

LICENSE AGREEMENT

THIS LICENSE AGREEMENT, made this _____ day of _____, 2015, between the CITY OF TACOMA, a municipal corporation, operating under the laws of the state of Washington (hereinafter called the "Licensor" or "City"), and LANDIS+GYR MIDWEST, INC. a Delaware corporation, registered to do business in Washington (hereafter called "Licensee"), collectively, the "Parties";

WITNESSETH:

WHEREAS Licensee's predecessors in interest (SCHLUMBERGER RESOURCE MANAGEMENT SERVICES and CELLNET TECHNOLOGY MIDWEST, INC.) obtained a license from the City beginning in 2001 pursuant to City Resolution No. 35356 to enter into and upon and use and occupy the Public Rights-of-Way to install and operate an Automated Meter Reading System after proper application, and

WHEREAS the previously granted license expires by its own terms on February 15, 2015 without the possibility of additional extension and both the City and Licensee have determined it to be on their best interest to grant enter into this License Agreement, and

WHEREAS Licensee's Automated Meter Reading System requires installation (or maintaining existing facilities in place) of Overhead Facilities that will be attached to light poles throughout the City pursuant to a separate pole attachment agreement with the City, and

WHEREAS the Licensee has not prior to now, and does not intend in the future to offer Telecommunications Services for hire, sale, or resale to the general public, and

WHEREAS Title 16B of the Tacoma Municipal Code provides generally that an Operator of a Telecommunications Facility must obtain a franchise prior to constructing a Telecommunications Facility and/or providing Telecommunications Service with the exception set forth in Chapter 16B.03 that a License may be issued in lieu of the franchise in circumstances where the City determines that the use of the Public Rights-of-Way by the applicant Licensee is de minimis, and

WHEREAS the City Council finds that the activities of Licensee, as authorized herein, will be minimally intrusive to the Public City Rights-of-Way for the following reasons: (1) Licensee will not construct or install Underground Facilities within the Public Rights-of-Way; (2) the Overhead Facilities to be installed will be limited in size; (3) similar installations by other providers are not

precluded as only a small percentage of available facilities for pole attachment in the Rights-of-Way will be utilized; (4) the monetary cost for installation or removal of the facilities is de minimis when compared to such costs for installation or removal of Underground Facilities; (5) installation or removal of Overhead Facilities will not noticeably impact users in the Public Rights-of-Way; (6) the Overhead Facilities will not be attached to decorative or historic street lights; and (7) Licensee's system does not provide telecommunication services for hire or to the public, and

WHEREAS the City Council has determined that the use and occupancy of the Public Rights-of-Way, as authorized herein to allow operation of an Automated Meter Reading Telecommunications System, is of substantial benefit to the citizens of the City, and

WHEREAS the City Council finds that the activities of Licensee as authorized herein, will have a de minimis impact on and to the Public Rights-of-Way, and

WHEREAS the City and Licensee desire to enter into a License setting forth the terms and conditions under which the Licensee may occupy the Public Rights-of-Way as set forth herein, and

WHEREAS the City is willing to issue a non-exclusive License to Licensee conditioned on acceptance by Licensee of the terms and conditions hereof;

NOW, THEREFORE, in consideration of the mutual promises contained herein, the City and the Licensee hereby agree as follows:

SECTION 1 - DEFINITIONS. For the purposes of this License, the following terms, phrases, words, and their derivations shall have the meaning given herein; Capitalized words not defined herein, which are defined in Title 16 of the Tacoma City Code, shall have the same meaning or be interpreted as provided in Title 16. Words not defined here or in Title 16 shall have their ordinary meaning. A reference to Title 16 or to the City's Charter refers to the same as amended from time to time.

1.1 "Automated Meter Reading" means and refers to a fixed wireless network of devices and related Facilities using radio transmission technology in the unlicensed band and the 928-952 MHz area of the radio spectrum utilizing spread spectrum and packet technologies and a tiered network that enable the operator to obtain information and data from end point devices (e.g., utility meters).

1.2 "City" means the City of Tacoma, a municipal corporation of the state of Washington, operating as a first-class city.

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

1.4 "Communications Facility" means a device which, alone or as part of an aggregation of devices, is capable of transmitting and/or receiving signals.

1.5 "Facilities" or "Installations" are, refer to, and include, but are not limited to, plant, systems, improvements, and equipment owned, leased, or otherwise used by the Licensee, such as equipment, conduit, radios, transmitters, receivers, instruments, machines, appliances, and all devices necessary, auxiliary to, or convenient for the transmission and reception of communication signals where such Facilities or Installations are located.

1.6 "Gross Receipts" include all revenue derived directly or indirectly by the Operator; or derived directly or indirectly by its affiliates, subsidiaries, parent companies, and any person in whom the operator has a financial interest, or revenues received by the Operator from a person with whom Operator has a revenue-producing agreement, from the provision of Telecommunications Services via the Automated Meter Reading Telecommunications system, which provision shall be interpreted to include all services and ancillary equipment; provided, however, that this term shall not include taxes imposed directly upon any subscriber or user by the federal, state, county, or other governmental unit and required to be collected by the operator; provided, further, that Licensee may deduct from its gross revenues those revenues received from a lessee that holds a franchise or license under Title 16, if that lessee submits a certificate to the Telecommunications Operator stating that it has paid the fees it owes the City for the applicable reporting period. Copies of the certificate must be provided to the City.

1.7 "License" means the rights granted by this License Agreement and conditioned as set forth herein, and under the Tacoma Municipal Code and the City Charter.

1.8 "License Area" means that area within the present and future corporate limits of Tacoma in which the Licensee is authorized to operate its Telecommunications System.

1.9 "Licensee" is LANDIS+GYR MIDWEST, INC. a Delaware corporation, doing business in Washington, with its home office at 11425 NE 120TH ST Kirkland, WA, 98034.

1.10 "Operator," refers to a Person (a) who operates 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 a Communication System or a specific portion of a Communication System shall be treated as an Operator.

1.11 "Overhead Facilities" refers to Communications Facilities located above the surface of the ground.

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

1.13 "Public Rights-of-Way" mean the public streets and easements which, under the City Charter, the Tacoma Municipal Code, City ordinances, and applicable laws, the City has authority to grant License Agreements, permits, or Licenses for use thereof, or has regulatory authority thereover, excluding railroad Rights-of-Way and crossings, airport, and harbor areas. Public Rights-of-Way, for the purpose of this License Agreement, 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.

1.14 "System" means the Licensee's Communication system.

1.15 "Communication Service(s)" means transmission for automated meter reading and reception of data or information in electronic or optical form, including, but not limited to, voice, video, or data, whether or not the transmission medium is owned by the provider itself. Telecommunication Services include Telephone Service but does not include Cable Service or over-the-air broadcasts to the public-at-large from Facilities licensed by the Federal Communications Commission or any successor thereto.

1.16 "Communication System" means a tangible facility that is used to provide communications, any portion of which occupies Public Rights-of-Way. The term Telecommunication System, by way of example and not limitation, includes wires, equipment cabinets, guys, conduit, radio transmitting towers, transmitters, receivers, poles, other supporting structures, and associated and appurtenant Facilities used to transmit telecommunication signals. The term Telecommunication System includes all devices mounted on light poles in the Public Rights-of-Way through which Telecommunication Services are originated or terminated. An Open Video System is not a Telecommunication System to the

extent that it provides only video services; a Cable System is not a Telecommunication System to the extent that it provides only Cable Service.

1.17 "Telephone Service" means the providing by any Person of access to a local telephone network, local telephone network switching service, toll service, or coin Telephone Service, or providing telephonic, video, data, or similar communication or transmission for hire via a local telephone network, toll line, channel, cable, microwave, or similar communication or transmission system. Telephone Service includes intrastate or interstate service, including toll service originating from or received on communications equipment or apparatus in this State if the charge for the service is billed to a Person in this State. Telephone Service does not include the providing of competitive Telephone Service as defined in Tacoma Municipal Code § 6.66.020, the providing of cable television service, or the providing of broadcast services by radio or television stations.

1.18 "Title," when used in the context of referring to this Title of the Tacoma Municipal Code, shall mean both Title 16A and 16B of the Tacoma Municipal Code.

1.19 "Underground Facilities" refers to electric utility and Communications Facilities located under the surface of the ground.

SECTION 2 - LICENSE.

2.1 Grant of License Agreement.

A. General. The City hereby grants to the Licensee a non-exclusive License which, once it becomes effective, shall authorize the Licensee to enter into and upon the City's Public Rights-of-Way within the License Area to install, maintain, relocate, remove, replace, modify, attach, reattach, reinstall, and repair Overhead Facilities necessary for the operation of its Automated Meter Reading System and further to use and occupy the Public Rights-of-way for the operation of such Overhead Facilities.

B. Rights Subject to Law. Such grant is subject to and must be exercised in strict accordance with this License Agreement, Title 16 of the Tacoma Municipal Code, and the City Charter, and may be revoked if it is not so exercised; provided, further, that the exercise of any rights pursuant to the License Agreement is subject to the exercise of the City's police powers and other regulatory powers as it may have or obtain in the future, and all rights granted herein must be exercised in strict accordance with applicable law, including by way of example and not limitation, any applicable zoning codes and permitting requirements. No rights shall pass to the Licensee by implication.

C. Rights Limited. The rights granted under this License are limited to the purpose of installing, maintaining, relocating, removing, replacing, modifying, attaching, reattaching, reinstalling, and repairing Overhead Facilities and use of the Public Rights-of-Way to operate such Overhead Facilities as part of Licensee's Automated Meter Reading System to provide Communications Services this License Agreement does not include permission to: (i) construct or install Underground Facilities; (ii) provide Telecommunications Services for hire, sale, or resale to the general public; (iii) attach Overhead Facilities to City owned light poles or other City owned Facilities within the Public Rights-of-Way; (iv) attach Overhead Facilities to City owned property not within the Public Rights-of-Way; (v) provide Cable Service, as defined in 47 U.S.C. § 522; (vi) provide multichannel video programming; (vii) provide Open Video Systems; (viii) provide information services as defined pursuant to 47 U.S.C. § 153 (20); or (ix) use of the Public Rights-of-Way for uses not specifically authorized herein.

D. Charter and Code. In the event of any conflict between a provision in this License Agreement and any provision of the City Charter or the Tacoma Municipal Code, which Charter is incorporated herein by this reference, the applicable provision of the Charter shall control over any inconsistent provision of this License Agreement.

E. Material Change in Facilities/Service. Licensee agrees that if the nature or character of the Overhead Facilities materially change during the term or terms of the License, to include the offering of services not described herein or a material increase in the dimensions of the Overhead Facilities, then Licensee shall notify the City in writing, at least two months in advance of the anticipated date of the change in the nature or character of the Overhead Facilities. The Parties agree to negotiate in good faith the terms and conditions under which Licensee may be permitted to offer the additional service(s), change the services, or change the dimensions of the Overhead Facilities.

F. Location of Overhead Facilities. Licensee shall submit to the City Manager detailed plans relating to precise location in the Public Rights-of-Way proposed for installation of the Overhead Facilities. Upon the completion of installation, Licensee shall furnish promptly to the City a pole list showing the exact location of the Overhead Facilities in the Public Rights-of-Way. Such identifications shall be incorporated in Exhibit B to this License Agreement, as the same shall be amended from time to time.

2.2 License Agreement Term/Renewal. The term of the License Agreement shall be for one year from the date of execution, and unless terminated sooner in accordance with this License Agreement, Title 16B, or the City Charter, will renew automatically at the end of the initial one year period for up to ten (10) years.

2.3 License Agreement Non-Exclusive. The License Agreement granted herein is non-exclusive.

2.4 Revocation. The Licensee understands and acknowledges that issuance and renewal of a license agreement by the City is discretionary and that any such license agreement is terminable at will. The City, therefore, reserves the right to, in addition to any rights granted by the City Charter or Title 16, revoke the License Agreement, and all rights, permissions, and privileges granted herein and pertaining thereto, with or without cause. Revocation shall be effected by resolution of the City Council adopted 30 days or more after notice to the Licensee of the City's intent to revoke the License.

2.5 Right to Require Removal of Property/Right to Remove Property.

A. Upon termination or revocation of the License, if the Licensee has not obtained a subsequent license, the City may require the Licensee to remove its property from any Public Rights-of-Way, and surrender to City such portion of the Rights-of-Way in the same or better condition as existed just prior to such removal, subject to any rights the Licensee may have to abandon property in place, as set out in Title 16. If the Licensee fails to remove property that the City requires it to remove, the City may perform the work and collect the cost thereof from the Licensee. The actual cost of removal, including direct and indirect administrative costs, shall be promptly paid by Licensee.

B. At the termination or expiration of this License Agreement, to the extent any portion of the Automated Meter Reading System in the Public Rights-of-Way is not removed by the Operator within 120 days after the end of the License Agreement term or the date an order to remove Installations is provided to the Licensee, whichever is later, the property, if not in conflict with state law, will be deemed abandoned 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 2.5.B to remove Communications Facilities shall be sent, by registered or certified mail, to the Licensee no earlier than 60 days prior to, and no later than 120 days following, the date of the License Agreement termination/expiration. Removal and repair shall be completed (except with respect to property that the Licensee is permitted or required to abandon in place) not later than 60 days following the date of notification to remove the Facilities.

D. The Licensee shall file a written removal plan with the City not later than 25 calendar days following the date of the receipt of any orders directing removal, or any consent to removal describing the work that will be performed, the

manner it will be performed, and a schedule for removal by location. The removal plan shall be subject to review, approval, and regulation by the City which review shall be complete and a decision as to approval made within ten days of submittal of the removal plan. The affected property must be returned to as good or better condition than existed immediately prior to removal, and those damaged by removal must be compensated for the damage.

2.6 Responsibility for Costs. Except as expressly provided otherwise, any act that the Licensee is required to perform under this License Agreement shall be performed at its cost. If the Licensee fails to perform work that it is required to perform within the time provided for performance, the City may perform the work and bill the Licensee. The Licensee shall pay the amounts billed within 30 days of receipt of the bill. The parties agree that any amounts paid pursuant to this section are cost based fees and not fees assessed for the use of the Public Rights-of-Way.

2.7 Work of Contractors and Subcontractors. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the Licensee. The Licensee shall be responsible for all work performed by its contractors and subcontractors, and others performing work on its behalf as if the work were performed by it, and shall ensure that all such work is performed in compliance with this License Agreement, Title 16, and other applicable law, and shall be jointly and severally liable to the City for all damages and correcting all damage caused by them. It is the Licensee's responsibility to ensure that contractors, subcontractors, or other persons performing work on the Licensee's behalf are familiar with the requirements of the License Agreement, Title 16, and other applicable laws governing the work performed by them.

2.8 Survival of Terms. Upon the termination, expiration or revocation of this License, the Licensee shall no longer have the right pursuant to this license agreement with the City, to occupy the Public Rights-of-Way for the purposes authorized herein. However, the Licensee's obligations to the City survive the expiration of these rights according to their terms.

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

3.1 Use of Public Rights-of-Way. Licensee may, subject to the terms of this License Agreement and other applicable laws, install, maintain, relocate, remove, replace, modify, attach, reattach, reinstall, and repair Overhead Facilities necessary for its Automated Meter Reading System to provide Communications Services. Without limiting the foregoing, the Licensee expressly agrees that it will perform the foregoing in compliance with the requirements of Title 16, and with

other applicable City codes; and will obtain and maintain all bonds and billable work orders required by the same.

3.2 Operation, Maintenance, and Repair. The Licensee shall, in all cases, comply with all lawful City ordinances and regulations, now in effect or hereinafter enacted, regarding the acquisition of permits and such other items as may be required by the City in connection with the Maintenance and Repair of the Automated Meter Reading System.

Without limiting the foregoing, the Licensee agrees that it shall, in the course of operating, maintaining, and repairing its Automated Meter Reading System, comply with the requirements of Title 16 and, among other things:

A. (1) The Licensee shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its Facilities when required by the City by reason of traffic conditions; public safety; Public Rights-of-Way Construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, operation, or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned Communications System, public work, public facility, or improvement or any government-owned utility; Public Rights-of-Way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the Automated Meter Reading System. Collectively, such matters are referred to below as the "public work." Upon notice of such public work, City will cooperate with Licensee to locate alternate temporary or permanent site(s) in the Public Rights-of-way for Licensee's Facilities so affected.

(2) In the event of an emergency, or where the Automated Meter Reading System creates or is contributing to an imminent danger to health, safety, or property, the City may protect, support, temporarily disconnect, remove, or relocate any or all parts of the Automated Meter Reading System without prior notice, and charge the Licensee for costs incurred.

(3) If any person that is authorized to place Facilities in the Rights-of-Way requests the Licensee to protect, support, temporarily disconnect, remove, or relocate the Licensee's Facilities to accommodate the Construction, Operation, or Repair of the Facilities of such other Person, the Licensee shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation, or unless the Licensee's Automated Meter Reading 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) The Licensee shall, on the request of any Person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires, if any, to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the Person requesting the same.

B. The Licensee's obligation to operate, maintain, and repair its Automated Meter Reading System in compliance with all laws, ordinances, departmental rules and regulations, and practices affecting such System includes, by way of example and not limitation, the obligation to comply with applicable zoning codes and safety codes. The Licensee shall exercise reasonable care in the performance of all its activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or legal nuisance to the public or to property.

C. The Licensee's Maintenance or Repair of its Automated Meter Reading System shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid.

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

E. In any dispute over the adequacy of a removal or repair relative to this section, the City's Department of Public Works Director shall, in his or her sole discretion, make the final determination.

3.3 Right To Inspect and Order Corrections. The City may inspect the Automated Meter Reading System at any time reasonable under the circumstances to ensure compliance with this License and applicable law, including to ensure that the Automated Meter Reading System of the Licensee is constructed and maintained in a safe condition. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable law, may order the Licensee, in writing, to make the necessary repairs and alterations specified therein immediately to correct the unsafe condition on a time table established by the City which is reasonable in light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if the Licensee fails to do so, and to charge the Licensee therefor.

3.4 Information Regarding Ongoing Work. In addition to providing notice to the public of ongoing work as may be required under applicable law, the Licensee shall make information available regarding any ongoing Operation, or Repair of its Automated Meter Reading System sufficient to show: (1) the nature of the work being performed; (2) where it is being performed; (3) its estimated completion date; and (4) progress to completion.

SECTION 4 - REGULATORY PROVISIONS.

4.1 Intent. The City shall have the right to administer and regulate activities of the License within its jurisdiction up to the fullest extent of applicable law. The failure to reserve a particular right to regulate, or reference a particular regulation, shall not be interpreted by negative implication or otherwise to prevent the application of a regulation to the Licensee.

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

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

B. Commence an action at law for monetary damages.

C. Commence an action for equitable or other relief, including injunctive relief.

D. Declare the License to be revoked.

E. Seek specific performance of any provision which reasonably lends itself to such remedy.

In determining which remedy or remedies for the Licensee'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 the Licensee 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 License Agreement Violations. Before imposing liquidated damages, or drawing upon the performance bond or any other security set out in Section 5, the City shall follow the procedure below.

A. Notice of Violation. In the event that the City believes that the Licensee has not complied with a term of this License Agreement, the City shall notify the Licensee in writing, by certified mail, of the nature of the alleged noncompliance.

B. The Licensee's Right to Cure or Respond. Except as provided in Section 4.3.D, the Licensee shall have 10 days from the receipt of notice described above, to: (a) respond to the City contesting the assertion of noncompliance; or (b) to cure such default or, in the event that by the nature of the default such default cannot be cured within the ten-day period, initiate steps to remedy such default as promptly as possible. The duty to cure includes the duty to cure all harms caused by the acts or omissions of the Licensee. At the end of the ten-day period, the Licensee shall notify the City, in writing, of the steps it has taken to cure the default, if any; if the cure is not complete, the reason it is not complete and the projected date for completion; and, if the default is disputed, the complete basis for that contention.

C. Public Hearing. The City may schedule a public hearing to investigate any alleged default. The City, if a hearing is scheduled, shall give the Licensee five calendar days' notice of the time and place of the hearing, and provide the Licensee with an opportunity to be heard.

D. Action. If (after such hearing if a hearing is scheduled) the City determines that the Licensee did not cure or initiate steps to cure to the City's satisfaction, after the notice required by Section 4.3.A was provided, then the City may draw upon any performance bond, letter of credit, security fund, or other security, including requiring performance under the guarantee, and impose liquidated damages. However, notice and opportunity to cure are not required for repeat violations or for a failure to correct a default where the Licensee knew, or should have known, it was in default. In such cases, the performance bond, security fund, letter of credit, or other security may be drawn upon, the guarantor required to perform, and liquidated damages imposed after the hearing required by Section 4.3.C.

4.4 Failure to Enforce. The Licensee shall not be relieved of any of its obligations to comply promptly with any provision of this License by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in the Licensee's conduct.

4.5 Force Majeure. The Licensee shall not be deemed in default with the provisions of its License where performance was rendered impossible by war or riots, civil disturbances, floods, or other natural catastrophes or matters beyond the Licensee's reasonable control; the unforeseeable unavailability of labor or materials; or power outages exceeding back-up power supplies. The acts or omissions of Affiliates are not necessarily beyond the Licensee's control, and the knowledge of Affiliates shall be imputed to Licensee. The License Agreement shall not be revoked or the Licensee penalized for such noncompliance provided the Licensee takes immediate and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with its License Agreement without unduly endangering the health, safety, and integrity of the Licensee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property, or private property.

4.6 Alternative Remedies. No provision of this License Agreement shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provision of the ordinance or any rule, regulation, requirement, or directive promulgated thereunder. Neither the existence of other remedies identified in this License nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover monetary damages for such violation by the Licensee, or to seek and obtain judicial enforcement of the Licensee's obligations by means of specific performance, injunctive relief or mandate, or any other judicial remedy at law or in equity.

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

SECTION 5 - COMPENSATION AND FINANCIAL PROVISIONS.

5.1 Performance Bond. At the same time it provides its License Agreement acceptance to the City, the Licensee shall provide a performance bond to ensure the faithful performance of its responsibilities under this License Agreement and applicable law, including, by way of example and not limitation, its obligations to relocate and remove its Facilities and to restore City Rights-of-Way and other property. The initial amount of the performance bond shall be \$25,000. The amount of the bond may be changed from time to time to reflect changed

risks to the City or to the public. The Licensee may be required to obtain additional bonds in accordance with the City's ordinary practices. The bond shall be in a form and with a surety acceptable to the City's Risk Manager and in a form acceptable to the City Attorney. The Licensee shall pay all premiums or costs associated with maintaining the bond, and shall keep the same in full force and effect at all times.

5.2 Indemnification by the Licensee.

A. The Licensee, by accepting this License, agrees to release the City from and against any and all liability and responsibility in or arising out of the Operation, Maintenance, or Repair of the Automated Meter Reading System, and, without limiting the provisions of Section 6.4, agrees not to sue or seek any money or damages from the City in connection with the above-mentioned matters.

B. The Licensee agrees to indemnify and hold harmless the City, its trustees, elected and appointed officers, agents, and employees from and against any and all claims, demands, or causes of action of whatsoever kind or nature, and the resulting losses, costs, expenses, reasonable attorneys' fees, liabilities, damages, orders, judgments, or decrees sustained by the City arising out of, or by reason of, or resulting from or of the acts, errors, or omissions of the Licensee, or its agents, independent contractors, or employees related to or in any way arising out of Operation, Maintenance, or Repair of the Automated Meter Reading System. As between Licensee and the City only the Licensee waives immunity under RCW Title 51 and affirms that the City and the Licensee have specifically negotiated this provision, as required by RCW 4.24.115, to the extent it may apply.

C. The Licensee agrees that the covenants and representations relating to the indemnity provided in Sections 5.2.A through 5.2.B shall survive the term of its License Agreement and continue in full force and effect as to the Licensee's responsibility to indemnify.

5.3 Licensee Insurance.

A. The Licensee shall maintain, throughout the term of the License Agreement, adequate insurance to protect the City, its trustees, elected and appointed officers, agents, and employees against claims and damages that may arise as a result of the Construction of the Automated Meter Reading Telecommunications System. This obligation shall require the Licensee to maintain insurance at least in the following amounts:

(1) COMPREHENSIVE GENERAL LIABILITY insurance to cover liability, bodily injury, and property damage. Exposures to be covered are:

premises, operations, products/completed operations, and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

- (a) Bodily Injury
 - i. Each Occurrence \$1,000,000
 - ii. Annual Aggregate \$3,000,000
- (b) Property Damage
 - i. Each Occurrence \$1,000,000
 - ii. Annual Aggregate \$3,000,000
- (c) Personal Injury
 - i. Annual Aggregate \$3,000,000

(2) COMPLETED OPERATIONS AND PRODUCTS

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

(3) PROPERTY DAMAGE LIABILITY INSURANCE shall include coverage for the following hazards: X - explosion, C - collapse, U - underground.

(4) WORKERS' COMPENSATION insurance shall be maintained during the life of this License Agreement to comply with statutory limits for all employees, and in the case any work is sublet, the Licensee shall require its contractors and subcontractors similarly to provide workers' compensation insurance for all the latter's employees unless such employees are covered by the protection afforded by the Licensee. The Licensee shall also maintain, during the life of this policy, employer's liability insurance. The following minimum limits must be maintained:

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

(5) COMPREHENSIVE AUTO LIABILITY insurance shall include owned, hired, and non-owned vehicles. The following minimum limits must be maintained:

- (a) Bodily Injury

- i. Each Occurrence \$1,000,000
- ii. Annual Aggregate \$3,000,000

(b) Property Damage

- i. Each Occurrence \$1,000,000
- ii. Annual Aggregate \$3,000,000

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

C. Certificates of insurance, reflecting evidence of the required insurance, and naming the City as an additional insured on the GENERAL LIABILITY and AUTOMOTIVE policies described above, shall be filed with the City's Risk Manager. The certificate shall be filed with the acceptance of the License Agreement, and annually thereafter, and as provided in Section 5.3.E.

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

E. In the event that the insurance certificate provided indicates that the insurance shall terminate or lapse during the period of the License Agreement, then, in that event, the Licensee 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 License Agreement.

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

5.4 License Fee. In partial consideration for the right to occupy Public Rights-of-Way to provide Communications Services, during the term of the Agreement and any extensions or renewals, Licensee shall pay 5 percent of Gross Revenues (after deduction from Gross Revenues of Bad Debt Expense calculated (using the direct write-off method) as a License Agreement Fee. Bad Debt Expense is treated as revenue when recovered.

5.5 The Licensee Obligated to Pay Administrative Costs. In accord with RCW 35.21.860, as presently effective, or as later amended, the Licensee must pay the City an amount sufficient to recover administration expenses incurred in receiving and approving this Agreement, including, but not limited to, the reasonable costs of outside consultants retained by the City to assist in the City's consideration and processing of this License application. The first \$1,000 of said expenses will be covered by the \$5,000 Application Fee deposited with the City. The Licensee will also pay the reasonable costs of enforcing, or, as necessary, reviewing the provisions of this Agreement as well as costs involved with the modification, amendment, renewal, or Transfer of this Agreement, as ordered by the Media & Communications Director, whether such costs result from accrued in-house staff time, out-of-pocket expenses, or administrative costs, as well as expenses of retaining independent technical, legal, or financial consultants or advisors, or whether relating to costs incurred due to initial System development or to future System expansion. The amount of payment to be made by the Licensee to cover these administrative costs is an amount determined to be reasonable by the Franchise Services Manager based upon the costs described herein. Such obligation further includes municipal fees related to receiving and approving permits or Licenses, inspecting plans, or relating to the preparation of a detailed statement pursuant to RCW 43.21C. Said fees must be paid within 30 days of receipt of the City's billing therefor.

5.6 Manner of Payment; Audit. The Licensee shall make all required fee payments, including the License Fee, in the form, intervals, and manner requested by the City Treasurer, and furnish him or her any information related to his or her revenue collection functions reasonably requested; provided, that the Use Fee payments shall be quarterly. In case of audit, the Treasurer may require the Licensee to furnish a verified statement of compliance with the Licensee's obligations or in response to any questions. Said certificate may be required from an independent, certified public accountant at the Licensee's expense. All audits will take place on the Licensee's premises or offices furnished by the Licensee, which shall be a location within the City. The Licensee agrees, upon request of the City Treasurer, to provide copies of all documents filed with any federal, state, or local regulatory agency, to be mailed to the City Treasurer on the same day as filed, postage prepaid, affecting any of the Licensee's facilities or business operations in the City.

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

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

5.9 Auditing and Financial Records. The Licensee shall manage all of its operations in the City in accordance with a policy of keeping books and records open and accessible to the City. Without limiting its obligations under this Agreement, the Licensee agrees that it will collect and make available books and records for inspection and copying by the City in accordance with Title 16. The Licensee shall be responsible for collecting the information and producing it. Books and records shall be produced to the City at the Tacoma Municipal Building, or such other location as the parties may agree. Notwithstanding any provision of Title 16 or this Agreement, if documents are too voluminous or for security reasons cannot be produced at the Tacoma Municipal Building or a mutually agreeable location within the City, then the Licensee 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.

The Licensee shall take all steps 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 16 or this Agreement. The Licensee shall be responsible for redacting any data that federal law prevents it from providing to the City. Records shall be kept for at least six years. In addition to maintaining all records as required by Title 16, the Licensee shall maintain records sufficient to show its compliance with the requirements of this Agreement, and shall produce those records within 30 days of a City request.

The Licensee 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 Automated Meter Reading Telecommunication System under this Agreement, Title 16, or other applicable law.

SECTION 6 - MISCELLANEOUS PROVISIONS.

6.1 Posting and Publication. The Licensee shall assume the cost of posting and publication of this License as such posting and publication is required by law, and such is payable upon the Licensee's filing of acceptance of the License Agreement.

6.2 Guarantee of Performance. The Licensee acknowledges that it enters into the License voluntarily in order to secure, and in consideration of, the grant from the City of a ten-year License. Performance pursuant to the terms and conditions of this License is guaranteed by the Licensee.

6.3 Governing Law and Venue. The License Agreement shall be governed by and construed in accordance with the laws of the state of Washington, and the Licensee agrees that any action brought relative to enforcement of this License shall be initiated in the Superior Court of Pierce County, and shall not be removed to a federal court.

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

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

City of Tacoma
Municipal Services Center
1224 MLK Jr. Way
Tacoma, WA 98405
Attn: MCO - Franchise Services Manager

The notices or responses to the Licensee shall be addressed as follows:

LANDIS+GYR MIDWEST, INC.
11425 NE 120TH ST
Kirkland, WA, 98034

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

6.5 Execution. The Licensee shall execute and return to the City three original countersigned copies of this License Agreement within ten days after the date of passage of the resolution by the City Council. In accepting the License, the Licensee warrants that it has carefully read the terms and conditions of this License Agreement, unconditionally accepts all of the terms and conditions of this License Agreement, agrees to abide by the same, and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a License, that this License represents the entire agreement between the Licensee and the City, and that the Licensee accepts all risks related to the interpretation of this License Agreement. The countersigned License Agreement shall be returned to the City accompanied by: evidence of insurance; a payment for publication costs, if any; billable work order deposit; and security deposit or the letter of credit, if any. The License Agreement rights granted herein shall not become effective until all of the foregoing are received in an acceptable form. In the event the Licensee fails to submit the countersigned License Agreement 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 License shall be null and void.

CITY OF TACOMA:

T.C. Broadnax
City Manager

Countersigned:

Gwen Schuler
Media & Communications Director

Jeff Lueders
Franchise Services Manager

Andy Cherullo, Finance Director

Attest:

Doris Sorum, City Clerk

Saada Gegoux, Risk Manager

Approved as to form and legality:

Jeff Capell, Deputy City Attorney

ACCEPTANCE OF LICENSE

I, _____, am the _____ of
 _____, and warrant that I am the authorized
 representative to accept the above-referenced License on behalf of
 _____. I certify that this License and all terms and conditions
 thereof are accepted by _____, without qualification or reservation.

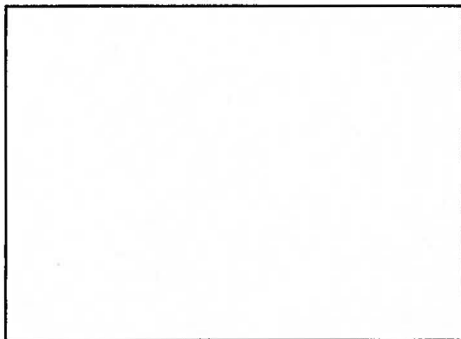
DATED this _____ day of _____, 2015.

By _____

STATE OF _____)
) ss.
 COUNTY OF _____)

I certify that I know or have satisfactory evidence that _____
 is the person who appeared before me, and said person acknowledged that they
 signed this instrument, on oath stated that they were authorized to execute the
 instrument and acknowledged it as the _____ of the
 _____ to be the free and voluntary act of such
 party for the uses and purposes mentioned in the instrument.

Dated: _____



(Use this space for notary stamp/seal)

 Notary Public
 Print Name _____
 My commission expires _____