Legislation Passed May 2, 2017

The Tacoma City Council, at its regular City Council meeting of May 2, 2017, 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. 39706
A resolution setting Tuesday, May 16, 2017, at approximately 5:15 p.m., as the date for a public hearing by the City Council on the proposed Six-Year Comprehensive Transportation Improvement Program amended for the years 2016-2017 and 2018-2023.
[Chris E. Larson, Engineering Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]

Resolution No. 39707
A resolution appointing and reappointing individuals to the Sustainable Tacoma Commission.
[Doris Sorum, City Clerk; Bill Fosbre, Acting City Attorney]

Resolution No. 39708
A resolution awarding a contract to Dickson Company, in the amount of $282,750.00, plus applicable sales tax, plus a 10 percent contingency, for a total of $311,025.00, budgeted from the Asphalt Plant Fund, for hot mix asphalt aggregate blend, for an initial contract term of one year, with the option to renew for four additional one-year terms, for a projected contract total of $1,651,273.97 - Specification No. PW17-0046F.
[Rae Bailey, Street Operations Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]

Resolution No. 39709
A resolution awarding a contract to Global Contractors, LLC, in the amount of $1,345,826, sales tax not applicable, plus a 10 percent contingency, for a total of $1,480,409, budgeted from the Transportation Capital and Engineering Fund, for pedestrian improvements in the Hilltop and South Downtown areas - Specification No. PW17-0034F.
[Darius Thompson, Project Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]

Resolution No. 39710
A resolution awarding a contract to Johansen Excavating, Inc., in the amount of $5,679,655.75, excluding sales tax, plus a 15 percent contingency, for a total of $6,531,604.11, budgeted from various departmental funds, for roadway and utility improvements associated with the South 38th Streetscape project - Specification No. PW17-0081F.
[Mark R. D’Andrea, P.E., Project Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]
Resolution No. 39711
A resolution authorizing an increase to the contract with The Stergion Group, Inc., in the amount of $198,880, plus applicable sales tax, for a total of $612,400, budgeted from the Information Systems and Finance Administration Funds, for continued project management and implementation support services - Specification No. PS14-0295F. [Michelle Lewis-Hodges, Information Technology Manager; Jack Kelanic, Director, Information Technology]

Resolution No. 39712
A resolution authorizing the execution of a Memorandum of Understanding with South Sound 911, for emergency radio system access fees charged to regional public safety agencies, through December 31, 2017. [Jack Kelanic, Director, Information Technology]

Resolution No. 39713
A resolution authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Novotny, Inc., for the development of 12 multi-family market-rate and affordable housing units located at 7602 Pacific Avenue in the South 72nd and Pacific Avenue Mixed-Use Center. [Debbie Bingham, Economic Development Specialist; Ricardo Noguera, Director, Community and Economic Development]

Resolution No. 39714
A resolution authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Brentwood Real Estate, LLC, for the development of 45 multi-family market-rate and affordable housing units located at 2515 South 48th Street in the Tacoma Mall Mixed Use-Center. [Debbie Bingham, Economic Development Specialist; Ricardo Noguera, Director, Community and Economic Development]

Resolution No. 39715
A resolution authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Koz Development, LLC, for the development of 104 multi-family market-rate and affordable housing units located at 1552-1556 Market Street in the Downtown Regional Growth Center. [Debbie Bingham, Economic Development Specialist; Ricardo Noguera, Director, Community and Economic Development]

Ordinance No. 28418
An ordinance vacating a sub-surface portion of Court E, lying between South 13th and South 15th Streets, to accommodate an existing building wall. (Alma Mater, LLC; File No. 124.1375) [Phyllis K. Macleod, Hearing Examiner]

Ordinance No. 28425
An ordinance granting a non-exclusive franchise to Mobilitie, LLC to construct, operate, and maintain a telecommunications system in the City. [Jeff Lueders, Cable Communications and Franchise Services Manager; Gwen Schuler, Director, Media and Communications]
RESOLUTION NO. 39706

A RESOLUTION relating to the Six-Year Comprehensive Transportation Improvement Program; setting Tuesday, May 16, 2017, at approximately 5:15 p.m., as the date for a public hearing on the proposed Six-Year Comprehensive Transportation Improvement Program Amended 2016-2017 and 2018-2023.

WHEREAS RCW 35.77.010 provides for adoption by the legislative body of each city and town, of a comprehensive transportation program for the ensuing six calendar years, after conducting one or more public hearings, and

WHEREAS staff presented the proposed capital projects to be added to the Six-Year Comprehensive Transportation Improvement Program Amended 2016-2017 and 2018-2023 ("Program") to the Transportation Commission on February 15, 2017, and

WHEREAS the proposed Program, as amended, was presented to the Infrastructure, Planning, and Sustainability Committee for consideration on February 22 and March 22, 2017, and

WHEREAS the City desires to fix a time and date for public hearing for the purpose of considering the proposed Program; Now, Therefore,

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

Section 1. That a public hearing, for the purpose of considering and adopting the Six-Year Comprehensive Transportation Improvement Program Amended 2016-2017 and 2018-2023, shall be held before the City Council in the Council Chambers on the first floor of the Tacoma Municipal Building, 747 Market Street, Tacoma, Washington, on Tuesday, May 16, 2017, at approximately
5:15 p.m., or as soon thereafter as the same may be heard, all in accordance with RCW 35.77.010.

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

Adopted ______________

__________________________
Mayor

Attest:

__________________________
City Clerk

Approved as to form:

__________________________
Deputy City Attorney
RESOLUTION NO. 39707

BY REQUEST OF DEPUTY MAYOR THOMS AND COUNCIL MEMBERS IBSEN, MCCARTHY, AND MELLO

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

WHEREAS vacancies exist on the Sustainable Tacoma Commission, and

WHEREAS, at its meeting of April 12, 2017, the Infrastructure, Planning, and Sustainability Committee recommended the appointment and reappointment of individuals to said commission, and

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

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

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

Adopted ____________________________

_______________________________ Mayor

Attest:

_______________________________
City Clerk

Approved as to form:

_______________________________
Acting City Attorney
EXHIBIT “A”

SUSTAINABLE TACOMA COMMISSION

Appointing Sheree Cooks to a three-year term to expire April 30, 2020.
Appointing Christopher Karnes to an unexpired term to expire April 30, 2019.
Appointing Jaclyn Layton to an unexpired term to expire April 30, 2018.
Reappointing Christine Cooley to a three-year term to expire April 30, 2020.
RESOLUTION NO. 39708

A RESOLUTION related to the purchase of materials, supplies or equipment, and
the furnishing of services; authorizing the execution of a contract with the
Dickson Company, in the amount of $282,750.00, plus applicable sales
tax, plus a 10 percent contingency, for a cumulative total of $311,025.00,
budgeted from the Asphalt Plant Fund, for hot mix asphalt aggregate
blend, for an initial contract term of one year, with the option to renew for
four additional one-year terms, for a projected contract total of
$1,651,273.97, pursuant to Specification No. PW17-0046F.

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

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

Therefore,

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

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

Section 2. That the proper officers of the City are hereby authorized to
enter into a contract with the Dickson Company, in the amount of $282,750.00,
plus applicable sales tax, plus a 10 percent contingency, for a cumulative total of
$311,025.00, budgeted from the Asphalt Plant Fund, for hot mix asphalt
aggregate blend, for an initial contract term of one year, with the option to renew
for four additional one-year terms, for a projected contract total of $1,651,273.97, pursuant to Specification No. PW17-0046F, consistent with Exhibit “A.”

Adopted ______________________

________________________________________
Mayor

Attest:

________________________________________
City Clerk

Approved as to form:

________________________________________
Acting City Attorney
RESOLUTION NO. 39709

A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the execution of a contract with Global Contractors, LLC, in the amount of $1,345,826, plus a 10 percent contingency, for a cumulative total of $1,480,409, sales tax not applicable, budgeted from the Transportation Capital and Engineering Fund, for pedestrian improvements in the Hilltop and South Downtown areas pursuant to Specification No. PW17-0034F.

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

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

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

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

Section 2. That the proper officers of the City are hereby authorized to enter into a contract with Global Contractors, LLC, in the amount of $1,345,826, plus a 10 percent contingency, for a cumulative total of $1,480,409, sales tax not applicable, budgeted from the Transportation Capital and Engineering Fund.
Fund, for pedestrian improvements in the Hilltop and South Downtown areas pursuant to Specification No. PW17-0034F, consistent with Exhibit “A.”

Adopted ______________________

_________________________________
Mayor

Attest:

_________________________________
City Clerk

Approved as to form:

_________________________________
Acting City Attorney
RESOLUTION NO. 39710

A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the execution of a contract with Johansen Excavating, Inc., in the amount of $5,679,655.75, plus a 15 percent contingency, for a cumulative total of $6,531,604.11, excluding sales tax, budgeted from various departmental funds, for roadway and utility improvements associated with the South 38th Streetscape project pursuant to Specification No. PW17-0081F.

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

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

Therefore,

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

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

Section 2. That the proper officers of the City are hereby authorized to enter into a contract with Johansen Excavating, Inc., in the amount of $5,679,655.75, plus a 15 percent contingency, for a cumulative total of $6,531,604.11, excluding sales tax, budgeted from various departmental funds, for roadway and utility improvements associated with the South 38th Streetscape project.
Streetscape project pursuant to Specification No. PW17-0081F, consistent with Exhibit “A.”

Adopted __________________________

Mayor

Attest:

_______________________________
City Clerk

Approved as to form:

_______________________________
Acting City Attorney
RESOLUTION NO. 39711

A RESOLUTION related to the purchase of materials, supplies or equipment, and the furnishing of services; authorizing the increase of Contract No. 4600011451 with The Stergion Group, Inc., in the amount of $198,880, plus applicable sales tax, for a cumulative total of $612,400, budgeted from the Information Systems and Finance Administration Funds, for continued project management and implementation support services pursuant to Specification No. PS14-0295F.

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

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

Therefore,

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

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

Section 2. That the proper officers of the City are hereby authorized to increase Contract No. 4600011451 with The Stergion Group, Inc., in the amount of $198,880, for a cumulative total of $612,400, plus applicable sales tax, budgeted from the Information Systems and Finance Administration Funds, for continued
project management and implementation support services pursuant to Specification No. PS14-0295F, consistent with Exhibit “A.”

Adopted ____________________________

____________________________________
Mayor

Attest:

____________________________________
City Clerk

Approved as to form:

____________________________________
Deputy City Attorney
RESOLUTION NO. 39712

BY REQUEST OF COUNCIL MEMBER LONERGAN

A RESOLUTION relating to radio communications; authorizing the execution of a Memorandum of Understanding with South Sound 911 for emergency radio system access fees charged to regional public safety agencies, through December 31, 2017.

WHEREAS the City owns and operates a 800 MHz public safety radio communications network in support of critical services provided by the Tacoma Police, Tacoma Fire, Public Works, and Environmental Services Departments, and

WHEREAS, in 2003, to further regional interoperability for public safety providers, the City extended access to its emergency radio communications system to other local law enforcement agencies, fire companies, and other first-responders throughout the Tacoma-Lakewood-Puyallup metropolitan area, and

WHEREAS there are now 27 external agencies, or approximately 1,700 external radio subscribers, to the City’s emergency communications system, and

WHEREAS, in January 2016, the City Council approved Resolution No. 39374, authorizing the execution of a Memorandum of Understanding between the City, South Sound 911 (“SS911”), and Pierce County to cap monthly fees at $30 per month for SS911 customer agencies, and to reimburse the City in the one-time reimbursement of $445,859 to offset lost revenue in 2016, and

WHEREAS the City’s radio system operating costs and customer base have grown commensurately from 2016 to 2017, and

WHEREAS, under the terms of the proposed Memorandum of Understanding (“MOU”), the City will agree to a 2017 fee cap of $31.50 per month,
per radio, for all SS911 City of Tacoma customer agencies, and SS911 will reimbursement the City a total of $413,702, and

WHEREAS the MOU will be effective through December 31, 2017, and will only apply to SS911 City of Tacoma customer agencies, and

WHEREAS the City will continue to support efforts to achieve radio system interoperability enhancements with Pierce County while the parties collaborate towards a long-term solution; Now, Therefore,

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

That the proper officers of the City are hereby authorized to execute a Memorandum of Understanding with South Sound 911 for emergency radio system access fees charged to regional public safety agencies, through December 31, 2017, said document to be substantially in the form of the proposed memorandum on file in the office of the City Clerk.

Adopted _______________________

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Mayor

Attest:

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City Clerk

Approved as to form:

______________________________
Chief Deputy City Attorney
RESOLUTION NO. 39713

A RESOLUTION relating to the multi-family property tax exemption program; authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Novotny, Inc., for the development of 12 multi-family market-rate and affordable housing units to be located at 7602 Pacific Avenue in the 72nd and Pacific Avenue Mixed-Use Center.

WHEREAS the City has, pursuant to chapter 84.14 of the Revised Code of Washington, designated several Residential Target Areas for the allowance of a limited property tax exemption for new multi-family residential housing, and

WHEREAS the City has, through Ordinance No. 25789, enacted a program whereby property owners in Residential Target Areas may qualify for a Final Certificate of Tax Exemption which certifies to the Pierce County Assessor-Treasurer that the owner is eligible to receive a limited property tax exemption, and

WHEREAS Novotny, Inc., is proposing to develop 12 new market-rate and affordable housing units to consist of seven one-bedroom, one-bath units, 800 square feet in size and renting for $1,000 per month; and five two bedroom, one and one-half bath units, 900 square feet in size and renting for $1,250 per month, as well as 12 on-site residential parking stalls, and

WHEREAS the Director of Community and Economic Development has reviewed the proposed property tax exemption and recommends that a conditional property tax exemption be awarded for the property located at 7602 Pacific Avenue, as more particularly described in the attached Exhibit “A”; Now, Therefore,
BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

Section 1. That the City Council does hereby approve and authorize a conditional property tax exemption, for a period of 12 years, to Novotny, Inc., for the property located at 7602 Pacific Avenue in the 72nd and Pacific Avenue Mixed-Use Center, as more particularly described in the attached Exhibit “A.”

Section 2. That the proper officers of the City are authorized to execute a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Novotny, Inc., said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted ____________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form: Legal description approved:

______________________________
Deputy City Attorney

Chief Surveyor

Public Works Department
EXHIBIT “A”

LEGAL DESCRIPTION

Tax Parcel: 7850000720

Legal Description:

That portion of the Southeast quarter of the Southwest quarter of Section 28, Township 20 North, Range 03 East, W.M., more particularly described as follows:

Beginning at the intersection of the West line of Pacific Avenue and a line parallel with and 225 feet North of the South line of Lot 10 of T.J. Spooner’s Five-Acre Lots in Section 28, Township 20 North, Range 03 East, W.M., according to the Plat thereof recorded in Volume 1 of Plats at Page 65, Pierce County, Washington;

Thence on said parallel line West to the East line of that certain property conveyed to Robert G. Johnson and Thea I. Johnson, husband and wife, by deed recorded under Recording No. 2235987;

Thence North along the East line of said Johnson tract 75 feet, more or less, to the South line of South 76th Street, as appropriated by the City of Tacoma;

Thence on said South line of 76th Street, easterly to the West line of Pacific Avenue;

Thence southerly along said West line of Pacific Avenue 75 feet, more or less, to the Point of Beginning.

Except any portion lying within the North 30th feet of the East one-half of said Lot 10, conveyed to the City of Tacoma for street purposes by deed recorded under Auditor’s File Number 1753488.
RESOLUTION NO. 39714

A RESOLUTION relating to the multi-family property tax exemption program; authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Brentwood Real Estate, LLC, for the development of 45 multi-family market-rate and affordable housing units to be located at 2515 South 48th Street in the Tacoma Mall Mixed-Use Center.

WHEREAS the City has, pursuant to chapter 84.14 of the Revised Code of Washington, designated several Residential Target Areas for the allowance of a limited property tax exemption for new multi-family residential housing, and

WHEREAS the City has, through Ordinance No. 25789, enacted a program whereby property owners in Residential Target Areas may qualify for a Final Certificate of Tax Exemption which certifies to the Pierce County Assessor-Treasurer that the owner is eligible to receive a limited property tax exemption, and

WHEREAS Brentwood Real Estate, LLC, is proposing to develop 45 new market-rate and affordable housing units to consist of 45 one-bedroom, one-bath units, ranging in size from 420-460 square feet and renting for $650-$750 per month, as well as 31 on-site residential parking stalls, and

WHEREAS the Director of Community and Economic Development has reviewed the proposed property tax exemption and recommends that a conditional property tax exemption be awarded for the property located at 2515 South 48th Street, as more particularly described in the attached Exhibit “A”; Now, Therefore,

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

Section 1. That the City Council does hereby approve and authorize a conditional property tax exemption, for a period of 12 years, to Brentwood Real
Estate, LLC, for the property located 2515 South 48th Street in the Tacoma Mall Mixed-Use Center, as more particularly described in the attached Exhibit “A.”

Section 2. That the proper officers of the City are authorized to execute a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Brentwood Real Estate, LLC, said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted __________________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form: Legal description approved:

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Deputy City Attorney

______________________________
Chief Surveyor

______________________________
Public Works Department
EXHIBIT “A”

LEGAL DESCRIPTION

Tax Parcel: 6060000120

Legal Description:

That portion of the Southwest quarter of the Southeast quarter of
Section 18, Township 20 North, Range 03 East, W.M., more
particularly described as follows:

Lots 5 through 13, inclusive, Block 9, Map of Montclair Addition to
the City of Tacoma, Washington Territory, according to the plat
thereof recorded in Volume 2 of Plats at Page 103, records of
Pierce County, Washington.

Together with the North 23.67 feet of South 48th Street abutting
said premises, vacated by City of Tacoma Ordinance No. 27198,
recorded April 20, 2005, under Recording No. 200504200976.

Situate in the City of Tacoma, County of Pierce, State of
Washington.
A RESOLUTION relating to the multi-family property tax exemption program; authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Koz Development, LLC, for the development of 104 multi-family market-rate and affordable housing units to be located at 1552-1556 Market Street in the Downtown Mixed-Use Center.

WHEREAS the City has, pursuant to chapter 84.14 of the Revised Code of Washington, designated several Residential Target Areas for the allowance of a limited property tax exemption for new multi-family residential housing, and

WHEREAS the City has, through Ordinance No. 25789, enacted a program whereby property owners in Residential Target Areas may qualify for a Final Certificate of Tax Exemption which certifies to the Pierce County Assessor-Treasurer that the owner is eligible to receive a limited property tax exemption, and

WHEREAS Koz Development, LLC, is proposing to develop 104 new market-rate and affordable housing units to consist of 104 studio units, 250 square feet in size and renting for $850 per month, as well as 1,370 square feet of retail space, and

WHEREAS the Director of Community and Economic Development has reviewed the proposed property tax exemption and recommends that a conditional property tax exemption be awarded for the property located at 1552-1556 Market Street, as more particularly described in the attached Exhibit “A”; Now, Therefore,

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

Section 1. That the City Council does hereby approve and authorize a conditional property tax exemption, for a period of 12 years, to Koz Development,
LLC, for the property located at 1552-1556 Market Street in the Downtown Mixed-Use Center, as more particularly described in the attached Exhibit “A.”

Section 2. That the proper officers of the City are authorized to execute a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with Koz Development, LLC, said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted ____________________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form: Legal description approved:

______________________________
Deputy City Attorney Chief Surveyor

______________________________
Public Works Department
EXHIBIT “A”

LEGAL DESCRIPTION

Tax Parcel: 2015080130

Legal Description:

That portion of the Northwest quarter of the Southwest quarter of Section 04, Township 20 North, Range 03 East, W.M., more particularly described as follows:

Lots 25 and 26 in Block 1508 as the same are known and designated upon a certain plan entitled “Map of New Tacoma, Washington Territory,” filed for record in the Office of the Auditor of Pierce County, February 3rd, 1875.

Situate in the City of Tacoma, County of Pierce, State of Washington.
RESOLUTION NO. 39716

BY REQUEST OF MAYOR STRICKLAND

A RESOLUTION relating to the homelessness crisis; directing the Interim City Manager to promptly prepare and present to the City Council an Emergency Temporary Aid and Shelter Program to respond to the homelessness crisis, and to prepare and present an ordinance declaring a state of emergency relating to the current homeless crisis, authorizing the suspension of certain regulations to facilitate the Emergency Temporary Aid and Shelter Program, and providing for approval of such emergency services contracts as are necessary to support this program.

WHEREAS the City of Tacoma continues to experience large numbers of individuals and families who are homeless due to such factors as job loss, family crisis, substance abuse, economic reasons, mental health issues, and loss of temporary housing, and

WHEREAS the pattern of stagnant and declining wages and shortage of available affordable housing has also contributed to the rising numbers of homeless individuals and families, and

WHEREAS the homelessness crisis is occurring in communities throughout the West Coast, causing cities like Seattle, Washington; Portland, Oregon; and Los Angeles, California, to declare states of emergency in order to provide emergency services and shelters for the growing number of unsheltered homeless individuals and families, and

WHEREAS point in time counts conducted in the greater Tacoma area have identified 1,997 homeless persons in year 2012; 1,303 in year 2013; 1,474 in year 2014; 1,283 in year 2015; 1,762 in year 2016; and 1,321 in year 2017, and
WHEREAS, despite the improving economy, the point in time counts reveal that at any given night large numbers of people, including families, experience homelessness and can be found sleeping on the streets and in parks, cars, abandoned buildings, steep slopes, under highway overpasses, and in other places not meant for human habitation, and

WHEREAS, of the 1,321 homeless persons counted in the point in time count for 2017, 21 percent were identified as chronically homeless, 14 percent were households with children, 39 percent were female, 14 percent were victims of domestic violence, 6 percent were unaccompanied youth and young adults, 10 percent were veterans, and 41 percent were people of color, and

WHEREAS, in years 2015-2016, the unsheltered population in the greater Tacoma area increased by 46 percent and since 2010, the unsheltered homeless population had increased by 192 percent, with more individuals and families living in places not fit for human habitation, and

WHEREAS the supply of available temporary and permanent support housing for homeless persons residing in Tacoma is inadequate to meet demand, resulting in long lines for emergency shelters (the wait list for some shelters is as high as 80-90 people per night), long waits for support housing, and a rising number of unsheltered households, and

WHEREAS, on any given night, homeless encampments in Tacoma may be occupied by 100 or more persons, and
WHEREAS homeless encampments occur without appropriate sanitation facilities or proper trash receptacles and often become contaminated with garbage, human waste, used needles, and dirty dressings, resulting in occupants facing serious health and sanitation issues, and

WHEREAS conditions in homeless encampments are personally stressful and expose occupants to communicable diseases like tuberculosis and respiratory illnesses, violence, malnutrition, and harmful weather exposures and exacerbate common conditions such as high blood pressure, diabetes, and asthma because there is no safe place to properly store medications or syringes, and

WHEREAS behavioral health issues such as depression or alcoholism often develop or are made worse for people living in homeless encampments, and these conditions frequently co-occur with a complex mix of severe physical, psychiatric, substance use, and social problems, and

WHEREAS, according to the National Health Care for the Homeless Council, persons “...experiencing homelessness are three to four times more likely to die prematurely than their housed counterparts, and experience an average life expectancy as low as 41 years...,” and

WHEREAS health care services are not effective when a patient’s health is continually compromised by street and shelter conditions, and inpatient hospitalization or residential drug treatment and mental health care do not have lasting impacts when the patient is returned to a homeless environment, and
WHEREAS conditions in homeless encampments that are dangerous to human health include: garbage that becomes a food source for vermin; vectors (organisms that transmit diseases or parasites) and related pathogens; lack of proper food storage and clean dishes that can facilitate the spread of food-borne disease; lack of sanitary facilities to dispose of human and animal fecal waste, which can lead to contamination of ground and surface water supplies and transmittal of disease; improper disposal of discarded medical and sharps waste; accumulation of combustible materials that can ignite; lack of poor hygiene which contributes to dental and skin problems; and the victimization of homeless persons by both sheltered and non-sheltered persons, and

WHEREAS these conditions arise from human-made events and are contributing to, and will continue to contribute to, significant human suffering, creating an immediate need to provide temporary aid and shelter for the homeless persons occupying these encampments, regardless of where in the City they may be found, and

WHEREAS the housing and homelessness crisis presents an existing and ongoing threat of significant harm to human health and life, requiring immediate action, and

WHEREAS residents of homeless encampments have needs that include the provision of social, public, and mental health services; stability; storage and safety; potable drinking water; solid waste disposal; and human waste disposal, and
WHEREAS many of these conditions can be mitigated through interim measures designed to meet the immediate survival and safety needs of those persons occupying homeless encampments, such as the provision of hygiene facilities, trash collection, sanitary facilities, temporary shelters, and outreach and gateway services within the encampments, and

WHEREAS the City Council finds that it is in the best interest of the public health, safety, and welfare for the City Council to exercise its police power authority to declare a housing emergency and to authorize an emergency program for establishment of temporary housing and aid stations to address basic humanitarian needs in areas with significant concentrations of homeless persons, and to authorize emergency contracts to provide aid and temporary shelter services at such locations; Now, Therefore,

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

Section 1. That the Interim City Manager is directed to promptly prepare and present to the City Council an Emergency Temporary Aid and Shelter Program to respond to the homelessness crisis.

Section 2. That the Interim City Manager is directed to promptly prepare and present to the City Council an ordinance declaring a state of emergency relating to the current homeless crisis, authorizing the suspension of certain regulations to facilitate the Emergency Temporary Aid and Shelter Program, and providing
for approval of such emergency services contracts as are necessary to support this program.

Adopted ______________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
Chief Deputy City Attorney
ORDINANCE NO. 28418

AN ORDINANCE related to the vacation of City right-of-way; vacating a
sub-surface portion of Court E, lying between South 13th and
South 15th Streets, to accommodate an existing building wall; and
adopting the Hearing Examiner’s Findings, Conclusions, and
Recommendations related thereto.

WHEREAS all steps and proceedings required by law and by
resolution of the City Council to vacate the portion of the right-of-way
hereinafter described have been duly taken and performed; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. That the City Council hereby adopts the Hearing Examiner’s
Findings, Conclusions, and Recommendations as contained in the Hearing
Examiner’s Report and Recommendation to the City Council bearing File
No. 124.1375 and dated February 23, 2017, which Report is on file in the
office of the City Clerk.
Section 2. That the sub-surface portion of Court E, lying between South 13th and South 15th Streets, legally described as follows:

That portion of the public alley lying between Blocks 1310 and 1311 of the Map of New Tacoma, according to the Plat thereof recorded February 3, 1875, and as shown on survey recorded November 16, 2015, under Auditor’s Fee No. 201511165001, all records of Pierce County, Washington, being more particularly described as follows:

Beginning at the Southwest corner of Lot 13, said Block 1310; Thence South 82°37’54” West along the westerly extension of the South line of said Lot a distance of 5.00 feet; Thence North 07°23’27” West a distance of 104.92 feet; Thence North 82°36’33” East a distance of 5.00 feet to the West line of said Block 1310; Thence South 07°23’27” East along said line a distance of 104.92 feet to the Point of Beginning, and lying between elevation 188.39 feet NGVD29 (lowest elevation of footing) and elevation 207.00 feet NGVD (elevation of Court E).

Containing 524.6 square feet, more or less;

is hereby vacated, and the land so vacated is hereby surrendered and attached to the property bordering thereon, as a part thereof, and all right or title of the City in and to the portion of the right-of-way so vacated does

Req. #17-0232
hereby vest in the owners of the property abutting thereon, all in the manner
provided by law.

Passed ____________________________

Attest:

Mayor

City Clerk

Approved as to form: Property description approved:

Deputy City Attorney Chief Surveyor

Public Works Department

Location: A sub-surface portion of Court E lying between South 13th and
South 15th Streets

Petitioner: Alma Mater, LLC

Vacation Req. No. 124.1375

 Req. #17-0232 -3-
ORDINANCE NO. 28425

AN ORDINANCE granting a non-exclusive franchise to Mobilitie, LLC, a Nevada limited liability company, to construct, operate, and maintain a telecommunications system in the City of Tacoma; setting forth provisions, terms, and conditions of the grant of franchise; specifically making such grant subject to the provisions of Title 16B, Title 9, and Title 10 of the Tacoma Municipal Code, as well as the Tacoma City Charter; providing for City regulation of the Telecommunications System; prescribing liquidated damages and certain other remedies for violation of franchise provisions in addition to those specified pursuant to the Municipal Code and the City of Tacoma Charter.

WHEREAS Mobilitie, LLC, a Nevada limited liability company registered to do business in the state of Washington ("Mobilitie" or "Franchisee") is a telecommunications company currently involved in the business of operating a telecommunications network utilizing fiber optic and wireless technology, and

WHEREAS, as part of expanding such network, Mobilitie desires to obtain a franchise to operate its telecommunications network in City of Tacoma right-of-way, and

WHEREAS Mobilitie has applied to the City to install and operate Personal Wireless Facilities (as defined at Section 1.14 below) and fiber optic cable within the City streets and public rights-of-way, and also intends, with appropriate, additional City authorization and subject to City zoning and land use regulations, to place above-ground transmission facilities in certain locations in City right-of-way, and

WHEREAS the City Council has determined to grant such a franchise to Mobilitie upon those certain terms and conditions which the City Council deems necessary due to the unique nature of fiber optic cable and wireless transmission facilities as set forth herein, 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 of the Tacoma Municipal Code ("TMC"), 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 TMC or to the City’s Charter refers to the same as may be amended from time to time. Any reference to a “party” hereunder shall mean the City or Franchisee, as applicable, and a reference to the “parties” shall mean collectively the City and Franchisee.

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 System” refers to a telecommunications system.

1.4 “Construction, operation, or maintenance” and similar formulations of these terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, or components thereof, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.
1.5 “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. The definition of “Customer” shall also include Persons who use Franchisee’s Facilities, whether as lessees or through other arrangement.

1.6 “Facilities” or “Installations” are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, installed, operated, maintained, or otherwise used by Franchisee, such as antennae, 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, encompasses both Overhead Facilities/Installations and Underground Facilities/Installations. Nothing in this definition, or anything else in this Franchise shall be interpreted as authorizing Franchisee to construct its own support system for Overhead Facilities or any other above-ground Facilities in the Franchise Area without the additional authorizations required herein below and as proscribed by City zoning and land use regulation ordinances.

1.7 “Franchise” means the rights expressly granted by this Franchise and conditioned as set forth herein and under the TMC and City Charter.

1.8 “Franchise Area” means that area within the present and future corporate limits of Tacoma.
1.9 “Franchisee” means Mobilitie, LLC, a Nevada limited liability company registered to do business in the state of Washington with its principal Washington office located at 11245 SE 6th Street, Ste. B-220, Bellevue, WA 98004.

1.10 “Gross Receipts,” for purposes of this Franchise, means any and all receipts or income received directly or indirectly by Franchisee, which is derived from the operation of its System in the City, less uncollectibles. Gross Receipts 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 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.

1.11 “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.
1.12 “Overhead Facilities” refers to existing electric utility and communications Facilities located above the surface of the ground, including the underground supports and foundations for such Facilities.

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

1.14 “Personal Wireless Facilities” are Facilities which are above ground such as transmitters, antenna structures, and other types of installations, whether related to wireless or fiber/optic transmission, now or hereafter used for the provision of personal wireless services as that term is defined in Section 704 of the 1996 Telecommunications Act.

1.15 “Public Rights-of-Way” mean the public streets and easements over which, under the City Charter, the TMC, 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/crossings, airport, and harbor areas. Public Rights-of-Way, for the purpose of this Franchise, also 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, optical form, or by wireless transmission, 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 or commercial video 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 Rights-of-Way. The term Telecommunications System, by way of example
and not limitation, includes antennae, 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 (where
separately authorized by an attachment agreement) 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, but poles and other structures to which
Franchisee’s Facilities are attached shall not be deemed to be part of Franchisee’s
Telecommunications System unless such poles or other structures are owned by
Franchisee.
1.19. “Telephone Service” means the provision 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 by any person. 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 TMC 6A.40.030, the providing of cable television service, or the providing of broadcast services by radio or television stations.

1.20 “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, maintain, and operate a fiber optic/wireless Telecommunication System to provide Telecommunication Service and internet access service, and to use the City’s Public Rights-of-Way as authorized herein. This grant of Franchise does not, by itself, grant any right to construct, operate or maintain any new, above-ground Facilities without prior City approval, which will require additional permitting.
and/or an additional site specific or master siting agreement, in conformance with
City zoning and land use ordinances and applicable state laws.

This grant is subject to and must be exercised in strict accordance with and
subject to this Franchise Agreement, Title 16B, and other applicable provisions of
the TMC and Tacoma City Charter, including, but not limited to, the provisions set
forth in Article VIII of the Charter, and TMC Title 13, and this Franchise may be
revoked under Section 2.5 if it is not so exercised. The exercise of any rights
pursuant to this Franchise is subject to the exercise of the City’s police powers,
and other regulatory powers as the City may have or obtain in the future, and all
rights granted herein must be exercised in strict accordance with applicable laws,
including, by way of example and not limitation, zoning codes and permitting
requirements. No rights shall pass to Franchisee by implication. This Franchise
shall constitute both a right and an obligation to provide or cause to be provided
the services of the Telecommunications System as required by the provisions of
this Franchise.

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

Notwithstanding the above grant to use Public Rights-of-Way, no Public
Rights-of-Way shall be used by Franchisee if the City, in its opinion, 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 or inconsistency between a provision in this Franchise and any provision of the City Charter, which Charter is incorporated herein by reference, the applicable provision of the City Charter shall control over any inconsistent provision of this Franchise.

2.2 Franchise Term. The term of the Franchise shall be ten years unless terminated sooner in accordance with this Franchise, Title 16B, or the City Charter. At the expiration of the term, Franchisee may apply to extend or renew the Franchise as provided in Title 16B.02.100.

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 Title 16B.01.030.Y, shall be accomplished in accordance with TMC Title 16B.02.120. Any intra-company Transfer of this Franchise shall be excepted from the requirements of TMC Title 16B.02.120.A-B if such Transfer and the Transferee Affiliate meet all of the requirements of TMC Title 16B.02.120.F (or any successor ordinance). Any Transfer not made in accordance with TMC Title 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 TMC.

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 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 or any other City interest. 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 16B or in the event that:

A. Franchisee is in non-compliance with a material provision of 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

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

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

E. The procedures for revocation and forfeiture shall be governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked, Franchisee shall be given notice and opportunity to cure at least equivalent to that required by Title 16B as of the effective date of this Franchise (except in those cases where notice and opportunity to cure are not required or would be futile), and shall be accorded at least an opportunity to be heard that provides at least the due process
protections required by Title 16B as of the effective date of this Franchise, which opportunities and protections are set out in Section 2.5.F., below.

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

2. Notwithstanding the foregoing, the City may declare a Franchise forfeited without opportunity to cure when Franchisee: (a) fails to begin to exercise its rights hereunder within 45 days of Franchisee’s acceptance of this Franchise, (b) stops providing or causing to be provided all Service it is required to provide or cause to be provided under this Franchise, (c) Transfers without the prior consent of the City as and when required in the Franchise, or (d) is found by a court or regulatory body with appropriate jurisdiction to have defrauded or attempted to defraud the City or Franchisee’s Customers within the City.

Notwithstanding the provisions of Title 16B.05.100C.2, if Franchisee fails to timely
pay any undisputed Franchise application/administrative fees or other undisputed fees owed hereunder or under Title 16B, before the City can initiate any termination or forfeiture of rights, Franchisee shall be provided with ten (10) business days’ prior written notice and an opportunity to cure the failure to pay. However, Franchisee shall have the right to receive 30 days’ prior notice of an intent to declare a Franchise forfeited, and shall have the opportunity to show cause why the Franchise should not be forfeited.

3. Notwithstanding the foregoing 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 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 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 in writing; and (b) the successful bidder has covenanted and agreed in writing 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 as provided in Section 2.2 (referred to below collectively as a “termination”), Franchisee shall remove its Facilities from the Public Rights-of-Way under Section 2.7, unless the City elects to purchase the Facilities as provided in Section 2.6 B.

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 as provided in Section 2.2 (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 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 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 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 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 TMC 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 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 the 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 any portion of its Telecommunications System that the City will not purchase 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, 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 Intentionally Omitted.

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 Franchisee the actual cost thereof. Franchisee shall pay the amounts billed within 30 days of
receipt of an 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 is performed in compliance with this Franchise and Title 16B, and other applicable laws, including, without limitation, the City’s Right-of-Way Restoration Policy. Franchisee and its contractors and subcontractors shall be jointly and severally liable for all damages and correcting all damages they cause. It is Franchisee’s responsibility to ensure that contractors, subcontractors, or other Person(s) performing work on Franchisee’s behalf are familiar with the requirements of this Franchise, Title 16B, the City’s Right-of-Way Restoration Policy, and other applicable laws governing the work performed by them.

2.11 Survival of Terms. Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the purpose of providing Telecommunications Service. However, Franchisee’s obligations to the City (other than the obligation to provide service or cause such service to be provided to Customers) survive the expiration of these rights according to their terms. By way of illustration and not limitation, Sections 2.6, 2.7, 2.9, 2.10, and 4 of this Franchise shall continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to
the extent that a City-approved Transfer, sale, or assignment of the
Telecommunications System is completed, and another entity has assumed full
and complete responsibility for the Telecommunications System or for the relevant
acts or omissions.

2.12 Termination by Franchisee. Franchisee may terminate this Franchise,
with or without cause, upon sixty (60) days’ written notice of its intent to so
terminate. Upon termination, Franchisee shall accrue no further obligations
hereunder, but any obligations accrued prior to termination shall remain, as shall
obligations that by their terms survive the termination hereof.

Section 3. Operation In Streets And Rights-of-Way.

3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of
this Franchise and TMC Titles 16B and 13, the City’s Right-of-Way Restoration
Policy, and other applicable laws, enter onto and use the Public Rights-of-Way to
construct, operate, and maintain a Telecommunications System in Public
Rights-of-Way within the Franchise Area, to provide, or cause to be provided,
Telecommunications Services and internet access services. Under this Franchise,
Franchisee may also construct Personal Wireless Facilities, but may only do so
after obtaining an additional site-specific or master siting agreement from the City
for such Personal Wireless Facilities. Without limiting the foregoing, Franchisee
expressly agrees that it will construct, operate and maintain its System in
compliance with the requirements of Title 16B and TMC Title 13 zoning and land
use regulation ordinances, including those governing the placement of its
Telecommunications System, and with other applicable City codes; and will obtain and maintain all bonds and billable work orders required by the same.

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

Without limiting the foregoing, Franchisee agrees that it shall, in the course of constructing, operating, and maintaining its Telecommunications System, comply with the requirements of Titles 16B and 13, and among other things:

A. 1. Franchisee shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned Communications System, public work, public project, public facility, or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Telecommunications System. Collectively, such matters are referred to below as the “public work.”
2. In the event of an emergency, or where the Telecommunications System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Telecommunications System without prior notice, and charge Franchisee for actual costs incurred.

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

4. Franchisee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same.
B. Franchisee’s obligation to construct, operate, and maintain its Telecommunications System in compliance with all applicable laws, ordinances, departmental rules and regulations and published or otherwise readily available practices affecting such System, includes, by way of example, and not limitation, the obligation to construct, operate and maintain 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 maintenance shall be performed in a manner consistent with industry standards. 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 Rights-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 maintenance of its Telecommunications System shall not commence until all required permits or agreements have been properly filed for and obtained from the proper City officials and all required permits and agreements obtained 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 all Facilities, which includes, without limitation, Personal Wireless Facilities, in the Public Rights-of-Way, and must in any event install Facilities in a manner that minimizes interference with the use of the Public Rights-of-Way by others, including others that may be installing Communications Facilities.

The City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to a particular Public Right-of-Way area; may deny access if Franchisee is not willing to comply with the City’s requirements; and may remove, or require removal of, any Facility that is not installed in compliance with the requirements established by the City, or which is installed without prior City approval of the time, place, or manner of installation and charge Franchisee for all the costs associated with removal; and may require Franchisee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.
consistent with requirements the City imposes on other similarly situated
franchisees or users of the Public Rights-of-Way.

E. Franchisee agrees that, as a condition of a permit for installation
of conduit, the City may require it to install conduit in excess of its reasonably
foreseeable requirements for the purpose of accommodating the City where the
City Manager determines it is appropriate to do so to minimize disruption of public
passage or infrastructure, to forestall or relieve exhaustion of Right-of-Way
capacity, or to protect environmentally sensitive areas; provided that the City will
be responsible for the additional costs, including material and labor, associated
with installing such excess conduit if installed for City use; and provided further that
City’s use of any such excess conduit is limited to non-commercial, governmental
uses.

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

G. Subject to subsection G.3. below, and recognizing that
Franchisee’s intended Personal Wireless Facilities are intended to be located
above ground, Franchisee shall be subject to the requirement that whenever all
existing utilities are located underground in an area in the City, Franchisee, at its
own cost, must also locate its Telecommunication System underground, including
Telecommunication System Facilities, such as drops, which cross private property.
1. Whenever the owners of poles locate or relocate underground within an area of the City, Franchisee shall concurrently relocate its Facilities underground at its own cost.

2. Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities underground, 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, where the Facilities, due to the nature of their function must be above ground, 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 Franchisee to locate or relocate its Telecommunication System, either underground, or to a mutually agreed upon above ground location, when other existing utilities in an area are ordered to locate or relocate their facilities underground under other provisions of the TMC, 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. Subject to subsection G.3. above, Franchisee shall participate in conversion to underground Local Improvement Districts ("LIDs") at the same time as other utilities are required to participate in conversion to underground LIDs. 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 TMC, 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, 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 maintenance 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 TMC. 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 ensuring 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 under Section 2, Franchisee may voluntarily remove any Facilities from the Public Rights-of-Way which have been installed in such a manner that they can be removed without trenching or other opening of the Public Rights-of-Way.

3.3 Right To Inspect and Order Corrections. The City may, at its cost, 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 Franchisee’s representatives are not on-site performing work on the Telecommunications System, whenever feasible, the City shall give reasonable advance notice of its intent to inspect so that Franchisee may have a representative present during the inspection. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a time table established by the City which is reasonable in light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do so in a timely manner, and to charge 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.


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

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

   C. Public Hearing. The City may schedule a public hearing to investigate any alleged default. The City shall give Franchisee 20 calendar days’ notice of the time and place of the hearing and provide Franchisee with an opportunity to be heard.
D. Action after Hearing. If the City determines after such hearing that the Franchisee did not timely cure, or initiate steps to cure the default in a timely manner satisfactory to the City, after the notice required by Section 4.3.A. was provided, then the City may draw upon any performance bond, security fund or other security, including requiring performance under the guarantee; and impose liquidated damages. However, notice and opportunity to cure are not required for repeat violations, or for a failure to correct a default where Franchisee knew or should have known it was in default; in such cases, the performance bond, letter of credit or other security may be drawn upon, the guarantor required to perform and liquidated damages imposed after the hearing required by Section 4.3.C.

E. Liquidated Damage Amounts. Because any material failure to comply with the provisions of this Franchise by Franchisee 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 2017 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 Franchisee a minimum of 30 days after notice to 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. 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
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 Franchisee’s control, and the
knowledge of affiliates shall be imputed to Franchisee. This Franchise shall not
be revoked or Franchisee penalized for such noncompliance, provided that
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 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 this 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, resolutions, rules policies and regulations heretofore or hereafter adopted or established during the entire term of the Franchise; provided that, nothing herein shall prevent Franchisee from challenging a provision of laws that applies only to it as an impairment of contract. Nothing in this Franchise shall limit the City’s right of eminent domain under state law. Nothing in this Franchise shall be deemed to waive the requirements of any lawful code or resolution of the City regarding permits, fees to be paid, or manner of construction.

Section 5. Reporting Requirements.

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

5.2 Annual Report. In the event that changes in applicable laws allow the City to require a franchise fee as referenced at Section 6 below, then no later than 120 days following the end of Franchisee’s fiscal year each year after the imposition of franchise fees, Franchisee shall present a written report to the City which shall include:

A. Audited financial statements for (1) Franchisee and (2) any affiliate which is involved in any way with the operation or ownership of the System; and a financial statement for Franchisee that includes Gross Receipts from all sources, as well as an income statement and a balance sheet. In the event any audited financial report has not been published by the date due under this section, then the audited financial report shall be deemed presented on time if presented within 30 days after publication.

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

1. A summary of the previous year’s activities for the Franchise Area, including, but not limited to, the total number of Franchisee’s customers (if any), miles of Facilities, any services added or dropped, and any technological changes occurring in the system;
2. Plans for the future; and

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

5.3 Additional Reports. Franchisee shall prepare and furnish to the City within 60 days of written request, to the person and address specified in the City’s request, in a form reasonably prescribed by the City, such additional reports with respect to Franchisee’s operation, affairs, transactions, or property, as may be reasonably necessary and appropriate to ensure compliance with the material provisions of this Franchise, or to permit the performance of any of the rights, functions, or duties of the City 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.


6.1 Fees; Taxes.

A. State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee for the intended use. 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 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 TMC Chapter 6A, and are taxable at the 6 percent rate specified in TMC 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 excluding any Gross Receipts from the provision of internet access service. It is agreed that the amount of Gross Receipts to be taxed will not include the amount of tax imposed on Franchisee by City ordinance unless Franchisee is passing on the amount of tax imposed to its customers within the City. 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 allowed by RCW 35.21.860 or other applicable laws, Franchisee may be required to pay other costs applicable to this Franchise and Franchisee’s activities hereunder. The amount of payment to be made by Franchisee to cover these administrative costs shall be determined by the Franchise Services Manager in conformance with applicable laws. Such obligation further includes municipal fees related to receiving and approving permits or licenses, inspecting plans and construction, or relating to the preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt of the City’s billing therefor.

D. Manner of Payment; Audit. Franchisee will pay the City Telephone Business Tax specified in Section 6.1B on a monthly basis accompanied by Franchisee’s standard remittance form which specifies the net taxable charges, the local tax rate, and the local tax due, plus penalties and/or interest, if any is due. Franchisee shall make all other required fee payments in the form, at the intervals and in the manner requested by the City Treasurer, and furnish him/her any information related to his/her revenue collection functions reasonably requested. In case of audit, the City Treasurer may require Franchisee to furnish a verified statement of compliance with Franchisee’s obligations or in response to any
questions. Said certificate may be required from an independent, certified public accountant, at Franchisee’s expense. All audits will take place on Franchisee’s premises or offices furnished by Franchisee, which shall be a location within the City of Tacoma or other mutually agreeable place; however, Franchisee must agree to pay the associated costs of travel. 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 Receipts 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 Receipts for purposes of calculating payments.

F. Late Payments. Any fees owing which remain unpaid more than ten (10) business 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 City 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 the City of Tacoma 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 for operations in the City of Tacoma available for inspection and non-confidential books and records for operations in the City of Tacoma 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 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 if such location is outside the City.

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, or causing to be provided, 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; provided, that City shall promptly return or destroy upon Franchisee’s written request any data prohibited by federal law to be provided to City and erroneously provided to 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 $250,000. The amount of the bond may be changed from time to time to reflect changed risks to the City or to the public. Franchisee may be required to obtain additional bonds in accordance with the City’s ordinary practices and/or pursuant to applicable TMC 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 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, except to the extent
Franchisee’s Telecommunication System is damaged by the negligent acts or 
omissions or willful misconduct of the City or its agents.

B. Franchisee agrees to indemnify and hold harmless the City, its 
trustees, elected and appointed officers, agents, and employees, from and against 
any and all claims, demands, or causes of action of whatever kind or nature, and 
the resulting losses, costs, expenses, reasonable attorneys’ fees, liabilities, 
damages, orders, judgments, or decrees, sustained by any third party arising out 
of, or by reason of, or resulting from or of the acts, errors, or omissions of 
Franchisee or its agents, independent contractors, or employees related to or in 
any way arising out of the construction, operation, maintenance, or relocation of 
the Telecommunications System, unless and to the extent caused by the 
negligence of the City or its agents or representatives. Franchisee waives 
immunity under Title 51 RCW and affirms that the City and Franchisee have 
specifically negotiated this provision, as required by RCW 4.24.115, to the extent it 
may apply.

C. Franchisee agrees that the covenants and representations 
relating to the indemnity provided in Sections A and B above shall survive the 
term/expiration/termination of this Franchise and continue in full force and effect as 
to Franchisee’s responsibility to indemnify, subject to the applicable statute of 
limitations.

6.5 Franchisee Insurance.

A. Franchisee shall maintain, throughout the term of the Franchise, 
adequate insurance, in Franchisee’s reasonable judgment, to protect the City, its
trustees, elected and appointed officers, agents, and employees against claims
and damages that may arise as a result of the construction, operation or
maintenance of the Telecommunications System. The City makes no
representation as to what constitutes adequate insurance for Franchisee’s
operations. The foregoing notwithstanding, Franchisee must maintain at least the
minimum insurance coverages and amounts set forth in TMC 16B.05.090.

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

C. Certificates of insurance, reflecting evidence of the required
insurance and naming the City as an additional insured with all required
endorsements on the General Liability and Automotive policies/coverages hereby
required, shall be filed with the City’s Risk Manager. The certificate shall be filed
with the acceptance of the Franchise, and annually thereafter, and as provided in
Section E below.

D. 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
Guide.

E. In the event that the insurance certificate provided indicates that
the insurance shall terminate or lapse during the period of the Franchise,
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 reserves the right to require any other insurance coverage it deems necessary during the term of the Franchise, depending upon the exposures; provided that such requirement(s) conforms with TMC 16B.

G. It is Franchisee’s responsibility to ensure that each subcontractor obtains and maintains adequate liability insurance coverage, and upon request of the City, Franchisee shall provide evidence of such insurance.

6.6 Security Fund. Franchisee shall establish a cash security fund or provide the City an irrevocable letter of credit or assignment of funds in the amount of $50,000, as additional security 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. Any 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 or assignment of funds, it shall promptly notify Franchisee, and Franchisee shall promptly restore the fund or the letter of credit or assignment of funds to the full required amount. The City may from time to time change the amount of the required security fund/letter of credit/assignment of funds to reflect changes in the risks to the City and to the public, including delinquencies in taxes or other payments to the City.

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 its 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 preemptively 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, and if in the federal courts, in the United State 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, except to the extent Franchisee’s Telecommunication
System is damaged by the negligent acts or omissions or willful misconduct of
the City or its representatives.

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 recipient 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:

Mobilitie LLC
Attn: Legal Department
2220 University Drive
Newport Beach, CA 92660

With copies to: legal@mobilitie.com

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
fails to provide the required accompanying documents and payments, within the

time limits set forth in this section, the grant of the Franchise shall be null and
void.

Passed ______________________

______________________________
Mayor

Attest:

______________________________
City Clerk

Approved as to form:

______________________________
Deputy City Attorney
ACCEPTANCE OF CITY FRANCHISE

Ordinance No. ___________, effective _____________, 2017.

I, _______________________, am the ____________________ of Mobilitie, LLC, a Nevada limited liability company, and am the authorized representative to accept the above referenced City franchise ordinance on behalf of Mobilitie LLC.

I certify that this franchise and all terms and conditions thereof are accepted by Mobilitie LLC.

DATED this ____ day of ________________, 2017.

MOBILITIE, LLC

By ___________________________

Its ___________________________