



ORDINANCE NO. 28992

1 AN ORDINANCE relating to telecommunications and franchise services; granting a
 2 non-exclusive franchise to Port of Tacoma, to construct, operate, and
 3 maintain fiber-optic telecommunications facilities in the public rights-of-way
 4 in designated area of the City of Tacoma; setting forth provisions, terms and
 5 conditions of the grant of franchise; specifically making such grant subject to
 6 the provisions of the Tacoma Municipal Code and Tacoma City Charter;
 7 providing for regulation of the telecommunications system; prescribing
 8 liquidated damages and certain other remedies for violation of franchise
 9 provisions in addition to those specified pursuant to the Municipal Code and
 10 the City of Tacoma Charter.

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

13 WHEREAS, PORT OF TACOMA (“Franchisee”) has owned and operated
 14 such Telecommunications Facilities pursuant to a franchise agreement authorized
 15 by the City of Tacoma (“City”) under Ordinance 27898 on July 13, 2010 and as
 16 amended under Ordinance 28016, and is now applying for a new Franchise to
 17 continue to operate and maintain the same Telecommunications System in the City
 18 of Tacoma, and

19 WHEREAS, the Tacoma City Council (“City Council”) has determined to
 20 grant such a franchise to PORT OF TACOMA upon those certain terms and
 21 conditions which the City Council deems necessary, and

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

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- 26 1.3 Construction, operation, or repair
- 1.4 Facility or Installation
- 1.5 Franchise



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5.5 Security Fund

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SECTION 6. MISCELLANEOUS PROVISIONS

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6.9 Execution



BE IT ORDAINED BY THE CITY OF TACOMA:

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

11 1.1 "City" means the City of Tacoma, a municipal corporation of the
12 state of Washington, and all departments, divisions, and agencies thereof,
13 including Tacoma Public Utilities.

14 1.2 "City Manager" means the City Manager or the City Manager's
15 designee.

17 1.3 "Construction, operation, or repair" and similar formulations of this
18 term mean the named actions interpreted broadly, encompassing, among other
19 things, installation, extension, maintenance, replacement, or components,
20 relocation, undergrounding, grading, site preparation, adjusting, testing, make-
21 ready, and excavation.

23 1.4 "Facility" and/or "Installation" refer to Telecommunications Facility
24 and/or Telecommunications Installation and include, but are not limited to, plant,
25 systems, improvements, and equipment owned, leased, or otherwise used by
26 the Franchisee, such as poles, fiber, wires, fixtures, equipment, above ground



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and underground circuits, and conduit in public rights-of-way and other property necessary or convenient for the transmission and distribution of telecommunications service where such facilities are located. This term, when used without a modifier, shall be considered to encompass both Overhead Facilities and Underground Facilities.

1.5 "Franchise" is as defined under the Tacoma Municipal Code and the City Charter.

1.6 "Franchise Area" means that area, set forth in Schedule I attached hereto, within the present and future corporate limits of the City of Tacoma, that a Franchisee is authorized to construct, operate, and maintain a Telecommunications System.

1.7 "Franchisee" is Port of Tacoma.

1.8 "Hazardous Substances" means any hazardous, toxic, or dangerous substance, material, waste, pollutant, or contaminant, including all substances designated under the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1257 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Federal Insecticide, Fungicide, Rodenticide Act, 7 U.S.C. § 136 et seq.; the Washington Hazardous Waste management Act, Chapter 70.105 RCW; and the Washington Model Toxics Control Act, Chapter 70.105D, RCW; all as



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

8 1.9 “Operator” refers to a Person who has ownership of any part of
9 such Telecommunications System or has control over the use of any part of the
10 such Telecommunications System through a lease, swap, rental or other similar
11 bargained for arrangement.

12 1.10 “Overhead Facilities” refers to electric utility and
13 Telecommunications Facilities located above the surface of the ground, including
14 the underground supports and foundations for such Facilities.

15 1.11 “Person” includes any individual, corporation, partnership,
16 association, joint stock company, trust, or any other legal entity, but not the City,
17 unless the City department provides Telecommunications Service as defined
18 herein.

19 1.12 “Public Rights of Way” mean the public streets and easements
20 which, under the City Charter, the Tacoma Municipal Code, City ordinances, and
21 applicable laws, the City has authority to grant Franchises, permits, or Licenses
22 for use thereof or has regulatory authority thereover, but expressly excluding
23 railroad rights of way, airport, and harbor areas. Public Rights-of-Way for the
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1 purpose of this Franchise do not include buildings, parks, poles, conduits, similar
2 facilities, or property owned by or leased to the City, including, by way of
3 example and not limitation, structures in the Public Rights-of-Way such as utility
4 poles and light poles.

5 1.13 "System" means the Telecommunications System.

6 1.14 "Telecommunications Service" or "Service" means the
7 transmission of information in electronic or optical form, including, but not
8 limited to, voice, video, or data, whether or not the transmission medium is
9 owned by the provider itself. Telecommunications Service includes telephone
10 service but does not include Cable Service or over-the-air broadcasts to the
11 public-at-large from facilities licensed by the Federal Communications
12 Commission or any successor thereto.

13 1.15 "Telecommunications System" or "Telecommunications Facility"
14 means a tangible facility that is used to provide one or more Telecommunications
15 Services, any portion of which occupies Public Rights-of-Way. The term
16 Telecommunications System by way of example, and not limitation, includes
17 wires, equipment cabinets, guys, conduit, radio transmitting towers, poles, other
18 supporting structures, and associated and appurtenant facilities used to transmit
19 telecommunications signals. The term Telecommunications System includes all
20 devices mounted on light and/or utility poles in the Public Rights-of-Way through
21 which Telecommunications Services are originated or terminated. An open video
22 system is not a Telecommunications System to the extent that it provides only
23 video services; a Cable System is not a Telecommunications System to the
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1 extent that it provides only Cable Service. The term Telecommunications Facility
2 includes any of the tangible components of a Telecommunications System which
3 occupies Public Rights-of-Way.

4 1.16 "Title," when used alone in the context of referring to the Title of
5 the Tacoma Municipal Code, shall mean Title 16 (and more specifically Title
6 16B) of the Tacoma Municipal Code.

7 1.17 "Underground Facilities" refers to electric utility and
8 Telecommunications Facilities located under the surface of the ground,
9 excluding the underground foundations or supports for Overhead Facilities.
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11 Section 2 - FRANCHISE.

12 2.1 Grant of Franchise. The City hereby grants to Franchisee a
13 non-exclusive Franchise which, once it becomes effective, shall authorize
14 Franchisee, to occupy the Public Rights-of-Way within the Franchise Area set
15 forth in Schedule I attached hereto to construct, operate, and maintain a fiber-
16 optic Telecommunications System necessary to the operation of the
17 Franchisee's business and to the health, safety, and welfare of the community.
18 This Franchise is conditioned upon the provisions contained herein and the
19 Franchisee's compliance with any application federal or state regulations that
20 currently exist or may hereafter be enacted by federal or state regulatory
21 agencies with jurisdiction over the Franchisee and its use of the Public-Rights-
22 of-Way, Title 16B, Title 10, and other applicable provisions of the Tacoma
23 Municipal Code, the Tacoma City Charter including but not limited to the
24 provisions set forth in Article VIII of the Charter, applicable law, including by
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1 way of example and not limitation, zoning law codes and permitting requirements,
2 and this Franchise may be revoked if it is not so exercised. Neither the granting
3 of this Franchise, nor any provision thereof, shall constitute a waiver or bar to the
4 exercise of any governmental right or power, police power, or regulatory power of
5 the City as may exist at the time the Franchise is issued or thereafter be obtained.

6 No rights shall pass to the Franchisee by implication.

7 The grant of this Franchise is limited to the purpose stated herein. This
8 Franchise does not include permission to provide for hire Telecommunications
9 Services or cable service, as defined in 47 U.S.C. § 522, multichannel video
10 programming, open video systems, or uses other than what is stated herein.
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12 Notwithstanding the above grant to use Public Rights-of-Way, no Public
13 Rights-of-Way shall be used by Franchisee if the City, in its sole opinion,
14 determines that such use is inconsistent with the terms, conditions or provisions
15 by which such Public Rights-of-Way was created or dedicated, or presently
16 used under applicable laws.
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18 Franchisee shall not unlawfully discriminate in hiring, in contracting, or in
19 the provision of services.

20 This Franchise is only intended to convey a limited right and interest as
21 to that property and those rights-of-way designated on Schedule I in which the
22 City has an actual interest. It is not a warranty of title or interest in City road
23 rights-of-way, nor is it a warranty of the Franchisee's right to locate in any such
24 area. No rights granted herein shall be deemed to be a representation nor
25 guarantee by the City that its interest, or other right to control the use of such
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1 property, is sufficient to permits its use for such purposes, and a Franchise
2 shall be deemed to grant no more than those rights which the City may have
3 the undisputed right and power to give. None of the rights granted herein shall
4 affect the City's ability or jurisdiction over its property, streets, or rights-of-way.

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

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10 2.2 Franchise Term. Subject to compliance with Section 7.7, each of
11 the provisions of this Franchise shall become effective upon the Franchisee's
12 acceptance of the terms and conditions of this Franchise ("Effective Date") and
13 shall remain in effect for ten (10) years thereafter. Subsequently, and in
14 accordance with the terms and provisions of Tacoma Charter Article VIII, City
15 Council may consider renewing this Franchise, at the written request of the
16 Franchisee, for any additional renewal period at any time within two (2) years
17 before the end of the Franchisee's original ten (10) year term, unless either
18 party expresses its intention in writing to terminate this Franchise at the
19 conclusion of the original ten (10) year term.

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21 2.3 Franchise Non-Exclusive. The Franchise granted herein shall be
22 non-exclusive. The issuance of a Franchise shall not affect the City's right to
23 itself construct, operate, or repair any Facility, with or without a Franchise.
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2.4 Assignment and Transfer of Franchise.

1 A. In accordance with Tacoma City Charter Article VIII,
2 Section 8.5, this Franchise shall not be leased, assigned, or otherwise alienated
3 without the express consent of the City. The rights granted, pursuant to this
4 Franchise, are a privilege that is held in the public trust and personal to the
5 original Franchisee. Franchisee shall ensure that no Transfer of the Franchise
6 may occur, directly or indirectly, without the express consent of the City by
7 ordinance.

9 B. Applications for approval of any Transfer shall be filed in
10 accordance with procedures set out in Title 16B of the Tacoma Municipal Code.

11 C. Any transfer or assignment of this Franchise without the
12 prior written consent of the City as set forth herein shall be void and shall result
13 in revocation of the Franchise and any existing permits.

14 2.5 Revocation. The procedures for revocation and forfeiture shall be
15 governed by Title 16B, Section 16B.05.100. Before the Franchise is revoked,
16 Franchisee shall be given notice and opportunity to cure at least equivalent to
17 that required by Title 16B (except in those cases where notice and opportunity
18 to cure are not required), and shall be accorded at least an opportunity to be
19 heard that provides at least the due process protections required by Title 16B.
20 In addition to any rights set out elsewhere in this Franchise, the City Charter or
21 Title 16, the City reserves the right to declare a forfeiture or otherwise revoke
22 this Franchise, and all rights and privileges pertaining thereto, as provided in
23 Title 16(B) or in the event that:
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1 A. Franchisee materially breaches or otherwise fails to
2 perform, comply with or otherwise observe any of the terms and conditions of
3 this franchise or fails to maintain all required licenses and approvals from
4 federal, state, and local jurisdictions, and fails to cure such breach or default
5 within thirty (30) calendar days of City's providing Franchisee written notice
6 thereof, or, if not reasonably capable of being cured within thirty (30) calendar
7 days, within such other reasonable period of time as the parties may agree
8 upon; or

9 B. Franchisee becomes insolvent, unable or unwilling to pay
10 its debts, or is adjudged a bankrupt; or

11 C. Franchisee fails to obtain and maintain any permit required by
12 any federal or state regulatory body or by the City, relating to the construction,
13 operation, and maintenance of the Telecommunications System; or

14 D. Franchisee fails to maintain the full amount of, or to post a
15 performance bond as required under the terms of this Franchise.
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18 2.6 Right to Require Removal of Property/Right to Remove Property.

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

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

7 C. Any order by the City issued pursuant to Section 2.6.A to
8 remove Installations shall be sent by registered or certified mail to Franchisee
9 not later than 24 months following the date of Franchise termination. Removal
10 shall be completed (except with respect to property that Franchisee is permitted
11 to abandon in place) not later than 12 months following the date of notification
12 to remove the Facilities.

13 D. Franchisee shall file a written removal plan with the City not
14 later than 30 calendar days following the date of the receipt of any orders directing
15 removal, or any consent to removal describing the work that will be performed, the
16 manner it will be performed, and a schedule for removal by location. The removal
17 plan shall be subject to approval and regulation by the City, including, without
18 limitation, the City's Right-of-Way Restoration Policy.

19 The affected property must be restored to as good or better condition than
20 existed immediately prior to removal; and those damaged by removal must be
21 compensated for the damage.
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1 2.7 Responsibility for Costs. Except as expressly provided otherwise,
2 any act that Franchisee is required to perform under this Franchise shall be
3 performed at its cost. If Franchisee fails to perform work that it is required to
4 perform within the time provided for performance, the City may perform the
5 work and bill the Franchisee. The Franchisee shall pay the amounts billed
6 within 30 days of receipt of the bill. The parties agree that any amounts paid
7 pursuant to this section or Title 16B are not franchise fees.

8 2.8 Work of Contractors and Subcontractors. Work by contractors and
9 subcontractors is subject to the same restrictions, limitations and conditions as if
10 the work were performed by Franchisee. Franchisee shall be responsible for all
11 work performed by its contractors and subcontractors, and others performing work
12 on its behalf as if the work were performed by it and shall ensure that all such work
13 is performed in compliance with this Franchise and Title 16B, and other applicable
14 law, including without limitation, the City's Right-of-Way Restoration Policy, and
15 shall be jointly and severally liable for all damages and correcting all damage
16 caused by them. It is Franchisee's responsibility to ensure that contractors,
17 subcontractor or other Person(s) performing work on Franchisee's behalf are
18 familiar with the requirements of this Franchise, Title 16B, the City's Right-of-Way
19 Restoration Policy, and other applicable laws governing the work performed by
20 them.
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24 2.9 Survival of Terms. Upon the expiration, termination, revocation, or
25 forfeiture of the Franchise Agreement, Franchisee shall no longer have the right
26 to occupy the Public Rights-of-Way as provided for through this Franchise.



1 However, the Franchisee's obligations under this Franchise Agreement to the
2 City shall survive the expiration, termination, revocation, or forfeiture of these
3 rights according to its terms for so long as Franchisee's Telecommunications
4 System or any part thereof shall remain in whole or in part in the Public Rights-of-
5 Way, or until such time as Franchisee transfers ownership in all of its Facilities in
6 the Franchise Area to the City or executes an assignment as provided for under
7 TMC 16B. Said obligations include, but are not limited to Franchisee's
8 obligations to indemnify, defend, and protect the City, to provide insurance, to
9 relocate its Facilities, and to reimburse the City for its costs to perform
10 Franchisee's work.
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12 SECTION 3 - OPERATION IN STREETS AND RIGHTS-OF-WAY.

13 3.1 Use of Public Rights-of-Way. Franchisee may, subject to the terms
14 of this Franchise and Title 16B, the City's Right-of-Way Restoration Policy, and
15 other applicable laws, construct, operate and maintain a System in the Public
16 Rights-of-Way within the Franchise Area. Without limiting the foregoing,
17 Franchisee expressly agrees that it will construct, operate and maintain its System
18 in compliance with the requirements of The Titles 10 and 16, and with other
19 applicable City codes; and will obtain and maintain all bonds and billable work
20 orders required by the same.
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23 3.2 Construction, Operation, or Repair. Franchisee shall, in all cases,
24 comply with all lawful City ordinances and regulations now in effect or hereinafter
25 enacted regarding the acquisition of permits and such other items as may be
26 required by the City in connection with the construction, operation or repair of the



1 Telecommunications System, including, without limitation, the City's Right-of-Way
2 Restoration Policy.

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

6 A. (1) Franchisee shall, with as much advance notice as is
7 feasible under the circumstances, but in no event less than 90 days, except in
8 circumstances there is a risk to public safety, protect, support, temporarily
9 disconnect, relocate, or remove any of its property when required by the City by
10 reason of traffic conditions; public safety; Public Rights-of-Way construction;
11 Public Rights-of-Way repair (including resurfacing or widening); change of
12 Public Rights-of-Way grade; construction, installation or repair of sewers,
13 drains, water pipes, power lines, signal lines, tracks, or any other type of
14 government-owned Telecommunications System, public work, public project,
15 public facility, or improvement or any government-owned utility; Public Rights-
16 of-Way vacation; or for any other purpose where the work involved would be
17 aided by the removal or relocation of the Telecommunications System.
18 Collectively, such matters are referred to below as the "public work."
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21 (2) In the event of an emergency, or where the
22 Telecommunications System creates or is contributing to an imminent danger to
23 health, safety, or property, the City may protect, support, temporarily
24 disconnect, remove, or relocate any or all parts of the Telecommunications
25 System without prior notice, and charge the Franchisee for costs incurred. The
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1 City shall notify Franchisee as soon as is reasonably practical, after any City
2 action pursuant to this Section.

3 (3) In the case of work, if any third party Person that is
4 authorized to place Facilities in the Rights-of-Way requests Franchisee to protect,
5 support, temporarily disconnect, remove, or relocate Franchisee's facilities to
6 accommodate the construction, operation, or repair of the facilities of such other
7 third party Person, the Franchisee shall, after 90 days' advance written notice, take
8 action to effect the necessary changes requested. In the case of work by a third
9 party Person for the sole benefit of the thirty party Person, unless the matter is
10 governed by a valid contract or a state or federal law or regulation, or unless the
11 Franchisee's Telecommunications System was not properly installed, the
12 Franchisee's reasonable cost of the same shall be borne by the third party Person
13 requesting the protection, support, temporary disconnection, removal, or
14 relocation.
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16 (4) Franchisee shall, on the request of any Person
17 holding a valid permit issued by a governmental authority, temporarily raise or
18 lower its wires to permit the moving of buildings or other objects. The expense
19 of such temporary removal or raising or lowering of wires shall be paid by the
20 Person requesting the same.
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22 B. The Franchisee's obligation to construct, operate, and repair its
23 Telecommunications System in compliance with all laws, ordinances, departmental
24 rules and regulations and practices affecting such System, includes, by way of
25 example, and not limitation, the obligation to construct, operate, maintain, and
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1 repair in accordance with zoning codes, safety codes and City construction
2 standards, including the most current version of the Standard Specifications for
3 Road, Bridge and Municipal Construction, as prepared by the Washington State
4 Department of Transportation (WSDOT) and the Washington State Chapter of
5 American Public Works Association (APWA); the most current version of the APWA
6 Amendments to Division One, and the most current version of the City of Tacoma
7 Amendments thereto. In addition, the construction, operation, and repair shall be
8 performed in a manner consistent with industry standards for the same or similar
9 services in the State of Washington. The Franchisee shall exercise reasonable
10 care in the performance of all its activities and shall use industry standard methods
11 and devices for preventing failures and accidents that are likely to cause damage,
12 injury, or nuisance to the public or to property. In the event that Franchisee's work
13 or other use of the Public Right-of-Way causes damage to any City facility,
14 Franchisee shall bear the cost of repairing, or replacing as necessary, such City
15 facility.
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18 C. Except in the event of an emergency, Franchisee shall provide
19 City at least thirty (30) calendar days written notice prior to any alteration, repair,
20 replacement, removal, or other substantial activity, other than routine inspections
21 and maintenance, by Franchisee, its agents, employees or contractors on
22 Franchisee's Facilities or appurtenant structures on City's property. Said written
23 notice shall include, at a minimum, detailed plans and specifications, if any, and a
24 detailed description of the proposed work and anticipated time of the work. Such
25 work shall only commence upon the issuance of applicable permits by the City,
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1 which permits shall not be unreasonably withheld or delayed. In the event of an
2 emergency requiring immediate action by Franchisee for the protection of the
3 Facilities, City's property, Franchisee may take such action upon such notice to the
4 City as is reasonable under the circumstances. If any damage occurs to an
5 Underground Facility or its protective covering, the Franchisee, or its agent, shall
6 notify the Facility's operator promptly. When the Facility's operator receives a
7 damage notice, the Facility's operator shall promptly dispatch personnel to the
8 damage area to investigate. If the damage results in the escape of any flammable,
9 toxic, or corrosive gas or liquid, or endangers life, health, or property, the
10 Franchisee, or its agent, shall immediately notify the Facility's operator and 911
11 and take immediate action to protect the public and nearby properties.
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13 D. Franchisee must follow City-established requirements for
14 placement of Facilities in Public Rights-of-Way, including the specific location of
15 Facilities in the Public Rights-of-Way, and must in any event install Facilities in
16 a manner that minimizes interference with the use of the Public Rights-of-Way
17 by others, including others that may be installing Telecommunications Facilities.
18 The City may require that Facilities be installed at a particular time, at a specific
19 place, or in a particular manner as a condition of access to a particular Public
20 Right-of-Way area; may deny access if Franchisee is not willing to comply with
21 the City's requirements; and may remove, or require removal of, any Facility
22 that is not installed in compliance with the requirements established by the City,
23 or which is installed without prior City approval of the time, place, or manner of
24 installation and charge the Franchisee for all costs associated with removal;
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and may require Franchisee to cooperate with others to minimize adverse impacts on the Public Rights-of-Way through joint trenching and other arrangements.

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

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

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

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



1 I. Whenever it shall be necessary in constructing, maintaining,
2 repairing, relocating, removing, or replacing any of the Franchisee's Facilities in any
3 street, right of way area, or public property, the Franchisee shall without delay, as
4 soon as is commercially reasonable, and at the Franchisee's sole expense, remove
5 all debris and restore the surface of the street, or public property as nearly as
6 practicable to as good or better condition as it was in before the work began.
7 Franchisee shall replace any property corner monuments, survey reference or hubs
8 that were disturbed or destroyed during the Franchisee's work in the Franchise
9 Area. Such restoration shall be done in a manner consistent with applicable codes
10 and laws, under the supervision of the City's Director of Public Works or his
11 authorized designee and to the City's reasonable satisfaction and specifications.
12 Whenever restoration is required hereunder, the restoration shall be done under a
13 bond in an amount appropriate to guarantee adequate restoration.
14

15 J. No tree trimming shall be performed without the permission
16 of the City and other affected authorities, and any tree trimming must be
17 performed in strict accordance with the City Code. Even if tree trimming is
18 authorized by the City, Franchisee is liable for any damage it causes during the
19 course of tree trimming.
20

21 K. In any dispute over the adequacy of a restoration relative to
22 this section, the Tacoma Department of Public Works Director shall in his/her
23 sole discretion, make the final determination.
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25 L. Franchisee shall not remove any Overhead or Underground
26 Facilities except as hereinafter provided.



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

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

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

(4) Franchisee may voluntarily remove any Overhead or Underground Facilities from the streets which have been installed in such a manner that they can be removed without trenching or other opening of the Rights-of-Way.

M. Additional Notice of Disturbance or Damage. If the Franchisee's actions including but not limited to the installation, construction, operation, maintenance, or repair of its Telecommunications System causes



1 unplanned, unapproved, or unanticipated disturbance or damage to the Public-
2 Rights-of-Way or other public or private property, Franchisee shall promptly
3 notify the property owner within 24 hours.

4 N. Franchisee shall continuously be a member of the State of
5 Washington one number locator service under RCW 19.122, or approved
6 equivalent, and shall comply with all such applicable rules and regulations.

7 Franchisee shall provide reasonable notice to the City prior to commencing any
8 work or construction under this Franchise and additionally to those owners or other
9 persons in control of property abutting the Franchise Area when such work or
10 construction will affect access to such property or otherwise impact such property
11 or the private or public improvements within said area.

12 O. Nothing in this Franchise shall be deemed to impose any
13 duty or obligations upon the City to determine the adequacy or sufficiency of the
14 Franchisee's plans and designs or to ascertain whether the Franchisee's
15 proposed or actual construction, testing, maintenance, repairs, replacement or
16 removal is in conformance with the plans and specifications reviewed by the
17 City. Franchisee shall ensure that any contractor working on its job sites within
18 the Franchise Area has a written safety plan addressing the safety of all persons
19 and property during the performance of any work therein.

20 3.3 Right To Inspect and Order Corrections. The City may inspect the
21 Telecommunications System at any time reasonable under the circumstances to
22 ensure compliance with this Franchise and applicable law, including to ensure
23 that Franchisee's Telecommunications System is constructed and maintained in
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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 Franchisee, in writing, to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition on a timetable established by the City which is reasonable in light of the unsafe condition. The City has the right to correct, inspect, administer, and repair the unsafe condition if Franchisee fails to do so, and to charge the Franchisee therefor.

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

SECTION 4 - REGULATORY PROVISIONS.

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

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



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

- 8 B. Commencing an action at law for monetary damages;
9 C. Commencing an action for equitable or other relief;
10 D. Declaring the Franchise to be revoked; and/or
11 E. Seeking specific performance of any provision, which
12 reasonably lends itself to such remedy.
13

14 In determining which remedy or remedies for Franchisee's violation are
15 appropriate, the City may take into consideration the nature and extent of the
16 violation, the remedy needed to prevent such violations in the future, whether
17 Franchisee has a history of previous violations of the same or similar kind, and
18 such other considerations as are appropriate under the circumstances.
19 Remedies are cumulative; the exercise of one shall not foreclose the exercise
20 of others.
21

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23 4.3 Procedure for Remedying Franchise Violations. Before imposing
24 liquidated damages, or drawing upon any performance bond, letter of credit,
25 security fund, or any other security provided to the City related to this Franchise
26 set forth in Section 6, the City shall follow the procedure below.



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A. Notice of Violation. In the event that the City believes that

Franchisee has not complied with the terms of this Franchise, the City shall notify Franchisee in writing, by certified mail, of the nature of the alleged noncompliance.

B. Franchisee's Right to Cure or Respond. Except as provided in

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

C. Public Hearing. The City may schedule a public hearing to

investigate any alleged default. The City shall give Franchisee 20 calendar days' notice of the time and place of the hearing and provide Franchisee with an opportunity to be heard.

D. Action after Hearing. If the City determines after such

hearing that the Franchisee did not cure, or initiate steps to cure satisfactory to the City, 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



1 liquidated damages. However, notice and opportunity to cure are not required
2 for repeat violations, or for a failure to correct a default where Franchisee knew
3 or should have known it was in default; in such cases, the performance bond,
4 security fund, letter of credit or other security may be drawn upon, the guarantor
5 required to perform and liquidated damages imposed after the hearing required
6 by Section 4.3.C.

7 E. Liquidated Damage Amounts. Because Franchisee's
8 failure to comply with the provisions of this Franchise will result in injury to the
9 City, and because it may be difficult to estimate the extent of each such injury,
10 Franchisee and the City agree to the following liquidated damages, which
11 provisions represent the best estimate of the damages resulting from injuries of
12 specific types. The amounts of the liquidated damages set forth in this
13 Franchise are in 2024 dollars and shall be increased each year by the increase
14 in the U. S. Department of Labor, Bureau of Labor Statistics, Consumer Price
15 Index for Pacific Cities and U. S. City Average for the greater Seattle area. The
16 amount of liquidated damages for all material violations of this Franchise for
17 which actual damages may not be ascertainable shall be: \$1,000 per day for
18 each violation for each day the violation continues. It is provided, however, that
19 the City shall allow the Franchisee a minimum of 30 business days after notice
20 to the Franchisee of such neglect, failure, or refusal to comply within which to
21 meet compliance or correct performance, prior to the assessment of any
22 liquidated damages.
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4.4 Failure to Enforce. Franchisee shall not be relieved of any of its obligations to comply promptly with any provision of this Franchise by reason of any failure of the City to enforce prompt compliance, and the City's failure to enforce shall not constitute a waiver of rights or acquiescence in Franchisee's conduct.

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

4.6 Alternative Remedies. No provision of this Franchise shall be deemed to bar the right of the City 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 Franchise 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 Franchisee,



1 or to seek and obtain judicial enforcement of Franchisee's obligations by means
2 of specific performance, injunctive relief or mandate, or any other judicial remedy
3 at law or in equity.

4 4.7 Compliance with the Laws. Franchisee shall comply with all federal
5 and state laws and regulations, including regulations of any administrative agency
6 thereof, as well as all City ordinances, resolutions, rules policies and regulations
7 heretofore or hereafter adopted or established during the entire term of the
8 Franchise; provided that, nothing herein shall prevent Franchisee from
9 challenging a provision of laws that applies only to it as an impairment of contract.
10 Nothing in this Franchise shall limit the City's right of eminent domain under state
11 law. Nothing in this Franchise shall be deemed to waive the requirements of any
12 lawful code or resolution of the City regarding permits, fees to be paid, or manner
13 of construction.
14

15 SECTION 5 - COMPENSATION AND FINANCIAL PROVISIONS.

16 5.1 Fees and Costs.

17 A. Franchise Fee. The City reserves the right to exercise authority
18 it has or may acquire in the future to charge a fee for the use of the City's Rights-
19 of-Way provided for under this Agreement, as authorized by law, and Franchisee
20 shall in good faith endeavor to negotiate a reasonable fee in that event.
21

22 B. Permit Fees. Franchisee shall be subject to all permit fees
23 associated with activities undertaken through the authority granted in this
24 Franchise Agreement or under ordinances of the City in effect on the date the
25 permits and authorizations are issued for the affected Facilities.
26



1 C. Franchisee Obligated to Pay Administrative Costs. In accord
2 with RCW 35.21.860 as presently effective, and as it may be later amended,
3 Franchisee must pay the City an amount sufficient to recover administration
4 expenses incurred in receiving and approving this Franchise, including, but not
5 limited to, the reasonable costs of outside consultants retained by the City to
6 assist in the City's consideration and processing of this Franchise application.
7 The first \$5,000 of said expenses will be covered by the \$5,000 application fee
8 deposited with the City. Franchisee will also pay the reasonable costs of
9 enforcing, or, as necessary, reviewing, the provisions of this Franchise as well as
10 costs involved with the modification, amendment, renewal, or Transfer of this
11 Franchise, as ordered by the Franchise Services Manager, whether such costs
12 result from accrued in-house staff time, or out-of-pocket expenses or administrative
13 costs, as well as expenses of retaining independent technical, legal, or financial
14 consultants or advisors, or whether relating to costs incurred due to initial System
15 development or to future System expansion. The amount of payment to be made by
16 Franchisee to cover these administrative costs is an amount determined to be
17 reasonable by the Franchise Services Manager pursuant to applicable laws and
18 regulations. Such obligation further includes municipal fees related to receiving and
19 approving permits or licenses, inspecting plans and construction, or relating to the
20 preparation of a detailed statement pursuant to Chapter 43.21C RCW. Said fees
21 must be paid within 30 days of receipt of the City's billing therefor.
22

25 D. Manner of Payment; Audit. Franchisee shall make any required
26 fee payments in the form, intervals and manner requested by the City Treasurer,



1 and furnish him/her any information related to his/her revenue collection functions
2 reasonably requested. In case of audit, the City Treasurer may require Franchisee
3 to furnish a verified statement of compliance with Franchisee's obligations or in
4 response to any questions. Said certificate may be required from an independent,
5 certified public accountant, at Franchisee's expense. All audits will take place on
6 Franchisee's premises or offices furnished by Franchisee, which shall be a location
7 within the City of Tacoma or other mutually agreeable place; however, the
8 Franchisee must agree to pay the associated costs. Franchisee agrees, upon
9 request of the City Treasurer, to provide copies of all documents filed with any
10 federal, state, or local regulatory agency, to be mailed to the City Treasurer on the
11 same day as filed, postage prepaid, affecting any of Franchisee's Facilities or
12 business operations in the City of Tacoma.

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

25 5.2 Performance Bond. At the same time it provides its Franchise
26 acceptance to the City, Franchisee shall provide a performance bond to ensure the



1 faithful performance of its responsibilities under this Franchise and applicable law,
2 including by way of example and not limitation, its obligations to relocate and
3 remove its facilities; and to restore City Rights-of-Way and other property. The
4 initial amount of the performance bond shall be \$15,000. The amount of the bond
5 may be changed from time to time to reflect changed risks to the City or to the
6 public. The Franchisee may be required to obtain additional bonds in accordance
7 with the City's ordinary practices. The bond shall be, in a form and with a surety
8 (authorized to do business in the state of Washington) acceptable to the City's Risk
9 Manager and in a form acceptable to the City Attorney. Franchisee shall pay all
10 premiums or costs associated with maintaining the bond, and shall keep the same
11 in full force and effect at all times during the Franchise Term.
12

13 5.3 Indemnification.

14 A. Franchisee, by accepting this Franchise, agrees to release the
15 City from and against any and all liability and responsibility in or arising out of the
16 construction, operation or maintenance of the Franchisee's System, and, without
17 limiting the provisions of Section 7.4, agrees not to sue or seek any money or
18 damages from City, its trustees, elected and appointed officials, officers, agents,
19 and employees in connection with the above mentioned matters unless the
20 liabilities and damages are caused by the City, its trustees, elected and appointed
21 officials, officers, agents, and employees and the actions are not provided for under
22 this Franchise and are not a lawful exercise of the City's governmental right or
23 power, police power, or regulatory power.
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1 B. Franchisee agrees to indemnify, defend, and hold harmless
2 the City, its trustees, elected and appointed officials, officers, agents, and
3 employees, from and against any and all claims, demands, or causes of action of
4 whatever kind or nature, and the resulting losses, costs, expenses, reasonable
5 attorneys' fees, liabilities, damages, orders, judgments, or decrees, sustained by
6 the City or any third party arising out of, or by reason of, or resulting from, or of
7 the acts, errors, or omissions of the Franchisee, or its agents, independent
8 contractors or employees related to or in any way arising out of the construction,
9 operation, repair, or relocation of the System including but not limited to costs and
10 reasonable attorneys' and experts' fees incurred by the City in defense thereof,
11 arising from (a) Franchisee's breach of any environmental laws applicable to the
12 System or (b) from any release of a hazardous substance on, from, or as a result
13 of the System being in the Franchise Area, or (c) other activity related to the
14 Franchise Area by Franchisee, its employees, agents, contractors, or
15 subcontractors provided that this provision shall not apply to the extent that the
16 claims, demands, or causes of action, resulting losses, costs, expenses,
17 attorneys' fees, liabilities, damages, orders, judgments, or decrees result from the
18 sole negligence of the City, its trustees, elected and appointed officers, agents, or
19 employees. This indemnity includes but is not limited to (a) liability for a
20 governmental agency's costs of removal or remedial action for Hazardous
21 Substances; (b) damages to natural resources caused by Hazardous Substances,
22 including the reasonable costs of assessing such damages; (c) liability for any
23 other person's costs of responding to hazardous substances; (d) liability for any
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1 costs of investigation, abatement, correction, cleanup, fines, penalties, or other
2 damages arising under any environmental laws; and (e) liability for personal
3 injury, property damage, or economic loss arising under any statutory or common-
4 law theory.

5 C. Franchisee shall remain solely and separately liable for the
6 function, testing, maintenance, replacement and/or repair of the Facilities or other
7 activities permitted hereunder.

8 D. With respect to any action brought by any employee of
9 Franchisee against the City, Franchisee waives immunity under Title 51 RCW
10 for the sole and limited purpose of effectuating its obligations to indemnify, hold
11 harmless, and defend the City under this clause and affirms that the City and
12 Franchisee have specifically negotiated this provision, as required by
13 RCW 4.24.115, to the extent it may apply.

14 E. Except for third party claims covered under the indemnification
15 provisions in this Franchise, in no event shall either party be liable to the other
16 party for any incidental, special, punitive, or consequential damages arising out
17 of or in connection with this Franchise.

18 F. This Franchise shall not create any duty on the City or any of its
19 officials, officers, employees or agents and no liability shall arise from any action
20 or failure to act by the City or any of its officials, officers, employees or agents in
21 the exercise of powers reserved herein. Further, this ordinance is not intended to
22 acknowledge, create, imply or expand any duty or liability of the City with respect
23 to any function in the exercise of its police power or for any other purpose. Any
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1 duty that may be deemed to be created in the City hereunder shall be deemed a
2 duty to the general public and not to any specific party, group or entity.

3 G. Franchisee agrees that the covenants and representations
4 relating to the indemnity provided in this Section 5.3 above shall survive the
5 term/expiration/termination of this Franchise, Special Street Use Permit, License,
6 or other authorization, and continue in full force and effect as to the Franchisee's
7 responsibility to indemnify, subject to Section 2.9 on Survival of Terms.

8 5.4 Franchisee Insurance.

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

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

22 C. Certificates of insurance, reflecting evidence of the required
23 insurance and naming the City as an additional insured for both ongoing and
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1 completed operations with all required endorsements on all required policies shall
2 be filed with the City's Risk Manager annually. The certificate shall be filed with
3 the acceptance of the Franchise, and annually thereafter, and as provided in E
4 below. These certificates shall contain a provision that the insurers providing
5 coverages afforded under these policies will not cancel same until at least 30 days'
6 prior written notice has been given to the City.

7 D. Policies shall be issued by companies authorized to do
8 business under the laws of the state of Washington (or issued as a surplus line
9 by a Washington Surplus lines broker). Financial Ratings must be no less than
10 "(A-)VII" in the latest edition of "Bests Key Rating Guide," published by A.M.
11 Best Guide.
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13 E. In the event that the insurance certificate provided indicates
14 that the insurance shall terminate or lapse during the period of the Franchise, the
15 Franchisee shall furnish, prior to the expiration of the date of such insurance, a
16 renewed certificate of insurance as proof that equal and like coverage has been or
17 will be obtained prior to any such lapse or termination during the balance of the
18 period of the Franchise.
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20 F. The City shall reserve the right to require any other
21 insurance coverage it deems necessary during the term of the Franchise,
22 depending upon the exposures.
23

24 5.5 Security Fund. Franchisee shall establish a cash security fund or
25 provide the City an irrevocable letter of credit in the amount of \$30,000, to secure
26 the payment of fees owed, to secure any other performance promised in this



1 Franchise, and to pay any taxes, fees or liens owed to the City. The letter of
2 credit shall be in a form and with an institution acceptable to the City's Director of
3 Finance and in a form acceptable to the City Attorney. Should the City draw upon
4 the cash security fund or letter of credit, it shall promptly notify the Franchisee,
5 and the Franchisee shall promptly restore the fund or the letter of credit to the full
6 required amount. The City may from time to time change the amount of the
7 required security fund/letter of credit to reflect changes in the risks to the City and
8 to the public, including delinquencies in taxes or other payments to the City.

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10 SECTION 6 - MISCELLANEOUS PROVISIONS.

11 6.1 Posting and Publication. Franchisee shall assume the cost of
12 posting and publication of this Franchise as such posting and publication is
13 required by law and such is payable upon Franchisee's filing of acceptance of
14 the Franchise.

15 6.2 Guarantee of Performance. Franchisee acknowledges that it enters
16 into the Franchise voluntarily in order to secure and in consideration of the grant
17 from the City of a ten-year Franchise. Performance pursuant to the terms and
18 conditions of this Franchise agreement is guaranteed by Franchisee.

19 6.3 Governing Law and Venue. The Franchise shall be governed by
20 and construed in accordance with the laws of the state of Washington without
21 recourse to any principles of Conflicts of Laws, and Franchisee agrees that any
22 action brought relative to enforcement of this Franchise shall be initiated in the
23 Superior Court of Pierce County, and shall not be removed to a federal court.
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1 6.4 Open Records and Confidentiality. Unless otherwise provided by law,
2 information submitted as part of a Franchise application is open to public inspection
3 and subject to the Washington Public Records Act (Chapter 42.56 RCW). It is the
4 Franchisee’s responsibility to be familiar with the Washington Public Records Act.
5 Franchisee may specifically identify any information it considers proprietary by
6 marking and providing said information to City in a separate envelope marked
7 “Proprietary Information.” In the event that: (A) the City receives a request from
8 another party to disclose any information which the Franchisee has deemed
9 proprietary, and if the City Attorney determines that said information may be subject
10 to being disclosed; or (B) the City determines that the information should be
11 disclosed in connection with its enforcement of any provision of Title 16B TMC, or in
12 the exercise of its police or regulatory powers, then the City shall notify the
13 Franchisee of the Franchisee’s opportunity to seek a protective order from a court
14 with appropriate jurisdiction. In the event an action is not commenced within ten
15 business days, the City may disclose said information. By submitting information
16 which the Franchisee deems proprietary or otherwise exempt from disclosure, the
17 Franchisee agrees to defend and hold harmless the City from any claim for
18 disclosure under the Washington Public Records Act, including, but not limited to,
19 any expenses including out-of-pocket costs and attorneys’ fees, as well as any
20 judgment entered against the City for the attorney fees of the party requesting
21 disclosure.
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25 6.5 No Recourse. Without limiting such immunities as the City or other
26 Persons may have under applicable law, Franchisee shall have no monetary



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recourse whatsoever against the City or its officials, boards, commissions, agents or employees for any loss, costs, expense or damage arising out of any provision or requirement of Title 16B or because of the enforcement of Title 16B or the City's exercise of its authority pursuant to Title 16B, this Franchise or other applicable law.

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

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

With A Copy To:

City Attorney
747 Market Street, #1120
Tacoma, WA 98402

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

PORT OF TACOMA, Director of Contracts
P.O. Box 1837
Tacoma, WA 98401



With A Copy To:

1 Port General Counsel (provided the City has been informed of the Port
2 Counsel's current address)

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

8 6.7. Corrections by City Clerk and Amendment by the Parties. Upon
9 approval of the City Attorney, the City Clerk is authorized to make necessary
10 corrections to this ordinance, including the correction of clerical errors; references
11 to other local, state or federal laws, codes, rules, or regulations; or ordinance
12 numbering and section/subsection numbering. Any other modification, change, or
13 alteration to this Franchise shall only be effective if completed by means of a
14 written ordinance approved by City Council approving said amendment.
15

16 6.8 Entire Franchise. This Franchise contains the entire understanding
17 and agreement between the parties as to the subject matter herein and no other
18 agreements or understandings, written or otherwise, shall be binding upon the
19 parties upon approval and acceptance of this Franchise.
20

21 6.9 Execution. Franchisee shall execute Ordinance by means of signed
22 acceptance of the Franchise granted hereunder within 30 days after the date of
23 passage of the Ordinance by the City Council. The acceptance shall be submitted
24 in the form attached hereto or other form acceptable to the City Attorney and in
25 accepting the Franchise, Franchisee warrants that it has carefully read the terms
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and conditions of this Franchise and unconditionally accepts all of the terms and conditions of this Franchise and agrees to abide by the same and acknowledges that it has relied upon its own investigation of all relevant facts, that it has had the assistance of counsel, that it was not induced to accept a Franchise, that this Franchise represents the entire agreement between Franchisee and the City, and that Franchisee accepts all risks related to the interpretation of this Franchise. The countersigned Ordinance and acceptance shall be returned to the City accompanied by: evidence of insurance; a payment for publication costs; billable work order deposit, and security deposit (or the letter of credit), if any.

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

Passed _____

Mayor: _____

Attest: City Clerk

Approved as to form

Deputy City Attorney



ACCEPTANCE OF CITY FRANCHISE

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Ordinance No. _____, effective _____, 2024

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

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

DATED this _____ day of _____, 2024.

By _____
Its _____

Approved as to form:

General Counsel, Port of Tacoma



SCHEDULE I

“Franchised Area”

A meandering 5 Foot wide strip lying within the northerly 75 feet of the Port of Tacoma Road Right of Way described as follows:

Beginning at a point 45 Feet easterly of the intersection of East 11th Street, as vacated by City of Tacoma Ordinance 15312 dated April 18, 1955 and the extended northerly margin of Port of Tacoma Road as dedicated per the Corrected Plat of Port of Tacoma Industrial Development District, First Addition recorded March 20, 1957 under Auditor's File Number 1782439, records of Pierce County, Washington; thence Southeasterly, within said Port of Tacoma Road Right of Way, to a point lying 250 Feet Easterly of the easterly margin of Lincoln Avenue and the Terminus of this described strip.

As further depicted within the As-Build drawings attached hereto and incorporated herein by this reference.

All situate in the Northeast and Southeast Quarter of Section 34, and the Southwest Quarter of Section 35, Township 21 North, Range 3 East of the W.M., City of Tacoma, County of Pierce, State of Washington

Together with

ALL THAT PORTION OF THE FOLLOWING DESCRIBED 5 FOOT WIDE STRIP OF LAND LYING WITHIN THE EAST 11TH STREET, MILWAUKEE WAY AND LINCOLN AVENUE RIGHT OF WAYS, LYING 2.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT A BRASS DISK AT THE INTERSECTION OF EAST 11TH STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 184, AS SHOWN ON PORT OF TACOMA 2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA SURVEY CONTROL MAP"; THENCE SOUTH 44°06'22" WEST, 4,652.71 FEET TO A BRASS DISK SET IN A MONUMENT CASE AT THE INTERSECTION OF EAST 11TH STREET AND THORNE ROAD, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 925 AS SHOWN ON AFORESAID MAP; THENCE SOUTH 50°20'25" WEST, 830.42 FEET, MORE OR LESS, TO THE NORTHERN MARGIN OF EAST 11TH STREET AND THE POINT OF BEGINNING; THENCE SOUTH 43°27'34" EAST ALONG AN UNDERGROUND CONDUIT ROUTE, 125.15 FEET;



1 THENCE SOUTH 43°44'19" WEST, 113.27 FEET TO A POLE AND
2 TRANSITION TO AERIAL CABLE ROUTE;
3 THENCE CONTINUING SOUTH 43°44'19" WEST ALONG SAID AERIAL
4 CABLE ROUTE, 54.06 FEET;
5 THENCE SOUTH 30°49'29" EAST, 1444.88 FEET;
6 THENCE SOUTH 29°39'29" EAST, 213.86 FEET;
7 THENCE SOUTH 27°40'58" EAST, 255.85 FEET; THENCE SOUTH 26°57'56"
8 EAST, 246.82 FEET; THENCE SOUTH 29°27'07" EAST, 250.17 FEET;
9 THENCE SOUTH 35°28'43" EAST, 246.79 FEET; THENCE SOUTH 29° 24'46"
10 EAST, 253.39 FEET;
11 THENCE NORTH 59°58'41" EAST, 91.67 FEET TO A POLE AND
12 TRANSITION TO UNDERGROUND CONDUIT ROUTE;
13 THENCE SOUTH 06°02'25" WEST ALONG SAID UNDERGROUND CONDUIT
14 ROUTE, 27.20 FEET;
15 THENCE SOUTH 31°27'14" EAST, 351.14 FEET;
16 THENCE SOUTH 39°46'07" EAST, 89.31 FEET;
17 THENCE SOUTH 52°47'35" EAST, 9.53 FEET;
18 THENCE SOUTH 79°15'18" EAST, 9.53 FEET;
19 THENCE NORTH 89° 29'00" EAST, 18.95 FEET;
20 THENCE SOUTH 77°10'44" EAST, 12.15 FEET; THENCE SOUTH 51°15'42"
21 EAST, 14.59 FEET; THENCE SOUTH 04°14'24" EAST, 85.59 FEET; THENCE
22 SOUTH 13°33'24" EAST, 14.48 FEET; THENCE SOUTH 30°08'00" EAST,
23 14.48 FEET;
24 THENCE SOUTH 41°36'50" EAST, 102.36 FEET, MORE OR LESS, TO THE
25 EASTERN MARGIN OF MILWAUKEE WAY AND THE TERMINUS OF THIS
26 DESCRIBED LINE.

16 THE SIDELINES OF WHICH ARE TO BE LENGTHENED OR SHORTENED
17 AS NEEDED TO INTERSECT EACH OTHER AT ALL ANGLE POINTS AND
18 THE MARGINS OF EAST 11TH STREET, MILWAUKEE WAY AND LINCOLN
19 AVENUE.

19 TOGETHER WITH
20 ALL THAT PORTION OF THE FOLLOWING DESCRIBED 5 FOOT WIDE
21 STRIP OF LAND LYING WITHIN THE MARSHALL AVENUE RIGHT OF WAY,
22 LYING 2.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED
23 CENTER LINE:

23 COMMENCING AT A BRASS DISK AT THE INTERSECTION OF EAST 11 TH
24 STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF
25 TACOMA CONTROL POINT NO. 184, AS SHOWN ON PORT OF TACOMA
26 2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA
SURVEY CONTROL MAP"; THENCE SOUTH 44°06'22" WEST, 4,652.71 FEET
TO A BRASS DISK SET IN A MONUMENT CASE AT THE INTERSECTION
OF EAST 11TH STREET AND THORNE ROAD, SAID MONUMENT ALSO



1 BEING PORT OF TACOMA CONTROL POINT NO. 925 AS SHOWN ON
2 AFORESAID MAP;
3 THENCE SOUTH 21° 29'58" EAST, 4,968.41 FEET, MORE OR LESS, TO THE
4 NORTHERN MARGIN OF MARSHALL AVENUE AND THE POINT OF
5 BEGINNING; THENCE SOUTH 38° 13'32" EAST ALONG A UNDERGROUND
6 CONDUIT ROUTE, 2.42 FEET;
7 THENCE SOUTH 79°47'16" EAST, 3.98 FEET;
8 THENCE NORTH 58°39'00" EAST, 27.02 FEET;
9 THENCE SOUTH 31°21'00" EAST, 75.20 FEET, MORE OR LESS, TO THE
10 SOUTHERN MARGIN OF SAID MARSHALL AVENUE AND THE TERMINUS
11 OF THIS DESCRIBED LINE.

12 THE SIDELINES OF WHICH ARE TO BE LENGTHENED OR SHORTENED
13 AS NEEDED TO INTERSECT EACH OTHER AT ALL ANGLE POINTS AND
14 THE MARGINS OF MARSHALL AVENUE.

15 TOGETHER WITH
16 ALL THAT PORTION OF THE FOLLOWING DESCRIBED 5 FOOT WIDE
17 STRIP OF LAND LYING WITHIN THE PORT OF TACOMA ROAD RIGHT OF
18 WAY, LYING 2.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED
19 CENTER LINE:

20 COMMENCING AT A BRASS DISK AT THE INTERSECTION OF EAST 11TH
21 STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF
22 TACOMA CONTROL POINT NO. 184, AS SHOWN ON PORT OF TACOMA
23 2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA
24 SURVEY CONTROL MAP"; THENCE SOUTH 44°06'22" WEST, 4,652.71
25 FEET TO A BRASS DISK SET IN A MONUMENT CASE AT THE
26 INTERSECTION OF EAST 11TH STREET AND THORNE ROAD, SAID
MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 925
AS SHOWN ON AFORESAID MAP;
THENCE SOUTH 41°56'25" WEST, 8,773.94 FEET, MORE OR LESS, TO THE
WESTERN MARGIN OF PORT OF TACOMA ROAD AND THE POINT OF
BEGINNING;
THENCE NORTH 77°45'15" EAST ALONG AN UNDERGROUND CONDUIT
ROUTE, 48.24 FEET;
THENCE SOUTH 75°04'30" EAST, 132.35 FEET;
THENCE NORTH 71°48'57" EAST, 9.40 FEET;
THENCE NORTH 10°20'58" EAST, 19.84 FEET;
THENCE NORTH 38°28'24" EAST, 101.73 FEET, MORE OR LESS, TO THE
EASTERN MARGIN OF SAID PORT OF TACOMA ROAD AND THE
TERMINUS OF THIS DESCRIBED LINE.



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THE SIDELINES OF WHICH ARE TO BE LENGTHENED OR SHORTENED AS NEEDED TO INTERSECT EACH OTHER AT ALL ANGLE POINTS AND THE MARGINS OF PORT OF TACOMA ROAD.

TOGETHER WITH ALL THAT PORTION OF THE FOLLOWING DESCRIBED 5 FOOT WIDE STRIP OF LAND LYING WITHIN THE ALEXANDER AVENUE RIGHT OF WAY, LYING 2.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT A BRASS DISK AT THE INTERSECTION OF EAST 11TH STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 184, AS SHOWN ON PORT OF TACOMA 2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA SURVEY CONTROL MAP"; THENCE SOUTH 44°06'22" WEST, 4,652.71 FEET TO A BRASS DISK SET IN A MONUMENT CASE AT THE INTERSECTION OF EAST 11TH STREET AND THORNE ROAD, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 925 AS SHOWN ON AFORESAID MAP; THENCE SOUTH 64°21'18" EAST, 10,141.65 FEET, MORE OR LESS, TO THE WESTERN MARGIN OF ALEXANDER AVENUE AND THE POINT OF BEGINNING; THENCE SOUTH 08°11'07" EAST ALONG AN AERIAL CABLE ROUTE, 130.23 FEET TO A POLE AND TRANSITION TO UNDERGROUND CONDUIT ROUTE; THENCE SOUTH 12°53'24" EAST ALONG SAID UNDERGROUND CONDUIT ROUTE, 13.31 FEET; THENCE SOUTH 08°08'20" EAST, 6.75 FEET; THENCE SOUTH 23°15'58" WEST, 2.59 FEET; THENCE SOUTH 48°49'20" WEST, 11.63 FEET; THENCE SOUTH 25°42'23" WEST, 2.36 FEET; THENCE SOUTH 02°35'25" WEST, 5.62 FEET; THENCE SOUTH 06°36'02" EAST, 92.60 FEET; THENCE SOUTH 01°03'53" EAST, 53.13 FEET; THENCE SOUTH 00°49'08" WEST, 53.30 FEET; THENCE NORTH 90°00'00" EAST, 40.91 FEET; THENCE SOUTH 00°00'00" EAST, 85.79 FEET; THENCE SOUTH 22°27'52" WEST, 4.48 FEET; THENCE NORTH 87°10'43" WEST, 44.80 FEET; THENCE NORTH 88°37'36" WEST, 31.06 FEET, MORE OR LESS, TO THE WESTERN MARGIN OF ALEXANDER AVENUE AND THE TERMINUS OF THIS DESCRIBED LINE.

THE SIDELINES OF WHICH ARE TO BE LENGTHENED OR SHORTENED AS NEEDED TO INTERSECT EACH OTHER AT ALL ANGLE POINTS AND THE MARGINS OF ALEXANDER AVENUE.

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ALL THAT PORTION OF THE FOLLOWING DESCRIBED 5 FOOT WIDE STRIP OF LAND LYING WITHIN THE ALEXANDER AVENUE RIGHT OF WAY, LYING

2.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE: COMMENCING AT A BRASS DISK SET IN A MONUMENT CASE AT THE INTERSECTION OF EAST 11TH STREET AND THORNE ROAD, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 925, AS SHOWN ON PORT OF TACOMA 2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA SURVEY CONTROL MAP"; THENCE NORTH 44°06'22" EAST, 4652.71 FEET TO A BRASS DISK AT THE INTERSECTION OF EAST 11TH STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 184 AS SHOWN ON AFORESAID MAP;

THENCE SOUTH 46°03'53" WEST, 713.74 FEET, MORE OR LESS, TO THE WESTERN MARGIN OF ALEXANDER AVENUE AND THE POINT OF BEGINNING; THENCE NORTH 39°13'35" EAST ALONG AN UNDERGROUND CONDUIT ROUTE, 3.70 FEET;

THENCE NORTH 06°21 '13" WEST, 10.84 FEET

THENCE NORTH 32°48'31" EAST, 18.14 FEET TO A POLE AND TRANSITION TO AN AERIAL CABLE ROUTE;

THENCE SOUTH 43°35'16" EAST, 553.55 FEET;

THENCE SOUTH 45°53'19" EAST, 1,066.87 FEET;

THENCE SOUTH 45°28'32" EAST, 539.86 FEET;

THENCE SOUTH 46°27'17" EAST, 317.66 FEET;

THENCE SOUTH 45°50'47" EAST, 488.10 FEET;

THENCE SOUTH 46°06'51" EAST, 521.77 FEET;

THENCE SOUTH 45°27'54" EAST, 636.20 FEET;

THENCE SOUTH 46°08'28" EAST, 211.08 FEET;

THENCE SOUTH 45°47'47" EAST, 642.45 FEET;

THENCE SOUTH 46°18'25" EAST, 204.48 FEET;

THENCE SOUTH 45°54'44" EAST, 633.99 FEET;

THENCE SOUTH 17°11 '43" WEST, 25.62 FEET, MORE OR LESS, TO THE WESTERN MARGIN OF ALEXANDER AVENUE AND THE TERMINUS OF THIS DESCRIBED LINE.

THE SIDELINES OF WHICH ARE TO BE LENGTHENED OR SHORTENED AS NEEDED TO INTERSECT EACH OTHER AT ALL ANGLE POINTS AND THE MARGINS OF ALEXANDER AVENUE.

TOGETHER WITH

ALL THAT PORTION OF THE FOLLOWING DESCRIBED 5 FOOT WIDE STRIP OF LAND LYING WITHIN THE EAST 11TH STREET RIGHT OF WAY, LYING 2.5 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT A BRASS DISK AT THE INTERSECTION OF EAST 11TH STREET AND TAYLOR WAY, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 184, AS SHOWN ON PORT OF TACOMA



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2007 SURVEY CONTROL MAP TITLED "BLAIR-HYLEBOS PENINSULA SURVEY CONTROL MAP"; THENCE SOUTH 44°06'22" WEST, 4,652.71 FEET TO A BRASS DISK SET IN A MONUMENT CASE AT THE INTERSECTION OF EAST 11TH STREET AND THORNE ROAD, SAID MONUMENT ALSO BEING PORT OF TACOMA CONTROL POINT NO. 925 AS SHOWN ON AFORESAID MAP;
THENCE SOUTH 46°53'16" WEST, 1,034.56 FEET, MORE OR LESS, TO THE NORTHERN MARGIN OF EAST 11TH STREET AND THE POINT OF BEGINNING; THENCE SOUTH 29°02'00" EAST ALONG A UNDERGROUND CONDUIT ROUTE, 104.58 FEET, MORE OR LESS, TO THE SOUTHERN MARGIN OF SAID EAST 11TH STREET AND THE TERMINUS OF THIS DESCRIBED LINE.
THE SIDELINES OF WHICH ARE TO BE LENGTHENED OR SHORTENED AS NEEDED TO INTERSECT EACH OTHER AT ALL ANGLE POINTS AND THE MARGINS OF EAST 11TH STREET.
NOTE: THE TOTAL LENGTH OF AERIAL LINE IS 9,029 FEET AND THE TOTAL LENGTH OF THE UNDERGROUND LINE IS 1,994 FEET. TOTAL OVERALL LENGTH FOR BOTH LINES IS 11,023 FEET.