



Legislation Passed August 19, 2014

The Tacoma City Council, at its regular City Council meeting of August 19, 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. 38987

A resolution authorizing the execution of an Interlocal Agreement with the Port of Tacoma to clarify the rights and responsibilities of the City and the Port relating to jointly-owned real property commonly referred to as Julia's Gulch located in Northeast Tacoma.

[Ian Munce, Special Assistant to the Director; Peter Huffman, Director, Planning and Development Services]

Resolution No. 38988

A resolution authorizing the execution of an amendment to the agreement with Business Interiors Northwest in the amount of \$400,000, plus sales tax, for a cumulative total of \$1,968,000, budgeted from various departmental funds, to increase the contract for office systems and ancillary furniture on an as-needed basis - Specification No. CT09-0355F.

[Marie Holm, Senior Buyer; Kathy Katterhagen, Manager, Procurement and Payables Division, Finance]

Resolution No. 38989

A resolution authorizing the execution of an amendment to the agreement with Ceccanti, Inc., in the amount of \$650,000, including sales tax, for a cumulative total of \$13,290,776.99, budgeted from the Surface Water Fund, for unforeseen overages associated with construction delays, additional time and labor necessary to complete the required work, and additional construction requirements not anticipated during the original estimation process for the Stadium Way Arterial Improvement Project - Specification No. PW12-0083F.

[Erik Ward, Project Manager; Michael P. Slevin III, P.E., Director, Environmental Services]

Resolution No. 38990

A resolution awarding a contract to Western Peterbilt, Inc., in the amount of \$433,495, plus sales tax, budgeted from the Solid Waste Fund, for one Compressed Natural Gas Hybrid Automated Side Loader Truck - Sole Source.

[Gary Kato, Division Manager; Michael P. Slevin III, P.E., Director, Environmental Services]

Ordinance No. 28236

An ordinance granting a non-exclusive franchise to tw telecom of washington llc, to construct, operate and repair a telecommunications system throughout the city.

[Jeff Lueders, Cable Communications & Franchise Services Manager;
T.C. Broadnax, City Manager]



RESOLUTION NO. 38987

1 A RESOLUTION relating to City jointly-owned real property; authorizing the
2 execution of an Interlocal Agreement with the Port of Tacoma to clarify the
3 rights and responsibilities of the City and the Port relating to that certain
jointly-owned real property commonly referred to as Julia's Gulch.

4 WHEREAS the City and the Port of Tacoma ("Port") own, as tenants in
5 common, certain real property commonly referred to as Julia's Gulch, and

6 WHEREAS the City and the Port, as common owners of the Property,
7 entered into an agreement on January 3, 2008, regarding the management of the
8 Property, and
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10 WHEREAS the City of Tacoma, Environmental Services Department, as
11 manager of the Property, has contracted with the Metropolitan Park District of
12 Tacoma ("Metro Parks") to facilitate expanded public access and recreational use
13 of the Property, and
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15 WHEREAS the Port, which contributed a majority of the funding for the
16 acquisition of the Property, is supportive of the expanded public use, but desires
17 that the City take responsibility for any increased liability in conjunction with such
18 expanded public use of the Property, and
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20 WHEREAS the City and the Port seek to clarify certain rights and
21 responsibilities regarding the Property, and an Interlocal Agreement ("Agreement")
22 has been prepared by City and Port staff which outlines the rights and
23 responsibilities for both parties; Now, Therefore,
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BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

That the proper officers of the City are hereby authorized to execute the Interlocal Agreement with the Port of Tacoma ("Port") to clarify the rights and responsibilities of the City and the Port relating to that certain real property commonly referred to as Julia's Gulch, said document to be substantially in the form of the interlocal agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



RESOLUTION NO. 38988

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the increase of Contract
3 No. 4600005988 with Business Interiors Northwest in the amount of
4 \$400,000, plus sales tax, for a cumulative total of \$1,968,000, budgeted
5 from various departmental funds, to increase the contract for office
6 systems and ancillary furniture on an as-needed basis pursuant to
7 Specification No. CT09-0355F.

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

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

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

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

18 Section 2. That the proper officers of the City are hereby authorized to
19 increase Contract No. 4600005988 with Business Interiors Northwest in the
20 amount of \$400,000, plus sales tax, for a cumulative total of \$1,968,000,
21 budgeted from various departmental funds, to increase the contract for office
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1 systems and ancillary furniture on an as-needed basis pursuant to Specification

2 No. CT09-0355F, consistent with Exhibit "A."

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4 Adopted _____

5 _____
Mayor

6 Attest:

7 _____
City Clerk

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9 Approved as to form:

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11 _____
City Attorney

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TO: Board of Contracts and Awards
FROM: Kathy Katterhagen, Finance Division Manager, Procurement and Payables *KK*
Marie Holm, Finance/Purchasing
COPY: City Council, City Manager, City Clerk, SBE Coordinator, LEAP Coordinator, and
Andrew Cherullo, Finance Director
SUBJECT: Increase for Citywide Office Systems and Ancillary Furniture Contract
Request for Proposals CT09-0355F, SAP Contract No. 4600005988 - August 19, 2014
DATE: July 25, 2014

SUMMARY:

Finance/Purchasing requests approval to increase Contract No. 4600005988 with Business Interiors Northwest (BINW), Tacoma, WA by \$400,000, plus sales tax, for office systems and ancillary furniture to be purchased as needed. This increase will bring the contract to a cumulative amount of \$1,968,000, plus sales tax. The contract expires January 31, 2015 with no options to renew. At the time of contract award in 2010, estimated usage was based on historical data and planned project purchases. Due to unplanned larger purchases, the TPU Cafeteria remodel and an upcoming one-time purchase to upgrade the Green River Facility Operations Building, the current contract balance will need to be increased to allow for the one-time purchases to occur as well as other furniture purchases and services until the contract expires.

STRATEGIC POLICY PRIORITY:

State and briefly explain which strategic policy priority is best aligned to this action. Please remove the statements below you are not directly addressing.

- Encourage and promote an open, effective, results-oriented organization.

This contract has aggressive fixed discounts and is widely used by many departments within the City.

BACKGROUND:

ISSUE: This contract increase allows for the continuation of furniture purchases, work station design and installation services used by various City departments as needed. Although there are two other furniture contracts available to use, the departments have gravitated towards the BINW contract more exclusively. At the time of the initial award, BINW was given \$900,000 and two other furniture suppliers were given contracts for \$450,000 each. To-date, the BINW contract has approximately \$37,000 available. The Bang Office Interiors contract has approximately \$447,000 and the Open Square d/b/a Bank and Office Interiors contract has \$430,000. Awarding three contracts allowed for continued standardization of furniture or new options. BINW carries Herman Miller furniture which TPU has standardized in their facilities. The discounts available on the various manufacturer lines are excellent and allowed departments a variety of manufacturers.

ALTERNATIVES: The alternative course of action would be to not increase the contract at this time and wait till the remaining amount of \$37,000 is spent. Taking this action may cause a delay in the payment processing and having to ratify purchases when requesting a contract increase. Because this contract is used “as needed”, there is no prior notification of purchases to be made. Although there are two other furniture contracts in place, departments use this contract more frequently because they have other systems furniture made by the same manufacturer.



COMPETITIVE SOLICITATION: This contract was originally awarded to BINW as a result of Request for Proposals CT09-0355F. BINW has agreed to increase the contract at the same terms and conditions as the original contract.

CONTRACT HISTORY: This contract was originally approved by Resolution 37964 on January 5, 2010, in the amount of \$900,000, plus sales tax and by Utility Board Resolution U-10346 on December 16, 2009. The first contract amendment approved per Resolution 38262 on May 17, 2011 and Utility Board Resolution U-10465 on April 27, 2011, increased the contract by \$668,000, plus sales tax, for a total of \$1,568,000, plus sales tax. This second amendment of \$400,000, plus sales tax, would bring the cumulative aggregate total to \$1,968,000, plus sales tax through January 31, 2015.

RECOMMENDATION:

Finance/Purchasing recommends an increase to the contract to allow BINW to continue supporting furniture needs to the various departments.

FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Various departmental funds			\$400,000
TOTAL			

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
TOTAL			

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$200,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes



RESOLUTION NO. 38989

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the execution of Contract
3 No. 4600008105 with Ceccanti, Inc., in the amount of \$650,000, including
4 sales tax, for a cumulative total of \$13,290,776.99, budgeted from the
5 Surface Water Fund, for unforeseen overages associated with
6 construction delays, additional time and labor necessary to complete the
7 required work, and additional construction requirements not anticipated
8 during the original estimation process for the Stadium Way Arterial
9 Improvement Project, pursuant to Specification No. PW12-0083F.

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

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

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

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

20 Section 2. That the proper officers of the City are hereby authorized to
21 increase Contract No. 4600008105 with Ceccanti, Inc., in the amount of \$650,000,
22 including sales tax, for a cumulative total of \$13,290,776.99, budgeted from the
23 Surface Water Fund, for unforeseen overages associated with construction delays,
24 additional time and labor necessary to complete the required work, and additional
25 construction requirements not anticipated during the original estimation process for
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1 the Stadium Way Arterial Improvement Project, pursuant to Specification
2 No. PW12-0083F, consistent with Exhibit "A."

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4 Adopted _____

5 _____
6 Mayor

7 Attest:

8 _____
9 City Clerk

10 Approved as to form:

11 _____
12 City Attorney

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TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services
Kurtis D. Kingsolver, P.E., Director/City Engineer, Public Works
COPY: City Council; City Manager; City Clerk; SBE Coordinator; LEAP Coordinator;
Chuck Blankenship, Finance/Purchasing; and Erik Ward, ESSE Project Manager
SUBJECT: Resolution to increase the contract with Ceccanti, Inc. for the Stadium Way Arterial
Improvement Project – Request for Bids Specification No. PW12-0083F, Contract
No. 4600008105 – August 19, 2014
DATE: August 5, 2014

SUMMARY:

The Environmental Services and Public Works Departments request approval to increase Contract No. 4600008105 with Ceccanti, Inc., Tacoma, WA, by \$650,000, including sales tax, budgeted from the ES Surface Water Fund 4301 and PW Transportation Capital Fund 1060, for a cumulative total of \$13,290,776.99, for unforeseen overages associated with construction delays, additional time and labor necessary to complete the required work, and additional construction requirements not anticipated during the original estimation process.

STRATEGIC POLICY PRIORITY:

- Plan for and improve public infrastructure that meets the transportation needs of all Tacoma residents and visitors.

The Commerce Street/Schuster Parkway stormwater trunk main improvements provide critical drainage to more than 90 acres of properties and roadways in downtown Tacoma. This flooding mitigation project provides flood relief during high-intensity storm events by realigning and upsizing a portion of the existing trunk main, constructing a new storm main extension, re-grading roadway surfaces, and constructing new pedestrian ramps. Commerce Street/Stadium Way provides a vital transportation link between north and west Tacoma, the Stadium Way Business District, I-705 and the downtown. This project provides a high factor of safety against flooding for properties along Commerce Street previously affected by flooding.

BACKGROUND:

ISSUE: The proposed contract increase will provide funding for overages associated with construction delays, additional time and labor necessary to complete the required work, and additional construction requirements not anticipated during the original estimation process.

October through December 2013, a total of 6.9 inches of rain fell in Tacoma. In contrast, after the added work began in January 2014, over 20 inches of rain fell in the three winter months. Inclement weather severely affected the Contractor's production capabilities and created saturated ground conditions which caused construction delays and necessitated additional remediation of pipe trenches and exposed road bedding. Construction days for this contract, which were originally estimated at 75 days, increased to approximately 110 days. In an effort to try to keep on schedule and work on dry days the Contractor was required to work several weekends. Labor on these days was paid at a premium. During construction the Contractor also ran into field conditions which necessitated design changes. Two additional stormwater manholes were added to the contract and one additional wastewater manhole was added; there were several instances where unmarked and unknown underground utilities required field changes and caused delays, one of which was the replacement of approximately 35-linear feet of retaining wall not originally



anticipated. In all, the additional labor, material and equipment rental costs associated with the additional work and additional construction days drove construction costs to far exceed original estimations. Additional funds for this contract are necessary to pay for overages experienced with construction labor, equipment rentals and additional construction requirements.

\$30,000 of this increase will settle a claim with the Contractor addressing disputed contract items, such as the deletion of work associated with the large retaining wall on Schuster Parkway, and additional traffic control, excavation, and roadway paving on the original Stadium Way construction project.

ALTERNATIVES: Once the flooding mitigation work began, the only alternative course of action to avoid these overages would have been to stop work and complete the flood mitigation work under a separate contract. The consequence of stopping work and hiring a different contractor would have been an increased risk of additional flooding due to delayed upgrades to the stormwater system, additional closures of both Schuster Parkway and Commerce Street to complete the necessary improvements at a later date, additional costs associated with temporary asphalt restoration and subsequent demolition when the new contract started and additional expenses associated with the procurement of a new construction contract.

Delaying this work would have resulted in negative impacts to the residents and businesses that regularly utilize Schuster Parkway and Commerce Street. The estimated cost of not implementing this action and hiring a new contractor would have been an additional \$100,000, based on a typical contractor markup of 12 percent versus the agreed 6 percent negotiated for this extension.

COMPETITIVE SOLICITATION: This contract was originally awarded to Ceccanti, Inc., as a result of a Request for Bids Specification No. PW12-0083F in April 2012. The contractor has agreed to perform the additional work and amend the contract at the same prices, terms, and conditions as the original contract extension adopted on November 19, 2013, with a 6 percent markup.

CONTRACT HISTORY: The original contract for \$10,740,776.99, including sales tax, was adopted by City Council Resolution No. 38481 on May 8, 2012. Amendment No. 1, in the amount of \$1,900,000.00, was adopted by Resolution No. 38777 on November 19, 2013, for a cumulative total of \$12,640,776.99, and initiated the flooding mitigation work on Commerce Street/Schuster Parkway, addressed additional roadway stabilization issues on Stadium Way, and provided for additional storm and roadway improvements on Division and Tacoma Avenues. This proposed third amendment in the amount of \$650,000.00 will bring the contract to a cumulative total of \$13,290,776.99.

RECOMMENDATION:

The Environmental Services and Public Works Departments request approval to increase the contract with Ceccanti, Inc., by \$650,000, including sales tax, for a cumulative total of \$13,290,776.99, for unforeseen overages associated with construction delays, additional time and labor necessary to complete the required work, and additional construction requirements not anticipated during the original estimation process.



FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Transportation Capital Fund 1060	PWK-00516	5600000	\$30,000
Surface Water Fund 4301-06CON	ENV-03006-05	5600000	\$620,000
TOTAL			\$650,000

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
Transportation Capital Fund 1060	PWK-00516	6311010	\$30,000
ES Surface Water Fund 4301	521900	4343040	\$620,000
TOTAL			\$650,000

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$650,000

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes



RESOLUTION NO. 38990

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the waiver of competitive
3 procurement procedures due to sole source availability; and authorizing
4 the execution of a contract with Western Peterbilt, Inc., in the amount of
5 \$433,495, plus sales tax, budgeted from the Solid Waste Fund, for the
6 purchase of one Compressed Natural Gas (CNG) Hybrid Automated Side
7 Loader Truck.

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

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

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

15 Section 1. That the Council of the City of Tacoma concurs with the
16 Board of Contracts and Awards to adopt the recommendation for award as set
17 forth in the attached Exhibit "A," and authorizes the waiver of competitive
18 procurement procedures due to sole source availability.

19 Section 2. That the proper officers of the City are hereby authorized to
20 enter into a contract with Western Peterbilt, Inc., in the amount of \$433,495, plus
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1 sales tax, budgeted from the Solid Waste Fund, for the purchase of one
2 Compressed Natural Gas (CNG) Hybrid Automated Side Loader Truck,
3 consistent with Exhibit "A."
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5 Adopted _____
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7 _____
8 Mayor

9 Attest:
10 _____

11 City Clerk

12 Approved as to form:
13 _____

14 City Attorney
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TO: Board of Contracts and Awards
FROM: Michael P. Slevin III, P.E., Director, Environmental Services *WIS*
Gary Kato, Division Manager, Solid Waste Management
COPY: City Council; City Manager; City Clerk; SBE Coordinator; LEAP Coordinator;
Joseph Parris, Finance/Purchasing; and Andrew Torres, Assistant Division Manager,
Solid Waste Management
SUBJECT: Contract with Western Peterbilt, Inc. for a Compressed Natural Gas (CNG) Hybrid
Automated Side Loader Truck – Sole Source – August 19, 2014
DATE: August 6, 2014

SUMMARY:

The Environmental Services Department, Solid Waste Management Division (SWM), requests a waiver of competitive procurement procedures and recommends a contract be awarded to Western Peterbilt, Inc., Seattle, WA, in the amount of \$433,495, plus applicable sales tax, budgeted from ES Solid Waste Fund 4200, for the one-time purchase of one Compressed Natural Gas (CNG) Hybrid Automated Side Loader Truck. This CNG vehicle is manufactured by Autocar, LLC, and is sold by Western Peterbilt, Inc.

STRATEGIC POLICY PRIORITY:

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

Vehicles fueled with CNG result in lower emissions of sulfur dioxide, particulate matter, and 20 percent less carbon dioxide than gasoline or diesel, which contributes to a more sustainable environment.

BACKGROUND:

ISSUE: This vehicle will be an addition to the Solid Waste Management (SWM) truck fleet used to evaluate the productivity and sustainability of a CNG Hybrid Automated Side Loader. The vehicle stores energy from braking to supplement power of the Cummins Westport ISL-G CNG engine to provide up to 50 percent fuel savings, reduced brake wear, improved drivability, significantly reduced emissions (an estimated 55 fewer tons of CO₂ annually), and a 41 percent reduction in emissions of particulate matter. This CNG hybrid vehicle is a prototype and would be the first Automated Side Loader in the country with a CNG engine combined with the hybrid drive system. Autocar, LLC, through Western Peterbilt, Inc., is the only manufacturer currently licensed to make the hybrid-powered refuse truck with the Parker Runwise hybrid drive system and the Cummins Westport 8.9-liter ISL-G CNG engine.

ALTERNATIVES: The alternatives to purchasing the CNG Hybrid Automated Side Loader are limited. The hybrid drive Automated Side Loader is a prototype vehicle that would be used to evaluate its fuel and emissions efficiency for future purchases. Purchasing a different Automated Side Loader would not allow the evaluation of the new technology.

COMPETITIVE ANALYSIS: Waiver of competitive bidding is requested due to sole source. Staff contacted multiple truck manufacturers on the phone and/or in person regarding available hybrid technology, and all confirmed that Autocar, LLC and Cummins Westport, Inc. are the only manufacturers that can produce a CNG truck with Parker Hannifan's Hybrid technology.

CONTRACT HISTORY: New contract.



SUSTAINABILITY: CNG significantly reduces emissions (an estimated 55 fewer tons of CO₂ annually) and a 41 percent reduction in emissions of particulate matter.

SBE/LEAP COMPLIANCE: Not applicable.

RECOMMENDATION:

The Environmental Services Department, Solid Waste Management Division, requests a waiver of competitive procurement procedures and recommends a contract be awarded to Western Peterbilt, Inc., Seattle, WA, in the amount of \$433,495, plus applicable sales tax, for the one-time purchase of one CNG Hybrid Automated Side Loader Truck. This CNG vehicle is manufactured by Autocar, LLC, and is sold by Western Peterbilt, Inc.

FISCAL IMPACT:

EXPENDITURES:

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Solid Waste Fund 4200	ENV-00116	Various	\$433,495.00
TOTAL			\$433,495.00

* General Fund: Include Department

REVENUES:

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Solid Waste Fund 4200	512000	Various	\$433,495.00
TOTAL			\$433,495.00

FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$433,495

ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? Yes



City of Tacoma
Environmental Services Department

To: Kathy Katterhagen
Procurement and Payables Manager

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

Subject: Waiver of Competitive Solicitation Request – Sole Source Purchase
Compressed Natural Gas Hybrid Automated Side Loader Collection Truck from Western
Peterbilt, Inc.

Date: August 5, 2014

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

In accordance with Tacoma Municipal Code 1.06.257.A. (Sole Source), the Environmental Services Department, Solid Waste Management (SWM) Division, requests a waiver of the competitive solicitation process for the purchase of one CNG Hybrid Automated Side Loader Collection Truck. This vehicle will replace an existing SWM collection vehicle that has exceeded its life cycle. The CNG vehicle stores energy from braking to supplement power of the Cummins Westport ISL-G CNG engine to provide up to 50 percent fuel savings, reduced brake wear, improved drivability, significantly reduced emissions (an estimated 55 fewer tons of carbon dioxide annually), and a 41 percent reduction in emissions of particulate matter. This CNG hybrid vehicle is a prototype and will be the first Automated Side Loader in the country with a CNG engine combined with the hybrid drive system. The vehicle is only produced by Autocar, LLC, and the sole source vendor is **Western Peterbilt, Inc., Seattle, WA**. This is a one-time purchase totaling \$433,495.00, 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 ☒

Waiver Criteria:

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

Autocar, LLC is the only manufacturer of a hybrid-powered refuse truck that combines the Parker Runwise hybrid drive system and the Cummins Westport 8.9-liter ISL-G CNG engine. Western Peterbilt, Inc. is the local distributor for this prototype vehicle.

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.

We have contacted multiple truck manufacturers regarding available hybrid technology. We spoke on the phone and/or met with the following companies, and all confirmed that Autocar, LLC and Cummins Westport, Inc. are the only manufacturers that can produce a CNG truck with Parker Hannifan's Hybrid technology.

Cummins Northwest, LLC

811 SW Grady Way

Renton, WA 98057

(253) 905-9058

Contact: Don Corey, Regional Sales Manager

Autocar, LLC

551 South Washington Street

Hagerstown, IN 47346

(765) 489-6006

Contact: Trevor Bridges, Vice President Powertrain Integration & Strategies

Parker Hannifan Corporation Hydraulics Drive Systems

3885 Gateway Boulevard

Columbus, OH 43228

(901) 828-4218

Contact: Thomas C. DeCoster, Business Development Manager, North America

Western Peterbilt, Inc.

3801 Airport Way South

Seattle, WA 98108

(206) 624-7383

Contact: Stu Fox, Director of Refuse Sales

- 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.

This is a prototype vehicle with only one manufacturer, Autocar, LLC, capable of creating the compatibility of a CNG engine and Runwise hybrid drive system.

- 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 ☐

The attached letter confirms that Autocar, LLC is the only global manufacturer of the Runwise E3 CNG Hydraulic Hybrid vehicle. The unit provided will be specially made for the City of Tacoma and is currently not a production released vehicle.

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

The pricing provided is in line with similar vehicles purchased by the City. An Autocar E3 diesel hybrid truck was purchased in 2013 for \$387,000. Western Peterbilt, Inc. offers only one price for the requested CNG hybrid automated side loader collection truck.

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

Sole Source – Autocar, LLC | Western Peterbilt, Inc.

August 5, 2014

Page Three

d. Is this a one-time purchase? Yes ☒ No ☐ Total amount: \$433,495.00

Other supporting documentation attached? Yes ☒ No ☐

City Contact person: Timothy Hardy Phone: (253) 593-7734


Michael P. Slevin III, P.E.
Environmental Services Director
Department/Division Head (Please Print)

Department/Division Head Signature Date


T.C. Broadnax, City Manager

cc: Joe Parris, Senior Buyer, Finance/Purchasing

Purchasing Use Only

Approved _____ Rejected _____

None (after the fact) _____

Date _____ By _____



Westport

Cummins Westport
The Natural Choice



April 8, 2014

Trevor W Bridges,
Vice President Powertrain Integration & Strategy
Autocar, LLC
551 South Washington Street
Hagerstown, IN 47346

Re: City of Tacoma Natural Gas Hybrid Trucks

Dear Mr. Bridges,

This letter confirms that Cummins Westport Inc. (CWI) acknowledges Autocar's intention to build two (2) ACX refuse trucks equipped with series hydraulic hybrid systems and ISL G engines for use by the City of Tacoma, WA. The build specification of the engine(s) will match Autocar part number A1010023B106 and is strictly for an automotive (non-hybrid) configuration.

CWI has not validated ISL G engine performance with the Parker Runwise Advanced Series Hybrid Drive system and has no plans to do so. Cummins Westport's participation in this hybrid truck transaction does not obligate CWI to accept any engine modification requests or to proceed with any production release of a hybrid-compatible ISL G engine. The two hybrid systems in question from CWI's perspective are demonstration prototypes, and are the last two engines CWI will release for this purpose.

The City of Tacoma shall at all times, and at its own expense, perform proper maintenance to keep the engines in good and efficient working condition by performing maintenance in accordance with Cummins Westport's applicable Operation and Maintenance Manual.

In the event of failures of any engines where the engines have been properly maintained by the City, Cummins Westport shall bear all expenses of repair as under normal engine warranty coverage. CWI will not cover engine repairs or progressive damage related to the hybrid system.

Sincerely,

Charlie Ker
Director, Industry Relations & Refuse Segment
Cummins Westport Inc.

Cc: Andrew Torres, Public Works Dept., City of Tacoma



GVW - A GVW Holdings Company

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City Of Tacoma

4/11/2014

To whom it may concern.

Autocar E3 Runwise vehicles.

Autocar Truck is the only global manufacturer of the Runwise E3 Diesel Hydraulic Hybrid vehicle.

The City of Tacoma has a diesel powered Runwise Autocar vehicle that has shown exceptional fuel savings. You have expressed an interest in testing the E3 Runwise system using an ISL-G 320 HP CNG fuelled engine.

Autocar has worked with its supplier Cummins Westport to secure 2 X ISL-G 320 HP CNG engines to be installed in ACX chassis using the Runwise hybrid system. These chassis will be for sole purchase by the City of Tacoma in 2015.

The CNG powered ACX is not an Autocar production released vehicle at this time. Autocar knows of no other OEM truck manufacturer who has either production or proof of concept CNG powered Runwise vehicles used in the refuse or any other industry. Autocar has produced a proof of concept CNG Residential Front Load vehicle using a Runwise hybrid system at the request of Parker. This vehicle has just entered testing with selected customers.

Autocar places a high degree of value in our current strong relationship with the City of Tacoma. We are excited to be a partner with the City of Tacoma in this project.

Please feel free to contact the writer if you have further questions.

Trevor W Bridges.
V.P. Powertrain Integration & Strategies.
Autocar Truck
551 S Washington Street.
Hagerstown. IN 47346
765-489-6006



ORDINANCE NO. 28236

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

11 WHEREAS tw telecom of washington llc, a Delaware limited liability
12 company registered to do business in the state of Washington ("tw" or
13 "Franchisee") is a telecommunications company currently involved in the business
14 of operating a telecommunications network utilizing fiber optic technology, and

15 WHEREAS, as part of expanding such network, tw desires to obtain a
16 franchise to operate a system of fiber optic cable in City of Tacoma right-of-way,
17 and

18 WHEREAS tw has applied to the City to install and operate fiber optic cable
19 within the City streets and public rights-of-way, and

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

23 WHEREAS the City Council understands and acknowledges that tw's
24 parent, tw telecom, inc. will possibly be acquired by Level 3 Communications, Inc.
25 (also a City franchisee) sometime during the approval process of this Franchise or
26 shortly thereafter and for purposes of that transaction, the City pre-approves that



transaction pursuant to Section 2.4 of the Franchise and Tacoma Municipal Code

Chapter 16B, 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 1 - 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 any Title of the Tacoma Municipal Code ("City Code") 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 this term 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 necessary or convenient for the transmission and distribution of communications service where such facilities are located. "Facilities" or "Installations," when used without a modifier, shall be considered to encompass both Overhead Facilities/Installations and Underground Facilities/Installations.

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 tw telecom of washington llc, a Delaware limited liability company, with its home office at 10475 Park Meadows Drive, Littleton, CO 80124.

1.11 "Gross Receipts," for purposes of this Franchise, means any and all receipts or income received directly or indirectly by Franchisee, that is derived from the operation of its System in the City. Gross Receipts/Revenues shall include, by way of example and not limitation, revenues from its Telecommunications Service, all fees, late fees, installation and connection fees, upgrade and downgrade fees, and rental fees. The term Gross Receipts/Revenues shall not include any taxes on Services furnished by Franchisee imposed by any municipality, state, or other



governmental unit and collected by Franchisee for such governmental unit, nor shall the term include any wholesale services provided by Franchisee upon which fees or taxes have already been levied within the City of Tacoma.

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

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

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

1.15 "Public Rights-of-Way" mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant Franchises, permits, or Licenses for use thereof or has regulatory authority there over, but expressly 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 TV 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" means a tangible facility that is used to provide one or more Telecommunications Services, any portion of which occupies Public Right-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 System" 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, intrastate toll service, or coin telephone service, or providing telephonic, video, data, or similar communication or transmission for hire via a local telephone network, toll line, channel, cable, microwave, or similar communication or transmission system. Telephone Service includes intrastate or interstate service, including toll service, originating from, or received on, communications equipment or apparatus in this state if the charge for the service is billed to a person in this state. Telephone Service does not include the providing of competitive Telephone Service as defined in Tacoma Municipal Code 6A.40.030, the providing of cable television service, or the providing of broadcast services by radio or television stations.

1.20 "Title," when used alone 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
1 Telecommunication Service and internet access service, and to continue using the
2 City's Public Rights-of-Way as authorized herein.

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

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

24 Notwithstanding the above grant to use Public Rights-of-Way, no Public
25 Rights-of-Way shall be used by Franchisee if the City, in its non-arbitrary opinion,
26 determines that such use is inconsistent with the terms, conditions, or provisions



by which such Public Right-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. The term of the Franchise shall be ten years unless terminated sooner in accordance with this Franchise, Title 16B, or the City Charter.

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

2.4 Transfers, Generally.

A. Any transfer of this Franchise, as the term "Transfer" is defined in TMC 16B.01.030.Y, shall be accomplished in accordance with TMC 16B.02.120. Any Transfer not made in accordance with TMC 16B.02.120 may be considered a substantial violation of this Franchise by the City and may subject the Franchise to termination proceedings 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, SEC filing, or other written instrument evidencing such sale, lease, contractual agreement, mortgage, assignment or Transfer, certified and



sworn to as correct by Franchisee, subject to any confidentiality provisions in any such document. Every such Transfer, whether voluntary or involuntary, may be deemed void and of no effect as to the effectiveness of 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 to 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. 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 Revocation. In addition to any rights set out elsewhere in this Franchise, the City Charter or Title 16, subject to the notice and cure provisions contained in Title 16B, Section 16B.05.100, the City reserves the right to declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges pertaining thereto, as provided in Title 16(B) or in the event that:

A. Franchisee is in non-compliance with a material provision this Franchise; or

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



1 C. Franchisee fails to obtain and maintain any permit required by
2 any federal or state regulatory body or by the City, relating to the construction,
3 repair, and operation of the Facilities within the Public Rights-of-Way within the
4 Franchise Area; or

5 D. At any time during the term of the Franchise, Franchisee fails to
6 provide and maintain all of the securities required under this Franchise, including,
7 but not limited to, the performance bond required under this Franchise; fails to
8 maintain the insurance required by this Franchise; or fails to satisfy the indemnity
9 set out in this Franchise; or if any guarantor of Franchisee revokes its guarantee or
10 fails to satisfy or becomes unable to satisfy its obligations under such guarantee.
11

12 E. The procedures for revocation and forfeiture shall be governed
13 by Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee
14 shall be given notice and opportunity to cure at least equivalent to that required by
15 Title 16B as of the effective date of this Franchise (except in those cases where
16 notice and opportunity to cure are not required), and shall be accorded at least an
17 opportunity to be heard that provides at least the due process protections required
18 by Title 16B as of the effective date of this Franchise, which opportunities and
19 protections are set out in Section 2.6.F, below.
20

21 F. (1) Where, after notice and providing the Franchisee an
22 opportunity to be heard (if such opportunity is requested by a Franchisee), the City
23 finds that there has been an act or omission that would justify revocation of the
24 Franchise, the City may make an appropriate reduction in the remaining term of
25 the Franchise or revoke the Franchise. However, the Franchise may only be
26



revoked if the Franchisee (a) was given written notice of the default; and
1 (b) 30 days to cure the default; and (c) the Franchisee failed to cure the default, or
2 to propose a schedule for curing the default acceptable to the City where it is
3 impossible to cure the default in 30 days. The required written notice shall be
4 given before the City conducts the proceeding required by this paragraph. No
5 opportunity to cure is required for repeated violations of material provisions of the
6 Franchise, and fraud shall be deemed incurable.

8 (2) Notwithstanding the foregoing, the City may declare a
9 Franchise forfeited without opportunity to cure when the Franchisee: (a) fails to
10 begin to exercise its rights hereunder within 45 days of Franchisee's acceptance of
11 this Franchise; (b) stops providing all Service it is required to provide under the
12 Franchise; (c) Transfers without the prior consent of the City as and when required
13 in the Franchise; or (d) is found by a court or regulatory body with appropriate
14 jurisdiction to have defrauded or attempted to defraud the City or Franchisee's
15 customers within the City. Notwithstanding the provisions of Title 16B.05.100.C.2,
16 if Franchisee fails to timely pay any undisputed Franchise
17 application/administrative fees or other fees owed hereunder or under Title 16B,
18 before the City can initiate any termination or forfeiture rights, Franchisee shall be
19 provided with ten (10) business days' prior written notice and an opportunity to
20 cure the failure to pay. However, Franchisee shall have the right to receive
21 30 days' prior notice of an intent to declare a Franchise forfeited, and shall have
22 the opportunity to show cause why the Franchise should not be forfeited.
23
24
25
26



(3) Notwithstanding the foregoing and only to the extent permitted by applicable law, 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.

2.6 Continuity of Service and Right to Purchase the System.

A. In the event the City has declared a forfeiture for cause or otherwise validly revoked 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 property from the City, or otherwise encumber the Telecommunications System in any manner, without prior written consent of the City. The Franchisee’s obligations to remove its facilities under Title 16B, Section 16B.03.090, shall be deferred for the Continuation Period. Within 30 days of the date the City passes the ordinance requiring continuation of service, or 30 days after the effective date of the termination, whichever is earlier, Franchisee shall provide the City with an inventory of all its property in the City, and in addition, such other property 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. In the event the City has declared a forfeiture for cause or otherwise validly revoked 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"), the City shall have an option upon termination of the Franchise to purchase that portion of the Telecommunications System located in the Right-of-Way owned by the Franchisee, 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, 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 not located in the Right-of-Way, located outside the City, or that is leased or used (but not owned) by Franchisee from a third party pursuant to a tariff or contract. The foregoing option also requires Franchisee to sell the Telecommunications System owned by the Franchisee and located in the Right-of-Way, or such portion thereof as the City may choose to purchase, at a fair market price if the Franchise is terminated for cause. If Franchisee's request for a Franchise renewal is denied, the option requires Franchisee to sell the Telecommunications System owned by the Franchisee and located in the Right-of-Way, 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 2.6.B option rights in the following manner: the City will have up to 180 days after receiving the inventory required by Section 2.6.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 2.6.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 the price set by appraisal. Within 45 days of the date that notice is submitted, each party may appoint one appraiser. If each party appoints an appraiser, the two appraisers shall appoint a third appraiser; if only a single appraiser is appointed (whether by mutual agreement or because of the failure of a party to timely nominate an appraiser) that appraiser shall be the sole appraiser. The appraiser or appraisers shall establish a price for the System or portion thereof that the City desires to purchase in accordance with Section 2.6.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 such System to any other Person or entity, including any other Franchisee of a Telecommunications System, on whatever terms the City deems appropriate.

2.7 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 condition required by the Tacoma Municipal Code and City Right-of-Way Restoration Policy, 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 actual 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. In the event that Franchisee is permitted to abandon its Facilities in place, the City acknowledges that any ownership it takes in the Facilities thereafter is taken on an AS-IS, WHERE-IS basis.

B. To the extent any portion of the System in the Public Rights-of-Way or on any other public property of the City is not removed by the Operator within 12 months of the later of the end of the Franchise term, the



property will be deemed abandoned in its AS-IS, WHERE-IS condition 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 2.7.A to remove Facilities shall be sent by registered or certified mail, postage prepaid, return receipt requested, 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 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 in which it will be performed, and a schedule for removal by location. The removal plan shall be subject to approval and regulation by the City, including, without limitation, the City's Right-of-Way Restoration Policy. The affected property must be restored in compliance with City's Right-of-Way Restoration Policy; and any damage caused by Franchisee's removal must be addressed/compensated to the reasonable satisfaction of the City.

E. The purchase option provided for in Section 2.6 does not affect the City's authority to require Franchisee to remove its Telecommunications System upon Franchise termination, as provided in this section and Title 16B, nor does it affect the City's right to assume ownership of any portion of the Telecommunications System that is abandoned. Within 60 days of a request by



the City, the Franchisee shall execute such documents as may be required to convey such abandoned property to the City free and clear of all encumbrances.

2.8 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. 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 subject to the terms and conditions of the service contract then in effect between the respective Customer and Franchisee.

2.9 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, after first providing notice and an opportunity to cure as herein provided, may perform the work and bill the Franchisee the actual cost thereof. The Franchisee shall pay the amounts billed within 30 days of receipt of itemized bill. The parties agree that any amounts paid pursuant to this section or Title 16B are not franchise fees.

2.10 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



1 is performed in compliance with this Franchise and Title 16B, and other applicable
2 laws, including, without limitation, the City's Right-of-Way Restoration Policy. A
3 copy of the presently effective policy has been provided to the Franchisee, and the
4 City agrees to provide a current copy of the policy upon subsequent request from
5 the Franchisee. Franchisee and its contractors and subcontractors shall be jointly
6 and severally liable for all damages and correcting all damages caused by them. It
7 is Franchisee's responsibility to ensure that contractors, subcontractors, or other
8 Person(s) performing work on Franchisee's behalf are familiar with the
9 requirements of this Franchise, Title 16B, the City's Right-of-Way Restoration
10 Policy, and other applicable laws governing the work performed by them.
11

12 2.11 Survival of Terms. Upon the termination or forfeiture of the
13 Franchise, Franchisee shall no longer have the right to occupy the Public
14 Rights-of-Way for the purpose of providing Telecommunications Service.
15 However, Franchisee's obligations to the City (other than the obligation to provide
16 service to Customers) survive the expiration of these rights according to their
17 terms. By way of illustration and not limitation, Sections 2.6, 2.7, 2.9, and 4 of this
18 Franchise shall continue in effect as to Franchisee notwithstanding any expiration,
19 forfeiture, or revocation of the Franchise, except to the extent that a City-approved
20 Transfer, sale, or assignment of the Telecommunications System is completed,
21 and another entity has assumed full and complete responsibility for the
22 Telecommunications System or for the relevant acts or omissions.
23
24
25
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SECTION 3 - OPERATION IN STREETS AND RIGHTS-OF-WAY.

1 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms
2 of this Franchise and Title 16B, the City's Right-of-Way Restoration Policy, and
3 other applicable laws, construct, operate and maintain a fiber optic
4 Telecommunications System in Public Rights-of-Way within the Franchise Area, to
5 provide Telecommunications Services. Without limiting the foregoing, Franchisee
6 expressly agrees that it will construct, operate, and maintain its System in
7 compliance with the requirements of Title 16B, including those governing the
8 placement of its Telecommunications System, and with other applicable City
9 codes; and will obtain and maintain all bonds and billable work orders required by
10 the same.
11

12 3.2 Construction, Operation, or Repair. Franchisee shall, in all cases,
13 comply with all lawful City ordinances and regulations now in effect or hereinafter
14 enacted regarding the acquisition of permits and such other items as may be
15 required by the City in connection with the construction, operation, or repair of the
16 Telecommunications System, including, without limitation, the City's Right-of-Way
17 Restoration Policy.
18

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

23 A. (1) Franchisee shall, by a time specified by the City,
24 protect, support, temporarily disconnect, relocate, or remove any of its property
25 when required by the City by reason of traffic conditions; public safety; Public
26



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

9
10 (2) In the event of an emergency, or where the
11 Telecommunications System creates or is contributing to an imminent danger to
12 health, safety, or property, the City may protect, support, temporarily disconnect,
13 remove, or relocate any or all parts of the Telecommunications System without
14 prior notice, and charge the Franchisee for actual costs incurred.

15
16 (3) In the case of non-public work, if any Person that is
17 authorized to place Facilities in the Rights-of-Way requests Franchisee to protect,
18 support, temporarily disconnect, remove, or relocate Franchisee’s facilities to
19 accommodate the construction, operation, or repair of the facilities of such other
20 Person, the Franchisee shall, after 30 days’ advance written notice, take action to
21 effect the necessary changes requested. In the case of non-public work or non-
22 public projects, unless, and to the extent, the matter is governed by a valid contract
23 between Franchisee and such Person requesting Franchisee to take action under
24 this subsection (3) or governed by a valid state or federal law or regulation, or
25 unless the Franchisee’s Telecommunications System was not properly installed,
26



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 applicable 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 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



1 installed in compliance with the requirements established by the City, or which is
2 installed without prior City approval of the time, place, or manner of installation and
3 charge the Franchisee for all the costs associated with removal; and may require
4 Franchisee to cooperate with others to minimize adverse impacts on the Public
5 Rights-of-Way through joint trenching and other arrangements.

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

14 F. To the extent possible and technically and operationally
15 feasible, Franchisee shall use conduit existing at the time of permitting in installing
16 its System.

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

21 1. Whenever the owners of poles locate or relocate
22 underground within an area of the City, the Franchisee shall concurrently relocate
23 its Facilities underground at its own cost.



2. Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities underground, the Franchisee shall concurrently relocate its Facilities underground and, if it uses the same trench, be responsible for its pro-rated share of 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. 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 Tacoma Municipal 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, which permission shall not be unreasonably withheld, conditioned or delayed. 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 Franchisee's Telecommunications System 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 timetable 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 in a timely manner, 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 the performance bond or other security provided under this Franchise; provided, however, such drawing 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, actual legal and administrative costs:

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

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

4.3 Procedure for Remedying Franchise Violations. Before imposing liquidated damages, or drawing upon the performance bond, 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



1 default cannot be cured within the 30-day period, initiate steps to remedy such
2 default as promptly as possible and complete the cure within a reasonable time.

3 The duty to cure includes the duty to cure all harms caused by the acts or
4 omissions of Franchisee which gave rise to the alleged non-compliance. At the
5 end of the 30-day period, Franchisee shall notify the City in writing of the steps it
6 has taken to cure the default, if any; if the cure is not complete, the reason it is not
7 complete and the projected date for completion; and if the default is disputed, the
8 complete basis for that contention.

9
10 C. Public Hearing. The City may schedule a public hearing to
11 investigate any alleged default. The City shall give Franchisee 20 calendar days'
12 notice of the time and place of the hearing and provide Franchisee with an
13 opportunity to be heard.

14 D. Action after Hearing. If the City determines after such hearing
15 that the Franchisee did not timely cure, or initiate steps to cure the default in a
16 timely manner satisfactory to the City, after the notice required by Section 4.3.A
17 was provided, then the City may draw upon any performance bond, security fund,
18 or other security, including requiring performance under the guarantee; and impose
19 liquidated damages. However, notice and opportunity to cure are not required for
20 repeat violations, or for a failure to correct a default where Franchisee knew or
21 should have known it was in default; in such cases, the performance bond, letter of
22 credit, or other security may be drawn upon, the guarantor required to perform and
23 liquidated damages imposed after the hearing required by Section 4.3.C.
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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 shall not be deemed to be beyond the Franchisee's control, and the knowledge of Affiliates shall be imputed to Franchisee. This Franchise shall not be revoked or the Franchisee penalized for such noncompliance, provided that the Franchisee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with this Franchise without unduly endangering the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

4.6 Alternative Remedies. No provision of this Franchise shall be deemed to bar the right of the City or Franchisee 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 or Franchisee to recover monetary damages for such violation by Franchisee, or to seek and obtain judicial enforcement of Franchisee's or City'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 applicable federal and state laws and regulations, including regulations of any administrative agency thereof, as well as all applicable City ordinances,



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

8 SECTION 5 - REPORTING REQUIREMENTS.

9
10 5.1 Quarterly Reports. Within 30 days after the end of each of
11 Franchisee's fiscal quarters, Franchisee shall submit a written report to the City,
12 which shall contain a listing of all categories of Gross Revenues earned and Gross
13 Receipts collected by Franchisee for its business activities as identified in
14 Section 2.1, which are activities specifically taxable as a telephone business under
15 Tacoma Municipal Code Title 6. Said written report shall be in sufficient detail and
16 with sufficient explanation to enable the City to understand the report and to verify
17 the accuracy of the report. In addition, Franchisee shall provide such other reports
18 as may be required by Title 16B.

19
20 5.2 Annual Report. No later than 120 days following the end of
21 Franchisee's fiscal year each year, Franchisee shall present a written report to the
22 City which shall include:

23
24 A. Audited financial statements for (1) Franchisee and (2) any
25 Affiliate which is involved in any way with the operation or ownership of the
26 System; and a financial statement for Franchisee that includes Gross Revenues



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

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

12
13 1. A summary of the previous year's activities for the Franchise
14 Area, including, but not limited to, the total number of Customers, miles of
15 Facilities, any services added or dropped, and any technological changes
16 occurring in the system;

17
18 2. Plans for the future; and

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

20 5.3 Additional Reports. Franchisee shall prepare and furnish to the City
21 within 60 days of written request, to the person and address specified in the City's
22 request, in a form reasonably prescribed by the City, such additional reports with
23 respect to Franchisee's operation, affairs, transactions, or property, as may be
24 reasonably necessary and appropriate to ensure compliance with the material
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provisions of this Franchise, or to permit the performance of any of the rights, functions or duties of the City 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 or under chapter 42.56 RCW, or as otherwise provided by applicable laws. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation regarding its position on the protected status of the information under state or federal law. In the event that the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this Section prohibits the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records.

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, to be agreed to by the parties if the statutory prohibition is removed. The parties agree that this Section 6.1.A 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 its activities in the City of Tacoma identified in Section 2.1, but excluding internet access service, are activities specifically taxable as a telephone business under Tacoma Municipal Code Chapter 6A, and are taxable at the 6 percent rate specified in Tacoma Municipal Code Chapter 6A.40.050.D 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 but excluded any Gross Receipts from the provision of internet access service. 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 and as it may be later amended, Franchisee must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist in the City's consideration and processing of this Franchise application. The first \$5,000 of said expenses will be covered by the \$5,000 application fee deposited with the City. To the extent not prohibited by applicable laws, Franchisee will also pay the reasonable costs of enforcing, or, as necessary, reviewing, the provisions of



1 this Franchise, as well as costs involved with the modification, amendment, renewal,
2 or Transfer of this Franchise, as ordered by the Franchise Services Manager,
3 whether such costs result from accrued in-house staff time or out-of-pocket expenses
4 or administrative costs, as well as the actual expenses of retaining independent
5 technical, legal, or financial consultants or advisors, or whether relating to costs
6 incurred due to initial System development or to future System expansion. The
7 amount of payment to be made by Franchisee to cover these administrative costs is
8 an amount determined to be reasonable by the Franchise Services Manager. Such
9 obligation further includes municipal fees related to receiving and approving permits
10 or licenses, inspecting plans, and construction, or relating to the preparation of a
11 detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid within
12 30 days of receipt of the City's billing therefor.
13

14 D. Manner of Payment; Audit. Franchisee will pay the City
15 Telephone Business Tax specified in Section 6.1.B on a monthly basis accompanied
16 by Franchisee's standard remittance form which specifies the net taxable charges,
17 the local tax rate, and the local tax due, plus penalties and/or interest, if any is due.
18 Franchisee shall make all other required fee payments in the form, at the intervals,
19 and in the manner requested by the City Treasurer, and furnish him/her any
20 information related to his/her revenue collection functions reasonably requested. In
21 case of audit, the City Treasurer may require Franchisee to furnish a verified
22 statement of compliance with Franchisee's obligations or in response to any
23 questions. Said certificate may be required from an independent, certified public
24 accountant, at Franchisee's expense. All audits will take place on Franchisee's
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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, within 30 days of written request of the City Treasurer, to provide, to the person and address specified in the City Treasurer's request, 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. No deductions, including current or previously paid fees, shall be subtracted from the Gross Revenue amount, except as allowed under state or federal law, 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 the maximum allowable rate pursuant to RCW 19.52.020.

G. Period of Limitations. The period for commencing an action for the 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 books and records available for
inspection and non-confidential books and records for 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 made available for
inspection 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 reasonably 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. §§ 222 or 551 or to disclose or make available to



the City any books and records protected from disclosure under other applicable law. 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. The City will, however, provide notice to Franchisee of any request for such books and records so that Franchisee can engage whatever protective measures are available to it.

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 \$50,000. 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 and/or pursuant to applicable Tacoma Municipal Code provisions. 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 reasonably 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, or by reason of, or resulting from or of the negligent acts, errors, or omissions of the Franchisee during the construction, operation, or maintenance of the Telecommunications System, and, without limiting the provisions of Section 7.4, agrees not to sue or seek any money or damages from City. The foregoing notwithstanding, Franchisee shall not be required to indemnify the City for any negligent act, errors, or omissions of the City.

B. Franchisee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees, from and against any and all claims, demands, or causes of action of whatever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,



1 damages, orders, judgments, or decrees, sustained by the City or any third party
2 arising out of, or by reason of, or resulting from or of the acts, errors, or omissions
3 of the Franchisee or its agents, independent contractors, or employees related to
4 or in any way arising out of the construction, operation, repair, or relocation of the
5 Telecommunications System. Franchisee waives immunity under Title 51 RCW
6 and affirms that the City and Franchisee have specifically negotiated this provision,
7 as required by RCW 4.24.115, to the extent it may apply.

8 C. Franchisee agrees that the covenants and representations
9 relating to the indemnity provided in Sections A and B above shall survive the
10 term/expiration/termination of this Franchise and continue in full force and effect as
11 to the Franchisee's responsibility to indemnify.
12

13 6.5 Franchisee Insurance.

14 A. Franchisee shall maintain, throughout the term of the
15 Franchise, adequate insurance to protect the City, its trustees, elected and
16 appointed officers, agents, and employees against claims and damages that may
17 arise as a result of the construction, operation, or repair of the Telecommunications
18 System. This obligation shall require Franchisee to maintain insurance at least in
19 the following amounts:
20

21 (1) COMPREHENSIVE GENERAL LIABILITY insurance to
22 cover liability, bodily injury, and property damage. Exposures to be covered are:
23 premises, operations, products/completed operations, and certain contracts.
24
25
26



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 \$ 5,000,000

(b) Property Damage

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

(c) Personal Injury

- Annual Aggregate \$5,000,000

(2) COMPLETED OPERATIONS AND PRODUCTS

LIABILITY shall be maintained for six years after the termination of the Franchise or License (in the case of the Communications System owner or Operator) or completion of the work for the Communications System owner or Operator (in the case of a contractor or subcontractor).

(3) PROPERTY DAMAGE LIABILITY INSURANCE shall

include Coverage for the following hazards: X - explosion, C - collapse, U - underground.

(4) WORKERS' COMPENSATION insurance shall be

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



be maintained:

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

4 (5) COMPREHENSIVE AUTO LIABILITY coverage shall
5 include owned, hired, and non-owned vehicles.

- 6 (a) Bodily Injury
- 7 1. Each Occurrence \$ 1,000,000
- 8 2. Annual Aggregate \$ 3,000,000

- 9 (b) Property Damage
- 10 1. Each Occurrence \$ 1,000,000
- 11 2. Annual Aggregate \$ 3,000,000.

12 (6) Franchisee may utilize primary and umbrella or excess
13 liability policies to satisfy the preceding policy limit requirements.

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

19 C. Certificates of insurance, reflecting evidence of the required
20 insurance and naming the City as an additional insured with all required
21 endorsements on the GENERAL LIABILITY and AUTOMOTIVE policies described
22 above, shall be filed with the City's Risk Manager. The certificate shall be filed with
23 the acceptance of the Franchise, and annually thereafter, and as provided in E
24 below.
25
26



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, the Franchisee shall furnish, at least 30 days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage has been or will be obtained prior to any such lapse or termination during the balance of the period of the Franchise.

F. The City shall reserve the right to require any other insurance coverage it 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 \$50,000.00, 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, except that where federal law applies it shall control. Any litigation between the City and Franchisee arising under or regarding this Franchise shall occur, if in the state courts, in the Superior Court of Pierce County having jurisdiction thereof, and if in the federal courts, in the United States District Court for the Western District of Washington.

7.4 No Recourse. Without limiting such immunities as the City or other Persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense, or damage arising out of any 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 upon actual receipt or refusal of delivery and shall be sent by a nationally recognized overnight courier or by U.S. certified mail, return receipt requested, 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:

tw telecom of washington llc
Attn: Sr. VP & General Counsel
10475 Park Meadows Drive
Littleton, CO 80124

With a copy to:

tw telecom of washington llc
Attn: VP- Regulatory
10475 Park Meadows Drive
Littleton, CO 80124

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 two addresses.



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 the security fund deposit and performance bond.

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



1 fails to provide the required accompanying documents and payments, within the
2 time limits set forth in this section, the grant of the Franchise shall be null and void.
3

4 Passed _____

Mayor: _____

6 Attest: City Clerk
7
8 _____
9

10 Approved as to form
11
12 _____
13

Deputy City Attorney
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EXHIBIT "A"

ACCEPTANCE OF CITY FRANCHISE

Ordinance No. _____, effective _____, 2014.

I, _____, am the _____ of tw telecom holdings inc., sole member of tw telecom of washington llc, and am the authorized representative to accept the above referenced City franchise ordinance on behalf of tw telecom of washington llc.

I certify that this franchise and all terms and conditions thereof are accepted by tw telecom of washington llc.

DATED this _____ day of _____, 2014.

tw telecom of washington llc
by: tw telecom holdings inc., its sole member

By _____
Its _____