



**City of Tukwila
Transportation and
Infrastructure Committee**

- ❖ Thomas McLeod, Chair
- ❖ De'Sean Quinn
- ❖ Zak Idan

Distribution: T. McLeod D. Quinn Z. Idan V. Seal D. Robertson Mayor Ekberg D. Cline L. Humphrey H. Hash H. Ponnekanti G. Labanara B. Still	R. Turpin A. Youn Clerk File Copy 2 Extra Place pkt pdf on Z:\Trans & Infra Agendas e-mail cover to: A. Le, C. O'Flaherty, A. Youn, D. Almborg, B. Saxton, S. Norris, L. Humphrey, T. McLeod
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AGENDA

MONDAY, JULY 23, 2018 – 5:30 PM

**HAZELNUT CONFERENCE ROOM
(EAST ENTRANCE OF CITY HALL)**

Item	Recommended Action	Page
1. PRESENTATION(S)		
2. BUSINESS AGENDA		
a) Valley View Loop Sewer Transfer Area Ordinance to Establish Sewer Connection Requirements	a) Forward to 8/13/18 C.O.W. & 8/20/18 Regular	Pg. 1
b) AT&T/New Cingular Wireless Small Cell Technology Ordinance Franchise Agreement	b) Forward to 7/23/18 C.O.W. and 8/6/18 Regular	Pg. 7
c) Mobilitie, LLC Small Cell Technology Ordinance Franchise Agreement	c) Forward to 7/23/18 C.O.W. and 8/6/18 Regular	Pg. 55
3. SCATBd/RTC		
4. MISCELLANEOUS		
d) South 140 th Street Intersection Improvements	d) Discussion Only	
e) 53 rd Ave S Speed Cushions	e) Discussion Only	
f) 2018 Committee Work Plan	f) Discussion Only	Pg. 81
5. ANNOUNCEMENTS	Future Agendas:	

Next Scheduled Meeting: Monday, August 13, 2018

The City of Tukwila strives to accommodate individuals with disabilities.
Please contact the Public Works Department at **206-433-0179** for assistance.



INFORMATIONAL MEMORANDUM

TO: Transportation and Infrastructure Committee
FROM: Henry Hash, Public Works Director *H.H.*
BY: Pat Brodin, Development Manager
CC: Mayor Ekberg
DATE: July 20, 2018
SUBJECT: Valley View Loop Sewer Transfer Area
Project No. 81240203
Ordinance to Establish Sewer Connection Requirements for the Loop Area

ISSUE

Adopt an Ordinance for the Loop and surrounding area for sewer connection requirements and to define the service area boundary served by the Valley View Sewer District.

BACKGROUND

In April of 2018, the Tukwila City Council approved an amended Interlocal Agreement that allows Valley View Sewer District to provide sanitary sewer service to the Loop area of the City of Tukwila. In a series of public meetings, Valley View Sewer District has shared preliminary project and cost details with residents of the area regarding the installation of sewers. Now that permits have been issued, Valley View Sewer District is ready to begin construction. The ordinance will set the sewer connection requirements and define the service area boundary. Similar to the Duwamish neighborhood, parcel numbers are to be recorded at King County with the Ordinance to accurately represent the properties included in the sewer connection requirements.

DISCUSSION

The Ordinance states that any homes existing on September 30, 2018 will be required to connect to the sewer and pay the associated connection charges to Valley View Sewer District if any portion of any building is situated within 250 feet of a sewer line and if:

- Septic or health problems are identified by King County Health Department that require repair, or
- a temporary drain field repair permit that requires connection to public sewer issued by the King County Health Department, or
- the home changes ownership, or
- remodeling occurs, adding a bathroom or bedroom.

FISCAL IMPACT

There is no fiscal impact to the City as part of this Ordinance. The associated connection charges to the homeowner is through Valley View Sewer District.

RECOMMENDATION

Council is being asked to approve the Ordinance establishing sewer connection requirements and service area in the Loop and surrounding area pursuant to the Amended Sewer Service Agreement (15-115(a)) between the City of Tukwila and Valley View Sewer District and consider this item at the August 13, 2018 Committee of the Whole Meeting and subsequent August 20, 2018 Regular Meeting.

Attachments: Draft Ordinance with Exhibit

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, ESTABLISHING SEWER CONNECTION REQUIREMENTS FOR “THE LOOP AND SURROUNDING AREA”; DEFINING SERVICE AREA BOUNDARIES; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, a sewer plan identifying residential and commercial areas has been prepared with a prioritized construction schedule; and

WHEREAS, the City of Tukwila has granted the Valley View Sewer District the right to install and operate the sanitary sewer system for “the Loop and Surrounding Area”; and

WHEREAS, sewer lines meet Washington State Department of Ecology standards; and

WHEREAS, a Sewer Connection Charge will be paid at the time of connecting or before final building permit approval to the Valley View Sewer District for new facilities; and

WHEREAS, Valley View Sewer District will record this ordinance, binding it to the affected parcels in “the Loop and Surrounding Area”;

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

Section 1. “The Loop and Surrounding Area” Connection Charges.

Homes in “the Loop and Surrounding Area”—as identified by Section 2 of this ordinance, existing on September 30, 2018—will be required to connect to Valley View Sewer District sewer system and pay the associated connection charges to Valley View Sewer District if any portion of any building is situated within 250 feet of a sanitary sewer line or lateral, and if:

1. septic or health problems are identified by King County Health Department that require repair or replacement of the septic tank system, or

2. a temporary drain field repair permit that requires connection to public sewers upon their availability has been issued by the King County Health Department, or

3. the home changes ownership, or

4. remodeling occurs, adding a bathroom or bedroom.

Section 2. Service Area Boundaries. “The Loop and Surrounding Area” is the Valley View Service Area bordered by SR 518 on the north, Klickitat Drive on the east, 42nd Ave South on the west, and South 160th St on the south, as shown on the map attached to this ordinance (Exhibit A).

Section 3. 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 4. Severability. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance or its application to any person or situation should be held to be invalid or unconstitutional for any reason by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance or its application to any other person or situation.

Section 5. 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.

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:

Filed with the City Clerk: _____

Passed by the City Council: _____

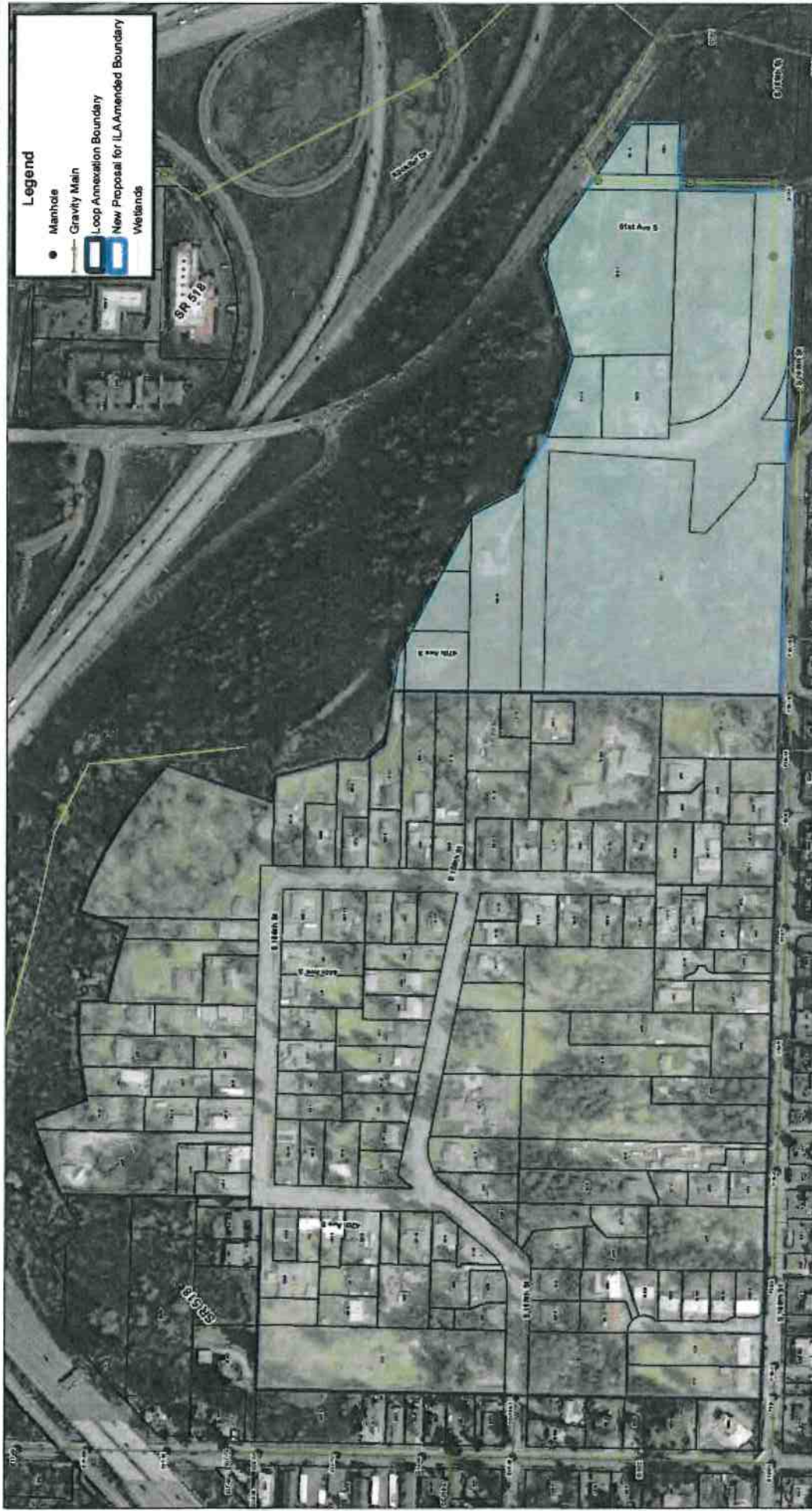
Published: _____

Effective Date: _____

Ordinance Number: _____

Rachel B. Turpin, City Attorney

Attachment: Exhibit A – Map of Valley View Sewer District



- Legend**
- Manhole
 - Gravity Main
 - Loop Annexation Boundary
 - New Proposal for I.L.A. Amended Boundary
 - Wetlands

This map is a draft illustration created from the Valley View Sewer District's information system. It was developed and prepared for informational purposes only. It is not intended to be used for any legal or financial purposes. Any reproduction or use of this map, or portion thereof, is prohibited without the express written permission of the Valley View Sewer District. © Valley View Sewer District



Exhibit A

Valley View Sewer District



 1 inch = 120 feet



DRAWING IS FULL SCALE
WHEN SHOWN AS SHOWN



List of Parcel Numbers for Loop Area Sewers

8108600720	8108600340	8108600201	6154200020
8108600080	8108600781	8108600240	6154200010
8108600062	8108600780	8108600280	8108600520
8108600065	8108600125	8108600325	8108600523
8108600043	8108600126	8108600320	8108600521
8108600041	8108600122	2386600005	8108600504
8108600021	8108600123	2386600010	8108600503
2223049014	8108600183	2386600035	8108600501
2223049007	8108600180	8108600845	8108600502
8108600740	8108600184	8108600842	8108600481
2223049013	8108600221	8108600840	8108600462
8108600762	8108600220	8108600560	8108600440
8108600761	8108600262	6154200090	8108600442
8108600760	8108600261	6154200080	8108600444
8108600764	8055500030	8108600522	8108600441
8108600763	8055500020	8108600505	2223049085
8108600081	8055500010	8108600500	2223049088
8108600083	8108600342	8108600480	2223049109
8108600082	8108600345	8108600460	2223049100
8108600063	8108600348	8108600464	2223049039
8108600064	8108600341	8108600443	2223049087
8108600060	8108600805	2386600015	2223049060
8108600059	8108600801	2386600020	2223049063
8108600040	8108600802	2386600025	2223049049
8108600042	8108600800	2386600030	2223049095
8108600020	8108600821	2386600040	2223049104
8108600101	8108600823	2386600041	2223049105
8108600120	8108600820	2386600046	2223049103
8108600130	8108600819	2386600050	2223049044
8108600146	8108600124	2386600055	2223049115
8108600145	8108600143	2223049016	2223049006
8108600182	8108600140	2223049079	
8108600181	8108600127	8108600561	
8108600223	8108600144	8108600562	
8108600222	8108600121	6154200070	
8108600258	8108600128	6154200060	
8108600260	8108600141	6154200050	
8108600300	8108600160	6154200040	
8108600302	8108600200	6154200030	



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: July 20, 2018
SUBJECT: Ordinance – AT&T/New Cingular Wireless Small Cell Technology Franchise

ISSUE

Approve Ordinance for AT&T/New Cingular Wireless Franchise Agreement.

BACKGROUND

New Cingular Wireless, PCS, LLC, headquartered in Delaware, is a telecommunications company that provides, among other things, personal wireless service. New Cingular Wireless is currently in the stages of deploying small cell technology to expand the capacity of its wireless network. Staff has negotiated with New Cingular 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 Mobilite Franchise Ordinance, which is also currently under consideration. The attached draft Franchise Ordinance establishes high-level, city-wide permission for New Cingular's deployment of small cell technology in the City's right-of-way. A Franchise Agreement establishes global requirements, expectations, and responsibilities between parties – essentially establishing the ground rules which both parties agree to follow. Regulatory requirements, a separate approval process from that of the franchise agreement, establish the physical standards and restrictions for specific installations. These requirements are enforced during the individual application review and are typically found in zoning and right-of-way code sections. Finally, pole use agreements are necessary to install small cell equipment on poles not owned by the Franchisee. In Tukwila, pole agreement will likely be with the City, Puget Sound Energy, or Seattle City Light.

Information on how other Washington jurisdictions are approaching the new small cell technology was presented during the recent Association of Washington Cities conference in Yakima. An analysis of Mukilteo and Renton's recently enacted legislation, Tukwila's related current codes, and staff recommendations on changes to the Franchise Ordinance, if any, will be discussed at the meeting.

FINANCIAL IMPACT

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

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

RECOMMENDATION

Council is being asked to approve the Ordinance that will grant a Franchise Agreement to New Cingular Wireless, PCS, LLC for small cell technology and consider this item at the July 23, 2018 Committee of the Whole and subsequent August 6, 2018 Regular Meeting.

Attachments: Draft Franchise Ordinance
Table Comparison of Small Cell Franchise Agreements

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF TUKWILA, WASHINGTON, GRANTING A NON-EXCLUSIVE FRANCHISE TO NEW CINGULAR WIRELESS PCS, LLC, A DELAWARE LIMITED LIABILITY COMPANY, FOR THE PURPOSE OF CONSTRUCTING, OPERATING, AND MAINTAINING A TELECOMMUNICATIONS SYSTEM IN CERTAIN PUBLIC RIGHTS-OF-WAY IN THE CITY; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, New Cingular Wireless PCS, LLC, a Delaware limited liability company, hereinafter referred to as “Franchisee” is a telecommunications company that, among other things, provides personal wireless service, including data transmission, and other telecommunications services to customers in the Puget Sound region; and

WHEREAS, Franchisee’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 a telecommunications system; and

WHEREAS, the City Council has determined that the use of portions of the City's rights-of-way for installation of a telecommunications system 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 telecommunications 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, upgrade, monitor, maintain, use, relocate, remove, or support.

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

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

F. 5. **"Default"** shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.

G. 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~~ Manual ("the Standards"), illustrating and describing the refinement of the design of the Telecommunications System 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 disrupts or 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) presents 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 Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, backup power supplies, power transfer switches, cut-off switches, electric meters, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.

K. 10. **“Franchise”** shall mean the grant, once accepted, 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 laws, ordinances, rules, regulations, resolutions, environmental standards, orders, decrees and requirements of all federal, state, and local governments, the departments, bureaus, or commissions thereof, or other governmental authorities, including the City acting in its governmental capacity. References to Laws shall be interpreted broadly to cover government actions, however nominated.

M. 12. **“Party(ies)”** shall mean either the City or the Franchisee or both.

N. 13. **“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.

O. 14. **“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. 15. **“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 areas designated for the public right-of-way, including areas that have been accepted by the City for use as the public right-of-way and 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. _____ 16. **“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. _____ 17. **“Service” or “Services”** shall mean the service or services authorized to be provided by the Franchisee under the terms and conditions of this Franchise.

S. _____ 18. **“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.

T. _____ 19. **“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 Franchisee, 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 System within the City-owned Public Rights-of-Way, generally described as those Public Rights-of-Way 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 Franchisee 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 Franchisee; provided, that such other franchises do not unreasonably interfere with Franchisee'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 Franchisee 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 Franchisee.

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. 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. However, this Franchise Agreement shall not take effect and Franchisee 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.

Section 5. Acceptance of Terms and Conditions. The full acceptance of this Franchise Agreement and all the terms and conditions shall be filed with the City Clerk within 30 days of the effective date of this ordinance in the form attached hereto as Exhibit A. Failure on the part of Franchisee 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.

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. In case of an emergency, Franchisee shall, within 24 hours of the emergency, obtain a permit from the City of Tukwila's Public Works Department.

B. 2. Coordination. All capital construction projects performed by Franchisee 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 Capital 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, the 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 if Franchisee is not willing to comply 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 Franchisee 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~~^{part} of its Telecommunications System, 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 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.

~~K.~~ 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 inconveniences the public use of the right of way or adversely affects the public health, safety, or welfare.

~~L.~~ **12. Underground Installation Required.** All telecommunications cables and junction boxes or other vaulted system components shall be installed underground consistent with the requirements of 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.

~~M.~~ **13. Relocation.**

~~4.~~ **a.** The City shall have the right to require Franchisee 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 rights~~ Public Rights-of-way ~~Way~~ for purposes of public welfare, health, or safety ("Public Improvements"). Such Public Improvements include, but are not limited to: ~~public rights~~ Public Rights-of-way ~~Way~~ construction; ~~public rights~~ Public Rights-of-way ~~Way~~ repair (including resurfacing or widening); change of ~~public rights~~ Public Rights-of-way ~~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~~ Public Rights-of-way ~~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 Franchisee to relocate its Facilities, the City shall provide Franchisee 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 Franchisee 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 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 such notice shall be no less than ~~ninety~~ (90) days.

~~2.~~ **b.** To ensure timely execution of relocation requirements, Franchisee shall, upon written request from the City, provide at Franchisee'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.** Franchisee 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 Franchisee 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, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City, in its sole discretion, decides not to accept the alternatives suggested by Franchisee, Franchisee shall relocate its Facilities as directed by the City.

4__d. Upon final approval of the relocation plan by the City, Franchisee 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 ~~right~~Public Right-of-way~~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 ~~rights~~Public Rights-of-way~~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 Franchisee'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 Franchisee's Facilities, Franchisee shall, upon notification from the City, respond within 24 hours to resolve the conflict.

6__f. Franchisee acknowledges and understands that any delay by Franchisee in performing the work to alter, adjust, relocate, or protect in place its Facilities within the ~~public rights~~Public Rights-of-way~~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~~Public Rights-of-way~~Way~~, and result in damage to the City, including but not limited to delay claims. Franchisee 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 Franchisee 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 Franchisee, including all reasonable costs and expenses incurred by the City due to Franchisee's delay. In such event, the City shall not be liable for any damage to any portion of Franchisee's system. In addition to any other indemnity set forth in this Franchise Agreement, Franchisee 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 Franchisee to adjust, modify, protect in place, or relocate its Facilities in a timely manner; provided that, Franchisee shall not be responsible for damages due to delays caused by the City.

~~N.~~

~~14. **Removal or Abandonment.**~~ Upon the removal from service of any service antennas or other associated structures, Facilities and/or amenities, Franchisee 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~~ Facility Constructed or owned by Franchisee shall be abandoned without the express written consent of the City.

~~O. 15. **Bond.**~~ Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Franchise Agreement, Franchisee shall, upon the request of the City, furnish one bond executed by Franchisee 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 ~~the~~ a form reasonably acceptable to the City. The bond shall be conditioned so that Franchisee shall observe all the covenants, terms, and conditions and shall faithfully perform all of the obligations of this Franchise Agreement, and ~~to~~ repair or replace any defective Franchisee work or materials discovered in the City's roads, streets, or property.

~~P. 16. **"One-Call" Location and Liability.**~~ Franchisee 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 Franchisee's system components or for interruptions in service to Franchisee customers which are a direct result of work performed for any City project for which Franchisee 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 Franchisee system components or for interruptions in service to Franchisee customers resulting from work performed under a permit issued by the City.

~~Q. 17. **As-Built Plans Required.**~~ Franchisee 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 Franchisee pursuant to this Franchise Agreement. The City shall reasonably determine the acceptability of any as-built submittals provided under this section.

~~R. 18. **Recovery of Costs.**~~ Franchisee 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 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, Franchisee shall pay such costs and expenses directly to the City.

~~S.~~

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.

~~T.~~ 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, ~~right~~ Public Right-of-way 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 60- days written notice to Franchisee, 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 Franchisee by reason of such termination other than those provided for in RCW 35.99.

Section 7. Franchise Compliance.

A.- Franchise Violations. The failure by either the City or Franchisee (the "Defaulting Party") to fully comply with any of the provisions of this Franchise Agreement may result in a written notice from the other party (the "Non-Defaulting Party") that describes the violations of the Franchise Agreement and requests remedial action within 60 days of receipt of such notice. If the Defaulting Party has not attained full compliance at the end of the 60-day period following receipt of the violation notification, the Non-Defaulting Party may, declare an immediate termination of this Franchise Agreement, provided that full compliance was reasonably possible within that 60-day period.—

B.- Emergency Actions.

1. If any of Franchisee's actions under this Franchise Agreement, or any failure by Franchisee to act to correct a situation caused by Franchisee, 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 Franchisee 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 Franchisee and give Franchisee an opportunity to correct within a specified time said threat, financial harm, or delay before undertaking such corrective measures. Franchisee 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 Franchisee 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 Franchisee to take appropriate action to correct a situation caused by Franchisee 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. If, during construction or maintenance of Franchisee'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, Franchisee 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 Franchisee'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, Franchisee shall, at its sole expense, remove all system components and Facilities within 60 days of such termination, provided that the City, at its sole option, may allow Franchisee 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.-__The receivership or trusteeship is timely vacated; or

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.- Franchisee 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.

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~~ 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. Notwithstanding the foregoing, neither Franchisee nor any of its contractors, subcontractors, or other Persons performing work on Franchisee's behalf shall be required to apply any new laws to existing Facilities unless required by law.

D. The Franchisee shall provide the City with written notice of any required policy cancellation at least 30 days prior to the effective date of such cancellation if such coverage is not replaced. Failure on the part of 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 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 Franchisee 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 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 Franchisee's telecommunications system 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 Franchisee to another person or entity controlling, controlled by, or under common control with Franchisee. Franchisee may license fibers to other users without the consent of the City provided that Franchisee remains solely responsible for the terms and conditions outlined in this Franchise Agreement.

B.- In any transfer of this Franchise which requires the approval of the City, Franchisee 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 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, 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). Franchisee 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.- Franchisee 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 Franchisee 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, Franchisee shall reimburse the City for franchise amendments and reasonable expenses associated with the project. Franchisee shall pay such costs within 30 days of receipt of a bill from the City.

E.- Failure by Franchisee 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 7 of this ordinance.

Section 12. Notices. Any notice to be served upon the City or Franchisee 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

Email: 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

New Cingular Wireless PCS, LLC
Attn: Network Real Estate Administration
Re: Cell Site #: Tukwila Small Cells (WA)
575 Morosgo Drive NE
Atlanta, GA 30324

With a copy to:

New Cingular Wireless PCS, LLC
Attn: AT&T Legal Dept – Network Operations
Re: Cell Site #: Tukwila Small Cells (WA)
208 S. Akard Street
Dallas, TX 75202-4206

Section 13. Indemnification.

A.- Franchisee 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. Franchisee shall release, indemnify, defend, and hold the City, its agents, employees, officers, officials, and volunteers harmless from all claims, actions, losses, 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 Franchisee, its officers, agents, servants, or employees, carried on in the furtherance of the rights, benefits, and privileges granted to Franchisee by this Franchise. In the event any claim or demand is presented to or filed with the City that gives rise to Franchisee's obligation pursuant to this section, the City shall within a reasonable time notify Franchisee thereof and Franchisee 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 Franchisee's obligation pursuant to this section, the City shall promptly notify Franchisee thereof, and Franchisee 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, Franchisee 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 Franchisee -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 Franchisee and the City, Franchisee'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, Franchisee 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 Franchisee'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, Franchisee shall have the option to terminate the Franchise Agreement.

Section 15. Reservation of Rights.

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.- 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. Franchisee shall not by this Franchise Agreement obtain any vested rights to use any portion of the City Rights-of-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 Telecommunications System, 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 Telecommunications System.

Section 17. Future Rules, Regulations, and Specifications. Franchisee 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 Franchisee, shall thereafter govern Franchisee's activities hereunder. However, in no event shall regulations:

~~A.~~ 1. Materially interfere with or adversely affect Franchisee's rights pursuant to and in accordance with this Franchise Agreement; or

~~B.~~ 2. Be applied in a discriminatory manner as it pertains to Franchisee and other similar user of such facilities.

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.

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 Telecommunications System 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; 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 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, 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:

Filed with the City Clerk: _____

Passed by the City Council: _____

Published: _____

Effective Date: _____

Ordinance Number: _____

Rachel B. Turpin, City Attorney

Attachments: —_ Exhibit A - Franchise Agreement Acceptance Form

DRAFT

EXHIBIT A

NEW CINGULAR WIRELESS PCS, 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"), New Cingular Wireless, a Delaware limited liability company, hereby accepts the terms, conditions and obligations to be complied with or performed by it under the Ordinance.

Sincerely,

NEW CINGULAR WIRELESS PCS, LLC,
a Delaware limited liability company

By: AT&T Mobility Corporation

By: _____

Name: _____

Title: _____

Date: _____

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

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
First Whereas clause	WHEREAS , Seattle SMSA Limited Partnership, a Delaware limited partnership, d/b/a Verizon Wireless, hereinafter referred to as "VERIZON" is a telecommunications company that, among other things, provides personal wireless services to customers in the Puget Sound region; and	WHEREAS , New Cingular Wireless PCS, LLC, a Delaware limited liability company, hereinafter referred to as "Franchisee" is a telecommunications company that, among other things, provides personal wireless service, including data transmission, and other telecommunications services to customers in the Puget Sound region; and	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	Company name is unique for each Franchisee and differences are carried throughout the agreements Description of what each company provides is negotiated specific to each agreement
Second Whereas clause	WHEREAS , VERIZON'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 a telecommunications system; and	WHEREAS , Franchisee'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 a telecommunications system; 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	Negotiated differences between agreements
Fifth Whereas clause	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 communications facilities;	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 telecommunications system and transmission of communications;	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;	Specific language describing the type of service provided by each Franchisee negotiated specific to each agreement
Section 1, Definitions		2. "Construct" shall mean to construct, reconstruct, install, reinstall, align, realign, locate, relocate, adjust, affix, attach, replace, repair, upgrade, monitor, maintain, use, relocate, remove, or support.	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.	Negotiated differences between agreements
Section 1, Definitions		3. "Contractor" shall mean any contractor selected and engaged by Franchisee to Construct Facilities in the Public Right(s)-of-Way. 4. "Costs" shall mean the actual, and documented costs incurred.	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.	Additional definitions provided
Section 1, Definitions	3. "Default" shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise that is not cured within 30 days after receipt of written notice from the non-defaulting Party.	5. "Default" shall mean any failure of a Party to keep, observe, or perform any of its duties or obligations under this Franchise.	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.	Differences between agreements negotiated specifically with each Franchisee but the intent between the Agreements is the same.

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 1, Definitions	4. “Design Document(s)” shall mean the plans and specifications for the construction of the Facilities meeting 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”),	6. “Design Document(s)” shall mean the plans and specifications for the construction of the Facilities meeting <u>at least</u> 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 <u>Telecommunications System Facilities</u> to be Constructed,	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 <u>Facilities</u> to be Constructed,	Language added to clarify the requirement of meeting the ;minimum standards is the lowest level acceptable. Negotiated differences between agreements
Section 1, Definitions	6. “Emergency” shall mean and refer to a sudden condition or set of circumstances that: (a) significantly disrupts or interrupts the operation of Facilities in the Public Rights-of-Way and VERIZON’s ability to continue to provide services if immediate action is not taken; or (b) <u>presents</u> an immediate threat of harm to persons or property if immediate action is not taken.	8. “Emergency” shall mean and refer to a sudden condition or set of circumstances that: (a) significantly disrupts or 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) <u>presents</u> an immediate threat of harm to persons or property if immediate action is not taken.	8. “Emergency” shall mean and refer to a sudden condition or set of circumstances that: (a) significantly disrupts or 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) <u>present</u> an immediate threat of harm to persons or property if immediate action is not taken.	Grammatical correction
Section 1, Definitions	7. “Facility or Facilities” means any part or all of the facilities, equipment and appurtenances of VERIZON whether underground or overhead and located within the Public Rights-of-Way as part of <u>VERIZON’s Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.</u>	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 Telecommunications System, including but not limited to, conduit, case, pipe, line, fiber, cabling, equipment, equipment cabinets and shelters, vaults, generators, <u>backup power supplies, power transfer switches, cut-off switches, electric meters,</u> conductors, poles, carriers, drains, vents, guy wires, encasements, sleeves, valves, wires, supports, foundations, anchors, transmitters, receivers, antennas, and signage.	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 <u>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”)</u> attached, mounted, or installed on an existing utility pole located in the Public Rights-of-Way for the purpose of <u>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 Communications Commission (“FCC”).</u> “Facility” or “Facilities” also means the control <u>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.</u>	Language specific to each agreement negotiated individually to best reflect the type of facility and services to be built and provided.

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 1, Definitions	8. “Franchise” shall mean the grant, once accepted , giving general permission to VERIZON 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.	10. “Franchise” shall mean the grant, once accepted , 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.	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.	Negotiated change, not substantive to the Agreement as Exhibit A must be submitted by the Franchisee for the Agreement to be in effect, essentially functioning as the Franchisee “accepting” the Agreement.
Section 1, Definitions			12. “Network” shall mean collectively the network of Facilities Constructed by or for and managed by Mobilitie within the Public Rights-of-Way for the provision of the Services.	Negotiated language specific to Mobilitie Agreement
Section 1, Definitions	13. “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.	15. “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 areas designated for the public right-of-way, including areas that have been accepted by the City for use as the public right-of-way and 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.	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.	New language broadens the definition of publicly owned right-of-way negotiated specific to AT&T Agreement
Section 1, Definitions	15. “Service” shall mean the service or services authorized to be provided by VERIZON under the terms and conditions of this Franchise Agreement .	17. “Service” shall mean the service or services authorized to be provided by Franchisee under the terms and conditions of this Franchise.	18. “Service” or “Services” shall mean the service or services authorized to be provided by Franchisee under the terms and conditions of this Franchise.	“Services” added for preference. Removed “Agreement” throughout from AT&T/Cingular and Mobilitie for preference, intent not changed.
Section 1, Definitions			19. “Small Cell” shall mean the Facilities at a particular location that comprises part of the Network.	Specific language negotiated by Mobilitie to be included in the Agreement

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 1, Definitions	16. “Telecommunications System” shall mean all necessary Facilities to establish a small cell network located in, under, and above City owned Public Right(s) -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 VERIZON for the provision of cable television services, video programming, or services other than personal wireless services, including ownership and/or operation of a dark fiber network.	18. “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.	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	Preference of use for the change from Right(s) to Rights. A dark fiber network is one that has fiber but is not in use, therefore is not under operation. Change to managing a dark fiber network is a semantic change for clarification purposes.
Section 2. Non-exclusive Franchise Granted	A. The City hereby grants to VERIZON, 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 System within all 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".	A. The City hereby grants to Franchisee, 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 System within the City-owned Public Rights-of-Way, generally described as those Public Rights-of-Way within the present and future boundaries of the City and hereinafter referred to as the "Franchise Area".	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 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".	Change is preference of wording but the intent between agreements is the same.
Section 3. Authority.	Section 3. Authority. The Director of Public Works or his or her 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 he or she deems necessary to carry out the provisions contained herein.	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 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.	Change to make language gender neutral

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 4. Franchise Term</p>	<p>Section 4. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of 10 years from the effective date of this ordinance. However, this Franchise Agreement shall not take effect and VERIZON 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 VERIZON 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 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 VERIZON prior to the Franchise expiration date.</p>	<p>Section 4. Franchise Term. The franchise rights granted herein shall remain in full force and effect for a period of 10 years from the effective date of this ordinance. However, this Franchise Agreement shall not take effect and Franchisee 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, <u>at the City's sole discretion,</u> 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.</p>	<p>Section 4. Franchise Term.</p> <p>A. Term. The franchise rights granted herein shall remain in full force and effect for a period of 10 years from the effective date of this ordinance <u>(the "Term").</u> 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, <u>at the City's sole discretion,</u> 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.</p> <p><u>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 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.</u></p>	<p>Use of "at the City's sole discretion" clarifies that any decision to extend a franchise agreement lies solely with the City.</p> <p>"Termination by Mobilitie" section negotiated specifically for their Agreement</p>
<p>Section 5.</p>	<p>Section 5. Acceptance of Terms and Conditions. <u>The full</u> acceptance of this Franchise Agreement and all the terms and conditions shall be filed with the City Clerk within 30 days of the effective date of this ordinance in the form attached hereto as Exhibit A. Failure on the part of VERIZON 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.</p>	<p>Section 5. Acceptance of Terms and Conditions. <u>The full</u> acceptance of this Franchise Agreement and all the terms and conditions shall be filed with the City Clerk within 30 days of the effective date of this ordinance in the form attached hereto as Exhibit A. Failure on the part of Franchisee 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.</p>	<p>Section 5. Acceptance of Terms and Conditions. <u>An</u> acceptance of this Franchise Agreement and all the terms and conditions, <u>in the form attached hereto as Exhibit A,</u> 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, <u>and in such event this Agreement shall terminate without further obligation to either party.</u></p>	<p>Language negotiated specific to Mobilitie Agreement</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>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. In case of an emergency, VERIZON shall, within 24 hours of the emergency, obtain a Permit from the City of Tukwila’s Public Works Department.</p>	<p>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. In case of an emergency, Franchisee shall, within 24 hours of the emergency, obtain a permit from the City of Tukwila’s Public Works Department.</p>	<p>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).</p>	<p>“Permit(s)” and the use of a capital letter indicates the Permit in question is defined in the Franchise Agreement. That is not the case, therefore use of “permit(s)” is correct in that it references a generic permit required as part of the larger permitting process.</p> <p>Use of “Construction” implies construction specific to the Agreement</p> <p>Remainder of the difference negotiated specific to Mobilitie Agreement address steps to be taken in the case of a bonafide emergency.</p>
<p>Section 6. Construction Provisions and Standards</p>	<p>2. Coordination. All capital construction projects performed by VERIZON 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 Capital 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.</p>	<p>2. Coordination. All capital construction projects performed by Franchisee 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.</p>	<p>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.</p>	<p>Change from “Capital” to “Public” clarifies that the projects in question are coordinated with publicly owned and controlled projects whereas “Capital” could be construed to encompass private projects which are not part of this Franchise Agreement.</p> <p>Use of “Construction” implies construction specific to the Agreement, used throughout Mobilitie Agreement</p>
<p>Section 6. Construction Provisions and Standards</p>	<p>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 if VERIZON is not willing to comply with such requirements; and, may require removal of any Facility that is not installed in compliance with the Standards provided in this Franchise Agreement or which is installed without prior City approval of the time, place, or manner of installation.</p>	<p>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 if Franchisee is not willing to comply 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.</p>	<p>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.</p>	<p>Negotiated change specific to Mobilitie Agreement, intent unchanged.</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>5. Construction Standards. Any construction, installation, maintenance, and restoration activities performed by or for VERIZON 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. VERIZON’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 the City or the City’s existing lessees, licensees, permittees, franchisees, easement beneficiaries or lien holders, without prior written consent of the 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.</p>	<p>5. Construction Standards. Any construction, installation, maintenance and restoration activities performed by or for Franchisee 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.</p>	<p>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.</p>	<p>Grammatical preference in remove the article before City.</p> <p>Capitalization of “Effective Date” clarifies the date is when this particular agreement is enacted and governs. See below.</p>
<p>Section 6. Construction Provisions and Standards, 6. Duty to Restore</p>	<p>a. VERIZON shall, after completion of construction of any part of its Telecommunications System, 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. VERIZON agrees to promptly complete restoration work to the reasonable satisfaction of the City and in conformance with City Standards.</p>	<p>a. Franchisee shall, after completion of construction of any part of its Telecommunications System, 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.</p>	<p>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.</p>	<p>Use of “Network” in lieu of “Telecommunications System” negotiated specifically for Mobilitie Agreement</p> <p>Change to “standards” in this clause is an oversight and should be changed to “Standards”</p>
<p>Section 6. Construction Provisions and Standards, 6. Duty to Restore</p>	<p>c. If weather or other conditions do not allow the complete restoration required, VERIZON shall temporarily restore the affected Public Right-of-Way or public property. VERIZON shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration.</p>	<p>c. If weather or other conditions do not allow the complete restoration required, Franchisee shall temporarily restore the affected Public 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.</p>	<p>c. If weather or other conditions do not allow the complete restoration required, Franchisee shall temporarily restore the affected Public 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.</p>	<p>Grammatical change made for consistency</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>8. Warranty. VERIZON shall warrant any restoration work performed by VERIZON in the Public Rights-of-Way or on other public property for 2 years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by VERIZON, the City may, after 30 days prior notice to VERIZON, 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 cost of those repairs from VERIZON. Within 30 days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, VERIZON shall pay the City.</p>	<p>8. Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for 2 years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by Franchisee, the City may, after prior notice to 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 Franchisee. Within 30 days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Franchisee shall pay the City.</p>	<p>8. Warranty. Franchisee shall warrant any restoration work performed by Franchisee in the Public Rights-of-Way or on other public property for 2 years, unless a longer period is required by applicable City Standards. If restoration is not satisfactorily and timely performed by Franchisee, the City may, after prior notice to 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 Franchisee. Within 30 days of receipt of an itemized list of those costs, including the costs of labor, materials and equipment, Franchisee shall pay the City.</p>	<p>Removal of “after 30 days” negotiated</p>
<p>Section 6. Construction Provisions and Standards</p>	<p>9. Restoration of Private Property. When VERIZON 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 the reasonable satisfaction of the private property owner.</p>	<p>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 the reasonable satisfaction of the private property owner.</p>	<p>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.</p>	<p>Additional language specific to Mobilitie Agreement</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>10. Stop Work. On written notice from the City that any Work does not comply with the Franchise Agreement, the approved Design Documents for the Work, the Standards, or other applicable Law, or is being performed in an unsafe or dangerous manner as reasonably 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, VERIZON shall cease and shall cause its contractors and subcontractors to cease such activity until the City is satisfied that VERIZON 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 VERIZON 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 VERIZON fails to do so, and to reasonably charge VERIZON for the costs incurred to perform such inspection, repair, or correction. Payment by VERIZON will be made within 30 days following receipt of written notice including itemized invoice and supporting documentation evidencing such cost.</p>	<p>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 30 days following receipt of written notice including itemized invoice and supporting documentation evidencing such cost.</p>	<p>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 30 days following receipt of written notice including itemized invoice and supporting documentation evidencing such cost.</p>	<p>“Written” removed to all for all types of notices to be used.</p> <p>Term “reasonably” removed to give final authority to Tukwila to make the determination when activity is unsafe or dangerous, not compliant with standards or laws, or not meeting the City-approved designs.</p> <p>Inclusion of “actual and documented” provides assurance to the Franchisee that the City will be able to produce a detailed invoice of reimbursable costs incurred to cure borne by the City.</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>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, VERIZON and VERIZON’s contractors and subcontractors may not make any material alterations to the Franchise Area without the City’s prior consent, which consent shall not be unreasonably withheld, delayed, or conditioned. The parties acknowledge that nothing in this agreement limits the City’s rights under applicable federal, state, and local laws to regulate the placement and appearance of VERIZON’s Facilities in the Franchise Area. Material alteration and/or deviation shall include, but not be limited to: a change in the dimension of height of location or placement of the Facilities</p>	<p>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 <u>written</u> consent, which consent shall not be unreasonably withheld. The parties acknowledge that nothing in this 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</p>	<p>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 <u>written</u> consent, which consent shall not be unreasonably withheld. The parties acknowledge that nothing in this 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. <u>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 15 days after the modification is made.</u></p>	<p>Negotiated changes between Tukwila and the Franchisees.</p> <p>Additional language in Mobilitie Agreement provides clarification on maintenance-type work not requiring additional permitting and restricts replacement of equipment to the same size and weight or smaller as the original permitted use.</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>12. Underground Installation Required. All telecommunications cables and junction boxes or other vaulted system components shall be installed underground consistent with the requirements of 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.</p>	<p>12. Underground Installation Required. All telecommunications cables and junction boxes or other vaulted system components shall be installed underground consistent with the requirements of 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.</p>	<p>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.</p>	<p>Language preference negotiated specific to Mobilitie Agreement, intent of the section is unchanged</p>
<p>Section 6. Construction Provisions and Standards, 13, Relocation</p>	<p>a. The City shall have the right to require VERIZON 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 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.</p>	<p>a. The City shall have the right to require Franchisee 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 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 Franchisee to relocate its Facilities, the City shall provide Franchisee 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 Franchisee 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 Franchisee as soon as practicable of the need for</p>	<p>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 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</p>	<p>“Public Rights-of-Way” and the use of capital letters indicates the publicly owned ROW specific to the Franchise and the City’s rights to require relocation. Change included after Verizon Agreement was approved.</p> <p>Addition to last sentence negotiated specific to Mobilitie Agreement</p>

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
		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.	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.	
Section 6. Construction Provisions and Standards, 13, Relocation	c. VERIZON 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 VERIZON 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, VERIZON shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by VERIZON full and fair consideration. In the event the City, in its sole discretion, decides not to accept the alternatives suggested by VERIZON, VERIZON shall relocate its Facilities as otherwise specified in Section 6, subparagraph 5.	c. Franchisee 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 Franchisee 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, Franchisee shall submit additional information to assist the City in making such evaluation. The City shall give each alternative proposed by Franchisee full and fair consideration. In the event the City, in its sole discretion, decides not to accept the alternatives suggested by Franchisee, Franchisee shall relocate its Facilities as directed by the City.	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 sole discretion, decides not to accept the alternatives suggested by Mobilitie, Mobilitie shall relocate its Facilities as directed by the City.	Change gives more control to the City to direct relocation but does not give authority to go beyond authority or requirements defined within the Franchise.
Section 6. Construction Provisions and Standards, 13, Relocation	e. If during the construction, repair, or maintenance of the City's public improvement project an unexpected conflict occurs from VERIZON's Facilities, VERIZON shall, upon notification from the City, respond within 24 hours to resolve the conflict.	e. If during the construction, repair, or maintenance of the City's public improvement project an unexpected conflict occurs from Franchisee's Facilities, Franchisee shall, upon notification from the City, respond within 24 hours to resolve the conflict.	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.	Use of "Public Improvement" clarifies that the project in question specifically relates to the Relocation section of the Franchise Agreement. Negotiated specific to Mobilitie Agreement
Section 6. Construction Provisions and Standards	14. Removal or Abandonment. Upon the removal from service of any service antennas or other associated structures, Facilities and amenities, VERIZON 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 VERIZON shall be abandoned without the express written consent of the City.	14. Removal or Abandonment. Upon the removal from service of any service antennas or other associated structures, Facilities and/or amenities, Franchisee 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 Franchisee shall be abandoned without the express written consent of the City.	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.	Inclusion of "/or" provides clarity on removal and abandonment definition. Use of "Facilities Constructed" implies the facility in question is specifically related to the Agreements

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 6. Construction Provisions and Standards</p>	<p>15. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Franchise Agreement, VERIZON shall, upon the request of the City, furnish one bond executed by VERIZON for all of its Facilities in the City's rights-of-way, in such sum as may be set and approved by the City as sufficient to ensure performance of VERIZON's obligations under this Franchise Agreement, provided, however, that such sum shall not exceed 150% of the cost of the Telecommunications System to be installed by VERIZON in the City rights-of-way. At VERIZON's sole option, VERIZON 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 the form reasonably acceptable to the City. The bond shall be conditioned so that VERIZON shall observe all the covenants, terms, and conditions and shall faithfully perform all of the obligations of this Franchise Agreement, and to repair or replace any defective VERIZON work or materials discovered in the City's roads, streets, or property.</p>	<p>15. Bond. Before undertaking any of the work, installation, improvements, construction, repair, relocation, or maintenance authorized by this Franchise Agreement, Franchisee shall, upon the request of the City, furnish one bond executed by Franchisee for all of its Facilities in the City's rights-of-way, in the amount of \$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 Franchisee 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 Franchisee work or materials discovered in the City's roads, streets, or property.</p>	<p>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 \$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.</p>	<p>Negotiated differences between Agreements.</p>
<p>Section 6. Construction Provisions and Standards</p>	<p>18. Recovery of Costs. VERIZON 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, VERIZON shall pay such reasonable costs and expenses directly to the City.</p>	<p>18. Recovery of Costs. Franchisee 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 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, Franchisee shall pay such costs and expenses directly to the City.</p>	<p>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 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.</p>	<p>Negotiated change to ensure that any costs incurred by the City are recovered without the qualifier of "reasonable"</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 7. Franchise Compliance	<p>A. Franchise Violations. The failure by VERIZON 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 VERIZON 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.</p>	<p>A. Franchise Violations. The failure by either the City or Franchisee (the "Defaulting Party") to fully comply with any of the provisions of this Franchise Agreement may result in a written notice from the other party (the "Non-Defaulting Party") that describes the violations of the Franchise Agreement and requests remedial action within 60 days of receipt of such notice. If the Defaulting Party has not attained full compliance at the end of the 60-day period following receipt of the violation notification, the Non-Defaulting Party may declare an immediate termination of this Franchise Agreement, provided that full compliance was reasonably possible within that 60-day period.</p>	<p>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.</p>	<p>Change provides direction should the City be the Defaulting Party in the agreement. Risk to the City is low.</p>
Section 7. Franchise Compliance, B, Emergency Actions	<p>1. If any of VERIZON's actions under this Franchise Agreement, or any failure by VERIZON to act to correct a situation caused by VERIZON, 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 VERIZON 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 VERIZON in writing and give VERIZON an opportunity to correct within a specified time said threat, financial harm or delay before undertaking such corrective measures.</p>	<p>1. If any of Franchisee's actions under this Franchise Agreement, or any failure by Franchisee to act to correct a situation caused by Franchisee, 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 Franchisee 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 Franchisee and give Franchisee an opportunity to correct within a specified time said threat, financial harm, or delay before undertaking such corrective measures.</p>	<p>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.</p>	<p>"in writing" removed to all for all types of notices to be used.</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
<p>Section 8. Insurance.</p>	<p>A. VERIZON shall maintain Commercial General liability insurance during the full term of this Franchise Agreement for bodily injury (including death) and property damages. The limit of liability shall be a combined single limit in the amount of \$2,000,000 for each occurrence and \$2,000,000 general aggregate.</p>	<p>A. Franchisee 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 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 Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.</p>	<p>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 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 Franchisee to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity. <u>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.</u></p>	<p>Changes to the required insurance coverage was negotiated with AT&T/Cingular and Mobilitie after recommendations by WCIA. The insurance coverage in the Mobilitie and AT&T Franchises provides significantly higher coverage than the Verizon Franchise. Mobilitie negotiated last clause to allow flexibility in meeting the higher coverage requirements through umbrella and/or excess liability insurance.</p>
<p>Section 8. Insurance.</p>	<p>B. Such 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; and shall stipulate that no insurance affected by the City will be called on to contribute to a loss covered thereunder. Upon receipt of notice from its insurer(s) that any insurance required by this Franchise Agreement will be cancelled or will not be renewed, and VERIZON will not replace such insurance with coverage as required by this Franchise Agreement, VERIZON shall provide the City with 30 days prior written notice of such cancellation. Notice shall be provided as required by Section 12 below. Should the City receive such notice, at City's discretion, the City may send a notice of default to VERIZON allowing VERIZON 15 days to cure its failure to maintain insurance as required by this Franchise Agreement. If VERIZON fails to cure the default within such 15-day period, the City may unilaterally terminate this Franchise Agreement by sending a written notice of termination to VERIZON.</p>	<p>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.</p> <p>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 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.</p>	<p>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.</p> <p>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 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.</p>	<p>Changes to the required insurance coverage was negotiated with AT&T/Cingular and Mobilitie after recommendations by WCIA. The insurance coverage in the Mobilitie and AT&T Franchises provides significantly higher coverage than the Verizon Franchise.</p>

Comparison of Small Cell Franchise Agreements

Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
		<p>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 of \$3,000,000 per accident. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.</p> <p>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.</p> <p>4. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A minus: VII.</p> <p>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 \$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:</p> <p>(a) the City shall promptly and no later than 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 and provide Franchisee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;</p>	<p>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 of \$3,000,000 per accident. Coverage shall be at least as broad as Insurance Services Office (ISO) form CA 00 01.</p> <p>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.</p> <p>4. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A minus: VII.</p> <p>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 \$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:</p> <p>a. the City shall promptly and no later than 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 and provide Franchisee with copies of any demands, notices, summonses, or legal papers received in connection with such claim, demand, lawsuit, or the like;</p>	

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
		<p>(b) the City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Franchisee; and</p> <p>(c) the City shall fully cooperate with Franchisee in the defense of the claim, demand, lawsuit, or the like.</p>	<p>b. the City shall not settle any such claim, demand, lawsuit, or the like without the prior written consent of Franchisee; and</p> <p>c. the City shall fully cooperate with Franchisee in the defense of the claim, demand, lawsuit, or the like.</p>	
Section 8. Insurance.	<p>C. VERIZON'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 VERIZON shall be deemed servants and agents of VERIZON for the purposes of this Franchise Agreement and are subject to the same restrictions, limitations, and conditions as if the Work were performed by VERIZON. VERIZON 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 Agreement and other applicable laws, and shall be jointly and severally liable for all damages and correcting all damage caused by them. It is VERIZON's responsibility to ensure that contractors, subcontractors, or other Persons performing Work on VERIZON's behalf are familiar with the requirements of this Franchise Agreement and other applicable Laws governing the Work performed by them.</p>	<p>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 Franchisee shall be deemed servants and agents of 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. Notwithstanding the foregoing, neither Franchisee nor any of its contractors, subcontractors, or other Persons performing work on Franchisee's behalf shall be required to apply any new laws to existing Facilities unless required by law.</p> <p>D. The Franchisee shall provide the City with written notice of any required policy cancellation at least 30 days prior to the effective date of such cancellation if such coverage is not replaced. Failure on the part of Franchisee to maintain the insurance as required shall constitute a material breach of</p>	<p>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 Franchisee shall be deemed servants and agents of 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.</p> <p>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 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 Franchisee to correct the breach, immediately terminate the Franchise or, at its discretion, procure or renew such insurance and pay any and all</p>	<p>Changes to the required insurance coverage was negotiated with AT&T/Cingular and Mobilitie after recommendations by WCIA.</p>

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
		the Franchise, upon which the City may, after giving five business days' notice to 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.	premiums in connection therewith, with any reasonable sums so expended to be repaid to the City on demand.	
Section 10. Transfer of Ownership.	<p>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 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 VERIZON's telecommunications system 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 VERIZON to another person or entity controlling, controlled by, or under common control with VERIZON. VERIZON may license Facilities to other users without the consent of the City provided that VERIZON remains solely responsible for the terms and conditions outlined in this Franchise Agreement.</p>	<p>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 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 Franchisee's telecommunications system 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 Franchisee to another person or entity controlling, controlled by, or under common control with Franchisee. Franchisee may license fibers to other users without the consent of the City provided that Franchisee remains solely responsible for the terms and conditions outlined in this Franchise Agreement.</p>	<p>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.</p>	Negotiated changes specific to Mobilitie Agreement

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Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 10. Transfer of Ownership.	B. In any transfer of this Franchise which requires the approval of the City, VERIZON 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 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.	B. In any transfer of this Franchise which requires the approval of the City, Franchisee 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 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.	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.	Negotiated change specific to Mobilitie Agreement
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, or "service provider" as defined in RCW 35.99.010, except that fees may be collected for administrative expenses related to such franchise. VERIZON 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.	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, 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) . Franchisee 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.	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, 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.	Negotiated change between Franchisees
Section 11. Administrative Fees.	D. In the event VERIZON 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, VERIZON shall reimburse the City for franchise amendments and reasonable expenses associated with the project. VERIZON shall pay such costs within 60 days of receipt of a bill from the City.	D. In the event Franchisee 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, Franchisee shall reimburse the City for franchise amendments and reasonable expenses associated with the project. Franchisee shall pay such costs within 30 days of receipt of a bill from the City.	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.	Negotiated change more beneficial to the City.

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 13. Indemnification	A. VERIZON 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. VERIZON shall release, indemnify, defend, and hold the City harmless from all claims, actions or damages, including reasonable attorney's 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 VERIZON, its officers, agents, servants or employees, carried on in the furtherance of the rights, benefits, and privileges granted to VERIZON by this Franchise.	A. Franchisee 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. Franchisee shall release, indemnify, defend, and hold the City, its agents, employees, officers, officials, and volunteers harmless from all claims, actions, losses, 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 Franchisee, its officers, agents, servants, or employees, carried on in the furtherance of the rights, benefits, and privileges granted to Franchisee by this Franchise.	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.	Negotiated change to expand indemnification coverage. Typographical correction from "attorney's" to "attorneys"
Section 13. Indemnification	B. To the extent of any concurrent negligence between VERIZON and the City, VERIZON'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 that 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.	B. To the extent of any concurrent negligence between Franchisee and the City, Franchisee'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.	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.	Grammatical correction from "that" to "which"
Section 13. Indemnification	C. With respect to the performance of this Franchise and as to claims made by VERIZON's employees against the City, its officers, agents and employees, VERIZON 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 VERIZON's officers, agents or employees against the City. This waiver is mutually negotiated by the parties.	C. With respect to the performance of this Franchise and as to claims against the City, its officers, agents and employees, Franchisee 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 Franchisee'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	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	Negotiated changes to expand indemnification coverage. Also extends the coverage of this clause beyond the termination of the Franchise Agreement.

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
		<u>section shall survive the expiration or termination of this Franchise Agreement.</u>	<u>the expiration or termination of this Franchise Agreement.</u>	
Section 16. Police Powers.	B. Nothing in this Franchise Agreement shall be deemed to impose any duty or obligation upon the City to determine the adequacy or sufficiency of VERIZON'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 Telecommunications System , suitability of the Franchise area for Construction, or any obligation on the part of the City to insure 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 Telecommunications System.	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 Telecommunications System , 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 Telecommunications System.	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.	Negotiated change from "Telecommunications System" to "Network" specific to Mobilitie Agreement Capitalization of "Area" to clarify that the area in question is specific to the franchise agreement, change throughout the AT&T and Mobilitie agreements Correction of typographical error from "insure" to "ensure"
Section 17. Future Rules, Regulations and Specifications	Section 17. Future Rules, Regulations and Specifications. VERIZON 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 VERIZON, shall thereafter govern VERIZON's activities hereunder; provided, however, that in no event shall regulations: 1. m aterially interfere with or adversely affect VERIZON's rights pursuant to and in accordance with this Franchise Agreement; or 2. b e applied in a discriminatory manner as it pertains to VERIZON and other similar user of such facilities.	Section 17. Future Rules, Regulations, and Specifications. Franchisee 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 Franchisee, shall thereafter govern Franchisee's activities hereunder. However, in no event shall regulations: 1. M aterially interfere with or adversely affect Franchisee's rights pursuant to and in accordance with this Franchise Agreement; or 2. B e applied in a discriminatory manner as it pertains to Franchisee and other similar user of such facilities.	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: 1. M aterially interfere with or adversely affect Mobilitie's rights pursuant to and in accordance with this Franchise Agreement; or 2. B e applied in a discriminatory manner as it pertains to Mobilitie and other similar user of such facilities.	Preference changes, intent unchanged

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 19. Calculation of Time.	Section 19. 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 Agreement .	Section 19. 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 19. 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.	Use of “Effective Date” defined under Section 29 (see below)
Section 20. Time Limits Strictly Construed.	Section 20. Time Limits Strictly Construed. Whenever this Franchise Agreement sets forth a time for any act to be performed by VERIZON, such time shall be deemed to be of the essence, and any failure of VERIZON to perform within the allotted time may be considered a Default of this Franchise Agreement.	Section 20. 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.	Section 20. 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.	Negotiated change specific to Mobilitie Agreement
Section 25. Force Majeure.	A. In the event VERIZON 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 unforeseen labor conditions not attributable to VERIZON’s employees, VERIZON shall not be deemed in Default of provisions of this Franchise Agreement.	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.	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.	Negotiated changes
Section 25. Force Majeure.	B. If VERIZON 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 Agreement, VERIZON shall provide documentation as reasonably required by the City to substantiate VERIZON’s claim. VERIZON shall have a reasonable time, under the circumstances, to perform the affected obligation under this Franchise Agreement or to procure a substitute for such obligation that is satisfactory to the City;	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 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 which is satisfactory to the City;	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 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 which is satisfactory to the City;	Negotiated change to remove “reasonably” Grammatical correction from “that” to “which”

Comparison of Small Cell Franchise Agreements				
Location	Verizon Agreement	AT&T/Cingular Agreement	Mobilitie Agreement	Discussion
Section 26. Attorneys' Fees.	Section 26. Attorneys' Fees. In the event 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 Agreement or its application to any person or circumstance, the prevailing Party shall be entitled to recover from the losing Party its reasonable attorneys, paralegals, accountants,	Section 26. Attorneys' Fees. In the event 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, paralegals, accountants,	Section 26. Attorneys' Fees. In the event 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, paralegals, accountants,	Grammatical correction
Section 29. Effective Date.	Section 29. 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.	Section 29. 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").	Section 29. 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").	Additional language further defines and clarifies previous usages of "the Effective Date" within the document

DRAFT



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: July 20, 2018
SUBJECT: Ordinance – Mobilitie, LLC Small Cell Technology Franchise Agreement

ISSUE

Approve Ordinance for Mobilitie, LLC Franchise Agreement.

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, which is also currently under consideration. The attached draft Franchise Ordinance establishes high-level, city-wide permission for New Cingular's deployment of small cell technology in the City's right-of-way. A Franchise Agreement establishes global requirements, expectations, and responsibilities between parties – essentially establishing the ground rules which both parties agree to follow. Regulatory requirements, a separate approval process from that of the franchise agreement, establish the physical standards and restrictions for specific installations. These requirements are enforced during the individual application review and are typically found in zoning and right-of-way code sections. Finally, pole use agreements are necessary to install small cell equipment on poles not owned by the Franchisee. In Tukwila, pole agreement will likely be with the City, Puget Sound Energy, or Seattle City Light.

Information on how other Washington jurisdictions are approaching the new small cell technology was presented during the recent Association of Washington Cities conference in Yakima. An analysis of Mukilteo and Renton's recently enacted legislation, Tukwila's related current codes, and staff recommendations on changes to the Franchise Ordinance, if any, will be discussed at the meeting.

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 fees to providers of personal wireless services under certain circumstances before the City issues a use permit. This Franchise Ordinance tracks that statutory language and provides that Mobilitie and the City will determine applicable site-specific fees 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 23, 2018 Committee of the Whole and subsequent August 6, 2018 Regular Meeting.

Attachments: Draft Franchise Ordinance

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.~~ 4. **"Contractor"** shall mean any contractor selected and engaged by Mobilitie to Construct Facilities in the Public Right(s)-of-Way.

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

~~G.~~ 6. **"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.

7. **"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 Mobilitie 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.

O. 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.

T. 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 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.**

~~4.~~ 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 RightRights-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~~

Email: ~~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

With a copy to:

Mobilitie, LLC
660 Newport Center Drive, Suite 200
Newport Beach, CA 92660
Attention: _Asset Management
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: ~~the~~ 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,~~ 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:

Filed with the City Clerk: _____

Passed by the City Council: _____

Published: _____

Effective Date: _____

Ordinance Number: _____

Rachel B. Turpin, City Attorney

Attachments: Exhibit A - Franchise Agreement Acceptance Form

DRAFT

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



Tukwila City Council Transportation & Infrastructure Committee – 2018 Work Plan

	Description	Qtr	Action or Briefing	Status
Transportation				
1.	42nd Avenue South Phase III/Gilliam Creek Culvert			
	Progress – updated information	1	B	7/9/18
	Authorize expenditure of additional budget in 412 fund	3	A	7/9/18
	Project Close-out	4	A	May move to 2019
2.	ADA Improvements			
	Bid award	3	A	
3.	Annual Overlay and Repair Program			
	2017 & 2018 Project Close-out	3	A	
	Pavement Management	2	B	
	Bid Award for 2018 Program	2	A	4/23/18
4.	53rd Avenue S (S 137th – S 144th St) & Water/Sewer/SSWM			
	Seattle City Light Agreement	1	A	5/14/18
	Bid Award	1	A	2/26/18
5.	Annual Bridge Inspections and Repairs			
	Bid Award	2	A	No Committee, under \$40k
	Project Closeout	4	A	
7.	Major Maintenance on 3 Bridges			
	Project Closeout	4	A	
8.	Road over BNRR Bridge Rehab			
	Project Closeout	4	A	
9.	TUC Ped/Bike Bridge			
	Project Closeout	4	A	
10.	S 144th St Phase II (42nd Ave S – TIB)			
	Project Closeout	4	A	
11.	Cascade View Safe Routes to School Phase II			
	Project Closeout	1	A	2/26/18
12.	Neighborhood Traffic Calming Program			
	Various activities/updates	1-4	A	Ongoing; gathering speed data
	Stop sign/Crosswalk Cost Overview	2	B	Complete
13.	Strander Blvd Extension Phase 3			
	Authorize grant application for Federal funds	1	A	3/26/18



Tukwila City Council Transportation & Infrastructure Committee – 2018 Work Plan

14.	Baker Boulevard Non-Motorized Improvements				
	Project closeout	3	A		
15.	BNSF Access				
	Briefing	3	B	Requested by Committee 5/29	
16.	OTHER				
	Grant Applications and Acceptances	1-4	A	Ongoing	
	Transportation Demand Management Programs Update	1-4	B	7/9/18	
	Surplus Equipment Resolution - Fleet				
	Tukwila International Boulevard Retrofit				
	2019-2020 Budget Components: Residential Street, Arterial Street, Public Works, Fleet, Water, Sewer, Surface Water	3-4		Priority Based Budgeting	
Utilities					
1.	58th Avenue South Water Main Replacement				
	Bid Award		A		
	Project closeout		A		
2.	CBD Sanitary Sewer Rehabilitation				
	Design 2018-A	1	A	3/26/18	
	Project closeout	4	A		
3.	Sewer Lift Station #2 Upgrades				
	Bid Award	3	A		
4.	GIS Inventory of Sewer System				
	2018 Contract	1	A	3/9/18	
5.	Annual Small Drainage Program				
	Closeout 2017	3	A		
	Design	1	A	3/26/18	
	Bid Award 2018	3	A		
6.	Tukwila 205 Levee Certification				
	Ongoing reporting		B		
7.	Chinook Wind				
	Ongoing reporting		B	Riverside residence. King County bought for restoration, mitigation site. King County doing design 2018.	
8.	Waste Management Contract				
9.	OTHER				
	Water Asset Management Briefing	1	B		



Tukwila City Council Transportation & Infrastructure Committee – 2018 Work Plan

	Loop Area Sewers Updates	1-4	B	Ongoing
	Briscoe Desimone Levee Updates	1-4	B	Ongoing.
	Macadam Road S. Water Upgrade Bid award		A	
	Annual sewer repair program	2-4	A	Ongoing
	Reclaimed water at golf course			Parks Dept. – Update 2018
	Riverton Creek Flapgate Removal			
	Franchise Agreements			Ongoing
10.	Standard Reports/Briefings	Frequency	Dept.	
	Facility Tours	As needed	PW	
	SCATBD	Monthly	CM Hougardy/Laurel	
	Committee Work Plan	2-4X	Council, Staff	
	Waste Management Update	Annual	PW	
	NPDES	Annual		