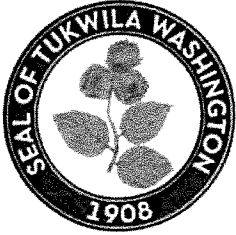


# COUNCIL AGENDA SYNOPSIS



-----Initials-----				ITEM NO.  <b>3E</b>
Meeting Date	Prepared by	Mayor's review	Council review	
<b>07/09/18</b>	<b>HH</b>	<i>[Signature]</i>	<i>[Signature]</i>	
<b>07/16/18</b>	<b>HH</b>			

## ITEM INFORMATION

STAFF SPONSOR: <b>HENRY HASH</b>	ORIGINAL AGENDA DATE: <b>07/09/18</b>									
AGENDA ITEM TITLE <b>Ordinance Granting a Non-Exclusive Franchise Agreement with Mobilitie, LLC for Small Cell Technology</b>										
CATEGORY	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Motion	<input type="checkbox"/> Resolution	<input checked="" type="checkbox"/> Ordinance	<input type="checkbox"/> Bid Award	<input type="checkbox"/> Public Hearing	<input type="checkbox"/> Other			
	Mtg Date <b>07/09/18</b>	Mtg Date	Mtg Date	Mtg Date <b>07/16/18</b>	Mtg Date	Mtg Date	Mtg Date			
SPONSOR	<input type="checkbox"/> Council	<input type="checkbox"/> Mayor	<input type="checkbox"/> HR	<input type="checkbox"/> DCD	<input type="checkbox"/> Finance	<input type="checkbox"/> Fire	<input type="checkbox"/> IT	<input type="checkbox"/> P&R	<input type="checkbox"/> Police	<input checked="" type="checkbox"/> PW
SPONSOR'S SUMMARY	<b>Mobilitie, LLC provides high capacity interexchange transport to telecommunications common carriers. Council is being asked to approve the new ordinance for the franchise agreement that will allow Mobilitie to deploy small cell technology to expand the capacity of its wireless network. Additional language has been added to insure safety, protect property, list insurance requirements, and require restoration to any property damaged, disturbed, or altered by Mobilitie.</b>									
REVIEWED BY	<input type="checkbox"/> COW Mtg.	<input type="checkbox"/> CA&P Cmte	<input type="checkbox"/> F&S Cmte	<input checked="" type="checkbox"/> Transportation Cmte	<input type="checkbox"/> Utilities Cmte	<input type="checkbox"/> Arts Comm.	<input type="checkbox"/> Parks Comm.	<input type="checkbox"/> Planning Comm.		
	DATE: <b>06/25/18</b>			COMMITTEE CHAIR: <b>THOMAS MCLEOD</b>						

### RECOMMENDATIONS:

SPONSOR/ADMIN. **Public Works Department**

COMMITTEE **Unanimous approval; forward to Committee of the Whole**

### COST IMPACT / FUND SOURCE

EXPENDITURE REQUIRED	AMOUNT BUDGETED	APPROPRIATION REQUIRED
<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Fund Source:

Comments:

MTG. DATE	RECORD OF COUNCIL ACTION
<b>07/09/18</b>	
<b>07/16/18</b>	
MTG. DATE	ATTACHMENTS
<b>07/09/18</b>	Informational Memorandum dated <b>06/22/18</b> Comparison documentation (see CAS 3D- New Cingular) Ordinance in strike-thru underlined format showing differences from T&I packet Minutes from the Transportation & Infrastructure Committee meeting of <b>06/25/18</b>
<b>07/16/18</b>	





## INFORMATIONAL MEMORANDUM

TO: **Transportation and Infrastructure Committee**  
FROM: **Harry Hash, Public Works Director** *H.H.*  
BY: **Cyndy Knighton, Senior Program Manager**  
CC: **Mayor Ekberg**  
DATE: **June 22, 2018**  
SUBJECT: **Ordinance – Mobilitie, LLC Small Cell Technology Franchise Agreement**

### **ISSUE**

Approval of Mobilitie, LLC Franchise Ordinance.

### **BACKGROUND**

Mobilitie, headquartered in Nevada, is a telecommunications company that provides, among other things, high capacity interexchange transport to telecommunications common carriers. Mobilitie is currently in the stages of deploying small cell technology to expand the capacity of its wireless network. Staff has negotiated with Mobilitie to develop the attached draft Franchise Ordinance.

### **ANALYSIS**

This Ordinance is consistent with the Verizon Franchise Ordinance approved by Council in February 2018 as well as the draft New Cingular Wireless Franchise Ordinance being concurrently considered. The attached Franchise Ordinance establishes permission for Mobilitie's deployment of small cellular technology in the City's right-of-way. Some of the features of the Mobilitie Franchise include:

- Definitions for clarity of references
- Provisions that the City provides no warranty in the right-of-way and will not defend Mobilitie for peaceable possession or use of the franchise area
- Provides provisions allowing the City to require notice to the public for work that will disturb or disrupt public property. Clarifies that the City can protect the public health, safety, and welfare by requiring facilities to be installed at a particular time, place, or manner
- Establishes a duty to restore the right-of-way to a condition as good or better than before the construction and provides a warranty of same. Protects private property by requiring Mobilitie to restore any private property damaged, disturbed, or altered by Mobilitie
- Provides that any contractors or subcontractors of Mobilitie that perform work in the right-of-way must comply with the City's indemnity and insurance requirements and mandates that Mobilitie take responsibility for all work performed by their contractors and subcontractors
- Specifies the City's stop work authority should work be performed in an unsafe manner
- Provides for revocation of the franchise should Mobilitie's business end up in receivership
- Clarifies that the franchise does not preclude the City from constructing its own utility facilities, repairing, maintaining, or widening the right-of-way.

### **FINANCIAL IMPACT**

Under the terms of the Franchise, Mobilitie will pay a \$5,000 administrative fee within 30 days of franchise approval.

Per RCW 35.21.860, cities may charge site-specific charges to providers of personal wireless services under certain circumstances before the City issues a use permit. This Franchise tracks that statutory language and provides that Mobilitie and the City will determine applicable site-specific charges at the use permit stage for eligible facilities.

### **RECOMMENDATION**

Council is being asked to approve the Ordinance that will grant a Franchise Agreement to Mobilitie, LLC for Small Cell Technology and consider this item at the July 9, 2018 Committee of the Whole and subsequent July 16, 2018 Regular Meeting.

Attachment: Draft Franchise Ordinance



DRAFT

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO MOBILITIE, LLC, A NEVADA LIMITED LIABILITY COMPANY, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING SMALL CELLS IN CERTAIN PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.**

**WHEREAS**, Mobilitie, LLC, a Nevada limited liability company, d/b/a Mobilitie, hereinafter referred to as "Mobilitie" or "Franchisee" is a telecommunications company that, among other things, provides high capacity interexchange transport to telecommunications common carriers, including data transmission, linkage to long distance carriers, and other telecommunications services to customers in the Puget Sound region; and

**WHEREAS**, Mobilitie's desired route through the City of Tukwila, hereinafter referred to as "City," requires the use of certain portions of City rights-of-way for the installation, operation, and maintenance of Small Cells; and

**WHEREAS**, the City Council has determined that the use of portions of the City's rights-of-way for installation of Small Cells is appropriate from the standpoint of the benefits to be derived by local business and the region as a result of such services; and

**WHEREAS**, the City Council also recognizes that the use of public rights-of-way must be restricted to allow for the construction of amenities necessary to serve the future needs of the citizens of Tukwila and that the coordination, planning, and management of the City's rights-of-way is necessary to ensure that the burden of costs for the operations of non-municipal interests are not borne by the citizenry; and

**WHEREAS**, the Revised Code of Washington (RCW) authorizes the City to grant and regulate non-exclusive franchises for the use of public streets, rights-of-way, and other public property for installation, operation, and maintenance of a fiber optic system and transmission of communications;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, HEREBY ORDAINS AS FOLLOWS:

Section 1. Definitions.

A. A. For the purposes of this Franchise and the ~~Exhibits~~ Exhibit attached hereto, the following terms, words, phrases, and their derivations where capitalized shall have the meanings given herein. Terms not defined herein shall have the meaning given in Title 11 of the Tukwila Municipal Code. Terms not defined herein or in Title 11 of the Tukwila 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.

B. B. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory. 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 are renumbered, then the reference shall be read to refer to the renumbered provision.

C. 1. **"Affiliate"** when used in connection with Franchisee means any Person who owns or controls, is owned or controlled by, or is under common ownership or control with Franchisee.

D. 2. **"Construct"** shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, replace, repair, monitor, maintain, use, relocate, remove, and/or support.

~~E. 3. **"Costs"** shall mean the actual, and documented costs incurred.~~

F. 3. **"Contractor"** shall mean any contractor selected and engaged by Mobilitie to Construct Facilities in the Public Right(s)-of-Way.

4. **"Costs"** shall mean the actual, and documented costs incurred.

G. 5. **"Default"** shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise beyond applicable notice and cure periods.

6. **"Design Document(s)"** shall mean the plans and specifications for the Construction of the Facilities meeting at least the minimum applicable general plan submittal requirements for engineering services plan review as set forth in the City's Infrastructure Design and Construction Standards manual ("the Standards"), illustrating and describing the refinement of the design of the Facilities to be Constructed, establishing the scope, relationship, forms, size, and appearance of the Facilities by means of plans, sections, and elevations, typical construction details, location, alignment, materials, and equipment layouts. The Design Documents shall include specifications that identify utilities, major material and systems, Public Right-of-Way improvements, restoration and repair, and establish in general their quality levels.

H. 7. **“Dispute”** shall mean a question or controversy that arises between the Parties concerning the observance, performance, interpretation, or implementation of any of the terms, provisions, or conditions contained in this Franchise or the rights or obligations of either Party under this Franchise.

I. 8. **“Emergency”** shall mean and refer to a sudden condition or set of circumstances that: (a) significantly ~~disrupt~~disrupts or ~~interrupt~~interrupts the operation of Facilities in the Public Rights-of-Way and Franchisee’s ability to continue to provide services if immediate action is not taken; or (b) present an immediate threat of harm to persons or property if immediate action is not taken.

J. 9. **“Facility” or “Facilities”** means any part or all of the facilities, equipment, and appurtenances of Franchisee whether underground or overhead and located within the Public Rights-of-Way as part of the Franchisee’s Network, including but not limited to, radios, antennas, transmitters, wires, fiber optic cables, Small Cells, and other wireless transmission devices (collectively, “Transmission Media”) attached, mounted, or installed on an existing utility pole located in the Public Rights-of-Way for the purpose of providing wireless, Wi-Fi, voice, data, messaging, or similar type of wireless service now or in the future offered to the public in general using spectrum radio frequencies, whether or not licensed by the Federal ~~Communication~~Communications Commission (“FCC”). “Facility” or “Facilities” also means the control boxes, meters, electric meter pedestals, cables, conduit, power sources, poles and replacement poles and other equipment, structures, plant, and appurtenances between the Transmission Media and the point where the Facility terminates and interconnects with broadband backhaul transmission facilities.

K. 10. **“Franchise”** shall mean the grant giving general permission to Franchisee to enter into and upon the Public Rights-of-Way to use and occupy the same for the purposes authorized herein, all pursuant and subject to the terms and conditions as set forth herein.

L. 11. **“Law(s)”** shall mean all present and future applicable ~~statutes, constitutions~~laws, ordinances, rules, regulations, resolutions, environmental standards, ~~judicial decisions, administrative orders,~~ orders, decrees and requirements of ~~the City~~all federal, state, and local governments, the departments, bureaus, or commissions thereof, or other governmental ~~agency having jurisdiction over the Parties~~authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated.

M. 12. **“Network”** shall mean collectively the network of Facilities Constructed by or for and managed by Mobilite within the Public Rights-of-Way for the provision of the Services.

N. 13. **“Party(ies)”** shall mean either the City or the Franchisee or both.

14. **“Permit”** means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights-of-Way and includes, but is not limited to: a construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

~~Q.~~ 15. **“Person”** means and includes any individual, corporation, partnership, association, joint-stock-company, limited liability company, political subdivision, public corporation, taxing district, trust, or any other legal entity, but not the City or any Person under contract with the City to perform work in the Public Rights-of-Way.

~~P.~~ 16. **“Public Right(s)-of-Way”** shall mean the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, way, lane, public way, drive, circle, or other public right-of-way, including any easement now or hereafter held by the City within the corporate boundaries of the City as now or hereafter constituted for the purpose of public travel, and over which the City has authority to grant permits, licenses, or franchises for use thereof, or has regulatory authority to thereover, excluding: railroad rights-of-way, airports, harbor areas, buildings, parks, poles, conduits, and excluding such similar facilities or property owned, maintained, or leased by the City in its proprietary capacity or as an operator of a utility.

~~Q.~~ 17. **“Public Works Director”** shall mean the Public Works Director for the City or their designee, or such officer or person who has been assigned the duties of ~~public works director~~ Public Works Director or their designee.

~~R.~~ **“Permit”** means a permit issued under the regulatory authority of the City that provides specific requirements and conditions for Work to Construct Facilities within the Public Rights of Way and includes, but is not limited to: a construction permit, building permit, street excavation permit, barricade permit, and clearing and grading permit.

~~S.~~ **“Service” or “Services”** shall mean has the same meaning as that term is defined in the United States Code, 47 U.S.C. 153 (53), but shall also mean wireless, Wi Fi, voice, data, messaging, or similar type of wireless service now or in the future offered to the public in general using spectrum radio frequencies, whether or not licensed by the FCC to the extent not covered by the foregoing definition. **“Service”** shall also include the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, utilizing, or making available information and content via telecommunications, and includes electronic publishing, as the same may evolve over time, including, without limitation, wireless, Wi Fi, voice, data, messaging, or similar type of wireless service now or in the future offered to the public in general using spectrum radio frequencies, whether or not licensed by the FCC.

18. “Service” or “Services” shall mean the service or services authorized to be provided by Franchisee under the terms and conditions of this Franchise.

~~F.~~ 19. **“Small Cell”** shall mean the Facilities at a particular location that comprises part of the Network.

“ 20. “Telecommunications System” shall mean all necessary Facilities to establish a small cell network located in, under, and above City owned Public Rights-of-Way for the provision of personal wireless services, including: commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services. Telecommunications System shall not mean or include Facilities owned or used by Franchisee for the provision of cable television services, video programming, or services



other than personal wireless services, including ownership, operation, and/or managing of a dark fiber network.

~~U.~~ 21. **“Work”** shall mean any and all activities ~~of the~~ Franchisee, or its officers, directors, employees, agents, contractors, subcontractors, volunteers, invitees, or licensees, within the Public Rights-of-Way to Construct the Facilities.

## **Section 2. Non-exclusive Franchise Granted.**

A. The City hereby grants to Mobilitie, subject to the conditions prescribed in this ordinance (“Franchise Agreement”), the franchise rights and authority to Construct and operate its Facilities necessary for a ~~telecommunications facility~~ Telecommunications System within the City-owned Public Rights-of-Way, generally described as that area within the present and future boundaries of the City and hereinafter referred to as the “Franchise Area”.

B. The foregoing franchise rights and authority (“Franchise”) shall not be deemed to be exclusive to Mobilitie and shall in no way prohibit or limit the City's ability to grant other franchises, permits, or rights along, over, or under the areas to which this Franchise has been granted to Mobilitie; provided, that such other franchises do not unreasonably interfere with Mobilitie's exercise of franchise rights granted herein as determined by the City. This Franchise shall in no way interfere with existing utilities or in any way limit, prohibit, or prevent the City from using the Franchise Area or affect the City's jurisdiction over such area in any way.

C. This Franchise Agreement merely authorizes Mobilitie to occupy and use the Franchise Area. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Franchise Area to Mobilitie.

D. -City does not warrant its title or property interest in or to any franchise area nor undertake to defend franchisee in the peaceable possession or use of the franchise area. No covenant of quiet enjoyment is made.

**Section 3. Authority.** The Director of Public Works or designee is hereby granted the authority to administer and enforce the terms and provisions of this Franchise Agreement and may develop such lawful and reasonable rules, policies, and procedures as the Public Works Director deems necessary to carry out the provisions contained herein.

## **Section 4. Franchise Term.**

A. **Term.** The franchise rights granted herein shall remain in full force and effect for a period of ~~ten~~ (10) years from the effective date of this ordinance (the “Term”). However, this Franchise Agreement shall not take effect and Mobilitie shall have no rights under this Franchise Agreement unless a written acceptance with the City is received pursuant to Section 5 of this Agreement. If Franchisee desires to renew this Franchise Agreement, it shall file a renewal application with the City between 180 days and 120 days prior to the expiration of the existing term. In the event of such filing, the City may, at the City's sole discretion, extend the term of this Franchise Agreement for up to one year beyond the expiration date to allow processing of renewal. If the City elects to extend the term of this

Franchise, written notice of the extension shall be provided to Franchisee prior to the Franchise expiration date.

**B. Termination by Mobilitie.** Mobilitie may terminate this Agreement, either in its entirety or only as to Facilities installed at a particular location, for any reason or no reason in Mobilitie's sole discretion by providing ~~thirty (30)~~ days' written notice to the City, in which case Mobilitie shall remove the subject Facilities or, with the approval of the City, abandon such Facilities in place.

**Section 5. Acceptance of Terms and Conditions.** An acceptance of this Franchise Agreement and all the terms and conditions, in the form attached hereto as Exhibit A, shall be filed with the City Clerk within 30 days of the effective date of this ordinance. Failure on the part of Mobilitie to file said consent within 30 days of the effective date of this ordinance shall void and nullify any and all rights granted under this Franchise Agreement, and in such event this Agreement shall terminate without further obligation to either party.

**Section 6. Construction Provisions and Standards.** The following provisions shall be considered mandatory and failure to abide by any conditions described herein shall be deemed as non-compliance with the terms of this Franchise Agreement and may result in some or all of the penalties specified in Section 7.

~~A.~~ 1 **Permit Required.** No Construction, maintenance, or repairs (except for emergency repairs) shall be undertaken in the Franchise Area without first obtaining appropriate permits from the City of Tukwila, except in the case of an Emergency. In case of an Emergency, Mobilitie may proceed with Construction, maintenance, or repairs necessary to address the Emergency without first obtaining appropriate permits, but shall, within 24 hours of the Emergency, obtain a permit from the City of Tukwila's Public Works Department. Such 24-hour period shall be extended to accommodate the duration of any closure of the City of Tukwila's Public Works Department (for example, for a holiday or weekend).—

~~B.~~ 2 **Coordination.** All capital Construction projects performed by Mobilitie within the Franchise Area shall be inspected by a City inspector. All work and inspection shall be coordinated with the Engineering Division of the Public Works Department to ensure consistency with City infrastructure, future Public Improvement projects, all developer improvements, and pertinent codes and ordinances in effect on the date the permits and authorizations are issued for the affected Facilities.

~~C.~~ 3 **Notice to the Public.** Except in the case of an Emergency, City retains the right to require ~~the~~ Franchisee to notify the public prior to commencing any significant planned Construction that Franchisee reasonably anticipates will materially disturb or disrupt public property or have the potential to present a danger or affect the safety of the public generally.

~~D.~~ 4 **Use of Public Rights-of-Way.** Within parameters related to the City's role in protecting the public health, safety, and welfare and except as may be otherwise preempted by Law, the City may require that Facilities be installed at a particular time, at a specific place, or in a particular manner as a condition of access to the proposed

Franchise Area and may deny access except in compliance with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards provided in this Franchise or which is installed without prior City approval of the time, place, or manner of installation.

~~E.~~ 5. **Construction Standards.** Any Construction, installation, maintenance and restoration activities performed by or for Mobilitie within the Franchise Area shall be Constructed and located so as to produce the least amount of interference with the free passage of pedestrian and vehicular traffic and the rights and reasonable convenience of property owners, businesses, and residents along the Public Rights-of-Way. All Construction, installation, maintenance, and restoration activities shall be conducted such that they conform to the City's development guidelines and standards in effect on the date the permits and authorizations are issued for the affected Facilities and comply with Title 11 of the Tukwila Municipal Code. Franchisee's Facilities shall be designed, located, aligned, and Constructed so as not to disturb or impair the use or operation of any street improvements, utilities, and related facilities of City or the City's existing lessees, licensees, permittees, franchisees, easement beneficiaries, or lien holders, without prior written consent of City or the parties whose improvements are interfered with and whose consent is required pursuant to agreements with the City existing prior to the Effective Date.

~~F.~~ 6. **Duty to Restore.**

~~1.~~ a. Franchisee shall, after completion of Construction of any part of its Network, leave the Public Rights-of-Way and other property disturbed nearby, in as good or better condition in all respects as it was in before the commencement of such Construction. Franchisee agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City standards.

~~2.~~ b. If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance or alteration or damage to Public Rights-of-Way or other public property, it shall promptly remove any obstructions therefrom and restore such Public Rights-of-Way and public property to the satisfaction of the City and in accordance with City Standards.

~~3.~~ c. If weather or other conditions do not allow the complete restoration required, Franchisee shall temporarily restore the affected Public ~~Right~~ Rights-of-Way or public property. Franchisee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.

~~G.~~ 7. **Notice.** If Franchisee's Work causes unplanned, unapproved, or unanticipated disturbance or damage to Public Rights-of-Way or other public or private property, ~~the~~ Franchisee shall promptly notify the property owner within ~~twenty-four (24)~~ hours.

~~H.~~ 8. **Warranty.** Franchisee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for ~~two (2)~~ years, unless a longer period is required by applicable City Standards. If restoration is not

satisfactorily and timely performed by ~~the~~ Franchisee, the City may, after prior notice to ~~the~~ Franchisee, or without notice where the disturbance or damage may create an imminent risk to public health or safety, cause the repairs to be made and recover the actual, and documented cost of those repairs from ~~the~~ Franchisee. Within ~~thirty (30)~~ days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, ~~the~~ Franchisee shall pay the City.

~~I~~ -      9 **Restoration of Private Property.** When Franchisee does any Work in the Public Rights-of-Way that affects, disturbs, alters, or damages any adjacent private property, it shall, at its own expense, be responsible for restoring such private property to its condition immediately prior to the affect, disturbance, alteration, or damage, to the reasonable satisfaction of the private property owner.

~~J~~ -      10 **Stop Work.** On notice from the City that any Work does not comply with the Franchise, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as determined by the City, the non-compliant Work may immediately be stopped by the City. The stop work order shall be in writing, given to the Person doing the Work and be posted on the Work site, indicate the nature of the alleged violation or unsafe condition and establish conditions under which Work may be resumed. If so ordered, Franchisee shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that Franchisee is in compliance. If an unsafe condition is found to exist, the City, in addition to taking any other action permitted under applicable Law, may order Franchisee to make the necessary repairs and alterations specified therein forthwith to correct the unsafe condition by a time the City establishes in its discretion. The City has the right to inspect, repair, and correct the unsafe condition if Franchisee fails to do so, and to reasonably charge Franchisee for the actual and documented costs incurred to perform such inspection, repair, or correction. Payment by Franchisee will be made within ~~thirty (30)~~ days following receipt of written notice including itemized invoice and supporting documentation evidencing such cost. The authority and remedy set forth herein in this section is in addition to, and not a substitute for, any authority the City may otherwise have to take enforcement action for violation of City Codes or Standards.

     11 **Alteration.** Except as may be shown in the Design Documents approved by the City or the records drawings, or as may be necessary to respond to an Emergency, Franchisee and Franchisee's contractors and subcontractors may not make any material alterations to the Franchise Area without the City's prior written consent, which consent shall not be unreasonably withheld. The parties acknowledge that nothing in this ~~Agreement~~agreement limits the City's rights under applicable federal, state, and local laws to regulate the placement and appearance of Franchisee's Facilities in the Franchise Area. Material alteration shall include, but not be limited to: a change in the dimension, height, location, or placement of the Facilities. If Franchisee desires to change either the location of any Facilities or otherwise materially deviates from the approved design of any of the Facilities, Franchisee shall submit such change to the City in writing for its approval. Franchisee shall have no right to commence any such alteration until after Franchisee has received the City's approval of such change in writing. Under no circumstance shall Franchisee permanently affix anything in the Franchise Area that has not been permitted by the City and or that inconveniences the public use of the right of way or adversely

affects the public health, safety, or welfare. Notwithstanding the foregoing, alterations shall not be material and shall not be subject to additional permitting or City approval to the extent that: (i) such modification to the attachment involves only substitution of internal components, and does not result in any change to the external appearance, dimensions, or weight of the attachment, as approved by the City; or (ii) such modification involves replacement of the attachment with an attachment that is the same, or smaller in weight and dimensions as the approved attachment. Mobilitie will notify the City of any such modification within ~~fifteen (15)~~ days after the modification is made.

~~K.~~ 12. **Underground Installation Required.** All telecommunications cables and junction boxes or other vaulted system components shall be installed underground when and to the extent required by Tukwila Municipal Code ~~§~~ Section 11.32.090(B), unless otherwise exempted from this requirement, in writing, by the Public Works Director, provided however, this requirement shall not apply to the Facilities that are required to remain above ground in order to be functional.

~~L.~~ 13. **Relocation.**

~~1.~~ a. The City shall have the right to require Mobilitie to alter, adjust, relocate, re-attach, secure, or protect in place its Facilities within the public right-of-way when reasonably necessary for construction, alteration, repair, or improvement of any portion of the Public ~~Right~~ Rights of-Way for purposes of public welfare, health, or safety (“Public Improvements”). Such Public Improvements include, but are not limited to: Public Rights-of-Way construction; Public Rights-of-Way repair (including resurfacing or widening); change of Public Rights-of-Way grade; construction, installation, or repair of sewers, drains, water pipes, power lines, signal lines, communication lines, or any other type of government-owned communications, utility or public transportation systems, public work, public facility, or improvement of any government-owned utility; Public Rights-of-Way vacation, and the construction of any public improvement or structure by any governmental agency acting in a governmental capacity. In the event the City requires Mobilitie to relocate its Facilities, the City shall provide Mobilitie with written notice requesting such relocation, along with plans for the Public Improvement that are sufficiently complete to allow for the initial evaluation, coordination, and the development of a relocation plan. The City and Mobilitie shall meet at a time and location determined by the City to discuss the project requirements including critical timelines, schedules, construction standards, utility conflicts, as-built requirements, and other pertinent relocation plan details. The City shall notify Mobilitie 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, such notice shall be no less than 90 days before the relocation is to be completed.

~~2.~~ b. To ensure timely execution of relocation requirements, Mobilitie shall, upon written request from the City, provide at Mobilitie’s expense, base maps, current as-built information, detailed relocation plan (including detailed schedule of relocation activities, identification of critical path, identification of Facilities, and relocation procedures), and other design, technical, or operational requirements within the ~~timeframe~~ time frame specified by the City.

3.                      c.        Mobilitie may, after receipt of written notice requesting a relocation of its Facilities, submit to the City written alternatives to such relocation within the time specified by the City. Such alternatives shall include the use and operation of temporary Facilities in adjacent rights-of-way. The City shall evaluate such alternatives and advise Mobilitie in writing if one or more of the alternatives are suitable to accommodate the work, which would otherwise necessitate relocation of the Facilities. If requested by the City, Mobilitie shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Mobilitie full and fair consideration. In the event the City, in its ~~reasonable~~ sole discretion, decides not to accept the alternatives suggested by Mobilitie, Mobilitie shall relocate its Facilities as directed by the City.

4.                      d.        Upon final approval of the relocation plan by the City, Mobilitie shall, at its own expense, unless otherwise prohibited by statute, and at the time frame specified by the City, temporarily or permanently remove, relocate, place underground, change or alter the position of any Facilities or structures within the Public Right-of-Way whenever the City has determined that such removal, relocation, undergrounding, change, or alteration is reasonably necessary for the construction, repair, maintenance, installation, public safety, or operation of any public improvement in or upon the Public ~~Right~~ Rights-of-Way. In the event relocation is required by reason of construction by a third party, non-governmental entity, for the sole benefit of the third party, non-governmental entity then Mobilitie's relocation costs shall be borne by the third party.

5.                      e.        If during the construction, repair, or maintenance of the City's Public Improvement project an unexpected conflict occurs from Mobilitie's Facilities, Mobilitie shall, upon notification from the City, respond within 24 hours to resolve the conflict ~~(provided, however, that Mobilitie shall be given a reasonable period of time to resolve the conflict).~~

6.                      f.        Mobilitie acknowledges and understands that any delay by Mobilitie in performing the work to alter, adjust, relocate, or protect in place its Facilities within the Public Rights-of-Way may delay, hinder, or interfere with the work performed by the City and its contractors and subcontractors in furtherance of construction, alteration, repair, or improvement of the Public Rights-of-Way, and result in damage to the City, including but not limited to, delay claims. Mobilitie shall cooperate with the City and its contractors and subcontractors to coordinate such relocation work to accommodate the public improvement project and project schedules to avoid delay, hindrance of, or interference with such project.

7.                      g.        Should Mobilitie fail, within ~~thirty (30)~~ days of receipt of written notice from the City, to alter, adjust, protect in place, or relocate any Facilities ordered by the City to be altered, adjusted, protected in place, or relocated, within the time prescribed by the City, given the nature and extent of the work, or if it is not done to the City's reasonable satisfaction, the City may, to the extent the City may lawfully do so, cause such work to be done and bill the reasonable cost of the work to Mobilitie, including all reasonable costs and expenses incurred by the City due to Mobilitie's delay. In such event, the City shall not be liable for any damage to any portion of Mobilitie's system. In addition to any other indemnity set forth in this Franchise Agreement, Mobilitie will indemnify, hold

harmless, and pay the costs of defending the City from and against any and all claims, suits, actions, damages, or liabilities for delays on public improvement construction projects caused by or arising out of the failure of Mobilitie to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Mobilitie shall not be responsible for damages due to delays caused by the City.

**M. 14. Removal or Abandonment.** Upon the removal from service of any service antennas or other associated structures, Facilities and/or amenities, Mobilitie shall comply with all applicable standards and requirements prescribed by the City of Tukwila's Public Works Department for the removal or abandonment of said structures and Facilities. No Facility Constructed or owned by Mobilitie shall be abandoned without the express written consent of the City.

**N. 15. Bond.** Before undertaking any of the work, installation, improvements, Construction, repair, relocation, or maintenance authorized by this Franchise Agreement, Mobilitie shall, upon the request of the City, furnish one bond executed by Mobilitie for all of its Facilities in the City's rights-of-way, in the amount of ~~Twenty Five Thousand Dollars and no/100~~ ~~[\$25,000.00]~~. At Franchisee's sole option, Franchisee may provide alternate security in the form of an assignment of funds or a letter of credit, in the same amount as the bond. All forms of security shall be in a form reasonably acceptable to the City. The bond shall be conditioned so that Mobilitie shall observe all the covenants, terms, and conditions and shall faithfully perform all of the obligations of this Franchise Agreement, and repair or replace any defective Mobilitie work or materials discovered in the City's roads, streets, or property.

**O. 16. "One-Call" Location and Liability.** Mobilitie shall subscribe to and maintain membership in the regional "One-Call" utility location service and shall promptly locate all of its lines upon request. The City shall not be liable for any damages to Mobilitie's system components or for interruptions in service to Mobilitie customers which are a direct result of work performed for any City project for which Mobilitie has failed to properly locate its lines and Facilities within the prescribed time limits and guidelines established by One-Call. The City shall also not be liable for any damages to the Mobilitie system components or for interruptions in service to Mobilitie customers resulting from work performed under a permit issued by the City.

**P. 17. As-Built Plans Required.** Mobilitie shall maintain accurate engineering plans and details of all installations within the City limits and shall provide, at no cost to the City, such information in both paper form and electronic form using the most current AutoCAD version prior to close-out of any permits issued by the City and any work undertaken by Mobilitie pursuant to this Franchise Agreement. The City shall reasonably determine the acceptability of any as-built submittals provided under this section.

**Q. 18. Recovery of Costs.** Mobilitie shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise Agreement or under ordinances of the City in effect on the date the permits and authorizations are issued for the affected Facilities. Where the City incurs ~~reasonable~~ costs and expenses for review or inspection of activities undertaken through the authority granted in this Franchise Agreement or any ordinances relating to the subject for which

permit fees have not been established, Mobilitie shall pay such reasonable costs and expenses directly to the City.

~~R.~~ 19 **Taxes.** Nothing contained in this Franchise Agreement shall exempt Franchisee's obligation to pay any applicable 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 or any other City ordinance, are separate from, and additional to, any and all federal, state, local, and City taxes as may be levied, imposed, or due from Franchisee.

~~S.~~ 20 **Vacation.** If, at any time, the City shall vacate any City road, right-of-way, or other City property which is subject to rights granted by this Franchise Agreement and said vacation shall be for the purpose of acquiring the fee or other property interest in said road, Public Right-of-Way, or other City property for the use of the City, in either its proprietary or governmental capacity, then the City may, at its option and by giving ~~90~~ 60 days written notice to Mobilitie, terminate this Franchise Agreement with reference to such City road, right-of-way, or other City property so vacated, and the City shall not be liable for any damages or loss to Mobilitie by reason of such termination other than those provided for in RCW 35.99.

## **Section 7. Franchise Compliance.**

   **A. Franchise Violations.** The failure by Mobilitie to fully comply with any of the provisions of this Franchise Agreement may result in a written notice from the City that describes the violations of the Franchise Agreement and requests remedial action within 60 days of receipt of such notice. If Mobilitie has not attained full compliance at the end of the 60-day period following receipt of the violation notification, the City may declare an immediate termination of all franchise rights and privileges, provided that full compliance was reasonably possible within that 60-day period.

### **B. Emergency Actions.**

~~4.~~    **1.** If any of Mobilitie's actions under this Franchise Agreement, or any failure by Mobilitie to act to correct a situation caused by Mobilitie, is reasonably deemed by the City to create a threat to life or property, financial harm, or cause a delay of the construction, repair or maintenance of the public improvement, the City may order Mobilitie to immediately correct said threat, financial harm, or delay or, at the City's discretion, the City may undertake measures to correct said threat, financial harm or delay itself; provided that, when possible, the City shall notify Mobilitie and give Mobilitie an opportunity to correct within a specified time said threat, financial harm, or delay before undertaking such corrective measures. Mobilitie shall be liable for all reasonable costs, expenses, and damages attributed to the correction of such an emergency situation as undertaken by the City to the extent that such situation was caused by Mobilitie and shall further be liable for all reasonable costs, expenses, and damages resulting to the City from such situation and any reimbursement of such costs to the City shall be made within 30 days of written notice of the completion of such action or determination of damages by the City. The failure by Mobilitie to take appropriate action to correct a situation caused by Mobilitie and identified by the City as a threat to public or private safety or property,



financial harm, or delay of the construction, repair, or maintenance of the public improvement shall be considered a violation of the terms of this Franchise Agreement.

~~2.~~ 2. If, during Construction or maintenance of Mobilitie's Facilities, any damage occurs to an underground facility and the damage results in the release of natural gas or other hazardous substance or potentially endangers life, health, or property, Mobilitie or its contractor shall immediately call 911 or other local emergency response number.

C. Other Remedies. Nothing contained in this Franchise Agreement shall limit the City's available remedies in the event of Mobilitie's failure to comply with the provisions of this Franchise Agreement, to include but not limited to, the City's right to a lawsuit for specific performance and/or damages.

D. Removal of System. In the event this Franchise Agreement is terminated as a result of violations of the terms of this Franchise Agreement, Mobilitie shall, at its sole expense, remove all system components and Facilities within ~~90~~ 60 days of such termination, provided that the City, at its sole option, may allow Mobilitie to abandon its Facilities in place.

E.- Receivership. At the option of the City, subject to applicable law and lawful orders of courts of competent jurisdiction, this Franchise may be revoked after the appointment of a receiver or trustee to take over and conduct the business of Franchisee whether in a receivership, reorganization, bankruptcy, or other action or proceeding, unless:

~~1.~~ 1. The receivership or trusteeship is timely vacated; or

~~2.~~ 2. The receiver or trustee has timely and fully complied with all the terms and provisions of this Franchise, and has remedied all defaults under the Franchise. Additionally, the receiver or trustee shall have executed an agreement duly approved by the court having jurisdiction, by which the receiver or trustee assumes and agrees to be bound by each and every term, provision, and limitation of this Franchise.

## Section 8. Insurance.

A. Mobilitie shall maintain liability insurance during the full term of this Franchise Agreement for personal injury and property damages which may arise from or in connection with operations or activities performed by or on ~~the Franchisee's~~ behalf with the issuance of this Franchise. The Franchisee's maintenance of insurance as required by the Franchise Agreement shall not be construed to limit the liability of ~~the Franchisee~~ to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. Notwithstanding anything to the contrary, Mobilitie may satisfy the foregoing insurance requirements through a combination of commercial general liability insurance and umbrella or excess liability insurance.

B. Such required insurance shall include as additional insured, the City, its officers, officials, and employees as their interest may appear under this Franchise Agreement, excluding worker's compensation and employer's liability; shall apply as primary

insurance; shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder.

1. Commercial General Liability insurance shall be at least as broad as Insurance Services Office (ISO) occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, products-completed operations, stop gap liability, personal injury and advertising injury, and liability assumed under an insured contract. The Franchisee's Commercial General Liability insurance shall provide limits of \$5,000,000 each occurrence; \$10,000,000 aggregate. There shall be no exclusion for liability arising from explosion, collapse or underground property damage. The ~~Public Entity~~City shall be included as an additional insured under the Permittee's Commercial General Liability insurance policy using ISO Additional Insured—State or Political Subdivisions—Permits CG 20 12 or a substitute endorsement providing at least as broad coverage.

2. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Automobile Liability insurance shall have a combined single limit for bodily injury and property damage ~~or \$ of \$3,000,000~~ per accident. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.

3. Further, franchisee shall maintain Pollution Liability insurance (or Franchisee shall self-insure the same) covering losses caused by pollution conditions that arise in connection with this Franchise. Franchisee's Pollution Liability insurance shall be written in an amount of \$1,000,000 per loss, with an annual aggregate of \$1,000,000. Pollution Liability insurance shall cover bodily injury, property damage, cleanup costs, and defense, including costs and expenses incurred in the investigation, defense, or settlement of claims.

4. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A minus: VII.

5. Notwithstanding the foregoing, Licensee may, in its sole discretion, self insure any of the required insurance under the same terms as required by this Agreement as long as Franchisee or its affiliated parent maintains a net worth of at least ~~Two Hundred Million Dollars and no/100 (\$200,000,000)~~ as evidenced in its annual certified financials. In the event Franchisee elects to self-insure its obligation under this Agreement to include the City as an additional insured, the following conditions apply: (i)

a. the City shall promptly and no later than ~~thirty (30)~~ days after notice thereof provide Franchisee with written notice of any claim, demand, lawsuit, or the like for which it seeks coverage pursuant to this ~~Section~~section and provide Franchisee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like; (ii)

b. the City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Franchisee; and (iii)

c. the City shall fully cooperate with Franchisee in the defense of the claim, demand, lawsuit, or the like.

C.- Franchisee's 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. Any contractors or subcontractors performing Work within the Public Rights-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.

D.- The Franchisee shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice if coverage is not replaced. Failure on the part of ~~the~~ Franchisee to maintain the insurance as required shall constitute a material breach of the Franchise, upon which the City may, after giving five business days' notice ~~to the~~ Franchisee to correct the breach, immediately terminate the Franchise or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any reasonable sums so expended to be repaid to the City on demand.

**Section 9. Other Permits and Approvals.** Nothing in this Agreement shall relieve Mobilitie from any obligation to obtain approvals or necessary permits from applicable federal, state and City authorities for all activities in the Franchise Area.

**Section 10. Transfer of Ownership.**

A. The rights, privileges, benefits, title, or interest provided by this Franchise shall not be sold, transferred, assigned or otherwise encumbered, without the prior written consent of the City, with such consent not being unreasonably withheld, conditioned, or delayed. No such consent shall be required, however, for a transfer in trust, by other hypothecation, or by assignment or any rights, title or interest in Mobilitie's Network in order to secure indebtedness. Approval shall not be required for mortgaging purposes provided that the collateral pledged for any mortgage shall not include the assets of this franchise. Approval shall not be required for any transfer from Mobilitie to an Affiliate or to any entity into which Mobilitie may be merged or consolidated or which purchases all or substantially all of the assets of Mobilitie that are subject to this Agreement. The parties agree and acknowledge that, notwithstanding anything in this Agreement to the contrary, certain Facilities deployed by Mobilitie in the Public Rights-of-Way pursuant to this Agreement may be owned by Mobilitie's third-party wireless carrier customers ("Carriers") and installed and maintained by Mobilitie pursuant to license agreements between Mobilitie and such Carriers. Such Facilities shall be treated as Mobilitie's Facilities for all purposes under this Agreement and sublicensing shall not require the City's consent provided that: (i) Mobilitie remains responsible and liable for all performance obligations under the Agreement with respect to such Facilities; (ii) the City's sole point of contact

regarding such Facilities shall be Mobilitie; and (iii) Mobilitie shall have the right to remove and relocate the Facilities.

B. In any transfer of this Franchise which requires the approval of the City, Mobilitie shall show that the recipient of such transfer has the technical ability, financial capability, and any other legal or general qualifications as reasonably determined by the City to be necessary to ensure that the obligations and terms required under this Franchise Agreement can be met to the full satisfaction of the City. This Franchise may not be transferred without filing or establishing with the City the insurance certificates, security fund, and performance bond as required pursuant to this Franchise. The qualifications of any transferee in a transfer that requires the approval of the City shall be determined by a hearing before the City Council and the approval to such transfer shall be granted by resolution of the City Council. Any reasonable administrative costs associated with a transfer of this Franchise that requires the approval of the City shall be reimbursed to the City within 30 days of such transfer. The transferee(s) shall thereafter be responsible for all obligations of Franchisee with respect to the Franchise; provided, that the transfer shall not in any respect relieve the Franchisee, or any of its successors in interest, of responsibility for acts or omissions, known or unknown, or the consequences thereof, if the acts or omissions occur before the time of the transfer.

#### **Section 11. Administrative Fees.**

A. Pursuant to the Revised Code of Washington (RCW), the City is precluded from imposing franchise fees for "telephone businesses" as defined in RCW 82.16.010 ~~and RCW 82.04.065~~, or "service provider" as defined in RCW 35.99.010, except that fees may be collected for administrative expenses related to such franchise or site specific charges pursuant to RCW 35.21.860(1)(e). Mobilitie does hereby warrant that its operations, as authorized under this Franchise Agreement, are those of a telephone business as defined in RCW 82.16.010 or a service provider as defined in 35.99.010.

B. Mobilitie shall be subject to a one-time \$5,000 administrative fee for reimbursement of costs associated with the preparation, processing and approval of this Franchise Agreement. These costs shall include, but not be limited to, wages, benefits, overhead expenses, equipment and supplies associated with such tasks as plan review, site visits, meetings, negotiations and other functions critical to proper management and oversight of the City's right-of-way. Administrative fees exclude normal permit fees as stipulated in Title 11 of the Tukwila Municipal Code. Payment of the one-time administrative fee is due 30 days after notice of franchise approval.

C. The City reserves the right to exercise authority it has or may acquire in the future to charge a franchise fee as authorized by law and Franchisee shall in good faith endeavor to negotiate a reasonable Franchise fee or other fee if future law permits the City to charge a Franchise fee. However, the parties shall negotiate a site-specific charge acceptable to the parties for facilities for personal wireless services that meet one of the criteria in RCW 35.21.860(1)(e)(i)-(iii). Pursuant to RCW 35.21.860(1)(e), the City is not required to approve a use permit for the placement of a facility for personal wireless

services that meets one of the criteria set forth in RCW 35.21.860(1)(e)(i)-(iii) absent such an agreement.

D. In the event Mobilitie submits a request for work beyond the scope of this Franchise Agreement, or submits a complex project that requires significant comprehensive plan review or inspection, Mobilitie shall reimburse the City for franchise amendments and reasonable expenses associated with the project. Mobilitie shall pay such costs within 30 days of receipt of a bill from the City.

E. Failure by Mobilitie to make full payment of bills within the time specified shall be considered sufficient grounds for the termination of all rights and privileges existing under this ordinance, utilizing the procedures specified in Section 4.7 of this ordinance.

**Section 12. Notices.** Any notice to be served upon the City or Mobilitie shall be delivered to the following addresses respectively:

**City of Tukwila**  
Office of the City Clerk  
6200 Southcenter Boulevard  
Tukwila, WA 98188

~~Email: [christy.oflaherty@tukwilawa.gov](mailto:christy.oflaherty@tukwilawa.gov)~~  
[Email: TukwilaCityClerk@tukwilawa.gov](mailto:TukwilaCityClerk@tukwilawa.gov)  
Phone: 206-433-1855

With a copy to:

Public Works Director  
[City of Tukwila](#)  
6300 Southcenter Boulevard Ste. 100  
Tukwila, WA 98188

**FRANCHISEE**

Mobilitie, LLC  
660 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Attention: Legal Department  
[legal@mobilitie.com](mailto:legal@mobilitie.com)

With a copy to:

Mobilitie, LLC  
660 Newport Center Drive, Suite 200  
Newport Beach, CA 92660  
Attention: Asset Management  
[WestAssetMgmt@mobilitie.com](mailto:WestAssetMgmt@mobilitie.com)

Notices shall be delivered by U.S. Mail, overnight courier (e.g., UPS or FedEx), or in person, and shall be deemed delivered upon receipt.

### Section 13. Indemnification.

A. Mobilitie shall use reasonable and appropriate precautions to avoid damage to persons or property in the Construction, installation, repair, operation, and maintenance of its structures and Facilities within the Franchise Area. Mobilitie shall release, indemnify, defend, and hold the City, its agents, employees, officers, officials, and volunteers harmless from all claims, actions, or damages, including reasonable attorneys' and expert witness fees, which may accrue to or be suffered by any person or persons, corporation, or property to the extent caused in part or in whole by any act or omission of Mobilitie, its officers, agents, servants, or employees, carried on in the furtherance of the rights, benefits, and privileges granted to Mobilitie by this Franchise. In the event any claim or demand is presented to or filed with the City that gives rise to Mobilitie's obligation pursuant to this section, the City shall within a reasonable time notify Mobilitie thereof and Mobilitie shall have a right, at its election, to settle or compromise such claim or demand. In the event any claim or action is commenced in which the City is named a party, and which suit or action is based on a claim or demand which gives rise to Mobilitie's obligation pursuant to this section, the City shall promptly notify Mobilitie thereof, and Mobilitie shall, at its sole cost and expense, defend such suit or action by attorneys of its own election. In defense of such suit or action, Mobilitie may, at its election and at its sole cost and expense, settle or compromise such suit or action. This section shall not be construed to require Mobilitie to:

1. protect and save the City harmless from any claims, actions or damages;
2. settle or compromise any claim, demand, suit or action;
3. appear in or defend any suit or action; or,
4. pay any judgment or reimburse the City's costs and expenses (including reasonable attorney's fees), to the extent such claim arises out of the negligence or intentional acts of the City, its employees, agents or independent contractors.

B. To the extent of any concurrent negligence between Mobilitie and the City, Mobilitie's obligations under this paragraph shall only extend to its share of negligence or fault. The City shall have the right at all times to participate through its own attorney in any suit or action which arises out of any right, privilege, and authority granted by or exercised pursuant to this Franchise Agreement when the City determines that such participation is required to protect the interests of the City or the public. Such participation by the City shall be at the City's sole cost and expense.

C. With respect to the performance of this Franchise and as to claims against the City, its officers, agents and employees, Mobilitie expressly waives its immunity under Title 51 of the Revised Code Washington, the Industrial Insurance Act for injuries to its officers, agents, and employees and agrees that the obligation to indemnify, defend, and hold harmless provided for in this paragraph extends to any claim brought by or on behalf of Mobilitie's officers, agents, or employees- directly against the City, its officers, agents, officials, employees, and volunteers. This waiver is mutually negotiated by the parties and the provisions of this section shall survive the expiration or termination of this Franchise Agreement.

**Section 14. Severability.** If any section, sentence, clause, or phrase of this ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, the City may elect to treat the portion declared invalid or unconstitutional as severable and enforce the remaining provisions of this ordinance; provided that, if the City elects to enforce the remaining provisions of the ordinance, Mobilitie shall have the option to terminate the Franchise Agreement.

**Section 15. Reservation of Rights.**

~~A.~~ A. The parties agree that this Franchise Agreement is intended to satisfy the requirements of all applicable laws, administrative guidelines, rules, orders and ordinances in effect on the date the permits and authorizations are issued for the affected Facilities. Accordingly, any provision of this Franchise Agreement or any local ordinance that may conflict with or violate the law shall be invalid and unenforceable, whether occurring before or after the execution of this agreement, it being the intention of the parties to preserve their respective rights and remedies under the law, and that the execution of this Franchise Agreement does not constitute a waiver of any rights or obligations by either party under the law.

~~B.~~ B. Nothing in this Franchise shall prevent the City from constructing sanitary or storm sewers; grading, changing grade, paving, repairing, widening, or otherwise altering any Public Rights-of-Way; laying down, repairing or removing water mains; or installing conduit or fiber optic cable.

**Section 16. Police Powers.**

A. Nothing contained herein shall be deemed to affect the City's authority to exercise its police powers. Mobilitie shall not by this Franchise Agreement obtain any vested rights to use any portion of the City ~~right~~Rights-of-way~~Way~~ except for the locations approved by the City and then only subject to the terms and conditions of this Franchise Agreement. This Franchise Agreement and the permits issued thereunder shall be governed by applicable City ordinances in effect at the time of application for such permits.

B. Nothing in this Franchise shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of Franchisee's Facilities. City's approvals and inspections as provided herein, are for the sole purpose of protecting the City's rights as the owner and/or manager of the Public Rights-of-Way and shall not constitute any representation or warranty, express or implied, as to the adequacy of the design or Construction of the Facilities or Network, suitability of the Franchise Area for Construction, or any obligation on the part of the City to ensure that Work or materials are in compliance with any requirements imposed by a governmental entity. The City is under no obligation or duty to supervise the design, Construction, or operation of the Network.

**Section 17. Future Rules, Regulations, and Specifications.**

A. Mobilitie acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulations governing telecommunications operations in the City. Such regulations, upon written notice to

Mobilitie, shall thereafter govern Mobilitie's activities hereunder. However, in no event shall regulations:

**A1.** Materially interfere with or adversely affect Mobilitie's rights pursuant to and in accordance with this Franchise Agreement; or

**B2.** Be applied in a discriminatory manner as it pertains to Mobilitie and other similar user of such facilities.

~~If any federal, state, or local laws or regulations (including, but not limited to, those issued by the Federal Communications Commission or its successor agency) and any binding judicial interpretations thereof (collectively, "Laws") that govern any aspect of the rights or obligations of the parties under this Agreement shall change after the Effective Date and such change makes any aspect of such rights or obligations inconsistent with the then effective Laws, then the parties agree to promptly amend the Agreement as reasonably required to accommodate and/or ensure compliance with any such legal or regulatory change.~~

~~**Section 18. Repealer. Intentionally Deleted.**~~

~~**Section 19. Entire Agreement.**~~ This Franchise contains all covenants and agreements between the City and the Franchisee relating in any manner to the Franchise, use, and occupancy of the Public Rights-of-Way and other matters set forth in this Franchise. No prior agreements or understanding pertaining to the same, written or oral, shall be valid or of any force or effect and the covenants and agreement of this Franchisee shall not be altered, modified, or added to except in writing signed by the City and Franchisee and approved by the City in the same manner as the original Franchise was approved.

**Section 2019. Calculation of Time.** Except where a period of time refers to "business days," all periods of time referred to herein shall include Saturdays, Sundays, and legal holidays in the State of Washington, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday in the State of Washington, the period shall be extended to include the next day which is not a Saturday, Sunday, or legal holiday in the State of Washington; provided that, the Effective Date shall be determined as provided in this Franchise.

**Section 2120. Time Limits Strictly Construed.** Whenever this Franchise sets forth a time for any act to be performed by Franchisee, such time shall be deemed to be of the essence, and any failure of Franchisee to perform within the allotted time may be considered a Default of this Franchise upon expiration of applicable notice and cure periods.

**Section 2221. Joint Venture.** It is not intended by this Franchise to, and nothing contained in this Franchise shall, create any partnership, joint venture, or principal-agent relationship or other arrangement between Franchisee and the City. Neither Party is authorized to, nor shall either Party act toward third Persons or the public in any manner that would indicate any such relationship. The Parties intend that the rights, obligations, and covenants in this Franchise and any collateral instruments shall be exclusively



enforceable by the City and Franchisee, their successors, and assigns. No Person not a Party hereto, and no such Person shall have any right or cause of action hereunder, except as may be otherwise provided herein. Further, ~~the~~ Franchisee is not granted any express or implied right or authority to assume or create any obligation or responsibility on behalf of or in the name of the City. However, nothing in this ~~Section~~section prevents an assignment as provided for in this Franchise.

**Section 2322. Binding Effect Upon Successors and Assigns.** All of the provisions contained in this Franchise shall be binding upon the heirs, successors, executors, administrators, receivers, trustees, legal representatives, transferees, and assigns of ~~the~~ Franchisee; and all privileges as well as any obligations and liabilities of ~~the~~ Franchisee shall inure to its heirs, successors, and assigns equally as if they were specifically mentioned wherever Franchisee is named herein.

**Section 2423. Waiver.** No failure by either Party to insist upon the performance of any of the terms of this Franchise or to exercise any right or remedy consequent upon a Default thereof, shall constitute a waiver of any such Default or of any of the terms of this Franchise. None of the terms of this Franchise to be kept, observed, or performed by either Party, and no Default thereof, shall be waived, altered, or modified except by a written instrument executed by the injured Party. No waiver of any Default shall affect or alter this Franchise, but each of the terms of this Franchise shall continue in full force and effect with respect to any other then existing or subsequent Default thereof. No waiver of any Default of the defaulting Party shall be implied from any omission by the injured Party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and then only for the time and to the extent therein stated. One or more waivers by the injured Party shall not be construed as a waiver of the subsequent Default of the same covenant, term or conditions.

**Section 2524. 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 Network or any part thereof shall remain in whole or in part in the Public Rights-of-Way, or until such time as ~~the~~ Franchisee transfers ownership in all Facilities in the Franchise Area to the City or a third-Party, or until such time as ~~the~~ Franchisee abandons said Facilities in place, all as provided herein. Said obligations include, but are not limited to: ~~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's work.

**Section 2625. Force Majeure.**

A. In the event Franchisee is prevented or delayed in the performance of any of its obligations herein due to circumstances beyond its control or by reason of a force majeure occurrence, such as, but not limited to: acts of God, acts of terrorism, war, riots, civil disturbances, natural disasters, floods, tornadoes, earthquakes, severe weather

conditions, employee strikes, and/or unforeseen labor conditions not attributable to Franchisee or its employees, Franchisee shall not be deemed in Default of provisions of this Franchise.

**B.** If Franchisee believes that circumstances beyond its control or by reason of a force majeure occurrence have prevented or delayed its compliance with the provisions of this Franchise, Franchisee shall provide documentation as required by the City to substantiate ~~the Franchisee's~~ claim. Franchisee shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise or to procure a substitute for such obligation ~~with which~~ is satisfactory to the City; provided that ~~the franchisee~~ Franchisee shall perform to the maximum extent it is able to perform and shall take reasonable steps within its power to correct such cause(s) in as expeditious a manner as possible, provided that ~~the Franchisee~~ takes prompt and diligent steps to bring itself back into compliance and to comply as soon as possible under the circumstances with the Franchise without unduly endangering the health, safety, and integrity of ~~the Franchisee's employees or property, or the health, safety, and integrity of the Franchisee's employees or property, or the health, safety, and integrity of the public,~~ Franchisee's employees or property, or the health, safety, and integrity of the public, Public Rights-of-Way, public property or private property.

**Section 2726. Attorneys' Fees.** In the event ~~of~~ a suit, action, arbitration, or other proceeding of any nature whatsoever, whether in contract or in tort or both, is instituted to enforce any word, article, section, subsection, paragraph, provision, condition, clause or sentence of this Franchise or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable ~~attorneys' attorneys'~~ paralegals, accountants, and other expert fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as allowed by Washington law and as determined by the judge or arbitrator at trial or arbitration, as the case may be, or on any appeal or review, in addition to all other amounts provided by Law. This provision shall cover costs and attorneys' fees related to or with respect to proceedings in Federal Bankruptcy Courts, including those related to issues unique to bankruptcy law. This provision shall not apply to the extent that the suit, action, arbitration, or other proceeding is brought to interpret any term, condition, provision, section, article, or clause of this Franchise.

**Section 2827. Venue.** This Franchise shall be governed by, and construed in accordance with the laws of the State of Washington. Any action brought relative to enforcement of this Franchise, or seeking a declaration of rights, duties, or obligations herein shall be initiated in the Superior Court of King County, and shall not be removed to a federal court, except as to claims over which such Superior Court has no jurisdiction. Removal to federal court shall be to the Federal Court of the Western District of Washington.

**Section 2928. Corrections by City Clerk or Code Reviser.** Upon approval of the City Attorney, the City Clerk and the code reviser are authorized to make necessary corrections to this ordinance, including the correction of clerical errors; references to other local, state or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering.

**Section 3029. 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 days after passage and publication as provided by law (the "Effective Date").

PASSED BY THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, at a Regular Meeting thereof this \_\_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST/AUTHENTICATED:

\_\_\_\_\_  
Christy O'Flaherty, MMC, City Clerk

\_\_\_\_\_  
Allan Ekberg, Mayor

APPROVED AS TO FORM BY:  
  
\_\_\_\_\_  
Rachel B. Turpin, City Attorney

Filed with the City Clerk: \_\_\_\_\_  
Passed by the City Council: \_\_\_\_\_  
Published: \_\_\_\_\_  
Effective Date: \_\_\_\_\_  
Ordinance Number: \_\_\_\_\_

Attachments: ~~---~~ Exhibit A - Franchise Agreement Acceptance Form



**EXHIBIT A**

**Mobilitie, LLC, Acceptance Form**

Date: \_\_\_\_\_

City of Tukwila  
City Clerk's Office  
6200 Southcenter Boulevard  
Tukwila WA 98188

Re: Ordinance No. \_\_\_\_\_, adopted on \_\_\_\_\_

Dear City Clerk:

In accordance with and as required by Section 5 of City of Tukwila Ordinance No. \_\_\_\_\_, passed by the City Council and approved by the Mayor on \_\_\_\_\_ (the "Ordinance"), Mobilitie, LLC, a Nevada limited liability company, hereby accepts the terms, conditions and obligations to be complied with or performed by it under the Ordinance.

Sincerely,

MOBILITIE, LLC,  
a Nevada limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

cc: Public Works Director, City of Tukwila, 6200 Southcenter Blvd, Tukwila, WA 98188





**C. Small Cell Technology Franchise Agreements with AT&T/New Cingular and Mobilitie, LLC**

Staff is seeking Council approval of franchise agreement ordinances with both AT&T/New Cingular Wireless, PCS, LLC, and Mobilitie, LLC. Both are telecommunications companies currently in the stages of deploying small cell technology to expand wireless network capacity and the respective ordinances would grant permission for this deployment in the City's right-of-way. While the agreements represent negotiations with each company, the ordinances are substantially consistent with one another as well as with the Verizon Franchise Ordinance approved in February 2018. The agreements provide for the City to charge site-specific charges prior to permit issuance as allowable by state law. Committee members asked clarifying questions. Staff mentioned that the ordinances in the Committee packet were not the most current and those would be provided before the Committee of the Whole. Councilmembers and staff discussed the need to balance meeting current technological needs and reducing visual clutter on poles throughout the City, and how the permitting process will play a role in this. Councilmember Quinn mentioned the importance of establishing criteria and looking at what neighboring jurisdictions are doing. Ms. Pellegrini, representing AT&T/New Cingular, offered to bring photo examples of different styles. Following discussion, the Committee requested the following information for the Committee of the Whole:

- Table explaining differences between the AT&T, Mobilitie, and Verizon franchise agreements
- First drafts of AT&T and Mobilitie agreements
- Number and locations of City-owned and non-City owned poles

**UNANIMOUS APPROVAL WITH ADDITIONAL INFORMATION. FORWARD TO JULY 9, 2018 COMMITTEE OF THE WHOLE.**

**D. Traffic Calming in Residential Neighborhoods**

Councilmembers commonly hear complaints about speeding and requests for traffic calming in neighborhoods and have requested for the City to have a strong, defensible process for prioritizing and implementing requests. The Committee discussed and provided input on this topic multiple times in 2017, most recently focusing on data collection from the portable speed signs. The Police Department and Public Works recently attended a community meeting focused on speed and traffic concerns. Councilmember Quinn stated that he has previously requested that Council be notified and invited to participate in such community meetings and was disappointed to hear that didn't happen in this case. Staff acknowledged the oversight and will make sure Council is notified in the future. Staff mentioned that the City has applicable policy documents such as the Traffic Calming Program, Walk & Roll Plan, and the Residential Street Prioritization Study, but funding will continue to be a challenge. Staff plans to present the results of the data collected by the mobile signs at a future Committee meeting, as well as propose new funding for traffic calming and sidewalks for the 2019-2020 budget. Councilmember Quinn stated that a purely complaint-based system such as that outlined in the Traffic Calming Program does not typically result in equitable implementation. Complaints can factor in but all data should be evaluated, and the Council should be well informed considering its fiduciary authority. Council is very interested in data gathered by staff to compare with perceptions of concerned citizens who have spoken up regarding speeding. Mr. Ahmed asked about the status of safety improvements at Tukwila International Boulevard and South 141<sup>st</sup> Street, noting that Abu Bakr Islamic Center is willing to contribute. Staff has been unsuccessful in securing grants and will provide a status update at the next Committee meeting. **RETURN TO COMMITTEE.**

