



Legislation Passed October 1, 2024

The Tacoma City Council, at its regular City Council meeting of October 1, 2024, adopted the following resolutions and/or ordinances. The summary of the contents of said resolutions and/or ordinances are shown below. To view the full text of the document, click on the bookmark at the left of the page.

Resolution No. 41530

A resolution awarding a contract to Dobbs Heavy Duty Holdings LLC, in the amount of \$3,172,025, plus applicable taxes, plus a 20 percent contingency, budgeted from the Solid Waste Fund, for six compressed natural gas automated side-loader garbage trucks to collect solid waste, recycling, and/or yard waste, for a projected total of \$3,806,430 - Sourcewell Contracts 032824-PMC and 110223-LEG.

[Lewis Griffith, Solid Waste Division Manager; Geoffrey M. Smyth, P.E., Interim Director, Environmental Services]

Resolution No. 41531

A resolution authorizing the execution of a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with 1436 E 31ST ST LLC, for the development of eight multi-family market and regulated rate rental housing units, located at 1434-1436 East 31st Street in the Lower Portland Avenue Mixed-Use Center.

[Debbie Bingham, Program Manager; Pat Beard, Interim Director, Community and Economic Development]

Resolution No. 41532

A resolution authorizing the execution of agreements with the Metropolitan Park District of Tacoma, in the amount of \$870,000, budgeted from the Public Safety Fund, to purchase 2.27 acres to facilitate the future construction of a new Fire Station 7, to enhance emergency response capabilities.

[Justin E. Davis, Facilities Management Division Manager, Public Works; Sionna Stallings-Ala'ilima, Interim Fire Chief]

Resolution No. 41533

A resolution authorizing the one-time use of Council Contingency Funds, in the amount of \$10,000, to support the Alchemy Skateboarding expansion project and youth access fund.

[Council Member Walker]

Resolution No. 41534

A resolution authorizing the one-time use of Council Contingency Funds, in the amount of \$5,000, to sponsor the Tacoma Halloween Parade.

[Council Member Sadalge]

Ordinance No. 28979

An ordinance granting a non-exclusive ten-year franchise agreement to Unite Private Networks, L.L.C., to construct, operate, maintain, remove, replace, and repair fiber-optic communications facilities within public right-of-way areas.

[Jeff Lueders, Cable and Franchise Services Division Manager;

Amy Clancy, Director, Media and Communications Office]



RESOLUTION NO. 41530

1 A RESOLUTION related to the purchase of materials, supplies or equipment, and
2 the furnishing of services; authorizing the execution of a contract with Dobbs
3 Heavy Duty Holdings LLC, in the amount of \$3,172,025, plus applicable
4 taxes, plus a 20 percent contingency, budgeted from the Solid Waste Fund,
5 for six compressed natural gas automated side-loader garbage trucks to
6 collect solid waste, recycling, and/or yard waste, for a projected total of
7 \$3,806,430, pursuant to Sourcewell Contract Nos. 032824-PMC and
8 110223-LEG.

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

13 WHEREAS the Board of Contracts and Awards has concurred with the
14 recommendation for award as set forth in the attached Exhibit "A"; Now, 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 Board of
17 Contracts and Awards to adopt the recommendation for award as set forth in the
18 attached Exhibit "A."

19 Section 2. That the proper officers of the City are hereby authorized to
20 enter into a contract with Dobbs Heavy Duty Holdings LLC, in the amount of
21 \$3,172,025, plus applicable taxes, plus a 20 percent contingency, budgeted from
22 the Solid Waste Fund, for six compressed natural gas automated side-loader
23
24
25
26



1 garbage trucks to collect solid waste, recycling, and/or yard waste, for a projected
2 total of \$3,806,430, pursuant to Sourcewell Contract Nos. 032824-PMC and
3 110223-LEG, consistent with Exhibit "A."
4

5 Adopted _____
6

7 _____
8 Mayor

9 Attest:
10

11 _____
12 City Clerk

13 Approved as to form:
14

15 _____
16 City Attorney
17
18
19
20
21
22
23
24
25
26



RESOLUTION NO. 41531

1 A RESOLUTION relating to the multi-family property tax exemption program;
 2 authorizing the execution of a Multi-Family Housing 12-Year Limited
 3 Property Tax Exemption Agreement with 1436 E 31ST ST LLC, for the
 4 development of eight multi-family market-rate and affordable rental
 housing units to be located at 1434-1436 East 31st Street in the Lower
 Portland Avenue Mixed-Use Center.

5 WHEREAS the City has, pursuant to chapter 84.14 of the Revised Code of
 6 Washington, designated several Residential Target Areas for the allowance of a
 7 limited property tax exemption for new multi-family residential housing, and
 8

9 WHEREAS the City has, through Ordinance No. 25789, enacted a program
 10 whereby property owners in Residential Target Areas may qualify for a Final
 11 Certificate of Tax Exemption which certifies to the Pierce County Assessor-Treasurer
 12 that the owner is eligible to receive a limited property tax exemption, and
 13

14 WHEREAS 1436 E 31ST ST LLC is proposing to develop eight new market-
 15 rate and affordable rental housing units to consist of:

Number of Units	Type of Unit	Average Size
Market Rate		
6	One bedroom, one bath	450 Square Feet
Affordable Rate		
2	One bedroom, one bath	450 Square Feet

16
 17
 18
 19 WHEREAS the affordable units will be rented to households whose income is
 20 at or below 70 percent of Pierce County Area Median Income, adjusted for
 21 household size, as determined by the Department of Housing and Urban
 22 Development on an annual basis, and rent will be capped at 30 percent of those
 23 income levels, adjusted annually, and
 24

25 WHEREAS the project will also include two on-site residential parking stalls,
 26 and



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS the Interim Director of Community and Economic Development has reviewed the proposed property tax exemption and recommends that a conditional property tax exemption be awarded for the property located at 1434-1436 East 31st Street in the Lower Portland Avenue Mixed-Use Center, as more particularly described in the attached Exhibit "A"; Now, Therefore,

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

Section 1. That the City Council does hereby approve and authorize a conditional property tax exemption, for a period of 12 years, to 1436 E 31ST ST LLC, for the property located at 1434-1436 East 31st Street in the Lower Portland Avenue Mixed-Use Center, as more particularly described in the attached Exhibit "A."

Section 2. That the proper officers of the City are authorized to execute a Multi-Family Housing 12-Year Limited Property Tax Exemption Agreement with 1436 E 31ST ST LLC, said document to be substantially in the form of the proposed agreement on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney

Legal description approved:

Chief Surveyor
Public Works Department



EXHIBIT "A"

PROJECT DESCRIPTION

Address: 1434 -1436 East 31st Street

Tax Parcels: 4715013323 & 4715013324

Number of Units	Type of Unit	Average Size	Expected Rental Rate
Market Rate			
6	One bedroom, one bath	450 Square Feet	\$1,600
Affordable Rate			
2	One bedroom, one bath	450 Square Feet	\$1,425 (including utility allowance)

The affordable units will be rented to households whose income is at or below 70 percent of Pierce County Area Median Income, adjusted for household size, as determined by the Department of Housing and Urban Development on an annual basis. Rent will be capped at 30 percent of those income levels, adjusted annually.

LEGAL DESCRIPTION

Legal Description:

LOTS 17 AND 18, BLOCK 8142, THE INDIAN ADDITION TO THE CITY OF TACOMA, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 7 OF PLATS, PAGES 30 AND 31, RECORDS OF PIERCE COUNTY, WASHINGTON.

SITUATE IN THE CITY OF TACOMA, COUNTY OF PIERCE, STATE OF WASHINGTON.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26



RESOLUTION NO. 41532

1 A RESOLUTION authorizing the execution of agreements with the Metropolitan
2 Park District of Tacoma, in the amount of \$870,000, budgeted from the
3 Public Safety Fund, to purchase 2.27 acres to facilitate the future
4 construction of a new Fire Station 7, to enhance emergency response
5 capabilities.

6 WHEREAS the City of Tacoma Fire Department (“TFD”) is requesting the
7 execution of agreements with the Metropolitan Park District of Tacoma (“Metro
8 Parks Tacoma”) to purchase 2.27 acres to facilitate the future construction of a
9 new Fire Station 7 to enhance emergency response capabilities, and

10 WHEREAS, as the community of Tacoma grows and changes, the
11 operations of TFD need to grow and change to ensure the department continues to
12 meet the needs of the community, and

13 WHEREAS the current Fire Station 7 was constructed in 1959 and is
14 collocated with the South Tacoma Library Branch at 5448 South Warner Street,
15 and

16 WHEREAS the station is staffed with a single engine company that
17 responds to over 3,500 emergencies annually, which far exceeds the
18 department’s target and national standard of 2,500 calls annually, and

19 WHEREAS, there is a need for an additional response unit to this area;
20 however, the station is undersized, and the existing property lacks the capacity
21 for the needed expansion to accommodate additional emergency vehicles,
22 equipment, and staff, and
23
24
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS, as part of the Fire Facilities Master Plan (2024), it is recommended that the existing station be relocated, and a new station be constructed, and

WHEREAS, in partnership with Metro Parks Tacoma, the City has been evaluating undeveloped Metro Parks Tacoma owned property located to the west of the South End Recreation Area ("SERA"), near South 60th and South Tyler Streets, to site a new station, and

WHEREAS the proposed site is currently undeveloped, has been significantly impacted by prior site grading and disturbance, and due to its isolation from other active areas of the park, has historically been the subject of misuse and dumping, and

WHEREAS this location has been identified as a favorable location for a new fire station and this vacant corner of the SERA campus would strategically place TFD in a better location to respond more effectively to the growing South Tacoma community, while also collocating these vital emergency resources on the SERA campus which is a designated disaster/crisis response site, and

WHEREAS there have been several opportunities for the community to engage on the proposal to relocate Fire Station 7, and

WHEREAS, on June 10, 2024, the first reading of the surplus and sale was presented to the Metropolitan Park District of Tacoma Board of Park Commissioners ("Park Board"), and



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS at the August 26, 2024 Park Board meeting, community comments were received and the second reading of the surplus and sale was presented and unanimously approved by the Park Board; Now, Therefore,

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

Section 1. That the request of the City of Tacoma Fire Department to purchase the real property located near South 60th and South Tyler Streets, from the Metropolitan Park District of Tacoma, for the amount of \$870,000, plus closing costs, budgeted from the Public Safety Fund, for the future construction of a new Fire Station 7, is hereby approved.

Section 2. That the proper officers of the City are hereby authorized to close on the purchase of the property for the purposes hereinabove enumerated, as memorialized in that certain Real Estate Purchase and Sale Agreement with the Metropolitan Park District of Tacoma, a copy of which is on file in the office of the City Clerk.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Deputy City Attorney



RESOLUTION NO. 41533

1 BY REQUEST OF COUNCIL MEMBERS DANIELS, RUMBAUGH, AND WALKER

2 A RESOLUTION authorizing the one-time use of funds in the amount of \$10,000,
3 budgeted from the Council Contingency Fund, with Alchemy Skateboarding,
4 to sponsor their expansion project and youth access fund.

5 WHEREAS Alchemy Skateboarding (“Alchemy”) is a non-profit organization
6 that currently operates the only public indoor skate park in Pierce County, and one
7 of only four in Washington State, and

8 WHEREAS in addition to providing regular and affordable access to this
9 indoor skate space, Alchemy also brings skateboarding to the community by
10 hosting or supporting public events with free skateboard programming, including
11 pop-up skateboard ramps, boards and safety equipment, and instructors who help
12 many first-time skaters safely experience the joy of skating, and

13 WHEREAS Alchemy has a track record of more than ten years of impactful
14 programs, innovative approaches to non-profit management, and a strong list of
15 community non-profit partners/collaborators, and their participant numbers are also
16 growing each year, and

17 WHEREAS Alchemy has served more than 6,500 participants in various
18 programs this year and has offered more than 2,400 hours of programming,
19 provides a much-needed positive outlet for youth in the City, and is an important
20 partner in efforts to reduce youth violence and build confidence, creativity, and grit
21 in our young people, and

22 WHEREAS Alchemy has also created skate-based curriculum for in and out
23 of school learning, partnered with local high schools to offer credit bearing skate
24



1 classes, worked with Pierce County's Juvenile Court system to provide positive
2 youth development programs to court-connected and at-risk youth, pioneered
3 career development skill building opportunities related to art, advocacy, building,
4 and design through an innovative after-school leadership program, and worked to
5 teach thousands of young people and adults how to skate, and
6

7 WHEREAS Alchemy currently occupies a 3,000 square foot building, which
8 contains a 2,000 square foot skate space with ramps and skate features, a small
9 program workshop, and a 1,000 square foot skateboard shop for participants,
10 skaters, and community members to access high quality equipment, knowledge,
11 and support, and
12

13 WHEREAS Alchemy is currently in the process of identifying and moving into
14 a larger facility better-suited to serve their continually growing community and
15 maintain itself as a regional hub for skateboarding, positive youth development
16 programs, and alternative creative-cultural community interests, and
17

18 WHEREAS with expanded facilities, Alchemy could accommodate more
19 participants, reduce wait times, and offer a greater variety of youth programs, and
20

21 WHEREAS a larger space would also enable Alchemy to host bigger
22 community events and workshops, fostering greater community engagement and
23 cohesion, and enhanced facilities would provide more opportunities for educational
24 outreach, integrating skateboarding with other disciplines like art, design, and urban
25 planning on a larger scale, and
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

WHEREAS this expansion would not only support physical activity and creativity, but also contribute to the personal and professional development of participants, ultimately strengthening the cultural fabric of the City and beyond, and

WHEREAS Alchemy’s youth access fund provides financial assistance for Alchemy programming and park access to those in need under the age of 24, and would also help ensure that all young people can access its programming and resources, and

WHEREAS the programs and services offered to youth by Alchemy support and advance the City’s public safety and economic development programs and goals, and expansion of its facilities and programs will increase those benefits, and

WHEREAS, at the September 24, 2024, Study Session, Council Member Walker shared a Council Consideration Request to authorize the one-time use of \$10,000 from the Council Contingency Fund to sponsor the Alchemy expansion project and youth access fund, and would also include the City of Tacoma logo and name as a sponsor, and

WHEREAS City staff will negotiate and execute an agreement for services, with terms and deliverables for the City’s investment, and

WHEREAS RCW 35.34.250 and 35.34.260 authorize a withdrawal from the Council 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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

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

WHEREAS the City Council finds that the City’s investment in the expansion of Alchemy’s expansion of facilities and services is a fundamental governmental purpose within the City’s authority to provide for economic development and investment in the City of Tacoma which is sufficient and appropriate consideration to the public to justify the City’s investment; Now, Therefore,

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

Section 1. That the foregoing Recitals are hereby adopted as the City Council’s legislative findings.

Section 2. That one-time funding in the amount of \$10,000, budgeted from the Council Contingency Fund, is hereby approved for the purpose of sponsoring the Alchemy Skateboarding (“Alchemy”) expansion project and youth access fund.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Section 3. That the proper officers of the City are hereby authorized to confirm deliverables with Alchemy for the purposes hereinabove enumerated, and document as appropriate.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney



RESOLUTION NO. 41534

1 BY REQUEST OF COUNCIL MEMBERS DIAZ, SADALGE, AND WALKER

2 A RESOLUTION authorizing the one-time use of funds in the amount of \$5,000,
3 budgeted from the Council Contingency Fund, to sponsor the Tacoma
4 Halloween Parade.

5 WHEREAS parades and festivals are economic drivers for local communities
6 as they help provide support to local businesses and economies, and advance the
7 City's economic development programs, and

8 WHEREAS on October 19, 2024, the Tacoma Halloween Parade ("THP") will
9 be making its haunting debut in the McKinley Hill neighborhood, and

10 WHEREAS the festivities will begin in the afternoon with an all-ages street
11 fair along McKinley Avenue, between East Wright Avenue and East Morton Street,
12 and will feature over 20 retail and merchandise vendors, including many vendors
13 from the Tacoma Haunted Farmers Market, as well as local community and
14 business booths, and local food trucks supplementing McKinley Hill Business
15 District food establishments that will be open during the event, and

16 WHEREAS the THP will also feature a stage with performances by local
17 artists and entertainers, and

18 WHEREAS as night falls, more than 40 individuals and groups are expected
19 to be walking, cheering, dancing, or waving from a float travelling through the
20 streets in a spectacle that will light up the McKinley Hill neighborhood, and

21 WHEREAS families, friends, and fans of all things spooky are invited to join
22 the crowd and celebrate the community's creativity and Halloween spirit which has
23

24
25
26



1 been planned by the Stellar Soireés Event Creation and the McKinley Hill Business
2 Association, and

3 WHEREAS this sponsorship level will provide the following benefits: (1)
4 parade presenter; (2) logo on 2024 swag bag; (3) parade participant spot; (4) public
5 shout out during the event; and (5) ghoulish social media package which includes
6 presenting sponsor, sponsor spotlight, sponsor Thank You, community post and
7 Blue Mouse Theatre on-screen advertisement, and

8 WHEREAS, at the September 24, 2024, Study Session, Council
9 Member Sadalge shared a Council Consideration Request to authorize the one-
10 time use of \$5,000 from the Council Contingency Fund to sponsor the Tacoma
11 Halloween Parade, and

12 WHEREAS City staff will negotiate and execute an agreement for services,
13 with terms and deliverables for the City's investment, and

14 WHEREAS RCW 35.34.250 and 35.34.260 authorize a withdrawal from the
15 Council Contingency fund for any municipal expense, the necessity or extent of
16 which could not have been foreseen or reasonably evaluated at the time of
17 adopting the budget, and

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

20 WHEREAS the City Council finds that City investment in the THP is a
21 fundamental governmental purpose within the City's authority to provide for
22 economic development and promote investment in the City of Tacoma which is
23
24
25
26



sufficient consideration to the public to justify the City's investment; Now,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Therefore,

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

Section 1. That the foregoing Recitals are hereby adopted as the City Council's legislative findings.

Section 2. That one-time funding in the amount of \$5,000, budgeted from the Council Contingency Fund, is hereby approved for the purpose of supporting the Tacoma Halloween Parade.

Section 3. That the proper officers of the City are hereby authorized to confirm deliverables with Tacoma Halloween Parade for the purposes hereinabove enumerated, and document as appropriate.

Adopted _____

Mayor

Attest:

City Clerk

Approved as to form:

Chief Deputy City Attorney



ORDINANCE NO. 28979

1 AN ORDINANCE relating to cable communications and franchise services;
2 granting the Unite Private Networks, L.L.C., a Delaware Limited Liability
3 Company, the nonexclusive right, privilege, authority, and limited
4 franchise to construct, operate, maintain, remove, replace, and repair
5 fiber-optic communications facilities in designated areas of City right of
6 way, together with equipment and appurtenances thereto, for the
7 transmission of data within and through those certain right of way areas,
8 streets, and public property within the City of Tacoma.

9 WHEREAS, Title 16B.02.020 requires a franchise prior to constructing a
10 Telecommunications Facility or providing Telecommunications Services, and

11 WHEREAS the Tacoma City Charter authorizes the City to grant
12 nonexclusive franchises for the use of City right-of-way, streets, and public
13 property, and

14 WHEREAS the Unite Private Networks, L.L.C. (hereinafter “Grantee” or
15 “Franchisee” or “Unite”), has owned and operated a Telecommunications Facility
16 consisting of fiber-optic communication lines through designated public right-of-way
17 areas within the City of Tacoma (hereinafter “City” or “Grantor”) authorized under
18 Ordinance 27986 on June 14, 2011, and is now applying for a new franchise to
19 continue to operate and maintain the same Telecommunications Facility, and

20 WHEREAS, the Tacoma City Council (“City Council”) has determined to
21 grant such a franchise to Unite Private Network LLC upon those certain terms
22 and conditions which the City Council deems necessary, and; Now, Therefore,

23
24
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

BE IT ORDAINED BY THE CITY OF TACOMA:

Section 1. Purpose.

The City grants this renewal of the nonexclusive limited franchise to Grantee to operate and maintain a Telecommunications Facility consisting of fiber-optic communication lines and related facilities (“Facilities”) necessary to the operation of Grantee’s business and to the health, safety, and welfare of the community as set forth Schedule I (“Franchised Area”) attached hereto. This Franchise is conditioned upon the terms and conditions contained herein and Grantee’s compliance with any applicable federal or state regulatory programs that currently exist or may hereafter be enacted by any federal or state regulatory agencies with jurisdiction over the Grantee and its use of the right-of-way. The purpose of this Franchise is to delineate the conditions relating to Grantee’s use of the public’s right-of-way, streets and property and to create a foundation for the parties to work cooperatively in the public’s best interests after this ordinance becomes effective. By granting this Franchise, the City is not assuming any risks or liabilities therefrom, which shall be solely and separately borne by Grantee.

Section 2. Right Conveyed.

2.1 Grantor hereby grants, under the terms and conditions contained herein, to Grantee, a limited liability company organized and existing under and by virtue of the laws of the State of Delaware, and which is registered and authorized to transact business within the State of Washington, the right, privilege, authority, and franchise to construct, operate, maintain, remove, replace, and repair the



1 Facilities, together with all equipment and appurtenances, as may be necessary
2 thereto, for the transmission and handling of electronic information and data,
3 through and under those certain streets, avenues, drives, and other public lands
4 within the City of Tacoma, as designated and more particularly described in
5 Schedule I, which is attached hereto and expressly incorporated herein by this
6 reference ("Franchised Area").
7

8 2.2 This Franchise is only intended to convey a limited right and interest
9 as to that public property and those rights of way designated on Schedule I in which
10 the City has an actual interest. It is not a warranty of title or interest in City road
11 rights-of-way, nor is it a warranty of Grantee's right to locate in any such area.
12 None of the rights granted herein shall affect the City's ability to use or jurisdiction
13 over its property, streets or rights of way.
14

15 Section 3. Term.

16 Each of the provisions of this Franchise shall become effective upon
17 Grantee's acceptance of the terms and conditions contained herein ("Effective
18 Date") and shall remain in effect for ten (10) years thereafter. Subsequently, and
19 in accordance with the terms and provisions of Tacoma Charter Article VIII, City
20 Council may consider renewing this Franchise, at the written request of Grantee,
21 for any additional renewal period at any time within two (2) years before the end of
22 the Franchise's original ten (10) year term, unless either party expresses its
23 intention in writing to terminate this Franchise at the conclusion of the original ten
24 (10) year term.
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Section 4. Compliance with Laws Standards and Policies.

Grantee shall, in carrying out any authorized activities under the privileges granted herein, comply with all applicable federal, state and local laws of any governmental entity with jurisdiction over the Facilities. This shall include all applicable laws, rules and regulations, and published City of Tacoma policies relating to Grantee's use of City right-of-way existing at the Effective Date of this Franchise or that may be subsequently enacted, modified or amended by any governmental entity with jurisdiction over Grantee and/or the Facilities.

Section 5. Construction on Public Properties.

5.1 This Section 5 shall apply to all construction done by Grantee in the Franchised Area. Except in the event of an emergency, Grantee shall provide Grantor at least thirty (30) calendar days' written notice prior to any alteration, repair, replacement, removal, or other substantial activity, other than routine inspections and maintenance, by Grantee, its agents, employees or contractors on Grantee's Facilities or appurtenant structures on Grantor's property. Said written notice shall include, at a minimum, detailed plans and specifications, if any, and a detailed description of the proposed work and anticipated time of the work. Such work shall only commence upon the issuance of applicable permits by the City, which permits shall not be unreasonably withheld or delayed. In the event of an emergency requiring immediate action by Grantee for the protection of the Facilities, Grantor's property or other persons or property, Grantee may take such action upon such notice to Grantor as is reasonable under the circumstances.



1 5.2 All work done hereunder by Grantee or upon Grantee's direction or
2 on Grantee's behalf shall be undertaken and completed in a workmanlike manner
3 and in accordance with the descriptions, plans and specifications provided to, and
4 approved by, Grantor. Grantee's activities shall be conducted in such a manner as
5 to avoid damage or interference with other utilities, drains or other structures, and
6 to interfere as little as possible with public travel, or other municipal uses and the
7 free use of adjoining property so as to provide safety for persons and property.
8 The Grantee's construction, maintenance and repairs shall be in compliance with
9 all applicable laws and regulations of governmental agencies with jurisdiction
10 including, without limitation the City's right-of-way restoration policy.

13 5.3 The City may condition the granting of any permit or other approval
14 that is required under this Franchise, at any time, on any lawful condition or
15 regulation, unless such condition or regulation is in conflict with a federal directive,
16 as may be reasonably necessary to the management of the public right-of-way or
17 the Grantor's property, including, by way of example and not limitation, bonding,
18 maintaining proper distance from other utilities, protecting the continuity of
19 pedestrian and vehicular traffic and protecting any right-of-way improvements,
20 private facilities and public safety.

23 5.4 Whenever it shall be necessary in constructing, maintaining, repairing,
24 relocating, removing or replacing any of the Grantee's Facilities in any street,
25 right-of-way area, or public property, the Grantee shall without delay, as soon as is
26 commercially reasonable, and at Grantee's sole expense, remove all debris and



1 restore the surface of the street, or public property as nearly as practicable to as
2 good or better condition as it was in before the work began. Grantee shall replace
3 any property corner monuments, survey reference or hubs that were disturbed or
4 destroyed during Grantee's work in the areas covered by this Franchise. Such
5 restoration shall be done in a manner consistent with applicable codes and laws,
6 under the supervision of the City's Director of Public Works or his authorized
7 designee and to the City's reasonable satisfaction and specifications. Whenever
8 restoration is required hereunder, the restoration shall be done under a letter of
9 credit, bond or assignment of funds in an amount appropriate to guarantee
10 adequate restoration.
11
12

13 5.5 Grantee shall continuously be a member of the State of Washington
14 one number locator service under RCW 19.122, or approved equivalent, and shall
15 comply with all such applicable rules and regulations. Grantee shall provide
16 reasonable notice to the City prior to commencing any work or construction under
17 this Franchise and additionally to those owners or other persons in control of
18 property abutting the Franchise Area when such work or construction will affect
19 access to such property or otherwise impact such property or the private or public
20 improvements within said area.
21

22 5.6 Upon acceptance of this Franchise by Grantee, and as a condition
23 of this Franchise, Grantee shall make available to the City, upon and within sixty
24 (60) working days of the City's written request and at no cost to the City,
25 relevant as-built plans, maps and records revealing the current location and
26



1 condition of Grantee's Facilities within the public right-of-way and public places.

2 5.7 Nothing in this Franchise shall be deemed to impose any duty or
3 obligation upon Grantor to determine the adequacy or sufficiency of Grantee's plans
4 and designs or to ascertain whether Grantee's proposed or actual construction,
5 testing, maintenance, repairs, replacement or removal is in conformance with the
6 plans and specifications reviewed by Grantor. Grantee shall ensure any contractor
7 working on its job sites within the Franchise Area, has a written safety plan
8 addressing safety of all persons and property during the performance of any work
9 therein.
10

11 Section 6. Operations, Maintenance, Inspection and Testing.

12 Grantee shall operate, test, inspect and maintain its Facilities in full
13 compliance with all applicable laws, rules, regulations and policies as now enacted
14 or hereafter amended, and any other current or future laws or regulations that are
15 applicable to Grantee's Facilities.
16

17 Section 7. INTENTIONALLY OMITTED

18 Section 8. Relocation.

19 8.1 Relocation for Public Work. Grantee shall, by a time specified by the
20 Grantor, protect, support, temporarily disconnect, relocate, or remove any of its
21 Facilities when required by Grantor for work in furtherance of the public health,
22 safety, or welfare, which work includes, without limitation: traffic conditions; public
23 safety; public right-of-way construction; public right-of-way repair (including
24 resurfacing or widening); change of public right-of-way grade; construction,
25
26



1 installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks,
2 or any other type of government-owned telecommunications or public transportation
3 systems, public work, public facility, or improvement of any government-owned
4 utility; public right-of-way vacation; or for any other public purpose where the work
5 involved would be aided by the removal or relocation of the Facilities. Collectively,
6 such matters are referred to as the “public work.”
7

8 8.1.1 Grantee may, after receipt of written notice requesting a
9 relocation of its facilities under section 8.1, submit to the City written alternatives
10 to such relocation within thirty (30) calendar days of receiving the plans and
11 specifications. The City shall evaluate such alternatives and advise Grantee in
12 writing if one or more of the alternatives are suitable to accommodate the work
13 that would otherwise necessitate relocation of the Facilities. If so requested by
14 the City, Grantee shall submit additional information to assist the City in making
15 such evaluation. The City shall give each alternative proposed by Grantee full
16 and fair consideration but retains sole discretion to decide for itself whether to
17 utilize its original plan or an alternative proposed by Grantee. In the event the
18 City ultimately determines that there is no other reasonable alternative, Grantee
19 shall relocate its Facilities as otherwise provided in this Section.
20
21

22 8.1.2 Grantor shall work cooperatively with Grantee in determining a
23 viable and practical route within which Grantee may relocate its Facilities under this
24 section 8, in order to minimize costs while meeting the public work project
25 objectives. Upon receipt of Grantor’s notice, plans and specifications, Grantee shall
26



1 complete relocation of its Facilities so as to accommodate the public work project at
2 least ten (10) calendar days prior to commencement of the public work project or
3 such other time as the parties may agree in writing.

4
5 8.2 Notice. Except in the case of emergencies, the City shall provide
6 written notice, describing where the public work is to be performed, at least sixty
7 (60) days prior to the deadline by which Grantee must protect, support, temporarily
8 disconnect, relocate or remove its Facilities. Grantee may seek an extension of the
9 time to perform such tasks where they cannot be performed in sixty (60) days even
10 with the exercise of due diligence, and such request for an extension shall not be
11 unreasonably refused.
12

13 8.3 Emergency Relocation, or Repair. In the event of an emergency, or
14 where the Facilities create or are contributing to an imminent danger to health,
15 safety, or property, the City may protect, support, temporarily disconnect, remove,
16 repair or relocate any or all parts of the Facilities, without prior notice, and charge
17 the Grantee for costs incurred.
18

19 8.4 Relocation for Other than Public Work. The City reserves its
20 authority to require relocation of the Facilities located within the public right-of-way,
21 as provided for under applicable state, federal, and local law.
22

23 8.5 Redesign Option. As an alternative to relocation, Grantee may
24 propose an alternative design for the pending public work in order to avoid any
25 relocation of Grantee's Facilities. Such redesign proposal shall be subject to
26 review and approval by the City and all costs of the redesign, including, without



1 limitation, the costs actually incurred in the public work as a result of the redesign
2 shall be solely for Grantee's account. Approval and acceptance of any such
3 redesign proposal shall be at the sole discretion of the City.
4

5 Section 9. INTENTIONALLY OMITTED

6 Section 10. Dispute Resolution.

7 10.1 In the event of a dispute between Grantor and Grantee arising by
8 reason of this Franchise, or any obligation hereunder, the dispute shall first be
9 referred to the operational officers or representatives designated by Grantor and
10 Grantee to have oversight over the administration of this Franchise. Said officers or
11 representatives shall meet within thirty (30) calendar days of either party's request
12 for said meeting, whichever request is first, and the parties shall make a good faith
13 effort to attempt to achieve a resolution of the dispute.
14

15 10.2 In the event that the parties are unable to resolve the dispute under
16 the procedure set forth in section 10.1, then the parties hereby agree that the
17 matter shall be referred to mediation within Pierce County. The parties shall
18 mutually agree upon a mediator to assist them in resolving their differences. If the
19 parties are unable to agree upon a mediator, the parties shall jointly obtain a list of
20 seven (7) mediators from a reputable dispute resolution organization and alternate
21 striking mediators on that list until one remains. A coin toss shall determine who
22 may strike the first name. If a party fails to notify the other party of which mediator
23 it has stricken within two (2) business days, the other party shall have the option of
24
25
26



1 selecting the mediator from those mediators remaining on the list. Any expenses
2 incidental to mediation shall be borne equally by the parties.

3 10.3 If either party is dissatisfied with the outcome of the mediation, that
4 party may then pursue any available judicial remedies in Pierce County, provided,
5 that if the party seeking judicial redress does not substantially prevail in the judicial
6 action, it shall pay the other party's reasonable legal fees and costs incurred in the
7 judicial action.
8

9 Section 11. Abandonment or Removal of Facilities.

10 In the event of abandonment or Grantee's permanent cessation of use of its
11 Facilities, or any portion thereof within the City of Tacoma, the Grantee shall, within
12 one hundred and eighty days (180) after the abandonment or permanent cessation
13 of use, remove the Facilities, secure the Facilities in such a manner as to cause it
14 to be as safe as is reasonably possible, or after petitioning the City to be allowed to
15 do so, decommission the Facilities in place, all in compliance with applicable laws,
16 regulations and industry standards. In the event of the removal of all or a portion
17 of the Facilities, Grantee shall restore the Franchise Area as nearly as possible to
18 the condition that existed prior to installation of Grantee's Facilities and in
19 compliance with the City's right-of-way restoration policy. Such property
20 restoration work shall be done at Grantee's sole cost and expense and to Grantor's
21 reasonable satisfaction. If Grantee fails to remove, secure or decommission the
22 Facilities, and/or fails to restore the Franchised Area or take such other mutually
23 agreed upon action, Grantor may, after reasonable notice to Grantee, remove the
24
25
26



1 Facilities, restore the Franchised Area or take such other action as is reasonably
2 necessary at Grantee's expense and Grantor shall not be liable therefor. This
3 remedy shall not be deemed to be exclusive and shall not prevent the City from
4 seeking a judicial order directing that the Facilities be removed.
5

6 Section 12. Nonexclusive Franchise.

7 This Franchise is nonexclusive. Grantor reserves the right to grant other
8 franchises, easements, licenses, permits or other approvals to others, subject to
9 the rights granted herein, provided that Grantor shall not grant any other franchise,
10 license, permit or other approval which would substantially interfere with Grantee's
11 use. Grantor shall notify Grantee of any proposed franchise, easement, license or
12 permit for a utility or other structure which may be located within ten (10) feet of
13 Grantee's Facilities, as shown on the latest map Grantee has provided the City.
14 When the Grantor has notice that excavation, construction or other work may be
15 undertaken within ten (10) feet of Grantee's Facilities, it shall notify Grantee so that
16 Grantee may have the opportunity to inspect the work to see that Grantee's
17 Facilities are not damaged. If the contractor undertaking the excavation,
18 construction or other work is observed to have violated safety regulations, Grantor
19 will cooperate to the extent feasible in pursuing an enforcement action to avoid
20 third party damage to the Facilities. This provision shall not create, either expressly
21 or implicitly, nor shall the City assume, any liability under any circumstances
22 hereunder.
23
24
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Section 13. Indemnification.

13.1 General Indemnification. Grantee shall indemnify, defend and hold harmless the City, its trustees, elected and appointed officials, officers, agents, and employees from any and all liability, loss, damage, cost, expense, and claim whatsoever, arising on or after the effective date of this Agreement, whether at law or in equity, arising out of or related to, directly or indirectly, the construction, operation, use, location, testing, repair, maintenance, relocation, removal, abandonment or damage to Grantee's Facilities, or from the existence of Grantee's Facilities and appurtenances, or for any information or other items transmitted through the Facilities, from any and all causes whatsoever, except to the extent they are caused by Grantor's sole negligence. If any action or proceeding is brought against Grantor by reason of the Facilities, Grantee shall defend the Grantor at the Grantee's sole expense, provided that, for uninsured actions or proceedings, defense attorneys shall be approved by Grantor, which approval shall not be unreasonably withheld.

13.2 Environmental Indemnification. Grantee shall indemnify, defend and save Grantor harmless from and against any and all liability, loss, damage, expense, actions and claims, arising on or after the date of this Franchise, either at law or in equity, including, but not limited to, costs and reasonable attorneys' and experts' fees incurred by Grantor in defense thereof, arising from (a) Grantee's breach of any environmental laws applicable to the Facilities or (b) from any release of a hazardous substance on, from or as a result of the Facilities being in the



1 Franchise Area, or (c) other activity related to this Franchise by Grantee, its agents,
2 contractors or subcontractors. This indemnity includes but is not limited to
3 (a) liability for a governmental agency's costs of removal or remedial action for
4 hazardous substances; (b) damages to natural resources caused by hazardous
5 substances, including the reasonable costs of assessing such damages; (c) liability
6 for any other person's costs of responding to hazardous substances; (d) liability for
7 any costs of investigation, abatement, correction, cleanup, fines, penalties, or other
8 damages arising under any environmental laws; and (e) liability for personal injury,
9 property damage, or economic loss arising under any statutory or common-law
10 theory.
11
12

13 13.3 Definitions.

14 13.3.1 "Hazardous Substance" means any hazardous, toxic, or
15 dangerous substance, material, waste, pollutant, or contaminant, including all
16 substances designated under the Resource Conservation and Recovery Act, 42
17 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response,
18 Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials
19 Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control
20 Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the
21 Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide,
22 Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous
23 Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics
24 Control Act, Chapter 70.105D, RCW; all as amended from time to time; or any other
25
26



1 federal, state, or local statute, code or ordinance or lawful rule, regulation, order,
2 decree, or other governmental authority as now or at any time hereafter in effect.
3 The term shall specifically include petroleum and petroleum products. The term
4 shall also be interpreted to include any substance which, after release into the
5 environment, will or may reasonably be anticipated to cause death, disease,
6 behavior abnormalities, cancer, or genetic abnormalities.
7

8 13.3.2 "Environmental Laws" shall include the Resource Conservation
9 and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental
10 Response, Compensation, and Liability Act, 42 U.S.C. § 9601 et seq.; the
11 Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal
12 Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42
13 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et
14 seq.; the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 et
15 seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; the
16 Washington Hazardous Waste Management Act, Chapter 70.105 RCW; and the
17 Washington Model Toxics Control Act, Chapter 70.105D RCW; all as amended
18 from time to time; or any other federal, state, or local statute, code, or ordinance
19 or federal or state administrative rule, regulation, ordinance, order, decree, or
20 other governmental authority as now or at any time hereafter in effect pertaining
21 to the protection of human health or the environment.
22
23
24
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Section 14. Insurance, Performance Bond and Security.

14.1 During this Agreement, Grantee shall provide and maintain, at its own cost, insurance in the minimum amount of Two Million United States Dollars (\$2,000,000.00) each occurrence, in a form and with a carrier reasonably acceptable to the Grantor, naming Grantor as an additional insured for ongoing operations and completed operations, to cover any and all insurable liability, damage, claims and loss as set forth in Section 13.1 above, and, to the extent such coverage is reasonably available in the commercial marketplace, all liability, damage, claims and losses as set forth in Section 13.2 above, except for liability for fines and penalties for violation of environmental laws and as otherwise provided below. Insurance coverage shall include, but is not limited to, all defense costs. Such insurance shall include, but is not limited to, environmental liability coverage, at a minimum covering liability from environmental incidents, subject to time element reporting requirements, and such other applicable pollution coverage as is reasonably available in the commercial marketplace. In the event that a deductible or self retention amount applies to the insurance herein, Grantee agrees to pay the amount of that deductible or self retention amount.

14.2 Proof of insurance and a copy of the insurance policy, including, but not limited to, coverage terms and claims procedures, shall be provided to the Grantor prior to the beginning of any substantial work, testing or construction or reconstruction on the Facilities. Said insurance shall contain a provision that it shall not be canceled without a minimum of thirty (30) days' prior written notice to the



1 Grantor, and shall include the City of Tacoma as a named additional insured. All
2 required liability policies shall be maintained for a period of not less than three
3 years following termination of this Franchise.
4

5 14.3 The indemnity and insurance provisions herein under Sections 13
6 and 14 shall survive the termination of this Franchise and shall continue for as long
7 as the Grantee's Facilities shall remain in or on the Franchise Area or until the
8 parties execute a new franchise agreement which modifies or terminates these
9 indemnity or insurance provisions.
10

11 14.4 Performance Bond. Within thirty (30) days after the award of
12 this Franchise, but in no event sooner than the final reading of the Franchise
13 ordinance, Grantee shall submit to the City Attorney, which shall be filed with the
14 appropriate City department, a performance bond running to the City, with good and
15 sufficient surety licensed to do business in the State of Washington and approved
16 by the City in the amount of \$15,000.00, conditioned that Grantee shall well and
17 truly observe, fulfill, and perform each term and condition of the Franchise. In the
18 alternative, Grantee may provide written evidence of the establishment of a Letter
19 of Credit (also referred to as "LOC") in favor of the City, in a form and with a
20 financial institution acceptable to the City in the amount of \$15,000.00. This LOC
21 shall be conditioned that in the event Grantee shall fail to comply with any one or
22 more of the provisions of this Franchise, then there shall be recoverable jointly and
23 severally from the principal and/or surety of such LOC, any damages suffered by
24 the Grantor as a result thereof, including the full amount of any compensation,
25
26



1 indemnification, or cost of removal, relocation or abandonment of Facilities as
2 prescribed herein; said condition to be a continuing obligation for the duration of the
3 Franchise and thereafter until Grantee has liquidated all of its obligations with the
4 City that may have arisen from the acceptance of the Franchise by Grantee or from
5 its exercise of any privilege herein granted. Written evidence of payment of
6 required premiums shall be filed and maintained with the City. In lieu of the LOC,
7 Grantee may provide for a bond, assignment of funds, or similar arrangement to be
8 established giving the City rights substantially the same as the rights of the City in
9 relation to the LOC, the provisions of which bond, assignment of funds, or other
10 arrangement shall be subject to the approval of legal counsel for the City.
11
12

13 Neither the provisions of this section, any LOC (or other security) accepted
14 by the City pursuant thereto, nor any damages recovered by the City thereunder
15 shall be construed to excuse faithful performance by Grantee or to limit liability of
16 Grantee under the Franchise or for damages, either to the full amount of the bond
17 or otherwise, except as otherwise provided herein.
18

19 14.5 Validity of Letter of Credit. If at any time during the term of the
20 Franchise, the condition of the entity issuing the LOC noted in Section 14.4 shall
21 change in such a manner as to render the LOC unsatisfactory to the City, Grantee
22 shall replace such LOC by a LOC of like amount and similarly conditioned, issued
23 by an entity satisfactory to the City. The City Council, from time to time, may
24 authorize or require appropriate and reasonable adjustments in the amount of the
25 LOC; provided, however, that prior to any required increase in the amount of the
26



1 LOC, the City shall give Grantee at least one hundred twenty (120) days' prior
2 notice thereof stating the exact reason for the requirement. Such reasons must
3 demonstrate a change in Grantee's business practices or financial situation that
4 would materially prohibit or impair its ability to comply with the terms of the
5 Franchise or afford compliance therewith.
6

7 Section 15. State Prohibition of Franchise Fee.

8 15.1 Fees that may be assessed under this License are subject to the
9 limitations as set forth in RCW 35.21.860. Franchisee agrees that if this statutory
10 prohibition is removed, the City may assess a reasonable franchise fee, to be
11 agreed to by the parties if the statutory prohibition is removed.
12

13 15.2 In accord with RCW 35.21.860 as presently effective, and as it may be later
14 amended, Franchisee must pay the City an amount sufficient to recover
15 administration expenses incurred in receiving and approving this License and
16 processing of the application. The first \$5,000 of said expenses will be covered
17 by the \$5,000 application fee deposited with the City. Licensee will also pay the
18 reasonable costs of enforcing, or, as necessary, reviewing, the provisions of this
19 License as well as costs involved with the modification, amendment, renewal, or
20 transfer of this License, as ordered by the City's Franchise Services Manager,
21 whether such costs result from accrued in-house staff time, or out-of-pocket
22 expenses or administrative costs, as well as expenses of retaining independent
23 technical, legal, or financial consultants or advisors, or whether relating to costs
24 incurred due to initial Facility development or to future Facility expansion. The
25
26



1 amount of payment to be made by Licensee to cover these administrative costs is
2 an amount determined to be reasonable by the City's Franchise Services Manager.

3 15.3 Except as expressly provided otherwise, any act that Franchisee is
4 required to perform under this Franchise shall be performed at its cost. If
5 Franchisee fails to perform work that it is required to perform within the time
6 provided for performance, the City may perform the work and bill the Franchisee.
7 The Franchisee shall pay the amounts billed within 30 days of receipt of the bill.
8 The parties agree that any amounts paid pursuant to this section or Title 16B are
9 not franchise fees.
10

11 15.4 Grantee agrees that it will obtain, pursuant to the City's currently
12 effective code and rates, any and all licenses, permits or other approvals necessary
13 for Grantee to operate, maintain or repair its facilities in the franchised area. This
14 shall include, by way of example only and not limitation, inspection and permit costs
15 associated with Grantee's work in the City's right-of-way or any generally applicable
16 taxes that the Grantor may legally levy.
17

18 Section 16. Notice.

19 All notices, demands, requests, consents and approvals which may, or are
20 required to be given by any party to any other party hereunder, shall be in writing
21 and shall be deemed to have been duly given if delivered personally, sent by
22 facsimile, sent by a nationally recognized overnight delivery service, or if mailed or
23 deposited in the United States mail and sent by registered or certified mail, return
24 receipt requested, postage prepaid to:
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Grantor: Jeff Lueders, Franchise Services Manager
City of Tacoma
1224 MLK Jr. Way
Tacoma, WA 98405

with copy to: Chris Bacha, City Attorney
City of Tacoma
747 Market Street, #1120
Tacoma, WA 98402

Grantee: Unite Private Networks LLC
Attn: Legal
120 W. 12th St., 11th Floor
Kansas City, MO 64105

or to such other address as the foregoing parties hereto may from time-to-time designate in writing and deliver in a like manner. All notices shall be deemed complete upon actual receipt or refusal to accept delivery. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission shall be the same as delivery of an original document.

Section 17. Assignment, Lease and Transfer of Franchise.

17.1 The rights granted pursuant to this Franchise are a privilege that is held in the public trust and personal to the original Franchisee. In accordance with the City of Tacoma Charter Section 8.5, no assignment, transfer, or lease of the Franchise may occur, directly or indirectly, without the prior consent of the City.

17.2 Subject to the foregoing, Grantee and any proposed assignee or transferee shall provide and certify the following to the City not less than ninety (90) days prior to the proposed date of transfer:



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

17.2.1 Complete information setting forth the nature, terms and conditions of the proposed assignment or transfer;

17.2.2 All information reasonably required by the City of a franchise applicant under Tacoma City Charter Article VIII and any applicable provisions of the Tacoma Municipal Code, as it may be amended from time to time, with respect to the proposed assignee or transferee;

17.2.3 Any other information reasonably required by the City; and,

17.2.4 An application fee which shall be set by the City, plus any other costs actually and reasonably incurred by the City in processing and investigating the proposed assignment or transfer.

17.3 No transfer shall be approved unless the assignee or transferee has at least the legal, technical, financial, and other requisite qualifications to carry on the activities of the Franchisee granted hereunder.

17.4 Any transfer or assignment of this Franchise without the prior written consent of the City as set forth herein shall be void and shall result in revocation of the existing permit or Franchise.

Section 18. Reservation of Police Power.

All the rights and privileges granted in this Franchise shall be governed by the terms and conditions contained herein subject to the City's reservation of all its police powers to enact ordinances that are necessary to protect the health, safety and welfare of the general public.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Section 19. Enforcement and Remedies.

19.1 Franchisee is subject to the enforcement and remedies as set forth in TMC 16B.05.100 including but not limited to revocation or forfeiture of the franchise and the penalties prescribed therein.

19.2 This Agreement shall not be terminated except upon a majority vote of the City Council, after reasonable notice to Grantee and an opportunity to be heard, provided that if exigent circumstances necessitate immediate termination, the hearing may be held as soon as possible after the termination.

19.3 Grantor's right to terminate this Agreement is in addition to and not in limitation of any other remedy of Grantor at law or equity. Grantor's failure to exercise such remedy at any time shall not waive Grantor's right to terminate or assert any other remedy at law or equity for any future breach or default of Grantee.

19.4 Termination of this Agreement shall not release Grantee from any liability or obligation with respect to any matter occurring prior to such termination, nor shall such termination release Grantee from any obligation to remove or secure the Facilities and restore the premises as set forth in Section 11 or TMC 16B.

Section 20. Legal Relations.

20.1 Grantee accepts any privileges granted hereunder by Grantor to the franchised public right-of-way and other public property in an "as is" condition. Grantee agrees that the City has never made any representations, implied or express warranties or guarantees as to the suitability, security or safety of Grantee's location of Facilities or the Facilities themselves in public property or



1 right-of-way or possible hazards or dangers arising from other uses of the public
2 right-of-way or other public property by the City or the general public. Grantee shall
3 remain solely and separately liable for the function, testing, maintenance,
4 replacement and/or repair of the Facilities or other activities permitted hereunder.
5

6 20.2 Grantee hereby waives immunity under Title 51 RCW in any cases
7 involving the Grantor and affirms that the Grantor and Grantee have specifically
8 negotiated this provision, to the extent it may apply.

9 20.3 This franchise ordinance shall not create any duty on the City or any
10 of its officials, employees or agents and no liability shall arise from any action or
11 failure to act by the City or any of its officials, employees or agents in the exercise
12 of powers reserved herein. Further, this ordinance is not intended to acknowledge,
13 create, imply or expand any duty or liability of the Grantor with respect to any
14 function in the exercise of its police power or for any other purpose. Any duty that
15 may be deemed to be created in the City hereunder shall be deemed a duty to the
16 general public and not to any specific party, group or entity.
17
18

19 20.4 This Franchise shall be governed by, and construed in accordance
20 with, the laws of the State of Washington and the parties agree that, in any such
21 action brought hereunder, except actions based on federal questions, venue shall
22 lie exclusively in Pierce County, Washington.
23

24 Section 21. Grantee's Acceptance.

25 This franchise ordinance shall be completely void if Grantee shall not file its
26 unconditional acceptance of this Franchise within thirty (30) calendar days from the



1 final passage of same by the City Council. Grantee shall file its unconditional
2 acceptance with the City's Finance Director and a copy of same with the City
3 Attorney's Office.

4
5 Section 22. Specific Performance.

6 The parties acknowledge that the covenants set forth herein are essential to
7 this Franchise, and, but for the mutual agreements of the parties to comply with
8 such covenants, the parties would not have entered into this Franchise. The
9 parties further acknowledge that they may not have an adequate remedy at law if
10 the other party violates such covenant. Therefore, the parties shall have the right,
11 in addition to any other rights they may have, to obtain in any court of competent
12 jurisdiction injunctive relief to restrain any breach or threatened breach of or
13 otherwise to specifically enforce any of such covenants contained herein should
14 the other party fail to perform them after notice as provided herein.

15
16 Section 23. Miscellaneous Provisions.

17
18 23.1 All the provisions, conditions, terms and requirements contained
19 herein shall be binding upon the Grantee's successors and assigns. All of
20 Grantee's privileges, obligations, and liabilities shall inure to its successors and
21 assigns equally as if they were specifically mentioned in this Franchise wherever
22 the Grantee is so mentioned.

23
24 23.2 Any modification, change or alteration to this Franchise shall only
25 be effective if completed in a written ordinance duly approved by City Council
26 approving said modification, change or alteration.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

23.3 No failure by any of the foregoing parties to insist upon the strict performance of any covenant, duty, agreement, or condition of this Franchise or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Any party hereto, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Franchise, and each and every covenant, agreement, term and condition of this Franchise shall continue in full force and effect with respect to other than existing or subsequent breach thereof.

23.4 Survival of Terms. Upon the termination or forfeiture of the Franchise, Franchisee shall no longer have the right to occupy the Public Rights-of-Way as provided for thru this Franchise. However, Franchisee’s obligations to the City survive the expiration of these rights according to their terms.

23.5. Open Records and Confidentiality. Unless otherwise provided by law, information submitted as part of a Franchise application is open to public inspection and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the Franchisee’s responsibility to be familiar with the Washington Public Records Act. Franchisee may specifically identify any information it considers proprietary by marking and providing said information to City in a separate envelope marked “Proprietary Information.” In the event that: (A) the City receives a request from another party to disclose any information which the Franchisee has deemed



1 proprietary, and if the City Attorney determines that said information may be subject
2 to being disclosed; or (B) the City determines that the information should be
3 disclosed in connection with its enforcement of any provision of Title 16B TMC, or in
4 the exercise of its police or regulatory powers, then the City shall notify the
5 Franchisee of the Franchisee's opportunity to seek a protective order from a court
6 with appropriate jurisdiction. In the event an action is not commenced within ten
7 business days, the City may disclose said information. By submitting information
8 which the Franchisee deems proprietary or otherwise exempt from disclosure, the
9 Franchisee agrees to defend and hold harmless the City from any claim for
10 disclosure under the Washington Public Records Act, including, but not limited to,
11 any expenses including out-of-pocket costs and attorneys' fees, as well as any
12 judgment entered against the City for the attorney fees of the party requesting
13 disclosure.
14
15

16 23.6 Franchisee and its employees, contractors, subcontractors, and
17 agents shall not unlawfully discriminate in hiring, in contracting, or in the provision
18 of services.
19
20
21
22
23
24
25
26



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

23.7 The captions of this Franchise ordinance are for convenience and reference only and in no way define, limit, or describe the scope or intent of this Franchise.

Passed _____

Mayor

Attest:

City Clerk

Approved as to Form:

Deputy City Attorney



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FRANCHISE ACCEPTANCE BY GRANTEE:

I, the undersigned official of the Unite Private Networks LLC (the “Franchisee”), am authorized to bind the Franchisee and to accept the terms and conditions of the foregoing Franchise (Ordinance No. _____), which are hereby accepted by the _____ this _____ day of _____, 2024. The foregoing date shall constitute the “Effective Date” of the Ordinance.

By: _____
Name: Charlene White
Title: VP, Network Facilities
Unite Private Networks LLC

Subscribed and sworn to before me this _____ day of _____, 2024.

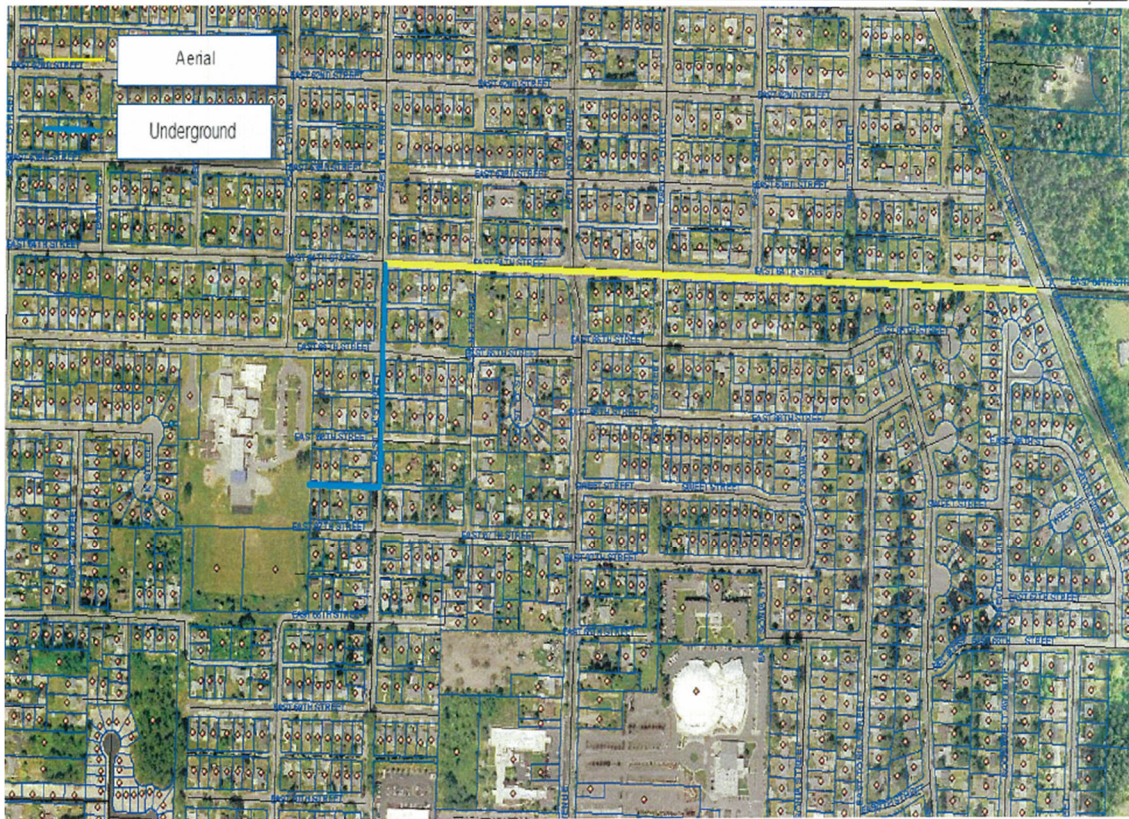
Notary Public in and for the State of _____
My commission expires _____

Received on behalf of the City this _____ day of _____, 20__.

Name: _____
Title: _____



- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26





1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

SCHEDULE I

“Franchised Area”

Aerial Franchised Area

That portion of Southwest quarter of Section 23 and the Southeast and Southwest quarters of Section 22 and the Northwest quarter of Section 26 and the Northeast and Northwest quarters of Section 27, all in Township 21 North, Range 03 East of the Willamette Meridian, City of Tacoma, Pierce County, Washington, more particularly described as follows:

A 5.00 foot wide strip of the East 64th Street Right of Way described as:

Beginning at the intersection of the East 64th Street and the East line of the Southwest quarter of the Southwest quarter of said Section 23 and the East line of the Northwest quarter of the Northwest quarter of said section 26, which define the easterly limits of the City of Tacoma; thence Westerly, within the East 64th Street right-of-way, a distance of 4,273 feet, more or less, to a point on the Easterly margin of East “M” Street, said point hereinafter referred to as Point “A”, and the Terminus of this aerial description.

Use of the immediately foregoing is conditioned upon the continued effectiveness of that certain Master Pole Attachment Agreement between Franchisee and City of Tacoma, Department of Public Utilities (d.b.a. Tacoma Power) dated June 2, 2010 (the “Pole Agreement”). Franchisee’s right to use this area is expressly made subject to all terms and conditions of the Pole Agreement.

Underground Franchised Area

That portion of Southeast quarter of the Southwest quarter of Section 22 and the Northeast quarter of the



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Northwest quarter of Section 27, Township 21 North,
Range 03 East of the Willamette Meridian,

City of Tacoma, Pierce County, Washington, more
particularly described as follows:

A 10.00 foot wide strip of the East "M" Street and
alley rights-of-way described as follows:

Beginning at the above referenced Point "A"; thence
southerly, within the East "M" Street right-of-way, a
distance of 843 feet, more or less, to a point opposite
the alley right-of-way lying between Blocks 5 and 6
within the Plat of GOLDEN ROD FIRST ADDITION
TO TACOMA, as recorded in Volume 10 of Plats at
Page 102, records of Pierce County Auditor; thence
westerly, within said rights-of-way a distance of 350
feet, more or less, to the West line of said Plat, being
the East line of property owned by the Tacoma
School District #10 and currently operated as Boze
Elementary School, and the Terminus of this
underground description.

All situate in the City of Tacoma, County of Pierce,
State of Washington.