



Legislation Passed January 29, 2013

The Tacoma City Council, at its regular City Council meeting of January 29, 2013, 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.

Purchase Resolution No. 38613

Awarding contracts to:

1. Rodarte Construction, Inc., on its bid of \$3,118,323.75, sales tax not included, plus a 10 percent contingency, for a cumulative total of \$3,430,156.13, budgeted from the Wastewater Fund, for the replacement of approximately 10,500 linear feet of existing wastewater sewer pipe and approximately 800 linear feet of stormwater sewer pipe located at North 43rd Street to Ruby Street from Pearl Street to Baltimore Street – Specification No. PW12-0423F; and
2. The CEI Group, Inc., in the amount of \$120,000.00, plus sales tax, for a cumulative total of \$538,000.00, budgeted from various departmental funds, to increase the contract for auto accident management services on an as needed basis through December 31, 2013 – Specification No. GF08-0550F.

Resolution No. 38614

Authorizing the execution of an agreement with the Metropolitan Development Council, in the amount of \$420,000, budgeted from the Mental Health Fund, for the Housing First Chronic Homelessness Project, effective January 1, 2013 through December 31, 2014.

Resolution No. 38615

Authorizing the execution of an agreement with the Boys & Girls Clubs of South Puget Sound, in the amount of \$450,000, budgeted from the General Fund, for the operation of the Topping HOPE Center in South Tacoma, effective January 1, 2013 through December 31, 2014.

Ordinance No. 28124

Authorizing the execution of a ten-year non-exclusive telecommunications franchise agreement with Zayo Group, LLC, to construct, operate, and repair a telecommunications system throughout the city.

Ordinance No. 28127

Amending Chapter 1.12 of the Municipal Code, relating to the Compensation Plan, to implement a change in the Section 125 Flexible Benefits Plan and approve a one-time payment to eligible employees; and to implement a Letter of Agreement negotiated with the International Brotherhood of Electrical Workers, Local 483, Customer and Field Services Unit.



RESOLUTION NO. 38613

1 A RESOLUTION related to the purchase of materials, supplies or equipment,
2 and the furnishing of services; authorizing the appropriate City officials to
3 enter into contracts and, where specified, waiving competitive bidding
4 requirements, authorizing sales of surplus property, or increasing or
5 extending existing agreements.

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

10 WHEREAS the Board of Contracts and Awards has reviewed the
11 proposals and bids received by the City, and the Board has made its
12 recommendation as set forth in Exhibit "A," and

13 WHEREAS the Board of Contracts and Awards has also made its
14 recommendations as to entering into purchasing agreements with those
15 governmental entities identified in Exhibit "A"; Now, Therefore,

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

17 That the Council of the City of Tacoma does hereby concur in the
18 findings and recommendations of the Board of Contracts and Awards set forth
19 in the attached Exhibit "A," and does hereby approve and authorize the:

20 (X) A. Procurement of those supplies, services, and public works
21 recommended for acceptance in the attached Exhibit "A";

22 () B. Rejection of those bids and/or proposals that are recommended
23 for rejection in the attached Exhibit "A";
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() C. Entry into the proposed purchasing agreement with those governmental entities identified in the attached Exhibit "A," which proposed agreement is on file in the office of the City Clerk;

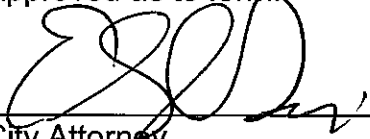
() D. Waiver of competitive bidding procedures in those instances, as set forth in Exhibit "A," in which it is impracticable to obtain supplies or public works improvements by competitive bid, or in those instances in which supplies and/or public works are available from a single source.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:


City Attorney



City of Tacoma
Environmental Services Department

EXHIBIT "A" 38613
RESOLUTION NO.: _____
ITEM NO.: 1
MEETING DATE: JANUARY 29, 2013

DATE: January 15, 2013
TO: Board of Contracts and Awards
SUBJECT: Wastewater Sewer Replacement Project
North 43rd Street to Ruby Street from Pearl Street to Baltimore Street
Budgeted from ES Wastewater Fund 4300
Request for Bids Specification No. PW12-0423F

RECOMMENDATION: The Environmental Services Department, Science and Engineering Division recommends a contract be awarded to low bidder **Rodarte Construction, Inc., Auburn, WA**, for the replacement of approximately 10,500 linear feet of existing wastewater sewer mains and 800 linear feet of stormwater sewer mains. The contract amount reflects a base award of \$3,118,323.75, excluding sales tax, plus a 10 percent contingency, for a cumulative amount of \$3,430,156.13, excluding sales tax.

EXPLANATION: The City of Tacoma's wastewater collection system consists of over 700 miles of underground pipe that conveys wastewater from residential and commercial customers to one of three different locations where it is treated prior to being discharged into Puget Sound.

To help address the problem of aging sewer infrastructure, Environmental Services developed an Asset Management Program. This ongoing program focuses on rehabilitating a certain amount of the City's poorest condition pipes every year. Depending on a pipe's age and condition, rehabilitation can be accomplished using pipe-lining technology that minimizes or eliminates the need for disruptive excavation, or in more severe cases, removing and replacing the existing pipe using traditional excavation methods.

The deteriorated wastewater pipes within the project limits were installed over 80 years ago. The pipes have exceeded their design life, require recurring maintenance and repairs, and are at risk of failure. If failure were to occur, it would result in sewer overflows of untreated wastewater into Commencement Bay and potentially into the basements of adjacent buildings. If repairs are made after it fails, costs go up dramatically.

The condition of these pipes requires complete replacement performed using open-cut excavation methods rather than pipe-lining. All excavation will be performed within existing paved roadways and gravel alleys. Because this work will be disturbing the existing paved roadways, the aging storm water pipes will also be replaced. These roads and alleys will be repaired in accordance with the City's Right-of-Way Restoration Policy upon completion of the underground sewer work.

SUSTAINABILITY EFFORTS: The reduced risk of sewer overflows from this project represents an improvement to human health and the environment. This project will also provide improvements to ergonomic components of Tacoma's sidewalks through curb ramp reconstruction at certain intersections within the project limits. Preventive rehabilitation of underground sewers in the project vicinity, prior to complete failure, represents the lowest lifecycle cost solution to maintaining these assets.

COMPETITIVE BIDDING: Request for Bids, Specification No. PW12-0423F was opened December 27, 2012. The City received 13 bid proposals. The project was advertised in the

Tacoma Daily Index and the Seattle Daily Journal of Commerce. Rodarte Construction, Inc. submitted the lowest responsive bid. The table below reflects the amount of the base award.

<u>Respondent</u>	<u>Location</u> <i>(city and state)</i>	<u>Submittal Amount</u> <i>(Excluding sales tax)</i>
Rodarte Construction, Inc.	Auburn, WA	\$3,118,323.75
Northwest Cascade, Inc.	Puyallup, WA	\$3,277,457.00
Johansen Excavating, Inc.	Buckley, WA	\$3,318,644.80
Titan Earthwork, LLC	Sumner, WA	\$3,403,279.00
Wm. Dickson Co.	Tacoma, WA	\$3,484,709.80
NOVA Contracting, Inc.	Olympia, WA	\$3,502,638.00
Goodfellow Bros., Inc.	Maple Valley, WA	\$3,509,190.00
D P K, Inc.	Kent, WA	\$3,680,969.00
Rognlin's, Inc.	Aberdeen, WA	\$3,683,258.25
Ceccanti, Inc.	Tacoma, WA	\$3,745,291.00
Stan Palmer Construction., Inc.	Bremerton, WA	\$3,846,581.00
Gary Merlino Construction Co., Inc.	Seattle, WA	\$4,502,191.50
James W. Fowler Co.	Dallas, OR	\$4,654,500.00
	Pre-bid Estimate	\$3,577,638.00

The recommended award is approximately 13 percent below the pre-bid estimate.

CONTRACT HISTORY: New contract.

FUNDING: Funds are budgeted in ES Wastewater Fund 4300. The entire contract amount has a base award of \$3,118,323.75, excluding sales tax, plus a 10 percent contingency, for a cumulative amount of \$3,430,156.13, excluding sales tax.

HUB/LEAP COMPLIANCE: Due to current City code revisions, the Historically Underutilized Business (HUB) Office has chosen to waive the HUB goal provision on this specific project. Therefore no HUB goal was set for this project. The Local Employment and Apprenticeship Training Program (LEAP) goal is 2,100 hours.

PROJECT ENGINEER/COORDINATOR: John O'Loughlin, P.E., Science and Engineering Division Manager, (253) 502-2175.



Michael P. Slevin III, P.E.
Interim Environmental Services Director

cc: James Wilkerson, Senior Buyer
Charles Wilson, HUB Coordinator
Peter Guzman, LEAP Coordinator
Terry Forslund, Environmental Services
Max Drathman, Environmental Services
Eric Johnson, Environmental Services



TO: T.C. Broadnax
City Manager

FROM: Michael P. Slevin III, P.E. *M.P.S.*
Interim Environmental Services Director

SUBJECT: Council Action Memo – Purchase Resolution – January 29, 2013
Wastewater Sewer Replacement Project
North 43rd Street to Ruby Street from Pearl Street to Baltimore Street

DATE: January 15, 2013

The Environmental Services Department, Science and Engineering Division is requesting the City Council to award a contract to low bidder Rodarte Construction, Inc., of Auburn, WA, for a base amount of \$3,118,323.75, excluding sales tax, plus a 10 percent contingency for a cumulative amount of \$3,430,156.13, excluding sales tax.

Background

The City of Tacoma's wastewater collection system consists of over 700 miles of underground pipe that conveys wastewater from residential and commercial customers to one of three different locations where it is treated prior to being discharged into the Puget Sound.

To help address the problem of aging sewer infrastructure, Environmental Services developed an Asset Management Program. This ongoing program focuses on rehabilitating a certain amount of the City's poorest condition pipes every year. Depending on a pipe's age and condition, rehabilitation can be accomplished using pipe-lining technology that minimizes or eliminates the need for disruptive excavation. When a pipe's condition is more severe, removing and replacing the existing pipe using traditional excavation methods can be required.

The condition of the wastewater pipes in the project vicinity (see attached map) requires complete replacement using traditional open-cut excavation methods. The excavation work will occur within the existing paved roadways and gravel alleys. These roads and alleys will be repaired in accordance with the City's Right-of-Way Restoration Policy. Because this work will be disturbing existing paved roadways, aging stormwater pipes beneath these roadways that are in poor condition will also be replaced.

The contract will replace approximately 10,500 linear feet of wastewater sewer pipe and approximately 800 linear feet of stormwater sewer pipe.

Funding

Funds are budgeted in ES Wastewater Fund 4300. The entire contract amount has a base award of \$3,118,323.75, excluding sales tax, plus a 10 percent contingency, for a cumulative amount of \$3,430,156.13, excluding sales tax.

Reason for Project

The underground wastewater pipes scheduled for replacement by this project were installed over 80 years ago. The pipes have exceeded their design life, require recurring maintenance

and repairs, and are at risk of failure. If failure were to occur, it would result in sewer overflows of untreated wastewater into Commencement Bay and potentially into the basements of adjacent buildings. The proposed project would replace these pipes and reduce of the risk of sewer overflows. Additionally, if repairs are made after failure then costs go up dramatically.

A reduced risk of sewer overflows from this project represents an improvement to human health and the environment. This project will also provide improvements to ergonomic components of Tacoma's sidewalks through curb ramp reconstruction at certain intersections within the project limits. Preventive rehabilitation of underground sewers in the project vicinity, prior to complete failure, represents the lowest lifecycle cost solution to maintaining these assets.

Outreach/Public Involvement

Information related to this project is available at the City's Project website by accessing www.tacomaprojects.com.

Construction Schedule

Construction to begin: March 2013
Scheduled completion: August 2013

Attachment

30613

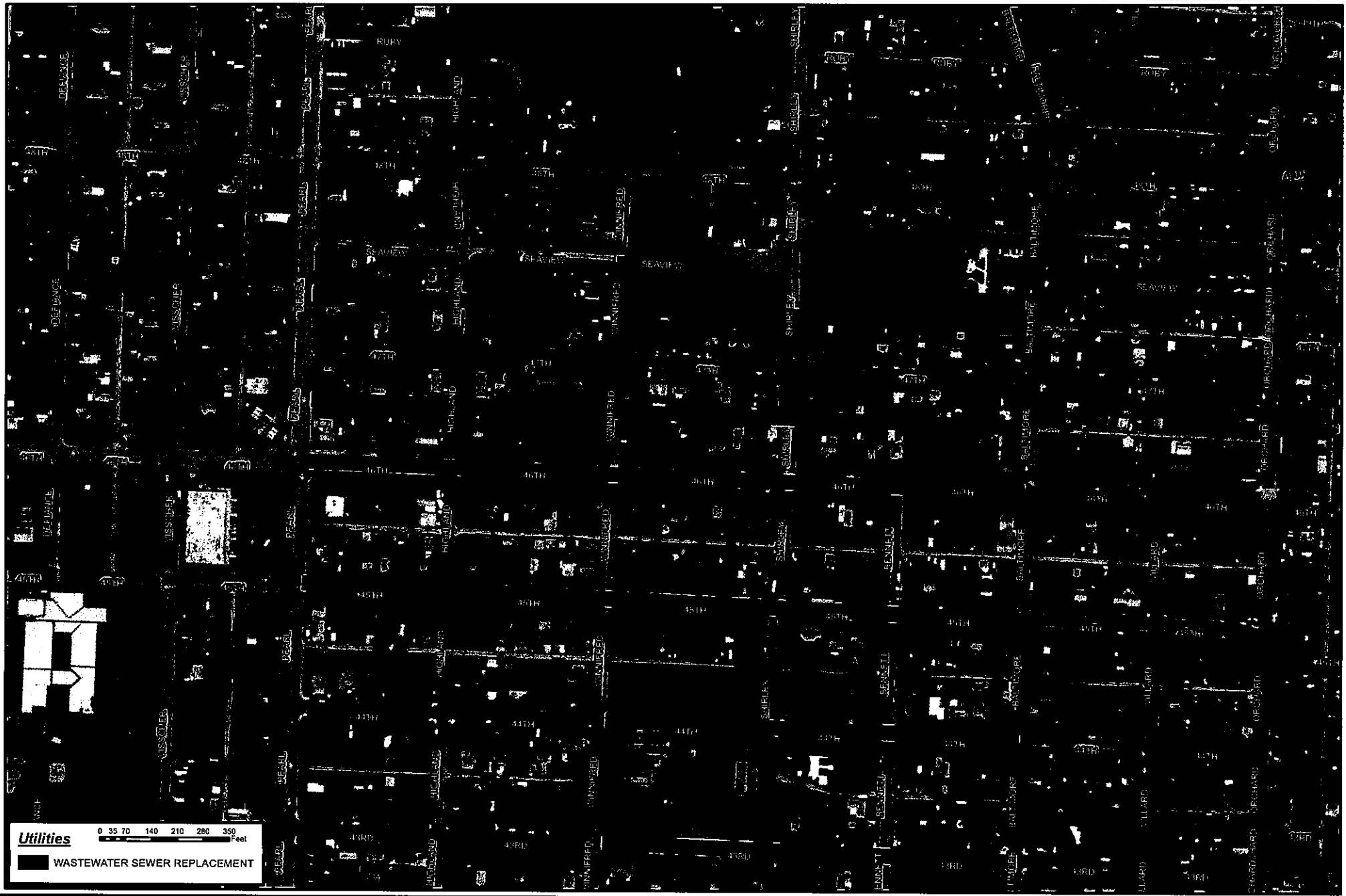
City of Tacoma

WASTEWATER SEWER REPLACEMENT PROJECT

N 43rd St to Ruby St from Pearl St to Baltimore St

PW12-0423F

Map Date: January 03, 2013
Source: Environmental Services Department
Science & Engineering Division



Utilities

0	35	70	140	210	280	350
Feet						

■ WASTEWATER SEWER REPLACEMENT



City of Tacoma
Public Works Department

EXHIBIT "A" 38613
RESOLUTION NO.: _____
ITEM NO.: 2
MEETING DATE: JANUARY 29, 2013

DATE: January 14, 2013
TO: Board of Contracts and Awards
SUBJECT: Increase Contract for Auto Accident Management Services
Budgeted from Various Individual Department Funds
Request for Proposals GF08-0550F
Contract No. 4600005136

RECOMMENDATION: The Public Works, Facilities Management Division, Fleet Services requests approval to increase Contract No. 4600005136 to **The CEI Group, Inc., Trevoze, PA**, by \$120,000, plus sales tax, for accident management. It includes auto repair estimates, independent appraisals, auto repairs, vendor monitoring, subrogation recovery service, centralized billing for payment to one vendor, claims review and web-based reports in real time to the City's General Government departments. This increase will bring the contract to a cumulative amount of \$538,000, plus sales tax.

EXPLANATION: The increase and extension of this contract will continue to provide every facet of accident management from a 24 hours per day, seven days per week toll-free number for the initial report through the return of the vehicle to service for the second renewal period.

COMPETITIVE BIDDING: This contract was originally awarded to The CEI Group, Inc., as a result of Request for Proposals Specification No. GF08-0550F in January 2009. The contractor has agreed to increase the contract at the same prices, terms, and conditions as the original contract.

CONTRACT HISTORY: The initial contact was approved per City Council Resolution No. 37645 on November 4, 2008, in the amount of \$418,000, plus sales tax. In December 2009 a price adjustment (some prices increased, others decreased) was done at the request of the vendor. In December 2011, the contract was extended for the first renewal period through December 31, 2012. This amendment will increase the contract to a cumulative amount of \$538,000, plus applicable sales tax, and extend the term through December 31, 2013. This is the second of two renewals allowed under this contract.

FUNDING: Funds are budgeted from various individual departments using the contract. Funding beyond the current biennium is subject to future availability of funds.

PROJECT ENGINEER/COORDINATOR: Jeffrey A. Jenkins, Facilities Division Manager, (253) 591-5508.

Richard E. McKinley
Public Works Director

cc: Jeffrey Jenkins, Angie Ballard, Public Works/Facilities
Richelle Krienke, Finance/Purchasing
Fred Chun/Deanna Pollard, Fleet Operations



TO: T.C. Broadnax
City Manager

FROM: Dick McKinley *DM*
Public Works Director

SUBJECT: Auto Accident Management Contract Extension with The CEI Group, Inc.
Budgeted from various funds as needed by using departments
Request for Proposal Specification No. GF08-0550F

DATE: January 14, 2013

The City Council is being requested to increase Contract No. 4600005136 to The CEI Group, Inc., of Trevese, PA, by \$120,000, plus sales tax, for accident management. It includes auto repair estimates, independent appraisals, auto repairs, vendor monitoring, subrogation recovery service, centralized billing for payment to one vendor, claims review and web-based reports in real time to the City's General Government departments. This increase will bring the contract to a cumulative amount of \$538,000, plus sales tax.

Background

The term of this contract stipulates it is a three year contract with the option to renew for two additional one-year periods. This is the final renewal and extends the contract to December 31, 2013. Due to an increase in vehicle accidents the funds requested in the initial contract are not enough to fund the contract to the end date.

Contract Scope

The contractor provides every facet of accident management from electronic initial reporting through returning the vehicle to service. This requested increase reflects current levels and anticipated future needs to cover through the end of December 2013. This extension will bring the contract to a cumulative amount of \$538,000, plus sales tax.

Funding Sources

Funds are budgeted from the funds of various departments that will utilize these services. Funding past this biennium will be subject to future availability of funds.



RESOLUTION NO. 38614

1 A RESOLUTION relating to homeless encampments; authorizing the execution of
2 a contract with the Metropolitan Development Council in the amount of
3 \$420,000, budgeted from the Mental Health Fund, for the delivery of the
4 Housing First Chronic Homelessness Project, effective January 1, 2013,
5 through December 31, 2014.

6 WHEREAS encampments are unsafe, unsanitary open spaces in the City
7 where persons experiencing homelessness camp, and

8 WHEREAS, in 2006, the City began using a "Housing First" model to
9 eliminate homeless encampments in an efficient and humane manner, and

10 WHEREAS, under this model, campers are offered housing and the
11 encampments are cleaned, and

12 WHEREAS program participants, once housed, are assisted in moving
13 towards housing stability and self-sufficiency through intensive one-on-one case
14 management and motivational interviewing, and

15 WHEREAS, to discourage repopulation of encampments, individuals who
16 camp in previously cleaned encampments are not eligible for "Housing First," and

17 WHEREAS the program has been expanded to include unhoused,
18 chronically homeless Tacoma residents who are living on City streets, and

19 WHEREAS "Housing First" services are provided by the Metropolitan
20 Development Council ("MDC") and Greater Lakes Mental Health ("GLMH"), and,

21 WHEREAS, during the 2013-2014 budget process, the City Council
22 authorized non-competitive funding to continue supporting these programs, and

23 WHEREAS the contract with MDC provides funding for rent, utilities, and
24 intensive one-on-one case management services for the Housing First Chronic
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Homelessness Project for two years, from January 1, 2013, through December 31, 2014, and

WHEREAS the contract with GLMH falls below the \$200,000 threshold and will be contracted administratively; 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 contract with the Metropolitan Development Council, in the amount of \$420,000, budgeted from the Mental Health Fund, for the delivery of the Housing First Chronic Homelessness Project, effective January 1, 2013, through December 31, 2014, said document to be substantially in the form of the proposed contract on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



RESOLUTION NO. 38615

1 A RESOLUTION relating to community development; authorizing the execution of
2 an agreement with the Boys & Girls Clubs of South Puget Sound, in the
3 amount of \$225,000 for 2013, and \$225,000 for 2014, budgeted from the
4 General Fund, for the purpose of operating the Topping HOPE Center in
South Tacoma for the period of January 1, 2013, through December 31,
2014.

5 WHEREAS the City Council adopted Resolution No. 37775 on April 14,
6 2009, expressing support for the Boys & Girls Club's Topping HOPE
7 Center ("Topping Center"), including a five-year commitment to provide operational
8 funding, in the amount of \$250,000 a year, for the years 2010 through 2014, and
9

10 WHEREAS the Topping Center opened in September 2010 and was
11 developed through a planning partnership between MetroParks Tacoma, Tacoma
12 Public Schools, and the Boys & Girls Clubs of South Puget Sound ("Boys & Girls
13 Club"), and
14

15 WHEREAS the intent was to create a dynamic community center to serve
16 South Tacoma, and

17 WHEREAS, in addition to providing its own programming on-site, the
18 Boys & Girls Club makes the Topping Center campus available to multiple
19 community organizations for meetings and events, including space for permanent
20 tenants, and
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22 WHEREAS the contract for 2011 was for the full \$250,000, but in 2012 the
23 contracted amount was reduced by 10 percent, to \$225,000, and
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WHEREAS the 2013-2014 contract keeps funding stable at \$225,000 per year, budgeted from the City's General Fund, to support continued operation of the Topping HOPE Center, and

WHEREAS the 2014 funding is the fifth year of the City's five-year commitment; 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 an agreement with the Boys & Girls Clubs of South Puget Sound, in the amount of \$225,000 for 2013 and \$225,000 for 2014, budgeted from the General Fund, for the purpose of operating the Topping HOPE Center in South Tacoma for the period of January 1, 2013, through December 31, 2014, said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



ORDINANCE NO. 28124

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

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

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

22 WHEREAS the Prior Franchise has expired by its terms, but has been in
23 extended holdover status pursuant to a Tolling (Letter) Agreement, and

24 WHEREAS Zayo has applied to the City to succeed to the rights and
25 obligations held under the Prior Franchise to install and operate fiber optic cable
26 within the City streets and public rights-of-way, and



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

3
 4 WHEREAS this City of Tacoma Telecommunications Franchise Ordinance
 5 contains the following sections:

6 SECTION 1. DEFINITIONS.

7 1.1 City 4
 8 1.2 City Manager 4
 9 1.3 Communications Facility 4
 10 1.4 Communications System..... 4
 11 1.5 Construction, operation, or repair 4
 12 1.6 Customer..... 5
 13 1.7 Facilities or Installations 5
 14 1.8 Franchise 5
 15 1.9 Franchise Area 5
 16 1.10 Franchisee 5
 17 1.11 Gross Receipts..... 5
 18 1.12 Operator 5
 19 1.13 Overhead Facilities..... 6
 20 1.14 Person 6
 21 1.15 Public Rights-of-Way..... 6
 22 1.16 System 6
 23 1.17 Telecommunications 6
 24 1.18 Telecommunications System 7
 25 1.19 Telephone Service 7
 26 1.20 Title 8
 1.21 Underground Facilities 8

20 SECTION 2. FRANCHISE.

21 2.1 Grant of Franchise..... 8
 22 2.2 Franchise Term 10
 23 2.3 Franchise Non-exclusive 10
 24 2.4 Transfers, Generally 10
 25 2.5 Change in Control-Notice and Affiliate Exception..... 11
 26 2.6 Revocation 12
 2.7 Continuity of Service and Right to Purchase the System ... 15
 2.8 Right to Require Removal of Property/
 Right to Remove Property 19
 2.9 Customers' Right to Obtain Service 21
 2.10 Responsibility for Costs..... 21



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2.11	Work of Contractors and Subcontractors	22
2.12	Survival of Terms	22

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

3.1	Use of Public Rights-of-Way	23
3.2	Construction, Operation, or Repair.....	23
3.3	Right to Inspect and Order Corrections	30
3.4	Information Regarding Ongoing Work.....	30

SECTION 4. REGULATORY PROVISIONS.

4.1	Intent	31
4.2	Remedies for Franchise Violations.....	31
4.3	Procedure for Remedying Franchise Violations	32
4.4	Failure to Enforce	34
4.5	Force Majeure	34
4.6	Alternative Remedies	35
4.7	Compliance with the Laws.....	35

SECTION 5. REPORTING REQUIREMENTS.

5.1	Quarterly Reports	36
5.2	Annual Report	36
5.3	Additional Reports	37
5.4	Preservation of Confidential Information	37

SECTION 6. COMPENSATION AND FINANCIAL PROVISIONS.

6.1	Fees; Taxes	38
6.2	Auditing and Financial Records.....	41
6.3	Performance Bond	41
6.4	Indemnification by Franchisee.....	43
6.5	Franchisee Insurance.....	44
6.6	Security Fund	47

SECTION 7. MISCELLANEOUS PROVISIONS.

7.1	Posting and Publication.....	47
7.2	Guarantee of Performance.....	47
7.3	Governing Law and Venue.....	48
7.4	No Recourse	48
7.5	Notice	48
7.6	Execution	49

Now, Therefore,



BE IT ORDAINED BY THE CITY OF TACOMA:

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Section 1. DEFINITIONS. For the purposes of this Franchise, the following terms, phrases, words, and their derivations shall have the meaning given herein; words not defined herein which are defined in Title 16B shall have the same meaning or be interpreted as provided in Title 16B. Words not defined here or in Title 16B shall be construed consistently with Title 47 of the United States Code, and if not therein, they shall have their common and ordinary meaning. A reference to any Title of the Tacoma Municipal Code or to the Tacoma City Charter ("City Charter") refers to the same as may be amended from time to time.

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

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

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

1.4 "Communications System" refers to a telecommunications system.

1.5 "Construction, operation, or repair" and similar formulations of this term mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, or components, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.



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

4 1.7 “Facilities” or “Installations” are and refer to and include, but are not
5 limited to, plant, systems, improvements, and equipment owned, leased, or
6 otherwise used by Franchisee such as poles, fiber, wires, fixtures, equipment,
7 underground circuits, and conduit in public rights-of-way and other property
8 necessary or convenient for the transmission and distribution of communications
9 service where such facilities are located.
10

11 1.8 “Franchise” means the rights granted by this Franchise and
12 conditioned as set forth herein, and under the Tacoma Municipal Code and City
13 Charter.

14 1.9 “Franchise Area” means that area within the present and future
15 corporate limits of Tacoma.
16

17 1.10 “Franchisee” is Zayo Group, LLC, a Delaware limited liability
18 company, with its home office at 400 Centennial Parkway, Suite 200, Louisville,
19 Colorado, 80027, 303-854-5271.

20 1.11 “Gross Receipts” shall have the meaning ascribed in Article VIII of
21 the City Charter or the meaning given to the phrase “Gross Revenue” as set forth
22 in Title 16 of the Tacoma Municipal Code.
23

24 1.12 “Operator,” when used with reference to a system, refers to a Person
25 (a) who provides service over a Communications System and directly or through
26 one or more affiliates owns a significant interest in such facility; or (b) who



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otherwise controls or is responsible for, through any arrangement, the management and operation of such a facility. A Person that operates under agreement of a Telecommunications System or a specific portion of a Telecommunications System to provide Telecommunications Services shall be treated as an Operator for purposes of this Franchise.

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

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

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

1.16 "System" means the Telecommunications System.

1.17 "Telecommunications Service" or "Service" means the transmission for hire of information in electronic or optical form, including, but not limited to,



1 voice, video, or data, whether or not the transmission medium is owned by the
2 provider itself. Telecommunications Service includes telephone service but does
3 not include Cable Service or over-the-air broadcasts to the public-at-large from
4 facilities licensed by the Federal Communications Commission or any successor
5 thereto.

6 1.18 "Telecommunications System" or "Telecommunications Facility"
7 means a tangible facility that is used to provide one or more Telecommunications
8 Services, any portion of which occupies Public Right-of-Way. The term
9 "Telecommunications System," by way of example and not limitation, includes
10 wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other
11 supporting structures, and associated and appurtenant facilities used to transmit
12 telecommunications signals. The term "Telecommunications System" includes all
13 devices mounted on light poles in the Public Rights-of-Way through which
14 Telecommunications Services are originated or terminated. An Open Video
15 System is not a Telecommunications System to the extent that it provides only
16 video services; a Cable System is not a Telecommunications System to the extent
17 that it provides only Cable Service. The term Telecommunications Facility includes
18 any of the tangible components of a Telecommunications System which occupies
19 Public Rights-of-Way.
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23 1.19. "Telephone Service" means the providing by any person of access to
24 a local telephone network, local telephone network switching service, toll service,
25 or coin telephone service, or providing telephonic, video, data, or similar
26 communication or transmission for hire via a local telephone network, toll line,



channel, cable, microwave, or similar communication or transmission system.

1 Telephone Service includes intrastate or interstate service, including toll service,
2 originating from or received on communications equipment or apparatus in this
3 state if the charge for the service is billed to a person in this state. Telephone
4 Service does not include the providing of competitive Telephone Service as
5 defined in Tacoma Municipal Code § 6A.40.030, the providing of cable television
6 service, or the providing of broadcast services by radio or television stations.
7

8 1.20 "Title," when used alone in the context of referring to this Title of the
9 Tacoma Municipal Code, shall mean Title 16 (and more specifically Title 16B) of
10 the Tacoma Municipal Code.
11

12 1.21 "Underground Facilities" refers to electric utility and Communications
13 Facilities located under the surface of the ground, excluding the underground
14 foundations or supports for Overhead Facilities.
15

16 Section 2. FRANCHISE.

17 2.1 Grant of Franchise. The City hereby grants to Franchisee a
18 non-exclusive Franchise which, once it becomes effective, shall authorize
19 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to
20 construct, repair, and operate an underground fiber optic Telecommunication
21 System to provide Telecommunication Service, and to continue using the City's
22 Public Rights-of-Way as authorized under the Prior Franchise.
23

24 Such grant is subject to and must be exercised in strict accordance with and
25 subject to this Franchise Agreement, Title 16B and other applicable provisions of
26 the Tacoma Municipal Code, and the City Charter, including, but not limited to, the



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

11 The grant of this Franchise is limited to the purpose of Franchisee
12 providing Telecommunications Service. This Franchise does not include
13 permission to provide cable service, as defined in 47 U.S.C. § 522, multichannel
14 video programming, open video systems, or uses other than Telecommunications
15 Service.
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17 Notwithstanding the above grant to use Public Rights-of-Way, no
18 Public Rights-of-Way shall be used by Franchisee if the City, in its sole opinion,
19 determines that such use is inconsistent with the terms, conditions, or provisions
20 by which such Public Rights-of-Way was created or dedicated, or presently used
21 under applicable laws.
22

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



2.2 Franchise Term. The term of the Franchise shall be ten years unless
1 terminated sooner in accordance with this Franchise, Title 16(B), or the City
2 Charter.

2.3 Franchise Non-Exclusive. The Franchise granted herein shall be
3 non-exclusive.
4

2.4 Transfers, Generally.

A. Every Transfer shall be subject to the prior written approval of
7 the City except as provided herein. A Transfer is any transaction in which: (1) all
8 or a portion of the Telecommunications System is sold or assigned; (2) there is any
9 change, acquisition, or direct or indirect transfer of control of Franchisee; or (3) the
10 rights and/or obligations held by Franchisee under the Franchise are transferred,
11 sold, assigned, or leased, in whole or in part, directly or indirectly, to another party.
12 The term "control" in subsection (2) above refers to actual working control, in
13 whatever manner exercised. It will be presumed that a change in working control
14 within the meaning of subsection (2) has occurred in any case where there is a
15 change in voting interest of 10 percent or more; or a change in voting interest that
16 results in a Person obtaining a 50 percent or greater interest in Franchisee; or a
17 change in voting interest that results in a Person that held 50 percent or greater
18 interest reducing their interest to below 50 percent. A Transfer without the prior
19 written approval of the City is a substantial violation of this Franchise and shall
20 make the Franchise subject to termination by the City as provided herein and in
21 Title 16B.
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B. Applications for approval of any Transfer shall be filed in accordance with procedures set out in Title 16B of the Tacoma Municipal Code.

C. Franchisee shall, within 60 days of the closing date of any Transfer, file with the City Clerk a copy of the deed, agreement, contract, mortgage, lease, SEC filing, or other written instrument evidencing such sale, lease, contractual agreement, mortgage, assignment or Transfer, certified and sworn to as correct by Franchisee. 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 the City's real property interest in the Public Right-of-Way. In addition, no such arrangement may be made if it would in any respect under any condition prevent the Operator or any successor from complying with the Franchise and applicable law, nor may any such arrangement permit a third party to succeed to the interest of the Operator or to own or control the Telecommunications System without the prior consent of the City. Any mortgage, pledge, or lease shall be subject to and subordinate to the rights of the City under this Franchise and other applicable law.

2.5 Change in Control - Notice and Affiliate Exception. Franchisee shall promptly notify the City of any proposed change in, transfer of, or acquisition by



1 any other Person of an ownership interest in Franchisee that results in a change in
2 control of Franchisee within the meaning of Section 2.4.A. However, if the
3 proposed change in control merely results in a Transfer of control from Franchisee
4 to another entity that is 100 percent owned by a direct parent of Franchisee, and
5 such parent provided an unconditional guaranty of performance of the Transferee
6 Affiliate at the time the Franchise was issued, then such Transfer shall not require
7 the prior approval of the City so long as all the conditions on affiliate Transfers set
8 forth in Title 16B are satisfied (including, without limitation, the notice
9 requirements).

11 2.6 Revocation. In addition to any rights set out elsewhere in this
12 Franchise, the City Charter, or Title 16, the City reserves the right to declare a
13 forfeiture or otherwise revoke this Franchise, and all rights and privileges
14 pertaining thereto, as provided in Title 16(B) or in the event that:

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

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

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

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

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

13 F. (1) Where, after notice and providing Franchisee an
14 opportunity to be heard (if such opportunity is timely requested by Franchisee), the
15 City finds that there has been an act or omission that would justify revocation of the
16 Franchise, the City may make an appropriate reduction in the remaining term of
17 the Franchise or revoke the Franchise. However, the Franchise may only be
18 revoked if Franchisee (a) was given written notice of the default; and (b) 30 days to
19 cure the default; and (c) Franchisee failed to cure the default, or to propose a
20 schedule for curing the default acceptable to the City where it is impossible to cure
21 the default in 30 days. The required written notice may be given before the City
22 conducts the proceeding required by this paragraph. No opportunity to cure is
23 required for repeated violations, and fraud shall be deemed incurable.
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(2) Notwithstanding the foregoing, the City may declare a Franchise forfeited without opportunity to cure when Franchisee: (a) stops providing service it is required to provide in the Franchise; (b) Transfers without the prior consent of the City as required in the Franchise; (c) fails to pay the Franchise application/administrative fees owed hereunder; or (d) defrauds or attempts to defraud the City or Franchisee's customers. However, Franchisee shall have the right to receive 30 days' prior notice of an intent to declare a Franchise forfeited and shall have the opportunity to show cause why the Franchise should not be forfeited.

(3) Notwithstanding the foregoing, the Franchise will automatically terminate by force of law 120 calendar days after an assignment for the benefit of creditors or the appointment of a receiver or trustee to take over the business of 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 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



1 event the Franchise and all rights and privileges of this Franchise will be revoked
2 and will terminate 30 calendar days after serving such notice, unless: (a) the City
3 has approved the Transfer of the Franchise to the successful bidder; and (b) the
4 successful bidder has covenanted and agreed with the City to assume and be
5 bound by the terms and conditions of this Franchise and Title 16B.

6 2.7 Continuity of Service and Right to Purchase the System.

7 A. In the event the City has declared a forfeiture for cause or
8 otherwise validly revoked this Franchise as provided herein, or in the event of
9 expiration of the initial term of this Franchise without this Franchise being renewed
10 or extended (referred to below collectively as a “termination”), Franchisee shall, at
11 the direction of the City expressed by ordinance, continue its operations for such
12 reasonable period (the “Continuation Period”) as the City may determine is
13 necessary to permit transition to another provider, which period may be
14 established taking into account any appeal of the termination. During such
15 Continuation Period, Franchisee shall continue to be bound by all its obligations
16 under this Franchise and Title 16B. Additionally, during this Continuation Period,
17 Franchisee shall not Transfer any portion of its Telecommunications System to any
18 other Person, including parts of the System rented, leased, or lease-purchased; or
19 significantly alter the Telecommunications System or remove property from the
20 City; or otherwise encumber the Telecommunications System in any manner,
21 without prior written consent of the City. Franchisee’s obligations to remove its
22 facilities under Title 16B, Section 16B.03.090, shall be deferred for the
23 Continuation Period. Within 30 days of the date the City passes the ordinance
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1 requiring continuation of service or 30 days after the effective date of the
2 termination, whichever is earlier, Franchisee shall provide the City with an
3 inventory of all its property in the City, and in addition, such other property as may
4 be used and useful by it in providing service within the City. Any property on the
5 list that is essential to providing service to other communities must be clearly
6 identified. Property on the list that is not within the City must be clearly identified
7 and its location stated.

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

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

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

9
10 If the City gives the notice required by the preceding paragraph, the
11 parties will thereafter promptly sign all necessary documents required to close the
12 transaction; provided, however, that the City may make conclusion of the
13 transaction conditional upon any necessary voter approval of any bond funding for
14 acquisition of all or a part of the System and, if applicable, the successful sale of
15 bonds.

16
17 The City and Franchisee will share equally the costs associated with
18 any appraiser that is jointly appointed (by them or by the appraisers each selects);
19 the City will bear costs associated with any appraiser that it separately appoints
20 and Franchisee will bear costs associated with any appraiser that it separately
21 appoints.

22
23 D. (1) Nothing in this section or in any other section of this
24 Franchise shall prevent the City's exercise of its rights under the City Charter.
25 Included within the rights granted under the City Charter is the right to purchase or
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condemn Franchisee's property within the Franchised Area at any time, which right
1 is expressly set out in Section 8.1(c) of the City Charter as follows:

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

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

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

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

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19 2.8 Right to Require Removal of Property/Right to Remove Property.

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

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

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

15 D. Franchisee shall file a written removal plan with the City not
16 later than 30 calendar days following the date of the receipt of any orders directing
17 removal or any consent to removal describing the work that will be performed, the
18 manner it will be performed, and a schedule for removal by location. The removal
19 plan shall be subject to approval and regulation by the City, including, without
20 limitation, the City's Right-of-Way Restoration Policy. The affected property must
21 be restored to as good or better condition than existed immediately prior to
22 removal, and those damaged by removal must be compensated for the damage.
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1 E. The purchase option provided for in Section 2.7 does not
2 affect the City's authority to require Franchisee to remove its Telecommunications
3 System upon Franchise termination, as provided in this section and Title 16B, nor
4 does it affect the City's right to assume ownership of any portion of the
5 Telecommunications System that is abandoned. Within 60 days of a request by
6 the City, Franchisee shall execute such documents as may be required to convey
7 such abandoned property to the City free and clear of all encumbrances.

8 2.9 Customers' Right to Obtain Service. It shall be the right of all
9 Customers to receive all available services insofar as their financial and other
10 obligations to Franchisee are honored during the term of the Franchise or any
11 Continuation Period. In addition to the obligations established under the other
12 provisions of this Franchise, in the event that Franchisee elects to overbuild,
13 rebuild, modify, or sell the system, Franchisee shall make its best effort to ensure
14 that all Customers receive continuous uninterrupted service at rates which are fair
15 and reasonable, regardless of the circumstance.

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18 2.10 Responsibility for Costs. Except as expressly provided otherwise,
19 any act that Franchisee is required to perform under this Franchise shall be
20 performed at its cost. If Franchisee fails to perform work that it is required to
21 perform within the time provided for performance, the City may perform the work
22 and bill Franchisee. Franchisee shall pay the amounts billed within 30 days of
23 receipt of the bill. The parties agree that any amounts paid pursuant to this section
24 or Title 16B are not franchise fees.
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1 2.11 Work of Contractors and Subcontractors. Work by contractors and
2 subcontractors is subject to the same restrictions, limitations and conditions as if
3 the work were performed by Franchisee. Franchisee shall be responsible for all
4 work performed by its contractors, subcontractors, and others performing work on
5 its behalf as if the work were performed by it, and shall ensure that all such work is
6 performed in compliance with this Franchise, Title 16B, and other applicable law,
7 including, without limitation, the City's Right-of-Way Restoration Policy, and shall
8 be jointly and severally liable for all damages and correcting all damage caused by
9 them. It is Franchisee's responsibility to ensure that contractors, subcontractors,
10 or other Person(s) performing work on Franchisee's behalf are familiar with the
11 requirements of this Franchise, Title 16B, the City's Right-of-Way Restoration
12 Policy, and other applicable laws governing the work performed by them.

14 2.12 Survival of Terms. Upon the termination or forfeiture of the Franchise,
15 Franchisee shall no longer have the right to occupy the Public Rights-of-Way for the
16 purpose of providing Telecommunications Service. However, Franchisee's
17 obligations to the City (other than the obligation to provide service to Customers)
18 survive the expiration of these rights according to their terms. By way of illustration
19 and not limitation, Sections 2.7, 2.8, 2.10, and 4 of this Franchise shall continue in
20 effect as to Franchisee notwithstanding any expiration, forfeiture, or revocation of
21 the Franchise, except to the extent that a City-approved Transfer, sale, or
22 assignment of the Telecommunications System is completed and another entity has
23 assumed full and complete responsibility for the Telecommunications System or for
24 the relevant acts or omissions.
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SECTION 3. OPERATION IN STREETS AND RIGHTS-OF-WAY.

1 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms
2 of this Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other
3 applicable laws, construct, operate, and maintain an underground fiber optic
4 Telecommunications System in Public Rights-of-Way within the Franchise Area to
5 provide Telecommunications Services. Without limiting the foregoing, Franchisee
6 expressly agrees that it will construct, operate, and maintain its System in
7 compliance with the requirements of Title 16B, including those governing the
8 placement of its Telecommunications System, and with other applicable City
9 codes; and will obtain and maintain all bonds and billable work orders required by
10 the same.
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13 3.2 Construction, Operation, or Repair. Franchisee shall, in all cases,
14 comply with all lawful City ordinances and regulations now in effect or hereinafter
15 enacted regarding the acquisition of permits and such other items as may be
16 required by the City in connection with the construction, operation or repair of the
17 Telecommunications System, including, without limitation, the City's Right-of-Way
18 Restoration Policy.
19

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

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



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

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

15
16 (3) In the case of non-public work, if any Person that is
17 authorized to place Facilities in the Rights-of-Way requests Franchisee to protect,
18 support, temporarily disconnect, remove, or relocate Franchisee's facilities to
19 accommodate the construction, operation, or repair of the facilities of such other
20 Person, Franchisee shall, after 30 days' advance written notice, take action to
21 effect the necessary changes requested. In the case of non-public work or non-
22 public projects, unless the matter is governed by a valid contract or a state or
23 federal law or regulation, or unless Franchisee's Telecommunications System was
24 not properly installed, the reasonable cost of the same shall be borne by the
25 Person requesting the protection, support, temporary disconnection, removal, or
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1 relocation and at no charge to the City, even if the City makes the request for such
2 action.

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

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

3 C. Franchisee's construction, operation, or repair of its
4 Telecommunications System shall not commence until all required permits have
5 been properly filed for and obtained from the proper City officials and all required
6 permits and associated fees paid. In any permit so issued, the City may impose,
7 as a condition of the granting of the permit, such conditions and regulations as may
8 be necessary to the management of the Public Rights-of-Way, including, by way of
9 example and not limitation, for the purpose of protecting any structures in the
10 Public Rights-of-Way, maintaining proper distance from other utilities, for the
11 proper restoration of such Public Rights-of-Way and structures, and for the
12 protection of the City and the public and the continuity of pedestrian and vehicular
13 traffic.
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15 D. Franchisee must follow City-established requirements for
16 placement of Facilities in Public Rights-of-Way, including the specific location of
17 Facilities in the Public Rights-of-Way, and must in any event install Facilities in a
18 manner that minimizes interference with the use of the Public Rights-of-Way by
19 others, including others that may be installing Communications Facilities. The City
20 may require that Facilities be installed at a particular time, at a specific place, or in
21 a particular manner as a condition of access to a particular Public Right-of-Way
22 area; may deny access if Franchisee is not willing to comply with the City's
23 requirements; and may remove, or require removal of, any Facility that is not
24 installed in compliance with the requirements established by the City or which is
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1 installed without prior City approval of the time, place, or manner of installation and
2 charge Franchisee for all the costs associated with removal; and may require
3 Franchisee to cooperate with others to minimize adverse impacts on the Public
4 Rights-of-Way through joint trenching and other arrangements.

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

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

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

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

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



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

H. Franchisee shall participate in conversion to underground Local Improvement Districts (“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.

1. As part of its obligations under the Tacoma Municipal Code, 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 repair of its Telecommunications System.



1 Public property and Public Rights-of-Way must be restored in conformance with
2 the City's Right-of-Way Restoration Policy.

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

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

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

13 (1) Franchisee shall not remove any underground Facilities
14 which require trenching or other opening of the Rights-of-Way along the extension
15 of the Facilities to be removed without the express permission of the City.
16 Franchisee must request permission from the City to remove the Facilities at least
17 30 days in advance of the date Franchisee proposes to begin removal.

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

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

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

9 3.3 Right To Inspect and Order Corrections. The City may inspect the
10 Telecommunications System at any time reasonable under the circumstances to
11 ensure compliance with this Franchise and applicable law, including to ensure that
12 Franchisee's Telecommunications System is constructed and maintained in a safe
13 condition. If an unsafe condition is found to exist, the City, in addition to taking any
14 other action permitted under applicable law, may order Franchisee, in writing, to
15 make the necessary repairs and alterations specified therein forthwith to correct
16 the unsafe condition on a time table established by the City which is reasonable in
17 light of the unsafe condition. The City has the right to correct, inspect, administer,
18 and repair the unsafe condition if Franchisee fails to do so, and to charge
19 Franchisee therefor.
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23 3.4 Information Regarding Ongoing Work. In addition to providing notice
24 to the public of ongoing work as may be required under applicable law, Franchisee
25 shall make available information regarding any ongoing construction, operation, or
26 installation of its Telecommunications System sufficient to show (1) the nature of



1 the work being performed; (2) where it is performed; (3) its estimated completion
2 date; and (4) progress to completion.

3 SECTION 4. REGULATORY PROVISIONS.

4 4.1 Intent. The City shall have the right to administer and regulate
5 activities of this Franchise up to the fullest extent of the law. The failure to reserve
6 a particular right to regulate or reference a particular regulation shall not be
7 interpreted by negative implication or otherwise to prevent the application of a
8 regulation to Franchisee.

9 4.2 Remedies for Franchise Violations. The City has the right to exercise
10 any and all of the following remedies, singly or in combination, in the event
11 Franchisee violates any provision of this Franchise:
12

13 A. Draw upon or foreclose all or any part of any letter of credit,
14 security fund, performance bond, or other security provided under this Franchise;
15 provided, however, such drawing or foreclosure shall be only in such a manner and
16 in such amount as the City reasonably determines is necessary to remedy the
17 default. Should the City take this action, Franchisee shall be responsible for all
18 direct and actual costs related to such action, including, but not limited to, legal and
19 administrative costs:
20

21 B. Commencing an action at law for monetary damages;

22 C. Commencing an action for equitable or other relief;

23 D. Declaring the Franchise to be revoked; and/or

24 E. Seeking specific performance of any provision, which

25 reasonably lends itself to such remedy.
26



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

7 4.3 Procedure for Remediating Franchise Violations. Before imposing
8 liquidated damages or drawing upon the performance bond, letter of credit,
9 security fund, or any other security set out in Section 6, the City shall follow the
10 procedure below.
11

12 A. Notice of Violation. In the event that the City believes that
13 Franchisee has not complied with the terms of this Franchise, the City shall notify
14 Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.
15

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

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

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

17 E. Liquidated Damage Amounts. Because Franchisee's failure to
18 comply with the provisions of this Franchise will result in injury to the City and
19 because it may be difficult to estimate the extent of each such injury, Franchisee
20 and the City agree to the following liquidated damages, which provisions represent
21 the best estimate of the damages resulting from injuries of specific types. The
22 amounts of the liquidated damages set forth in this Franchise are in 2012 dollars
23 and shall be increased each year by the increase in the U. S. Department of Labor,
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1 Bureau of Labor Statistics, Consumer Price Index for Pacific Cities and U. S. City
2 Average for the greater Seattle area. The amount of liquidated damages for all
3 material violations of this Franchise for which actual damages may not be
4 ascertainable shall be: \$500 per day for each violation for each day the violation
5 continues. It is provided, however, that the City shall allow Franchisee a minimum
6 of 30 days after notice to Franchisee of such neglect, failure, or refusal to comply
7 within which to meet compliance or correct performance prior to the assessment of
8 any liquidated damages.

9
10 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its
11 obligations to comply promptly with any provision of this Franchise by reason of
12 any failure of the City to enforce prompt compliance, and the City's failure to
13 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's
14 conduct.

15
16 4.5 Force Majeure. Franchisee shall not be deemed in default with
17 provisions of this Franchise where performance was rendered impossible by war or
18 riots, civil disturbances, floods, or other natural catastrophes beyond Franchisee's
19 control; the unforeseeable unavailability of labor or materials; or power outages
20 exceeding back-up power supplies. The acts or omissions of Affiliates are not
21 beyond Franchisee's control, and the knowledge of Affiliates shall be imputed to
22 Franchisee. This Franchise shall not be revoked or Franchisee penalized for such
23 noncompliance, provided that Franchisee takes immediate and diligent steps to
24 bring itself back into compliance and to comply as soon as possible under the
25 circumstances with this Franchise without unduly endangering the health, safety,
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and integrity of Franchisee's employees or property, or the health, safety, and
1 integrity of the public, Public Rights-of-Way, public property, or private property.

2 4.6 Alternative Remedies. No provision of this Franchise shall be
3 deemed to bar the right of the City to seek or obtain judicial relief from a violation of
4 any provision of this Ordinance or any rule, regulation, requirement or directive
5 promulgated thereunder. Neither the existence of other remedies identified in this
6 Franchise nor the exercise thereof shall be deemed to bar or otherwise limit the
7 right of the City to recover monetary damages for such violation by Franchisee, or
8 to seek and obtain judicial enforcement of Franchisee's obligations by means of
9 specific performance, injunctive relief, or mandate, or any other judicial remedy at
10 law or in equity.
11

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

1 5.1 Quarterly Reports. Within 30 days after the end of each of
2 Franchisee's fiscal quarters, Franchisee shall submit a written report to the City
3 which shall contain a listing of all categories of Gross Revenues earned and Gross
4 Receipts collected by Franchisee for its business activities as identified in
5 Section 2.1, which are activities specifically taxable as a telephone business under
6 Tacoma Municipal Code Title 6. Said written report shall be in sufficient detail and
7 with sufficient explanation to enable the City to understand the report and to verify
8 the accuracy of the report. In addition, Franchisee shall provide such other
9 quarterly reports as may be required by Title 16B.
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11 5.2 Annual Report. No later than 120 days following the end of
12 Franchisee's fiscal year each year, Franchisee shall present a written report to the
13 City which shall include:
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15 A. Audited financial statements for (1) Franchisee and (2) any
16 Affiliate which is involved in any way with the operation or ownership of the
17 System; and a financial statement for Franchisee that includes Gross Revenues
18 from all sources, gross Subscriber revenues from each category of service, as well
19 as an income statement and a balance sheet. In the event any audited financial
20 report has not been published by the date due under this section, then the audited
21 financial report shall be deemed presented on time if presented within 30 days
22 after publication.
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24 All financial reports required under this section shall be presented to
25 the City accompanied by such notes and explanations as are required to fully
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1 understand the reports. Such notes and explanations shall include, but not be
2 limited to, an explanation of any and all deductions made from Gross Revenues in
3 order to arrive at Gross Receipts for the calculation of Fees or taxes to be paid to
4 the City, as well as:

5 A. A summary of the previous year's activities for the Franchise
6 Area, including, but not limited to, the total number of Customers, miles of
7 underground Facilities, any services added or dropped, and any technological
8 changes occurring in the system;

9 B. Plans for the future; and

10 C. Such other information as is required by Title 16B.

11
12 5.3 Additional Reports. Franchisee shall prepare and furnish to the City,
13 upon request, at the times and in the form prescribed by the City, such additional
14 reports with respect to Franchisee's operation, affairs, transactions, or property as
15 may be reasonably necessary and appropriate to ensure compliance with the
16 material provisions of this Franchise, or to permit the performance of any of the
17 rights, functions, or duties of the City or such other regulatory entity in connection
18 with the Franchise.
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20 5.4 Preservation of Confidential Information. Trade secrets and
21 confidential information designated as such by Franchisee shall be subject to such
22 protection as provided in Title 16B.
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SECTION 6. COMPENSATION AND FINANCIAL PROVISIONS.

6.1 Fees; Taxes.

A. State Prohibition of Franchise Fee. The parties understand that RCW 35.21.860 currently prohibits a municipal franchise fee. Franchisee agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee to be agreed to by the parties if the statutory prohibition is removed. The parties agree that this Section 6.1.A does not limit the right of Franchisee to challenge the franchise fee pursuant to 47 USC § 253.

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

C. Franchisee Obligated to Pay Administrative Costs. In accord with RCW 35.21.860 as presently effective and as it may be later amended, Franchisee must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Franchise, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist in the City's consideration and processing of this Franchise application. The first



1 \$5,000 of said expenses will be covered by the \$5,000 application fee deposited
2 with the City. Franchisee will also pay the reasonable costs of enforcing or, as
3 necessary, reviewing the provisions of this Franchise, as well as costs involved
4 with the modification, amendment, renewal, or Transfer of this Franchise as
5 ordered by the Franchise Services Manager, whether such costs result from
6 accrued in-house staff time or out-of-pocket expenses or administrative costs, as
7 well as expenses of retaining independent technical, legal, or financial consultants
8 or advisors; or whether relating to costs incurred due to initial System development
9 or to future System expansion. The amount of payment to be made by Franchisee
10 to cover these administrative costs is an amount determined to be reasonable by
11 the Franchise Services Manager. Such obligation further includes municipal fees
12 related to receiving and approving permits or licenses, inspecting plans and
13 construction, or relating to the preparation of a detailed statement pursuant to
14 Chapter 43.21C RCW. Said fees must be paid within 30 days of receipt of the
15 City's billing therefor.
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18 D. Manner of Payment; Audit. Franchisee shall make all required
19 fee payments in the form, intervals, and manner requested by the City Treasurer
20 and furnish him/her any information related to his/her revenue collection functions
21 reasonably requested. In case of audit, the City Treasurer may require Franchisee
22 to furnish a verified statement of compliance with Franchisee's obligations or in
23 response to any questions. Said certificate may be required from an independent,
24 certified public accountant at Franchisee's expense. All audits will take place on
25 Franchisee's premises or offices furnished by Franchisee, which shall be a location
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1 within the City of Tacoma or other mutually agreeable place; however, Franchisee
2 must agree to pay the associated costs. Franchisee agrees, upon request of the
3 City Treasurer, to provide copies of all documents filed with any federal, state, or
4 local regulatory agency, to be mailed to the City Treasurer on the same day as
5 filed, postage prepaid, affecting any of Franchisee's Facilities or business
6 operations in the City of Tacoma.

7 E. No Other Deductions. Subject to federal law and regulation,
8 no deductions, including current or previously paid fees, shall be subtracted from
9 the Gross Revenue amount upon which payments are calculated and due for any
10 period, nor shall copyright fees or other license fees paid by Franchisee be
11 subtracted from Gross Revenues for purposes of calculating payments.

12 F. Late Payments. Any fees owing which remain unpaid more
13 than 10 days after the dates specified herein shall be delinquent and shall
14 thereafter accrue interest at 12 percent per annum or 2 percent above highest
15 prime lending rate published daily in the Wall Street Journal, during the period the
16 payment is due but unpaid, whichever is greater.

17 G. Period of Limitations. The period of limitation for recovery of
18 any fee payable hereunder shall be six years from the date on which payment by
19 Franchisee is due, subject to tolling as provided as a matter of law or equity.
20 Unless, within six years from and after the due date for a particular payment, the
21 City makes written request to review Franchisee's records with respect to such fee
22 payment (either individually or as part of a broader request), recovery shall be
23 barred with respect to such payment and the Franchising Authority shall be
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1 estopped from asserting any claims whatsoever against Franchisee relating to any
2 alleged deficiencies in that particular payment.

3 6.2 Auditing and Financial Records. Franchisee shall manage all of its
4 operations in accordance with a policy of keeping books and records open and
5 accessible to the City. Without limiting its obligations under this Franchise,
6 Franchisee agrees that it will collect and make available books and records for
7 inspection and copying by the City in accordance with Title 16B. Franchisee shall
8 be responsible for collecting the information and producing it. Books and records
9 shall be produced to the City at the Tacoma Municipal Building or such other
10 location as the parties may agree. Notwithstanding any provision of Title 16B or
11 this Franchise, if documents are too voluminous or for security reasons cannot be
12 produced at the Tacoma Municipal Building or mutually agreeable location within
13 the City, then Franchisee may produce the material at another central location,
14 provided it also agrees to pay the additional reasonable costs incurred by the City
15 in reviewing the materials.
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18 Franchisee shall take all steps required, if any, to ensure that it is able to
19 provide the City all information which must be provided or may be requested under
20 Title 16B or this Franchise, including by providing appropriate Subscriber privacy
21 notices. Nothing in this section shall be read to require a Franchisee to violate
22 47 U.S.C. § 551. Franchisee shall be responsible for redacting any data that
23 federal law prevents it from providing to the City. Records shall be kept for at least
24 six years. In addition to maintaining all records as required by Title 16B,
25 Franchisee shall maintain records sufficient to show its compliance with the
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1 requirements of this Franchise and shall produce those records within 30 days of a
2 City request.

3 Franchisee agrees to meet with a representative of the City upon request to
4 review its methodology of record-keeping, financial reporting, computing fee
5 obligations, and other procedures, the understanding of which the City deems
6 necessary for understanding the meaning of reports and records.

7 In exercising its rights under this section, the City agrees to request access
8 to only those books and records which it deems reasonably necessary as part of a
9 bona fide exercise of its authority over the Telecommunications System under this
10 Franchise, Title 16B, or other applicable law. The City further agrees that it will
11 withhold from public disclosure those books and records made available to it
12 pursuant to this Section 6.2, but only to the extent that the City believes that it has
13 the discretion to do so under state law.

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16 6.3 Performance Bond. At the same time it provides its Franchise
17 acceptance to the City, Franchisee shall provide a performance bond to ensure the
18 faithful performance of its responsibilities under this Franchise and applicable law,
19 including, by way of example and not limitation, its obligations to relocate and
20 remove its facilities and to restore City Rights-of-Way and other property. The
21 initial amount of the performance bond shall be \$300,000. The amount of the bond
22 may be changed from time to time to reflect changed risks to the City or to the
23 public. Franchisee may be required to obtain additional bonds in accordance with
24 the City's ordinary practices. The bond shall be in a form and with a surety
25 (authorized to do business in the state of Washington) acceptable to the City's Risk
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1 Manager and in a form acceptable to the City Attorney. Franchisee shall pay all
2 premiums or costs associated with maintaining the bond and shall keep the same
3 in full force and effect at all times during the Franchise Term.

4 6.4 Indemnification by Franchisee.

5 A. Franchisee, by accepting this Franchise, agrees to release the
6 City from and against any and all liability and responsibility in or arising out of, or
7 by reason of, or resulting from or of the negligent acts, errors, or omissions of
8 Franchisee during the construction, operation, or maintenance of the
9 Telecommunications System, and, without limiting the provisions of Section 7.4,
10 agrees not to sue or seek any money or damages from City in connection with the
11 above-mentioned matters.
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13 B. Franchisee agrees to indemnify and hold harmless the City, its
14 trustees, elected and appointed officers, agents, and employees, from and against
15 any and all claims, demands, or causes of action of whatever kind or nature and
16 the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,
17 damages, orders, judgments, or decrees sustained by the City or any third party
18 arising out of, or by reason of, or resulting from or of the acts, errors, or omissions
19 of Franchisee or its agents, independent contractors, or employees related to or in
20 any way arising out of the construction, operation, repair, or relocation of the
21 Telecommunications System. Franchisee waives immunity under Title 51 RCW
22 and affirms that the City and Franchisee have specifically negotiated this provision,
23 as required by RCW 4.24.115, to the extent it may apply.
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C. Franchisee agrees that the covenants and representations relating to the indemnity provided in subsections 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.

6.5 Franchisee Insurance.

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

(1) COMPREHENSIVE GENERAL LIABILITY insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- (a) Bodily Injury
 - 1. Each Occurrence \$2,000,000
 - 2. Annual Aggregate \$5,000,000
- (b) Property Damage
 - 1. Each Occurrence \$2,000,000
 - 2. Annual Aggregate \$5,000,000
- (c) Personal Injury
 - Annual Aggregate \$5,000,000

(2) COMPLETED OPERATIONS AND PRODUCTS LIABILITY shall be maintained for six years after the termination of the Franchise



1 or License (in the case of the Communications System owner or Operator) or
2 completion of the work for the Communications System owner or Operator (in the
3 case of a contractor or subcontractor).

4 (3) PROPERTY DAMAGE LIABILITY INSURANCE shall
5 include Coverage for the following hazards: X – explosion, C – collapse,
6 U - underground.

7 (4) WORKERS' COMPENSATION insurance shall be
8 maintained during the life of this contract to comply with statutory limits for all
9 employees, and in the case any work is sublet, Franchisee shall require its
10 contractors and subcontractors similarly to provide workers' compensation
11 insurance for all the latter's employees unless such employees are covered by the
12 protection afforded by Franchisee. Franchisee shall also maintain during the life of
13 this policy employers liability insurance. The following minimum limits must be
14 maintained:
15

- | | | |
|----|---------------------------|----------------|
| 16 | (a) Workers' Compensation | Statutory |
| 17 | (b) Employer's Liability | \$500,000 |
| 18 | | per occurrence |
| 19 | | |

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

- | | | |
|----|---------------------|-------------|
| 22 | (a) Bodily Injury | |
| 23 | 1. Each Occurrence | \$1,000,000 |
| 24 | 2. Annual Aggregate | \$3,000,000 |
| 25 | (b) Property Damage | |
| 26 | 1. Each Occurrence | \$1,000,000 |
| | 2. Annual Aggregate | \$3,000,000 |



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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 described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in Section E below.

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

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the Franchise, 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.



1 F. The City shall reserve the right to require any other insurance
2 coverage it deems necessary during the term of the Franchise, depending upon
3 the exposures.

4 6.6 Security Fund. Franchisee shall establish a cash security fund or
5 provide the City an irrevocable letter of credit in the amount of \$50,000 to secure
6 the payment of fees owed; to secure any other performance promised in this
7 Franchise; and to pay any taxes, fees, or liens owed to the City. The letter of credit
8 shall be in a form and with an institution acceptable to the City's Director of
9 Finance and in a form acceptable to the City Attorney. Should the City draw upon
10 the cash security fund or letter of credit, it shall promptly notify Franchisee and
11 Franchisee shall promptly restore the fund or the letter of credit to the full required
12 amount. The City may, from time to time, change the amount of the required
13 security fund/letter of credit to reflect changes in the risks to the City and to the
14 public, including delinquencies in taxes or other payments to the City.
15

16
17 SECTION 7. MISCELLANEOUS PROVISIONS.

18 7.1 Posting and Publication. Franchisee shall assume the cost of posting
19 and publication of this Franchise as such posting and publication is required by
20 law, and such is payable upon Franchisee's filing of acceptance of the Franchise.
21

22 7.2 Guarantee of Performance. Franchisee acknowledges that it enters
23 into the Franchise voluntarily in order to secure and in consideration of the grant
24 from the City of a ten-year Franchise. Performance pursuant to the terms and
25 conditions of this Franchise agreement is guaranteed by Franchisee.
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7.3 Governing Law and Venue. The Franchise shall be governed by and construed in accordance with the laws of the state of Washington without recourse to any principles of Conflicts of Laws, and Franchisee agrees that any action brought relative to enforcement of this Franchise shall be initiated in the Superior Court of Pierce County and shall not be removed to a federal court.

7.4 No Recourse. Without limiting such immunities as the City or other Persons may have under applicable law, Franchisee shall have no monetary recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense, or damage arising out of any provision or requirement of Title 16B or because of the enforcement of Title 16B or the City's exercise of its authority pursuant to Title 16B, this Franchise or other applicable law.

7.5 Notice. Unless expressly otherwise agreed between the parties, every notice, billing, or response required by this Franchise to be served upon the City or Franchisee shall be in writing, and shall be deemed to have been duly given to the required party five business days after having been posted in a properly sealed and correctly addressed envelope when hand delivered or sent by mail, postage prepaid. The notices or responses to the City shall be addressed as follows:

City of Tacoma
Municipal Services Building
1224 MLK Jr Way
Tacoma, WA 98405

Attn: Franchise Services Manager



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

1 Zayo Group, LLC
2 400 Centennial Parkway, STE 200
3 Louisville, CO 80027

4 Attn: Legal Department

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

9 7.6 Execution. Franchisee shall execute and return to the City three
10 original countersigned copies of this Ordinance and a signed acceptance of the
11 Franchise granted hereunder within 30 days after the date of passage of the
12 Ordinance by the City Council. The acceptance shall be submitted in the form
13 attached hereto or other form acceptable to the City Attorney and in accepting the
14 Franchise, Franchisee warrants that it has carefully read the terms and conditions
15 of this Franchise and unconditionally accepts all of the terms and conditions of this
16 Franchise and agrees to abide by the same and acknowledges that it has relied
17 upon its own investigation of all relevant facts, that it has had the assistance of
18 counsel, that it was not induced to accept a Franchise, that this Franchise
19 represents the entire agreement between Franchisee and the City, and that
20 Franchisee accepts all risks related to the interpretation of this Franchise. The
21 countersigned Ordinance and acceptance shall be returned to the City
22 accompanied by: evidence of insurance; a payment for publication costs; billable
23 work order deposit, and security deposit (or the letter of credit).
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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

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Ordinance No. _____, effective _____, 2013.

I, _____, am the _____ of
_____, and am the authorized representative to accept the
above-referenced City franchise ordinance on behalf of _____.

I certify that this franchise and all terms and conditions thereof are accepted
by _____ without qualification or reservation.

DATED this _____ day of _____, 2013.

By: _____

Its: _____

Witness: _____



ORDINANCE NO. 28127

1 AN ORDINANCE relating to the compensation plan; amending Chapter 1.12 of the
2 Tacoma Municipal Code to implement a change in the Section 125 Flexible
3 Benefits Plan and approve a one-time payment to eligible employees; and
4 to implement a Letter of Agreement negotiated with the International
5 Brotherhood of Electrical Workers, Local 483, Customer and Field Services
6 Unit.

7 WHEREAS, following agreements with the Tacoma Joint Labor Committee,
8 Professional Public Safety Management Association, Tacoma Police Management
9 Association (Local 26), and Tacoma Police Union (Local 6), the City will maintain
10 its Internal Revenue Code Section 125 Flexible Benefits Plan, but will discontinue
11 the employer contribution of \$30 per month, per employee, effective December 31,
12 2012, and

13 WHEREAS nonrepresented employees currently receive the same benefits
14 agreed to between the City and the Joint Labor Committee, and

15 WHEREAS, in recognition of the termination of this contribution, each
16 eligible employee will receive a one-time taxable payment of \$360, payable in the
17 month of January 2013, and

18 WHEREAS this ordinance will also provide for an application of rate of
19 5 percent for employees in the classification of "Customer Service Representative,
20 Lead," when performing the functions of Workforce Coordinator, per the Letter of
21 Agreement negotiated between the City and the International Brotherhood of
22 Electrical Workers, Local 483, Customer and Field Services Unit; Now, Therefore,

23
24 BE IT ORDAINED BY THE CITY OF TACOMA:
25
26



1 Section 1. That Section 1.12.117 of the Tacoma Municipal Code is hereby
2 amended to read as follows:

3 **1.12.117 IRC Section 125 Flexible Benefits Plan.** The City will implement
4 an Internal Revenue Code Section 125 flexible benefits plan. The City shall pay
5 such per participant administrative fees as may be incurred in administering the
6 Plan. ~~On behalf of each permanent, project, appointive, or temporary pending~~
7 ~~exam full-time or part-time employee who is enrolled in the medical benefits plan,~~
8 ~~except Belt Line employees in the classifications of Railway Switch Operator and~~
9 ~~Railway Switch Supervisor, the City will contribute \$30 per month to be~~
10 ~~administered under the provisions of the Plan.~~ Regular part-time employees who
11 are not enrolled in the medical benefits plan may enroll in the flexible spending
12 option of the flexible benefits plan, ~~but the City will not contribute the monthly \$30~~
13 ~~authorized for employees enrolled in the medical benefits plan.~~

14
15 At the end of each year, any unspent moneys in employee flexible benefits
16 accounts will be forfeited as provided by the plan and the forfeited monies shall
17 revert to the Labor-Management Employee Trust Fund established by Ordinance
18 No. 24153.

19
20 Section 2. In recognition of the termination of the Flexible Benefits Plan
21 contribution, each eligible employee will receive a one-time taxable payment of
22 \$360, payable in the month of January 2013.

23
24 Section 3. That Section 1.12.640 of the Tacoma Municipal Code is hereby
25 amended to read as follows:
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1.12.640 Application of additional rates.

* * *

0608 An application of rate of 5 percent will be applied to the Customer Service Representative, Lead (CSC 0608) position which is assigned the Workforce Coordinator modeling and forecasting functions.

* * *

Section 4. That Sections 1 and 2 of this ordinance are effective retroactive to December 31, 2012. Section 3 of this ordinance is effective retroactive to August 27, 2012.

Passed _____

Mayor _____

Attest:

City Clerk

Approved as to form

Deputy City Attorney