

CITY OF BURIEN, WASHINGTON

ORDINANCE NO. 796

AN ORDINANCE OF THE CITY OF BURIEN, WASHINGTON, GRANTING TO CROWN CASTLE FIBER LLC AND ITS AFFILIATES, SUCCESSORS, AND ASSIGNS A NONEXCLUSIVE FRANCHISE FOR TEN YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATIONS NETWORK, IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC STREET RIGHTS-OF-WAY OF THE CITY OF BURIEN, WASHINGTON, AND PROVIDING FOR SEVERABILITY AND AN EFFECTIVE DATE.

WHEREAS, Crown Castle Fiber LLC (the "Franchisee") has requested that the City Council grant a nonexclusive franchise (this "Franchise") for purposes of operating and maintaining a telecommunications network;

WHEREAS, the City Council has the authority to grant franchises for the use of its streets and other public properties pursuant to RCW 35A.47.040;

WHEREAS, Burien is willing to grant the rights requested by Franchisee subject to certain terms and conditions, which are acceptable to both parties; and

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BURIEN, WASHINGTON, DO ORDAIN AS FOLLOWS:

Table of Contents

	<u>Page</u>
Section 1. Franchise Granted.....	4
Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.....	4
Section 3. Non-Exclusive Franchise Grant.....	6
Section 4. Location of Telecommunications Network Facilities	7
Section 5. Relocation of Telecommunications Network Facilities.....	7
Section 6. Undergrounding of Facilities	12
Section 7. Maps and Records.....	13
Section 8. Work in the Rights-of-Way.....	14
Section 9. One Call Locator Service.....	17
Section 10. Safety Requirements.....	17
Section 11. Work of Contractors and Subcontractors	19
Section 12. Restoration after Construction	19
Section 13. Emergency Work/Dangerous Conditions.....	20
Section 14. Recovery of Costs, Taxes, and Fees.....	21
Section 15. Small Wireless Facilities.	23
Section 16. Indemnification.	28
Section 17. Insurance.....	31
Section 18. Abandonment of Franchisee’s Telecommunications Network.	33
Section 19. Security.....	35
Section 20. Revocation.	35
Section 21. Remedies to Enforce Compliance	36
Section 22. Non-Waiver	37

Section 23. Reserved.....	37
Section 24. Cost of Publication	38
Section 25. Acceptance	38
Section 26. Survival.....	38
Section 27. Assignment.....	38
Section 28. Extension	40
Section 29. Entire Agreement.....	40
Section 30. Eminent Domain.....	40
Section 31. Vacation	40
Section 32. Notice.....	41
Section 33. Compliance with All Applicable Laws.....	42
Section 34. Amendment	41
Section 35. Attorneys' Fees	43
Section 36. Hazardous Substances	42
Section 37. Licenses, Fees, and Taxes.....	43
Section 38. Miscellaneous.....	43
Section 39. Severability.....	44
Section 40. Edits.....	45
Section 41. Corrections	45
Section 42. Ordinance Effective Date	45
EXHIBIT A - Statement of Acceptance.....	46

Section 1. Franchise Granted. The following provisions establish the terms and conditions of the franchise granted herein:

Section 1.1 Pursuant to RCW 35A.47.040, the City of Burien, a Washington municipal corporation (hereinafter “Burien”), hereby grants to the Franchisee, its affiliates, heirs, successors, legal representatives, and assigns, subject to the terms and conditions hereinafter set forth, a Franchise for a period of ten (10) years, beginning on the Effective Date of this ordinance.

Section 1.2 This Franchise ordinance permits the Franchisee to construct, operate, maintain, replace, relocate, upgrade, remove, excavate, acquire, restore, and use the public street Rights-of-Way located in the City of Burien, for the purpose of providing telecommunications service pursuant to the Burien Municipal Code (“BMC”) and permits issued pursuant to this Franchise. Public Street “Rights-of-Way” means land acquired or dedicated by the City of Burien for public roads, streets, alleys, courts, boulevards, sidewalks, lanes, public ways, circles, utility easements that contain utility poles and only to the extent such Rights-of-Way are opened, but does not include: WSDOT-managed state highways; land dedicated for roads, streets, and highways not opened and not improved for motor vehicle use by the public; federally-granted trustlands or forest board trust lands; lands owned or managed by the state parks and recreation commission; or federally-granted railroad rights-of-way acquired under 43 U.S.C. § 912 and related provisions of federal law that are not open for motor vehicle use. Rights-of-Way for the purpose of this Franchise do not include: buildings, other Burien-owned physical facilities, parks, poles, conduits, fixtures, real property or property rights owned by Burien, or similar facilities or property owned by or leased to Burien. Franchisee is required to obtain a lease or similar agreement for the usage of any Burien or third party-owned poles, conduit, fixtures, or structures.

Section 2. Authority Limited to Occupation of Public Rights-of-Way for Services.

Section 2.1 The authority granted herein is a limited authorization to occupy and use the Rights-of-Way throughout Burien (the “Franchise Area”) for the purpose of providing telecommunications services. The Franchisee is authorized to place its Facilities in the Rights-of-Way only consistent with this Franchise, the Burien Zoning Code, the Comprehensive Plan, the

current Road Design and Construction Standards and the BMC and any other applicable law, order or rule. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the Rights-of-Way of Burien to the Franchisee. Franchisee hereby warrants that it expects to provide telecommunications services within Burien, consistent with the authority granted to it by the Washington State Utilities and Transportation Commission as that term is defined by federal law (“Services”).

Section 2.2 As used herein, “Telecommunications Network Facilities” means a network that is used for the transmission of wireless communications services, including fiber and small wireless facilities, collectively referred to as “Facilities”. “Small Wireless Facilities” (SWF) means a small wireless facility as defined in 47 CFR § 1.6002 and shall also include all necessary cables, transmitters, receivers, equipment boxes, backup power supplies, power transfer switches, electric meters, coaxial cables, wires, conduits, ducts, pedestals, antennas, electronics, and other necessary or convenient appurtenances used for the specific wireless communications facility. Equipment enclosures with equipment generating noise that exceed the noise limits allowed in the BMC or associated permit are excluded from “Small Wireless Facilities.” Services do not include personal wireless services and associated facilities that fall outside of the definition of Small Wireless Facilities (i.e. macro facilities).

Section 2.3 This Franchise permits Franchisee the right to install and operate a Telecommunications Network for the purpose of providing telecommunications services, whether provided by a third-party provider, Franchisee, or a corporate affiliate of Franchisee. Any third-party provider that provides telecommunications services and which uses Franchisee’s telecommunications network must have a separate franchise to use the Right-of-Way. This Franchise does not permit the Franchisee to offer cable internet services or Cable Service as that term is defined in 47 U.S.C. § 522(6) by wireline transmission.

Section 2.4 Franchisee may not install any facility, infrastructure, wires, lines, cables, or other equipment, on any Burien property other than a Right-of-Way, or upon private property without the owner’s prior written consent, or upon any Burien, public or privately-owned poles or conduits without Burien’s prior written consent. Nothing contained within this Franchise shall be construed to grant or convey any right, title, or interest in Burien’s Rights-of-Way to Franchisee other than permitting the Franchisee to provide the Services, and such permitted use

shall be subordinate to the primary use of the Right-of-Way as a public thoroughfare. If Franchisee desires to expand the Services provided within Burien, it shall request a written amendment to this Franchise. If Franchisee desires to use Burien-owned property, or to site new structures in the Rights-of-Way, it shall enter into a separate lease, site specific agreement or license agreement with the City of Burien.

Section 2.5 Franchisee may, without Burien's prior written approval, offer or provide capacity or bandwidth to its customers consistent with this Franchise provided:

(a) Franchisee at all times retains exclusive control over and responsibility for its telecommunications system, Facilities and Services, and remains responsible for constructing, installing, and maintaining its Facilities pursuant to the terms and conditions of this Franchise;

(b) Franchisee may not grant rights to any customer or lessee that are greater than any permitted use that Franchisee has pursuant to this Franchise;

(c) Such customer or lessee shall not be construed to be a third-party beneficiary under this Franchise; and

(d) No such customer or lessee may use the telecommunications system or Services for any purpose not authorized by this Franchise, nor to sell or offer for sale any service to Burien citizens without all required business licenses, permits, franchise or other form of state-wide approval.

Section 3. Non-Exclusive Franchise Grant. This Franchise is granted upon the express condition that it shall not in any manner prevent Burien from granting other or further franchises in, along, over, through, under, below, or across any said Rights-of-Way. This Franchise shall in no way prevent or prohibit Burien from using any of said roads, streets, or other public properties or affect its jurisdiction over them or any part of them, and Burien shall retain power to make all necessary changes, dedication, establishment, improvement, relocations, repairs, and maintenance of same as Burien may deem fit, including the dedication, establishment, improvement, and maintenance of all new Rights-of-Way, thoroughfares and other public properties of every type and description.

Section 4. Location of Telecommunications Network Facilities.

Section 4.1 Franchisee may locate its Facilities anywhere within the Franchise Area consistent with and subject to Burien's Design and Construction Standards and subject to Burien's applicable municipal code requirements to the extent consistent with applicable laws. Franchisee shall not be required to amend this Franchise to construct or acquire Facilities within the Franchise Area, provided that Franchisee does not expand its Services beyond those described in Section 2.

Section 4.2 To the extent that any Rights-of-Way within the Franchise Area are part of the state highway system ("State Highways"), are considered managed access by Burien, and are governed by the provisions of Chapter 47.24 RCW and applicable Washington State Department of Transportation (WSDOT) regulations, Franchisee shall comply fully with said requirements in addition to local ordinances and other applicable regulations. Without limitation of the foregoing, Franchisee specifically agrees that:

- (a) any pavement trenching and restoration performed by Franchisee within State Highways shall meet or exceed applicable WSDOT requirements;
- (b) any portion of a State Highway damaged or injured by Franchisee shall be restored, repaired and/or replaced by Franchisee to a condition that meets or exceeds applicable WSDOT requirements; and
- (c) without prejudice to any right or privilege of Burien, 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 Telecommunications Network Facilities.

Section 5.1 Relocation Requirement. Burien may require Franchisee, and Franchisee covenants and agrees, to protect, support, relocate, remove, and/or temporarily disconnect or relocate its Facilities within the Rights-of-Way when reasonably necessary for construction, alteration, repair, or improvement of the Rights-of-Way for purposes of and for public welfare, health, or safety or traffic conditions, dedications of new Rights-of-Way and the establishment and improvement thereof, widening and improvement of existing Rights-of-Way, 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 Burien or other governmental entity; provided that Franchisee may temporarily bypass in the authorized portion of the same Rights-of-Way upon Burien's prior written approval, which approval shall not unreasonably be withheld, conditioned, or delayed, any Facilities required to be temporarily disconnected or removed. For the avoidance of doubt, such projects shall include any Right-of-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, but shall not include, without limitation, any other improvements or repairs undertaken by or for the primary benefit of third-party private entities. Collectively all such projects described in this Section 5.1 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 5.1 shall be borne by Franchisee, and not by Burien. Franchisee shall complete the relocation of its Facilities at no charge or expense to Burien.

Section 5.2 Relocation - Third Party Structures. If the request for relocation from Burien originates due to a Public Improvement Project, in which structures or poles are either replaced or removed, then Franchisee shall relocate or remove its Facilities as required by Burien, and at no cost to Burien, subject to the procedure in Section 5.5. Franchisee acknowledges and agrees that the placement of Small Wireless Facilities on third party-owned structures does not convey an ownership interest in such structures. Franchisee acknowledges and agrees, that to the extent Franchisee's Small Wireless Facilities are on poles owned by third parties, Burien shall not be responsible for any costs associated with requests arising out of a Public Improvement Project.

Section 5.3 Relocation - Franchisee Owned Structures. The cost of relocation of any Franchisee owned poles or structures shall be determined in accordance with the requirements of RCW 35.99.060(3)(b), provided, however, that the Franchisee may opt to pay for the cost of relocating its Small Wireless Facilities in order to provide consideration for Burien's approval to ~~use~~ a Small Wireless Facility on Franchisee owned structures or poles in a portion of the Right-of-Way designated or proposed for a Public Improvement Project. For this Section 5.3, designation of the Right-of-Way for a Public Improvement Project shall be undertaken in Burien's Comprehensive Plan in accordance with the requirements of Chapter 36.70A RCW. The

Comprehensive Plan includes, but is not limited to the Transportation element or Transportation Improvement Plan (“TIP”), Capital Facilities element, utilities element, and any other element authorized by RCW 36.70A.070 and RCW 36.70A.080. The parties acknowledge that this provision is mutually beneficial to the parties, as Burien may otherwise deny the placement of the Small Wireless Facility at a particular site because of the cost impact of such relocation and the conflict with Burien’s Comprehensive Plan.

Section 5.4 Locate. Upon Burien’s request, or a third party performing work in the Right-of-Way, and in order to facilitate the design of street and Rights-of-Way improvements, Franchisee agrees, at its sole cost and expense, to locate, and if reasonably determined necessary by Burien, to excavate and expose its Facilities for inspection so that the Facilities' location may be taken into account in the improvement design. The decision as to whether any Facilities need to be relocated to accommodate Burien’s Public Improvement Projects shall be made by Burien upon review of the location and construction of Franchisee’s Facilities. Burien shall provide Franchisee at least fourteen (14) calendar days’ written notice prior to any excavation or exposure of Facilities.

Section 5.5 Notice and Relocation Process. If Burien determines that the project necessitates the relocation of Franchisee’s existing Facilities, Burien shall provide Franchisee in writing with a date by which the relocation shall be completed (the “Relocation Date”) consistent with RCW 35.99.060(2). In calculating the Relocation Date, Burien shall consult with Franchisee and consider the extent of facilities to be relocated, the services requirements, and the construction sequence for the relocation, within Burien’s overall project construction sequence and constraints, to safely complete the relocation. Franchisee shall complete the relocation by the Relocation Date, unless Burien or a reviewing court establishes a later date for completion, as described in RCW 35.99.060(2). To provide guidance on this notice process, Burien will make reasonable efforts to engage in the following recommended process, absent an emergency posing a threat to public safety or welfare or an emergency beyond the control of Burien that will result in severe consequences to Burien or the public:

- (a) Burien will consult with the Franchisee in the predesign phase of any Public Improvement Project to coordinate the project's design with Franchisee’s Facilities within such project’s area.

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

(c) Franchisee shall, during the predesign phase evaluate and provide comments to Burien related to any alternatives to possible relocations. Burien agrees to consider any alternatives proposed by the Franchisee, but the final decision accepting or rejecting any specific alternative shall be within Burien's sole discretion.

(d) Burien will provide Franchisee with its decision regarding the relocation of Franchisee's Facilities as soon as reasonably possible, but in no event less than ninety (90) calendar 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 5.5, Burien shall notify the Franchisee during the predesign meetings and the process mandated by the grant funding shall control.

(e) No later than eighty (80) calendar days after receipt of such notice and plans and specifications, Franchisee shall complete the relocation of its Facilities to accommodate such Public Improvement Project, at no charge or expense to Burien, at least ten days prior to commencement of construction of such improvements, unless such other timeline is provided by Burien or if the 80-calendar day period is extended by a Force Majeure Event. Such timeline may be extended by a mutual agreement.

(f) Franchisee shall complete relocation of its Facilities at no charge or expense to Burien pursuant to the timeline provided by Burien, or as otherwise modified by Burien.

(g) Burien may require the relocation of the Facilities at Franchisee's expense in the event of an unforeseen emergency that creates an immediate threat to the public safety, health, or welfare. Franchisee shall relocate its Facilities within the period specified by Burien.

Section 5.6 Alternative Arrangements. The provisions of this Section 5 shall in no manner preclude or restrict Franchisee 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 Burien, where the facilities to be constructed by said person or entity are not or will not become Burien-owned, operated, or maintained facilities, provided that such arrangements do not unduly delay a Burien construction project.

Section 5.7 Contractor Delay Claims. Franchisee shall be solely responsible for the out-of-pocket costs incurred by Burien for delays in a Public Project to the extent the delay is caused by or arises out of Franchisee's failure to comply with the final schedule for the relocation other than as a result of a Force Majeure Event or causes or conditions caused by the acts or omissions of Burien or any third party unrelated to Franchisee. Franchisee vendors and contractors shall not be considered unrelated third parties). Such out-of-pocket costs may include, but are not limited to, payment to Burien's contractors and/or consultants for increased costs and associated court costs, interest, and attorney fees incurred by Burien to the extent directly attributable to such Franchisee's caused delay in the Public Project.

Section 5.8 Indemnification. Franchisee will indemnify, hold harmless, and pay the costs of defending Burien, in accordance with the provisions of Section 16, against any and all claims, suits, actions, damages, or liabilities for delays on Burien's construction projects caused by or arising out of the failure of Franchisee to remove or relocate its Facilities as provided herein; provided, that Franchisee shall not be responsible for damages due to delays caused by circumstances beyond the control of Franchisee or the sole negligence, willful misconduct, or unreasonable delay of Burien or any unrelated third party.

Section 5.9 Burien's Costs. If Franchisee fails, neglects, or refuses to remove or relocate its Facilities as directed by Burien following the procedures outlined in Section 5.1 through Section 5.5, then upon at least ten (10) calendar days written notice to Franchisee, Burien may perform such work (including removal) or cause it to be done, and Burien's costs shall be paid by Franchisee pursuant to Section 14.3 and Section 14.4, and Burien shall not be responsible for any damage to the Facilities.

Section 5.10 Survival. The provisions of this Section 5 shall survive the expiration or termination of this Franchise during such time as Franchisee continues to have Facilities in the Rights-of-Way.

Section 6. Undergrounding of Facilities.

Section 6.1 Franchisee shall not be permitted to erect poles, unless permitted by Burien pursuant to Section 15.3 and the BMC or other applicable law. This Franchise does not place an affirmative obligation on Burien to allow the relocation of such Facilities on public property or in the Rights-of-Way, nor does it relieve Franchisee from any BMC provision related to the siting of wireless facilities.

Section 6.2 To the degree reasonably feasible, and if consistent with Burien's design standards, Franchisee should underground as much of its facilities as feasible. Franchisee shall not be required to underground any portion of the Facility that must technically remain above-ground to operate. If Burien requires undergrounding of wirelines (either telecommunications or electrical) and allows Franchisee's Facilities to remain above-ground, then Franchisee shall cooperate with Burien 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 Burien and Franchisee, at no cost to Burien.

Section 6.3 Franchisee shall not remove any underground Facilities that require trenching or other opening of the Rights-of-Way, except as provided in this Section 6.3. Franchisee may remove any underground Facilities from the Right-of-Way that have been installed in such a manner that it can be removed without trenching or other opening of the Right-of-Way, or if otherwise permitted by Burien. When Burien determines, in Burien's reasonable discretion, that Franchisee's underground Facilities must be removed to eliminate or prevent a hazardous condition, Franchisee shall remove such Facilities at Franchisee's sole cost and expense. Franchisee must apply and receive a permit, pursuant to Section 8.2, prior to any such removal of underground Facilities from the Right-of-Way and must provide as-built plans and maps pursuant to Section 7.1.

Section 6.4 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 Burien to pay any costs of undergrounding any of the Franchisee's Facilities.

Section 7. Maps and Records.

Section 7.1 Following any construction, excluding modifications that meet the same or substantially similar dimensions of the Small Wireless Facility, Franchisee shall provide Burien with accurate copies of as-built plans and maps prepared by Franchisee's design and installation contractors for all existing Small Wireless Facilities in the Franchise Area. These plans and maps shall be provided at no cost to Burien, and shall include hard copies and digital files in AutoCAD or other industry standard readable formats that are acceptable to Burien and delivered electronically. Further, Franchisee shall provide such maps within thirty (30) calendar days following a request from Burien. Franchisee shall warrant the accuracy of all plans, maps and as-builts provided to Burien.

Section 7.2 Within thirty (30) calendar days of a written request from the Public Works Director, the Franchisee shall furnish Burien with information sufficient to reasonably demonstrate that the Franchisee has complied with all applicable requirements of this Franchise.

Section 7.3 All books, records, maps, and other documents maintained by Franchisee with respect to its Facilities within the Rights-of-Way shall be made available for inspection by Burien at reasonable times and intervals; provided, however, that nothing in this Section 7.3 shall be construed to require Franchisee to violate state or federal law regarding customer privacy, nor shall this Section 7.3 be construed to require Franchisee to disclose proprietary or confidential information without adequate safeguards for its confidential or proprietary nature. Unless otherwise permitted or required by State or federal law, nothing in this Section 7.3 shall be construed as permission to withhold relevant customer data from Burien that Burien requests in conjunction with a tax audit or review; provided, however, Franchisee may redact identifying information such as names, street addresses (excluding city and zip code), social security numbers, or Employer Identification Numbers related to any confidentiality agreements Franchisee has with third parties.

Section 7.4 Franchisee shall not be required to disclose information that it reasonably deems to be proprietary or confidential in nature; provided, however, Franchisee shall disclose such information to comply with a utility tax audit. Franchisee shall be responsible for clearly and conspicuously identifying the work as confidential or proprietary, and shall provide a brief written explanation as to why such information is confidential and how it may be treated as such

under State or federal law. In the event that Burien receives a public records request under Chapter 42.56RCW or similar law for the disclosure of information Franchisee has designated as confidential, trade secret, or proprietary, Burien shall promptly provide written notice of such disclosure so that Franchisee can take appropriate steps to protect its interests.

Section 7.5 Nothing in Section 7.3 or Section 7.4 prohibits Burien from complying with Chapter 42.56 RCW or any other applicable law or court order requiring the release of public records, and Burien shall not be liable to Franchisee for compliance with any law or court order requiring the release of public records. Burien shall comply with any injunction or court order obtained by Franchisee that prohibits the disclosure of any such confidential records.

Section 7.6 On an annual basis, upon thirty (30) calendar days prior written notice, Burien shall have the right to conduct an independent audit of Franchisee’s records reasonably related to the administration or enforcement of this Franchise in accordance with GAAP.

Section 8. Work in the Rights-of-Way.

Section 8.1 During any period of relocation, construction, or maintenance, all work performed by Franchisee or its contractors shall be accomplished in a safe and workmanlike manner, so to minimize interference with the free passage of traffic and the free use of adjoining property, whether public or private. Franchisee shall at all times post and maintain proper barricades, flags, flaggers, lights, flares, and other measures as required for the safety of all members of the general public and comply with all applicable safety regulations during such period of construction as required by the ordinances of Burien, including but not limited to the Burien Municipal Code Chapter 12.17 or the laws of the State of Washington, including RCW 39.04.180 for the construction of trench safety systems. The provisions of this Section 8 shall survive the expiration or termination of this Franchise and during such time as Franchisee continues to have Facilities in the Rights of Way.

Section 8.2 Whenever Franchisee shall commence work in any Rights-of-Way for the purpose of excavation, installation, construction, repair, maintenance, or relocation of its Facilities, it shall apply to Burien, consistent with Burien Municipal Code Chapter 12.18, for a Right-of-Way Use Permit to do so. During the progress of the work, the Franchisee shall not unnecessarily obstruct the passage or proper use of the Rights-of-Way, and all work by the Franchisee in the area shall be performed in accordance with applicable Burien standards and

specifications. In no case shall any work commence within any Rights-of-Way without a permit, except as otherwise provided in this Franchise.

Section 8.3 Burien reserves the right to limit or exclude Franchisee's access to a specific route, public street Right-of-Way or other location when, in the judgment of the Public Works Director there is inadequate space (including but not limited to compliance with ADA clearance requirements and maintaining a clear and safe passage through the Rights-of-Way), a pavement cutting moratorium, unnecessary damage to public property, interference with municipal utilities, or for any other reason determined by the Public Works Director consistent with applicable law.

Section 8.4 If the Franchisee shall at any time plan to make excavations in any area covered by this Franchise, the Franchisee shall afford Burien, upon receipt of a written request to do so, an opportunity to share such excavation consistent with the requirements of BMC 12.17.120.

Section 8.5 As may be required by permit, depending on the impact of the usage of the Rights-of-Way, Franchisee shall give reasonable advance notice of intended construction to entities or persons adjacent to the affected area. Such notice shall contain the dates, contact number, nature and location of the work to be performed. Following performance of the work, Franchisee shall restore the Right-of-Way to Burien standards in effect at the time of construction except for any change in condition not caused by Franchisee. Any disturbance of landscaping, fencing, or other improvements on private property caused by Franchisee's work shall, at the sole expense of Franchisee, be promptly repaired and restored to the reasonable satisfaction of the property owner/resident. Notwithstanding the above, nothing herein shall give Franchisee the right to enter onto private property without the prior written permission of such private property owner, or as otherwise authorized by applicable law.

Section 8.6 Franchisee may trim trees upon and overhanging on public ways, streets, alleys, sidewalks, and other public places of Burien to prevent the branches of such trees from coming in contact with Franchisee's Facilities. The right to trim trees in this Section 8.6 shall only apply to the extent necessary to protect above-ground Facilities. Franchisee shall ensure that its tree trimming activities protect the appearance, integrity, and health of the trees to the extent reasonably possible. Franchisee shall be responsible for all debris removal from such activities.

All trimming, except in emergency situations, is to be done after obtaining a right-of-way use permit from Burien and at the expense of Franchisee. Franchisee may contract for such services, however, any firm or individual so retained must first receive a Burien approved right-of-way use permit prior to commencing such trimming. Nothing herein grants Franchisee any authority to act on Burien's behalf, to enter upon any private property, or to trim any tree or natural growth not owned by Burien. Franchisee shall be solely responsible and liable for any damage to any third parties' trees or natural growth caused by Franchisee's actions. Franchisee shall indemnify, defend, and hold harmless Burien from third party claims of any nature arising out of any act or negligence of Franchisee with regard to tree and/or natural growth trimming, damage, and/or removal. Franchisee shall reasonably compensate Burien or the property owner for any damage caused by trimming, damage, or removal by Franchisee. Except in an emergency, all tree trimming must be performed under the direction of an arborist certified by the International Society of Arboriculture, and in a manner consistent with the most recent issue of "Standards of Pruning for Certified Arborists" as developed by the International Society of Arboriculture or its industry accepted equivalent (ANSI A300), unless otherwise approved by the Public Works Director or his/her designee.

Section 8.7 Franchisee shall meet with Burien and other franchise holders and users of the Rights-of-Way upon written notice as determined by Burien, to schedule and coordinate construction in the Rights-of-Way. All construction locations, activities, and schedules shall be coordinated, as ordered by Burien to minimize public inconvenience, disruption, or damages.

Section 8.8 Franchisee shall inform Burien with at least thirty (30) calendar days' advance written notice that it is constructing, relocating, or placing ducts or conduits in the Rights-of-Way and provide Burien with an opportunity to request that Franchisee provide Burien with additional duct or conduit and related structures necessary to access the conduit pursuant to RCW 35.99.070.

Section 8.9 Franchisee shall maintain all above ground improvements that it places on Burien's public street Rights-of-Way pursuant to this Franchise. To avoid interference with Burien's ability to maintain the Right-of-Way, Franchisee shall provide a clear zone consistent with the Burien Road Design and Construction Standards. If Franchisee fails to comply with this

provision, and by its failure, property is damaged, then Franchisee shall be responsible for all damages caused thereby, including restoration.

Section 9. One Call Locator Service.

Prior to doing any work in the Rights-of-Way, the Franchisee 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 Chapter 19.122 RCW. Further, upon request, by Burien or a third party, Franchisee shall locate its Facilities consistent with the requirements of Chapter 19.122 RCW. Burien shall not be liable for any damages to Franchisee's Facilities or for interruptions in service to Franchisee's customers that are a direct result of Franchisee's failure to locate its Facilities within the prescribed time limits and guidelines established by the One Call Locator Service regardless of whether Burien issued a permit.

Section 10. Safety Requirements.

Section 10.1 Franchisee shall, at all times, employ professional care and shall install and maintain and use industry-standard methods for preventing failures and accidents that are likely to cause damage, injuries, or nuisances to the public. All structures and all lines, equipment, and connections in, over, under, and upon the Rights-of-Ways, wherever situated or located, shall at all times be kept and maintained in a safe condition. Franchisee shall comply with all federal, state, and municipal safety requirements, rules, regulations, laws, and practices, and employ all necessary devices as required by applicable law during the construction, operation, maintenance, upgrade, repair, or removal of its Facilities. Additionally, Franchisee 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 municipal services. By way of illustration and not limitation, Franchisee shall also comply with the applicable provisions of the National Electric Code, National Electrical Safety Code, FCC regulations, and Occupational Safety and Health Administration (OSHA) Standards. Upon reasonable notice to Franchisee, Burien reserves the general right to inspect the Facilities to evaluate if they are constructed and maintained in a safe condition.

Section 10.2 The Public Works Director is authorized to order correction or discontinuance of any such condition or activities as further described in this Section 10 and in the BMC. The

Public Works Director shall also have all powers and remedies which may be available under state law, the BMC, and this Franchise for securing the correction or discontinuance of any condition specified in this section.

Section 10.3 The following are methods the Public Works Director may use any and all methods in ordering correction or discontinuance of any such unsafe conditions or activities as the Public Works Director determines appropriate including but not necessarily limited to:

- (a) Serving of oral or written directives to Franchisee requesting immediate correction or discontinuance of the specified condition;
- (b) Service of a notice of civil violation pursuant to Burien Municipal Code 1.15.120, ordering the correction or discontinuance of a specific condition or activity within any reasonable period as the Public Works Director may determine;
- (c) Service of a civil infraction filed in the King County District Court, South Division, pursuant to Burien Municipal Code 1.15;
- (d) Revocation of previously granted permits where the Franchisee has failed or refused to comply with requirements imposed by Burien related to such permits;
- (e) Issuance of a stop work order to immediately stop work until authorization is received from Burien to proceed with such work; and
- (f) Service of summons and complaint certified by a Burien prosecutor or a citation and notice to appear by an arresting peace officer upon the permittee or other responsible person who is in violation of this Franchise or other Burien ordinances.

Section 10.4 All costs, including administrative costs, incurred by Burien in repairing any unsafe conditions shall be borne by Franchisee and reimbursed to Burien pursuant to Section 14.3 and Section 14.4.

Section 10.5 Additional safety standards include:

- (a) Franchisee shall endeavor to maintain all Facilities in an orderly manner, including, but not limited to, the removal of all bundles of unused cable on any aerial facilities and the placement of any cables connecting equipment in an orderly manner.

(b) All installations of equipment, lines, and ancillary facilities shall be installed in accordance with industry-standard engineering practices and shall comply with all federal, state, and local regulations, ordinances, and laws.

(c) Any opening or obstruction in the Rights-of-Way or other public places made by Franchisee in the course of its operations shall be protected by Franchisee at all times by the placement of adequate barriers, fences, or boarding, the bounds of which, during periods of dusk and darkness, shall be clearly marked and visible.

Section 11. Work of Contractors and Subcontractors. Franchisee's contractors of any tier shall be licensed and bonded in accordance with state law and Burien's ordinances, regulations, and requirements. Work by contractors (of any tier) are subject to the same restrictions, limitations, and conditions as if the work were performed by Franchisee. Franchisee shall be responsible for all work performed by its contractors (of any tier) and others performing work on its behalf as if the work were performed by Franchisee and shall ensure that all such work is performed in compliance with this Franchise and applicable law.

Section 12. Restoration after Construction.

Section 12.1 Franchisee shall, promptly after installation, construction, relocation, maintenance, or repair of its Facilities, or within sixty (60) calendar days after abandonment approved pursuant to Section 18, remove any obstructions from the Rights-of-Way and restore the surface of the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance or repair, as required by Burien Municipal Code Chapter 12.17, provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or anyone doing work for Franchisee nor for reasonable wear and tear. The Public Works Director or his/her designee shall have final approval of the condition of such Rights-of-Way after restoration. All concrete encased survey monuments that have been disturbed or displaced by such work shall be restored pursuant to federal, state (such as Chapter 332-120 WAC), and local standards and specifications.

Section 12.2 Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by work to the Franchise Area or other affected area at its sole cost and expense and according to the time and terms specified in the construction permit

issued by Burien. All work by Franchisee pursuant to this Franchise shall be performed in accordance with applicable Burien standards and warranted for at least two (2) years and for undiscovered defects as is standard and customary for this type of work.

Section 12.3 If conditions (e.g. weather) make the complete restoration required under this Section 12 impracticable, Franchisee shall temporarily restore the affected Rights-of-Way or property. Such temporary restoration shall be at Franchisee’s sole cost and expense. Franchisee shall promptly undertake and complete the required permanent restoration when conditions no longer make such permanent restoration impracticable.

Section 12.4 If Franchisee does not repair or restore a Right-of-Way or an improvement in or to a Right-of-Way within the reasonable time agreed to by the Public Works Director, or his/her designee, upon ten (10) calendar days’ notice to Franchisee, Burien may repair the damage and shall be reimbursed its actual cost within sixty (60) calendar days of submitting an invoice to Franchisee in accordance with the provisions of Section 14.3 and Section 14.4. In addition, and pursuant to Section 14.3 and Section 14.4, Burien may bill Franchisee for expenses associated with the inspection of such restoration work. The failure by Franchisee to complete such repairs shall be considered a breach of this Franchise and is subject to remedies by Burien including the imposition of damages consistent with Section 21.3.

Section 12.5 The provisions of this Section 12 shall survive the expiration or termination of this Franchise so long as Franchisee continues to have Facilities in the Rights-of- Way and has not completed all restoration to Burien’s standards.

Section 13. Emergency Work/Dangerous Conditions.

Section 13.1 If any emergency in which any of Franchisee’s Facilities located in the Rights-of-Way breaks, falls, becomes damaged, or if Franchisee’s Facilities is otherwise in such a condition as to immediately endanger the property, life, health or safety of any person, entity, or Burien, Franchisee 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 any person, entity, or Burien without first applying for and obtaining a permit as required by this Franchise. However, this shall not relieve Franchisee from the requirement of obtaining any permits necessary for this purpose, and Franchisee shall apply for all such permits not later than the next succeeding day during which the Burien City Hall is open for business.

Burien retains the right and privilege to cut, move or remove any Facilities located within Burien Rights-of-Way, as Burien may determine to be necessary, appropriate, or useful in response to any public health or safety emergency.

Section 13.2 Burien shall not be liable for any damage to or loss of Facilities within the Rights-of-Way as a result of or in connection with any public works, public improvements, construction, grading, excavation, filling, or work of any kind in the Rights-of-Way by or on behalf of Burien, except to the extent directly caused by the sole negligence, intentional misconduct, or criminal actions of Burien, its agents, employees or contractors. Burien shall further not be liable to Franchisee for any direct, indirect, or any other such damages suffered by any person or entity of any type as a direct or indirect result of Burien’s actions under this Section 13 except to the extent caused by the sole negligence, intentional misconduct, or criminal actions of Burien, its agents, contractors, or employees.

Section 13.3 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, electrical or telecommunications utilities or Burien property, the Public Works Director may direct Franchisee, at Franchisee’s own expense, to take reasonable action to protect the public, adjacent public places, Burien property or street utilities, and such action may include compliance within a prescribed time. If Franchisee fails or refuses to promptly take the actions directed by Burien, or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, before Burien can timely contact Franchisee to request Franchisee effect the immediate repair, Burien 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 Franchisee shall be liable to Burien for the costs thereof.

Section 14. Recovery of Costs, Taxes and Fees.

Section 14.1 Franchisee shall pay a fee for the actual administrative expenses incurred by Burien that are directly related to the receiving and approving this Franchise pursuant to RCW 35.21.860, including the costs associated with Burien’s legal costs actually and reasonably incurred in drafting and processing this Franchise. No permits shall be issued for the

installation of authorized Facilities until such time as Burien has received payment of this fee. Franchisee shall further be subject to all permit fees associated with activities undertaken through the authority granted in this Franchiseor under Burien's laws. Where Burien incurs costs and expenses for review, inspection, or supervision of activities, including but not limited to reasonable fees associated with attorneys, consultants, Burien staff and City Attorney time, undertaken through the authority granted in this Franchise or any ordinances relating to the subject for which a permit fee is not established, Franchisee shall pay such costs and expenses directly to Burien in accordance with the provisions of Section 14.3.

Section 14.2 Franchisee shall promptly reimburse Burien in accordance with the provisions of Section 14.3 and Section 14.4 for any and all costs Burien reasonably incurs in response to any emergency situation involving Franchisee's Facilities, to the extent said emergency is not Burien's fault. Burien agrees to simultaneously seek reimbursement from any franchisee or permit holder who caused or contributed to the emergency situation.

Section 14.3 Franchisee shall reimburse Burien within sixty (60) calendar days of submittal by Burien of an itemized billing for reasonably incurred costs, itemized by project and task, for Franchisee's proportionate share of all actual, identified expenses incurred by Burien in altering, constructing, installing, maintaining, planning, or repairing of any Burien facility as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall include but not be limited to Franchisee's proportionate cost of Burien personnel assigned to oversee or engage in any work in the Rights-of-Way as the result of the presence of Franchisee's Facilities in the Rights-of-Way. Such costs and expenses shall also include Franchisee's proportionate share of any time spent reviewing construction plans to either accomplish the relocation of Franchisee's Facilities or the routing or rerouting of any utilities so as not to interfere with Franchisee's Facilities.

Section 14.4 The time of Burien 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 and task for which Burien claims reimbursement. At Burien's option, the billing may be on an annual basis, but Burien shall

provide the Franchisee with Burien’s itemization of costs, in writing, at the conclusion of each project for information purposes.

Section 14.5 Franchisee 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, Burien will not impose a franchise fee under the terms of this Franchise, other than as described herein. Burien hereby reserves its right to impose a franchise fee on Franchisee if Franchisee'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, Burien also reserves its right to require that Franchisee obtain a separate Franchise for its change in use. Nothing contained herein shall preclude Franchisee from challenging any such new fee or separate agreement under applicable federal, state, or local laws.

Section 14.6 Franchisee stipulates and agrees that certain of its business activities are subject to taxation as a telephone business and that Franchisee shall pay to Burien the rate applicable to such taxable services under Burien Municipal Code Chapter 3.12, and consistent with state and federal law. The parties agree that if there is a dispute regarding tax payments that the process in Burien Municipal Code Chapter 3.12 shall control. In that event, Burien may not enforce remedies under Section 21 or commence a forfeiture or revocation process pursuant to Section 20 until the dispute is finally resolved either consistent with Burien Municipal Code Chapter 3.12 or by judicial action and then only if the Franchisee does not comply with such resolution. The parties agree however, that nothing in this Franchise shall limit Burien’s power of taxation as may exist now or as later imposed by Burien. This provision does not limit Burien’s power to amend Burien Municipal Code Chapter 3.12 as may be permitted by law.

Section 15. Small Wireless Facilities.

Section 15.1 Burien Retains Approval Authority. Burien shall have the authority at all times to control by appropriately exercised police powers through ordinance or regulation, 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 Franchisee, and Franchisee shall promptly conform with all such requirements, unless compliance would cause Franchisee to violate other legal requirements. This Franchise does not

prohibit Burien 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.

Section 15.2 Burien Approvals and Permits. The granting of this Franchise is not a substitute for any other required approvals to construct Franchisee's Facilities in the Rights-of-Way ("Burien Approvals"). The parties agree that such Burien Approvals (except Right-of-Way use permits described in Section 8.2) are not considered use permits, as that term is defined in RCW 35.99.010. These Burien Approvals do not grant general authorization to enter and utilize the Rights-of-Way but rather grant Franchisee permission to build its specific Small Wireless Facilities. Therefore, Burien Approvals are not subject to the thirty (30) calendar day issuance requirement described in RCW 35.99.030. The parties recognize that this provision is specifically negotiated as consideration for designating all of the Rights-of-Way of Burien as the Franchise Area. Such Burien Approvals shall be issued consistent with the Burien Municipal Code, and state and federal laws governing wireless communication facility siting and may be in addition to any permits required under Section 8.2.

Section 15.3 Preference for Existing Infrastructure; Site Specific Agreements.

(a) Franchisee shall utilize existing infrastructure in Burien whenever feasible and consistent with the design, concealment and siting regulations of the BMC. The erection of new poles or structures in the Rights-of-Way may only be permitted if no other alternative space feasible for the installation of the Facility is available. In the event that existing infrastructure is not available or feasible for a Small Wireless Facility, or if Burien prefers new poles or infrastructure in a particular area of Burien, then Franchisee may request the placement of new or replacement structures in the Rights-of-Way consistent with the requirements of the BMC.

(b) Franchisee acknowledges and agrees that if Franchisee requests to place new structures or replacement structures that are higher than the replaced structure and the overall height of the replacement structure and the Facility are over 60 feet in the Rights-of-Way then Franchisee may be required to enter into a site-specific agreement consistent with RCW 35.21.860 to construct such Facilities in the Rights-of-Way. Such

agreements may require a site-specific charge paid to Burien. The approval of a site-specific agreement is at the discretion of each of the parties thereto.

(c) Unless otherwise required by the BMC, replacement poles or structures which remain substantially similar to existing structures or deviate in height or design as permitted within the BMC are permissible provided that Franchisee, or the pole owner at the Franchisee's request, removes the old pole or structure promptly, but no more than thirty (30) calendar days after the installation of the replacement pole or structure.

(d) This Section 15.3 does not place an affirmative obligation on Burien to allow the placement of new infrastructure on public property or in the Rights-of-Way, nor does it relieve Franchisee from any BMC provision related to the siting of wireless facilities.

Section 15.4 Concealment. Franchisee shall construct its Facilities consistent with the concealment or stealth requirements as required by the BMC or in the applicable permit(s), lease, site specific agreement, or license agreement, in order to minimize the visual impact of such Facilities.

Section 15.5 Eligible Facilities Requests. The Parties agree that the intent of this Franchise is to provide general authorization to use the Rights-of-Way for Small Wireless Facilities. When considering whether a proposed modification is a substantial change under Section 6409(a) of the Spectrum Act, 47 U.S.C. §1455(a), the parties acknowledge that the designs as currently illustrated in a Small Wireless Facility permit are intended to maintain the appearance of a light or utility pole.

Section 15.6 Inventory. Franchisee shall maintain a current inventory of Small Wireless Facilities throughout the Term of this Franchise. Franchisee shall provide to Burien a copy of the inventory report no later than one hundred eighty (180) calendar days after the Effective Date of this ordinance and shall provide Burien an updated copy of the inventory report within thirty (30) calendar days of Burien's reasonable request. 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 18.1, shall be included in the inventory report and Franchisee 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 Rights-of-Way. Burien 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. Franchisee is not required to report on future inventory reports any Deactivated Facilities which were removed from the Rights-of-Way since the last reported inventory and may thereafter omit reference to the Deactivated Facilities.

Section 15.7 Unauthorized Facilities. Any Small Wireless Facilities installation in the Rights-of-Way that was not authorized under this Franchise or other required Burien Approval (“Unauthorized Facilities”) will be subject to the payment of an Unauthorized Facilities charge by Franchisee. Burien shall provide written notice to Franchisee of any Unauthorized Facilities identified by Burien staff and Franchisee shall either (i) establish that the site was authorized, or (ii) submit a complete application to Burien for approval of the Unauthorized Facilities. Upon notice of the Unauthorized Facility, Franchisee shall be charged One Thousand and 00/100 Dollars (\$1000.00) each day for each Unauthorized Facility (“Unauthorized Facility Penalty”). The Unauthorized Facility Penalty shall be waived in its entirety if Franchisee can establish that the site was in fact authorized. The Unauthorized Facility Penalty shall be suspended upon the submission of a complete application to Burien requesting approval of the Unauthorized Facility. If the application for such Unauthorized Facilities is denied as the final decision, then the Unauthorized Facility Penalty will resume until the Unauthorized Facilities are removed and Franchisee shall remove the Unauthorized Facilities from Burien’s Right-of-Way within thirty (30) calendar days after the expiration of all appeal periods for such denial. This Franchise remedy is in addition to any other remedy available to Burien at law or equity.

Section 15.8 Graffiti Abatement. As soon as practical, but not later than fourteen (14) calendar days from the date Franchisee receives notice or is otherwise aware, Franchisee 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 Franchisee from complying with any Burien graffiti or visual blight ordinance or regulation.

Section 15.9 Emissions Reports.

(a) Franchisee 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 Rights-of-Way, 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 Franchisee or on behalf of Franchisee on or near the specific pole or structure.

(b) Franchisee must provide to Burien the results of an emissions report (the “Emissions Report”) from a licensed professional engineer analyzing whether RF and EMF emissions at the proposed Small Cell Facility locations would comply with FCC standards. Franchisee may provide one Emissions Report within the same batch of applications if Franchisee is using the same Small Cell Facility configuration for all installations within that batch, or may submit one Emissions Report for each subgroup installation identified in the batch.

(c) At Burien’s request, upon completion of the initial installation of a Small Cell Facility or a material change in equipment for such Small Cell Facility anticipated to substantially increase the RF exposure from the Small Cell Facility, Franchisee must conduct on-site post-installation RF exposure testing in accordance with applicable rules and certify actual compliance with the applicable maximum permissible exposure limits for general population/uncontrolled RF exposure and provide a copy of such post-installation compliance report to Burien.

Section 15.10 Interference with Public Facilities. Franchisee’s Small Wireless Facilities shall not physically interfere or cause harmful interference, as defined in 47 CFR 15.3(m), with any Burien operations (including, but not limited to, traffic lights, public safety radio systems, or other Burien communications infrastructure), or the PSERN (or its successor entity) communications operation or equipment. If the Small Wireless Facilities cause such interference, Franchisee shall respond to Burien’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. Burien may require, by written notice, that Franchisee power down the specific Small

Wireless Facilities, or portion thereof, causing such interference if such interference is not remedied within forty-eight (48) hours after notice. If, within thirty (30) calendar days after receipt of such written notice from Burien of such interference, Franchisee has not abated such interference, such Small Wireless Facility may be deemed an Unauthorized Facility and subject to the provisions of Section 15.7 or removal by Burien consistent with Section 13.

Section 15.11 Interference with Other Facilities. Franchisee is solely responsible for determining whether its Small Wireless Facilities interfere with telecommunications facilities of other utilities and other franchisees within the Rights-of-Way. Franchisee 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. Franchisee, 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, electroliers, 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.

Section 16. Indemnification.

Section 16.1 Franchisee releases, covenants not to bring suit, and agrees to indemnify, defend, and hold harmless Burien, its agents, board and commission members (appointed or elected), counsel, directors, employees, officers, officials (elected and appointed), and representatives (collectively the "Indemnitees") from any and all claims, costs, judgments, awards, or liability to any person, for injury or death of any person, or damage to property caused by or arising out of any acts or omissions of Franchisee, its agents, board of directors, contractor (of any tier), counsel, employees, management, officers, servants, representatives, or shareholders or any other person acting in the operation of its business, or from any activity, work or thing done, permitted, or suffered by Franchisee arising from or in connection with, in performance of, or related to the performance of this Franchise and any rights granted within this Franchise. These indemnification obligations shall extend to claims that are not reduced to a

suit and any claims that may be compromised, with Franchisee's prior written consent, prior to the culmination of any litigation or the institution of any litigation.

Section 16.2 Inspection or acceptance by Burien of any work performed by Franchisee at the time of completion of construction shall not be grounds for avoidance by Franchisee of any of its obligations under this Section 16.

Section 16.3 Burien shall promptly notify Franchisee of any claim or suit and request in writing that Franchisee indemnify Burien. Franchisee may choose counsel to defend Burien subject to this 16.3. Burien's failure to so notify and request indemnification shall not relieve Franchisee of any liability that Franchisee might have, except to the extent that such failure prejudices Franchisee's ability to defend such claim or suit. In the event that Franchisee 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 Franchisee, Franchisee shall pay all of Burien's reasonable costs for defense of the action, including all expert witness fees, costs, and attorneys' 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 Burien and the counsel selected by Franchisee to represent Burien, then upon the prior written approval and consent of Franchisee, which shall not be unreasonably withheld, Burien shall have the right to employ separate counsel in any action or proceeding and to participate in the investigation and defense thereof. and Franchisee shall pay the reasonable fees and expenses of such separate counsel, except that Franchisee shall not be required to pay the fees and expenses of separate counsel on behalf of Burien for Burien to bring or pursue any counterclaims or interpleader action, equitable relief, restraining order or injunction. Burien'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 Burien but shall not include outside attorneys' fees for services that are unnecessarily duplicative of services provided Burien by Franchisee. 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.

Section 16.4 Except to the extent that damage or injury arises from the negligence or willful misconduct of the Indemnitees, the obligations of Franchisee under the indemnification provisions of this Section 16 and any other indemnification provision herein shall apply. However, should a court of competent jurisdiction determine that this Franchise is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to personal or real property were caused or contributed to by the concurrent negligence of the Franchisee and the Indemnitees the Franchisee's liability hereunder shall be only to the extent of the Franchisee's negligence. Notwithstanding the proceeding sentence, 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. It is further specifically and expressly understood that the indemnification provided herein constitutes Franchisee's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification, relating solely to indemnity claims made by Burien directly against the Franchisee for claims made against Burien by Franchisee's employees. This waiver has been mutually negotiated by the parties.

Section 16.5 Notwithstanding any other provisions of this Section 16, Franchisee assumes the risk of damage to its Facilities located in the Rights-of-Way and upon Burien-owned property from activities conducted by the Indemnitees, except to the extent any such damage or destruction is caused by or arises from the gross negligence, willful, or criminal actions on the part of the Indemnitees. In no event shall either party be liable to the other 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 such party's performance or failure to perform under this Franchise. Franchisee releases and waives any and all such claims against the Indemnitees. Franchisee further agrees to indemnify, hold harmless and defend Burien against any claims for damages, including, but not limited to, business interruption damages, lost profits and consequential damages, brought by or under users of Franchisee's Facilities as the result of any interruption of service due to

damage or destruction of Franchisee's Facilities caused by or arising out of activities conducted by Burien, its agents, employees, officers, or officials.

Section 16.6 The provisions of this Section 16 shall survive the expiration, revocation, or termination of this Franchise.

Section 17. Insurance.

Section 17.1 Franchisee shall procure and maintain for so long as Franchisee has Facilities in the Rights-of-Way, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the exercise of rights, privileges and authority granted to Franchisee. To the extent economically feasible, Franchisee shall require that every contractor and subcontractor (of any tier) maintain substantially the same insurance coverage with substantially the same policy limits as required of Franchisee. Franchisee shall procure insurance from insurers with a current A.M. Best rating of not less than A-, VII. Franchisee shall provide a copy of a certificate of insurance and additional insured endorsement to Burien for its inspection at the time of acceptance of this Franchise, and such insurance certificate shall evidence a policy of insurance that includes:

(a) Automobile Liability insurance with limits of \$5,000,000 combined single limit per occurrence for bodily injury and property damage;

(b) Commercial General Liability insurance as per form ISO CG 00 01 or its equivalent, written on an occurrence basis with limits of \$5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including personal and advertising injury, contractual liability; premises; operations; independent contractors; products and completed operations; and broad form property damage; explosion, collapse and underground (XCU);

(c) Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington and Employer's Liability with a limit of \$1,000,000 each accident/disease/policy limit; Evidence of qualified self-insurance is acceptable;

(d) Excess Umbrella liability policy with limits of \$10,000,000 per occurrence and in the aggregate. Franchisee may use any combination of primary and excess to meet required total limits.

Section 17.2 Payment of deductible or self-insured retention shall be the sole responsibility of Franchisee. Franchisee may utilize primary and umbrella liability insurance policies to satisfy the insurance policy limits required in this Section 17. Franchisee's umbrella liability insurance policy shall provide "follow form" coverage over its primary liability insurance policies or be at least as broad as such underlying policies.

Section 17.3 The required Commercial General Liability and Umbrella/Excess Liability insurance policies obtained by Franchisee shall include Burien, its agents, counsel, board and commission members, employees, officers, officials (appointed and elected), representatives, and volunteers ("Additional Insureds"), as an additional insured by blanket endorsement with regard to any work or operations performed under this Franchise or by or on behalf of the Franchisee and the required Commercial Auto Liability policy obtained by Franchisee shall include the Additional Insureds, as an additional insured by blanket endorsement with regard to the use of vehicles by or on behalf of Franchisee while in performance of this Franchise. In addition, the insurance policy shall contain a clause stating that coverage shall apply separately to each insured against whom a claim is made, or suit is brought, except with respect to the limits of the insurer's liability and except with respect to the rights and duties of Franchisee as the First Named insured. Franchisee shall provide to Burien a certificate of insurance and a copy of the blanket additional insured endorsements. Receipt by Burien of any certificate showing less coverage than required is not a waiver of Franchisee's obligations to fulfill the requirements. Franchisee's required general and auto liability insurance shall be primary insurance with respect to Burien. Any insurance, self-insurance, or insurance pool coverage maintained by Burien shall be in excess of Franchisee's required insurance and shall not contribute with it.

Section 17.4 Upon receipt of notice from its insurer(s) Franchisee shall provide Burien with thirty (30) calendar days prior written notice of any cancellation or non-renewal of any insurance policy, required pursuant to this Section 17, that is not replaced. Franchisee shall, prior to the effective date of such cancellation, obtain replacement insurance policies meeting the requirements of this Section 17. Failure to provide the insurance cancellation notice and to furnish to Burien replacement certificates of insurance meeting the requirements of this Section 17 shall be considered a material breach of this Franchise and subject to Burien's election of

remedies described in Section 21 below. Notwithstanding the cure period described in Section 21.3, Burien may pursue its remedies immediately upon a failure to furnish evidence of replacement insurance.

Section 17.5 Franchisee's maintenance of insurance as required by this Section 17 shall not be construed to limit the liability of Franchisee to the coverage provided by such insurance, or otherwise limit Burien's recourse to any remedy available at law or equity. Further, Franchisee's maintenance of insurance policies required by this Franchise shall not be construed to excuse unfaithful performance by Franchisee.

Section 17.6 Burien may review all insurance limits once every three (3) calendar years during the Term and may make reasonable adjustments in the limits in accordance with prudent risk management practices and insurance industry standards upon thirty (30) calendar days' prior written notice to Franchisee. Franchisee shall then provide an updated certificate of insurance to Burien showing compliance with these adjustments and shall furnish the required blanket additional insured endorsement.

Section 17.7 As of the Effective Date of this Franchise, Franchisee is not self-insured with respect to required insurance. Should Franchisee wish to become self-insured at the levels outlined in this Franchise at a later date, Franchisee or its affiliated parent entity shall comply with the following: (1) provide Burien, upon request, a copy of Franchisee's, or its parent company's, most recent annual report, if such financial statements are not otherwise publicly available; (2) Franchisee or its parent company is responsible for all payments within the self-insurance program; and (3) Franchisee assumes all defense and indemnity obligations as outlined in the indemnification section of this Franchise.

Section 18. Abandonment of Franchisee's Telecommunications Network.

Section 18.1 Where any Facilities or portions of Facilities are no longer needed and their use is to be discontinued, the Franchisee 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 15.6. Deactivated Facilities, or portions thereof, shall be completely removed within sixty (60) calendar days and the site, pole or infrastructure restored to its pre-existing condition, reasonable wear and tear excepted.

Section 18.2 If Franchisee leases a structure from a landlord and such landlord later abandons the structure, Franchisee shall remove its Facilities from the abandoned structure within ninety (90) calendar days of such notification from the landlord at no cost to Burien and shall remove the pole if required by the landlord. Notwithstanding the preceding sentence, the timelines determined by Burien for relocation projects described in Section 5 above shall apply.

Section 18.3 Upon the expiration, termination, or revocation of the rights granted under this Franchise, Franchisee shall remove all of its Facilities from the Rights-of-Way within sixty days of receiving written notice from the Public Works Director or his/her designee. The Facilities, in whole or in part, may not be abandoned by Franchisee without written approval by Burien. Any plan for abandonment or removal of Franchisee's Facilities must be first approved by the Public Works Director or his/her designee, and all necessary permits must be obtained prior to such work. Franchisee shall restore the Rights-of-Way to at least the same condition the Rights-of-Way were in immediately prior to any such installation, construction, relocation, maintenance, or repair provided Franchisee shall not be responsible for any changes to the Rights-of-Way not caused by Franchisee or any person doing work for Franchisee, or reasonable wear and tear. Franchisee shall be solely responsible for all costs associated with removing its Facilities.

Section 18.4 Notwithstanding Section 18.1 above, Burien may permit Franchisee's Facilities to be abandoned in place in such a manner as Burien may prescribe. Upon permanent abandonment, and Franchisee's agreement to transfer ownership of the Facilities to Burien, Franchisee shall submit to Burien a proposal and instruments for transferring ownership to Burien.

Section 18.5 Any Facilities which are not removed within one hundred eighty (180) calendar days of either the date of termination or revocation of this Franchise or the date Burien issued a permit authorizing removal, whichever is later, shall automatically become the property of Burien. Any costs incurred by Burien in safeguarding such Facilities or removing the Facilities shall be reimbursed by Franchisee. Nothing contained within this Section 18 shall prevent Burien from compelling Franchisee to remove any such Facilities through judicial action when Burien has not permitted Franchisee to abandon said Facilities in place.

Section 18.6 The provisions of this Section 18 shall survive the expiration, revocation, or termination of this Franchise and for so long as Franchisee has Facilities in Rights-of-Way.

Section 19. Security.

Section 19.1 Assurance Device(s). At Burien’s request, and consistent with BMC 12.17.080 and the applicable permit, Franchisee shall furnish an assurance device(s) in a form and amount as required by the Public Works Director to cover the performance and maintenance of the required work, improvements and restoration proposed by the Franchisee.

Section 19.2 Franchise Bond. Franchisee shall provide Burien with a bond in the amount of Fifty Thousand Dollars (\$50,000.00) (“Franchise Bond”) running or renewable for the term of this Franchise, in a form and substance reasonably acceptable to Burien. In the event Franchisee shall fail to substantially comply with any one or more of the provisions of this Franchise following notice and a reasonable opportunity to cure, then there shall be recovered jointly and severally from Franchisee and the bond any actual damages suffered by Burien as a result thereof, including but not limited to staff time, material and equipment costs, compensation or indemnification of third parties, and the cost of removal or abandonment of facilities hereinabove described. Franchisee specifically agrees that its failure to comply with the terms of this Section 19 shall constitute a material breach of this Franchise. The amount of the bond shall not be construed to limit Franchisee’s liability or to limit Burien’s recourse to any remedy to which Burien is otherwise entitled at law or in equity.

Section 20. Revocation. If Franchisee willfully violates or fails to comply with any material provisions of this Franchise beyond applicable notice and cure periods as set forth in Section 21.3, then at the election of the Burien City Council after at least thirty (30) calendar days written notice to Franchisee specifying the alleged violation or failure, Burien may revoke all rights conferred and this Franchise may be revoked by Burien City Council after a hearing held upon such notice to Franchisee. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within thirty (30) calendar days after the hearing, the Burien City Council, on the basis of the record, will make the determination as to whether there is cause for revocation, whether the Franchise will be terminated, or whether lesser sanctions should otherwise be imposed. The Burien City Council may in its sole discretion fix an additional time

period to cure violations. If the deficiency has not been cured at the expiration of any additional time period or if the Burien City Council does not grant any additional period, the Burien City Council may by resolution declare the Franchise to be revoked and forfeited or impose lesser sanctions. If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction, provided Franchisee is otherwise in compliance with the Franchise.

Section 21. Remedies to Enforce Compliance.

Section 21.1 Burien may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Franchisee to comply with the provisions of the Franchise and to recover damages and costs incurred by Burien by reason of Franchisee's failure to comply. In addition to any other remedy provided herein, Burien reserves the right to pursue any remedy to compel or force Franchisee and/or its successors and assigns to comply with the terms hereof, and the pursuit of any right or remedy by Burien shall not prevent Burien from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of Burien or Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to affect any such waiver.

Section 21.2 Franchisee may elect, without any prejudice to any of its other legal rights and remedies, to obtain an order from the superior court having jurisdiction compelling Burien to comply with the provisions of the Franchise and to recover damages and costs incurred by the Franchisee by reason of Burien's unreasonable failure to comply with such court order. In addition to any other remedy provided herein, Franchisee reserves the right to pursue any remedy to compel or force Burien to comply with the terms hereof, and the pursuit of any right or remedy by the Franchisee shall not prevent the Franchisee from thereafter declaring a forfeiture or revocation for breach of the conditions herein. Provided, further, that by entering into this Franchise, it is not the intention of the Franchisee to waive any other rights, remedies, or obligations as otherwise provided by law equity, or otherwise, and nothing contained here shall be deemed or construed to effect any such waiver.

Section 21.3 If Franchisee violates, fails to comply with any of the provisions of this Franchise, or fails to heed or comply with any notice given to Franchisee under the provisions of this Franchise, Burien shall provide Franchisee with written notice specifying with reasonable particularity the nature of any such breach and Franchisee shall undertake all commercially reasonable efforts to cure such breach within thirty (30) calendar days of receipt of notification. If the parties reasonably determine the breach cannot be cured within (30) calendar thirty days, Burien may specify a longer cure period, and condition the extension of time on Franchisee's submittal of a plan to cure the breach within the specified period, commencement of work within the original thirty (30) calendar day cure period, and diligent prosecution of the work to completion. If the breach is not cured within the specified time, or Franchisee does not comply with the specified conditions, Burien may, at its discretion, (1) revoke this Franchise in accordance with Section 20, (2) claim damages of Two Hundred Fifty Dollars (\$250.00) per day against the Franchisee or the Franchise Bond set forth in Section 19.2 until the violation is cured, or (3) pursue other remedies as described in Section 21.1 above. Liquidated damages described in this Section 21.3 shall not be offset against any sums due to Burien as a tax or reimbursement pursuant to Section 14.

Section 21.4 If Burien shall violate or fail to comply with any of the provisions of this Franchise, the Franchisee shall provide Burien with written notice specifying with reasonable particularity the nature of any such breach and Burien shall undertake all commercially reasonable efforts to cure such breach within thirty (30) calendar days of receipt of notification. If the parties reasonably determine the breach cannot be cured within thirty (30) calendar days, the parties may agree to a longer cure period. If the breach is not cured within the specified time, or Burien does not comply with the specified conditions, the Franchisee may, at its discretion, (1) terminate this Franchise, or (2) pursue other remedies as described in Section 21.2 above.

Section 22. Non-Waiver. The failure of either party 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. Reserved.

Section 24. Cost of Publication. Franchisee shall pay the cost of publication of this Franchise.

Section 25. Acceptance. Franchisee shall execute and return to Burien its execution and acceptance of this Franchise in the form attached hereto as Exhibit A. In addition, Franchisee shall submit proof of insurance obtained and additional insured endorsement pursuant to Section 17, any assurance device(s), if applicable, pursuant to Section 19 and the Franchise Bond required pursuant to Section 19.2. The administrative fee pursuant to Section 14.1 is due within thirty (30) calendar days of receipt of the invoice from Burien.

Section 26. Survival. All of the provisions, conditions, and requirements of Section 5, Section 6, Section 8, Section 12, Section 16, Section 17, Section 18, Section 25, Section 27, and Section 37 of this Franchise shall be in addition to any and all other obligations and liabilities Franchisee may have to Burien at common law, by statute, or by contract, and shall survive Burien's Franchise to Franchisee for the use of the Franchise Area, and any renewals or extensions thereof. All of the provisions, conditions, regulations and requirements contained in this Franchise shall further be binding upon the administrators, assigns, executors, heirs, legal representatives, and successors, of Franchisee and all privileges, as well as all obligations and liabilities of Franchisee shall inure to its assigns, heirs, and successors equally as if they were specifically mentioned where Franchisee is named herein.

Section 27. Assignment.

Section 27.1 This Franchise may not be directly or indirectly assigned, transferred, or disposed of by sale, lease, merger, consolidation, or other act of Franchisee, by operation of law or otherwise, unless approved in writing by Burien, which approval shall not be unreasonably withheld, conditioned, or delayed. The above notwithstanding, Franchisee 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 27.2 below, or for collateral security purposes. Franchisee shall provide prompt, written notice to Burien 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 27, no assignment or transfer of this Franchise shall be deemed to occur based on the public trading of Franchisee's stock; provided,

however, any tender offer, merger, or similar transaction resulting in a change of control shall be subject to the provisions of this Franchise.

Section 27.2 Any transactions that singularly or collectively result in a change of more than fifty percent (50%) of the: ultimate ownership or working control of Franchisee, ownership or working control of the Facilities, ownership or working control of affiliated entities having ownership or working control of Franchisee or of the Facilities, or of control of the capacity or bandwidth of Franchisee's Facilities, shall be considered an assignment or transfer requiring Burien's written approval. Transactions between affiliated entities are not exempt from Burien's approval if there is a change in control as described in the preceding sentence. Franchisee shall promptly notify Burien prior to any proposed change in, or transfer of, or acquisition by any other party of control of Franchisee. Every change, transfer, or acquisition of control of Franchisee shall cause a review of the proposed transfer. Burien shall approve or deny such request for an assignment or transfer requiring Burien's consent within one-hundred twenty (120) calendar days of a completed application from Franchisee, unless a longer time is mutually agreed to by the parties or when a delay in the action taken by Burien is due to the schedule of Burien City Council and action cannot reasonably be obtained within the one hundred twenty (120) calendar day period. If Burien adopts a resolution denying its consent and such change, transfer, or acquisition of control has been affected, Burien may revoke this Franchise, following the revocation procedure described in Section 20 above, or prior to any such revocation by Burien, Franchisee may revoke its request for consent to any such assignment, in which case, this Franchise shall continue in full force. The assignee or transferee must have the legal, technical, financial, and other requisite qualifications to own, hold, and operate Franchisee's Services. Franchisee shall reimburse Burien for all costs and expenses reasonably incurred by Burien in considering a request to transfer or assign this Franchise, in accordance with the provisions of Section 14.3 and Section 14.4, and shall pay the applicable application fee.

Section 27.3 Franchisee may, without prior consent from Burien: (i) lease the Facilities, or any portion, to another person; (ii) grant an indefeasible right of user interest in the Facilities, or any portion, to another person; or (iii) offer to provide capacity or bandwidth in its Facilities to another person, provided further, that Franchisee shall at all times retain exclusive control over its Facilities and remain fully responsible for compliance with the terms of this Franchise,

and Franchisee shall furnish, upon request from Burien, a copy of any such lease or agreement, provided that Franchisee may redact the name, street address (except for city and zip code), social security numbers, Employer Identification Numbers, or similar identifying information, and other information considered confidential under applicable laws provided in such lease or agreement, and the lessee complies, to the extent applicable, with the requirements of this Franchise and applicable BMC section. Franchisee's obligation to remain fully responsible for compliance with the terms under this Section 27.3 shall survive the expiration of this Franchise but only if and to the extent and for so long as Franchisee is still the owner or has exclusive control over the Facilities used by a third party.

Section 28. Extension. If this Franchise expires without renewal, Burien may, subject to applicable law:

(a) Allow Franchisee to maintain and operate its Facilities on a month-to-month basis, provided that Franchisee maintains insurance for such Facilities during such period and continues to comply with this Franchise; or

(b) Burien may order the removal of any and all Facilities at Franchisee's sole cost and expense consistent with Section 18.

Section 29. Entire Agreement. This Franchise constitutes the Parties' entire understanding and agreement 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 30. Eminent Domain. The existence of this Franchise shall not preclude Burien from acquiring by condemnation in accordance with applicable law, all or a portion of the Franchisee'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 31. Vacation. If at any time Burien, by ordinance, vacates all or any portion of the area affected by this Franchise, Burien shall not be liable for any damages or loss to the Franchisee by reason of such vacation. Burien shall notify the Franchisee in writing not less than sixty (60) calendar days before vacating all or any portion of any such area in which Franchisee is located. Burien may, after sixty (60) calendar days written notice to the Franchisee, terminate this Franchise with respect to such vacated area.

Section 32. 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) calendar 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 OF BURIEN

Attn: City Manager
400 SW 152nd St, Suite 300
Burien, WA 98166 with a copy to:

CITY OF BURIEN
Attn: City Clerk
400 SW 152nd St, Suite 300
Burien, WA 98166

CROWN CASTLE FIBER LLC

With a copy to:

Section 33. Compliance with All Applicable Laws. Franchisee agrees to comply with all present and future federal and state laws, ordinances, rules and regulations. Nothing herein shall be deemed to restrict Burien’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. Burien shall have the authority at all times to reasonably control by appropriate regulations the location, elevation, manner of construction and maintenance of Facilities by Franchisee, and Franchisee shall promptly conform with all such regulations, unless compliance would cause Franchisee to violate other requirements of law. Franchisee further expressly acknowledges that following the approval of this Franchise, Burien may modify its BMC to address Small Wireless deployment and such BMC modifications shall apply to Franchisee's Facilities, except to the extent prohibited by state or federal law. In the event of a conflict between the provisions of this Franchise and any other generally applicable ordinance(s) enacted under Burien's police power authority, such other ordinance(s) shall take precedence over the provisions set forth herein. Notwithstanding the foregoing, Franchisee shall not be required to comply with any new ordinances to the extent that they impact existing Facilities to which Franchisee has a vested right in accordance with the vested rights doctrine under Washington case law or as codified at RCW 19.27.095.

Section 34. Amendment. Burien 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 relating to a Burien ordinance enacted pursuant to such federal or state statute or regulation; provided that Burien provide Franchisee with thirty (30) calendar 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, Franchisee 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) calendar days of the call for negotiations, the Parties may then submit the issue to a court of competent jurisdiction.

Section 35. 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 36. Hazardous Substances. Franchisee shall not introduce or use any hazardous substances (chemical or waste) in the Rights-of-Way, in violation of any applicable law or regulation, nor shall Franchisee allow any of its agents, contractors (of any tier), or any person under its control to do the same. Franchisee will be solely responsible for and will defend, indemnify and hold Burien, its agents, employees, officers, and officials harmless from and against any and all 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 Franchisee's use, storage, or disposal of hazardous substances, whether or not intentional, and the use, storage or disposal of such substances by Franchisee's agents, contractors, or other persons acting under Franchisee's control, whether or not intentional.

Section 37. Licenses, Fees and Taxes. Prior to constructing any improvements, Franchisee shall obtain a business or utility license from Burien. Franchisee shall pay promptly and before they become delinquent, all taxes on personal property and improvements owned or placed by Franchisee 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 Burien and shall pay utility taxes and license fees imposed by Burien.

Section 38. Miscellaneous.

Section 38.1 Burien and Franchisee respectively represent that its signatory is duly authorized and has full right, power, and authority to execute this Franchise.

Section 38.2 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.

Section 38.3 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.

Section 38.4 Where the context so requires, the singular shall include the plural and the plural includes the singular.

Section 38.5 Franchisee shall be responsible for obtaining all other necessary approvals, authorizations, and agreements from any party or entity and it is acknowledged and agreed that Burien is making no representation, warranty, or covenant whether any of the foregoing approvals, authorizations, or agreements are required or have been obtained by Franchisee by any person or entity.

Section 38.6 This Franchise may be enforced at both law and equity.

Section 38.7 Franchisee acknowledges that it, and not Burien, shall be solely responsible for the premises and equipment's compliance with all marking and lighting requirements of the FAA and the FCC. Franchisee shall indemnify and hold Burien harmless from any fines or other liabilities caused by Franchisee's failure to comply with such requirements. Should Franchisee or Burien be cited by either the FCC or the FAA because the Facilities or the Franchisee's equipment is not in compliance and should Franchisee fail to cure the conditions of noncompliance within the timeframe allowed by the citing agency, Burien may either terminate this Franchise immediately on notice to the Franchisee or proceed to cure the conditions of noncompliance at the Franchisee's sole expense.

Section 38.8 Any reference to Burien's costs that must be paid by Franchisee pursuant to the terms of this Franchise shall mean all actual, reasonable, and documented costs of Burien.

Section 38.9 Neither party shall be required to perform any covenant or obligation in this Franchise, or be liable in damages to the other party, so long as the performance of the covenant or obligation is delayed, caused, or prevented by a Force Majeure Event. A "Force Majeure Event" is defined for purposes of this Franchise as Acts of God or similar event, delays, earthquakes, explosions, fire, floods, lockouts, insurrection, pandemic, riots, strikes of any kind, terrorism, storms, unusual transportation delays, war, washouts, weather (including inclement weather which prevents construction), and acts of the public enemy.

Section 39. Severability. Should a court of competent jurisdiction find any section, paragraph, sentence, clause, or phrase of this ordinance, or its application to any person or circumstance, unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 40. Edits. For purposes of this ordinance, additions are underlined, and deletions are stricken with brackets around the deleted language.

Section 41. Corrections. The City Clerk and codifiers of the ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 42. Ordinance Effective Date. This ordinance, being an exercise of a power specifically delegated to Burien's legislative body, is not subject to referendum, and shall take effect five (5) calendar days after passage and publication of an approved summary thereof consisting of the title ("Effective Date").

APPROVED:



Name: Sofia Aragon
MAYOR

ATTEST/AUTHENTICATED:



Name: Heather Dumlao
CITY CLERK

APPROVED AS TO FORM:



Name: Garmon Newsom II
CITY ATTORNEY

FILED WITH THE CITY CLERK: May 16, 2022
PASSED BY THE CITY COUNCIL: June 21, 2022
PUBLISHED: June 27, 2022
EFFECTIVE DATE: July 2, 2022
ORDINANCE NO.: 796