

ORDINANCE NO. 2860

AN ORDINANCE OF THE CITY OF ISSAQUAH, WASHINGTON, GRANTING TO SEATTLE SMSA LIMITED PARTNERSHIP D.B.A. VERIZON WIRELESS, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM CONSISTING OF SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF ISSAQUAH, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, REPEALING ORDINANCE NO. 2825 AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, Seattle SMA Limited Partnership d.b.a. Verizon Wireless (“Verizon Wireless”) has requested that the City of Issaquah (the “City”) grant it the right to construct, operate, and maintain a telecommunications system consisting of small wireless facilities within the public rights-of-way; and

WHEREAS, Verizon Wireless owns and operates telecommunications facilities, as defined under Chapter 12.60.020 of the IMC; and

WHEREAS, the City granted to Verizon Wireless a franchise on January 16, 2018 pursuant to Ordinance Number 2825 for a limited deployment of seven (7) small wireless facilities within the public ways of the City; and

WHEREAS, the City desires to repeal Ordinance Number 2825 and enter into a new franchise to reflect changes in City code and allowance for Verizon Wireless to utilize the public ways throughout the City and specifying the terms and conditions under which said use may be made; NOW, THEREFORE,

THE CITY COUNCIL OF THE CITY OF ISSAQUAH, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. Approval of Franchise. The terms and conditions governing the franchise specified in Attachment A to this Ordinance and incorporated herein by this reference is hereby approved.

Section 2. Repeal of Existing Franchise. Ordinance Number 2825 is hereby repealed.

Section 3. Deadline for Acceptance. The rights, privileges, and authority granted pursuant to this Ordinance shall take effect and be in force from and after the effective date of this Ordinance; provided, that Verizon Wireless accepts the terms and conditions prior to or within sixty (60) days after the effective date. Such written acceptance shall be accompanied by the certificates of insurance and additional insured endorsement, the establishment of a security fund, any applicable bonding requirements, and the reimbursement owed to the City.

Section 4. Severability. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance.

Section 5. Effective Date. Pursuant to RCW 35A.47.040, this Ordinance has been passed at least five (5) days after its first introduction and by a majority of the whole membership of the City Council at a regular meeting. This Ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

Passed by the City Council of the City of Issaquah, the 7th day of January, 2019.

Approved by the Mayor of the City of Issaquah, the 7th day of January, 2019.



MARY LOU PAULY, MAYOR

ATTEST/AUTHENTICATED:



CHRISTINE L. EGGERS, CITY CLERK

APPROVED AS TO FORM:



OFFICE OF THE CITY ATTORNEY

PUBLISHED: Jan. 11, 2019
EFFECTIVE DATE: Jan. 16, 2019
ORDINANCE NO.: 2860 / AB 7700

Exhibit A: Franchise Agreement

SUMMARY OF ORDINANCE NO. 2860

of the City of Issaquah, Washington

On the 7th day of January, 2019, the City Council of the City of Issaquah, passed Ordinance No. 2860. A summary of the content of said ordinance, consisting of the title and a summary of each section, provides as follows:

AN ORDINANCE OF THE CITY OF ISSAQUAH, WASHINGTON, GRANTING TO SEATTLE SMSA LIMITED PARTNERSHIP D.B.A. VERIZON WIRELESS, A NON-EXCLUSIVE FRANCHISE TO CONSTRUCT, OPERATE, AND MAINTAIN A TELECOMMUNICATIONS SYSTEM CONSISTING OF SMALL WIRELESS FACILITIES IN THE PUBLIC RIGHTS-OF-WAY OF THE CITY OF ISSAQUAH, WASHINGTON, PRESCRIBING CERTAIN RIGHTS, DUTIES, TERMS, AND CONDITIONS WITH RESPECT THERETO, REPEALING ORDINANCE NUMBER 2825 AND ESTABLISHING AN EFFECTIVE DATE.

The full text of this Ordinance will be mailed upon request.

DATED this 10th day of January, 2019.


CHRISTINE LEGGERS, CITY CLERK

**TELECOMMUNICATIONS FRANCHISE
WITH**

SEATTLE SMSA LIMITED PARTNERSHIP d.b.a. VERIZON WIRELESS

THIS TELECOMMUNICATIONS FRANCHISE (this “Franchise”) is entered into on _____, 20__, by and between the City of Issaquah (the “City”) and Seattle SMA Limited Partnership d.b.a. Verizon Wireless (“Grantee”).

WHEREAS, Grantee has requested that the City grant it the right to install, operate, maintain, and locate certain telecommunications facilities within the Public Ways of the City; and

WHEREAS, Grantee provides a broad range of telecommunications services and operates telecommunications facilities, as defined under Chapter 12.60.20 of the IMC; and

WHEREAS, the City granted to Grantee a franchise on January 16, 2018 (“Original Franchise”) for a limited deployment of 7 small wireless facilities within the Public Ways of the City; and

WHEREAS, the parties desire to terminate and replace that Original Franchise and revise it to reflect changes in City code and allowance for Grantee to utilize the Public Ways throughout the City;

WHEREAS, the City and Grantee desire to enter into an agreement authorizing Grantee to use the Public Ways throughout the City and specifying the terms and conditions under which said use may be made; and

NOW, THEREFORE, THE CITY AND GRANTEE AGREE AS FOLLOWS:

Section 1. Authority Granted.

A. **Grant.** The City hereby grants to Grantee, its heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege, and authority to construct, operate, maintain, restore replace, acquire, sell, lease its equipment and facilities within the Public Ways of the City. Public Ways means and includes any highway, street, alley, or other public right-of-way for motor vehicle travel under the jurisdiction and control of the City which has been acquired, established, dedicated or devoted to highway purposes now or hereafter owned by the City, but only to the extent of the City’s right, title, interest or authority to grant a license or franchise to occupy and the same for telecommunication facilities. Public Ways for the purpose of this Franchise do not include: (i) buildings, other City-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by the City, or similar facilities or property owned by or leased to the City, including, by way of example and not limitation, structures in the Public Ways such as utility poles and light poles and (ii) land dedicated for use which has not been approved and opened for use by the public.

B. **Limited Authorization.** The authority granted herein is a limited authorization to occupy and use the Public Ways throughout the City (the "Franchise Area"). The Grantee is authorized to place its Facilities in the Public Ways only consistent with this Franchise,

the Issaquah Zoning Code, the Comprehensive Plan, the Design and Construction Standards and the Issaquah Municipal Code (collectively the "Codes"). As described in Section 8, construction is not authorized without the appropriate City permits. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Public Ways of the City to the Grantee other than for the purpose of providing telecommunications services. Grantee hereby warrants that it expects to provide the following services within the City: small wireless network consisting of a collection of interrelated Small Wireless Facilities designed to deliver personal wireless services (the "Services").

C. **Small Wireless Facilities.** As used herein, "Small Wireless Facilities" or "Facilities" means a small wireless facility as defined in IMC Chapter 18.22. Equipment enclosures with air conditioning, battery backup with noise generating equipment are excluded from "Small Wireless Facilities".

D. **No Wireline Services.** This Franchise does not grant Grantee the right to install and operate wires and facilities to provide wireline broadband transmission services, whether provided by a third-party provider, Grantee, or a corporate affiliate of Grantee. Any entity that provides such wireline broadband transmission services must have an independent franchise to use the Public Ways outside of this Franchise. Further, this Franchise does not grant the right to offer cable internet services or Cable Services as those terms are defined in 47 U.S.C. § 522(6) by wireline transmission.

E. **No Access to City Owned Property.** No right to install any facility, infrastructure, wires, lines, cables, or other equipment, on any City property other than a Public Way, or upon private property without the owner's consent, or upon any City, public or privately-owned poles or conduits is granted herein. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in the Public Way of the City to Grantee other than for the purpose of providing the Services, or to subordinate the primary use of the right-of-way as a public thoroughfare. If Grantee desires to expand the Services provided within the City, it shall request a written amendment to this Franchise. If Grantee desires to use City owned property, including poles and structures within the Public Ways it shall enter into a separate lease or license agreement with the City.

F. **Terms Conditions, and Provisions of IMC Chapter 12.60 Incorporated by Reference.** The terms, conditions, and provisions of IMC Chapter 12.60, as currently written or hereinafter modified, are incorporated herein by reference. All rights granted hereunder are subject to the terms, conditions, and requirements of IMC Chapter 12.60 unless this Franchise specifically provides to the contrary. In the event that a conflict exists between the terms of this Franchise and the terms of IMC Chapter 12.60, the terms of this Franchise shall control.

Section 2. Term of Franchise. The term of this Franchise shall be for a period of five (5) years from the Effective Date, unless sooner terminated as provided in Section 21 hereof. This Franchise may be renewed pursuant to the provisions of IMC Section 12.60.190.

Section 3. Non-Exclusive Grant. This Franchise shall not in any manner prevent the City from entering into other similar agreements or franchises in, under, on, across, over, through, along or below any Public Ways of the City. Further, this Franchise shall in no way prevent or

prohibit the City from using any of its Public Ways or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvements, and dedication of the same as the City may deem fit, including the dedication, establishment, maintenance, and improvement of all new Public Ways.

Section 4. Location of Telecommunications Network Facilities.

A. **Location of Facilities.** Grantee may locate its Facilities anywhere within the Franchise Area consistent with the City's Design and Construction Standards and subject to the City's applicable Code requirements. Grantee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Grantee does not expand its Services beyond those described in Section 1.

B. **WSDOT.** To the extent that any Public Ways within the Franchise Area are part of the state highway system ("State Highways") and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Grantee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Grantee specifically agrees that:

1. any pavement trenching and restoration performed by Grantee within State Highways shall meet or exceed applicable WSDOT requirements;
2. any portion of a State Highway damaged or injured by Grantee shall be restored, repaired and/or replaced by Grantee to a condition that meets or exceeds applicable WSDOT requirements; and
3. without prejudice to any right or privilege of the City, WSDOT is authorized to enforce in an action brought in the name of the State of Washington any condition of this Franchise with respect to any portion of a State Highway.

Section 5. Relocation of Facilities.

A. **Relocation Requirement.** The City may require Grantee, and Grantee covenants and agrees, to protect, support, temporarily disconnect, relocate, remove, its Facilities within the Public Way when reasonably necessary for construction, alteration, repair, or improvement of the Public Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Public Ways and the establishment and improvement thereof, widening and improvement of existing Public Ways, street vacations, freeway construction, change or establishment of street grade, or the construction of any public improvement or structure by any governmental agency acting in a governmental capacity or as otherwise necessary for the operations of the City or other governmental entity, provided that Grantee shall in all such cases have the privilege to temporarily bypass in the authorized portion of the same Public Ways upon approval by the City, which approval shall not unreasonably be withheld or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Public Way improvement project, even if the project entails, in part, related work funded and/or performed by or for a third party, provided that such work is performed for the public benefit, and not primarily for the benefit of a private entity, and shall not include, without limitation, any other improvements or repairs undertaken by or for the sole benefit of third party

private entities. Collectively all such projects described in this Section 5.A shall be considered a “Public Improvement Project”. Except as otherwise provided by law, the costs and expenses associated with relocations or disconnections ordered pursuant to this Section 5.A shall be borne by Grantee. Nothing contained within this Franchise shall limit Grantee’s ability to seek reimbursement for relocation costs when permitted by RCW 35.99.060.

B. Locate Facilities. Upon request of the Public Works Director and in order to facilitate the design of the City street and Public Way improvements, Grantee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by the City, to excavate and expose its Facilities for inspection so that the location of the same may be taken into account in the design. The decision as to whether said Facilities need to be relocated in order to accommodate the City’s improvements shall be made by the Public Works Director upon review of the location and construction of Grantee’s Facilities.

C. Notice and Relocation Process. If the Public Works Director determines that the project may necessitate relocation of Grantee’s Facilities, the following process shall apply:

1. The City shall consult with the Grantee in the predesign phase of any Public Improvement Project in order to coordinate the project’s design with Grantee’s Facilities within such project’s area.

2. Grantee shall participate in predesign meetings until such time as (i) both parties mutually determine that Grantee’s Facilities will not be affected by the Public Improvement Project, or (ii) the City provides Grantee with written notice regarding relocation as provided in subsection 4 below.

3. Grantee shall, during the predesign phase, evaluate and provide comments to the City related to any alternatives to possible relocations. The City agrees to give any alternatives proposed by the Grantee full and fair consideration, but the final decision accepting or rejecting any specific alternative shall be within the City’s sole discretion.

4. The City shall provide Grantee with its decision regarding the relocation of Grantee’s Facilities as soon as reasonably possible, but in no event less than sixty (60) days prior to the commencement of the construction of such Public Improvement Project; provided, however that in the event that the provisions of a state or federal grant require a different notification period or process than that outlined in Section 5.C, the City shall notify the Grantee during the predesign meetings and the process mandated by the grant funding shall control.

5. After receipt of such written notice, Grantee shall relocate such Facilities to accommodate the Public Improvement Project consistent with the timeline provided by the City. Such timeline may be extended by a mutual agreement if necessitated by occurrence of an “act of God” or a delay by the City in approval of permits required to relocate Grantee’s Facilities (provided that such permit applications are submitted in a timely manner and are complete).

6. In the event of an emergency posing a threat to public safety or welfare, or in the event of an emergency beyond the control of the City which will result in severe

financial consequences to the City, which necessitates the relocation of Grantee's Facilities, Grantee shall relocate its Facilities within the time period specified by the City.

D. **Third Party Requests for Relocation.** The provisions of this Section shall in no manner preclude or restrict Grantee from making any arrangements it may deem appropriate when responding to a request for relocation of its Facilities by any person or entity other than the City, or a third party on behalf of the City, where the facilities to be constructed by said person or entity are not or will not become City-owned, operated or maintained facilities provided that such arrangements do not unduly delay a City construction project.

E. **Relocation - Third Party Structures.** If the request for relocation from the City originates due to a Public Improvement Project, in which structures or poles are either replaced or removed, then Grantee shall relocate or remove its Facilities as required by the City, and at no cost to the City, subject to the procedure in Section 5.C. Grantee acknowledges and agrees, that to the extent Grantee's Small Wireless Facilities are on poles owned by third parties the City shall not be responsible for any costs associated with requests arising out of a City Public Improvement Project.

F. **Contractor Delay Claims.** Grantee agrees to work cooperatively with the City, other franchisees and utilities and the City's third party contractor with respect to the Public Improvement Project. Upon a notification of a delay due to Grantee, Grantee agrees to work cooperatively with the City, other Grantees and utilities, and the City's third-party contractor to resolve such issues. If Grantee breaches its obligations under Section 5 with respect to relocating its Facilities within the Franchise Area, and to the extent such breach causes a delay in the work being undertaken by the City's third party contractor(s) that results in a claim by the third party contractor(s) for costs, expenses and/or damages that are directly caused by such delay and are legally required to be paid by the City (each, a "Contractor Delay Claim"), the City may at its sole option:

1. tender the Contractor Delay Claim to Grantee for defense and indemnification in accordance with Section 5.G and Section 14; or

2. require that Grantee reimburse the City for any such costs, expenses, and/or damages that are legally required to be paid by the City to its third-party contractor(s) as a direct result of the Contractor Delay Claim; provided that, if the City requires reimbursement by Grantee under this subsection, the City shall first give Grantee written notice of the Contractor Delay Claim and give Grantee the opportunity to work with the third-party contractor(s) to resolve the Contractor Delay Claim.

G. **Indemnification.** Grantee will indemnify, hold harmless, and pay the costs of defending the City, in accordance with the provisions of Section 14, against any and all claims, suits, actions, damages, or liabilities for delays on City construction projects caused by or arising out of the failure of Grantee to remove or relocate its Facilities in a timely manner; provided, that Grantee shall not be responsible for damages due to delays caused by circumstances beyond the control of Grantee or the negligence, willful misconduct, or unreasonable delay of the City.

H. **Joint Trenching.** In the case of relocation projects where the City hires and designates an independent contractor to accommodate and coordinate the conversion of overhead utilities within a City Public Improvement Project, if Grantee decides to participate in the joint trench opportunity then Grantee shall pay to the City Grantee's portion of the traffic control and trench costs, including excavation and other associated costs, trench bedding, and backfill commensurate with Grantee's proportionate share of trench usage. At least ninety (90) days prior to commencement of the City's trenching project, the City shall provide Grantee with an estimate of Grantee's proportionate share cost and the timeline for construction so that Grantee may determine if the joint trenching is a viable joint trench opportunity.

I. **City's Costs.** If Grantee fails, neglects, or refuses to remove or relocate its Facilities as directed by the City as described in this Section 5, except for in Section 5.D, then the City may perform such work or cause it to be done, and the City's costs shall be paid by Grantee pursuant to Section 11.

J. **Survival.** The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Grantee continues to have Facilities in the Public Ways.

Section 6. Undergrounding of Facilities.

A. Grantee acknowledges and agrees that if the City allows the placement of Small Wireless Facilities above ground the City may, at any time in the future, require the conversion of Grantee's aerial facilities to an underground installation or relocated at Grantee's expense if the existing poles on which Grantee's Facilities are located are designated for removal due to a Public Improvement Project as described in Section 5. This Franchise does not place an affirmative obligation on the City to allow the relocation of such Facilities on public property or in the Public Ways, nor does it relieve Grantee from any Code provision related to the siting of wireless facilities.

B. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Grantee's Facilities to remain above ground, then Grantee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Grantee, at no cost to the City.

C. Grantee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate. If the City requires undergrounding of wirelines (either telecommunications or electrical) and allows Grantee's Facilities to remain above ground, then Grantee shall cooperate with the City and modify the affected Facilities to incorporate the placement of wireline services underground and internal to the pole if the replacement pole is hollow (for example electrical and fiber) or otherwise consistent with a design plan agreed to between the City and Grantee, at no cost to the City.

D. Grantee shall not remove any underground Facilities that require trenching or other opening of the Public Ways, except as provided in this Section 6.C. Grantee may remove

any underground Facilities from the Public Ways that have been installed in such a manner that it can be removed without trenching or other opening of the Public Ways, or if otherwise permitted by the City. When the City determines, in the City's reasonable judgment, that Grantee's underground Facilities must be removed in order to eliminate or prevent a hazardous condition, Grantee shall remove such Facilities at Grantee's sole cost and expense. Grantee must apply and receive a permit, pursuant to Section 8.C, prior to any such removal of underground Facilities from the Public Ways and must provide as-built plans and maps pursuant to Section 7.A.

E. The provisions of this Section 6 shall survive the expiration, revocation, or termination of this Franchise. Nothing in this Section 6 shall be construed as requiring the City to pay any costs of undergrounding any of the Grantee's Facilities.

Section 7. Grantee Maps and Records.

A. Grantee shall provide the City with accurate copies of all as-built plans, maps, and records for all existing Small Wireless Facilities in the public rights of way. These plans, maps, and records shall be provided at no cost to the City, and shall conform to the requirements of IMC Section 12.60.440. At such time as Grantee develops or employs Geographic Information System ("GIS") technology, Grantee shall submit information in digital GIS format, showing the location of its Facilities. Grantee shall provide the City with updated maps within thirty (30) days after written request from the City.

B. Within thirty (30) days of a written request from the Public Works Director, Grantee shall furnish the City with information sufficient to reasonably demonstrate that Grantee has complied with all applicable requirements of IMC Chapter 12.60 and IMC Chapter 18. 22 and this Franchise.

C. All books, records, maps and other documents, maintained by Grantee with respect to its Facilities within the Public Ways shall be made available for inspection by the City at reasonable times and intervals; provided, however, that nothing in this Section shall be construed to require Grantee to violate State or federal law regarding subscriber privacy, nor shall this Section be construed to require Grantee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature.

D. Nothing in this Franchise prohibits the City from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and the City shall not be liable to Grantee for compliance with any law or court order requiring the release of public records. The City shall comply with any injunction or court order obtained by Grantee that prohibits the disclosure of any such confidential records; however, in the event a higher court overturns such injunction or court order and such higher court action is or has become final and non-appealable, Grantee shall reimburse the City for any fines or penalties imposed for failure to disclose such records, due to Grantee's judicial intervention, as required hereunder within sixty (60) days of a request from the City.

E. On an annual basis, upon thirty (30) days prior written notice, the City shall have the right to conduct an independent audit of Grantee's records reasonably related to the administration or enforcement of this Franchise.

Section 8. Work in the Public Ways.

A. All work performed shall be in compliance with all local, State, and federal laws. Permits must be obtained from the City and if applicable, the State and or federal agencies for any work being performed in the Public Ways.

B. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within the Public Ways and other public properties so as to interfere as little as is reasonably possible with the free passage of traffic (including but not limited to motor vehicles, pedestrians, and bicycles) and the free use of adjoining property, and Grantee shall at all times post and maintain proper site safety including but not limited to the use of barricades, traffic control devices, and temporary paving, and make reasonable efforts to comply with all applicable safety and American Disability Act regulations during such period of construction as required by IMC Section 12.60.430, general ordinances of the City or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems, and federal regulations.

C. Whenever Grantee shall commence any work within a Public Way, regardless of whether excavation is required, it shall apply to the City for a permit from the City of Issaquah in accordance with the Issaquah Municipal Code. Grantee shall file plans or maps with the City showing the proposed location of its Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any Public Way without said permit, except as otherwise provided in this Franchise or IMC Chapter 12.60. During the progress of the work, Grantee shall not unnecessarily obstruct the passage or proper use of the Public Ways, and all work by Grantee in any area covered by this Franchise and as described in this Section shall be performed in accordance with applicable City standards and specifications.

D. Grantee or any person acting on its behalf shall use suitable materials, including but not limited to, barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such ways or property.

E. Prior to doing any work in the Public Ways, Grantee shall follow established procedures, including contacting the Utility Notification Center in Washington and comply with all applicable State statutes regarding the One Call Locator Service pursuant to RCW 19.122. Further, upon request, by the City or a third party, Grantee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. The City shall not be liable for any damages to Grantee's Facilities or for interruptions in service to Grantee's customers that are a direct result of Grantee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether the City issued a permit.

F. Grantee shall provide the City with at least ten (10) working days' advance notice prior to commencing any non-emergency work.

G. Grantee shall provide a notice of entry to private property or streets, or public easements adjacent to or on such private property, as required by and in accordance with applicable Code.

H. Grantee agrees to comply with the cooperation requirements related to construction activities set forth in IMC Section 12.60.510.

I. Grantee, in accordance with applicable federal, State and local safety requirements, shall, at all times, employ ordinary care and shall install and maintain and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injury or nuisance to the public. All structures and all lines, equipment and connections in, over, under and upon the streets, sidewalks, alleys and Public Ways or places of a permit area, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in accordance with the approved plans. Grantee shall endeavor to maintain all equipment lines and facilities in an orderly manner. Additionally, Grantee shall keep its Facilities free of debris and anything of a dangerous, noxious or offensive nature or which would create a hazard or undue vibration, heat, noise or any interference with City services. The City reserves the general right to see that the system of Grantee is constructed and maintained in a safe condition. If a violation of the National Electrical Safety Code, other applicable regulation, or an otherwise unsafe condition is found to exist by the City, the City will establish a reasonable time for a Grantee to make necessary repairs, unless the City determines that the unsafe condition requires immediate resolution which in such case the City can require the Grantee to immediately repair or in the absence of the Grantee's availability make the repairs itself. If the repairs are not made within the established time frame or when immediate repair is required, the City may make the repairs itself or have them made and collect all reasonable costs thereof from a Grantee. All costs, including administrative costs, incurred by the City in repairing any unsafe conditions shall be borne by Grantee and reimbursed to the City pursuant to Section 11.

J. On notice from the City that any work is being performed contrary to the provisions of this Franchise, or in an unsafe or dangerous manner as determined by the City, or in violation of the terms of any applicable permit, laws, regulations, ordinances, or standards, the work may immediately be stopped by the City. The stop work order shall:

1. Be in writing;
2. Be given to the person doing the work or posted on the work site;
3. Be sent to Grantee by overnight delivery;
4. Indicate the nature of the alleged violation or unsafe condition; and
5. Establish conditions under which work may be resumed.

K. Grantee's contractors and subcontractors shall be licensed and bonded in accordance with the City's ordinances, regulations, and requirements. Further, Grantee's contractors and subcontractors that perform work in the Public Ways must include the City as an additional insured on their insurance policies consistent with the requirements of Section 15 below and must indemnify the City consistent with the requirements of Section 14 below. Work by

contractors and subcontractors are subject to the same restrictions, limitations, and conditions as if the work were performed by Grantee. Grantee 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 applicable law.

L. Grantee shall meet with the City and other franchise holders and users of the Public Ways upon written notice as determined by the City, to schedule and coordinate construction in the Public Way. All construction locations, activities, and schedules shall be coordinated, as ordered by the City to minimize public inconvenience, disruption or damages.

M. Unless directly and proximately caused by the sole negligence, willful misconduct, or criminal acts of the City, the City shall not be liable for any damage to or loss of any Facility within the Public Ways of the City as a result of or in connection with any public works, public improvements, construction, excavation, grading, filling, or work of any kind on the Public Ways by or on behalf of the City.

N. Grantee may trim trees upon and overhanging on Public Ways, streets, alleys, sidewalks, and other public places of the City so as to prevent the branches of such trees from coming in contact with Grantee's wires and cables. The right to trim trees shall only apply to the extent necessary to protect above ground Facilities. Grantee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Grantee shall be responsible for all debris removal from such activities. All trimming is to be done after the explicit prior written notification and approval of the City and at the expense of Grantee. Nothing herein grants Grantee any authority to act on behalf of the City, to enter upon any private property, or to trim any tree or natural growth not owned by the City. Grantee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Grantee's actions. Grantee shall indemnify, defend and hold harmless the City from third-party claims of any nature arising out of any act or negligence of Grantee with regard to tree and/or natural growth trimming, damage, and/or removal. Grantee shall reasonably compensate the City or the property owner for any damage caused by trimming, damage, or removal by Grantee. Grantee may contract for such services, however, any firm or individual so retained shall receive approval from the City prior to commencing such trimming. All tree trimming shall be in accordance with IMC Section 12.60.610.

Section 9. Restoration after Construction.

A. Grantee shall, at its own expense, promptly remove any obstructions from the Public Ways and restore such Public Ways in accordance with applicable City standards. If weather or other conditions do not permit the complete restoration required by this Section 9, Grantee shall temporarily restore the Public Ways. Such temporary restoration shall be at Grantee's sole expense and Grantee shall promptly undertake and complete the required permanent restoration when the weather or other conditions no longer prevent such permanent restoration. Grantee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the Public Ways or other affected area at its sole cost and expense according to the time and terms specified in the permit issued by the City. All work by Grantee

pursuant to this Section shall be performed in accordance with applicable City standards and warranted for a period of 2 years.

B. Grantee shall use suitable barricades, flags, flaggers, lights, flares and other measures as required for the safety of all members of the general public and to prevent injury or damage to any person, vehicle or property by reason of such work in or affecting such Public Ways.

C. The Public Works Director shall be responsible for inspection and final approval of the condition of the Public Ways following any construction and restoration activities therein. All survey monuments which are to be disturbed or displaced by such work shall be referenced and restored, as per WAC 332-120, as the same now exists or may hereafter be amended, and all pertinent federal, State and local standards and specifications.

D. In the event Grantee does not repair a Public Way or an improvement in or to a Public Way within the time agreed to with the Public Works Director, the City may upon ten (10) days' written notice to Grantee repair the damage and shall be reimbursed its actual cost within thirty (30) days of submitting an invoice to Grantee.

E. The provisions of this Section 9 shall survive the expiration, revocation, or termination of this Franchise.

Section 10. Emergency Work.

A. In the event of any emergency in which any of Grantee's Facilities located in, above, or under any Public Way breaks, are damaged, caused or contributed to a condition that appears to substantially impair the lateral support of the Public Ways, has unreasonably interfered with the use of the Public Ways, or if Grantee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual or entity, Grantee shall immediately take the proper emergency measures to repair its Facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Grantee from the requirement of notifying the City of the emergency work and obtaining any permits necessary for this purpose after the emergency work. Grantee shall notify the City by telephone promptly upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the City's Public Works Department is open for business.

B. The City retains the right and privilege to remove any Facilities located within the Public Ways of the City, as the City may determine to be necessary, appropriate or useful in response to any public health or safety emergency. The City shall notify Grantee by telephone promptly upon learning of the emergency and shall exercise reasonable efforts to avoid an interruption of Grantee's service. The City shall not be liable to Grantee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of the City's actions under this Section 10.

C. Whenever the construction, installation or excavation of Facilities authorized by this Franchise has caused or contributed to a condition that appears to substantially

impair the lateral support of the adjoining street or public place, or endangers the public, an adjoining public place, street utilities or City property, the Public Works Director may direct Grantee, at Grantee's own expense, to take reasonable action to protect the public, adjacent public places, City property or street utilities, and such action may include compliance within a prescribed time. In the event that Grantee fails or refuses to promptly take the actions directed by the City, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before the City can timely contact Grantee to request Grantee effect the immediate repair, the City may access the Facilities and take such reasonable actions as are necessary to protect the public, the adjacent streets, or street utilities, or to maintain the lateral support thereof, or reasonable actions regarded as necessary safety precautions, and Grantee shall be liable to the City for the costs thereof.

D. The provisions of this Section 10 shall survive the expiration, revocation, or termination of this Franchise.

Section 11. Recovery of Costs.

A. Grantee shall be subject to all permit fees associated with activities undertaken through the authority granted in this Franchise or under the laws of the City. Where the City incurs reasonable costs and expenses for review, inspection, or supervision of activities undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, including but not limited to attorneys, consultants, City Staff and City Attorney's office, Grantee shall reimburse the City directly for any and all costs after receiving an invoice documenting said costs and expenses in sufficient detail to demonstrate that they were reasonably necessary to perform the aforementioned actions. As used in this Agreement, the word "costs" or "expenses" shall mean the actual, reasonable and documented costs or expenses incurred.

B. In addition to the above, Grantee shall promptly reimburse the City for any and all costs the City reasonably incurs in response to any emergency involving Grantee's Facilities, including but not limited to such work performed pursuant to Section 10.

C. Grantee shall reimburse the City within thirty (30) days of submittal by the City of an itemized billing for reasonably incurred costs, itemized by project, for Grantee's proportionate share of all actual, identified expenses incurred by the City in planning, constructing, installing, repairing, altering, or maintaining any City facility as the result of the presence in the Public Ways of Grantee's Facilities. Such costs and expenses shall include but not be limited to Grantee's proportionate cost of City personnel assigned to oversee or engage in any work in the Public Ways as the result of the presence of Grantee's Facilities in the Public Ways. Such costs and expenses shall also include Grantee's proportionate share of any time spent reviewing construction plans in order to either accomplish the relocation of Grantee's Facilities or the routing or rerouting of any utilities so as not to interfere with Grantee's Facilities.

D. The time of City employees shall be charged at their respective rate of salary, including overtime if applicable, plus benefits and reasonable overhead. Any other costs will be billed proportionately on an actual cost basis. All billings will be itemized so as to specifically identify the costs and expenses for each project for which the City claims

reimbursement. A charge for the actual costs incurred in preparing the billing may also be included in said billing. The billing may be on an annual basis, but the City shall provide Grantee with the City's itemization of costs at the conclusion of each project for information purposes.

Section 12. Reservation of Rights.

A. Grantee hereby warrants that its operations as authorized under this Franchise are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Franchise, other than as described herein. The City hereby reserves its right to impose a franchise fee on Grantee if Grantee's operations as authorized by this Franchise change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Grantee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Grantee from challenging any such new fee or separate agreement under applicable federal, State, or local laws.

B. Grantee stipulates and agrees that certain of its business activities are subject to taxation as a telephone business and that Grantee shall pay to the City the rate applicable to such taxable services under Issaquah Municipal Code Chapter 5.32, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Issaquah Municipal Code Chapter 5.32 shall control. In that event, the City may not enforce remedies under Section 23 or commence a forfeiture or revocation process pursuant to Section 21 until the dispute is finally resolved either consistent with Issaquah Municipal Code Chapter 5.32 or by judicial action and then only if the Grantee does not comply with such resolution. The parties agree however, that nothing in this Franchise shall limit the City's power of taxation as may exist now or as later imposed by the City. This provision does not limit the City's power to amend Issaquah Municipal Code Chapter 5.32 as may be permitted by law.

Section 13. Small Wireless Facilities.

A. **City Retains Approval Authority.** The City shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, including IMC 12.60 and IMC 18.22, as now exist or hereinafter amended, consistent with 47 U.S.C. § 253, 47 U.S.C. § 332(c)(7) and the laws of the State of Washington, the location, elevation, manner of construction, and maintenance of any Small Wireless Facilities by Grantee, and Grantee shall promptly conform with all such requirements, unless compliance would cause Grantee to violate other requirements of law. This Franchise does not prohibit the City from exercising its rights under federal, state or local law to deny or give conditional approval to an application for a permit to construct any individual Small Wireless Facility.

B. **City Approvals and Permits.** The granting of this Franchise is not a substitute for any other City required approvals to construct Grantee's Facilities in the Public Ways ("City Approvals"). The parties agree that such City Approvals (except permits as described in Section 8.C) are not considered use permits, as that term is defined in RCW 35.99.010. These City Approvals do not grant general authorization to enter and utilize the Public Ways but rather grant Grantee permission to build its specific Small Wireless Facilities. Therefore, City Approvals are

not subject to the thirty (30) day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating the entire City as the Franchise Area. Such City Approvals shall be issued consistent with the Codes, state and federal laws governing wireless communication facility siting and shall be in addition to any permits required under Section 8.C. This Section does not affect the thirty (30) day issuance requirement described in RCW 35.99.030 required for use permits described in Section 8.C, including but not limited to right of way use permits and traffic control permits.

C. **Utilization of Existing Infrastructure.** Grantee shall utilize existing infrastructure in the City for the placement of its Facilities, unless a new pole is permitted consistent with the requirements of IMC Chapter 18.22. This Section 13 does not place an affirmative obligation on the City to allow the placement of Small Wireless Facilities on City-owned infrastructure or property, nor does it relieve Grantee from any Code provision related to the siting of wireless facilities. If a new pole is permitted consistent with the requirements of IMC Chapter 18.22, Grantee shall enter into a separate site-specific agreement with the City pursuant to RCW 35.21.860.

D. **Concealment.** Grantee shall construct its Facilities consistent with the concealment or stealth requirements as required by the Codes or in the applicable permit(s), in order to minimize the visual impact of such Facilities.

E. **Eligible Facilities Requests.** The parties acknowledge that it is the intent of this Franchise to provide general authorization to use the Public Ways for Small Wireless Facilities. The designs approved by the City for the installation of Small Wireless Facilities, including the dimensions and number of antennas and equipment boxes and the pole height are intended and stipulated to be concealment features when considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. § 1455(a).

F. **Inventory.** Grantee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Grantee shall provide to the City a copy of the inventory report no later than one hundred eighty (180) days after the Effective Date of this Franchise, and shall be updated within thirty (30) days of a reasonable request by the City. The inventory report shall include GIS coordinates, date of installation, type of pole used for installation, description/type of installation for each Small Wireless Facility installation and photographs taken before and after the installation of the Small Wireless Facility and taken from the public street. Small Wireless Facilities that are considered Deactivated Facilities, as described in Section 17.D, shall be included in the inventory report and Grantee shall provide the same information as is provided for active installations as well as the date the Facilities were deactivated and the date the Deactivated Facilities were removed from the Public Way. The City shall compare the inventory report to its records to identify any discrepancies, and the parties will work together in good faith to resolve any discrepancies. Grantee is not required to report on future inventory reports any Deactivated Facilities which were removed from the Public Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

G. **Unauthorized Facilities.** Any Small Wireless Facilities installations in the City Public Way that were not authorized under this Franchise or other required City Approval

("Unauthorized Facilities") will be subject to the payment of an Unauthorized Facilities charge by Grantee. The City shall provide written notice to Grantee of any Unauthorized Facilities identified by City staff and Grantee shall have sixty (60) days thereafter in which to either (i) establish that the site was authorized, or (ii) submit a complete application to the City for approval of the Unauthorized Facilities. Failure to do either of the foregoing within such 60-day period will result in the imposition of an Unauthorized Facilities charge in the amount of One Thousand and 00/100 Dollars (\$1,000.00) per Unauthorized Facility, per day starting on the sixty-first (61st) day until such time as Grantee has obtained approval for the Unauthorized Facilities or has otherwise removed such Facilities. If the City does not approve the application for such Unauthorized Facilities and Grantee is unsuccessful in an appeal (if an appeal is requested), then Grantee shall remove the Unauthorized Facilities from the City's Public Way within thirty (30) days after the expiration of all appeal periods for such denial. This Franchise remedy is in addition to any other remedy available to the City at law or equity.

H. **Graffiti Abatement.** As soon as practical, but not later than fourteen (14) days from the date Grantee receives notice or is otherwise aware, Grantee shall remove all graffiti on any of its Small Wireless Facilities of which it is the owner of the pole or structure or on the Small Wireless Facilities themselves attached to a third-party pole (i.e. graffiti on the shrouding protecting the radios). The foregoing shall not relieve Grantee from complying with any City graffiti or visual blight ordinance or regulation.

I. **Emissions Reports.**

1. Grantee is obligated to comply with all laws relating to allowable presence of or human exposure to Radiofrequency Radiation ("RFs") or Electromagnetic Fields ("EMFs") on or off any poles or structures in the Public Ways, including all applicable FCC standards, whether such RF or EMF presence or exposure results from the Small Wireless Facility alone or from the cumulative effect of the Small Wireless Facility added to all other sources operated by Grantee or on behalf of Grantee on or near the specific pole or structure.

2. Grantee must provide to the City the results of an emissions report (the "Emissions Report") from a licensed professional engineer analyzing whether RF and EMF emissions at the proposed Small Wireless Facility locations would comply with FCC standards. Grantee may provide one Emissions Report within the same batch of applications if Grantee is using the same Small Wireless Facility configuration for all installations within that batch or may submit one Emissions Report for each subbatch installation identified in the batch.

3. Nothing in this Franchise prohibits the City from requiring periodic testing of Grantee's Facilities. The City may inspect any of Grantee's Facilities and equipment located in the Public Ways. If the City discovers that the emissions from a Facility exceeds the FCC standards, then the City may order Grantee to immediately turn off the Facility until the emissions exposure is remedied. Such notification shall be made orally by calling 1-800-264-6620. and by written notice pursuant to Section 27. Grantee is required to promptly turn off the Facility no later than forty-eight (48) hours after receipt of notice pursuant to Section 27. If Grantee's Facilities are found to exceed FCC standards, then Grantee shall reimburse the City for any costs incurred by the City for testing the Facility and providing notice as described in Section 11.C and Section 11.D.

J. **Interference with Public Facilities.** Grantee's Small Wireless Facilities shall not physically interfere, or cause harmful interference (as defined in 47 C.F.R. Section 15.3(m)) with any City operations (including, but not limited to, traffic lights, public safety radio systems, or other City communications infrastructure), or the existing PSERN (or its successor entity) communications operations or equipment, or any other emergency communications entity, as long as such equipment is operating in accordance with applicable laws, regulations and manufacturer specifications. If the City determines that the Small Wireless Facilities cause such interference, Grantee shall respond to the City's request to address the source of the interference as soon as practicable, but in no event later than forty-eight (48) hours after receipt of notice. The City may require, by written notice, that Grantee power down specific Small Wireless Facilities, or portion thereof, which cause such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within ninety (90) days after receipt of such written notice requiring Grantee to power down its Facility, Grantee has not abated such interference, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 13G or removal by the City consistent with Section 10.

K. **Interference with Other Facilities.** Grantee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of utilities and other grantees within the Public Ways. Grantee shall comply with the rules and regulations of the Federal Communications Commission regarding radio frequency interference when siting its Small Wireless Facilities within the Franchise Area. Grantee, in the performance and exercise of its rights and obligations under this Franchise shall not physically or technically interfere in any manner with the existence and operation of any and all existing utilities, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliners, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as expressly permitted by applicable law or this Franchise, as long as such equipment is operating in accordance with applicable laws, regulations and manufacturer specifications.

Section 14. Indemnification.

A. Grantee hereby releases, covenants not to bring suit and agrees to indemnify, defend and hold harmless the City, its officers, officials, employees and agents from any and all claims, costs, judgments, awards or liability to any person arising from injury, sickness, or death of any person or damage to property:

1. For the alleged or actual negligent acts or omissions of Grantee, its agents, servants, officers or employees;
2. By virtue of Grantee's exercise of the rights granted by this Franchise;
3. By virtue of the City's permitting Grantee's use of the City's Public Way or other public property;

4. Based upon the City's inspection or lack of inspection of work performed by Grantee, its agents and servants, officers or employees in connection with work authorized on the Facilities or property over which the City has control, pursuant to this Franchise or pursuant to any other permit or approval issued in connection with this Franchise;

5. Arising as a result of the alleged or actual negligent acts or omissions of Grantee, its agents, servants, officers or employees in barricading, instituting trench safety systems or providing other warnings of any excavation, construction, or work upon Grantee's Facilities, in any Public Way, or other public place in performance of work or services permitted under this Franchise;

6. Based upon radio frequency emissions or radiation emitted from Grantee's equipment, if any, located within the Public Way, regardless of whether Grantee's equipment complies with applicable federal statutes and/or FCC regulations related thereto.

B. Grantee's indemnification obligations pursuant to Section 14.A shall include indemnifying the City for actions brought by Grantee's own employees and the employees of Grantee's agents, representatives, contractors, and subcontractors even though Grantee might be immune under Title 51 RCW from direct suit brought by such an employee. It is expressly agreed and understood that this indemnification for actions brought by the aforementioned employees is limited solely to claims against the City arising by virtue of Grantee's exercise of the rights set forth in this Franchise. The obligations of Grantee under this Section 14.B have been mutually negotiated by the parties hereto, and Grantee acknowledges that the City would not enter into this Franchise without Grantee's waiver thereof. To the extent required to provide this indemnification and this indemnification only, Grantee waives its immunity under Title 51 RCW as provided in RCW 4.24.115.

C. Except to the extent that damage or injury arises from the sole negligence or willful misconduct of the City, its officers, officials and employees, the obligations of Grantee under the indemnification provisions of this Section 14 and any other indemnification provision herein shall apply regardless of whether liability for damages arising out of bodily injury to persons or damages to property were caused or contributed to by the concurrent negligence of the City, its officers, officials and employees and the Grantee. Notwithstanding the proceeding sentence, to the extent the provisions of RCW 4.24.115 are applicable, the parties agree that the indemnity provisions hereunder shall be deemed amended to conform to said statute and liability shall be allocated as provided therein. This waiver has been mutually negotiated by the parties.

D. Inspection or acceptance by the City of any work performed by Grantee at the time of completion of construction shall not be grounds for avoidance of any of these covenants of indemnification. Provided that Grantee has been given prompt written notice by the City of any such claim, said indemnification obligations shall extend to claims which are not reduced to a suit and any claims which may be compromised prior to the culmination of any litigation or the institution of any litigation. The City has the right to defend or participate in the defense of any such claim, and has the right to approve any settlement or other compromise of any such claim, provided that Grantee shall not be liable for such settlement or other compromise unless it has consented thereto.

E. The City shall promptly notify Grantee of any claim or suit and request in writing that Grantee indemnify the City. Grantee may choose counsel to defend the City subject to this Section 14E. City's failure to so notify and request indemnification shall not relieve Grantee of any liability that Grantee might have, except to the extent that such failure prejudices Grantee's ability to defend such claim or suit. In the event that Grantee refuses the tender of defense in any suit or any claim, as required pursuant to the indemnification provisions within this Franchise, and said refusal is subsequently determined by a court having jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, Grantee shall pay all of the City's reasonable costs for defense of the action, including all expert witness fees, costs, and attorney's fees, and including costs and fees incurred in recovering under this indemnification provision. If separate representation to fully protect the interests of both parties is necessary, such as a conflict of interest between the City and the counsel selected by Grantee to represent the City, then upon the prior written approval and consent of Grantee, which shall not be unreasonably withheld, the City shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof, and Grantee shall pay the reasonable fees and expenses of such separate counsel, except that Grantee shall not be required to pay the fees and expenses of separate counsel on behalf of the City for the City to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. The City's fees and expenses shall include all out-of-pocket expenses, such as consultants and expert witness fees, and shall also include the reasonable value of any services rendered by the counsel retained by the City but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided the City by Grantee. Each party agrees to cooperate and to cause its employees and agents to cooperate with the other party in the defense of any such claim and the relevant records of each party shall be available to the other party with respect to any such defense.

F. In the event that Grantee refuses the tender of defense in any suit or any claim, said tender having been made pursuant to this Section, and said refusal is subsequently determined by a court having competent jurisdiction (or such other tribunal that the parties shall agree to decide the matter), to have been a wrongful refusal on the part of Grantee, then if Grantee does not promptly accept the tender of defense, Grantee shall pay all of the City's reasonable costs for defense of the action, including, if incurred, all reasonable expert witness fees, and reasonable attorneys' fees, and the reasonable costs of the City, and reasonable attorneys' fees of recovering under this Subsection.

G. Notwithstanding any other provisions of this Section, Grantee assumes the risk of damage to its Facilities located in the Public Way and upon City-owned property from activities conducted by the City, its officers, officials, agents, employees, volunteers, and contractors, except to the extent any such damage or destruction is caused by or arises from any willful misconduct or criminal actions on the part of the City, officers, officials, agents, employees, volunteers, and contractors. In no event shall the City be liable for any indirect, incidental, special, consequential, exemplary, or punitive damages, including by way of example and not limitation lost profits, lost revenue, loss of goodwill, or loss of business opportunity in connection with its performance or failure to perform under this Franchise. Grantee releases and waives any and all such claims against the City, its officers, officials, agents, employees, volunteers, and contractors. Grantee further agrees to indemnify, hold harmless and defend the City against any claims for damages, including, but not limited to, business interruption damages and lost profits, brought by

or under users of Grantee's Facilities as the result of any interruption of service due to damage or destruction of Grantee's Facilities caused by or arising out of activities conducted by the City, its officers, officials, employees, and agents except to the extent any such damage or destruction is caused by or arises from the sole negligence or any willful misconduct, or criminal actions on the part of the City, its officers, officials, employees and agents.

H. The provisions of this Section 14 shall survive the expiration, revocation, or termination of this Franchise.

Section 15. Insurance.

A. Grantee shall procure and maintain for the duration of the Franchise, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of the rights, privileges and authority granted hereunder to Grantee, or its employees. Grantee shall provide an insurance certificate including the City, its officers, elected officials, and employees, as additional insureds as their interest may appear under this Franchise, to the City at the time of execution pursuant to Section 38, and such insurance certificate shall evidence:

B. Commercial general liability insurance written on an occurrence basis, with total limits of \$5,000,000 per occurrence for bodily injury (including death) and for damage to property, and \$5,000,00.00 general aggregate including premises-operations, explosions and collapse hazard, underground hazard and products/completed operations.

C. Automobile liability for owned, non-owned and hired vehicles with a limit of \$3,000,000.00 combined single limit for each accident for bodily injury and property damage;

D. Worker's compensation within statutory limits and employer's liability insurance with limits of \$1,000,000 each accident/disease/policy limit;

E. Pollution liability shall be in effect throughout the entire Franchise term, with a limit of one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) in the aggregate.

F. Excess Umbrella liability policy with limits of \$5,000,000 per occurrence and in the aggregate.

G. The liability insurance policies required by this Section shall be maintained by Grantee throughout the term of this Franchise, and such other period of time during which Grantee is operating without a franchise or is engaged in the removal of its Facilities. The insurance policies, with the exception of Workers' Compensation and Employer's Liability obtained by Grantee shall include the City, its officers, officials, and employees ("Additional Insureds") as additional insured as their interests may appear under this Franchise, with regard to activities performed by or on behalf of Grantee. Payment of deductibles or self-insured retentions shall be the sole responsibility of Grantee. Payment of deductibles and self-insured retentions shall be the sole responsibility of Grantee. The insurance certificate required by this Section shall contain a clause stating that coverage shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability. Grantee's

insurance shall be primary insurance with respect to the City, its officers, officials, and employees. Any insurance maintained by the City, its officers, officials, and employees shall be in excess of Grantee's insurance and shall not contribute with it.

H. Upon receipt of notice from its insurer(s) Grantee shall use commercially reasonable efforts to provide the City with thirty (30) days prior written notice of any cancellation of any insurance coverage required herein. Within thirty (30) days after receipt by the City of any insurance cancellation Grantee shall obtain and furnish to the City evidence of replacement insurance meeting the requirements of this Section.

I. Maintenance of insurance as required by this Franchise shall not be construed to limit the liability of Grantee to the coverage provided by such insurance or otherwise limit the City's recourse to any remedy available at law or in equity.

J. As of the Effective Date of this Franchise, Grantee is not self-insured. Should Grantee wish to become self-insured at the levels outlined in this Franchise at a later date, Grantee must provide the City with thirty (30) days advanced written notice of its intent to self-insure. Grantee shall comply with the following: (i) provide the City, upon request, a copy of Grantee's most recent audited financial statements; (ii) Grantee is responsible for all payments within the self-insured retention; and (iii) Grantee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

K. The City may review all insurance limits once every calendar year during the Term, and may make reasonable adjustments in the limits upon thirty (30) days' prior written notice to Grantee. Grantee shall then issue a certificate of insurance to the City showing compliance with these adjustments.

Section 16. Impermissible Facilities.

A. Within thirty (30) days following written notice from the City, Grantee shall, at its own expense, remove any impermissible Facilities from the Public Ways. A Facility is impermissible and subject to removal in the following circumstances:

1. Upon expiration or termination of this Franchise.
2. Upon abandonment of a Facility within the Public Ways. Such property shall be deemed abandoned if Grantee does not respond within 120 days of notice of abandonment from the City.
3. If the Facility was constructed or installed without the prior grant of a franchise.
4. If the Facility was constructed or installed without the prior issuance of a required permit, however in such situation the process in Section 13.G shall apply.
5. If the Facility was constructed or installed at a location not permitted by the Franchise, however in such situation the process in Section 13.G shall apply.

B. Notwithstanding Section 16A, the City may, in its sole discretion, allow Grantee to abandon its Facilities in place. No Facilities of any type may be abandoned in place without the express written consent of the City. Any plan for abandonment or removal of a Grantee's Facilities must be first approved by the Public Works Director, and all necessary permits must be obtained prior to such work. Upon approved permanent abandonment of the Facilities, the Facilities shall become that of the City, and Grantee shall submit to the Public Works Director an instrument in writing, to be approved by the City Attorney, transferring to the City the ownership of such property.

C. The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise and for so long as Grantee has Facilities in Public Ways.

Section 17. Abandoned & Deactivated Facilities

A. If Grantee has determined to discontinue its operations in the City and Grantee determines it does not want to retain the physical infrastructure of such Facilities, then it shall submit to the City, within ninety (90) days of the planned date for discontinuance of operation, a proposal and instruments for transferring ownership of its Facilities to the City. If Grantee proceeds under this clause, the City may at its option:

1. Purchase the Facilities at a mutually determined price or Grantee may seek bids from other persons; or

2. Require Grantee, at its own expense, to remove the Facilities.

B. Facilities which fail to comply with Section 17A and which, for 120 days, remains unused shall be deemed to be abandoned. Abandoned Facilities are deemed to be a nuisance. After the lapsing of such 120 days and upon 30 days' notice to Grantee, the City may exercise any remedies or rights it has at law or in equity, including but not limited to:

1. Abating the nuisance;

2. Requiring removal of the Facilities at Grantee's expense;

3. Removing abandoned Facilities in conjunction with a proposed construction project; or

4. Allow Grantee to abandon its Facilities in place consistent with Section 16.B above.

C. Any costs incurred by the City in removing the Facilities shall be reimbursed by Grantee. Nothing contained within this Section 17 shall prevent the City from compelling Grantee to remove any such Facilities through judicial action when the City has not permitted Grantee to abandon said Facilities in place.

D. Where any Facilities or portions of Facilities are no longer needed and their use is to be discontinued, Grantee shall immediately report such Facilities in writing ("Deactivated Facilities") to the Public Works Director. This notification is in addition to the inventory revisions

addressed in Section 13.F. Deactivated Facilities, or portions thereof, shall be completely removed within six (6) months and the site, pole or infrastructure restored to its pre-existing condition.

E. If Grantee leases a structure from a landlord and such landlord later abandons the structure, for example by building a replacement structure, Grantee shall remove or relocate its Facilities within ninety (90) days of such notification from the landlord at no cost to the City.

F. The provisions of this Section 17 shall survive the expiration, revocation, or termination of this Franchise and for so long as Grantee has Facilities in Public Ways.

Section 18. Construction and Completion Bond.

A. As a condition of performing work in the Public Ways, and prior to the performance of such work in the Public Way, Grantee, at the City's request, shall post a construction bond ("Construction Bond"), and following completion a warranty security ("Warranty Security") in the amounts required by the City's construction design standards, as applicable.

B. The Construction Bond shall guarantee the following: (1) timely completion of construction; (2) construction in compliance with all applicable plans, permits, technical codes, and standards; (3) proper location of the Facilities as specified by the City; (4) restoration of the Public Ways and other City properties affected by the construction; (5) submission of as-built drawings after completion of construction; and, (6) timely payment and satisfaction of all claims, demands, or liens for labor, materials, or services provided in connection with the work which could be asserted against the City or City property. Said Construction Bond shall be required to remain in full force until sixty (60) days after substantial completion of the construction, as determined by the Public Works Director, including restoration of public ways and other property affected by the construction.

C. The Warranty Security is required during the warranty period to insure adequate funds for the City to perform the necessary warranty work should Grantee not do so for improvements against any defective work or labor done or defective materials used in the performance of the improvements throughout the warranty period. The warranty period shall be of one year following completion and acceptance of the improvements unless a longer warranty period is required by the City Engineer. This security shall be not less than 30% of the total construction cost of the Facilities accepted by the City and posted prior to the Construction Bond release. Should the City's construction design standards for streets change, Grantee shall post a Warranty Security in the amount required by such standards, unless waived by the City Engineer.

Section 19. Security Fund. Grantee shall establish a security fund ("Security Fund") in the amount of \$50,000.00 by providing a letter of credit reasonably acceptable to the City to guarantee the full and complete performance of the requirements of this Franchise, the requirements of IMC Chapter 12.60, and to guarantee payment of any costs, expenses, damages, or loss the City pays or incurs, including civil penalties, because of any failure attributable to Grantee to comply with the codes, ordinances, rules, regulations, or permits of the City. Prior to withdrawal of any funds from the Security Fund, the City shall comply with the provisions of IMC

Section 12.60.490 as that section presently exists or is hereafter amended. Grantee shall replenish the security fund within fourteen (14) days after written notice from the City that there is a deficiency in the amount of the Security Fund.

Section 20. Modification. The City reserves the right at any time to amend this Franchise to conform to any hereafter enacted, amended, or adopted federal or state statute or regulation relating to the public health, safety, and welfare, or relating to roadway regulation, or a City ordinance enacted pursuant to such federal or state statute or regulation upon providing Grantee with thirty (30) days written notice of its action setting forth the full text of the amendment and identifying the statute, regulation, or ordinance requiring the amendment. Said amendment shall become automatically effective upon expiration of the notice period unless, before expiration of that period, Grantee makes a written request for negotiations over the terms of the amendment. If the parties do not reach agreement as to the terms of the amendment within thirty (30) days of the call for negotiations, the parties shall submit the issue to non-binding mediation. If such mediation is unsuccessful, the parties may then submit the issue to a court of competent jurisdiction.

Section 21. Forfeiture and Revocation. The rights granted under this Franchise may be revoked or forfeited as provided in IMC Chapter 12.60.540 - 570. The City may elect, in lieu of the above and without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Grantee to comply with the provisions of this Franchise and to recover damages and costs incurred by the City by reason of Grantee's failure to comply. Grantee shall be provided an opportunity to cure or provide evidence of cure pursuant to IMC Section 12.60.550.

Section 22. Non-Waiver. The failure of the City to insist upon strict performance of any of the covenants and agreements of this Franchise or to exercise any option herein conferred in any one or more instances, shall not be construed to be a waiver or relinquishment of any such covenants, agreements or option or any other covenants, agreements or option.

Section 23. Remedies to Enforce Compliance.

A. In addition to any other remedy provided in this Franchise or within IMC Chapter 12.60, the City and Grantee reserve the right to pursue any remedy to compel or force the other party and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy shall not prevent them from thereafter declaring a default, forfeiture or revocation for breach of the conditions herein as provided in IMC 12.60.540 or as allowed by law. All rights and remedies provided herein shall be in addition to and cumulative with any and all other rights and remedies available to the City or Grantee. Such rights and remedies shall not be exclusive, and the exercise of one or more rights or remedies shall not be deemed a waiver of the right to exercise at the same time or thereafter any other right or remedy. The parties reserve the right to seek and obtain injunctive relief with respect to this Franchise to the extent authorized by applicable law and that the execution of this Franchise shall not constitute a waiver or relinquishment of such right. The parties agree that in the event a party obtains injunctive relief, neither party shall be required to post a bond or other security and the parties agree not to seek the imposition of such a requirement.

B. If Grantee shall violate, or fail to comply with any of the provisions of this Franchise, or should it fail to heed or comply with any notice given to Grantee under the provisions of this Franchise, the City shall provide Grantee with written notice specifying with reasonable particularity the nature of any such breach and Grantee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the City may specify a longer cure period, and condition the extension of time on Grantee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Grantee does not comply with the specified conditions, City may, at its discretion, (1) revoke this Franchise consistent with IMC 12.60.540 - 570, or (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Security Fund set forth in Section 19, or (3) pursue other remedies as described in Section 23.A above.

C. If the City shall violate, or fail to comply with any of the provisions of this Franchise, the Grantee shall provide the City with written notice specifying with reasonable particularity the nature of any such breach and the City shall undertake all commercially reasonable efforts to cure such breach within thirty (30) days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) thirty days, the parties may agree to a longer cure period. If the breach is not cured within the specified time, or the City does not comply with the specified conditions, the Grantee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as described in Section 23.A above.

Section 24. Survival. All of the provisions, conditions and requirements of Section 5, Section 6, Section 8, Section 9, Section 10, Section 12, Section 14, Section 15, Section 16 and Section 17, of this Franchise shall be in addition to any and all other obligations and liabilities Grantee may have to the City at common law, by statute, or by contract, and shall survive the expiration or termination of this Franchise, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives and assigns of Grantee and all privileges, as well as all obligations and liabilities of Grantee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever Grantee is named herein.

Section 25. Severability. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provisions of this Franchise.

Section 26. Assignment.

A. Grantee will comply with the provisions of IMC 12.60.520 and 12.60.530. This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation or other act of Grantee, by operation of law or otherwise, unless approved in writing by the City. The above notwithstanding, Grantee may freely assign this Franchise in whole or in part to a parent, subsidiary, or affiliated entity, unless there is a change of control as described in Section 26.B below. Grantee shall provide prompt, written notice to the City of any

such assignment. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such consent shall not be required unless and until the secured party elects to realize upon the collateral. For purposes of this Section 26 and IMC 12.60.520 and 12.60.530, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Grantee's stock, provided however any tender offer, merger or similar transaction resulting in a change of control shall be subject to IMC 12.60.520 and 12.60.530.

B. Any transactions which singularly or collectively result in a change of fifty percent (50%) or more of the ultimate ownership or working control of Grantee, of the ownership or working control of the Facilities, of the ownership or working control of affiliated entities having ownership or working control of Grantee or of the Facilities, or of control of the capacity or bandwidth of Grantee's Facilities or substantial parts thereof, shall be considered an assignment or transfer requiring City approval pursuant to IMC 12.60.530. Transactions between affiliated entities are not exempt from City approval if there is a change in control as described in the preceding sentence. Grantee shall promptly notify the City prior to any proposed change in, or transfer of, or acquisition by any other party of control of Grantee's company. Every change, transfer, or acquisition of control of Grantee's company shall cause a review of the proposed transfer. In the event that the City adopts a resolution denying its consent and such change, transfer or acquisition of control has been effected, the City may cancel this Franchise. The assignee or transferee must have the legal, technical, financial and other requisite qualifications to own, hold and operate Grantee's telecommunications system. Grantee shall reimburse the City for all direct and indirect costs and expenses reasonably incurred by the City in considering a request to transfer or assign this permit and shall pay the applicable application fee as described in IMC Chapter 3.65.

C. Grantee may, without prior consent from the City: (i) lease the Facilities, or any portion thereof, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion thereof, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Grantee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms hereof, Grantee furnishes, upon request from the City, a copy of any such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of IMC Chapter 12.60 and applicable City codes.

Section 27. Notice. Any notice required or permitted under this Franchise shall be in writing, and shall be delivered personally, delivered by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the other party at the address listed below. If such notice, demand or other communication shall be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or other communication is given by overnight delivery, it shall be conclusively deemed given the day after it was sent to the party to whom such notice, demand or other communication is to be given. If such notice, demand or other communication is given by mail, it shall be conclusively deemed given three (3) days after it was deposited in the United States mail addressed to the party to whom such notice, demand or other communication is to be given.

City:

City of Issaquah
Director of Public Works
P.O. Box 1307
Issaquah, WA 98027

Grantee:

Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Network Real Estate
180 Washington Valley Road
Bedminster, New Jersey 07921

With a copy to:
Seattle SMSA Limited Partnership
d/b/a Verizon Wireless
Attn: Pacific Market General Counsel
15505 Sand Canyon Avenue
Irvine, CA 92618

Section 28. Entire Agreement. This Franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon execution of this Franchise.

Section 29. Eminent Domain. The existence of this Franchise shall not preclude the City from acquiring by condemnation in accordance with applicable law, all or a portion of Grantee's Facilities for the fair market value thereof. In determining the value of such Facilities, no value shall be attributed to the right to occupy the area conferred by this Franchise.

Section 30. Vacation. If at any time the City, by ordinance, vacates all or any portion of the area affected by this Franchise, the City shall not be liable for any damages or loss to Grantee by reason of such vacation. The City shall notify Grantee in writing not less than ninety (90) days before vacating all or any portion of any such area in which Grantee's Facilities are located. This Franchise is terminated with respect to the vacated area upon the consummation of the vacation by the City.

Section 31. Light, Signs and Symbols. All lights, signs or symbols placed by Grantee shall be subject to the prior approval of the City. In the event Grantee shall place lights, signs or symbols where they are visible from the street and not acceptable to the City, the City may demand the immediate removal of such lights, signs or symbols and the refusal of Grantee to comply with such demand within twenty-four (24) hours will constitute a breach of this Franchise, thereby entitling the City to exercise any available legal remedy and to remove the light, signs or symbols.

Section 32. Compliance with All Applicable Laws. Grantee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict the City's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this Franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public. The City shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Grantee, and Grantee shall promptly conform with all such regulations, unless

compliance would cause Grantee to violate other requirements of law. Grantee further expressly acknowledges that following the approval of this Franchise, the City may modify its Codes to address small wireless deployment and such Code modifications shall apply to Grantee's Facilities, except to the extent of a vested right pertaining to an existing Facility. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under the City's police power authority, such other ordinances(s) shall take precedence over the provisions set forth herein.

Section 33. Attorneys' Fees. If a suit or other action is instituted in connection with any controversy arising out of this Franchise, the prevailing party shall be entitled to recover all of its costs and expenses, including such sum as the Court may judge as reasonable for attorneys' fees, costs, expenses and attorneys' fees upon appeal of any judgment or ruling.

Section 34. Hazardous Substances. Grantee shall not introduce or use any hazardous substances (chemical or waste), in violation of any applicable law or regulation, nor shall Grantee allow any of its agents, contractors or any person under its control to do the same. Grantee will be solely responsible for and will defend, indemnify and hold the City, its agents and employees harmless from and against any and all direct claims, costs and liabilities including reasonable attorneys' fees and costs, arising out of or in connection with the cleanup or restoration of the property associated with Grantee's use, storage, or disposal of hazardous substances or the use, storage or disposal of such substances by Grantee's agents, contractors or other persons acting under Grantee's control.

Section 35. Licenses, Fees and Taxes. Prior to constructing the Facilities, Grantee shall obtain a business or utility license from the City, if so required by the IMC. Grantee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Grantee and shall pay all license fees and public utility charges relating to the conduct of its business; shall pay for all permits, licenses and zoning approvals, shall pay any other applicable tax unless documentation of exemption is provided to the City and shall pay utility taxes and license fees imposed by the City.

Section 36. Miscellaneous.

A. City and Grantee respectively represent that its signatory is duly authorized and has full right, power and authority to execute this Franchise.

B. This Franchise shall be construed in accordance with the laws of the State of Washington. Venue for any dispute related to this Franchise shall be the United States District Court for the Western District of Washington, or King County Superior Court.

C. Section captions and headings are intended solely to facilitate the reading thereof. Such captions and headings shall not affect the meaning or interpretation of the text herein.

D. Where the context so requires, the singular shall include the plural and the plural includes the singular.

E. Grantee shall be responsible for obtaining all other necessary approvals, authorizations and agreements from any party or entity and it is acknowledged and agreed that the City is making no representation, warranty or covenant whether any of the foregoing approvals, authorizations or agreements are required or have been obtained by Grantee by any person or entity.

F. This Franchise may be enforced at both law and equity.

G. This Franchise may be executed in duplicate counterparts, each of which shall be deemed an original.

H. Grantee acknowledges that it, and not the City, shall be responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Grantee shall indemnify and hold the City harmless from any fines or other liabilities caused by Grantee's failure to comply with such requirements. Should Grantee or the City be cited by either the FCC or the FAA because the premises or Grantee's equipment is not in compliance and should Grantee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, the City may either terminate this Franchise immediately on notice to Grantee or proceed to cure the conditions of noncompliance at Grantee's expense.

Section 37. Reimbursement. Grantee shall pay a fee for the actual administrative expenses incurred by the City that are related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with the City's legal costs incurred in drafting and processing this Franchise. Grantee shall pay all costs of publication of this Franchise and any and all notices prior to any public meeting or hearing in connection with this Franchise. Grantee shall pay the reimbursements pursuant to this Section 37 within thirty (30) days after receipt of an invoice from the City. No permits shall be issued for the installation of authorized Facilities until such time as the City has received payment of this fee.

Section 38. Original Franchise. The Franchise between the City and Grantee as adopted by Ordinance Number 2825 (the "Original Franchise") is hereby terminated and replaced by this Franchise as of the Effective Date of this Franchise, and this Franchise, and all exhibits attached hereto shall constitute the entire Franchise between the parties. The grant of this Franchise shall have no effect on the requirements of the Original Franchise related to indemnification or insurance to the City against acts and omissions occurring during the period that the Original Franchise was in effect and during any period in which Franchisee's Facilities were in the Franchise Area.

Section 40. Acceptance. This Franchise and the rights, privileges and authority granted hereunder shall take effect and be in force from and after the Effective Date of this Franchise. Unless executed by Grantee prior to the City's execution, Grantee shall execute this Franchise within sixty (60) days after the City's execution of this Franchise. Such written acceptance shall be accompanied by the certificates of insurance and additional insured endorsement specified in Section 15, the establishment of the Security Fund pursuant to Section 19, any applicable Construction Bond or Warranty Security pursuant to Section 18, and the reimbursement to the City pursuant to Section 37. This Franchise is voidable unless accepted in writing with the required certificates of insurance, reimbursement and establishment of the security fund by Grantee within this sixty (60) days.

Section 41. Effective Date. This Franchise, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after the passage and publication of an approved summary thereof consisting of the title (the "Effective Date").

CITY OF ISSAQUAH

SEATTLE SMSA LIMITED
PARTENRSHIP d.b.a. VERIZON
WIRELESS

By: _____
Name: Mary Lou Pauly
Title: Mayor
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

ATTEST/AUTHENTICATED:

Christine Eggers
City Clerk/CMC

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

By: _____