



AGENDA
Long Beach City Council Meeting
Regular City Council
December 17, 2012 at 7:00 p.m.
Long Beach City Hall - Council Chambers
115 Bolstad Avenue West

7:00 PM CALL TO ORDER; PLEDGE OF ALLEGIANCE; AND ROLL CALL

Call to order	Mayor Andrew, Council Member Linhart, Council Member Maxson,
And roll call	Council Member Perez, Council Member Murry, and Council Member Phillips

CONSENT AGENDA - TAB - A

All matters, which are listed within the consent section of the agenda, have been distributed to each member of the Long Beach City Council for reading and study. Items listed are considered routine by the Council and will be enacted with one motion unless a Council Member specifically requests it to be removed from the Consent Agenda to be considered separately. Staff recommends approval of the following items:

- November 19, 2012 Regular City Council minutes
- December 3, 2012 Regular City Council minutes
- Payroll Report for Warrants 52546 – 52637 & 70684 - 70744 for \$245,090.02.

BUSINESS

- **AB-12-57 – Franchise Agreement – TAB - B**

ORAL REPORTS

- | | | | | |
|---|---------------------|--------------|---------------------------|-------------------------|
| • | City Council | Mayor | City Administrator | Department Heads |
|---|---------------------|--------------|---------------------------|-------------------------|

CORRESPONDENCE AND WRITTEN REPORTS – TAB - C

- **Police Report for November 2012**
- **Correspondence – FAQ on the Marijuana Initiative**

FUTURE CITY COUNCIL MEETING SCHEDULE

The Regular City Council meetings are held the 1st and 3rd Monday of each month at 7:00 PM and may be preceded by a workshop commencing at 6:00 PM.

January 7, 2013 – 7:00 pm – City Council Meeting
January 22, 2013 – 7:00 pm – City Council Meeting

PUBLIC COMMENT

At this time, the Mayor will call for any comments from the public on any subject whether or not it is on the agenda for any item(s) the public may wish to bring forward and discuss. Preference will be given to those who must travel. **Please limit your comments to five minutes. The City Council does not take any action or make any decisions during public comment.** To request Council action during the Business portion of a Council meeting, contact the City Administrator at least one week in advance of a meeting.

ADJOURNMENT

American with Disabilities Act Notice: The City Council Meeting room is accessible to persons with disabilities. If you need assistance, contact the City Clerk at (360) 642-4421.

TAB - A

LONG BEACH CITY COUNCIL MEETING

NOVEMBER 19, 2012

CALL TO ORDER

Mayor Andrew called the meeting to order at 7:00 p.m. and asked for the Pledge of Allegiance.

ROLL CALL

Gene Miles, City Administrator, called roll with C. Linhart, C. Perez, C. Murry and Mayor Andrew present. C. Maxson and C. Murry were absent.

CONSENT AGENDA

Minutes, November 5, 2012 Regular City Council meeting
Payroll Report for Warrants 52460-52507 & 705-70605 for \$171,143.86
C. Linhart made the motion to approve the consent agenda with C. Phillips seconding the motion. 3 Ayes 0 Nays 2 Absent (C. Maxson-C. Murry), motion passed.

PROCLAMATION

Mayor Andrew read a proclamation recognizing First Responders.

BUSINESS

WS 12-17 2012 Amendments to Land Use Codes

C. Linhart made the motion to postpone this workshop bill with C. Perez seconding the motion. 3 Ayes 0 Nays 2 Absent (C. Maxson-C. Murry), motion passed.

AB 12-58 Setting Property Tax Rate for 2013 Collection-Resolution 2012-8

Gene Miles, City Administrator, presented the agenda bill explaining the preliminary budget had been prepared with a 1% increase in property taxes, plus any new construction and annexations. **C. Linhart made the motion to approve the agenda bill with C. Phillips seconding the motion. 3 Ayes 0 Nays 2 Absent (C. Maxson-C. Murry), motion passed.**

ORAL REPORTS

C. Phillips, C. Perez, C. Linhart, Mayor Andrew, Gene Miles, City Administrator and Chief Wright presented oral reports.

CORRESPONDENCE

Correspondence – Initiative 502 – Thoughts from MRSC

Correspondence – COLPAC Letter

Business License – Pacific Coast Cabins LLC: 111 Ocean Beach Blvd S

PUBLIC COMMENT

Nicole Engle, owner of Good Neighbor Vet, is interested in providing vaccines via mobile. Andi Day, Long Beach Peninsula Visitor Bureau, gave a brief presentation. Jason Knott inquired about the South Pacific county Humane Society property lease.

ADJOURNMENT

C. Phillips made the motion to adjourn at 7:31 p.m. with C. Linhart seconding the motion. 3 Ayes 0 Nays 2 Absent (C. Maxson-C. Murry), motion passed.

Mayor

ATTEST:

City Clerk

LONG BEACH CITY COUNCIL MEETING

DECEMBER 3, 2012

CALL TO ORDER

Mayor Andrew called the meeting to order at 7:00 p.m. and asked for the Pledge of Allegiance.

ROLL CALL

David Glasson, Finance Director, called roll with C. Linhart, C. Maxson, C. Perez, C. Murry, C. Phillips and Mayor Andrew present.

CONSENT AGENDA

Minutes, the minutes from November 19, 2012 Regular city council meeting will be on the next agenda
Payroll Report for Warrants 52508-52545 & 70606-70683 for \$131,323.85

C. Linhart made the motion to approve the consent agenda with C. Phillips seconding the motion. 5 Ayes 0 Nays, motion passed.

BUSINESS

AB 12-59 Public Hearing on the adoption of the 2012 Budget-Ordinance 885

Mayor Andrew opened the public hearing for the adoption of the 2012 budget at 7:01 p.m. and asked for comments. Being no comments, Mayor Andrew closed the public hearing at 7:02 p.m. **C. Maxson made the motion to approve the 2012 budget as presented with C. Perez seconding the motion. C. Linhart and C. Murry stated they approved of the 2012 budget with the exception of the Lodging Tax portion due to a potential conflict of interest. 5 Ayes 0 Nays, motion passed.**

AB 12-60 Approval of Circus sponsored by the Lions Club

C. Linhart presented the agenda bill explaining in June the circus will return and they would like to use the restroom parking lot area west of the Bolstad approach. There will be 2 shows on Sunday, June 2, 2013 and there isn't any cost to the city. **C. Phillips made the motion to approve the agenda bill with C. Murry seconding the motion. 5 Ayes 0 Nays, motion passed.**

ORAL REPORTS

C. Linhart, C. Maxson, C. Perez, C. Murry, C. Phillips, Mayor Andrew, David Glasson, Finance Director and Chief of the Long Beach Volunteer Fire Department and Gayle Borchard presented oral reports.

CORRESPONDENCE

Correspondence – Coastal Harvest Annual Report
Correspondence – Sales Tax collection & Lodging Tax Collections
New Hospital Administrator Open House

PUBLIC COMMENT

Jamie Martin inquired about the Sargent's position being discontinued.

Andi Day spoke on behalf of the Long Beach Peninsula Visitor Bureau.

ADJOURNMENT

C. Linhart made the motion to adjourn at 7:24 p.m. with C. Phillips seconding the motion. 5 Ayes 0 Nays, motion passed.

Mayor

ATTEST:

City Clerk



Warrant Register

Check Periods: 2012 - December - First

I, THE UNDERSIGNED DO HEREBY CERTIFY UNDER PENALTY OF PERJURY THAT THE MATERIALS HAVE BEEN FURNISHED, THE SERVICES RENDERED OR THE LABOR PERFORMED AS DESCRIBED HEREIN AND THAT THE CLAIM IS A JUST, DUE AND UNPAID OBLIGATION AGAINST THE CITY OF LONG BEACH, AND THAT I AM AUTHORIZED TO AUTHENTICATE AND CERTIFY TO SAID CLAIM.

Council Member

Council Member

Council Member

Finance Director

Number	Name	Print Date	Clearing Date	Amount
52546	Alves, Sandy L.	12/5/2012		\$2,638.02
52547	Andrew, Robert E.	12/5/2012		\$404.55
52548	Binion, Jacob	12/5/2012		\$1,347.53
52549	Bledsoe, Linda	12/5/2012		\$768.38
52550	Borchard, Gayle	12/5/2012		\$1,761.49
52551	Busby, Randy Scott	12/5/2012		\$2,337.14
52552	Cutting, Jeffrey G.	12/5/2012		\$2,095.73
52553	Fitzgerald, Rick E.	12/5/2012		\$1,386.72
52554	Gilbertson, Bradley K	12/5/2012		\$1,389.45
52555	Glasson, David R.	12/5/2012		\$2,404.11
52556	Goulter, John R.	12/5/2012		\$1,480.17
52557	Gray, Karen	12/5/2012		\$778.68
52558	Gray, Rick R.	12/5/2012		\$1,783.33
52559	Huff, Timothy M.	12/5/2012		\$1,453.94
52560	Kaino, Kris	12/5/2012		\$1,037.75
52561	Kitzman, Michael	12/5/2012		\$1,809.52
52562	Linhart, Steven P	12/5/2012		\$272.95
52563	Lueche, Paul J	12/5/2012		\$1,363.05
52564	Martin, Kevin R	12/5/2012		\$2,076.83
52565	Maxson, Don W	12/5/2012		\$272.95
52566	Meling, Casey K	12/5/2012		\$2,359.67
52567	Miles, Eugene S	12/5/2012		\$2,769.96
52568	Mortenson, Tim	12/5/2012		\$2,569.58
52569	Murry, Del R	12/5/2012		\$272.95
52570	Myers, Ragan S.	12/5/2012		\$1,329.99
52571	Ostgaard, Loretta G	12/5/2012		\$1,352.97
52572	Padgett, Timothy J	12/5/2012		\$1,526.58
52573	Perez, Arthur Mark	12/5/2012		\$272.95
52574	Phillips, Gerald S	12/5/2012		\$272.95

Number	Name	Print Date	Clearing Date	Amount
52575	Payroll Vendor	12/5/2012		Void
52576	Stidham, William G	12/5/2012		\$1,294.43
52577	Turner, Michael S.	12/5/2012		\$810.90
52578	Warner, Ralph D.	12/5/2012		\$2,074.25
52579	Payroll Vendor	12/5/2012		Void
52580	Payroll Vendor	12/5/2012		Void
52613	Wright, Flint R	12/5/2012		\$2,242.09
52614	Zuern, Donald D.	12/5/2012		\$1,921.52
52615	Russum, Richard	12/5/2012		\$1,690.50
52616	AFLAC	12/5/2012		Void
52617	Association of WA Cities	12/5/2012		Void
52618	City of Long Beach - Fica	12/5/2012		Void
52619	City of Long Beach - FWH	12/5/2012		Void
52620	Council Gift Fund	12/5/2012		Void
52621	Dept of Labor & Industries	12/5/2012		Void
52622	Dept of Retirement Systems	12/5/2012		Void
52623	Dept of Retirement Systems Def Comp	12/5/2012		Void
52624	Hartford Life Insurance	12/5/2012		Void
52625	Teamsters Local #58	12/5/2012		Void
52626	United Employee Benefit Trust (UEBT)	12/5/2012		Void
52627	AFLAC	12/5/2012		\$414.17
52628	Association of WA Cities	12/5/2012		\$13,715.88
52629	City of Long Beach - Fica	12/5/2012		\$9,458.98
52630	City of Long Beach - FWH	12/5/2012		\$9,179.78
52631	Council Gift Fund	12/5/2012		\$60.00
52632	Dept of Labor & Industries	12/5/2012		\$990.94
52633	Dept of Retirement Systems	12/5/2012		\$7,932.46
52634	Dept of Retirement Systems Def Comp	12/5/2012		\$1,178.00
52635	Hartford Life Insurance	12/5/2012		\$525.00
52636	Teamsters Local #58	12/5/2012		\$184.50
52637	United Employee Benefit Trust (UEBT)	12/5/2012		\$5,566.00
70684	Postmaster	12/4/2012		\$506.70
70685	Burger, Beverly	12/5/2012		\$1,310.00
70686	Tangly Cottage Garden	12/5/2012		\$589.78
70687	Miles, Gene	12/5/2012		\$49.95
70688	Miles, Gene	12/11/2012		\$137.91
70689	Glasson, David	12/11/2012		\$50.51
70690	Active Enterprises, Inc.	12/14/2012		\$75.46
70691	Addy Lab, Llc	12/14/2012		\$190.00
70692	Airgas USA LLC	12/14/2012		\$34.41
70693	ALS ENVIRONMENTAL	12/14/2012		\$534.00
70694	Alsco-American Linen Div.	12/14/2012		\$164.72
70695	American Messaging	12/14/2012		\$34.20
70696	Arts Auto Parts Inc.	12/14/2012		\$321.36
70697	Backflow Management Inc	12/14/2012		\$540.00
70698	Beachdog.com Inc.	12/14/2012		\$2,500.00

Number	Name	Print Date	Clearing Date	Amount
70699	Boyce Equipment & Parts Co., Inc	12/14/2012		\$879.48
70700	Cascade Columbia Distribution CO	12/14/2012		\$2,804.40
70701	CenturyLink	12/14/2012		\$456.21
70702	City of Long Beach	12/14/2012		\$75.00
70703	Clatsop Power Equipment	12/14/2012		\$275.00
70704	Coast Rehabilitation Services	12/14/2012		\$292.00
70705	Consolidated Technology Services	12/14/2012		\$17.45
70706	CURRAN-McLEOD, INC	12/14/2012		\$2,080.00
70707	DAVIS WRIGHT TREMAINE LLP	12/14/2012		\$6,739.63
70708	Dennis Company	12/14/2012		\$681.88
70709	Department of Revenue	12/14/2012		\$108.40
70710	Dept. of Ecology	12/14/2012		\$66,842.90
70711	Dept. of Health	12/14/2012		\$126.00
70712	Dijulio Displays	12/14/2012		\$118.17
70713	Englund Marine Supply	12/14/2012		\$507.32
70714	Evergreen Septic Service	12/14/2012		\$84.00
70715	Ford Electric	12/14/2012		\$72.78
70716	Goelz, Doug	12/14/2012		\$4,700.00
70717	Hach Company	12/14/2012		\$423.65
70718	Harbor Pacific Bottling	12/14/2012		\$219.50
70719	Hedges, Jan Lem	12/14/2012		\$312.00
70720	HENRY, SARAH	12/14/2012		\$176.98
70721	Interstate Battery	12/14/2012		\$71.09
70722	K & L Supply, Inc.	12/14/2012		\$1,417.35
70723	Lawson Products, Inc.	12/14/2012		\$255.99
70724	LONG BEACH FIREMANS FOUNDATION	12/14/2012		\$20,000.00
70725	Midway Printery	12/14/2012		\$91.04
70726	Oman & Son Builders	12/14/2012		\$198.94
70727	One Call Concepts, Inc.	12/14/2012		\$10.56
70728	Pacific Art & Office Supply	12/14/2012		\$77.96
70729	Pacific Office Automation	12/14/2012		\$1,439.10
70730	Peninsula Sanitation	12/14/2012		\$761.04
70731	Peninsula Visitors Bureau	12/14/2012		\$10,625.00
70732	Powell, Seiler & Co., P.S	12/14/2012		\$485.00
70733	Public Utility District 2	12/14/2012		\$470.38
70734	Quill Corporation	12/14/2012		\$22.62
70735	Recall Secure Destruction Services	12/14/2012		\$126.15
70736	Sid's Iga	12/14/2012		\$21.98
70737	U S Fire Equipment, Llc	12/14/2012		\$160.00
70738	U.S Cellular	12/14/2012		\$285.73
70739	Usa Blue Book	12/14/2012		\$96.62
70740	Wilcox & Flegel	12/14/2012		\$1,264.24
70741	Wilcox & Flegel Oil Co.	12/14/2012		\$2,439.80
70742	Wirkkala Construction	12/14/2012		\$3,060.05
70743	World Kite Museum	12/14/2012		\$5,833.34

Number 70744 Name Yoshiimi, Mary Print Date 12/14/2012 Clearing Date Amount \$15.00

Total \$245,090.02
Check
Grand Total \$245,090.02

TAB - B



**CITY COUNCIL
AGENDA BILL
AB 12-57**

Meeting Date: December 17, 2012

AGENDA ITEM INFORMATION

SUBJECT: Ordinance No. 884 a franchise agreement with LS Networks.	<i>Originator:</i>	
	Mayor	
	City Council	
	City Administrator	GM
	City Attorney	DG
	City Clerk	
	City Engineer	
	Community Development Director	
	Finance Director	
	Fire Chief	
	Police Chief	
	Streets/Parks/Drainage Supervisor	
	Water/Wastewater Supervisor	
COST: N/A	Other:	
SUMMARY STATEMENT: AN ORDINANCE GRANTING TO LIGHTSPEED NETWORKS, INC., DBA "LS NETWORKS" AN OREGON CORPORATION, A FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF LONG BEACH WASHINGTON – Doug and I have reviewed and this version works for all of us.		
RECOMMENDED ACTION: Approve		

ORDINANCE NO. 884

AN ORDINANCE OF THE CITY OF LONG BEACH, WASHINGTON, GRANTING LIGHTSPEED NETWORKS, INC., DBA "LS NETWORKS" AN OREGON CORPORATION, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE AND MAINTAIN A TELECOMMUNICATIONS NETWORK WITHIN THE CITY OF LONG BEACH; ESTABLISHING AN EFFECTIVE DATE; AND PROVIDING FOR SEVERABILITY

WHEREAS, Lightspeed Networks, Inc. has submitted an application to the City of Long Beach for a telecommunications Franchise to provide telecommunications services using the Public Rights-of-Way, and

WHEREAS, the City is a municipal corporation operating under the laws of the state of Washington as a non-charter code City and is authorized pursuant to RCW 35A.11.020, 35A.11.030, 35A.21.160 and RCW 35A.47.040 to grant nonexclusive Franchises within the boundaries of the City; and

WHEREAS, Lightspeed Networks, Inc. has deposited the sum of \$5,000 dollars with the City to be drawn upon by the City to pay for the costs of issuance of this Franchise, with such costs to include legal fees, consultant fees and staff review; and

WHEREAS, the City duly fixed the time and place for hearing said application and due and timely notice of said hearing on such application was given pursuant to statute and ordinance, and hearing on said application having been held as prescribed by law; and

WHEREAS, the City having been fully advised in the premises and having determined that it is in the public interest to grant such Franchise in the manner herein set forth; and

WHEREAS, based on representations and information provided by Lightspeed Networks, Inc., and information provided by City staff, the City Council has determined that it is in the best interest of and consistent with the convenience and necessity of the City to grant a Franchise within the confines of the City to the Franchisee, and on the terms and conditions hereinafter set forth;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LONG BEACH, WASHINGTON, as follows:

Section 1. Grant of Franchise. The City Council does hereby grant to the applicant, Lightspeed Networks, Inc., a non-exclusive telecommunications Franchise, upon the following terms and conditions:

ARTICLE I. DEFINITIONS

For the purpose of this Franchise, the following terms, phrases, words, and their derivations

where capitalized shall have the meanings given herein and in Chapter ___ of the Long Beach Municipal Code. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, and the use of any gender shall be applicable to all genders whenever required. The word "shall" is mandatory and "may" is permissive. Words not defined herein or in Chapter ___ of the Long Beach Municipal Code, shall have the meaning given pursuant to such federal statutes, rules, or regulations that apply to and regulate the services provided by the Franchisee. Words not otherwise defined, shall be given their common and ordinary meaning. References to governmental entities (whether persons or entities) refer to those entities or their successors in authority. If specific provisions of law, regulation or rule referred to herein be renumbered, then the reference shall be read to refer to the renumbered provision.

- A. "City" is the City of Long Beach, Washington.
- B. "Direct Costs" shall mean and include all costs and expenses to the City directly related to a particular activity or activities, including by way of example:
 - 1. All costs and expenses of materials, equipment, supplies, utilities, consumables, goods and other items used or incorporated in connection with and in furtherance of such activity or activities and any taxes, insurance, and interest expenses related thereto, including costs for crews and equipment;
 - 2. All costs and expenses of labor inclusive of payroll benefits, non-productive time and overhead for each of the labor classifications of the employees performing work for the activity and determined in accordance with the City's ordinary governmental accounting procedures; and
 - 3. All costs and expenses to the City for any work by consultants or contractors to the extent performing work for a particular activity or activities, including by way of example and not limitation, engineering and legal services.
- C. "Franchisee" means Lightspeed Networks, aka LS Networks, the grantee of rights under this Franchise ordinance or its lawful successor, transferee or assignee.
- D. "Easement" shall be limited to those Rights-of-Way owned or controlled by the City.
- E. "Facilities" means telecommunications Facilities.
- F. "Force Majeure" means any delays caused by reason of (1) civil commotion; (2) riots; (3) Acts of God and nature, including but not limited to floods, earthquakes, ice storms and tornadoes; (4) strikes or labor unrest; (5) the inability to secure materials; and (6) any other event or circumstances reasonably beyond the control of the Franchisee.
- G. "Franchise" means the initial authorization, or renewal thereof, issued by the City pursuant to Chapter ___ of the Long Beach Municipal Code, giving the Operator the nonexclusive right to occupy the space on, in, under, over, across, or within Public Ways to provide a specified service within the Franchise Area.
- H. "Franchise Area" shall mean collectively or individually the Rights-of-Way located within the City limits of Long Beach as they exist upon acceptance of this franchise, and any such Rights-of-Way as may be hereafter annexed within the City Limits.
- I. "Rights-of-Way" or "Right-of-Way" means the surface, the air space above the surface, and the area below the surface of any Public Way. No reference in this Franchise to a "Right-of-

Way" or "Public Way" shall be deemed to be a representation or guarantee by the City that its interests or other rights in such property are sufficient to permit its use for the installation and maintenance of the System, and the Franchisee shall be deemed to gain only those rights which the City has the right and power to give and only to the extent necessary to carry out the purposes of this Franchise.

- J. "System" means a Telecommunication System.

ARTICLE H. GRANT OF FRANCHISE

SECTION I. Grant.

- A. There is hereby granted to the Franchisee a non-exclusive right, privilege, and franchise to have, acquire, construct, reconstruct, maintain, use and operate within the Franchise Area, the System and to have, acquire, construct, reconstruct, maintain, use and operate in, over, under, along, and across the present and future Rights-of-Way all necessary or desirable Facilities in connection with the System.
- B. Limited Rights. This Franchise is intended to convey limited rights and interests only as to those Rights-of-Way in which the City has an actual interest. It is not a warranty of title or interest in any Right-of-Way; it does not provide the Franchisee with any interest in any particular location within the Right-of-Way; and it does not confer rights other than as expressly provided in the grant hereof. This Franchise does not deprive the City of any powers, rights or privileges it now has, or may later acquire in the future, to use, perform work on or to regulate the use of and to control the City's Rights-of-Way covered by this Franchise, including without limitation the right to perform work on its roadways, streets or appurtenant drainage Facilities, water and waste water Facilities and including constructing, altering, paving, widening, grading, or excavating such streets. Such Franchise shall not include or be a substitute for:
 - 1. Any other permit or authorization required for the privilege of transacting and carrying on a business within the City required by the ordinances and laws of the City;
 - 2. Any permit, agreement or authorization required in connection with operations on or in public streets or property, including, by way of example and not limitation, construction and street cut permits; or
 - 3. Any permits or agreements for occupying any other property of the City or private entities to which access is not specifically granted by the Franchise including, without limitation, permits and agreements for placing devices on or in poles, conduits, other structures or railroad easements, whether owned by the City or a private entity.

By way of example, and without limiting the foregoing, this chapter shall not be read to diminish or in any other way affect the authority of the City to control and charge for the use of its real estate, fixtures, or personal property. Therefore, any person who desires to use such property must obtain additional approvals, Franchises or agreements for that purpose, as may be required by the City.

- C. Most Favored Community. In the event that Franchisee enters into any agreement, Franchise or other understanding with any other City, town or county in the state of Washington which provides terms or conditions more favorable to the City, town or

county than those provided in its agreement with the City, such as, but not limited to, free or reduced fee hookups, access or service, the City shall be entitled to request at the City's option, and the grantee, Franchisee, or lessee in question shall be required to execute, an amendment to its agreement which incorporates the more favorable terms and conditions.

- D. **Competitively Neutral.** The City shall impose, on a competitively neutral and nondiscriminatory basis, similar terms and conditions upon other similarly situated providers of telecommunications services operating within the City. In the event the City enters into a Franchise with any other similarly situated person or entity other than the Franchisee to use the Rights-of-Way for the purpose of constructing or operating a Telecommunications System or providing Telecommunications Service to any part of the Franchise Area in which the Franchisee is providing Telecommunications Service under the terms and conditions of this Franchise, the terms and conditions thereof, taken as a whole, shall be substantially similar and neither more favorable nor less burdensome to such person than those contained herein in order that one Telecommunications Operator not be granted an unfair competitive advantage over another.

In furtherance of the foregoing, the City and Franchisee recognize and acknowledge that other Telecommunications Franchises granted by the City might contain provisions and conditions that are different than the provisions and conditions that the Franchisee has negotiated and accepted in this Franchise. Nothing in this Franchise shall be construed so as to require identical provisions and conditions in other Telecommunications Franchises granted by the City.

- E. Franchisee shall have the right, without prior City approval, to offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:
1. The customer or lessee has complied, to the extent applicable, with the requirements of this Franchise; and
 2. Franchisee at all times retains exclusive control over its System and remains responsible for constructing, installing and maintaining its Facilities pursuant to the terms and conditions of this Franchise; and
 3. Franchisee may grant no rights to any customer or lessee that are greater than any rights Franchisee has pursuant to this Franchise; and
 4. Such customer or lessee shall not be construed to be a third-Party beneficiary hereunder; and,
 5. No such customer or lessee may use the System for any purpose not authorized herein.
- F. **Authorized Services.** The grant given herein expressly authorizes Franchisee to use the Public Way to provide Telecommunications Services. This authorization is limited and is not intended nor shall it be construed as granting Franchisee or any other Person the right, duty or privilege to use Franchisee's Facilities or the Public Rights-of-Way to provide services not specifically authorized herein. This Franchise shall not be interpreted to prevent the City from lawfully imposing additional conditions, including additional compensation conditions for use of the Public Rights-of-Way, should Franchisee or its customers, users or lessees provide service other than service specifically authorized

herein. However, this Franchise shall not be read as a concession by the Franchisee that it needs authorization to provide any services not otherwise authorized herein.

SECTION 2. Term.

The Franchise granted hereunder shall be for a term of five (5) years from and after the effective date of this ordinance, unless otherwise lawfully terminated in accordance with the terms of this Franchise; provided that, the Franchise is subject to renewal in conformance with the provisions of Long Beach Municipal Code Ch. ___ as currently exists or may hereinafter be amended.

SECTION 3. Franchise Subject to Other Laws.

This Franchise is subject to and shall be governed by all applicable provisions of law. Notwithstanding any other provisions of this Franchise to the contrary, the Franchisee shall at all times comply with all laws and regulations of the state and federal government or any administrative agencies thereof, provided, however, if any such law or regulations shall require the Franchisee to perform any service, or shall permit the Franchisee to perform any service, or shall prohibit the Franchisee from performing any service, in conflict with the terms of this Franchise, City ordinance, or any regulation of the City Council, then as soon as possible following knowledge thereof, the Franchisee shall notify the attorney for the City of the point of conflict believed to exist between such regulation or law and regulations of the City Council, the City's ordinance, or this Franchise.

SECTION 4. Other Franchises.

This Franchise shall not be construed as any limitation upon the right of the City to grant to other persons rights, privileges, or authorities similar to the rights, privileges, and authorities herein set forth, in the same or other Rights-of-Way, Public Ways or public places. The City specifically reserves the right to grant at any time during the term of this Franchise or renewal thereof, if any, such additional Franchises as it deems appropriate.

SECTION 5. Waivers.

- A. The failure of the City on one or more occasions to exercise a right or to require compliance or performance under this Franchise, or any other applicable law shall not be deemed to constitute a waiver of such right or a waiver of compliance or performance by the City, nor shall it excuse the Franchisee from complying or performing, unless such right or such compliance or performance has been specifically waived in writing by the City.
- B. No waiver by the City of any breach or violation of any provision of this Franchise or any ordinance shall be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other provision. Neither the granting of the Franchise, nor any provision herein, nor any action by the City hereunder shall constitute a waiver of or a bar to the exercise of any governmental right or power of the City, as provided for under state and federal law, including without limitation the right of eminent domain.
- C. No waiver of any provisions of this Franchise by the City shall be effective unless authorized in writing by the City.

SECTION 6. Franchise Acceptance; Prior Franchise Superseded and Repealed.

- A. The authorization granted pursuant to this Franchise shall not become effective unless and until the ordinance granting the same has become effective. Upon adoption of this Franchise and acceptance hereof by the Franchisee, the Franchisee agrees to be bound by all the terms and conditions contained herein, which acceptance shall constitute an absolute and unconditional acceptance of the Franchise and promise to comply with and abide by all its provisions, terms, and conditions.
- B. Within thirty (30) days after the effective date of the ordinance granting this Franchise, or within such extended period of time as the council in its discretion may authorize, Franchisee shall file with the City administrator or designee an unconditional written acceptance of the Franchise, together with the performance and payment bond and insurance certificate required by this Franchise
- C. By accepting the Franchise, the Franchisee: (1) acknowledges and accepts the City's legal right to issue and enforce the Franchise; (2) accepts and agrees to comply with each and every provision of this Franchise; (3) agrees that the Franchise was authorized pursuant to processes and procedures consistent with applicable law, and that it will not raise any claim to the contrary; (4) warrants that Franchisee has full right and authority to enter into and accept this Franchise in accordance with the terms hereof, and by entering into or performing this Franchise, Franchisee is not in violation of its charter or by-laws, or any law, regulation, or agreement by which it is bound or to which it is subject; and (5) warrants that acceptance of this Franchise by Franchisee has been duly authorized by all requisite board action, that the signatories for Franchisee hereto are authorized to sign the Franchise acceptance, and that the joinder or consent of any other party, including a court, trustee, or referee, is not necessary to make valid and effective the execution, delivery, and performance of this Franchise.
- D. Except as provided in this Article II, Section 6(D) of this Franchise, the failure of Franchisee to timely file its written acceptance shall be deemed a rejection by Franchisee of this Franchise, and this Franchise shall then be void. In the event that Franchisee timely files its written acceptance but fails to timely file its performance and payment bond or insurance certificate as required by this Franchise, this Franchise shall be voidable in the sole discretion of the City administrator without further action required by the City Council or the consent of the Franchisee. The Franchise shall be voidable until such time as Franchisee files the performance and payment bond and insurance certificate as required by this Franchise. No opportunity to cure or public hearing is required to void the Franchise pursuant to this Section.

SECTION 7. Police Powers; Reservation of Rights; Conflict.

- A. The City reserves the right and power to promulgate such additional laws and regulations as it may find necessary in the exercise of its lawful police powers, and in accepting this Franchise, the Franchisee acknowledges that its rights hereunder are subject to the police powers of the City to adopt and enforce general ordinances necessary for the safety and welfare of the public, and the Franchisee agrees to comply with all generally applicable laws and ordinances enacted by the City pursuant to such power.
- B. Any conflict between the provisions of this Franchise and any other present or future lawful exercise of the City's police powers shall be resolved in favor of the latter, except that any such exercise that is not of general application in the jurisdiction or applies specifically to the Franchisee shall prevail only if upon such exercise, the City finds an Emergency exists constituting a danger to health, safety, property or general welfare or

such exercise is mandated by law.

- C. The City reserves the right to delegate its authority for Franchise administration to a designated agent.
- D. LBMC ___ provides that the provisions of LBMC Ch. ___ shall be incorporated by reference into this Franchise. In lieu thereof, the City and Franchisee intend that the terms and conditions of this Franchise have been prepared to conform to LBMC Ch. ___, as set forth in attached Exhibit "B", such that material terms, conditions and provisions of LBMC Ch. ___, as set forth in attached Exhibit "B", have been incorporated into this Agreement, subject to modification as provided throughout this Franchise. The City and the Franchisee further intend that when any word, article, section, subsection, paragraph, provision, condition, clause, or sentence of this Franchise is in conflict with any word, article, section, subsection, paragraph, provision, condition, clause, or sentence, of LBMC Ch. ___, as set forth in attached Exhibit "B", such word, article, section, subsection, paragraph, provision, condition, clause, or sentence of this Franchise shall control to the extent of such conflict.

SECTION 8. Permits Required.

In addition to this Franchise, in order for the Franchisee to be allowed to occupy or use the Rights-of-Way of the City, the Franchisee shall obtain development authorization and all other required authorizations, certificates, licenses and permits, in accordance with federal, state and local law, including fees. No work, construction, development, excavation, or installation of any equipment or Facilities shall take place on, in, under, over, across, or within the Public Ways, other ways, City property, or other property, whether publicly or privately owned, until such time as development authorization is granted and required permits are issued. The City shall not unreasonably withhold any permits requested by the Franchisee as determined by applicable law.

ARTICLE III. STANDARDS FOR USE OF RIGHTS-OF-WAY

SECTION 1. Uses of Rights-of-Way.

- A. Non-exclusive Grant: This grant for the use of all City Rights-of-Way is nonexclusive and does not establish priority for use over other Franchise holders, permit holders and the City's own use of public property. Additionally, Franchisee shall respect rights and property of the City and other authorized users of the Rights-of-Way. Disputes between the Franchisee and other entities over the use of the Rights-of-Way shall first be submitted to the Mayor or City administrator for possible resolution.
- B. Interference with Persons and Improvements: The Franchisee's System shall be located, erected and maintained so that none of its Facilities shall endanger or interfere with the lives of persons, or interfere with any improvements the City may deem proper to make, or unnecessarily hinder or obstruct the free use of Rights-of-Way or other public property. The City administrator shall have power at any time to order and require Franchisee to remove and abate any wire, cable, or other structure that is dangerous to life or property, and in case Franchisee, after notice, fails or refuses to act within a reasonable time, the City shall have the power to remove or abate the same at the expense of the Franchisee.
- C. Facilities Maps: Franchisee shall provide the City with a map or maps accurately

reflecting the horizontal and vertical location and configuration of all of their Telecommunications Facilities on, in, under, over, across, or within Public Ways and City property. All maps maintained by the Franchisee with respect to its Facilities within the Public Ways and upon City property shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this section shall be construed to require Franchisee to violate state or federal law regarding subscriber privacy, nor shall this section be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

- D. **Interference With Utilities:** The Franchisee with the consent of the Public Works Director shall place equipment or other fixtures in such a manner that does not unreasonably interfere with existing gas, electric or telephone Facilities, traffic control signalization, street lights, fire alarm lines or communications lines, or obstruct or hinder in any manner the various utilities serving the residents of the City.
- E. **Additional Easements:** If additional private easements are necessary, it shall be the Franchisee's responsibility to secure the same. The grant of this Franchise is limited to the City's control of its Rights-of-Way and does not extend to any other public or private property.
- F. **Cooperation With Building Movers:** Whenever any person shall have obtained permission from the City to occupy or use any Public Way for the purpose of moving any building, the Franchisee shall, upon thirty (30) days' written notice from the City, temporarily raise or lower its wires which may obstruct the removal of such building to permit the moving of buildings; provided that, the person desiring to move the building shall comply with all requirements of the City for the movement of buildings. The expense of such temporary removal, and raising or lowering of wires shall be paid by the person requesting the same, and the Franchisee shall have the authority to require such payment from such person in advance. Unless otherwise agreed, the Franchisee shall be given not less than thirty (30) calendar days advance notice to arrange for such temporary wire changes.
- G. **Construction and Maintenance, Excavation:**
 - 1. The route of any underground portions of the System shall be subject to review and approval by the City. Engineering plans for construction in Rights-of-Way shall be submitted to the City prior to construction.
 - 2. Except in an Emergency, the Franchisee shall comply with generally applicable City ordinances, policies and rules pertaining to notification when excavating pavement in any Right-of-Way.
- H. **Coordination of Placement of Manholes:** The Franchisee shall coordinate the placement of its manholes, if any, with the affected City Departments.
- I. **Movement of Facilities During Emergencies:** The City retains the right and privilege to cut or move any Telecommunications Facilities located on, in, under, over, across, or within Public Ways or City property, as the City may determine to be necessary, appropriate or useful in response to any public health or safety Emergency. The City shall not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions pursuant to this section. The City shall make reasonable attempts to notify the Franchisee.

- J. Payment of the City's Locate Costs: The Franchisee shall only pay for the City's locate costs that specifically relate to the Franchisee and so long as those costs are not already included in the permit fees. The Franchisee shall be required to obtain verifiable locates prior to any digging, trenching or excavation.
- K. Acquisition of Facilities: Upon the Franchisee's acquisition of Facilities in any Right-of-Way, or upon the addition or annexation of any area in which the Franchisee owns or operates any Facility, the Franchisee shall, at the City's request or annually, submit to the City a statement describing all Facilities involved, whether authorized by the Franchise, permit, license or other prior right, and specifying the location of all such Facilities to the extent the Franchisee has possession of such information. Such Facilities shall immediately be subject to the terms of this Franchise.
- L. Discontinuing Use of Facilities; Removal of Unauthorized Facilities: Within ninety (90) days following written notice from the City, Franchisee shall, at its own expense, remove any unauthorized Facilities from the Public Ways and restore such Public Ways in accordance with the requirements of Article VI, Section 6(D) of this Franchise. Any plan for removal of said Facilities or related appurtenances must be approved by the City, and development authorization and all necessary permits must be obtained prior to such work. Facilities, or related appurtenances, are unauthorized and subject to removal in the following circumstances:
1. Upon expiration, revocation or termination of the Franchise;
 2. Upon abandonment of the System, Facilities or related appurtenances within the Public Ways or upon property of the City. Property shall be deemed abandoned if left in place ninety calendar (90) days after expiration or termination of an authorization, Franchise, or lease;
 3. If the System, Facilities or related appurtenances were constructed or installed without the prior grant of an authorization, Franchise, or lease;
 4. If the System, Facilities or related appurtenances were constructed or installed without the prior issuance of a required development authorization and permits; or
 5. If the System, Facilities or related appurtenances were constructed or installed at a location not permitted by the authorization, Franchise, or lease.

Provided, however, that the City may, in its sole discretion, allow Franchisee to abandon such Facilities in place. No property of any type may be abandoned in place without the express written consent of the City. Upon permanent abandonment of the Facilities in place, the Facilities shall become that of the City, and Franchisee shall submit to the City an instrument in writing, to be approved by the City, transferring to the City the ownership of such property. The provisions of this section shall survive the expiration, revocation, or termination of the Franchise.

- M. Hazardous Substances:
1. The Franchisee shall comply with all applicable local, state and federal laws, statutes, regulations, ordinances and orders concerning hazardous substances relating to the Franchisee's System in the Rights-of-Way.
 2. The Franchisee shall maintain and inspect its System located in the Rights-of-

Way. At any time, the City may inspect the Franchisee's Facilities in the Rights-of-Way to determine if any release of hazardous substances has occurred, or may occur, from or related to the Franchisee's System. In removing or modifying the Franchisee's Facilities as provided in this Franchise, the Franchisee shall also remove and properly dispose of all residues of hazardous substances related thereto.

3. The Franchisee shall indemnify and hold the City harmless against any and all liability, claims, costs, and expenses, of any kind, whether direct or indirect, incurred by the City arising out of a release of hazardous substances caused by the Franchisee's System in the Rights-of-Way.
- N. Completion of Work by the City: On failure of the Franchisee to commence, pursue or complete any work required by law or by the provisions of this Franchise or any applicable permit to be done in any Right-of-Way within the time prescribed and to the satisfaction of the City, the City may at its discretion cause the work to be done. The Franchisee shall pay to the City the reasonable costs of the work in the itemized amount reported by the City to the Franchisee in accordance with the cost reimbursement requirements set forth in Article V, Section 2(A) of this Franchise.

SECTION 2. Use of Franchise Facilities.

The City shall have the right, at no cost, during the life of this Franchise, to make additional use of the Facilities, for any public purpose; however the City may not lease said Facilities to a third party, providing that such uses do not unreasonably interfere with the operations of the Franchisee.

SECTION 3. Joint Use of Poles, Trenches, and Conduits.

- A. The Franchisee may attach its wires to poles owned and maintained by another person or entity should those parties agree. If Franchisee is unable to reach an agreement with the owner of the poles, the only alternative is to place their wires underground, as no separate or additional poles shall be erected within the City of Long Beach except upon a showing of extreme necessity.
- B. Lines shall be located on poles in compliance with applicable safety standards and shall not interfere with the erection, replacement, operation, repair, or maintenance of the wires and appurtenances of the persons or entities occupying the poles.
- C. The Franchisee may be required by the City to share trench space with another person or entity for the placement of Facilities underground. Compensation to the Franchisee as well as terms of sharing trench space shall be resolved between the affected entities. Ducts, cables, or wires shall be placed in trenches in compliance with applicable safety standards and, pursuant to the space allocation plan of the City.
- D. Coordination of Construction Activities. Franchisee is required to cooperate with the City and with other grantees, franchisees, lessees, and users of the Public Way, as follows:
 1. By February 1st of each year Franchisee shall provide the City with a schedule of Franchisee's proposed construction activities in, around, or that may affect the Public Ways or City property;

2. Franchisee shall meet with the City, other grantees, Franchisees, lessees, and users of the Public Ways and City property annually or as determined by the City to schedule and coordinate construction on, in, under, over, across, or within the Public Ways and City property; and
3. All construction locations, activities and schedules shall be coordinated, as ordered by the City public works department, to minimize public inconvenience, disruption or damages.

SECTION 4. Changes for Governmental Purposes.

A. Franchisee shall, at its own expense, temporarily or permanently remove, relocate, change, or alter the position of any Telecommunications Facilities on, in, under, over, across, or within a Public Way or City property whenever the Long Beach City administrator shall have determined that such removal, relocation, change, or alteration is reasonably necessary for:

1. The construction, repair, maintenance, or installation of any City or other public improvement in or upon the Public Ways or City property; or
2. The operations of the City or other governmental entity in or upon the Public Way or City property.

City or public improvements shall include, by way of example and not limitation, changes in the grade, location, alignment or width of any Public Way or in the location or manner of construction any water pipe, gas pipe, sanitary sewer pipe, storm sewer pipe or trench or other underground or overhead structure for any governmental purpose whatsoever. If Franchisee's Facilities are placed within or attached to poles, conduits, or appliances owned or maintained by others, such as utility poles of a public utility pursuant to a pole attachment agreement, Franchisee shall undertake such removal, alteration, change or adaption in cooperation with the public utility. Except for Franchisee revocation or termination or System abandonment, the City shall not require Franchisee to remove its Facilities entirely from a Right-of-Way unless suitable alternatives are available for relocation at a reasonable cost. If Franchisee fails or refuses to begin such alterations or changes within such time period set forth in the notice of the need for relocation, the City shall have the power to remove or abate the same at the expense of the Franchisee, all without compensation or liability for damages to the Franchisee.

- B. The City shall notify Franchisee as soon as practicable of the need for relocation and shall specify the date by which relocation shall be completed. Except in case of Emergency, notice shall be no less than one hundred and eighty (180) days prior to the date that the relocation must be completed. In calculating the date that relocation must be completed, the City shall consult with Franchisee and consider the extent of Facilities to be relocated, the service requirements, and the construction sequence for the relocation, within the overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the date specified in the notice, unless the city, or a reviewing court, establishes a later date for completion, after a showing by the Franchisee that the relocation cannot be completed by the date specified using best efforts and meeting safety and service requirements.
- C. In cases of Emergency, the City may require relocation of the Franchisee's Facilities at the Franchisee's expense in the event the Emergency creates an immediate threat to the

public safety, health and welfare.

- D. Nothing herein is intended, nor shall be construed, as a waiver by the Franchisee of its right to seek reimbursement for relocation expenses as provided in RCW Ch. 35.99.

SECTION 5. Work by Others.

- A. The City reserves the right to lay, and permit to be laid, sewer, electric, phone, gas, water, and other pipelines, cables, conduits and related appurtenances, and to do and permit to be done any underground or overhead work in, across, along, over, or under a Right-of-Way or other public place occupied by the Franchisee. The City also reserves the right to construct new streets and to alter the design of existing streets. In performing such work, provided the City complies with notification requirements of the Northwest Utility Notification Center ("call before you dig"), the City shall not be liable to the Franchisee for any damage so occasioned, but nothing herein shall relieve any other person or entity from the responsibility for damages to the Facilities of the Franchisee.
- B. Except as provided in Article III, Section 4(A) of this Franchise, in the event that the City subsequently authorizes someone other than the Franchisee to occupy space under the surface of a Right-of-Way, such grant shall be subject to the rights herein granted or heretofore obtained by the Franchisee.
- C. If any Public Way or portion thereof used by Franchisee is to be vacated during the term of this Franchise, unless as a condition of such vacation the Franchisee is granted the right to continue its Facilities in the vacated Public Right-of-Way, Franchisee shall, without delay or expense to City, remove its Facilities from such Public Right-of-Way, and restore, repair or reconstruct the Public Right-of-Way where such removal has occurred, and place the Public Right-of-Way in such condition as may be required by the City.
- D. If the City shall require the Franchisee to adapt or conform its Facilities or in any way or manner to alter, relocate, or change its Facilities to enable any other entity or person, except the City and other governmental entities as provided in Article III, Section 4(A) of this Franchise, to use, or use with greater convenience, said Right-of-Way, the Franchisee shall not be bound to make any such changes until such other entity or person shall have undertaken, with good and sufficient bond, to reimburse the Franchisee for any costs, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of Franchisee's property; provided, however, that the City shall never be liable for such reimbursement.

SECTION 6. Construction Provisions.

- A. Standards. The Franchisee's System constructed within the City shall comply with all applicable federal, state and local laws and the City's adopted standards and specifications for the construction of streets and utilities as adopted from time to time by the City, including by way of example, and not limitation, the most current version of the Washington State Department of Transportation, road, bridge and municipal construction standards.
- B. Tree Trimming and Removal. To the extent permitted by law, the Franchisee shall have the authority after obtaining any consent legally required from any affected property owner to trim trees or other natural growth overhanging any of its Telecommunications System in the City so as to prevent branches from coming in contact with the

Franchisee's wires, cables, or other equipment. The Franchisee shall reasonably compensate the City or property owner for any damages caused by such trimming, or shall, at its own cost and expense, reasonably replace all trees or shrubs damaged as a result of any construction, operation or maintenance of the System. The Franchisee shall make reasonable efforts not to harm such trees or shrubs. Any pruning or removal of trees or shrubs in the City shall comply with practices outlined in the American National Standards Institute, Inc., (ANSI) Tree Care Operations - Tree, Shrub, and Other Woody Plant Maintenance Standard Practices and with City Code provisions, including licensing and permitting provisions, and shall be done by a qualified, professional arborist.

- C. Inspection. The City shall have the right, but not a duty, to inspect all construction and installation work performed by the Franchisee pursuant to this Franchise as it shall find necessary to ensure compliance by the Franchisee. Such inspection shall be in accordance with the provisions of this Franchise.
- D. Restoration of City Property and Public Ways.
1. When Franchisee, or any person acting on its behalf, does any work in or affecting any Public Ways, other ways or City property, it shall, at its own expense, promptly remove any obstructions therefrom and restore such Public Ways and City property in accordance with the City's Design Standards and Standard Construction Specifications, and in the absence thereof, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City.
 2. If weather or other conditions do not permit the complete restoration required by this section, the Franchisee shall temporarily restore the affected ways or property. Such temporary restoration shall be at the Franchisee's sole expense and the Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.
 3. Franchisee, and any person acting on its behalf, shall use suitable barricades, flags, flagmen, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.
 4. The public works department shall be responsible for inspection and final approval of the condition of the Public Ways, other ways, and City property following any construction and restoration activities therein. Further, the provisions of this section shall survive the expiration, revocation or termination of this Franchise.
 5. Nothing herein shall prevent the City from charging the Franchisee its usual and customary fees of general applicability for inspection of such restoration or replacement work.
 6. The Franchisee shall be solely responsible for protecting the public health, safety and welfare on such City property from the time of disturbance until proper restoration. Failure of the Franchisee to replace or restore such City property within a reasonable time period after written notification by the City shall entitle the City to cause the proper restoration to be made at the Franchisee's expense. The Franchisee shall pay to the City the cost thereof, in the itemized amounts

reported by the City to the Franchisee, within thirty (30) calendar days after receipt of such itemized report. Such payment shall not excuse a breach of the Franchise caused by the Franchisee's failure to commence, pursue or complete the required work.

7. If the Franchisee excavates the surface of any Right-of-Way, the Franchisee shall be responsible for restoration of the Right-of-Way in accordance with the City's standards and specifications for the construction of streets and utilities, and in the absence thereof, to as good a condition as existed before the work was undertaken, unless otherwise directed by the City. The City may, after providing notice to the Franchisee, resurface any opening made by the Franchisee in the Right-of-Way, and the expense thereof shall be paid by the Franchisee. The City may, after providing notice to the Franchisee, remove and/or repair any work done by the Franchisee which, in the determination of the City, is inadequate or unsatisfactory. The cost thereof, including the costs of inspection and supervision, shall be paid by the Franchisee. All of the Franchisee's work under this Franchise, and this Section in particular, shall be performed and completed in strict compliance with all generally applicable rules, regulations and ordinances of the City.
- E. Restoration of Other Property. Whenever the Franchisee shall cause, or any person acting on its behalf shall cause, any disturbance, injury or damage to property other than Public Ways or City property, by or because of the installation, maintenance or operation of its Facilities, such disturbance, injury or damage shall be remedied fully by the Franchisee at its expense. Further, the Franchisee shall, at its own cost and expense, replace and restore the respective property in accordance with the City's standards and specifications for the construction of streets and utilities, within a reasonable time of the disturbance, injury or damage.
- F. Construction Necessary For Operation. Subject to applicable laws, regulations and ordinances of the City and the provisions of this Franchise, the Franchisee may perform all construction necessary for the operation of its System. All construction and maintenance of any and all Facilities within the Right-of-Way incident to the Franchisee's Telecommunications System shall, regardless of who performs the construction, be and remain the Franchisee's responsibility.
- G. Joint Trenching and Boring. The Franchisee may make excavations in the Rights-of-Way for any Facility needed for the maintenance or extension of the Franchisee. Prior to doing such work, the Franchisee shall give appropriate notice to the City and the notification association in accordance with applicable law (namely the Northwest Utility Notification Center). When obtaining a permit, the Franchisee shall inquire in writing about other construction currently in progress, planned or proposed, in order to investigate thoroughly all opportunities for joint trenching or boring. Whenever it is possible and reasonably practicable to joint trench or share bores or cuts, the Franchisee shall work with other providers, licensees, permittees, and franchisees so as to reduce so far as possible the number of street cuts within the City. If the Franchisee reasonably anticipates that trenching will encounter tree roots, the Franchisee shall consult with the City prior to trenching.
- H. Emergency Repairs. In the event of an unexpected repair or Emergency, Franchisee may commence such repair and Emergency response work as required under the circumstances, provided that, the Franchisee shall notify the City as promptly as possible, before such repair or Emergency work commences or as soon thereafter as possible if

advance notice is not practicable. The Franchisee may initiate such Emergency repairs, and shall apply for appropriate permits within seventy-two (72) hours after discovery of the Emergency. The Franchisee shall comply with all applicable City regulations relating to such excavations or construction, including the payment of permits or license fees, and shall reimburse the City for any damage to City utilities as a result of the Emergency repairs. Likewise, in the event Emergency repairs are necessary to any underground municipal utility to ameliorate a serious risk to the public health and/or safety, if the City knows or has reason to believe part of Franchisee's System is buried in the area which is to be excavated, the City shall immediately notify Franchisee of the City's intent to excavate. Such notification shall be done in such manner as may be reasonably calculated under the circumstances of the Emergency to provide Franchisee with an opportunity to identify the location of any part of its System buried within the proposed excavation site. If the City then damages the System while making the Emergency excavation, so long as its actions are not wanton, the City and its officers, employees, and contractor shall have no liability for the damage.

I. Location of Facilities. The Franchisee shall be a member of the Northwest Utility Notification Center as soon as underground assets are in place. After any City department, franchisee, licensee, or permittee notifies the Franchisee of a proposed street excavation, in accordance with the rules applicable to such a member, the Franchisee shall, at the Franchisee's expense:

1. Mark on the surface all of its locatable underground Facilities within the area of the proposed excavation;
2. Notify the excavator of any unlocatable underground Facilities in the area of the proposed excavation; or
3. Notify the excavator that the Franchisee does not have any underground Facilities in the vicinity of the proposed excavation.

J. Reservation of City Rights. Nothing in this Franchise shall prevent the City from constructing or establishing any public work or improvement.

Any and all such removal or replacement shall be subject to all applicable notice requirements as specified in Section 4, at the expense of the Franchisee. Should the Franchisee fail to remove, adjust or relocate its Facilities by the date established by the City's written notice to the Franchisee, the City may affect such removal, adjustment or relocation, and the expense thereof shall be paid by the Franchisee.

K. Building Codes.

1. The Franchisee shall strictly adhere to all building and zoning codes currently or hereafter in effect. The Franchisee shall arrange its lines, cables, and other appurtenances, on both public and private property, in such a manner as to cause no unreasonable interference with the use of said public or private property by any person. In the event of such interference, the City may require the removal or relocation of the Franchisee's lines, cables, Facilities and other appurtenances from the property in question.
2. All plans for aerial crossings near existing or proposed traffic signals, signs, flashers, or other traffic control devices shall be submitted to the City for approval. No crossings shall be permitted that obstruct traffic signals or other

official traffic control devices.

L. Underground and Overhead Construction.

1. Whenever any new or existing electric utilities, cable Facilities, or Telecommunications Facilities are located or relocated underground, Franchisee shall relocate its Facilities located in the same Public Way underground at no expense to the City, except as otherwise provided at law. Absent extraordinary circumstances or undue hardship as determined by the Long Beach City administrator, such relocation shall be made concurrently to minimize the disruption of the Public Ways, other ways, or property. No extension granted by the City administrator pursuant to this subsection shall exceed a period of 12 months.
2. In areas of the City where electrical, cable or other telephone systems are installed on poles above ground (overhead), the Franchisee shall have the option of installing its System in like manner above ground on existing poles or, alternatively, underground.

M. Rights-Of-Way Occupancy.

1. Nothing in this Franchise shall give the Franchisee the right to attach its System to structures or poles owned by the City without consent of the City.
2. The Franchisee shall:
 - (a) Locate and install all Facilities, equipment and structures so as to cause minimum interference with the rights and reasonable convenience of property owners;
 - (b) Keep and maintain all Facilities, equipment and structures in a good and safe condition, and in good order and repair and in a manner that complies with all applicable federal, state and local requirements;
 - (c) Place any Facilities, equipment and structures in any Right-of-Way in such manner as not to interfere with the usual travel of the Right-of-Way or cause unsafe conditions of any sort;
 - (d) Submit a traffic control plan to the City for approval and receive such approval at least 24 hours prior to commencing construction except in the case of Emergency. Such traffic control plan shall be available for public inspection on the construction site at all times; and
 - (e) Notify adjacent property owners, businesses, residents, and others specified by the City prior to construction and major maintenance projects.
 - (f) Franchisee shall maintain its System, Facilities and related appurtenances in good and safe condition.
 - (g) Franchisee, in accordance with applicable federal, state and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury, or nuisance to the public and/or workers. All structures and all lines, equipment and connections in, over, under, and upon the Public Ways, shall

at all times be kept and maintained in a safe, suitable condition, and in good order and repair. If a violation of the National Electrical Safety Code or other applicable regulation is found to exist by the City, the City may, after discussions with a Franchisee, establish a reasonable time for a Franchisee to make necessary repairs. If the repairs are not made within the established time frame, the City may make the repairs itself or have them made and collect all reasonable costs thereof from the Franchisee.

3. The Franchisee shall not make street cuts or curb cuts unless absolutely necessary, and only after a permit has been obtained from the City under such conditions as the City shall in its sole discretion determine.
4. Before beginning any excavation or other construction activity on a Right-of-Way which crosses or abuts any private property, the Franchisee shall clearly mark and delineate with flags, stakes or non-polluting water-soluble spray paint the boundaries of that Right-of-Way where it abuts or crosses the private property. After such excavation or other construction activity, the Franchisee shall restore such property to not less than the City's standards.
5. The Franchisee shall locate, mark and map any of its installed System for the City at no expense to the City. The Franchisee shall install underground warning tape with a metallic tracer at least twelve (12) inches above all feeder and trunk lines and above all fiber optic cable.

N. Stop Work.

On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The rights granted herein are in addition to any rights the City may have at law or under its police powers to issue a stop work order.

0. Franchisee's Contractors/Subcontractors. Franchisee contractors and subcontractors performing Work in the Public Rights-of-Way shall comply with such bond, indemnity and insurance requirements as may be required by City code or regulations, or other applicable law. The Franchisee and its contractors shall be licensed and bonded in accordance with the City's ordinances, regulations and requirements for any contractors working in the Rights-of-Way. Any contractors or subcontractors performing Work within the Public Right-of-Way on behalf of the Franchisee shall be deemed servants and agents of the Franchisee for the purposes of this Franchise and are subject to the same restrictions, limitations and conditions as if the work were performed by Franchisee. Franchisee 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 Franchise and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is Franchisee's responsibility to ensure that contractors, subcontractors or other persons performing work on Franchisee's behalf are familiar with the requirements of this Franchise and other applicable laws governing the work performed by them. Any act or omission of any contractor of the Franchisee which violates any provision of this Franchise shall be considered an act or omission of the Franchisee for the purposes of this Franchise.

- P. Private Property. If directed by the City, at least 24 hours prior to entering private property or streets or Public Ways adjacent to or on such private property to perform new construction or reconstruction, a notice indicating the nature and location of the work to be performed shall be physically posted, at no expense to the City, upon the affected property by the Franchisee. A door hanger may be used to comply with the notice and posting requirements of this section. Franchisee shall make a good faith effort to comply with the property owner's/resident's preferences, if any, on location or placement of underground installations (excluding aerial cable lines utilizing existing poles and existing cable paths), consistent with sound engineering practices; provided, however, that nothing in this chapter shall permit a Franchisee to unlawfully enter or construct improvements upon the property or premises of another. If any damage is caused by any Franchisee activity or omission, the Franchisee shall reimburse the property owner one hundred percent (100%) of the cost of the damage or replace the damaged property. In the case of an Emergency, the Franchisee shall attempt to contact the property owner or legal tenant in person, and shall leave a door hanger notice in the event personal contact is not made.
- Q. Notice of Work. Except as may be otherwise authorized by the Public Works Director, Franchisee, and persons performing work on behalf of Franchisee, shall not commence any non-Emergency work on, in, under, over, across, or within Public Ways without first giving ten (10) working days' advance notice to the City.
- R. Survey Monuments. All survey monuments which are disturbed or displaced by any Work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, state and local standards and specifications.

ARTICLE IV. ADMINISTRATION AND REGULATION

SECTION 1. Transfer of Ownership or Control.

- A. This Franchise shall not be directly or indirectly assigned or transferred, leased or disposed of either in whole or in part by voluntary sale or involuntary sale, merger or consolidation, either legal or equitable or any right, interest or property therein, pass to or vest in any person, or entity without the prior written consent of the City Council, which consent shall not be unreasonably withheld or delayed, except as expressed by ordinance, and then only on such reasonable conditions as may be prescribed therein.
- B. No consent will be required for a transfer in trust, mortgage, or other hypothecation as a whole or in part to secure an indebtedness.
- C. Notwithstanding the foregoing, the Franchise shall not be assigned or transferred in any manner within twelve (12) months after the initial grant of the Franchise.
- D. Absent extraordinary and unforeseeable circumstances, no System or integral part of a System shall be assigned or transferred before construction of the System has been completed.
- E. The Franchisee shall promptly notify the City of any actual or proposed change in, or transfer of, or disposition of, or acquisition by any other party of, control of the Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer change or acquisition.

- F. Franchisee and the proposed assignee or transferee shall provide and certify the following information to the City not less than one hundred and fifty (150) days prior to the proposed date of transfer:
1. Complete information setting forth the nature, terms and condition of the proposed transfer or assignment;
 2. All information required of an authorization, Franchise, or lease applicant pursuant to this chapter with respect to the proposed transferee or assignee;
 3. Any other information reasonably required by the City; and
 4. An application fee which shall be set by the City council by resolution.
- G. No transfer shall be approved unless the assignee or transferee has the legal, technical, financial, and other requisite qualifications to own, hold and operate the System.
- H. Franchisee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign the Franchise. No approval shall be deemed approved until all such costs and expenses have been paid.
- I. The word "control" as used herein is not limited to major stockholders but includes actual working control in whatever manner exercised. Any transaction, assignment or transfer which singularly or collectively results in a change of fifty percent (50%) or more of the ownership or working control of the grantee, Franchisee, or lessee, of the ownership or working control of the System, or of the ownership or working control of Affiliated entities having ownership or working control of the Franchisee or of the System, or of control of the capacity or bandwidth of the Franchisee's System, Facilities or substantial parts thereof shall be considered an assignment or transfer requiring City approval pursuant this section. Transactions between Affiliated entities are not exempt from City approval.

Every change, transfer, or acquisition of control of the Franchisee shall make the Franchise subject to cancellation unless and until the City Council shall have consented thereto, which consent will not be unreasonably withheld. For the purpose of determining whether it shall consent to such change, transfer, disposition, or acquisition of control, the City Council may inquire into the qualifications of the prospective controlling party, and the Franchisee shall assist the City Council in any such inquiry. Any transfer or assignment of the Franchise or System, or integral part of a System without prior written approval of the City pursuant to this section or pursuant to an authorization, Franchise, or lease agreement shall be void and is cause for revocation of the grant.

- K. In the event that the City adopts a resolution or other appropriate order denying its consent and such change, transfer or acquisition of control has been affected, the City may revoke the Franchise.
- L. The proposed transferee/assignee must show its legal and technical qualifications and its financial responsibility as determined by the City Council and must agree to comply with all the provisions of the Franchise. Unless the Franchisee and the City Council otherwise agree on an extension of time, the City Council shall be deemed to have consented to a proposed transfer or assignment in the event it has not acted within one hundred and fifty

(150) days of notice.

- M. The consent or approval of the City Council to any transfer of the Franchise shall not constitute a waiver or release of the right of the City in and to the Rights-of-Way, and any transfer shall by its terms, be expressly subordinate to the terms and conditions of this Franchise.
- N. By its acceptance of this Franchise, the Franchisee specifically agrees that any such transfers occurring without prior approval of the City Council shall constitute a violation of this Franchise by the Franchisee. In no event shall a transfer of ownership or change of control be approved without the successor in interest becoming a signatory to this Franchise.
- O. Within thirty (30) days of any transfer or sale and upon request, if approved or deemed granted by the City, the Franchisee shall file with the City a copy of the deed, agreement, or other written instrument evidencing such sale or transfer of ownership or control, certified and sworn to as correct by the Franchisee.
- P. The City may inquire into the legal, technical and financial qualifications of the prospective controlling party or transferee, and the Franchisee shall assist the City in so inquiring. The City may condition said sale or transfer upon such terms and conditions as it deems reasonably appropriate; provided, however, the City shall not unreasonably withhold its approval and any such terms and conditions so attached shall be related to the legal, technical, and financial qualifications of the prospective controlling party or transferee and to the resolution of outstanding and unresolved issues of noncompliance with the terms and conditions of this Franchise by the Franchisee.
- Q. Notwithstanding anything to the contrary in this Section, the prior written approval of the City Council shall not be required for any sale, assignment or transfer of the Franchise, the System or ownership to an entity controlling, controlled by, or under the same common control as the Franchisee.

ARTICLE V. FINANCIAL AND INSURANCE REQUIREMENTS

SECTION 1. Liability Insurance.

Franchisee shall secure and maintain the following liability insurance policies insuring both the Franchisee, and the City, and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges, and authority granted to the Franchisee, or the use of the Public Way for the construction, installation or operation of its System:

- A. Comprehensive general liability insurance, written on an occurrence basis, with limits not less than:
 - 1. Five million dollars for bodily injury or death to each person;
 - 2. Five million dollars for property damage resulting from any one accident; and
 - 3. Five million dollars for all other types of liability;
- B. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000 for each person and \$3,000,000 for each accident;

- C. Worker's compensation within statutory limits and employer's liability insurance with limits of not less than \$1,000,000;
- D. Comprehensive form premises-operations, explosions and collapse hazard, underground hazard and products completed hazard with limits of not less than \$3,000,000;
- E. Railroad Track Exclusion. The Franchisee's insurance shall include a requirement that the "railroad exclusion" be deleted or may include, in the alternative, ISO endorsement CG 24 17 or a substantially similar endorsement.
- F. The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of the Franchise, and such other period of time during which the Franchisee, is operating without Franchise, or is engaged in the removal of its Telecommunications Facilities. The Franchisee shall provide an insurance certificate, together with an endorsement naming the City and its elected and appointed officers, officials, agents, employees, representatives, engineers, consultants, and volunteers as additional insureds, to the City prior to the commencement of any work or installation of any Facilities pursuant to said authorization, Franchise, or lease. Any deductibles or self-insured retentions must be declared to and approved by the City. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance as respect to the City, its officers, officials, employees, agents, consultants, and volunteers. Any insurance maintained by the City, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the grantee's, Franchisee's, or lessee's insurance and shall not contribute with it;
- G. In addition to the coverage requirements set forth in this section, each such insurance policy shall contain an endorsement in a form which substantially complies with the following:

It is hereby understood and agreed that in the event this policy is canceled or subject to non-renewal, Franchisee shall give notice of the same to the City as soon as reasonable practical after notice to Franchisee of cancellation or non-renewal, however, this period should not exceed 30 days.
- H. Franchisee shall obtain and furnish to the City replacement insurance policies meeting the requirements of this section, so that there is no lapse in coverage.
- I. The Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by the Franchisee or to limit the liability of the Franchisee to the coverage provided in the insurance policies, or otherwise to limit the City's recourse to any other remedy available at law or in equity.
- J. Acceptability of Insurers. Each insurance policy obtained pursuant to this Franchise shall be issued by financially sound insurers who may lawfully do business in the State of Washington with a financial strength rating at all times during coverage of no less than an "A-" and in a financial size category of no less than "XII", in the latest edition of "Best's Rating Guide" published by A.M. Best Company. In the event that at any time during coverage, the insurer does not meet the foregoing standards, Franchisee shall give prompt notice to the City and shall seek coverage from an insurer that meets the foregoing standards. The City reserves the right to change the rating or the rating guide depending

upon the changed risks or availability of other suitable and reliable rating guides.

SECTION 2. Compensation.

- A. **Utility Tax.** Nothing contained in this Franchise Agreement shall exempt Franchisee from Franchisee's obligation to pay any utility tax, business tax, or ad valorem property tax, now or hereafter levied against real or personal property within the City, or against any local improvement assessment imposed on Franchisee. Any fees, charges and/or fines provided for in the City Municipal Code for work performed or activities occurring in the Public Way, whether pecuniary or in-kind, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed or due from Franchisee.
- B. **Recovery of City Costs.**
1. **Reimbursement of Direct Costs of Design Review and Inspection.** City approvals and inspections, as provided for in this Franchise, are for the sole purpose of protecting the City's rights as the owner or manager of the Rights-of-Way and are separate and distinct from the approvals and inspections and fees that may be required pursuant to a Regulatory Permit. Therefore, Franchisee shall reimburse to the City, its Direct Costs of approvals and inspections, to the extent that such Direct Costs are not included in the costs for issuance of and compliance with the Regulatory Permit. Approvals and inspection, by way of example and not limitation, include review of design documents and inspection for compliance with city design standards.
 2. **Reimbursement of Direct Costs of altering Public Rights-of-Way.** Franchisee shall reimburse the City for the Direct Costs incurred by the City in planning, designing, constructing, installing, repairing or altering any City infrastructure, structure, or facility as the result of the actual or proposed presence in the Public Right-of-Way of Franchisee's Facilities. Such costs and expenses shall include, but not be limited to, the Direct Costs of City personnel and contractors utilized to oversee or engage in any work in the Right-of-Way as the result of the presence of Franchisee's Facilities in the Right-of-Way, and any time spent reviewing construction plans in order to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any public utilities or Public Rights-of-Way so as not to interfere with Franchisee's Facilities. Upon request as a condition of payment by Franchisee, all billing will be itemized so as to specifically identify the Direct Costs and expenses for each project for which the City claims reimbursement.
 3. **Franchisee Responsibility for Costs.** Except as expressly provided otherwise in this Franchise, any act that Franchisee, its contractors or subcontractors are required to perform under this Franchise shall be performed at their sole cost and expense.
 4. **Franchisee Work Performed by the City.** Any work performed by the City that Franchisee has failed to perform as required pursuant to this Franchise and which is performed by the City in accordance with the terms of this Franchise, shall be performed at the cost and expense of the Franchisee. Franchisee shall be obligated to pay the Direct Costs to the City for performing such work.
 5. **Upon request and as a condition of payment by the Franchisee of Direct Costs**

payable by Franchisee under this Franchise, the City shall submit an itemized billing so as to specifically identify the Direct Costs incurred by the City for each project for which the City claims reimbursement.

6. Contesting charges. Franchisee may contest all or parts of amounts owed within thirty (30) days of receipt of any invoice in accordance with the following process. The City will investigate Franchisee's contest and will make appropriate adjustments to the invoice, if necessary, and resubmit the invoice to Franchisee. Franchisee shall pay any amounts owing as itemized in the resubmitted invoice which amounts shall be due within thirty (30) days of receipt of the resubmitted invoice. The Franchisee may seek whatever rights or remedies it may have to contest any amounts it disputes as set forth in the resubmitted invoice; provided that, the Franchisee pays such amounts under written protest identifying the factual and legal basis for such dispute.
7. All non-contested amounts owing shall be due and paid within thirty (30) days of receipt of invoice; provided that, in the event that an itemized invoice is not provided at the time of receipt of invoice and the City receives a request from Franchisee for an itemized invoice within 30 days of receipt of invoice, such amounts shall be due and paid within (30) days of receipt of the itemized invoice.
8. Any amounts payable under this Franchise by Franchisee which shall not be paid upon the due date thereof, shall bear interest at a rate of twelve (12%) percent per annum.
9. The current contract does not call or otherwise call for payment by franchisee for use of the City Rights of Way pursuant to RCW 35.21.860. However, should the law or its interpretation change, or the franchisee provide any service within the City, then a payment from the franchisee to the City shall be negotiated to include taxes, fees, compensation, or any other form of payment authorized by law.

SECTION 3. Indemnity.

The Franchisee hereby releases, covenants not to bring suit, and agrees to indemnify, defend and hold harmless the City, its officers, employees, agents, representatives, engineers, and consultants from any and all claims, costs, judgments, awards, or liability to any person, including claims by the Franchisee's own employees to which the grantee, Franchisee, or lessee might otherwise be immune under Title 51 RCW, arising from injury or death of any person or damage to property of which the negligent acts or omissions of the Franchisee, its agents, servants, officers, or employees in performing under this authorization, Franchise, or lease are a proximate cause.

The Franchisee further releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers and employees from any and all claims, costs, judgments, awards, or liability to any person including claims by the Franchisee's own employees, including those claims to which the Franchisee might otherwise have immunity under Title 51 RCW, arising against the City solely by virtue of the City's ownership or control of the rights-of-way or other public properties, by virtue of the Franchisee's exercise of the rights granted herein, or by virtue of the City's permitting the Franchisee's use of the City's rights-of-way or other public property, based upon the City's inspection or lack of inspection of work performed by the grantee, Franchisee, or

lessee, its agents and servants, officers or employees in connection with work authorized on the City's property or property over which the City has control, pursuant to this Franchise, or pursuant to any other permit or approval issued in connection with this Franchise.

This covenant of indemnification shall include, but not be limited by this reference, to claims against the City arising as a result of the negligent acts or omissions of the Franchisee, its agents, servants, officers, or employees in barricading, instituting trench safety systems or providing other adequate warnings of any excavation, construction, or work in any public right-of-way or other public place in performance of work or services permitted under this authorization, Franchise, or lease.

Inspection or acceptance by the City of any work performed by the Franchisee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation.

In the event that the Franchisee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to the indemnification clauses contained herein, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of the Franchisee, then the Franchisee shall pay all of the City's costs for defense of the action, including all reasonable expert witness fees and reasonable attorneys' fees and the reasonable costs of the City, including reasonable attorneys' fees of recovering under this indemnification clause.

In the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Franchisee, and the City, its officers, employees and agents, the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Franchisee's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

The provisions of this section shall survive the expiration or termination of this Franchise. Notwithstanding any other provisions of this section, the Franchisee assumes the risk of damage to its Facilities located in the City's Public Ways, rights-of-way, easements, and property from activities conducted by the City, its officers, agents, employees, and contractors. The Franchisee releases and waives any and all claims against the City, its officers, agents, employees, or contractors for damage to or destruction of the Franchisee's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, and contractors, in the Public Ways, rights-of-way, easements, or property subject to this Franchise, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful and malicious action on the part of the City, its officers, agents, employees, or contractors.

The Franchisee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by or under users of the Franchisee's Facilities as the result of any interruption of service due to damage or destruction of the user's Facilities caused by or arising out of activities conducted by the City, its officers, agents, employees, or

contractors, except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful and malicious actions on the part of the City, its officers, agents, employees, or contractors.

Unless directly and proximately caused by the willful and malicious acts of the City, the City shall not be liable for any damage to or loss of any Telecommunications System or Facilities on, in, under, over, across or within Public Ways or City property as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on, in, under, over, across, or within such Public Way or City property by or on behalf of the City.

The fact that Franchisee carries out any activities under this Franchise through independent contractors shall not constitute an avoidance of or defense to Franchisee's duties of defense and indemnification under this Section.

SECTION 4. Performance and Financial Guaranties.

A. Performance and Payment Bond.

1. Franchisee shall provide to the City a faithful performance and payment bond in the initial amount of twenty-five thousand dollars (\$25,000.00) to ensure the full and faithful performance of all of its responsibilities under this Franchise and applicable laws, including, by way of example and not limitation, its obligations to relocate and remove its Facilities, to restore the Public Right-of-Way and other property when damaged or disturbed, to reimburse the City for its Direct Costs and keeping Franchisee's insurance in full force.
2. The performance bond shall be in a form with terms and conditions acceptable to the City and reviewed and approved by the City Attorney.
3. The performance bond shall be with a surety with a rating no less than "A X" in the latest edition of "Bests Rating Guide," published by A.M. Best Company.
4. The Franchisee shall pay all premiums or costs associated with maintaining the performance and payment bond, and shall keep the same in full force and effect at all times. If Franchisee fails to provide or maintain the bond, then the City, in its sole discretion, may require Franchisee to substitute an equivalent cash deposit as described below in lieu of the bond.
5. Franchisee's maintenance of the bond(s) shall not be construed to excuse unfaithful performance by Franchisee, or limit the liability of Franchisee to the amount of the bond(s), or otherwise limit the City's recourse to any other remedy available at law or in equity.
6. The amount of the bond may, in the reasonable discretion of the City, be adjusted by the City to take into account (1) cumulative inflation, (2) increased risk to the City, (3) and the experiences of the Parties regarding Franchisee's compliance with its obligations under the Franchise. Prior to adjusting the amount of the bond, the City shall provide reasonable notice to the Franchisee and an opportunity to provide comments, and the City shall review and consider such comments that are timely made.

B. Cash Deposit/Irrevocable Letter of Credit in Lieu of Bond.

1. Franchisee may, at its election substitute an equivalent cash deposit with an escrow agent approved by the City or an irrevocable letter of credit in form and content approved by the City Attorney, instead of a performance and payment bond. This cash deposit or irrevocable letter of credit shall ensure the full and faithful performance of all of Franchisee's responsibilities hereto under this Franchise and all applicable Laws. This includes but, is not limited to, its obligations to relocate or remove its facilities, restore the Public Rights-of-Way and other property to their original condition, reimbursing the City for its costs, and keeping Franchisee's insurance in full force.
 2. The City shall notify Franchisee in writing, by certified mail, of any default and shall give Franchisee thirty (30) days from the date of such notice to cure any such default. In the event that the Franchisee fails to cure such default to the satisfaction of the City, the City may, at its option, draw upon the cash deposit or letter of credit up to the amount of the City's costs incurred to cure Franchisee's default. Upon the City's cure of Franchisee's default, the City shall notify Franchisee in writing of such cure.
 3. Within three (3) days of a withdrawal from the Security Fund, the City shall mail, by certified mail, return receipt requested, written notification of the amount, date, and purpose of such withdrawal to the Franchisee.
 4. In the event that the City draws upon the cash deposit or letter of credit, Franchisee shall thereupon replenish the cash deposit or letter of credit to the full amount as specified herein or provide a replacement performance and payment bond.
 5. Upon termination of the Franchise under conditions other than those stipulating forfeiture of the Security Fund, the balance then remaining in the Security Fund shall be returned to the Franchisee within sixty (60) days of such termination, provided that there is then no outstanding default on the part of the Franchisee.
 6. Failure to maintain or restore the security fund or letter of credit shall constitute a Breach of this Agreement.
- C. Reservation of Rights. The rights reserved to the City herein are in addition to all other rights of the City, whether reserved herein or authorized by applicable Law, and no action, proceeding, or exercise of a right with respect to such Security Fund or letter of credit will affect any other right the City may have. Neither the filing of a letter of credit with the City, nor the receipt of any damages recovered by the City thereunder, shall be construed to excuse faithful performance by the Franchisee or limit the liability of the Franchisee under the terms of its Franchise for damages, either to the full amount of the letter of credit or otherwise.

ARTICLE VI. ENFORCEMENT AND TERMINATION

SECTION 1. Forfeiture and Termination.

- A. In addition to all other rights and powers retained by the City under this Franchise, pursuant to City code, or otherwise, the City reserves the right (after notice and the opportunity to cure as provided by Subsection C, below) to forfeit and terminate the Franchise and all rights and privileges of the Franchisee hereunder in accordance with the revocation or termination procedures as prescribed at LBMC Section ____, Exhibit "B",

attached hereto.

- B. Nothing herein shall be construed as limiting any judicial remedies that the City may have, at law, in contract or in equity, for enforcement of this Franchise.

SECTION 2. Foreclosure.

Upon the foreclosure or other judicial sale of all or a substantial part of the System, or upon the termination of any lease covering all or a substantial part of the System, the Franchisee shall notify the City of such fact, and such notification shall be treated as a notification that a change in control of the Franchisee has taken place, and the provisions of this Franchise governing the consent of the City Council to such change in control of the Franchisee shall apply.

SECTION 3. Receivership.

The City shall have the right to cancel this Franchise one hundred twenty (120) days after the appointment of a receiver, or trustee, to take over and conduct the business of the Franchisee, whether in receivership, reorganization, bankruptcy or other action or proceeding, unless such receivership or trusteeship shall have been vacated prior to the expiration of said one hundred twenty (120) days, or unless:

- A. Within one hundred twenty (120) days after the election or appointment of a receiver or trustee, such receiver or trustee shall have fully complied with all the provisions of this Franchise and remedied all defaults hereunder; and,
- B. Such receiver or trustee, within said one hundred twenty (120) days, shall have executed an agreement, duly approved by the court having jurisdiction in the premises, whereby such receiver or trustee assumes and agrees to be bound by each and every provision of this Franchise.

SECTION 4. Bankruptcy.

The City shall have the right to cancel this Franchise immediately should the Franchisee liquidate, become insolvent, make a transfer for the benefit of creditors, or reorganize and enter into an arrangement for the benefit of creditors or file a voluntary petition in bankruptcy; or an involuntary petition in bankruptcy is filed against the Franchisee and is not dismissed within one hundred twenty (120) days after the filing.

SECTION 5. Removal of System.

At the expiration of the term for which this Franchise has been granted, without renewal, or upon its lawful termination or revocation as provided herein, the Franchisee shall forthwith, upon notice by the City, remove at the Franchisee's own expense, or abandon in place, all designated portions of the System from all Rights-of-Way within the City as provided at, and subject to the requirements of, Article III, Section 1(L) of this Franchise.

ARTICLE VII. MISCELLANEOUS PROVISIONS

SECTION I. Notices.

All notices from the Franchisee to the City pursuant to this Franchise shall be to:

City of Long Beach Attn:

City Administrator
P O Box 310
115 Bolstad Avenue West
Long Beach, WA 98631

(360) 642-4421 Office
(360) 642-8841 Fax

or to another person as designated by the City. All notices from the City to the Franchisee pursuant to this Franchise shall be sent to:

Contracts Administration,
LS Networks,
921 SW Washington St., Ste. 370,
Portland, OR 97205

Phone: (503) 294-5300
Facsimile: (503) 227-8585

or to such other person or address designated by the Franchisee. The Franchisee shall maintain with the City administrator, throughout the term of the Franchise, an address for service of notices by mail. The Franchisee shall also maintain with the City, an office address and telephone number for the conduct of matters related to this Franchise during normal business hours. A new address and telephone number of the office shall be furnished to the City Clerk within fifteen (15) days after any change thereof.

SECTION 2. Time Limits Strictly Construed.

Whenever this Franchise sets forth a time for any act to be performed by the Franchisee, such time shall be deemed to be of the essence, and any failure of the Franchisee to perform within the allotted time may be considered a material violation of this Franchise and sufficient grounds for the City to invoke any relevant remedy. However, in the event that the Franchisee is prevented or delayed in the performance of any of its obligations under this Franchise by reason of force majeure, the Franchisee's performance shall be excused during the force majeure occurrence and the Franchisee thereafter shall, under the circumstances, promptly perform the affected obligations under this Franchise or procure a substitute which is satisfactory to the City.

SECTION 3. Cumulative Provision.

The rights and remedies reserved to the City and the Franchisee by this Franchise are cumulative and shall be in addition to and not in derogation of any other rights or remedies which the City and the Franchisee may have with respect to the subject matter of this Franchise, and a waiver thereof at any time shall have no effect on the enforcement of such rights or remedies at a future time. Further, either the City or the Franchisee may seek any legal or equitable relief allowed by law provided that, if both parties agree, the City and the Franchisee may seek methods of alternative dispute resolution.

SECTION 4. Compliance with Federal, State, and Local Laws.

The Franchisee, its contractors, subcontractors, employees, and agents shall comply with all applicable federal, state, and local laws, rules, and regulations issued pursuant thereto. The Franchisee and the City have carefully reviewed this Franchise and believe that all provisions hereof are enforceable and in full compliance with all applicable local, state, and federal laws and regulations in effect on the date of execution. If the Franchisee shall discover that any significant aspect of the operation or of any provision of the plans, specifications, or configurations of the Franchisee's System is contrary to or inconsistent with any applicable law, ordinance, rule, or regulation, the Franchisee shall promptly report such fact to the City in writing. The Franchisee and the City shall also be entitled to all rights and be bound by all changes in applicable local, state, and federal law which occur subsequent to the date of this Franchise. The Franchisee and the City acknowledge that their rights and obligations under this Franchise are explicitly subject to all such changes.

SECTION 5. Confidentiality.

City agrees to keep confidential any proprietary or confidential books or records to the extent permitted by law. Franchisee shall be responsible for clearly and conspicuously identifying the work confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such under State or federal law. If City receives a demand from any person for disclosure of any information designated by Franchisee as confidential, City shall, so far as consistent with applicable law, advise Franchisee and provide Franchisee with a copy of any written request by the party demanding access to such information within a reasonable time. If Franchisee believes that the disclosure of such documents by City would interfere with Franchisee's rights under federal or state law, Franchisee shall institute an action in the Pacific County Superior Court to prevent the disclosure by City of such documents. Franchisee shall join the person requesting the documents to such an action. Franchisee shall defend, indemnify and hold City harmless from any claim or judgment including, but not limited to, any penalties or costs under RCW 42.56.

SECTION 6. Captions.

The captions to sections and subsections contained herein are intended solely to facilitate the reading thereof, and such captions shall not affect the meaning or interpretation of the text herein.

SECTION 7. Construction of Agreement.

This Franchise shall be governed, construed, and enforced in accordance with the laws of the state of Washington (as amended), and any other applicable local, state and federal laws, rules, regulations, legislation, or orders (as such now exist, are later amended or subsequently adopted).

SECTION 8. No Joint Venture.

Nothing herein shall be deemed to create a joint venture or principal-agent relationship between the parties, and neither party is authorized to, nor shall either party act toward third persons or the public in any manner which would indicate any such relationship with the other.

SECTION 9. Entire Agreement.

This Franchise and all attachments represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and supersede all prior oral and written negotiations between the parties. This Franchise can be amended, supplemented, modified, or changed only by an agreement in writing which makes specific reference to this Franchise or to the appropriate attachment and which is signed on behalf of both parties. All exhibits annexed hereto at the time of execution of this Franchise or in the future as contemplated herein, are hereby incorporated by reference as though fully set forth herein.

SECTION 10. Actions of the City or the Franchisee.

In any action by the City or the Franchisee mandated or permitted under the terms hereof, it shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

SECTION 11. Severability, Preemption, and Precedence.

- A. If any section, subsection, sentence, clause, phrase, provision, or portion of this Franchise is for any reason held invalid or unenforceable by any court of competent jurisdiction, or any state or federal regulatory agency having jurisdiction thereof, the remainder of this Franchise shall not be affected thereby, and each remaining section, subsection sentence, clause, phrase, provision, and portion of this Franchise shall be valid and enforceable to the fullest extent permitted by law.
- B. In the event that federal or state laws, rules or regulations preempt a provision or limit the enforceability of a provision of this Franchise, then the provision shall be read to be preempted to the extent and for the time required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the City or Franchisee, and any amendments to this Franchise negotiated as a result of such provision being preempted shall no longer be of any force or effect with respect to that provision.

SECTION 12. Venue.

Any action concerning a dispute arising under this Franchise shall be convened in Pacific County, Washington.

SECTION 13. Interpretation.

As a further condition of this Franchise, the parties acknowledge that this Franchise shall be deemed and construed to have been prepared mutually by both parties.

SECTION 14. Attorney's Fees.

In the event that either party shall take action, whether judicial or otherwise, to enforce or interpret any of the provisions of this Franchise, the prevailing party shall be entitled to recover from the other party all expenses which it may reasonably incur in such action, including attorneys' fees and costs, whether incurred in a court of law or otherwise.

SECTION 15. Effective Date.

This Ordinance shall be in full force and effect five (5) days after publication and shall be binding upon acceptance by the Franchisee as provided herein.

SECTION 16. Publication.

This ordinance, or a summary thereof, shall be published in the official newspaper of the City, the expense of which shall be borne by Franchisee, and shall take effect and be in full force as provided herein.

SECTION 17. Survival of Terms.

Upon the expiration, termination, revocation or forfeiture of the Franchise, the Franchisee shall no longer have the right to occupy the Franchise Area for the purpose of providing services authorized herein. However, the Franchisee's obligations under this Franchise to the City shall survive the expiration, termination, revocation or forfeiture of these rights according to its terms for so long as the Franchisee's Utility System or any part thereof shall remain in whole or in part in the Public Rights-of-Way, unless abandoned as provided herein. Said obligations include, by way of illustration and not limitation, Franchisee's obligations to indemnify, defend, and protect the City, to provide insurance, to relocate its Facilities, and to reimburse the City for its costs to perform Franchisee work.

SECTION 18. Discriminatory Practices Prohibited.

Throughout the term of this Franchise, Franchisee shall fully comply with all equal employment and nondiscrimination provisions of applicable law.

Section 2. Effective Date. This Ordinance, or a summary thereof, shall be published in the official newspaper of the City, and shall take effect and be in full force five (5) days after the date of publication.

ADOPTED BY THE LONG BEACH CITY COUNCIL AT A REGULAR MEETING
THEREOF ON THE ___ DAY OF ___ 2012

Robert Andrews, Mayor

ATTEST:

City Clerk

APPROVED AS TO FORM:

Douglas Goelz, City Attorney

Filed with the City Clerk:
Passed by the City Council:
Ordinance No. 884
Date of Publication:
Effective Date:

TAB - C

Long Beach Police

P.O. Box 795
Long Beach, WA 98631

lbpchief@centurytel.net

Phone 360-642-2911
Fax 360-642-5273

12-01-12

Page 1 of 3

To: Mayor Andrew and Long Beach City Council

From: Chief Flint R. Wright

Ref.: Monthly Report for November 2012

During the month of November the Long Beach Police Department handled the following cases and calls:

Long Beach

617 Total Incidents

Aid Call Assists: 2

Alarms: 3

Animal Complaints: 15

Assaults: 6

Assists: 86

(Includes 8 Law Enforcement Agency Assists Outside City Boundaries)

Burglaries: 8

Disturbance: 14

Drug Inv.: 3

Fire Call Assists: 3

Follow Up: 117

Found/Lost Property: 5

Harassment: 10

Malicious Mischief: 3

MIP – Alcohol: 6

MIP – Tobacco: 0

Missing Person: 2

Prowler: 1

Runaway: 0

Security Checks: 240

Suspicious: 31

Thefts: 21

Traffic Accidents: 2

Traffic Complaints: 4

Traffic Tickets: 1

Traffic Warnings: 7

Trespass: 6

Warrant Arrests: 13

Welfare Checks: 8

Ilwaco

355 Total Incidents

Aid Call Assists: 2

Alarms: 11

Animal Complaints: 3

Assaults: 2

Assists: 41

Burglaries: 3

Disturbance: 2

Drug Inv.: 3

Fire Call Assists: 1

Follow Up: 66

Found/Lost Property: 0

Harassment: 3

Malicious Mischief: 5

MIP – Alcohol: 0

MIP – Tobacco: 0

Missing Person: 1

Prowler: 0

Runaway: 0

Security Checks: 169

Suspicious: 12

Thefts: 6

Traffic Accidents: 3

Traffic Complaints: 2

Traffic Tickets: 0

Traffic Warnings: 5

Trespass: 4

Warrant Arrests: 7

Welfare Checks: 4

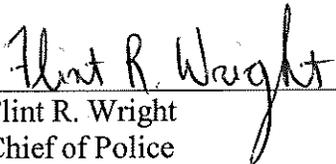
Monthly Report Continued:

Page 2 of 3

On November 1st Officer Jeff Cutting attended training. He was given refresher training for operating the BAC or breathalyzer machine and for conducting standardized field sobriety tests. The BAC and field tests are used for conducting DUI arrest investigations.

On the 25th Officer Casey Meling taught a class to Pacific County Reserves on taking statements from witnesses. I am pleased that I have officers who are capable of teaching these types of classes.

I received a thank you card from Well Spring Community Network. The network thanked the department for helping out with the prescription drug take back event held earlier in the fall and for helping out with "Red Ribbon Week" in late October. I have attached a copy of the card.



Flint R. Wright
Chief of Police

11-28-12

Dear Flint, Casey, Loretta, and crew,

Just wanted to thank you for your support this fall for the Red Ribbon Week festivities and your support of the Rx drug takeback. Well Spring couldn't do it without you!

Thanks so much,

Monica Jones



FAQ on the Marijuana Initiative, I-502

The following are a collection of questions that have been raised as cities evaluate how best to respond to the approval of I-502. Cities should revisit their policies and procedures with their legal counsel to ensure that their actions are in compliance with the new law.

Law enforcement impacts

Law enforcement agencies should revisit their policies and procedures with their legal advisors to ensure that their actions are in compliance with the new law.

Who can have marijuana, and how much?

According to the initiative, on December 6, adults over the age of 21 are allowed to carry any combination of the following: up to 1 ounce of usable marijuana, 16 ounces of marijuana-infused product in solid form, 72 ounces of marijuana-infused product in liquid form.

What are the consequences of possession over an ounce? For a person 21 years and older, possession in the range above one ounce to 40 grams (about 1.5 ounces) results in a misdemeanor. Possession of more than 40 grams is a Class C Felony.

Where can you legally buy marijuana? The Washington State Liquor Control Board has until December 1, 2013, to establish guidelines and regulations for the sale and distribution of marijuana. Until then, it is illegal to purchase marijuana from an unlicensed provider. It is also illegal to grow or sell marijuana. Collective gardens used by medical marijuana patients are not affected by the language of this initiative.

What constitutes an infraction for marijuana? Law enforcement officers have probable cause to cite for the infraction based upon seeing someone with the product or smelling it, and the person is within public view. This person would be charged with a Class 3 civil infraction under RCW 7.80. Though the fine is not directly specified in the initiative, some have predicted the citation will likely result in a \$103 fine.

Can law enforcement seize marijuana and paraphernalia? Unless they can articulate some other behavior that suggests a criminally illegal behavior or activity, further searches of the person are not lawful. Different agencies' policy will dictate seizure of any marijuana or paraphernalia. At this time, it is unclear whether the marijuana and paraphernalia will be seized or not.

If a law enforcement officer witnesses a person smoking what appears to be marijuana, can they then search that person? The officer who witnesses the infraction can contact the person and issue the citation. Officers can initiate a search only if there is suspicion or indication that the person receiving the citation may be armed, or if that person gives the presiding officer indication they have criminal possession on their person.

Must law enforcement officers have warrants for blood tests? If officers believes someone is driving under the influence and impaired, they will conduct a field sobriety test. If officers establish probable cause, they will ask for permission to draw blood, or they can obtain a warrant from a judge. In the case of a collision, blood draws are mandatory. The provisions and policies of a blood draw are not a new practice and were not changed by the initiative.

How does law enforcement obtain blood? Officers must follow their agency's policy. Many take the person to the nearest hospital facility for the blood draw.

Personnel & policy

Can employers continue to test for marijuana? Similar to alcohol, employers may require testing, discipline for policy violations, and regulate use or impact in the workplace. Employers should make sure that their personnel policies are up to date and include legalized marijuana, and consult with their city or agency legal representative.

Is there a difference between the 5ng (nanogram) threshold and the 15ml (milliliter) threshold that urine tests from Department of Licensing (DOL) use? Yes. 5ng is the limit set forth by the initiative as the per se level of impairment for someone under the influence of marijuana. This is measured by a blood test designed to detect "active metabolites." Studies indicate that active metabolite levels fall to approximately 2ng within 4-6 hours of use. Commercial Driver License (CDL) holders are regulated by DOL, which follows federal regulations and uses the 15ml threshold. This level is measured by a urine test.

What about off-duty marijuana consumption?

Washington public employers have a strong legal basis to discipline or discharge employees who test positive for marijuana if this action is consistent with the respective contracts, policies and past disciplinary action. However, further legislation and litigation will likely determine whether discharge for off-duty marijuana use violates public policy.

Land use & zoning

Can jurisdictions implement policies to limit producers, processors and retailers licenses and locations? Growing marijuana (unless it is a collective garden) remains illegal until the Liquor Control Board (LCB) establishes a process for licensing and regulation. The LCB will also regulate permissions for marijuana cultivation, processing, distribution, and retail facilities. The LCB is taking public comments until Feb. 10 about the rules and restrictions needed for a marijuana-grower license.

The initiative specifies that only state-licensed production, processing and sale of marijuana are permitted. The initiative intended that the licensing process be similar to that for alcohol. Cities will have the ability to object to the LCB regarding a proposed license. Presumably, local land use and zoning regulations will apply to the siting of growing, processing and retail outlets. The initiative specifies that such facilities must be at least 1,000 feet from elementary and secondary schools, playgrounds, recreation centers, day cares, parks, transit centers, libraries and arcades.

Medical marijuana collective gardens and not affected by this initiative.

Taxes & revenue

Will cities get any revenue from the sale of marijuana? The initiative does not provide for any direct funding to cities. Cities will receive their share of local sales tax revenues and any locally imposed B&O taxes. The Washington State Office of Financial Management (OFM) estimates that locals could receive as much as \$120 million in these taxes over five years. However, there has been some concern that OFM overestimated how much marijuana will actually be consumed from these state-licensed stores. Cities will not see any revenue from marijuana sales until at least December 2013.

What about all of the expected new revenue from legal marijuana sales? The initiative created a specific new taxing scheme. The initiative provides for a 25% excise tax at each transaction point (producer to processor, processor to retailer, and retailer to consumer). The taxes will be placed in a dedicated marijuana fund. After quarterly distributions of \$1.25 million for LCB administration and \$180,000 to other specific programs, the taxes will be distributed as follows:

- 50% to the state's Basic Health Plan
- 19.07% to the state general fund
- 15% to the Department of Social & Health Services for behavioral health & recovery
- 10% to the Department of Health for marijuana education & public health
- 5% to Community Health Centers
- 1% to the UW and WSU for research on the short- and long-term effects of marijuana use
- 0.03% to the Building Bridges Programs