



## Legislation Passed November 28, 2017

The Tacoma City Council, at its regular City Council meeting of November 28, 2017, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

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### **Resolution No. 39871**

A resolution authorizing the execution of a grant agreement with the Washington State Department of Transportation, in the amount of \$2,500,000, for safety improvements at two railroad grade crossings on the Marine View Drive segment of State Route 509.

[Alan Matheson, Assistant Rail Superintendent; Dale King, Rail Superintendent]

### **Resolution No. 39872**

A resolution appointing and reappointing individuals to the Human Rights Commission. [Doris Sorum, City Clerk; Bill Fosbre, City Attorney]

### **Resolution No. 39873**

A resolution awarding a contract to Mountain Stone Aggregate LLC, in the amount of \$283,350, plus a 10 percent contingency, plus applicable sales tax, for a total of \$311,685, budgeted from the Asphalt Plant Fund, for hot mix asphalt aggregate, for an initial contract period of one-year, with the option to renew for four additional one-year periods, for a projected contract total of \$1,654,777.99 - Specification No. PW17-0392F.

[Rae Bailey, Street Operations Division Manager; Kurtis D. Kingsolver, P.E., Director, Public Works]

### **Resolution No. 39874**

A resolution authorizing the reissuance of Tacoma Municipal Belt Line 8807 and Tacoma Rail Mountain Division 8000 series freight switching tariffs, and the Tacoma Municipal Belt Line 6004 series demurrage tariff, effective January 1, 2018, to ensure reliable rail services at cost of service rates.

[Dan McCabe, Rail Section Manager; Dale King, Rail Superintendent]

### **Resolution No. 39875**

A resolution approving the 2018-2019 Funding Priorities Statement for the Annual Action Plan of the Consolidated Plan for Housing and Community Development.

[Ricardo Noguera, Director, Community and Economic Development; Linda Stewart, Interim Director, Neighborhood and Community Services]

**Resolution No. 39876**

A resolution authorizing the use of up to \$50,000 of City Council Contingency Funds to support a pilot project to assist tenants and provide incentives to landlords who accept Section 8 Housing Vouchers; create funds for landlord damage reimbursements, and to assist tenants with screening fees and security deposits; and directing the City Manager to examine the feasibility of adding source of income as a protected class in rental regulations and negotiate and execute a professional services agreement with the Tacoma Housing Authority outlining the scope of work and deliverables.

[Council Members Blocker, Campbell, and Walker Lee]

**Ordinance No. 28463**

An ordinance granting a non-exclusive franchise to WA-CLEC LLC, to construct, operate, and maintain a telecommunications system in the City.

[Jeff Lueders, Cable Communications and Franchise Services Manager;  
Gwen Schuler, Director, Media and Communications]

**Ordinance No. 28464**

An ordinance granting a non-exclusive franchise to ExteNet Systems, Inc., to construct, operate, and maintain a telecommunications system in the City.

[Jeff Lueders, Cable Communications and Franchise Services Manager;  
Gwen Schuler, Director, Media and Communications]

**Ordinance No. 28471**

An ordinance amending Chapter 1.30 of the Municipal Code, relating to Retirement and Pensions, to increase the employer and employee contribution rates by a combined total of 1 percent, effective the first pay period in February 2018.

[Timothy Allen, Director, Retirement]



## RESOLUTION NO. 39871

1 A RESOLUTION relating to the Department of Public Utilities, Beltline Division,  
2 d.b.a. Tacoma Rail; authorizing the execution of a Highway-Railroad  
3 Grade Crossing Grant Agreement with the Washington State Department  
4 of Transportation, in the amount of \$2,500,000, for safety improvements  
at two railroad grade crossings on the Marine View Drive segment of  
State Route 509.

5 WHEREAS the City of Tacoma, Department of Public Utilities, Beltline  
6 Division (d.b.a. "Tacoma Rail"), was awarded a Grant from the Washington  
7 State Department of Transportation ("WSDOT") to design, engineer, and install  
8 new grade crossing signal systems on the Marine View Drive segment of State  
9 Route 509, and  
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11 WHEREAS WSDOT has identified two existing passive Highway-Railroad  
12 at Grade Crossings on the Marine View Drive segment of State Route 509,  
13 numbered USDOT #917-955P and USDOT #852-620R, as locations where  
14 safety improvements should be constructed in order to alert motorists in  
15 northbound and southbound lanes when railroad equipment is on the Highway-  
16 Railroad Grade Crossing, and  
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18 WHEREAS, pursuant to 23 U.S.C., Section 130, WSDOT Grant  
19 Agreement RRB-1185 provides for reimbursement of Tacoma Rail's direct and  
20 associated project costs related to the design, engineering, and installation of  
21 the safety improvements at the two locations, up to an amount not to exceed  
22 \$2,500,000, and  
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24 WHEREAS Section 4.11 of the Tacoma City Charter requires that all  
25 matters relating to the "incurring of indebtedness . . . shall be initiated by the  
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1 Board, subject to approval by the Council, and executed by the Board,” prior to  
2 acceptance of the Agreement, and

3 WHEREAS, by adoption of Public Utility Board Resolution No. U-10974  
4 on November 15, 2017, the proposed Agreement was approved, pending  
5 confirmation from the City Council; Now, Therefore,  
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7 BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TACOMA:

8 Section. 1. That the City of Tacoma, Department of Public Utilities,  
9 Beltline Division (d.b.a. “Tacoma Rail”) is approved to accept grant funding from  
10 the Washington State Department of Transportation for reimbursement of  
11 Tacoma Rail’s direct and associated project costs related to the design,  
12 engineering, and installation of the safety improvements at two locations on the  
13 Marine View Drive segment of State Route 509 up to an amount not to exceed  
14 \$2,500,000, and to deposit said reimbursements into the Tacoma Rail Fund.  
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16 Section 2. That the Superintendent of Rail is authorized to execute the  
17 grant agreement with WSDOT for the administration of the state funding  
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1 accepted pursuant to Section 1, said document to be substantially in the form of  
2 the proposed grant agreement on file in the office of the City Clerk.

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4 Adopted \_\_\_\_\_

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Mayor

7 Attest:

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\_\_\_\_\_  
City Clerk

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11 Approved as to form:

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City Attorney

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Requested by Public Utility Board  
Resolution No. U-10974

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## RESOLUTION NO. 39872

1 BY REQUEST OF COUNCIL MEMBERS BLOCKER, CAMPBELL, LONERGAN,  
2 AND WALKER LEE

3 A RESOLUTION relating to committees, boards, and commissions; realigning term  
4 expirations, and appointing and reappointing individuals to the Human Rights  
5 Commission.

6 WHEREAS vacancies exist on the Human Rights Commission, and

7 WHEREAS, at its meeting of November 9, 2017, the Community Vitality and  
8 Safety Committee conducted interviews and recommended the appointment and  
9 reappointment of individuals to said commission, and

10 WHEREAS, over time, terms have become aligned, such that terms have  
11 varying expiration months in March, April, May, and December, and

12 WHEREAS, pursuant to City Charter 2.4 and the Rules, Regulations, and  
13 Procedures of the City Council, the persons named on Exhibit "A" have been  
14 nominated to serve on the Human Rights Commission; Now, Therefore,

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

16 That those nominees to the Human Rights Commission, listed on Exhibit "A,"  
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are hereby confirmed and appointed or reappointed as members of such  
commission for such terms as are set forth on the attached Exhibit "A."

Adopted \_\_\_\_\_

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Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

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City Attorney



**EXHIBIT "A"**

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**HUMAN RIGHTS COMMISSION**

Appointing **Lisa Snyder** to serve a three-year term, effective January 1, 2018, to expire December 31, 2020.

Appointing **Allen Ratcliffe** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2017, followed by a three-year term to expire December 31, 2020.

Appointing **Jennifer Vasilez** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2017, followed by a three-year term to expire December 31, 2020.

Appointing **Natalie Collins** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2019.

Appointing **Gina Fonseca Crescioni** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2019.

Appointing **Kim Tosch** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2019.

Appointing **Areum (Andy) Youn** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2019.

Appointing **Jeremy Terhar** to fill an unexpired term, effective November 28, 2017, to expire December 31, 2019.

Reappointing **Maria Villalpando Ramos** to serve a three-year term to expire December 31, 2020.





## RESOLUTION NO. 39873

1 A RESOLUTION awarding a contract to Mountain Stone Aggregate LLC, in the  
2 amount of \$283,350, plus a 10 percent contingency, plus applicable  
3 sales tax, for a total of \$311,685, budgeted from the Asphalt Plant Fund,  
4 for hot mix asphalt aggregate, for an initial contract period of one-year,  
5 with the option to renew for four additional one-year periods, for a  
6 projected contract total of \$1,654,777.99 pursuant to Specification  
7 No. PW17-0392F.

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

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

14 Therefore,

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

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

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Section 2. That the proper officers of the City are hereby authorized to enter into a contract with Mountain Stone Aggregate LLC, in the amount of \$283,350, plus a 10 percent contingency, plus applicable sales tax, for a total of \$311,685, budgeted from the Asphalt Plant Fund, for hot mix asphalt aggregate, for an initial contract period of one-year, with the option to renew for four additional one-year periods, for a projected contract total of \$1,654,777.99 pursuant to Specification No. PW17-0392F, consistent with Exhibit "A."

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney



## RESOLUTION NO. 39874

1 A RESOLUTION relating to the Department of Public Utilities; authorizing the  
2 Beltline Division, d.b.a. Tacoma Rail, to reissue the TMBL 8807 and  
3 TRMW 8000 series freight switching tariffs, as well as the TMBL 6004 series  
4 demurrage tariff, with an effective date of January 1, 2018, to ensure  
5 reliable rail services at cost of service rates.

6 WHEREAS the Department of Public Utilities, Beltline Division (d.b.a.  
7 "Tacoma Rail"), is recommending adjustments to charges related to freight  
8 switching, and is seeking approval to reissue its freight switching tariff TMBL 8807  
9 and TRMW 8000, incorporating such adjustments, and

10 WHEREAS the switching tariffs define the line haul and miscellaneous  
11 switching charges allocated to the movement of railcars, and the proposed  
12 adjustments include a rate increase of \$10 for unit train line haul traffic, a \$150 line  
13 haul rate increase for Positive Train Control ("PTC") enabled divisions, and a  
14 3 percent increase on general TRMW switching fees, and

15 WHEREAS the demurrage tariff establishes rates, credits, and exemptions  
16 for the application of railcar demurrage, and the demurrage tariff rate and schedule  
17 has not changed since 1998, when the demurrage tariff was established, and

18 WHEREAS the proposed demurrage tariff adds Saturdays as being exempt  
19 from being a demurrage day while changing the daily rate from \$50 to \$60;  
20 Sundays and holidays are exempt in the current tariff, and

21 WHEREAS Section 4.11 of the Tacoma City Charter requires that all  
22 matters related to the fixing of rates and charges for utility services shall be  
23 initiated by the Board and approved by the City Council, and  
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WHEREAS, on November 15, 2017, the Public Utility Board approved the proposed revisions, and

WHEREAS Tacoma Rail believes it is in the best interests of its customers and the citizens of Tacoma that the recommended freight switching tariffs and demurrage tariff be approved; Now, Therefore,

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

Section 1. That the proposed revisions and reissue of Tacoma Rail Freight Switching Tariffs TMBL 8807, TRMW 8000, and Demurrage Tariff TMBL 6604 series are hereby approved, effective January 1, 2018.

Section 2. That the publication of TMBL 8807, TRMW 8000, and Demurrage Tariff TMBL 6604 is approved.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
City Attorney

Requested by Public Utility Board  
Resolution No. U-10975



## RESOLUTION NO. 39875

1 A RESOLUTION relating to the Consolidated Plan for Housing and Community  
2 Development; authorizing approval of the 2018-2019 Funding Priorities  
3 Statement for the Annual Action Plan of the City's Consolidated Plan for  
4 Housing and Community Development.

4 WHEREAS the City Council biennially approves the Funding Priorities  
5 Statement to provide direction to the City for recommending/awarding federal  
6 funds prior to starting the application process for the Consolidated Plan Annual  
7 Program, and

8 WHEREAS the purpose of establishing funding priorities is to provide  
9 direction for the selection of housing, social services and community development  
10 activities, and

11 WHEREAS all programs and projects must be consistent with the  
12 Community Development Block Grant ("CDBG"), HOME Investment Partnership  
13 Program ("HOME"), or Emergency Shelter Grant Program ("ESG"), or any other  
14 funding source regulations, as applicable, and

15 WHEREAS CDBG projects and programs must meet one of three major  
16 national objectives: (1) benefit lower income persons; (2) remove blight; or  
17 (3) meet an urgent need, and

18 WHEREAS HOME projects must provide housing or assist in housing for  
19 low-income persons, and

20 WHEREAS ESG projects must provide a service or shelter to benefit  
21 homeless persons, and

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WHEREAS the Funding Priorities are organized into six categories:

- (1) General; (2) Set-asides; (3) Housing; (4) Community Development;
- (5) Economic Development; and (6) Human Services, and

WHEREAS the two-year Funding Priorities will begin during the fourth year of the current Consolidated Plan period, which spans fiscal years 2015-2016 to 2019-2020, and currently expires on June 30, 2020; Now, Therefore,

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

That the City Council does hereby approve the City’s 2018-2019 Funding Priorities Statement for the Annual Action Plan of the City’s Consolidated Plan for Housing and Community Development, attached hereto as Exhibit “A,” said document to be substantially in the form of the proposed 2018-2019 Funding Priorities Statement on file in the office of the City Clerk.

Adopted \_\_\_\_\_

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Mayor

Attest:  
  
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City Clerk

Approved as to form:  
  
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Deputy City Attorney



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**EXHIBIT "A"**

**City of Tacoma CDBG, HOME and ESG  
Funding Priorities Statement (2018-2019)**

All programs and projects must be consistent with Community Development Block Grant (CDBG), HOME Investment Partnership Program (HOME), and any other funding source regulations and requirements as applicable. CDBG projects must meet one of three major criteria: (1) benefitting lower-income persons, (2) removing blight, or (3) meeting an urgent need. HOME projects must provide housing or assist in housing for low-income persons.

The Funding Priorities are organized into six categories: (1) General; (2) Set-asides; (3) Housing; (4) Community Development; (5) Economic Development; and (6) Human Services. Each of the categories is briefly summarized as follows:

1. General Priorities (CDBG and HOME) – Funds will support activities that:  
(a) are consistent with existing plans (e.g. Consolidated Plan, Comprehensive Plan, Human Services Strategic Plan); (b) leverage other funding resources when applicable; (c) can commit funds within 12 to 24 months; (d) are proposed by an organization with a proven capacity for project completion and good management; (e) show reasonable cost effectiveness; and (f) do not require General Fund monies for project operation and maintenance.
2. Set-Aside Priorities – Set aside amounts from the annual CDBG grant:  
(a) up to 50% for housing development & rehabilitation; (b) 15% (HUD Maximum) to support human services; and (c) up to \$100,000 for community development (neighborhood improvement projects such as Local Improvement District (“LID”) assistance, sidewalk repair or replacement, and innovative grants).
3. Housing Priorities (CDBG and HOME) – The priorities for Housing activities are: (a) homeownership programs that benefit low-income owners with repairs and rehabilitation; (b) programs that assist first-time homebuyers to purchase a home; (c) program that maintain and expand affordable rental housing for families and the elderly; and (d) programs that provide supportive housing for homeless and/or special needs individuals and families that may include emergency and transitional shelters, and special needs housing with support services. In furtherance of these efforts, staff recommends funding the following low-income housing programs at the



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noted funded level: Homeowner occupied Neighborhood Preservation Program which includes single family rehabilitation and energy improvements (CDBG \$500,000), Emergency Major Home Repair (CDBG \$150,000), and Down Payment Assistance for first time home buyers (HOME \$250,000).

- 4. Community Development Priorities (CDBG only) – The priorities for Community Development are activities that support neighborhood improvements for lower income residents such as: (a) payment of LID assessments for lower income homeowners; (b) street-related improvements such as sidewalk repair or replacement in lower income neighborhoods; (c) eligible neighborhood innovative grant projects; and (d) public facilities.
  
- 5. Economic Development Priorities (CDBG only) – The priorities for Economic Development are activities that help increase jobs and business opportunities such as: (a) creation or retention of jobs for lower income persons; (b) business services that support lower income neighborhood and/or lower income groups; (c) financial and technical assistance for disadvantaged persons who own or plan to start a business; and (d) revitalization of blighted or lower income business districts through historic preservation, conservation actions and neighborhood economic development.
  
- 6. Human Services Priorities (CDBG and ESG) – In 2011, Human Services funding priorities were updated to align with federal HEARTH legislation and respond to changes in ESG regulations. CDBG funds remained targeted toward low and moderate income persons, with a new emphasis on stabilization services that would support individuals and families to move toward housing and economic stability. A category for youth stabilization services was added in 2015 to reflect the local priority to provide services to unaccompanied youth who are at risk for or currently experiencing homelessness. ESG funds were re-focused on HUD's new categories of eligible activities, including rapid re-housing. The priorities for human services supported with CDBG and ESG funds are identified below.

CDBG

CDBG funds will support programs that target lower income Tacoma residents, provide stabilization services, and address one of the Funding Priorities listed below. The three funding priorities are of equal importance.





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Housing Stabilization Services: Housing and homelessness prevention services for individuals and families at risk of or currently experiencing homelessness, including tailored services that will lead residents toward more stable housing.

Economic Stabilization Services: Services that have a direct connection to increasing the economic stability of lower income Tacoma residents, including increased economic opportunity (e.g. through pre-employment training or job placement).

Youth Emergency Stabilization Services: Housing and intervention/prevention services for unaccompanied youth, up to (and including) age 24, who are at risk of or currently experiencing homelessness.

ESG

ESG funds will be used for programs which support individuals and families who are experiencing or at risk of experiencing homelessness, as defined by the Department of Housing and Urban Development. Ten percent (10%) of the grant will be reserved for expenses related to administration of the grant and reporting through the local Homelessness Management Information System (HMIS). The remainder of the funds will be used for the following components:

Street Outreach: Services related to engaging with unsheltered homeless individuals and families and connecting them with emergency shelter, housing, or critical services.

Emergency Shelter: Operations and essential services associated with provision of emergency shelter to homeless individuals and families.

Rapid Re-housing: Rental assistance and stabilization services to help individuals and families who are currently homeless into permanent housing and stability.

Homelessness Prevention: Rental assistance and stabilization services to prevent individuals and families who are at risk of homelessness from losing their housing.



## RESOLUTION NO. 39876

1 BY REQUEST OF COUNCIL MEMBERS BLOCKER, CAMPBELL, AND  
2 WALKER LEE

3 A RESOLUTION authorizing the use of City Council Contingency Funds, in the  
4 amount of up to \$50,000 to support a pilot project to assist tenants and  
5 provide incentives to landlords who accept Section 8 Housing Vouchers;  
6 create funds for landlord damage reimbursements; assist tenants with  
7 screening fees and security deposits; and, directing the City Manager to  
8 negotiate an agreement with the Tacoma Housing Authority outlining the  
9 scope of work and deliverables, and to study adding source of income as  
10 a protected class in rental regulations.

11 WHEREAS, as part of the homeless health emergency declaration and  
12 increased cost of living in the Tacoma area, the City Council has discussed  
13 strategies to encourage affordable housing, including incentives for landlords to  
14 accept Section 8 Housing Vouchers from the Tacoma Housing Authority (“THA”),  
15 and assisting tenants with security deposits and screening fees, and

16 WHEREAS, according to the THA, as many as 40 percent of new voucher  
17 recipients in 2016 had to return their vouchers because they could not secure  
18 housing in the time allotted; that percentage dropped to 22 percent in 2017, and

19 WHEREAS this decrease was not because more housing became available,  
20 but rather because THA is giving families more time to look for housing; it  
21 sometimes takes over four months for new voucher holders to secure housing, and

22 WHEREAS, at the November 14, 2017 Study Session, Council Member  
23 Walker Lee shared a Council Consideration Request, sponsored by Council  
24 Members Blocker and Campbell, to support a pilot project with the THA to assist  
25 tenants and provide incentives to landlords who accept Section 8 Housing  
26 Vouchers, and



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WHEREAS THA's suggestions for a pilot program are to establish the following incentives:

1. Signing bonus for landlords who make units available to Section 8 tenants: A one-time cash incentive for landlords who make units that have not previously been available to Section 8 tenants available to them.

2. Creation of a landlord damage fund: This fund would act as an insurance policy for landlords if their properties were to become damaged by Section 8 tenants. The fund would likely only provide reimbursements for amounts in excess of the tenant's security deposit and any other insurance payments, as well as include a cap on what that amount would be.

3. Creation of a fund to assist tenants with screening fees and security deposits: Screening fees and security deposits are an ongoing barrier for low-income households.

4. Request City staff examine the feasibility of adding source of income as a protected class over the next year: This strategy would request the City's Office of Equity and Human Rights ("OEHR"), along with the Human Rights Commission, to look at the feasibility of making it illegal for landlords to discriminate on the basis of where tenants obtain their income. Implementing this policy would take an extensive outreach and education campaign, as well as community engagement, and would necessitate OEHR staff to begin developing a timeline for implementation to be presented to the Community, Vitality, and Safety Committee in 2018, and



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WHEREAS RCW 35.33.145 and 35.34.250 authorize a withdrawal from the Contingency Fund for any municipal expense, the necessity or extent of which could not have been foreseen or reasonably evaluated at the time of adopting the budget, and

WHEREAS the City Council's request to use funds from the Contingency Fund for a pilot project to provide incentives to landlords who accept Section 8 Housing Vouchers is necessary and could not have reasonably been foreseen or evaluated at the time the City Council adopted the budget, and

WHEREAS Ordinance No. 22569 requires an affirmative vote of not less than six members of the City Council in order to withdraw moneys from this fund;

Now, Therefore,

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

Section 1. That one-time funding in the amount of up to \$50,000, budgeted from the City Council Contingency Fund, is hereby approved for the purpose of supporting a pilot project to assist tenants and provide incentives to landlords who accept Section 8 Housing Vouchers; create funds for landlord damage reimbursements; assist tenants with screening fees and security deposits; and



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Section 2. That the City Manager is hereby directed to negotiate an agreement with the THA for the purposes hereinabove enumerated; and, to study adding source of income as a protected class in rental regulations.

Adopted \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney



## ORDINANCE NO. 28463

1 AN ORDINANCE granting a non-exclusive franchise to WA-CLEC LLC, a  
2 Delaware limited liability company, to construct, operate, and maintain a  
3 telecommunications system in the City of Tacoma; setting forth provisions,  
4 terms, and conditions of the grant of franchise; specifically making such  
5 grant subject to the provisions of Title 16B, Title 9, and Title 10 of the  
6 Tacoma Municipal Code, as well as the Tacoma City Charter; providing for  
7 City 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 Tacoma Municipal Code and the  
10 Tacoma City Charter.

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

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

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

24 WHEREAS the City Council has determined to grant such a franchise to  
25 CLEC upon those certain terms and conditions which the City Council deems  
26



necessary due to the unique nature of fiber optic cable and wireless transmission facilities as set forth herein, and

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

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Now, Therefore,





BE IT ORDAINED BY THE CITY OF TACOMA:

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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 of the Tacoma Municipal Code (“TMC”), shall have the same meaning or be interpreted as provided in Title 16B. Words not defined here or in Title 16B shall be construed consistently with Title 47 of the United States Code, and if not therein, they shall have their common and ordinary meaning. A reference to any Title of the TMC or to the Tacoma City Charter refers to the same as may be amended from time to time. Any reference to a “party” hereunder shall mean the City or Franchisee, as applicable, and a reference to the “parties” shall mean collectively the City and Franchisee.

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

1.2 “City Manager” means the City Manager or the City Manager’s designee.

1.3 “Communications System” refers to a telecommunications system.

1.4 “Construction, operation, or maintenance” and similar formulations of these terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, or components thereof, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.



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1.5 "Customer" means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by the Telecommunications System. The definition of "Customer" shall also include Persons who use Franchisee's Facilities, whether as lessees or through other arrangement.

1.6 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, installed, operated, maintained, or otherwise used by Franchisee, such as antennae, poles, fiber, wires, fixtures, equipment, underground circuits, and conduit in Public Rights-of-Way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located.

"Facilities" or "Installations," when used without a modifier, encompasses both Overhead Facilities/Installations and Underground Facilities/Installations. Nothing in this definition, or anything else in this Franchise shall be interpreted as authorizing Franchisee to construct its own support system for Overhead Facilities or any other above-ground Facilities in the Franchise Area without the additional authorizations required herein below and as proscribed by City zoning and land use regulation ordinances.

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

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



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1.9 "Franchisee" means WA-CLEC LLC, a Delaware limited liability company registered to do business in the state of Washington with its principal office located at 2000 Corporate Drive, Canonsburg, PA 15317.

1.10 "Gross Receipts," for purposes of this Franchise, means any and all receipts or income received directly or indirectly by Franchisee, which is derived from the operation of its System in the City, less uncollectibles. Gross Receipts shall include, by way of example and not limitation, revenues from its Telecommunications Service, all fees, late fees, installation and connection fees, upgrade and downgrade fees, and rental fees. The term Gross Receipts shall not include any taxes on services furnished by Franchisee imposed by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit, nor shall the term include any wholesale services provided by Franchisee upon which fees or taxes have already been levied within the City of Tacoma.

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



1 1.12 "Overhead Facilities" refers to existing electric utility and  
2 communications Facilities located above the surface of the ground, including the  
3 underground supports and foundations for such Facilities.

4 1.13 "Person" includes any individual, corporation, partnership, association,  
5 joint stock company, trust, or any other legal entity, but not the City for purposes  
6 hereof.

7 1.14 "Personal Wireless Facilities" are Facilities which are above ground  
8 such as transmitters, antenna structures, and other types of installations, whether  
9 related to wireless or fiber/optic transmission, now or hereafter used for the  
10 provision of personal wireless services as that term is defined in Section 704 of the  
11 1996 Telecommunications Act.  
12

13 1.15 "Public Rights-of-Way" mean the public streets and easements over  
14 which, under the City Charter, the TMC, City ordinances, and applicable laws,  
15 the City has authority to grant Franchises, permits, or Licenses for use thereof or  
16 has regulatory authority there over, but expressly excluding railroad  
17 rights-of-way/crossings, airport, and harbor areas. Public Rights-of-Way, for the  
18 purpose of this Franchise, also do not include buildings, parks, poles, conduits,  
19 or similar facilities or property owned by or leased to the City, including, by way  
20 of example and not limitation, structures in the Public Rights-of-Way such as  
21 utility poles and light poles.  
22

23 1.16 "System" means the Telecommunications System.

24 1.17 "Telecommunications Service" or "Service" means the transmission for  
25 hire of information in electronic, optical form, or by wireless transmission, including,  
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1 but not limited to, voice, video, or data, whether or not the transmission medium is  
2 owned by the provider itself. Telecommunications Service includes telephone  
3 service, but does not include cable TV or commercial video service or over-the-air  
4 broadcasts to the public-at-large from facilities licensed by the Federal  
5 Communications Commission or any successor thereto.

6 1.18 "Telecommunications System" means a tangible facility that is used to  
7 provide one or more Telecommunications Services, any portion of which occupies  
8 Public Rights-of-Way. The term Telecommunications System, by way of example  
9 and not limitation, includes antennae, wires, equipment cabinets, guys, conduit,  
10 radio transmitting towers, poles, other supporting structures, and associated and  
11 appurtenant facilities used to transmit telecommunications signals. The term  
12 Telecommunications System includes all devices mounted on light poles (where  
13 separately authorized by an attachment agreement) in the Public Rights-of-Way  
14 through which Telecommunications Services are originated or terminated. An  
15 Open Video System is not a Telecommunications System to the extent that it  
16 provides only video services; a Cable System is not a Telecommunications System  
17 to the extent that it provides only Cable Service. The term Telecommunications  
18 System includes any of the tangible components of a Telecommunications System  
19 which occupies Public Rights-of-Way, but poles and other structures to which  
20 Franchisee's Facilities are attached shall not be deemed to be part of Franchisee's  
21 Telecommunications System unless such poles or other structures are owned by  
22 Franchisee.  
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1 1.19. "Telephone Service" means the provision of access to a local  
2 telephone network, local telephone network switching service, intrastate toll  
3 service, or coin telephone service, or providing telephonic, video, data, or similar  
4 communication or transmission for hire via a local telephone network, toll line,  
5 channel, cable, microwave, or similar communication or transmission system by  
6 any person. Telephone Service includes intrastate or interstate service, including  
7 toll service, originating from, or received on, communications equipment or  
8 apparatus in this State if the charge for the service is billed to a person in this  
9 State. Telephone Service does not include the providing of Competitive telephone  
10 service as defined in TMC 6A.40.030, the providing of cable television service, or  
11 the providing of broadcast services by radio or television stations.

13 1.20 "Underground Facilities" refers to electric utility and Communications  
14 Facilities located under the surface of the ground, excluding the underground  
15 foundations or supports for Overhead Facilities.

17 Section 2. Franchise.

18 2.1 Grant of Franchise. The City hereby grants to Franchisee a  
19 non-exclusive Franchise which, once it becomes effective, shall authorize  
20 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to  
21 construct, maintain, and operate a fiber optic/wireless Telecommunication System  
22 to provide Telecommunication Service and internet access service, and to use the  
23 City's Public Rights-of-Way as authorized herein. This grant of Franchise does  
24 not, by itself, grant any right to construct, operate, or maintain any new, above-  
25 ground Facilities without prior City approval, which will require additional permitting  
26



1 and/or an additional site specific or master siting agreement, in conformance with  
2 City zoning and land use ordinances and applicable state laws.

3 This grant is subject to and must be exercised in strict accordance with and  
4 subject to this Franchise Agreement, Title 16B, and other applicable provisions of  
5 the TMC and Tacoma City Charter, including, but not limited to, the provisions set  
6 forth in Article VIII of the Charter, and TMC Title 13, and this Franchise may be  
7 revoked under Section 2.5 if it is not so exercised. The exercise of any rights  
8 pursuant to this Franchise is subject to the exercise of the City's police powers,  
9 and other regulatory powers as the City may have or obtain in the future, and all  
10 rights granted herein must be exercised in strict accordance with applicable laws,  
11 including, by way of example and not limitation, zoning codes and permitting  
12 requirements. No rights shall pass to Franchisee by implication. This Franchise  
13 shall constitute both a right and an obligation to provide or cause to be provided  
14 the services of the Telecommunications System as required by the provisions of  
15 this Franchise.  
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18 The grant of this Franchise is limited to the purpose of Franchisee providing  
19 or causing to be provided Telecommunications Service and internet access  
20 service. This Franchise does not include permission to provide cable service as  
21 defined in 47 U.S.C. § 522, multichannel video programming, open video systems,  
22 or uses other than Telecommunications Service.  
23

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



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

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

7 2.2 Franchise Term. The term of the Franchise shall be ten years unless  
8 terminated sooner in accordance with this Franchise, Title 16B, or the Tacoma City  
9 Charter. At the expiration of the term, Franchisee may apply to extend or renew  
10 the Franchise as provided in Title 16B.02.100.

11 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be non-  
12 exclusive.

13 2.4 Transfers, Generally.

14 A. Any transfer of this Franchise, as the term "Transfer" is defined in  
15 TMC Title 16B.01.030.Y, shall be accomplished in accordance with  
16 TMC Title 16B.02.120. Any intra-company Transfer of this Franchise shall be  
17 excepted from the requirements of TMC Title 16B.02.120.A-B if such Transfer and  
18 the Transferee Affiliate meet all of the requirements of TMC Title 16B.02.120.F (or  
19 any successor ordinance). Any Transfer not made in accordance with  
20 TMC Title 16B.02.120 may be considered a substantial violation of this Franchise  
21 by the City and may subject the Franchise to termination proceedings by the City  
22 as provided herein and in Title 16B.  
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1 B. Applications for approval of any Transfer shall be filed in  
2 accordance with procedures set out in Title 16B of the TMC.

3 C. Franchisee shall, within 60 days of the closing date of any  
4 Transfer, file with the City Clerk a copy of the deed, agreement, contract,  
5 mortgage, lease, SEC filing, or other written instrument evidencing such  
6 Transfer, certified and sworn to as correct by Franchisee, subject to any  
7 confidentiality provisions in any such document. Every such Transfer, whether  
8 voluntary or involuntary, may be deemed void and of no effect as to the  
9 effectiveness of this Franchise by the City unless Franchisee files the required  
10 copy within the 60-day period.

11 D. The requirements of this section shall not be deemed to  
12 prohibit the use of Franchisee's property as collateral for security in financing  
13 the construction or acquisition of all or part of the Telecommunications System  
14 franchised hereunder, provided that no such security shall purport to attach to  
15 the City's real property interest in the Public Right-of-Way or any other City  
16 interest. In addition, no such arrangement may be made if it would in any  
17 respect under any condition prevent the Operator or any successor from  
18 complying with the Franchise and applicable law. Any mortgage, pledge, or  
19 lease shall be subject to and subordinate to the rights of the City under this  
20 Franchise, and other applicable law.

21 2.5 Revocation. In addition to any rights set out elsewhere in this  
22 Franchise, the City Charter, or Title 16, subject to the notice and cure provisions  
23 contained in Title 16B, Section 16B.05.100, the City reserves the right to declare  
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1 a forfeiture or otherwise revoke this Franchise, and all rights and privileges  
2 pertaining thereto, as provided in Title 16B or in the event that:

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

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

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

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

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

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

16 (2) Notwithstanding the foregoing, the City may declare a  
17 Franchise forfeited without opportunity to cure when Franchisee: (a) fails to begin  
18 to exercise its rights hereunder within 45 days of Franchisee's acceptance of this  
19 Franchise, (b) stops providing or causing to be provided all Service it is required to  
20 provide or cause to be provided under this Franchise, (c) Transfers without the  
21 prior consent of the City as and when required in the Franchise, or (d) is found by a  
22 court or regulatory body with appropriate jurisdiction to have defrauded or  
23 attempted to defraud the City or Franchisee's Customers within the City.  
24

25 Notwithstanding the provisions of Title 16B.05.100.C.2, if Franchisee fails to timely  
26



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

8 (3) Notwithstanding the foregoing and only to the extent  
9 permitted by applicable law, the Franchise will automatically terminate by force of  
10 law 120 calendar days after an assignment for the benefit of creditors or the  
11 appointment of a receiver or trustee to take over the business of Franchisee,  
12 whether in a receivership, reorganization, bankruptcy, assignment for the benefit of  
13 creditors, or other action or proceeding. However, the Franchise may be  
14 reinstated within that 120-day period, if: (a) such assignment, receivership, or  
15 trusteeship has been vacated; or (b) such assignee, receiver, or trustee has fully  
16 complied with the terms and conditions of Title 16B and this Franchise and has  
17 executed an agreement, approved by any court having jurisdiction, assuming and  
18 agreeing to be bound by the terms and conditions of Title 16B and this Franchise.  
19 However, in the event of foreclosure or other judicial sale of any of the facilities,  
20 equipment, or property of Franchisee, the City may revoke this Franchise, following  
21 a public hearing before the City Council, by serving notice upon Franchisee and  
22 the successful bidder at the sale, in which event the Franchise and all rights and  
23 privileges of this Franchise will be revoked and will terminate 30 calendar days  
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1 after serving such notice, unless: (a) the City has approved the Transfer of the  
2 Franchise to the successful bidder in writing; and (b) the successful bidder has  
3 covenanted and agreed in writing with the City to assume and be bound by the  
4 terms and conditions of this Franchise and Title 16B.

5 2.6 Continuity of Service and Right to Purchase the System.

6 A. In the event the City has declared a forfeiture for cause or  
7 otherwise validly revoked this Franchise as provided herein, or in the event of  
8 expiration of the initial term of this Franchise without this Franchise being renewed  
9 or extended as provided in Section 2.2 (referred to below collectively as a  
10 "termination"), Franchisee shall remove its Facilities from the Public Rights-of-Way  
11 under Section 2.7, unless the City elects to purchase the Facilities as provided in  
12 Section 2.6.B.

13 B. In the event the City has declared a forfeiture for cause or  
14 otherwise validly revoked this Franchise as provided herein, or in the event of  
15 expiration of the initial term of this Franchise without this Franchise being  
16 renewed or extended as provided in Section 2.2 (referred to below collectively  
17 as a "termination"), the City shall have an option upon termination of the  
18 Franchise to purchase that portion of the Telecommunications System located in  
19 the Right-of-Way owned by Franchisee, whether termination is, or is not, for  
20 cause. This option requires Franchisee to convey the Telecommunications  
21 System or such portion thereof as the City may choose to purchase, provided,  
22 that nothing herein shall require the City to accept or pay for any contract that it  
23 does not wish to assume. Franchisee is not required to convey portions of the  
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Telecommunications System not located in the Right-of-Way, located outside the City, or that is leased or used (but not owned) by Franchisee from a third party pursuant to a tariff or contract. The foregoing option also requires Franchisee to sell the Telecommunications System owned by Franchisee and located in the Right-of-Way or such portion thereof as the City may choose to purchase at a fair market price, if the Franchise is terminated for cause. If Franchisee's request for a Franchise renewal is denied, the option requires Franchisee to sell the Telecommunications System owned by Franchisee and located in the Right-of-Way, or such portion thereof as the City may choose to purchase, at fair market value, determined on the basis of the value of the Telecommunications System as a going concern (taking into account such property used and useful in providing service within the City that is not to be conveyed) and with no value allocated to the Franchise itself.

C. The City may exercise its Section 2.6.B option rights in the following manner: the City will first give Franchisee written notice of its intent to purchase the Telecommunications System or a portion of the Telecommunications System and request an inventory of the System or portion specified in the City of Tacoma. Thereafter, Franchisee shall sixty (60) days to produce the requested inventory and the City shall have up to 180 days after receiving the inventory to notify Franchisee that it intends to continue with the exercise of its right to purchase the Telecommunications System or a portion of the Telecommunications System. Within 90 days of the date the City notifies Franchisee of its intent to exercise the option, or by such other time as the parties may separately agree, the



1 parties shall meet to establish a price that comports with the requirements of  
2 Section 2.6.B. If the parties are unable to agree to a price within 180 days after the  
3 City notifies Franchisee that the City intends to exercise its purchase option, either  
4 party may require the price to be set by appraisal by sending the other party notice  
5 that it wishes to have the price set by appraisal. Within 45 days of the date that  
6 notice is submitted, each party may appoint one appraiser. If each party appoints  
7 an appraiser, the two appraisers shall appoint a third appraiser; if only a single  
8 appraiser is appointed (whether by mutual agreement or because of the failure of a  
9 party to timely nominate an appraiser) that appraiser shall be the sole appraiser.  
10  
11 The appraiser or appraisers shall establish a price for the System or portion thereof  
12 that the City desires to purchase in accordance with Section 2.6.B. This appraisal  
13 determination shall be final and non-appealable. The City shall have 120 days  
14 after the decision of the appraisers to notify Franchisee that it wishes to conclude  
15 the transaction; if it does not so notify Franchisee, the option shall be deemed  
16 terminated.  
17

18           If the City gives the notice required by the preceding paragraph, the  
19 parties will thereafter promptly sign all necessary documents required to close the  
20 transaction; provided, however, that the City may make conclusion of the  
21 transaction conditional upon any necessary voter approval of any bond funding for  
22 acquisition of all or a part of the System and, if applicable, the successful sale of  
23 the bonds.  
24

25           The City and Franchisee will share equally the costs associated with  
26 any appraiser that is jointly appointed (by them or by the appraisers each selects);



1 the City will bear costs associated with any appraiser that it separately appoints  
2 and Franchisee will bear costs associated with any appraiser that it separately  
3 appoints.

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

9 To acquire by purchase or condemnation, for the use of  
10 the city itself or its inhabitants, all of the property of the  
11 grantee within the public streets, alleys, or places at a fair  
12 and just value, which shall not include any valuation of  
13 the franchise, right, or privilege, which shall thereupon be  
14 terminated.

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

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

21 E. In the event the City purchases, acquires, takes over, or holds all  
22 or parts of the System, the City shall have the right, without limitation, to assign,  
23 sell, lease, or otherwise transfer its interest in all or parts of such System to any  
24 other Person or entity, including any other Franchisee of a Telecommunications  
25 System, on whatever terms the City deems appropriate.  
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2.7 Right to Require Removal of Property/Right to Remove Property.

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A. Upon termination of this Franchise, Franchisee may be required to remove its property from any Public Rights-of-Way and restore such Rights-of-Way to the condition required by the TMC and City's Right-of-Way Restoration Policy, subject to any rights Franchisee may have to abandon property in place, as set out in Title 16B. If Franchisee fails to remove property that the City requires it to remove, the City may perform the work and collect the actual cost thereof from Franchisee. The actual cost thereof, including direct and indirect administrative costs, shall be a lien upon all plant and property of Franchisee effective upon filing of the lien with the Pierce County Auditor. In the event that Franchisee is permitted to abandon its Facilities in place, the City acknowledges that any ownership it takes in the Facilities thereafter is taken on an AS-IS, WHERE-IS basis.

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

C. Any order by the City issued pursuant to Section 2.7.A to remove Facilities shall be sent by registered or certified mail, postage prepaid, return receipt requested, to Franchisee not later than 24 months following the date of Franchise termination. Removal shall be completed (except with respect to



property that Franchisee is permitted to abandon in place) not later than 12 months following the date of notification to remove the Facilities.

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2 D. Franchisee shall file a written removal plan with the City not later  
3 than 30 calendar days following the date of the receipt of any orders directing  
4 removal, or any consent to removal describing the work that will be performed, the  
5 manner in which it will be performed, and a schedule for removal by location. The  
6 removal plan shall be subject to approval and regulation by the City, including,  
7 without limitation, the City's Right-of-Way Restoration Policy. The affected  
8 property must be restored in compliance with the City's Right-of-Way Restoration  
9 Policy; and any damage caused by Franchisee's removal must be  
10 addressed/compensated to the reasonable satisfaction of the City.  
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13 E. The purchase option provided for in Section 2.6 does not affect  
14 the City's authority to require Franchisee to remove any portion of its  
15 Telecommunications System that the City will not purchase upon Franchise  
16 termination, as provided in this section and Title 16B, nor does it affect the City's  
17 right to assume ownership of any portion of the Telecommunications System that  
18 is abandoned. Within 60 days of a request by the City, Franchisee shall execute  
19 such documents as may be required to convey such abandoned property to the  
20 City, free and clear of all encumbrances.  
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23 2.8 Intentionally Omitted.

24 2.9 Responsibility for Costs. Except as expressly provided otherwise, any  
25 act that Franchisee is required to perform under this Franchise shall be performed  
26 at its cost. If Franchisee fails to perform work that it is required to perform within



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

6 2.10 Work of Contractors and Subcontractors. Work by contractors and  
7 subcontractors is subject to the same restrictions, limitations, and conditions as if  
8 the work were performed by Franchisee. Franchisee shall be responsible for all  
9 work performed by its contractors and subcontractors, and others performing work  
10 on its behalf as if the work were performed by it, and shall ensure that all such  
11 work is performed in compliance with this Franchise and Title 16B, and other  
12 applicable laws, including, without limitation, the City's Right-of-Way Restoration  
13 Policy. Franchisee and its contractors and subcontractors shall be jointly and  
14 severally liable for all damages and correcting all damages they cause. It is  
15 Franchisee's responsibility to ensure that contractors, subcontractors, or other  
16 Person(s) performing work on Franchisee's behalf are familiar with the  
17 requirements of this Franchise, Title 16B, the City's Right-of-Way Restoration  
18 Policy, and other applicable laws governing the work performed by them.

19 2.11 Survival of Terms. Upon the termination or forfeiture of the Franchise,  
20 Franchisee shall no longer have the right to occupy the Public Rights-of-Way for  
21 the purpose of providing Telecommunications Service. However, Franchisee's  
22 obligations to the City (other than the obligation to provide service or cause such  
23 service to be provided to Customers) survive the expiration of these rights  
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1 according to their terms. By way of illustration and not limitation, Sections 2.6, 2.7,  
2 2.9, 2.10, and 4 of this Franchise shall continue in effect as to Franchisee  
3 notwithstanding any expiration, forfeiture, or revocation of the Franchise, except to  
4 the extent that a City-approved Transfer, sale, or assignment of the  
5 Telecommunications System is completed and another entity has assumed full and  
6 complete responsibility for the Telecommunications System or for the relevant acts  
7 or omissions.

8 2.12 Termination by Franchisee. Franchisee may terminate this Franchise,  
9 with or without cause, upon sixty (60) days' written notice of its intent to so  
10 terminate. Upon termination, Franchisee shall accrue no further obligations  
11 hereunder, but any obligations accrued prior to termination shall remain, as shall  
12 obligations that by their terms survive the termination hereof.

14 Section 3. Operation in Streets and Rights-of-Way.

15 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of  
16 this Franchise and TMC Titles 16B and 13, the City's Right-of-Way Restoration  
17 Policy, and other applicable laws, enter onto and use the Public Rights-of-Way to  
18 construct, operate, and maintain a Telecommunications System in Public  
19 Rights-of-Way within the Franchise Area, to provide, or cause to be provided,  
20 Telecommunications Services and internet access services. Under this Franchise,  
21 Franchisee may also construct Personal Wireless Facilities, but may only do so  
22 after obtaining an additional site-specific or master siting agreement from the City  
23 for such Personal Wireless Facilities. Without limiting the foregoing, Franchisee  
24 expressly agrees that it will construct, operate and maintain its System in  
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1 compliance with the requirements of the TMC, including, but not limited to,  
2 Title 16B and Title 13 zoning and land use regulations governing the placement of  
3 its Telecommunications System; and will obtain and maintain all bonds and billable  
4 work orders required by the same.

5 3.2 Construction, Operation, or Maintenance. Franchisee shall, in all  
6 cases, comply with all lawful City ordinances and regulations now in effect or  
7 hereinafter enacted regarding the acquisition of permits and such other items as  
8 may be required by the City in connection with the construction, operation, or  
9 maintenance of the Telecommunications System, including, without limitation, the  
10 City's Right-of-Way Restoration Policy.  
11

12 Without limiting the foregoing, Franchisee agrees that it shall, in the course  
13 of constructing, operating, and maintaining its Telecommunications System,  
14 comply with the requirements of Titles 16B and 13, and among other things:  
15

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

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

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

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

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



1 agreements have been properly filed for and obtained from the proper City officials  
2 and all required permits and agreements obtained and associated fees paid. In  
3 any permit so issued, the City may impose, as a condition of the granting of the  
4 permit, such conditions and regulations as may be necessary to the management  
5 of the Public Rights-of-Way, including, by way of example and not limitation, for the  
6 purpose of protecting any structures in the Public Rights-of-Way, maintaining  
7 proper distance from other utilities, for the proper restoration of such Public  
8 Rights-of-Way and structures, and for the protection of the City and the public and  
9 the continuity of pedestrian and vehicular traffic.  
10

11 D. Franchisee must follow City-established requirements for  
12 placement of Facilities in Public Rights-of-Way, including the specific location of all  
13 Facilities, which includes, without limitation, Personal Wireless Facilities, in the  
14 Public Rights-of-Way, and must in any event install Facilities in a manner that  
15 minimizes interference with the use of the Public Rights-of-Way by others,  
16 including others that may be installing Communications Facilities.  
17

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

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

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

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

(2) Whenever an electric utility opens a trench for the purpose of installing or relocating Facilities underground, Franchisee shall concurrently relocate its Facilities underground and, if it uses the same trench, be responsible for its pro-rated share of the cost.

(3) The City Manager may, for good cause shown, exempt a particular portion of the Telecommunication System from the obligation to locate or relocate Facilities underground, where relocation is impractical, where the Facilities, due to the nature of their function must be above-ground, or where the interest in protecting against visual blight can be protected in another manner. Nothing in this Section 3.2.G prevents the City from ordering Franchisee to locate or relocate its Telecommunication System, either underground, or to a mutually agreed upon above-ground location, when other existing utilities in an area are ordered to locate or relocate their facilities underground under other provisions of the TMC, it being the intent that the number and extent of Overhead Facilities and the visual pollution resulting therefrom will, over time, be reduced and eventually, to the extent feasible, be eliminated.

H. Subject to subsection G(3) above, Franchisee shall participate in conversion to underground Local Improvement Districts (“LIDs”) at the same time as other utilities are required to participate in conversion to underground LIDs. Franchisee, at no cost to the City or abutting property owners, shall share fairly



with other utilities the cost of undergrounding when done through the LID process.

1 As part of its obligations under the TMC, Franchisee shall provide the preliminary  
2 cost estimate, facility conversion designs, and final cost estimates to any LID  
3 project coordinator in a timely manner. At the request of an LID project  
4 coordinator, Franchisee shall perform underground construction and movement of  
5 Customer connections underground (overhead reclaim), in coordination with the  
6 undergrounding services provided by other LID utilities, at no cost to the City or  
7 abutting property owners.  
8

9 I. Franchisee shall promptly repair any and all Public Rights-of-Way,  
10 public property, or private property that is disturbed or damaged during the  
11 construction, operation, or maintenance of its Telecommunications System. Public  
12 property and Public Rights-of-Way must be restored in conformance with the City's  
13 Right-of-Way Restoration Policy.  
14

15 J. No tree trimming shall be performed without the permission of the  
16 City and other affected authorities, and any tree trimming must be performed in  
17 strict accordance with the TMC. Even if tree trimming is authorized by the City,  
18 Franchisee is liable for any damage it causes during the course of tree trimming.  
19

20 K. In any dispute over the adequacy of a restoration relative to this  
21 section, the Tacoma Department of Public Works Director shall, in his/her sole  
22 discretion, make the final determination.  
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24 L. Franchisee shall not remove any Facilities except as hereinafter  
25 provided.  
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(1) Franchisee shall not remove any Facilities which require trenching or other opening of the Rights-of-Way along the extension of the Facilities to be removed without the express permission of the City, which permission shall not be unreasonably withheld, conditioned, or delayed. Franchisee must request permission from the City to remove the Facilities at least 30 days in advance of the date Franchisee proposes to begin removal.

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

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

(4) Subject to the City's rights to purchase the Telecommunications System under Section 2, Franchisee may voluntarily remove any Facilities from the Public Rights-of-Way which have been installed in such a manner that they can be removed without trenching or other opening of the Public Rights-of-Way.

3.3 Right to Inspect and Order Corrections. The City may, at its cost, inspect the Telecommunications System at any time reasonable under the



1 circumstances to ensure compliance with this Franchise and applicable law,  
2 including to ensure that Franchisee's Telecommunications System is constructed  
3 and maintained in a safe condition. If Franchisee's representatives are not on-site  
4 performing work on the Telecommunications System, whenever feasible, the City  
5 shall give reasonable advance notice of its intent to inspect so that Franchisee may  
6 have a representative present during the inspection. If an unsafe condition is  
7 found to exist, the City, in addition to taking any other action permitted under  
8 applicable law, may order Franchisee, in writing, to make the necessary repairs  
9 and alterations specified therein forthwith to correct the unsafe condition on a time  
10 table established by the City which is reasonable in light of the unsafe condition.  
11  
12 The City has the right to correct, inspect, administer, and repair the unsafe  
13 condition if Franchisee fails to do so in a timely manner, and to charge Franchisee  
14 therefor.

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16 3.4 Information Regarding Ongoing Work. In addition to providing notice to  
17 the public of ongoing work as may be required under applicable law, Franchisee  
18 shall make available information regarding any ongoing construction, operation, or  
19 installation of its Telecommunications System sufficient to show (1) the nature of  
20 the work being performed; (2) where it is performed; (3) its estimated completion  
21 date; and (4) progress to completion.

22  
23 Section 4. Regulatory Provisions.

24 4.1 Intent. The City shall have the right to administer and regulate activities  
25 of this Franchise up to the fullest extent of the law. The failure to reserve a  
26 particular right to regulate, or reference a particular regulation, shall not be



1 interpreted by negative implication or otherwise to prevent the application of a  
2 regulation to Franchisee.

3 4.2 Remedies for Franchise Violations. The City has the right to exercise  
4 any and all of the following remedies, singly or in combination, in the event  
5 Franchisee violates any provision of this Franchise:

6 A. Draw upon the performance bond or other security provided  
7 under this Franchise; provided, however, such drawing shall be only in such a  
8 manner and in such amount as the City reasonably determines is necessary to  
9 remedy the default. Should the City take this action, Franchisee shall be  
10 responsible for all direct and actual costs related to such action, including, but not  
11 limited to, actual legal and administrative costs:

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

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

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

15 E. Seeking specific performance of any provision which reasonably  
16 lends itself to such remedy.  
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18 In determining which remedy or remedies for Franchisee's violation are  
19 appropriate, the City may take into consideration the nature and extent of the  
20 violation, the remedy needed to prevent such violations in the future, whether  
21 Franchisee has a history of previous violations of the same or similar kind, and  
22 such other considerations as are appropriate under the circumstances. Remedies  
23 are cumulative; the exercise of one shall not foreclose the exercise of others.  
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1 4.3 Procedure for Remedying Franchise Violations. Before imposing  
2 liquidated damages, or drawing upon the performance bond or any other security  
3 set out in Section 6, the City shall follow the procedure below.

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

7 B. Franchisee's Right to Cure or Respond. Except as provided in  
8 Section 4.3.D, Franchisee shall have 30 days from the receipt of notice described  
9 above to (a) respond to the City contesting the assertion of noncompliance, or  
10 (b) to cure such default or, in the event that by the nature of the default such  
11 default cannot be cured within the 30-day period, initiate steps to remedy such  
12 default as promptly as possible and complete the cure within a reasonable time.  
13 The duty to cure includes the duty to cure all harms caused by the acts or  
14 omissions of Franchisee which gave rise to the alleged non-compliance. At the  
15 end of the 30-day period, Franchisee shall notify the City in writing of the steps it  
16 has taken to cure the default, if any; if the cure is not complete, the reason it is not  
17 complete and the projected date for completion; and if the default is disputed, the  
18 complete basis for that contention.  
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21 C. Public Hearing. The City may schedule a public hearing to  
22 investigate any alleged default. The City shall give Franchisee 20 calendar days'  
23 notice of the time and place of the hearing and provide Franchisee with an  
24 opportunity to be heard.  
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1 D. Action after Hearing. If the City determines after such hearing  
2 that the Franchisee did not timely cure, or initiate steps to cure the default in a  
3 timely manner satisfactory to the City, after the notice required by Section 4.3.A  
4 was provided, then the City may draw upon any performance bond, security fund,  
5 or other security, including requiring performance under the guarantee; and impose  
6 liquidated damages. However, notice and opportunity to cure are not required for  
7 repeat violations, or for a failure to correct a default where Franchisee knew or  
8 should have known it was in default; in such cases, the performance bond, letter of  
9 credit, or other security may be drawn upon, the guarantor required to perform and  
10 liquidated damages imposed after the hearing required by Section 4.3.C.  
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12 E. Liquidated Damage Amounts. Because any material failure to  
13 comply with the provisions of this Franchise by Franchisee will result in injury to the  
14 City, and because it may be difficult to estimate the extent of each such injury,  
15 Franchisee and the City agree to the following liquidated damages, which  
16 provisions represent the best estimate of the damages resulting from injuries of  
17 specific types. The amounts of the liquidated damages set forth in this Franchise  
18 are in 2017 dollars and shall be increased each year by the increase in the  
19 U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for  
20 Pacific Cities and U. S. City Average for the greater Seattle area. The amount of  
21 liquidated damages for all material violations of this Franchise for which actual  
22 damages may not be ascertainable shall be: \$500 per day for each violation, for  
23 each day the violation continues. It is provided, however, that the City shall allow  
24 Franchisee a minimum of 30 days after notice to Franchisee of such neglect,  
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1 failure, or refusal to comply within which to meet compliance or correct  
2 performance, prior to the assessment of any liquidated damages.

3 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its  
4 obligations to comply promptly with any provision of this Franchise by reason of  
5 any failure of the City to enforce prompt compliance, and the City's failure to  
6 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's  
7 conduct.

8 4.5 Force Majeure. Franchisee shall not be deemed in default with  
9 provisions of this Franchise where performance was rendered impossible by war  
10 or riots, civil disturbances, floods, or other natural catastrophes beyond  
11 Franchisee's control; the unforeseeable unavailability of labor or materials; or  
12 power outages exceeding back-up power supplies. The acts or omissions of  
13 affiliates shall not be deemed to be beyond Franchisee's control, and the  
14 knowledge of affiliates shall be imputed to Franchisee. This Franchise shall not  
15 be revoked or Franchisee penalized for such noncompliance, provided that  
16 Franchisee takes immediate and diligent steps to bring itself back into compliance  
17 and to comply as soon as possible under the circumstances with this Franchise  
18 without unduly endangering the health, safety, and integrity of Franchisee's  
19 employees or property, or the health, safety, and integrity of the public, Public  
20 Rights-of-Way, public property, or private property.  
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24 4.6 Alternative Remedies. No provision of this Franchise shall be deemed  
25 to bar the right of the City or Franchisee to seek or obtain judicial relief from a  
26 violation of any provision of this Ordinance or any rule, regulation, requirement, or



1 directive promulgated thereunder. Neither the existence of other remedies  
2 identified in this Franchise nor the exercise thereof shall be deemed to bar or  
3 otherwise limit the right of the City or Franchisee to recover monetary damages for  
4 such violation by Franchisee, or to seek and obtain judicial enforcement of  
5 Franchisee's or City's obligations by means of specific performance, injunctive  
6 relief or mandate, or any other judicial remedy at law or in equity.

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

19           Section 5. Reporting Requirements.

20           5.1 Annual Reports. Within 120 days following the end of Franchisee's  
21 fiscal year each year, Franchisee shall submit a written report to the City which  
22 shall contain a listing of all categories of Gross Receipts collected by Franchisee  
23 for its business activities as identified in Section 2.1, which are activities  
24 specifically taxable as a telephone business under TMC Title 6. Said written report  
25 shall be in sufficient detail and with sufficient explanation to enable the City to  
26



understand the report and to verify the accuracy of the report. In addition,  
1 Franchisee shall provide such other reports as may be required by Title 16B.

2           5.2 Future Franchise Fee Report. In the event that changes in applicable  
3 laws allow the City to require a franchise fee as referenced at Section 6 below,  
4 then no later than 120 days following the end of Franchisee's fiscal year each year  
5 after the imposition of franchise fees, Franchisee shall present a written report to  
6 the City which shall include:  
7

8                   A. Audited financial statements for (1) Franchisee and (2) any  
9 affiliate which is involved in any way with the operation or ownership of the  
10 System; and a financial statement for Franchisee that includes Gross Receipts  
11 from all sources, as well as an income statement and a balance sheet. In the  
12 event any audited financial report has not been published by the date due under  
13 this section, then the audited financial report shall be deemed presented on time if  
14 presented within 30 days after publication.  
15  
16

17                   All financial reports required under this section shall be presented to  
18 the City, accompanied by such notes and explanations as are required to fully  
19 understand the reports. Such notes and explanations shall include, but not be  
20 limited to, an explanation of any and all deductions made from Gross Receipts for  
21 the calculation of fees or taxes to be paid to the City, as well as:  
22

23                           (1) A summary of the previous year's activities for the  
24 Franchise Area, including, but not limited to, the total number of Franchisee's  
25 customers (if any), miles of Facilities, any services added or dropped, and any  
26 technological changes occurring in the system;



(2) Plans for the future; and

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

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

5.4 Preservation of Confidential Information. Trade secrets and confidential information designated as such by Franchisee shall be subject to such protection as provided in Title 16B or under chapter 42.56 RCW, or as otherwise provided by applicable laws. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation regarding its position on the protected status of the information under state or federal law. In the event that the City receives a public records request under chapter 42.56 RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, the City shall promptly provide notice of such disclosure so that Franchisee can take appropriate steps to protect its interests. Nothing in this section prohibits the City from complying with chapter 42.56 RCW, or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Franchisee for compliance with any law or court order requiring the release of



public records. The City shall comply with any injunction or court order obtained by Franchisee which prohibits the disclosure of any such confidential records.

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 for the intended use. Franchisee agrees that if this statutory prohibition is removed, the City may assess a reasonable franchise fee, to be agreed to by the parties if the statutory prohibition is removed. The parties agree that this Section 6.1.A does not limit the right of Franchisee to challenge the Franchise Fee pursuant to 47 USC § 253.

B. Franchisee Subject to the City Telephone Business Tax.

Franchisee agrees that its activities in the City of Tacoma identified in Section 2.1, but excluding internet access service, are activities specifically taxable as a telephone business under TMC Chapter 6A, and are taxable at the rate specified in TMC 6A.40.050.D, now in effect or as amended, but excluding any Gross Receipts from the provision of internet access service. It is agreed that the amount of Gross Receipts to be taxed will 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



1 in the City's consideration and processing of this Franchise application. The first  
2 \$5,000 of said expenses will be covered by the \$5,000 application fee deposited  
3 with the City. To the extent allowed by RCW 35.21.860 or other applicable laws,  
4 Franchisee may be required to pay other costs applicable to this Franchise and  
5 Franchisee's activities hereunder. The amount of payment to be made by  
6 Franchisee to cover these administrative costs shall be determined by the Franchise  
7 Services Manager in conformance with applicable laws. Such obligation further  
8 includes municipal fees related to receiving and approving permits or licenses,  
9 inspecting plans and construction, or relating to the preparation of a detailed  
10 statement pursuant to Chapter 43.21C RCW. Said fees must be paid within 30 days  
11 of receipt of the City's billing therefor.  
12

13 D. Manner of Payment; Audit. Franchisee will pay the City Telephone  
14 Business Tax specified in Section 6.1.B on a monthly basis accompanied by  
15 Franchisee's standard remittance form which specifies the net taxable charges, the  
16 local tax rate, and the local tax due, plus penalties and/or interest, if any is due.  
17 Franchisee shall make all other required fee payments in the form, at the intervals,  
18 and in the manner requested by the City Treasurer, and furnish him/her any  
19 information related to his/her revenue collection functions reasonably requested. In  
20 case of audit, the City Treasurer may require Franchisee to furnish a verified  
21 statement of compliance with Franchisee's obligations or in response to any  
22 questions. Said certificate may be required from an independent, certified public  
23 accountant, at Franchisee's expense. All audits will take place on Franchisee's  
24 premises or offices furnished by Franchisee, which shall be a location within the City  
25  
26



1 of Tacoma or other mutually agreeable place; however, Franchisee must agree to  
2 pay the associated costs of travel. Franchisee agrees, within 30 days of written  
3 request of the City Treasurer, to provide, to the person and address specified in the  
4 City Treasurer's request, copies of all documents filed with any federal, state, or  
5 local regulatory agency, to be mailed to the City Treasurer on the same day as filed,  
6 postage prepaid, affecting any of Franchisee's Facilities or business operations in the  
7 City of Tacoma.

8 E. No Other Deductions. No deductions, including current or  
9 previously paid fees, shall be subtracted from the Gross Receipts amount except  
10 as allowed under state or federal law, upon which payments are calculated and  
11 due for any period, nor shall copyright fees or other license fees paid by  
12 Franchisee be subtracted from Gross Receipts for purposes of calculating  
13 payments.  
14

15 F. Late Payments. Any fees owing which remain unpaid more than  
16 10 business days after the dates specified herein shall be delinquent and shall  
17 thereafter accrue interest at the maximum allowable rate pursuant to  
18 RCW 19.52.020.  
19

20 G. Period of Limitations. The period for commencing an action for  
21 the recovery of any fee payable hereunder shall be six years from the date on  
22 which payment by Franchisee is due, subject to tolling as provided as a matter of  
23 law or equity. Unless within six years from and after the due date for a particular  
24 payment, the City makes written request to review Franchisee's records with  
25 respect to such fee payment (either individually or as part of a broader request)  
26



1 recovery shall be barred with respect to such payment and the City shall be  
2 estopped from asserting any claims whatsoever against Franchisee relating to any  
3 alleged deficiencies in that particular payment.

4           6.2 Auditing and Financial Records. Franchisee shall manage all of its  
5 operations in the City of Tacoma in accordance with a policy of keeping books and  
6 records open and accessible to the City. Without limiting its obligations under this  
7 Franchise, Franchisee agrees that it will collect and make books and records for  
8 operations in the City of Tacoma available for inspection and non-confidential  
9 books and records for operations in the City of Tacoma for copying by the City in  
10 accordance with Title 16B. Franchisee shall be responsible for collecting the  
11 information and producing it. Books and records shall be made available for  
12 inspection to the City at the Tacoma Municipal Building, or such other location as  
13 the parties may agree. Notwithstanding any provision of Title 16B or this  
14 Franchise, if documents are too voluminous or for security reasons cannot be  
15 produced at the Tacoma Municipal Building or mutually agreeable location within  
16 the City, then Franchisee may produce the material at another central location,  
17 provided it also agrees to pay the additional reasonable costs incurred by the City  
18 in reviewing the materials if such location is outside the City.

19           Franchisee shall take all steps reasonably required, if any, to ensure that it  
20 is able to provide the City all information which must be provided or may be  
21 requested under Title 16B or this Franchise, including by providing, or causing to  
22 be provided, appropriate Subscriber privacy notices. Nothing in this section shall  
23 be read to require a Franchisee to violate 47 U.S.C. §§ 222 or 551 or to disclose or  
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make available to the City any books and records protected from disclosure under other applicable law. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City; provided, that the City shall promptly return or destroy upon Franchisee's written request any data prohibited by federal law to be provided to the City and erroneously provided to the City. Records shall be kept for at least six years. In addition to maintaining all records as required by Title 16B, Franchisee shall maintain records sufficient to show its compliance with the requirements of this Franchise, and shall produce those records within 30 days of a City request.

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

The City agrees to request access to only those books and records, in exercising its rights under this section, which it deems reasonably necessary as part of a bona fide exercise of its authority over the Telecommunications System under this Franchise, Title 16B, or other applicable law. The City further agrees that it will withhold from public disclosure those books and records made available to it pursuant to this Section 6.2, but only to the extent that the City believes that it has the discretion to do so under state law. The City will, however, provide notice to Franchisee of any request for such books and records so that Franchisee can engage whatever protective measures are available to it.



6.3 Performance Bond. At the same time it provides its Franchise  
1 acceptance to the City, Franchisee shall provide a performance bond to ensure the  
2 faithful performance of its responsibilities under this Franchise and applicable law,  
3 including, by way of example and not limitation, its obligations to relocate and  
4 remove its facilities, and to restore City Rights-of-Way and other property. The  
5 initial amount of the performance bond shall be \$250,000. The amount of the bond  
6 may be changed from time to time to reflect changed risks to the City or to the  
7 public. Franchisee may be required to obtain additional bonds in accordance with  
8 the City's ordinary practices and/or pursuant to applicable TMC provisions. The  
9 bond shall be in a form and with a surety (authorized to do business in the state of  
10 Washington) reasonably acceptable to the City's Risk Manager and in a form  
11 reasonably acceptable to the City Attorney. Franchisee shall pay all premiums or  
12 costs associated with maintaining the bond, and shall keep the same in full force  
13 and effect at all times during the Franchise Term.  
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6.4 Indemnification by Franchisee.  
17  
18 A. Franchisee, by accepting this Franchise, agrees to release the  
19 City from and against any and all liability and responsibility in or arising out of, or  
20 by reason of, or resulting from or of the negligent acts, errors, or omissions of  
21 Franchisee during the construction, operation, or maintenance of the  
22 Telecommunications System, and, without limiting the provisions of Section 7.4,  
23 agrees not to sue or seek any money or damages from City, except to the extent  
24 Franchisee's Telecommunication System is damaged by the negligent acts or  
25 omissions or willful misconduct of the City or its agents.  
26



1 B. Franchisee agrees to indemnify and hold harmless the City, its  
2 trustees, elected and appointed officers, agents, and employees, from and against  
3 any and all claims, demands, or causes of action of whatever kind or nature, and  
4 the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,  
5 damages, orders, judgments, or decrees, sustained by any third party arising out  
6 of, or by reason of, or resulting from or of the acts, errors, or omissions of  
7 Franchisee or its agents, independent contractors, or employees related to or in  
8 any way arising out of the construction, operation, maintenance, or relocation of  
9 the Telecommunications System, unless and to the extent caused by the  
10 negligence of the City or its agents or representatives. Franchisee waives  
11 immunity under Title 51 RCW and affirms that the City and Franchisee have  
12 specifically negotiated this provision, as required by RCW 4.24.115, to the extent it  
13 may apply.  
14

15 C. Franchisee agrees that the covenants and representations  
16 relating to the indemnity provided in Sections A and B above shall survive the  
17 term/expiration/termination of this Franchise and continue in full force and effect as  
18 to Franchisee's responsibility to indemnify, subject to the applicable statute of  
19 limitations.  
20

21 6.5 Franchisee Insurance.  
22

23 A. Franchisee shall maintain, throughout the term of the Franchise,  
24 adequate insurance, in Franchisee's reasonable judgment, to protect the City, its  
25 trustees, elected and appointed officers, agents, and employees against claims  
26 and damages that may arise as a result of the construction, operation, or



1 maintenance of the Telecommunications System. The City makes no  
2 representation as to what constitutes adequate insurance for Franchisee's  
3 operations. The foregoing notwithstanding, Franchisee must maintain at least the  
4 minimum insurance coverages and amounts set forth in TMC 16B.05.090.

5 B. The required insurance must be obtained and maintained for the  
6 entire period Franchisee has facilities in the Public Rights-of-Way, and for six years  
7 thereafter. If Franchisee, its contractors, or subcontractors do not have the  
8 required insurance, the City may order such entities to stop operations until the  
9 insurance is obtained and approved.  
10

11 C. Certificates of insurance, reflecting evidence of the required  
12 insurance and naming the City as an additional insured with all required  
13 endorsements on the Commercial General Liability and Automotive  
14 policies/coverages hereby required, shall be filed with the City's Risk Manager.  
15 The certificate shall be filed with the acceptance of the Franchise, and annually  
16 thereafter, and as provided in Section E below.  
17

18 D. Policies shall be issued by companies authorized to do business  
19 under the laws of the state of Washington. Financial Ratings must be no less than  
20 "A-VII" in the latest edition of "Bests Key Rating Guide," published by A.M. Best  
21 Guide.  
22

23 E. In the event that the insurance certificate provided indicates that  
24 the insurance shall terminate or lapse during the period of the Franchise,  
25 Franchisee shall furnish, at least 30 days prior to the expiration of the date of such  
26 insurance, a renewed certificate of insurance as proof that equal and like



1 coverage has been or will be obtained prior to any such lapse or termination  
2 during the balance of the period of the Franchise.

3 F. The City reserves the right to require any other insurance  
4 coverage it deems necessary during the term of the Franchise, depending upon  
5 the exposures; provided that such requirement(s) conforms with TMC 16B.

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

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

1           7.1 Posting and Publication. Franchisee shall assume the cost of posting  
2 and publication of this Franchise, as such posting and publication is required by  
3 law, and such is payable upon Franchisee's filing its acceptance of the  
4 Franchise.  
5

6           7.2 Guarantee of Performance. Franchisee acknowledges that it enters  
7 into the Franchise voluntarily in order to secure and in consideration of the grant  
8 from the City of a ten-year Franchise. Performance pursuant to the terms and  
9 conditions of this Franchise agreement is guaranteed by Franchisee.  
10

11           7.3 Governing Law and Venue. The Franchise shall be governed by and  
12 construed in accordance with the laws of the state of Washington without  
13 recourse to any principles of Conflicts of Laws, except that where federal law  
14 preemptively applies, it shall control. Any litigation between the City and  
15 Franchisee arising under or regarding this Franchise shall occur, if in the state  
16 courts, in the Superior Court of Pierce County, and if in the federal courts, in the  
17 United States District Court for the Western District of Washington.  
18

19           7.4 No Recourse. Without limiting such immunities as the City or other  
20 Persons may have under applicable law, Franchisee shall have no monetary  
21 recourse whatsoever against the City or its officials, boards, commissions,  
22 agents, or employees for any loss, costs, expense, or damage arising out of any  
23 provision or requirement of Title 16B or because of the enforcement of Title 16B  
24 or the City's exercise of its authority pursuant to Title 16B, this Franchise, or  
25 other applicable law, except to the extent Franchisee's Telecommunication  
26



1 System is damaged by the negligent acts or omissions or willful misconduct of  
2 the City or its representatives.

3 7.5 Notice. Unless expressly otherwise agreed between the parties, every  
4 notice, billing, or response required by this Franchise to be served upon the City or  
5 Franchisee shall be in writing, and shall be deemed to have been duly given to the  
6 required recipient upon actual receipt or refusal of delivery and shall be sent by a  
7 nationally recognized overnight courier or by U.S. certified mail, return receipt  
8 requested, postage prepaid. The notices or responses to the City shall be  
9 addressed as follows:  
10

11 City of Tacoma  
12 Municipal Services Building  
13 1224 MLK Jr Way  
14 Tacoma, WA 98405  
15 Attn: Franchise Services Manager

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

17 WA-CLEC, LLC  
18 c/o Crown Castle  
19 2000 Corporate Drive  
20 Canonsburg, PA 15317  
21 Attn: Ken Simon, General Counsel

22 with a copy to:

23 WA-CLEC, LLC  
24 c/o Crown Castle  
25 2000 Corporate Drive  
26 Canonsburg, PA 15317  
Attn: SCN Contracts Management

The City and Franchisee may designate such other address from time to  
time by giving written notice to the other, but notice cannot be required to more  
than two addresses.



1 7.6 Execution. Franchisee shall execute and return to the City three  
2 original countersigned copies of this Ordinance and a signed acceptance of the  
3 Franchise granted hereunder within 30 days after the date of passage of the  
4 Ordinance by the City Council. The acceptance shall be submitted in the form  
5 attached hereto or other form acceptable to the City Attorney and in accepting  
6 the Franchise, Franchisee warrants that it has carefully read the terms and  
7 conditions of this Franchise and unconditionally accepts all of the terms and  
8 conditions of this Franchise and agrees to abide by the same and acknowledges  
9 that it has relied upon its own investigation of all relevant facts, that it has had  
10 the assistance of counsel, that it was not induced to accept a Franchise, that  
11 this Franchise represents the entire agreement between Franchisee and the  
12 City, and that Franchisee accepts all risks related to the interpretation of this  
13 Franchise. The countersigned Ordinance and acceptance shall be returned to  
14 the City accompanied by: evidence of insurance; a payment for publication  
15 costs; billable work order deposit; and the security fund deposit and  
16 performance bond.  
17

18  
19 The Franchise rights granted herein shall not become effective until all of  
20 the foregoing is received in acceptable form. In the event Franchisee fails to  
21 submit the countersigned Ordinance and acceptance as provided for herein, or  
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1 fails to provide the required accompanying documents and payments, within the  
2 time limits set forth in this section, the grant of the Franchise shall be null and  
3 void.

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5 Passed \_\_\_\_\_

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8 Mayor

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11 Attest:  
12 City Clerk

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14 Approved as to form:  
15 \_\_\_\_\_  
16 Deputy City Attorney

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**ACCEPTANCE OF CITY FRANCHISE**

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Ordinance No. \_\_\_\_\_, effective \_\_\_\_\_, 2017.

I, \_\_\_\_\_, am the \_\_\_\_\_ of  
WA-CLEC, LLC, a Washington limited liability company, and am the authorized  
representative to accept the above-referenced City franchise ordinance on behalf  
of WA-CLEC, LLC.

I certify that this franchise and all terms and conditions thereof are accepted  
by WA-CLEC, LLC.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

WA-CLEC, LLC

By \_\_\_\_\_

Its \_\_\_\_\_



## ORDINANCE NO. 28464

1 AN ORDINANCE granting a non-exclusive franchise to ExteNet Systems, Inc., a  
2 Delaware corporation, to construct, operate, and maintain a  
3 telecommunications system in the City of Tacoma; setting forth provisions,  
4 terms, and conditions of the grant of franchise; specifically making such  
5 grant subject to the provisions of Title 16B, Title 9 and Title 10 of the  
6 Tacoma Municipal Code, as well as the Tacoma City Charter; providing for  
7 City 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 Tacoma Municipal Code and  
10 Tacoma City Charter.

11 WHEREAS ExteNet Systems, Inc., a Delaware corporation registered to do  
12 business in the state of Washington (“ESI” or “Franchisee”) is a  
13 telecommunications company currently involved in the business of operating a  
14 telecommunications network utilizing fiber optic and wireless technology, and

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

18 WHEREAS ESI has applied to the City to install and operate fiber optic  
19 cable within the City streets and public rights-of-way, and also intends, with  
20 appropriate, additional City authorization and subject to City zoning and land use  
21 regulations, to place above-ground transmission facilities in certain locations in City  
22 right-of-way, and

23 WHEREAS the City Council has determined to grant such a franchise to ESI  
24 upon those certain terms and conditions which the Council deems necessary due  
25 to the unique nature of fiber optic cable and wireless transmission facilities as set  
26 forth herein, and

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



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Now, Therefore,

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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 of the Tacoma Municipal Code (“TMC”), shall have the same meaning or be interpreted as provided in Title 16B. Words not defined here or in Title 16B shall be construed consistently with Title 47 of the United States Code, and if not therein, they shall have their common and ordinary meaning. A reference to any Title of the TMC or to the Tacoma City Charter refers to the same as may be amended from time to time. Any reference to a “party” hereunder shall mean the City or Franchisee, as applicable, and a reference to the “parties” shall mean collectively the City and Franchisee.

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

1.2 “City Manager” means the City Manager or the City Manager’s designee.

1.3 “Communications system” refers to a telecommunications system.

1.4 “Construction, operation, or maintenance” and similar formulations of these terms mean the named actions interpreted broadly, encompassing, among other things, installation, extension, maintenance, replacement, or components thereof, relocation, undergrounding, grading, site preparation, adjusting, testing, make-ready, and excavation.



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1.5 "Customer" means any Person or entity who legally receives within the corporate limits of the City any one or more of the services provided by the Telecommunications System. The definition of "Customer" shall also include Persons who use Franchisee's Facilities, whether as lessees or through other arrangement.

1.6 "Facilities" or "Installations" are and refer to and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by Franchisee, such as antennae, poles, fiber, wires, fixtures, equipment, underground circuits, and conduit in Public Rights-of-Way and other property necessary or convenient for the transmission and distribution of communications service where such facilities are located. "Facilities" or "Installations," when used without a modifier, encompass both Overhead Facilities/Installations and Underground Facilities/Installations. Nothing in this definition or anything else in this Franchise shall be interpreted as authorizing Franchisee to construct its own support system for Overhead Facilities or any other above-ground Facilities in the Franchise Area without the additional authorizations required herein below and as proscribed by City zoning and land use regulation ordinances.

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

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



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1.9 "Franchisee" means ExteNet Systems, Inc., a Delaware corporation registered to do business in the state of Washington with its principal office located at 3030 Warrenton Road, Suite 340, Lisle, IL 60532.

1.10 "Gross Receipts," for purposes of this Franchise, means any and all receipts or income received directly or indirectly by Franchisee, which is derived from the operation of its System in the City, less uncollectibles. Gross Receipts shall include, by way of example and not limitation, revenues from its Telecommunications Service, all fees, late fees, installation and connection fees, upgrade and downgrade fees, and rental fees. The term Gross Receipts shall not include any taxes on services furnished by Franchisee imposed by any municipality, state, or other governmental unit and collected by Franchisee for such governmental unit, nor shall the term include any wholesale services provided by Franchisee upon which fees or taxes have already been levied within the City of Tacoma.

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





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

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

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

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

1.16 "System" means the Telecommunications System.

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



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

6 1.18 "Telecommunications System" means a tangible facility that is used to  
7 provide one or more Telecommunications Services, any portion of which occupies  
8 Public Right-of-Way. The term Telecommunications System by way of example,  
9 and not limitation, includes antennae, wires, equipment cabinets, guys, conduit,  
10 radio transmitting towers, poles, other supporting structures, and associated and  
11 appurtenant facilities used to transmit telecommunications signals. The term  
12 Telecommunications System includes all devices mounted on light poles (where  
13 separately authorized by an attachment agreement) in the Public Rights-of-Way  
14 through which Telecommunications Services are originated or terminated. An  
15 Open Video System is not a Telecommunications System to the extent that it  
16 provides only video services; a Cable System is not a Telecommunications System  
17 to the extent that it provides only Cable Service. The term Telecommunications  
18 System includes any of the tangible components of a Telecommunications System  
19 which occupies Public Rights-of-Way, but poles and other structures to which  
20 Franchisee's Facilities are attached shall not be deemed to be part of Franchisee's  
21 Telecommunications System unless such poles or other structures are owned by  
22 Franchisee.  
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1 1.19. "Telephone Service" means the provision of access to a local  
2 telephone network, local telephone network switching service, intrastate toll  
3 service, or coin telephone service, or providing telephonic, video, data, or similar  
4 communication or transmission for hire via a local telephone network, toll line,  
5 channel, cable, microwave, or similar communication or transmission system by  
6 any person. Telephone Service includes intrastate or interstate service, including  
7 toll service, originating from, or received on, communications equipment or  
8 apparatus in this state if the charge for the service is billed to a person in this state.  
9 Telephone Service does not include the providing of Competitive telephone service  
10 as defined in Tacoma Municipal Code § 6A.40.030, the providing of cable  
11 television service, or the providing of broadcast services by radio or television  
12 stations.  
13

14 1.20 "Underground Facilities" refers to electric utility and Communications  
15 Facilities located under the surface of the ground, excluding the underground  
16 foundations or supports for Overhead Facilities.  
17

18 Section 2. Franchise.

19 2.1 Grant of Franchise. The City hereby grants to Franchisee a  
20 non-exclusive Franchise which, once it becomes effective, shall authorize  
21 Franchisee to use the City's Public Rights-of-Way within the Franchise Area to  
22 construct, maintain, and operate a fiber optic/wireless Telecommunication System  
23 to provide Telecommunication Service and internet access service, and to use the  
24 City's Public Rights-of-Way as authorized herein. This grant of Franchise does  
25 not, by itself, grant any right to construct new, above-ground Facilities without prior  
26



1 City approval, which will require additional permitting and/or an additional site  
2 specific or master siting agreement, in conformance with City zoning and land use  
3 ordinances and applicable state laws.

4 This grant is subject to and must be exercised in strict accordance with and  
5 subject to this Franchise Agreement, Title 16B, and other applicable provisions of  
6 the TMC and Tacoma City Charter, including, but not limited to, the provisions set  
7 forth in Article VIII of the Charter, and TMC Title 13, and this Franchise may be  
8 revoked under Section 2.5 if it is not so exercised. The exercise of any rights  
9 pursuant to this Franchise is subject to the exercise of the City's police powers,  
10 and other regulatory powers as the City may have or obtain in the future, and all  
11 rights granted herein must be exercised in strict accordance with applicable laws,  
12 including, by way of example and not limitation, zoning codes and permitting  
13 requirements. No rights shall pass to Franchisee by implication. This Franchise  
14 shall constitute both a right and an obligation to provide the services of the  
15 Telecommunications System as required by the provisions of this Franchise.  
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18 The grant of this Franchise is limited to the purpose of Franchisee providing  
19 Telecommunications Service and internet access service. This Franchise does not  
20 include permission to provide cable service, as defined in 47 U.S.C. § 522,  
21 multichannel video programming, open video systems, or uses other than  
22 Telecommunications Service.  
23

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



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

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

7 2.2 Franchise Term. The term of the Franchise shall be ten years unless  
8 terminated sooner in accordance with this Franchise, Title 16B, or the Tacoma City  
9 Charter. At the expiration of the term, Franchisee may apply to extend or renew the  
10 Franchise as provided in Title 16B.02.100.

11 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be non-  
12 exclusive.

13 2.4 Transfers, Generally.

14 A. Any transfer of this Franchise, as the term "Transfer" is defined in  
15 TMC Title 16B.01.030.Y, shall be accomplished in accordance with  
16 TMC Title 16B.02.120. Any intra-company Transfer of this Franchise shall be  
17 excepted from the requirements of TMC Title 16B.02.120.A-B if such Transfer and  
18 the Transferee Affiliate meet all of the requirements of TMC Title 16B.02.120.F (or  
19 any successor ordinance). Any Transfer not made in accordance with TMC Title  
20 16B.02.120, may be considered a substantial violation of this Franchise by the City  
21 and may subject the Franchise to termination proceedings by the City as provided  
22 herein and in 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 TMC.

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

D. The requirements of this section shall not be deemed to prohibit the use of Franchisee's property as collateral for security in financing the construction or acquisition of all or part of the Telecommunications System franchised hereunder, provided that no such security shall purport to attach to the City's real property interest in the Public Right-of-Way or any other City interest. In addition, no such arrangement may be made if it would in any respect under any condition prevent the Operator or any successor from complying with the Franchise and applicable law. Any mortgage, pledge, or lease shall be subject to and subordinate to the rights of the City under this Franchise, and other applicable law.

2.5 Revocation. In addition to any rights set out elsewhere in this Franchise, the Tacoma City Charter or Title 16, subject to the notice and cure provisions contained in Title 16B, Section 16B.05.100, the City reserves the right to



1 declare a forfeiture or otherwise revoke this Franchise, and all rights and privileges  
2 pertaining thereto, as provided in Title 16B or in the event that:

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

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

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

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

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

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

16 (2) Notwithstanding the foregoing, the City may declare a  
17 Franchise forfeited without opportunity to cure when Franchisee: (a) fails to begin  
18 to exercise its rights hereunder within 180 calendar days of Franchisee's  
19 acceptance of this Franchise, (b) stops providing all Service it is required to  
20 provide under the Franchise, (c) Transfers without the prior consent of the City as  
21 and when required in the Franchise, or (d) is found by a court or regulatory body  
22 with appropriate jurisdiction to have defrauded or attempted to defraud the City or  
23 Franchisee's customers within the City. Notwithstanding the provisions of  
24 Title 16B.05.100.C.2, if Franchisee fails to timely pay any undisputed Franchise  
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1 application/administrative fees or other undisputed fees owed hereunder or under  
2 Title 16B, before the City can initiate any termination or forfeiture of rights,  
3 Franchisee shall be provided with ten (10) business days' prior written notice and  
4 an opportunity to cure the failure to pay. However, Franchisee shall have the right  
5 to receive 30 days' prior notice of an intent to declare a Franchise forfeited, and  
6 shall have the opportunity to show cause why the Franchise should not be  
7 forfeited.

8 (3) Notwithstanding the foregoing and only to the extent  
9 permitted by applicable law, the Franchise will automatically terminate by force of  
10 law 120 calendar days after an assignment for the benefit of creditors or the  
11 appointment of a receiver or trustee to take over the business of Franchisee,  
12 whether in a receivership, reorganization, bankruptcy, assignment for the benefit of  
13 creditors, or other action or proceeding. However, the Franchise may be  
14 reinstated within that 120-day period, if: (a) such assignment, receivership, or  
15 trusteeship has been vacated; or (b) such assignee, receiver, or trustee has fully  
16 complied with the terms and conditions of Title 16B and this Franchise and has  
17 executed an agreement, approved by any court having jurisdiction, assuming and  
18 agreeing to be bound by the terms and conditions of Title 16B and this Franchise.  
19 However, in the event of foreclosure or other judicial sale of any of the facilities,  
20 equipment, or property of Franchisee, the City may revoke this Franchise, following  
21 a public hearing before the City Council, by serving notice upon Franchisee and  
22 the successful bidder at the sale, in which event the Franchise and all rights and  
23 privileges of this Franchise will be revoked and will terminate 30 calendar days  
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1 after serving such notice, unless: (a) the City has approved the Transfer of the  
2 Franchise to the successful bidder in writing; and (b) the successful bidder has  
3 covenanted and agreed in writing with the City to assume and be bound by the  
4 terms and conditions of this Franchise and Title 16B.

5 2.6 Continuity of Service and Right to Purchase the System.

6 A. In the event the City has declared a forfeiture for cause or  
7 otherwise validly revoked this Franchise as provided herein, or in the event of  
8 expiration of the initial term of this Franchise without this Franchise being renewed  
9 or extended as provided in Section 2.2 (referred to below collectively as a  
10 "termination"), Franchisee shall remove its Facilities from the Public Rights-of-Way  
11 under Section 2.7, unless the City elects to purchase the Facilities as provided in  
12 Section 2.6 B.

13 B. In the event the City has declared a forfeiture for cause or  
14 otherwise validly revoked this Franchise as provided herein, or in the event of  
15 expiration of the initial term of this Franchise without this Franchise being renewed  
16 or extended as provided in Section 2.2 (referred to below collectively as a  
17 "termination"), the City shall have an option upon termination of the Franchise to  
18 purchase that portion of the Telecommunications System located in the  
19 Right-of-Way owned by Franchisee, whether termination is, or is not, for cause.  
20 This option requires Franchisee to convey the Telecommunications System or such  
21 portion thereof as the City may choose to purchase, provided, that nothing herein  
22 shall require the City to accept or pay for any contract that it does not wish to  
23 assume. Franchisee is not required to convey portions of the Telecommunications  
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1 System not located in the Right-of-Way, located outside the City, or that is leased  
2 or used (but not owned) by Franchisee from a third party pursuant to a tariff or  
3 contract. The foregoing option also requires Franchisee to sell the  
4 Telecommunications System owned by Franchisee and located in the Right-of-Way  
5 or such portion thereof as the City may choose to purchase at a fair market price, if  
6 the Franchise is terminated for cause. If Franchisee's request for a Franchise  
7 renewal is denied, the option requires Franchisee to sell the Telecommunications  
8 System owned by Franchisee and located in the Right-of-Way, or such portion  
9 thereof as the City may choose to purchase, at fair market value, determined on the  
10 basis of the value of the Telecommunications System as a going concern (taking  
11 into account such property used and useful in providing service within the City that  
12 is not to be conveyed) and with no value allocated to the Franchise itself.

13  
14 C. The City may exercise its Section 2.6.B option rights in the  
15 following manner: the City will have up to 180 days after receiving the inventory  
16 required by Section 2.6.A to notify Franchisee that it intends to exercise its right to  
17 purchase the Telecommunications System or a portion of the Telecommunications  
18 System. Within 90 days of the date the City notifies Franchisee of its intent to  
19 exercise the option, or by such other time as the parties may separately agree, the  
20 parties shall meet to establish a price that comports with the requirements of  
21 Section 2.6.B. If the parties are unable to agree to a price within 180 days after the  
22 City notifies Franchisee that the City intends to exercise its purchase option, either  
23 party may require the price to be set by appraisal by sending the other party notice  
24 that it wishes to have the price set by appraisal. Within 45 days of the date that  
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notice is submitted, each party may appoint one appraiser. If each party appoints an appraiser, the two appraisers shall appoint a third appraiser; if only a single appraiser is appointed (whether by mutual agreement or because of the failure of a party to timely nominate an appraiser) that appraiser shall be the sole appraiser.

The appraiser or appraisers shall establish a price for the System or portion thereof that the City desires to purchase in accordance with Section 2.6.B. This appraisal determination shall be final and non-appealable. The City shall have 120 days after the decision of the appraisers to notify Franchisee that it wishes to conclude the transaction; if it does not so notify Franchisee, the option shall be deemed terminated.

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

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

D. (1) Nothing in this section or in any other section of this Franchise shall prevent the City's exercise of its rights under the Tacoma City



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

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

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

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

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

## 21 2.7 Right to Require Removal of Property/Right to Remove Property.

22 A. Upon termination of this Franchise, Franchisee may be required  
23 to remove its property from any Public Rights-of-Way and restore such  
24 Rights-of-Way to the condition required by the TMC and City's Right-of-Way  
25 Restoration Policy, subject to any rights Franchisee may have to abandon property  
26



1 in place, as set out in Title 16B. If Franchisee fails to remove property that the City  
2 requires it to remove, the City may perform the work and collect the actual cost  
3 thereof from Franchisee. The actual cost thereof, including direct and indirect  
4 administrative costs, shall be a lien upon all plant and property of Franchisee  
5 effective upon filing of the lien with the Pierce County Auditor. In the event that  
6 Franchisee is permitted to abandon its Facilities in place, the City acknowledges  
7 that any ownership it takes in the Facilities thereafter is taken on an AS-IS,  
8 WHERE-IS basis.

9  
10 B. To the extent any portion of the System in the Public  
11 Rights-of-Way or on any other public property of the City is not removed by the  
12 Operator within 12 months of the end of the Franchise term, the property will be  
13 deemed abandoned in its AS-IS, WHERE-IS condition and shall become the  
14 property of the City if the City wishes to own it.

15  
16 C. Any order by the City issued pursuant to Section 2.7.A to remove  
17 Facilities shall be sent by registered or certified mail, postage prepaid, return  
18 receipt requested, to Franchisee not later than 24 months following the date of  
19 Franchise termination. Removal shall be completed (except with respect to  
20 property that Franchisee is permitted to abandon in place) not later than 12 months  
21 following the date of notification to remove the Facilities.

22  
23 D. Franchisee shall file a written removal plan with the City not later  
24 than 30 calendar days following the date of the receipt of any orders directing  
25 removal, or any consent to removal describing the work that will be performed, the  
26 manner in which it will be performed, and a schedule for removal by location. The



1 removal plan shall be subject to approval and regulation by the City, including,  
2 without limitation, the City's Right-of-Way Restoration Policy. The affected  
3 property must be restored in compliance with the City's Right-of-Way Restoration  
4 Policy; and any damage caused by Franchisee's removal must be  
5 addressed/compensated to the reasonable satisfaction of the City.

6 E. The purchase option provided for in Section 2.6 does not affect  
7 the City's authority to require Franchisee to remove any portion of its  
8 Telecommunications System that the City will not purchase upon Franchise  
9 termination, as provided in this section and Title 16B, nor does it affect the City's  
10 right to assume ownership of any portion of the Telecommunications System that  
11 is abandoned. Within 60 days of a request by the City, Franchisee shall execute  
12 such documents as may be required to convey such abandoned property to the  
13 City free and clear of all encumbrances.

14  
15 2.8 Customers' Right to Obtain Service. It shall be the right of all  
16 Customers to receive all available services insofar as their financial and other  
17 obligations to Franchisee are honored during the term of the Franchise. In addition  
18 to the obligations established under the other provisions of this Franchise, in the  
19 event that Franchisee elects to overbuild, rebuild, modify, or sell the System,  
20 Franchisee shall make its best effort to ensure that all Customers receive service  
21 subject to the terms and conditions of the service contract then in effect between  
22 the respective Customer and Franchisee.

23  
24  
25 2.9 Responsibility for Costs. Except as expressly provided otherwise, any  
26 act that Franchisee is required to perform under this Franchise shall be performed



1 at its cost. If Franchisee fails to perform work that it is required to perform within  
2 the time provided for performance, the City, after first providing notice and an  
3 opportunity to cure as herein provided, may perform the work and bill Franchisee  
4 the actual cost thereof. Franchisee shall pay the amounts billed within 30 days of  
5 receipt of an itemized bill. The parties agree that any amounts paid pursuant to  
6 this section or Title 16B are not franchise fees.

7           2.10 Work of Contractors and Subcontractors. Work by contractors and  
8 subcontractors is subject to the same restrictions, limitations, and conditions as if  
9 the work were performed by Franchisee. Franchisee shall be responsible for all  
10 work performed by its contractors and subcontractors, and others performing work  
11 on its behalf as if the work were performed by it and shall ensure that all such work  
12 is performed in compliance with this Franchise and Title 16B, and other applicable  
13 laws, including without limitation, the City's Right-of-Way Restoration Policy.  
14 Franchisee and its contractors and subcontractors shall be jointly and severally  
15 liable for all damages and correcting all damages they cause. It is Franchisee's  
16 responsibility to ensure that contractors, subcontractor or other Person(s)  
17 performing work on Franchisee's behalf are familiar with the requirements of this  
18 Franchise, Title 16B, the City's Right-of-Way Restoration Policy, and other  
19 applicable laws governing the work performed by them.  
20  
21  
22

23           2.11 Survival of Terms. Upon the termination or forfeiture of the Franchise,  
24 Franchisee shall no longer have the right to occupy the Public Rights-of-Way for  
25 the purpose of providing Telecommunications Service. However, Franchisee's  
26 obligations to the City (other than the obligation to provide service to Customers)





1 survive the expiration of these rights according to their terms. By way of illustration  
2 and not limitation, Sections 2.6, 2.7, 2.9, 2.10, and 4 of this Franchise shall  
3 continue in effect as to Franchisee notwithstanding any expiration, forfeiture, or  
4 revocation of the Franchise, except to the extent that a City-approved Transfer,  
5 sale, or assignment of the Telecommunications System is completed and another  
6 entity has assumed full and complete responsibility for the Telecommunications  
7 System or for the relevant acts or omissions.

8 Section 3. Operation in Streets and Rights-of-Way.

9 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms of  
10 this Franchise and TMC Titles 16B and 13, the City's Right-of-Way Restoration  
11 Policy, and other applicable laws, enter onto and use the Public Rights-of-Way to  
12 construct, operate, and maintain a fiber optic Telecommunications System in  
13 Public Rights-of-Way within the Franchise Area to provide, or cause to be  
14 provided, Telecommunications Services and internet access services. Under this  
15 Franchise, Franchisee may also construct Personal Wireless Facilities, but may  
16 only do so after obtaining an additional site-specific or master siting agreement  
17 from the City for such Personal Wireless Facilities. Without limiting the foregoing,  
18 Franchisee expressly agrees that it will construct, operate, and maintain its System  
19 in compliance with the requirements of Title 16B and TMC Title 13 zoning and land  
20 use regulation ordinances, including those governing the placement of its  
21 Telecommunications System, and with other applicable City codes; and will obtain  
22 and maintain all bonds and billable work orders required by the same.  
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1 3.2 Construction, Operation, or Maintenance. Franchisee shall, in all  
2 cases, comply with all lawful City ordinances and regulations now in effect or  
3 hereinafter enacted regarding the acquisition of permits and such other items as  
4 may be required by the City in connection with the construction, operation, or  
5 maintenance of the Telecommunications System, including, without limitation, the  
6 City's Right-of-Way Restoration Policy.

7 Without limiting the foregoing, Franchisee agrees that it shall, in the course  
8 of constructing, operating, and maintaining its Telecommunications System comply  
9 with the requirements of Titles 16B and 13, and among other things:  
10

11 A. (1) Franchisee shall, by a time specified by the City, protect,  
12 support, temporarily disconnect, relocate, or remove any of its property when  
13 required by the City by reason of traffic conditions; public safety; Public  
14 Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or  
15 widening); change of Public Rights-of-Way grade; construction, installation or  
16 repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other  
17 type of government-owned Communications System, public work, public project,  
18 public facility, or improvement or any government-owned utility; Public Rights-of-  
19 Way vacation; or for any other purpose where the work involved would be aided by  
20 the removal or relocation of the Telecommunications System. Collectively, such  
21 matters are referred to below as the "public work."  
22

23  
24 (2) In the event of an emergency, or where the  
25 Telecommunications System creates or is contributing to an imminent danger to  
26 health, safety, or property, the City may protect, support, temporarily disconnect,



remove, or relocate any or all parts of the Telecommunications System without  
prior notice, and charge Franchisee for actual costs incurred.

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

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

B. Franchisee's obligation to construct, operate, and maintain its Telecommunications System in compliance with all applicable laws, ordinances, departmental rules and regulations, and published or otherwise readily available



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

19 C. Franchisee's construction, operation, or maintenance of its  
20 Telecommunications System shall not commence until all required permits or  
21 agreements have been properly filed for and obtained from the proper City officials  
22 and all required permits and agreements obtained and associated fees paid. In  
23 any permit so issued, the City may impose, as a condition of the granting of the  
24 permit, such conditions and regulations as may be necessary to the management  
25 of the Public Rights-of-Way, including, by way of example and not limitation, for the  
26



1 purpose of protecting any structures in the Public Rights-of-Way, maintaining  
2 proper distance from other utilities, for the proper restoration of such Public  
3 Rights-of-Way and structures, and for the protection of the City and the public and  
4 the continuity of pedestrian and vehicular traffic.

5 D. Franchisee must follow City-established requirements for  
6 placement of Facilities in Public Rights-of-Way, including the specific location of all  
7 Facilities, which includes, without limitation, Personal Wireless Facilities, in the  
8 Public Rights-of-Way, and must in any event install Facilities in a manner that  
9 minimizes interference with the use of the Public Rights-of-Way by others,  
10 including others that may be installing Communications Facilities.  
11

12 The City may require that Facilities be installed at a particular time, at a  
13 specific place, or in a particular manner as a condition of access to a particular  
14 Public Right-of-Way area; may deny access if Franchisee is not willing to comply  
15 with the City's requirements; and may remove, or require removal of, any Facility  
16 that is not installed in compliance with the requirements established by the City, or  
17 which is installed without prior City approval of the time, place, or manner of  
18 installation and charge Franchisee for all the costs associated with removal; and  
19 may require Franchisee to cooperate with others to minimize adverse impacts on  
20 the Public Rights-of-Way through joint trenching and other arrangements  
21 consistent with requirements the City imposes on other similarly situated  
22 franchisees or users of the Public Rights-of-Way.  
23  
24

25 E. Franchisee agrees that, as a condition of a permit for installation  
26 of conduit, the City may require it to install conduit in excess of its reasonably



1 foreseeable requirements for the purpose of accommodating the City where the  
2 City Manager determines it is appropriate to do so to minimize disruption of public  
3 passage or infrastructure, to forestall or relieve exhaustion of Right-of-Way  
4 capacity, or to protect environmentally sensitive areas; provided, that the City will  
5 be responsible for the additional costs, including material and labor, associated  
6 with installing such excess conduit if installed for City use; and provided further,  
7 that City's use of any such excess conduit is limited to non-commercial,  
8 governmental uses.

9  
10 F. To the extent possible and technically and operationally feasible,  
11 Franchisee shall use conduit existing at the time of permitting in installing its  
12 System.

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

17  
18 (1) Whenever the owners of poles locate or relocate  
19 underground within an area of the City, Franchisee shall concurrently relocate its  
20 Facilities underground at its own cost.

21  
22 (2) Whenever an electric utility opens a trench for the purpose  
23 of installing or relocating Facilities underground, Franchisee shall concurrently  
24 relocate its Facilities underground and, if it uses the same trench, be responsible  
25 for its pro-rated share of 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 in areas where other existing utilities are ordered to locate or relocate their facilities underground under other provisions of the TMC, it being the intent that the number and extent of Overhead Facilities and the visual pollution resulting therefrom will, over time, be reduced and eventually, to the extent feasible, be eliminated.

H. Subject to subsection G(3) above, Franchisee shall participate in conversion to underground Local Improvement Districts (“LIDs”) at the same time as other utilities are required to participate in conversion to underground LIDs. Franchisee, at no cost to the City or abutting property owners, shall share fairly with other utilities the cost of undergrounding when done through the LID process. As part of its obligations under the TMC, Franchisee shall provide the preliminary cost estimate, facility conversion designs, and final cost estimates to any LID project coordinator in a timely manner. At the request of an LID project coordinator, Franchisee shall perform underground construction and movement of Customer connections underground (overhead reclaim), in coordination with the undergrounding services provided by other LID utilities, at no cost to the City or abutting property owners.



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

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

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

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

17 (1) Franchisee shall not remove any Facilities which require  
18 trenching or other opening of the Rights-of-Way along the extension of the  
19 Facilities to be removed without the express permission of the City, which  
20 permission shall not be unreasonably withheld, conditioned, or delayed.  
21 Franchisee must request permission from the City to remove the Facilities at least  
22 30 days in advance of the date Franchisee proposes to begin removal.  
23

24 (2) Franchisee shall remove such Facilities as the City orders  
25 it to remove; provided, that the City may not order removal where such removal is  
26





1 primarily to give economic benefit or advantage to a competing provider of  
2 Telecommunications Service.

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

9 (4) Subject to the City's rights to purchase the  
10 Telecommunications System under Section 2, Franchisee may voluntarily remove  
11 any Facilities from the streets which have been installed in such a manner that  
12 they can be removed without trenching or other opening of the Rights-of-Way.

13  
14 3.3 Right To Inspect and Order Corrections. The City may, at its cost,  
15 inspect the Telecommunications System at any time reasonable under the  
16 circumstances to ensure compliance with this Franchise and applicable law,  
17 including to ensure that Franchisee's Telecommunications System is constructed  
18 and maintained in a safe condition. If Franchisee's representatives are not on-site  
19 performing work on the Telecommunications System, whenever feasible, the City  
20 shall give reasonable advance notice of its intent to inspect so that Franchisee may  
21 have a representative present during the inspection. If an unsafe condition is  
22 found to exist, the City, in addition to taking any other action permitted under  
23 applicable law, may order Franchisee in writing to make the necessary repairs and  
24 alterations specified therein forthwith to correct the unsafe condition on a time table  
25  
26



1 established by the City which is reasonable in light of the unsafe condition. The  
2 City has the right to correct, inspect, administer, and repair the unsafe condition if  
3 Franchisee fails to do so in a timely manner, and to charge Franchisee therefor.

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

10  
11 Section 4. Regulatory Provisions.

12 4.1 Intent. The City shall have the right to administer and regulate activities  
13 of this Franchise up to the fullest extent of the law. The failure to reserve a  
14 particular right to regulate, or reference a particular regulation, shall not be  
15 interpreted by negative implication or otherwise to prevent the application of a  
16 regulation to Franchisee.  
17

18 4.2 Remedies for Franchise Violations. The City has the right to exercise  
19 any and all of the following remedies, singly or in combination, in the event  
20 Franchisee violates any provision of this Franchise:

21 A. Draw upon the performance bond or other security provided  
22 under this Franchise; provided, however, such drawing shall be only in such a  
23 manner and in such amount as the City reasonably determines is necessary to  
24 remedy the default. Should the City take this action, Franchisee shall be  
25  
26



responsible for all direct and actual costs related to such action, including, but not limited to, actual legal and administrative costs:

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

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

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

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

B. Franchisee's Right to Cure or Respond. Except as provided in Section 4.3.D, Franchisee shall have 30 days from the receipt of notice described above to (a) respond to the City contesting the assertion of noncompliance, or (b) to cure such default or, in the event that by the nature of the default such



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

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

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

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



1 E. Liquidated Damage Amounts. Because any material failure to  
2 comply with the provisions of this Franchise by Franchisee will result in injury to the  
3 City, and because it may be difficult to estimate the extent of each such injury,  
4 Franchisee and the City agree to the following liquidated damages, which  
5 provisions represent the best estimate of the damages resulting from injuries of  
6 specific types. The amounts of the liquidated damages set forth in this Franchise  
7 are in 2017 dollars and shall be increased each year by the increase in the  
8 U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index for  
9 Pacific Cities and U. S. City Average for the greater Seattle area. The amount of  
10 liquidated damages for all material violations of this Franchise for which actual  
11 damages may not be ascertainable shall be: \$500 per day for each violation, for  
12 each day the violation continues. It is provided, however, that the City shall allow  
13 Franchisee a minimum of 30 days after notice to Franchisee of such neglect,  
14 failure, or refusal to comply within which to meet compliance or correct  
15 performance, prior to the assessment of any liquidated damages.  
16  
17

18 4.4 Failure to Enforce. Franchisee shall not be relieved of any of its  
19 obligations to comply promptly with any provision of this Franchise by reason of  
20 any failure of the City to enforce prompt compliance, and the City's failure to  
21 enforce shall not constitute a waiver of rights or acquiescence in Franchisee's  
22 conduct.  
23

24 4.5 Force Majeure. Franchisee shall not be deemed in default with  
25 provisions of this Franchise where performance was rendered impossible by war or  
26 riots, civil disturbances, floods, or other natural catastrophes beyond Franchisee's



1 control; the unforeseeable unavailability of labor or materials; or power outages  
2 exceeding back-up power supplies. The acts or omissions of affiliates shall not be  
3 deemed to be beyond Franchisee's control, and the knowledge of affiliates shall be  
4 imputed to Franchisee. This Franchise shall not be revoked or Franchisee  
5 penalized for such noncompliance, provided that Franchisee takes immediate and  
6 diligent steps to bring itself back into compliance and to comply as soon as  
7 possible under the circumstances with this Franchise without unduly endangering  
8 the health, safety, and integrity of Franchisee's employees or property, or the  
9 health, safety, and integrity of the public, Public Rights-of-Way, public property, or  
10 private property.  
11

12 4.6 Alternative Remedies. No provision of this Franchise shall be deemed  
13 to bar the right of the City or Franchisee to seek or obtain judicial relief from a  
14 violation of any provision of this Ordinance or any rule, regulation, requirement or  
15 directive promulgated thereunder. Neither the existence of other remedies  
16 identified in this Franchise nor the exercise thereof shall be deemed to bar or  
17 otherwise limit the right of the City or Franchisee to recover monetary damages for  
18 such violation by Franchisee, or to seek and obtain judicial enforcement of  
19 Franchisee's or City's obligations by means of specific performance, injunctive  
20 relief or mandate, or any other judicial remedy at law or in equity.  
21  
22

23 4.7 Compliance with the Laws. Franchisee shall comply with all applicable  
24 federal and state laws and regulations, including regulations of any administrative  
25 agency thereof, as well as all applicable City ordinances, resolutions, rules,  
26 policies, and regulations heretofore or hereafter adopted or established during the



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

7 Section 5. Reporting Requirements.

8 5.1 Quarterly Reports. Within 30 days after the end of each of Franchisee's  
9 fiscal quarters, Franchisee shall submit a written report to the City which shall  
10 contain a listing of all categories of Gross Receipts collected by Franchisee for its  
11 business activities as identified in Section 2.1, which are activities specifically  
12 taxable as a telephone business under TMC Title 6. Said written report shall be in  
13 sufficient detail and with sufficient explanation to enable the City to understand the  
14 report and to verify the accuracy of the report. In addition, Franchisee shall  
15 provide such other reports as may be required by Title 16B.

16  
17  
18 5.2 Annual Reports. In the event that changes in applicable laws allow the  
19 City to require a franchise fee as referenced at section 6 below, then no later than  
20 120 days following the end of Franchisee's fiscal year each year after the  
21 imposition of franchise fees, Franchisee shall present a written report to the City  
22 which shall include:  
23

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



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

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

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

16 (2) Plans for the future; and

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

18  
19 5.3 Additional Reports. Franchisee shall prepare and furnish to the City  
20 within 60 days of written request, to the person and address specified in the City's  
21 request, in a form reasonably prescribed by the City, such additional reports with  
22 respect to Franchisee's operation, affairs, transactions, or property as may be  
23 reasonably necessary and appropriate to ensure compliance with the material  
24 provisions of this Franchise, or to permit the performance of any of the rights,  
25 functions, or duties of the City in connection with the Franchise.  
26





1 5.4 Preservation of Confidential Information. Trade secrets and confidential  
2 information designated as such by Franchisee shall be subject to such protection  
3 as provided in Title 16B or under chapter 42.56 RCW, or as otherwise provided by  
4 applicable laws. Franchisee shall be responsible for clearly and conspicuously  
5 identifying the work as confidential or proprietary, and shall provide a brief written  
6 explanation regarding its position on the protected status of the information under  
7 state or federal law. In the event that the City receives a public records request  
8 under chapter 42.56 RCW or similar law for the disclosure of information  
9 Franchisee has designated as confidential, trade secret, or proprietary, the City  
10 shall promptly provide notice of such disclosure so that Franchisee can take  
11 appropriate steps to protect its interests. Nothing in this section prohibits the City  
12 from complying with chapter 42.56 RCW, or any other applicable law or court order  
13 requiring the release of public records, and the City shall not be liable to  
14 Franchisee for compliance with any law or court order requiring the release of  
15 public records. The City shall comply with any injunction or court order obtained by  
16 Franchisee which prohibits the disclosure of any such confidential records.

19 Section 6. Compensation and Financial Provisions.

20 6.1 Fees; Taxes.

21 A. State Prohibition of Franchise Fee. The parties understand that  
22 RCW 35.21.860 currently prohibits a municipal franchise fee for the intended use.  
23 Franchisee agrees that if this statutory prohibition is removed, the City may assess  
24 a reasonable franchise fee, to be agreed to by the parties if the statutory  
25

26



1 prohibition is removed. The parties agree that this Section 6.1.A does not limit the  
2 right of Franchisee to challenge the franchise fee pursuant to 47 USC § 253.

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

4 Franchisee agrees that its activities in the City of Tacoma identified in Section 2.1,  
5 but excluding internet access service, are activities specifically taxable as a  
6 telephone business under TMC Chapter 6A, and are taxable at the rate specified  
7 in TMC 6A.40.050.D, now in effect or as amended, but excluding any Gross  
8 Receipts from the provision of internet access service. It is agreed that the  
9 amount of Gross Receipts to be taxed will include the amount of tax imposed on  
10 Franchisee by City ordinance. This Franchise does not limit the City's power of  
11 taxation.  
12

13 C. Franchisee Obligated to Pay Administrative Costs. In accord with

14 RCW 35.21.860 as presently effective, and as it may be later amended,  
15 Franchisee must pay the City an amount sufficient to recover administration  
16 expenses incurred in receiving and approving this Franchise, including, but not  
17 limited to, the reasonable costs of outside consultants retained by the City to assist  
18 in the City's consideration and processing of this Franchise application. The first  
19 \$5,000 of said expenses will be covered by the \$5,000 application fee deposited  
20 with the City. To the extent allowed by RCW 35.21.860 or other applicable laws,  
21 Franchisee may be required to pay other costs applicable to this Franchise and  
22 Franchisee's activities hereunder. The amount of payment to be made by  
23 Franchisee to cover these administrative costs shall be determined by the  
24 Franchise Services Manager in conformance with applicable laws. Such obligation  
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1 further includes municipal fees related to receiving and approving permits or  
2 licenses, inspecting plans and construction, or relating to the preparation of a  
3 detailed statement pursuant to Chapter 43.21C RCW. Said fees must be paid  
4 within 30 days of receipt of the City's billing therefor.

5 D. Manner of Payment; Audit. Franchisee will pay the City  
6 Telephone Business Tax specified in Section 6.1.B on a monthly basis  
7 accompanied by Franchisee's standard remittance form which specifies the net  
8 taxable charges, the local tax rate, and the local tax due, plus penalties and/or  
9 interest, if any is due. Franchisee shall make all other required fee payments in  
10 the form, at the intervals, and in the manner requested by the City Treasurer, and  
11 furnish him/her any information related to his/her revenue collection functions  
12 reasonably requested. In case of audit, the City Treasurer may require Franchisee  
13 to furnish a verified statement of compliance with Franchisee's obligations or in  
14 response to any questions. Said certificate may be required from an independent,  
15 certified public accountant, at Franchisee's expense. All audits will take place on  
16 Franchisee's premises or offices furnished by Franchisee, which shall be a location  
17 within the City of Tacoma or other mutually agreeable place; however, Franchisee  
18 must agree to pay the associated costs of travel. Franchisee agrees, within  
19 30 days of written request of the City Treasurer, to provide, to the person and  
20 address specified in the City Treasurer's request, copies of all documents filed with  
21 any federal, state, or local regulatory agency, to be mailed to the City Treasurer on  
22 the same day as filed, postage prepaid, affecting any of Franchisee's Facilities or  
23 business operations in the City of Tacoma.  
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1 E. No Other Deductions. No deductions, including current or  
2 previously paid fees, shall be subtracted from the Gross Receipts amount except  
3 as allowed under state or federal law, upon which payments are calculated and  
4 due for any period, nor shall copyright fees or other license fees paid by  
5 Franchisee be subtracted from Gross Receipts for purposes of calculating  
6 payments.

7 F. Late Payments. Any fees owing which remain unpaid more than  
8 10 business days after the dates specified herein shall be delinquent and shall  
9 thereafter accrue interest at the maximum allowable rate pursuant to  
10 RCW 19.52.020.  
11

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

23 6.2 Auditing and Financial Records. Franchisee shall manage all of its  
24 operations in the City of Tacoma in accordance with a policy of keeping books and  
25 records open and accessible to the City. Without limiting its obligations under this  
26 Franchise, Franchisee agrees that it will collect and make books and records for



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operations in the City of Tacoma available for inspection and non-confidential books and records for operations in the City of Tacoma for copying by the City in accordance with Title 16B. Franchisee shall be responsible for collecting the information and producing it. Books and records shall be made available for inspection to the City at the Tacoma Municipal Building, or such other location as the parties may agree. Notwithstanding any provision of Title 16B or this Franchise, if documents are too voluminous or for security reasons cannot be produced at the Tacoma Municipal Building or mutually agreeable location within the City, then Franchisee may produce the material at another central location, provided it also agrees to pay the additional reasonable costs incurred by the City in reviewing the materials.

Franchisee shall take all steps reasonably required, if any, to ensure that it is able to provide the City all information which must be provided or may be requested under Title 16B or this Franchise, including by providing, or causing to be provided, appropriate Subscriber privacy notices. Nothing in this section shall be read to require Franchisee to violate 47 U.S.C. §§ 222 or 551 or to disclose or make available to the City any books and records protected from disclosure under other applicable law. Franchisee shall be responsible for redacting any data that federal law prevents it from providing to the City; provided, that the City shall promptly return or destroy upon Franchisee's written request any data prohibited by federal law to be provided to the City and erroneously provided to the City. Records shall be kept for at least six years. In addition to maintaining all records as required by Title 16B, Franchisee shall maintain records sufficient to show its



1 compliance with the requirements of this Franchise, and shall produce those  
2 records within 30 days of a 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 The City agrees to request access to only those books and records, in  
8 exercising its rights under this section, which it deems reasonably necessary as  
9 part of a bona fide exercise of its authority over the Telecommunications System  
10 under this Franchise, Title 16B, or other applicable law. The City further agrees  
11 that it will withhold from public disclosure those books and records made available  
12 to it pursuant to this Section 6.2, but only to the extent that the City believes that it  
13 has the discretion to do so under state law. The City will, however provide notice  
14 to Franchisee of any request for such books and records so that Franchisee can  
15 engage whatever protective measures are available to it.  
16  
17

18 6.3 Performance Bond. At the same time it provides its Franchise  
19 acceptance to the City, Franchisee shall provide a performance bond to ensure the  
20 faithful performance of its responsibilities under this Franchise and applicable law,  
21 including, by way of example and not limitation, its obligations to relocate and  
22 remove its facilities, and to restore City Rights-of-Way and other property. The  
23 initial amount of the performance bond shall be \$250,000. The amount of the bond  
24 may be changed from time to time to reflect changed risks to the City or to the  
25 public. Franchisee may be required to obtain additional bonds in accordance with  
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1 the City's ordinary practices and/or pursuant to applicable TMC provisions. The  
2 bond shall be in a form and with a surety (authorized to do business in the state of  
3 Washington) reasonably acceptable to the City's Risk Manager and in a form  
4 reasonably acceptable to the City Attorney. Franchisee shall pay all premiums or  
5 costs associated with maintaining the bond, and shall keep the same in full force  
6 and effect at all times during the Franchise Term.

7 6.4 Indemnification by Franchisee.

8 A. Franchisee, by accepting this Franchise, agrees to release the  
9 City from and against any and all liability and responsibility in or arising out of, or  
10 by reason of, or resulting from or of the negligent acts, errors, or omissions of  
11 Franchisee during the construction, operation, or maintenance of the  
12 Telecommunications System, and, without limiting the provisions of Section 7.4,  
13 agrees not to sue or seek any money or damages from City, except to the extent  
14 Franchisee's Telecommunication System is damaged by the negligent acts or  
15 omissions or willful misconduct of the City or its agents.  
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18 B. Franchisee agrees to indemnify and hold harmless the City, its  
19 trustees, elected and appointed officers, agents, and employees, from and against  
20 any and all claims, demands, or causes of action of whatever kind or nature, and  
21 the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities,  
22 damages, orders, judgments, or decrees, sustained by any third party arising out  
23 of, or by reason of, or resulting from or of the acts, errors, or omissions of  
24 Franchisee or its agents, independent contractors, or employees related to or in  
25 any way arising out of the construction, operation, maintenance, or relocation of  
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1 the Telecommunications System, Franchisee waives immunity under Title 51 RCW  
2 and affirms that the City and Franchisee have specifically negotiated this provision,  
3 as required by RCW 4.24.115, to the extent it may apply.

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

9  
10 6.5 Franchisee Insurance.

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

19  
20 B. The required insurance must be obtained and maintained for the  
21 entire period Franchisee has facilities in the Public Rights-of-Way, and for six years  
22 thereafter. If Franchisee, its contractors, or subcontractors do not have the  
23 required insurance, the City may order such entities to stop operations until the  
24 insurance is obtained and approved.  
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C. Certificates of insurance, reflecting evidence of the required insurance and naming the City as an additional insured with all required endorsements on the Commercial General Liability and Automotive policies/coverages hereby required, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the Franchise, and annually thereafter, and as provided in Section E below.

D. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial Ratings must be no less than "A-VII" 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.

F. The City reserves the right to require any other insurance coverage it deems necessary during the term of the Franchise, depending upon the exposures; provided that such requirement(s) conforms with TMC 16B.

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



1 6.6 Security Fund. Franchisee shall establish a cash security fund or  
2 provide the City an irrevocable letter of credit or assignment of funds in the  
3 amount of \$50,000 as additional security to secure the payment of fees owed, to  
4 secure any other performance promised in this Franchise, and to pay any taxes,  
5 fees, or liens owed to the City. Any letter of credit shall be in a form and with an  
6 institution acceptable to the City's Director of Finance and in a form acceptable to  
7 the City Attorney. Should the City draw upon the cash security fund or letter of  
8 credit or assignment of funds, it shall promptly notify Franchisee and Franchisee  
9 shall promptly restore the fund or the letter of credit or assignment of funds to the  
10 full required amount. The City may from time to time change the amount of the  
11 required security fund/letter of credit/assignment of funds to reflect changes in  
12 the risks to the City and to the public, including delinquencies in taxes or other  
13 payments to the City.  
14

15 Section 7. Miscellaneous Provisions.  
16

17 7.1 Posting and Publication. Franchisee shall assume the cost of posting  
18 and publication of this Franchise, as such posting and publication is required by  
19 law, and such is payable upon Franchisee's filing its acceptance of the Franchise.  
20

21 7.2 Guarantee of Performance. Franchisee acknowledges that it enters  
22 into the Franchise voluntarily in order to secure and in consideration of the grant  
23 from the City of a ten-year Franchise. Performance pursuant to the terms and  
24 conditions of this Franchise agreement is guaranteed by Franchisee.

25 7.3 Governing Law and Venue. The Franchise shall be governed by and  
26 construed in accordance with the laws of the state of Washington without recourse



1 to any principles of Conflicts of Laws, except that where federal law preemptively  
2 applies, it shall control. Any litigation between the City and Franchisee arising  
3 under or regarding this Franchise shall occur, if in the state courts, in the Superior  
4 Court of Pierce County, and if in the federal courts, in the United States District  
5 Court for the Western District of Washington.

6 7.4 No Recourse. Without limiting such immunities as the City or other  
7 Persons may have under applicable law, Franchisee shall have no monetary  
8 recourse whatsoever against the City or its officials, boards, commissions, agents,  
9 or employees for any loss, costs, expense, or damage arising out of any provision  
10 or requirement of Title 16B or because of the enforcement of Title 16B or the City's  
11 exercise of its authority pursuant to Title 16B, this Franchise, or other applicable law,  
12 except to the extent Franchisee's Telecommunication System is damaged by the  
13 negligent acts or omissions or willful misconduct of the City or its representatives.

14 7.5 Notice. Unless expressly otherwise agreed between the parties, every  
15 notice, billing, or response required by this Franchise to be served upon the City or  
16 Franchisee shall be in writing, and shall be deemed to have been duly given to the  
17 required recipient upon actual receipt or refusal of delivery and shall be sent by a  
18 nationally recognized overnight courier or by U.S. certified mail, return receipt  
19 requested, postage prepaid. The notices or responses to the City shall be  
20 addressed as follows:  
21  
22

23  
24 City of Tacoma  
25 Municipal Services Building  
26 1224 MLK Jr Way  
Tacoma, WA 98405  
Attn: Franchise Services Manager



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

1  
2           ExteNet Systems, Inc.  
3           Attn: CFO  
4           3030 Warrenville Road, Suite 340  
5           Lisle, Illinois 60532

6           with copies to "General Counsel" at the same address.

7           The City and Franchisee may designate such other address from time to  
8 time by giving written notice to the other, but notice cannot be required to more  
9 than two addresses.

10           7.6 Execution. Franchisee shall execute and return to the City three  
11 original countersigned copies of this Ordinance and a signed acceptance of the  
12 Franchise granted hereunder within 30 days after the date of passage of the  
13 Ordinance by the City Council. The acceptance shall be submitted in the form  
14 attached hereto or other form acceptable to the City Attorney and in accepting the  
15 Franchise, Franchisee warrants that it has carefully read the terms and conditions  
16 of this Franchise and unconditionally accepts all of the terms and conditions of this  
17 Franchise and agrees to abide by the same and acknowledges that it has relied  
18 upon its own investigation of all relevant facts, that it has had the assistance of  
19 counsel, that it was not induced to accept a Franchise, that this Franchise  
20 represents the entire agreement between Franchisee and the City, and that  
21 Franchisee accepts all risks related to the interpretation of this Franchise. The  
22 countersigned Ordinance and acceptance shall be returned to the City  
23 accompanied by: evidence of insurance; a payment for publication costs; billable  
24 work order deposit; and the security fund deposit and performance bond.  
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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 \_\_\_\_\_, 2017.

I, \_\_\_\_\_, am the \_\_\_\_\_ of ExteNet Systems, Inc., a Delaware corporation, and am the authorized representative to accept the above-referenced City franchise ordinance on behalf of ExteNet Systems, Inc.

I certify that this franchise and all terms and conditions thereof are accepted by ExteNet Systems, Inc.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2016.

**EXTENET SYSTEMS, INC.**

By \_\_\_\_\_

Its \_\_\_\_\_



## ORDINANCE NO. 28471

1 AN ORDINANCE relating to retirement and pensions; amending Chapter 1.30 of  
2 the Tacoma Municipal Code, Retirement and Pensions, by amending  
3 Sections 1.30.350 and 1.30.360 thereof to increase the employer and  
4 employee contribution rates by a combined total of 1 percent, effective the  
5 first pay period in February 2018.

6 WHEREAS the Board of Administration of the City of Tacoma Employees'  
7 Retirement System ("Board"), along with its actuary and investment consultant,  
8 continues to review the funding status of the Tacoma Employees' Retirement  
9 System ("TERS") on an ongoing basis to ensure the financial and actuarial  
10 soundness of the plan, and

11 WHEREAS, at its meeting of June 8, 2017, the Board voted to recommend  
12 to the City Council a 1 percent increase to the combined contribution rate, from  
13 20 percent to 21 percent, based on the results of the most recent valuation report  
14 from the TERS actuary, as well as the guidance of the TERS' Funding and  
15 Benefits Policy, and

16 WHEREAS, in order to accomplish the recommended increase, the Board is  
17 recommending an increase of 0.54 percent in the employer contribution rate, from  
18 10.80 percent of pay to 11.34 percent of pay, effective as of the first pay period in  
19 February 2018; and an increase of 0.46 percent in the employee contribution rate,  
20 from 9.20 percent of pay to 9.66 percent of pay, effective as of the first pay period  
21 in February 2018, and

22 WHEREAS the proposed recommendation was presented and agreed to by  
23 the Joint Labor Committee on September 27, 2017, as required by its Collective  
24 Bargaining Agreement, and  
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WHEREAS, in anticipation of this request, a 1 percent combined contribution rate increase, beginning in 2018, was incorporated into the 2017-2018 Biennial Budget, and

WHEREAS this recommendation is being made in order to ensure and maintain the retirement benefits for the long term; Now, Therefore,

BE IT ORDAINED BY THE CITY OF TACOMA:

That Chapter 1.30 of the Tacoma Municipal Code is hereby amended by amending Sections 1.30.350 and 1.30.360 thereof as set forth in the attached Exhibit "A."

Passed \_\_\_\_\_

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

Approved as to form:

\_\_\_\_\_  
Deputy City Attorney





**EXHIBIT "A"**

1 \* \* \*

2 **1.30.350 Contributions – Deductions.**

3 The Director of Finance shall deduct 8.28 percent, including the required contributions by the member to the  
4 cost of living increase as provided in Section 1.30.665 hereof, from the compensation as defined in  
5 Section 1.30.130, and shall provide the Retirement Board with a certified copy of each time roll. The  
6 deduction shall be ~~8.74% effective as of the first pay period in 2011, and shall increase to 9.2% effective as of  
7 the first pay period in 2012~~9.66%, effective as of the first pay period in February 2018. Each of the amounts  
8 so deducted by the Director of Finance shall forthwith be paid into the Retirement Fund and shall be credited  
9 by the Board to the individual account of the member. Regular interest shall be credited to each individual  
10 account upon such dates as may be determined by the Board. Every employee shall be deemed to have  
11 conclusively consented and agreed to the contributions deducted as above provided.

7 **1.30.360 Contributions – City's share.**

8 At the end of each payroll period, the Director of Finance shall determine the aggregate amount of covered  
9 payroll for each department and shall certify such aggregate amount to the Retirement Board and shall  
10 thereupon transfer to the Retirement Fund, hereinafter provided for, from the money appropriated for that  
11 purpose, that percentage of the aggregate covered payroll of each utility, the Retirement System and General  
12 Fund, which is determined by the Retirement Board based on actuarial investigation as the amount necessary  
13 to fund membership service, prior service, and basic service pensions on an actuarially-sound basis. Effective  
14 January 1, 2000, no contributions shall be made on overtime. The percentage is established at ~~9.72% and shall  
15 be 10.26% effective as of the first pay period in 2011, and shall increase to 10.80% effective as of the first  
16 pay period in 2012~~11.34%, effective as of the first pay period in February 2018, including the required  
17 contributions by the City to the cost of living increase as provided for in Section 1.30.665, until increased or  
18 decreased on the basis of actuarial investigation, as hereinafter provided in Section 1.30.410. Said percentage  
19 shall be changed when found to be necessary to ensure the actuarial and financial soundness of the System.  
20 Regular interest shall be credited to the accumulated contributions of the City in the manner and upon such  
21 dates as may be determined by the Board.

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