or whether
relating to costs incurred due to initial System development or to future System
expansion. The amount of payment to be made by Franchisee to cover these
administrative costs is an amount determined to be reasonable by the Franchise Services Manager. Such obligation further includes municipal fees related to receiving and approving permits or licenses, inspecting plans and construction, or relating to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt of the City's billing therefor.

D. Manner of Payment; Audit. Franchisee shall make all required fee payments in the form, intervals and manner requested by the City Treasurer, and furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit, 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.
B. The required insurance must be obtained and maintained for the entire period the Franchisee has facilities in the Public Rights-of-Way, and for six years thereafter. If the Franchisee, its contractors, or subcontractors do not have the required insurance, the City may order such entities to stop operations until the insurance is obtained and approved.

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

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

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise then in that event, the Franchisee shall furnish, no later than the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like
coverage has been or will be obtained prior to any such lapse or termination during
the balance of the period of the Franchise.

F. The City shall reserve the right to require any other insurance
coverage it 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:
City of Tacoma  
Municipal Services Building  
1224 MLK Jr Way  
Tacoma, WA  98405  
Attn:  Franchise Services Manager

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

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

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

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

Passed ____________

__________________________

Mayor: ______________________

Attest: City Clerk

__________________________

Approved as to form

__________________________

Deputy City Attorney

Passed ____________

Mayor: ______________________

Attest: City Clerk

Approved as to form

Deputy City Attorney
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: _________________________